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September 8, 2022

File: G22L1-005

Ken Kyikavichik
Grand Chief
Gwich'in Tribal Council
PO BOX 1509
Inuvik NT X0E 0T0

Sent by email

Mr. Kyikavichik,

Re: GTC Request for Public Hearing – KBL Environmental Ltd Type B Water Licence Renewal for Inuvik Soil Treatment Facility (G22L1-005)

The Gwich'in Land and Water Board (Board) met on September 7, 2022 and considered the request for a Public Hearing in association with KBL Environmental Ltd.'s Type B Water Licence Renewal for the Inuvik Soil Treatment Facility, as submitted by the Gwich'in Tribal Council on June 28, 2022.

In accordance with subparagraph 72.15 (1)(a) of the Mackenzie Valley Resource Management Act, the Board may hold an optional public hearing for a Type B Water Licence Application if it is satisfied it is in the public interest to do so.

The Board has decided not to hold a public hearing for application G22L1-005 at this time. The reasons for this decision are attached. Please do not hesitate to contact GLWB Acting Executive Director Alec Sandra Macdonald should you have any questions or concerns regarding this letter.

Yours sincerely,

Elizabeth Wright
Chair, Gwich'in Land and Water Board

BCC'd to: GLWB Distribution List
Attached: Reasons for Decision



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Reasons for Decision

Water Licence Application – Request for Public Hearing	
File Number	G22L1-005
Company	KBL Environmental Ltd.
Project	Inuvik Soil Treatment Facility
Location	Inuvik, NT
Activity	Deposit of Waste – In association with the Operation of the Inuvik Soil Treatment Facility
Date of Decision	September 7, 2022

1.0 DECISION

On September 7, 2022, the Gwich'in Land and Water Board (GLWB or Board) met and considered the request for a public hearing made by the Gwich'in Tribal Council (GTC) on June 28, 2022, in respect to the KBL Environmental Ltd Type B Water Licence (Licence) renewal Application G22L1-005 for the Inuvik Soil Treatment Facility.¹ After reviewing the Applications and the evidence gathered during the regulatory proceeding, the Board has made the following decision:

- 1) To deny the request for a public hearing and continue with the regulatory process for Application G22L1-005.**

These Reasons for Decision set out the Board's regulatory process for the Application to date and rationale for the decision regarding the public hearing request.

2.0 APPLICATION SUMMARY

KBL Environmental has applied to the GLWB to renew Water Licence G17L1-002, which authorizes the deposit of waste in association with the operation of the Inuvik Soil Treatment Facility (STF). The Inuvik STF is located on previously disturbed lands within Town of Inuvik's Solid Waste Disposal Facilities.

Project activities involve the collection, storage, and treatment of petroleum hydrocarbon contaminated soil, snow and water, including the operation and maintenance of a soil treatment pad and a water retention pond. Treated soil meeting licence criteria will be transferred for use as daily cover at the Inuvik landfill. Soil determined through laboratory analysis to be unsuitable for re-use will be transported off site to an appropriate facility approved to accept the material for treatment or disposal. Treated water is reused onsite, discharged to the receiving environment, or transported offsite if it does not meet licence criteria.

2.1 Application Contents²

1. Licence Application Form and Project Description
2. Engagement Record and Plan V.2.1
3. Operations and Maintenance Plan (including Spill Contingency Plan) V.2.2
4. Waste Management Plan V.2.2
5. Environmental Monitoring Plan V.2.1
6. Closure and Reclamation Plan V.1.1

3.0 REGULATORY PROCESS

The Board's regulatory process is summarized in Table 3.1 and discussed in detail below.

¹ See glwb.com for [KBL - Inuvik Soil Treatment Facility - GTC Comments and Request for Public Hearing - Jun28 22](#)

² See new.onlinereviewssystem.ca for [KBL - Type B Water Licence Renewal - Inuvik STF \(G22L1-005\)](#)

3.1 Regulatory Process – Timeline to date

Date	Step in Proceeding
June 2, 2022	Licence Application submitted
June 7, 2022	Application deemed complete and circulated for public review
June 23, 2022	KBL Licence G17L1-002 expires
June 28, 2022	Comments deadline (GNWT ENR and GTC commented) <u>*GTC request for a Public Hearing is submitted to the Board</u>
July 7, 2022	Comment response deadline (KBL responded)
July 15, 2022	Information Request issued to GNWT ENR (Request for Inspection Report)
July 28, 2022	Deadline for Response to Information Request
August 19, 2022	Response to Information Request (Inspection Report) Received from GNWT ENR
August 23, 2022	Response to GNWT ENR Inspection Report Received from KBL
September 7, 2022	GLWB Meeting to decide on GTC request for Public Hearing

3.2 Application Public Review

During the Public Review of Application G22L1-005, comments and recommendations were received from Gwich'in Tribal Council (GTC) and GNWT Department of Environment and Natural Resources (GNWT ENR).³ GTC's comments are discussed below, as they pertain to the request for a public hearing.

