



By email to: [tyree@mvlwb.com](mailto:tyree@mvlwb.com); [sallerston@mvlwb.com](mailto:sallerston@mvlwb.com)

Ms. Tyree Mullaney, Regulatory Officer  
Ms. Shannon Allerston, Regulatory Officer  
Mackenzie Valley Land and Water Board  
7<sup>th</sup> Floor – 4910 50<sup>th</sup> Avenue  
P.O. Box 2130  
Yellowknife, NT  
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Dear Ms. Mullaney and Ms. Allerston,

**Tundra Mine Remediation Project Water Licence and Land Use Permit Applications  
(MV2016L8-0003 & MV2016X0011)  
Technical Session Information Request Responses**

This letter is in response to Undertaking #5 issued to the Government of the Northwest Territories (GNWT) and Indigenous and Northern Affairs Canada (INAC) at the June 23, 2016 technical sessions for the Tundra Mine Remediation Project. The response provided below builds on the comments provided by the Land Use Inspector to the Board on June 27, 2016, and represents the position of the GNWT Department of Lands (Lands) and Department of Environment and Natural Resources (ENR). The GNWT has communicated with INAC about this response and it is our understanding that INAC will be providing a similar response to the undertaking under separate cover.

**Undertaking #5 – Collaboration:**

*Given the project straddles both federal and non-federal lands, please confirm the following approaches to managing, regulating, and inspecting this project:*

- a) Issuance of one Land Use Permit and one Water Licence for the undertaking.*
- b) Compliance will be monitored by the federal inspectors. Otherwise, clarify how the federal and territorial inspectors would interact and how the Land Use Permit and Water Licence could be drafted to facilitate this.*
- c) The federal Minister will be the only minister to approve the Water Licence.*

## **GNWT Response:**

### **Parts a) and b) –Issuance and Compliance:**

Only one land use permit and one water licence should be issued for the undertaking. Compliance with the terms and conditions of the water licence will be monitored by federal inspectors. Compliance with the land use permit will be monitored by federal inspectors on lands under Canada's administration and control and by territorial inspectors on territorial lands.

The rationale for issuing one land use permit with compliance monitored as noted above is as follows:

Under the Delegation Instrument from the Minister of INAC to the Minister of Lands, the Minister of Lands was delegated the authority for the designation of inspectors in relation to the use of lands under subsection 84(1) of the *MVRMA*, other than in respect of a federal area. "Federal area" is defined in section 51 of the *MVRMA* as: "any lands under the administration and control of a minister of the Government of Canada and any land on which is situated a waste site for which the Management – as defined in the Northwest Territories Lands and Resources – is the responsibility of the Government of Canada". Tundra Mine is listed as a Site Requiring Remediation under Part D of the Inventory of Sites in the Devolution Agreement, and is therefore a Waste Site for which the Management is the responsibility of the Government of Canada.

Tundra Mine, as a Site Requiring Remediation under Part D of the Inventory of Sites in the Devolution Agreement, is limited to the lands under Canada's administration and control and does not include territorial lands. The federal area in this case is therefore limited to lands under Canada's administration and control. Consequently, compliance will be monitored by federal inspectors on lands under Canada's administration and control and by territorial inspectors on territorial lands. As there is no apparent reason why the terms and conditions of the land use permit should differ on lands under Canada's administration and control and territorial lands, one land use permit can be issued for the whole undertaking.

The rationale for issuing one water licence with compliance monitored by federal inspectors is as follows:

Section 23 of the *Northwest Territories Act* states: "Only a federal minister may, in relation to a federal appurtenant undertaking, exercise the following powers and functions under a Law of the Legislature: (a) approve the issuance, renewal or amendment of a licence permitting the use of waters or the deposit of waste in waters; (g) designate inspectors and grant them powers that are substantially the same as those set out in section 37 or 44.02 of the *Northwest Territories Waters Act*, as they read immediately before the coming into force of section 1". "Federal appurtenant undertaking" is defined in the *Northwest Territories Act* as: "An undertaking in relation to which a use of waters or a deposit of waste is permitted by a licence and that is (a) related to remediation that is performed by or on behalf of Her Majesty in right of

Canada (i) under the Agreement or (ii) in respect of an Excepted Waste Site as defined in section 1.1 of the Agreement; or (b) located on public lands that are under the administration and control of a federal minister”.

The remediation of the Tundra Mine Site is therefore a federal appurtenant undertaking. The effect of section 23(a) of the *Northwest Territories Act* is that the GNWT cannot require issuance of a second water licence, to be approved by the Minister of ENR, for this undertaking. There also do not appear to be any activities that will take place outside of the federal area for this undertaking that will require a water licence. The effect of section 23(g) of the *Northwest Territories Act* is that only a federally appointed inspector can monitor compliance with the terms and conditions of the water licence for this undertaking.

**Part c) - Approval of Water Licence:**

As only the federal Minister may approve the issuance of a water licence in relation to a federal appurtenant undertaking, as noted above, it follows that the federal Minister will be the only minister to approve the water licence.

I trust that this information satisfies your request. If you have any questions, please contact Mr. Scott Stewart, Lands at 767-9187 ext. 24185 or [scott\\_stewart@gov.nt.ca](mailto:scott_stewart@gov.nt.ca), or Ms. Kate Witherly, ENR at 767-9233 ext. 53095 or [kate\\_witherly@gov.nt.ca](mailto:kate_witherly@gov.nt.ca).

Sincerely,



Scott Stewart, Superintendent  
North Slave Region  
Department of Lands



Joel Holder, Director  
Conservation, Assessment & Monitoring  
Department of ENR