



August 19, 2022

Mason Mantla  
Chair  
Wek'èezhì Land and Water Board  
Box 32  
WEKWEÈTÌ NT X0E 1W0

Dear Mr. Mantla:

**Diavik Diamond Mines (2012) Inc - Type A Water Licence Amendment - W2015L2-0001**

---

On July 21, 2022, the Department of Environment and Natural Resources (ENR) of the Government of the Northwest Territories received the Wek'èezhì Land and Water Board's (Board) response to the letter that I sent on June 29, 2022, informing the Board that I was unable to approve the Water Licence Amendment for Diavik Diamond Mine (2012) Inc (DDMI) due to three legal issues. On July 27, 2022, I also received a copy of the letter the Tłıchǵ Government sent to the Board. I appreciate the Board clarifying their decision and providing a response to the legal issues noted in my letter and the Tłıchǵ Government's explanation of their position on the jurisdiction of the Board and concerns about my decision.

Annex A to this letter provides more detail related to point 1, regarding missing key foundational information required under the *Waters Regulations*, and point 3, the exclusion of *Metal and Diamond Mine Effluent Regulation* limits in the water licence, of my original letter, dated June 29, 2022. Annex B to this letter provides a response to certain statements in the Board's letter of July 21, 2022 and the Tłıchǵ Government letter of July 27, 2022. I am providing this information to further clarify my reasons for not approving the recommended water licence at this time.

I would like to turn our attention to next steps toward completing the process to amend DDMI's water licence as expeditiously as possible, as referenced in my June 29<sup>th</sup> letter. To commence this process, I request a ruling from the Board to re-open the public record under rules 22 and 38 of the Rules of Procedure. Re-opening the public record is the only means of addressing the matters of concern without ending or starting the process over again. I am requesting that the Board consider a few further steps, once the record is re-opened, in this process to hear additional information on the application. The steps should include the following to ensure procedural fairness:

.../2

- The Applicant provides evidence on the quality of “Waste” which is to be released from the decommissioned pond(s) (consistent with s. 5(1) and 5(2) of the *Waters Regulations*),
- The Board initiates a review and assessment by all registered interveners, and
- The Board subsequently renders a decision on the new “Waste” discharge in line with legislation and the Mackenzie Valley Land and Water Board Water and Effluent Quality Management Policy (2011).

I have asked my staff and legal counsel to make themselves available to work with the Board staff, and to complete the amendment process as fairly and as expeditiously as possible. I understand the company has an interest in the process recommencing.

Sincerely,



Shane Thompson  
Minister  
Environment and Natural Resources

#### Attachments

c. Ryan Fequet  
Executive Director  
Wek'èezhii Land and Water Board

Dr. Erin Kelly  
Deputy Minister  
Environment and Natural Resources

Julian Kanigan  
Assistant Deputy Minister, Environment and Climate Change  
Environment and Natural Resources

Brett Wheler  
A/Director, Department of Culture and Lands Protection  
Tłchq Government

## ANNEX A

### **Interpretation of s. 5 of the *Waters Regulations* and of s. 27(5) of the *Waters Act***

#### **Interpretation of s. 5 of the *Waters Regulations***

S. 5(1) of the *Waters Regulations* sets out two applicable mandatory details that must be included in any application for a water licence or the renewal or amendment of a water licence:

- It shall be in the form set out in Schedule C; and
- It must contain the information identified in that form

S. 5(2) of the *Waters Regulations* sets out additional information that shall be provided if certain uses or discharges will occur.

It is apparent that Item 8 of Schedule C of the *Waters Regulations* corresponds to the matters set out in s. 5(2)(f)(i)-(iii) of the *Waters Regulations*.

Section. 5(2)(f)(i)-(iii) is clear that new technical information must be provided for this amendment application to complete the amendment process. Although the WLWB has discretion to determine the level of detail required, the compulsory wording of s. 5(2)(f)(i)-(iii) does not leave discretion for the WLWB to proceed with an application that omits this information.