GTC brought forward concerns regarding KBL's adherence to approved management plans. In particular, GTC had concerns regarding the storage and handling of a large volume of contaminated soil from Aklavik. GTC representatives undertook a site visit observed soil being stockpiled in windrows that exceeded the 4 m height allowed by the approved Operations and Maintenance Manual. GTC also noted that the soil contained pieces of plastic, and that the site was not fenced. GTC noted that it had discussed compliance concerns with KBL during pre-application engagement in April 2022 and was concerned that non-compliance was ongoing. GTC further noted that "although the past and current application addresses many of the concerns surrounding the operation and management of the soil treatment cell through various plans, the observed disregard for adhering to those plans is concerning," and "Based on the need for further clarity on this project, as well as to address concerns tied to current non-compliance issues GTC requests the Gwich'in Land and Water Board enacts Section 72.15 (1)(a) of the Mackenzie Valley Resource Management Act...and hold a public hearing this application."

³ See new.onlinereviewssystem.ca for [KBL - Type B Water Licence Renewal - Inuvik STF \(G22L1-005\)](#)

In its response to GTC's comments, KBL explained that the material heights had been exceeded as the soil was being received, but that appropriate windrowing had been undertaken. KBL also clarified that fencing construction had been delayed but was scheduled to take place this summer, and that any garbage within the soil would be removed during the treatment process. KBL disagreed with the need for a public hearing and with the suggestions that KBL was not adhering to its approved management plans. KBL recommended that "any concerns with non-compliance follow the Boards and ENR's established routes of inspections and enforcement".

3.3 Information Request to GNWT ENR - Facility Inspection Report

The Inuvik STF was licensed in June 2017; however, the facility was not constructed until November 2021, and no water licence inspections had been conducted by GNWT-ENR at the time of application. The Board noted that observations of non-compliance were made by GTC representatives, but as there were no formal reports on the register, it was determined that additional evidence pertaining to compliance was required before the Board could make a decision in respect to the need for a public hearing for the Application.

On July 18, 2022, in accordance with Rule 61 of the Mackenzie Valley Land and Water Boards' Rules of Procedure, the Board issued an Information Request (IR) to GNWT ENR. The IR requested that GNWT ENR Water Resources Officers undertake an inspection of the Inuvik STF and provide a Water Licence Inspection Report so that evidence regarding licence compliance could be available to the Board.⁴

On July 28, 2022, an ENR Water Resources Officer (WRO) undertook the inspection, and on August 19, 2022, the WRO submitted an Inspection Report to the Board. The Report noted that as KBL's Water Licence was expired, the facility could not operate or accept new material until an active water licence was in place. The report also noted some plastic debris within the facility, a crack forming within the facility berm, a lack of signage at the waste discharge location, fencing not installed, and windrows exceeding maximum allowable height.⁵

On August 23, 2022, KBL submitted responses to GNWT ENR inspection report. In the responses, KBL acknowledged its expired licence and subsequent limitations on operations. KBL provided evidence that the plastic debris had been cleaned up, the berm crack had been repaired, that signage had been in place during the inspection, that the fencing had been installed, and that the windrow heights were in compliance with approved Operations and Maintenance Plan.⁶

⁴ See GLWB registry for [KBL - Inuvik Soil Treatment Facility - Information Request to ENR - Jul18 22](#)

⁵ See GLWB registry for [KBL - Inuvik STF - GNWT ENR Response to Information Request \(Facility Inspection Report\) - Aug19 22](#)

⁶ See GLWB Public Registry for [KBL - Inuvik Soil Treatment Facility - KBL Response to GNWT ENR Inspection Report - Aug23 22](#)

3.4 Optional Public Hearing

A public hearing provides applicants, interested parties, and members of the public with an opportunity to present evidence and express views regarding an application directly to the Board. The Board's regulatory process requires that a public hearing be scheduled for all Type A Water Licence applications. For Type B applications, where the projects are typically smaller in scale and less likely to cause environmental impacts or be of public concern, public hearings are not required. However, in accordance with *Mackenzie Valley Resource Management Act 72.15(1)* and *Waters Act 41(1)*, the Board has the discretion to hold a hearing for any project, if it is satisfied that it would be in the public interest to do so.

While *Public interest* is not defined in either Act, in this context, the Board understands it to generally mean the "*well-being, convenience and concern of the public at large*". The Board will make this determination based on such factors as the type of development, the levels of public concern, and the sensitivity of the Project area, etc.

In this instance, the GTC has requested a Public Hearing be held, based on the need for further clarity on the project as well as to address concerns regarding compliance issues.

4.0 REASONS

The Board has decided that the public interest not sufficient to hold a public hearing for this application, and provides the following reasons:

- KBL's application is a Type B Water Licence renewal for an existing soil treatment facility (STF). The Board's regulatory process for original Application G17L1-002 included a preliminary screening determination which found that the Project was unlikely to have a significant adverse impact the environment or be a cause of public concern.⁷
- A Public Hearing allows parties to ask questions about the project and submit evidence that the Board would use to develop Licence terms and conditions. In this instance, KBL has applied to renew the existing terms and conditions of Water Licence G17L1-002, so the Licence has been developed, and only minor adjustments to it would be expected.
- The Board received submissions from just two parties during the public review of application G22L1-005, suggesting that concerns regarding the Project are limited.

⁷ See GLWB Public Registry for [G17L1-002 - KBL Environmental - Preliminary Screening Report - Jul25_17](#)

- GTC comments suggest that its concerns are not with the Licence terms and conditions themselves, but with KBL’s compliance with them and the approved management plans.
- GNWT ENR is the department responsible for monitoring and determining licence compliance; ENR’s public review comments did not suggest any major concerns with the application materials or licence compliance.
- KBL responded to both ENR and GTC comments, and to the ENR inspection report; it appears that KBL has rectified the compliance concerns that were brought to the Board’s attention.
- The Inuvik STF is a relatively small operation, located within the footprint of the Town of Inuvik Solid Waste Disposal Facilities, on lands already disturbed by waste disposal activities. The STF is contained within a lined, bermed facility. The sensitivity of the project area is low. Regular water quality monitoring is required both by KBL’s Water Licence and the Town of Inuvik’s Water Licence, and no exceedances have been identified to date.
- GTC is a First Nation as defined by the MVRMA, and it represents the collective rights and interests of Gwich’in Participants, many of whom reside in Inuvik. The Board weighs GTC’s comments accordingly. However, the Board also acknowledges that KBL’s facility is located with the Town of Inuvik, and the Gwich’in Comprehensive Land Claim Agreement 12.4 limits Gwich’in access rights within tenured parcels of municipal land, where the Gwich’in Land Use Plan also does not apply.⁸
- KBL has stated it does not believe a public hearing is necessary.
- KBL undertook engagement with GTC in advance of the application, and the two parties developed a mutually agreed up on engagement plan. It is the Board’s expectation that engagement activities will continue for the life of the project and that GTC will have opportunity to discuss any remaining or future concerns with KBL through the engagement process.⁹
- GTC, along with all parties, will have an opportunity to comment on a Draft Water Licence which will be circulated for public review.
- A Public Hearing can be costly for the Board, and for all parties involved.

5.0 CONCLUSION

In making its decision and preparing these Reasons for Decision, the Board has reviewed and considered:

- 1) The Applications as submitted by the Applicant for the Project;

⁸ See www.gwichintribal.ca for [Gwich’in Comprehensive Land Claim Agreement - Volume I](#)

⁹ See GLWB Public Registry for [KBL - Inuvik Soil Treatment Facility - Engagement Plan V.2.1 - Jun02_22.pdf](#)

- 2) The evidence and submissions received by the Board from the Applicant in relation to the Licence;
and
- 3) The comments and recommendations, evidence, and submissions received by the Board from Parties during the regulatory proceeding.

The Board will now continue with the regulatory process for application G22L1-005.

SIGNATURE



September 8, 2022

Elizabeth Wright, Chair
Gwich'in, Land and Water Board

Date