It is apparent from the analysis under the 'Item 10 of Schedule C' heading in the July 21, 2022 Letter from Mason Mantla, Chair of WLWB, to Minister Thompson that the WLWB believes that the sole reason for requiring the information in Item 10 of Schedule C is in relation to carrying out a preliminary screening, and that there is consequently no reason to require this information if the application is exempt from preliminary screening. Such an interpretation is not supported by the clear wording of the legislation. Under s. 5(2)(f)(iv) of the *Waters Regulations*, if there is a deposit of waste, there shall be an *assessment of the qualitative and quantitative effects on the waters into which the waste is to be deposited*. Item 10 of Schedule C is the item under which this information is to be set out. It is acknowledged that the wording of Item 10 of Schedule C ('PREDICTED ENVIRONMENTAL IMPACTS OF UNDERTAKING AND PROPOSED MITIGATION') is broader than that in s. 5(2)(f)(iv). However, as s. 5(2)(f)(iv) of the *Waters Regulations* does not fall within Item 8 of Schedule C, and there is no other item in Schedule C with a description that could include s. 5(2)(f)(iv), Item 10 of Schedule C is the only item under which this information could be provided, along with any other information about predicted environmental impacts and proposed mitigations. Any information required under s. 5(2)(f)(iv) of the *Waters Regulations* could be relevant in determining how to regulate the deposit of waste in the amended licence and this information is not limited in relevance to a preliminary screening.

All of the information in s. 5(2)(f)(i)-(iv) of the *Waters Regulations* is consequently information that an applicant for a new, amended or renewed water licence that involves the deposit of waste must provide. It is relevant for both the consideration of intervenors in determining the position they take, and the applicable land and water board in determining how to regulate the deposit of waste. DDMI

must provide this information for its water licence amendment application for the proceeding to be complete and for it to comply with the *Waters Regulations*.

### **Interpretation of s. 27(5) of the *Waters Act***

Section. 27(5) of the *Waters Act* gives a land and water board discretion to opt not to regulate a parameter set out in the *Metal and Diamond Mining Effluent Regulations* (MDMER) if, based on a reasonable assessment of evidence related to the application, including that under s. 5 of the *Waters Regulations*, the land and water board concludes that the parameter has no potential to exceed the limit under MDMER. If it is apparent based on the evidence related to the application that there is the potential for an exceedance of the limit under MDMER, that parameter must be regulated by the applicable land and water board through an effluent quality criterion in the body of the licence (not in a schedule the board could amend at some future date without ministerial approval). Any evidence that is taken into account by a land and water board in opting not to regulate a parameter set out under MDMER must be on the public record for the application, and needs to be specifically referenced in the reasons for decision. Not including any effluent criteria in a licence after not requiring evidence on the quality of waste would not be compliant with s. 27(5) of the *Waters Act*, as no evidence could be used by the Board to exercise its discretion not to include waste limits equivalent to or more stringent than MDMER. If a land and water board opted not to regulate a parameter set out under MDMER on the basis of evidence not on the public record for the application, intervenors would have no opportunity to consider and provide their perspective on that evidence.

## ANNEX B

### Page 1 - Board Response letter

*“The WLWB fully considered the input provided by the GNWT in its decision. This included consideration of all submissions made by the GNWT-ENR, which participated as an Intervener, and by the GNWT-Lands, which provided input through the public review of the Application and Draft Water Licence.”*

### Page 3 - Board Response letter

*“In its initial ORS comments, the GNWT identified uncertainties that could be addressed by research (GNWT-ENR comments 8 and 9), however, did not raise a concern with the lack of water quality information provided to consider the Application.”*

### GNWT’s response

On **November 5, 2021**, the GNWT submitted comments on the amendment application to the Board. In its comments, the GNWT requested more details on the water quality in the mixing zones and details on when research and monitoring of these mixing zones would commence. The GNWT also asked for specific details on how unregulated runoff from the closed mine would mix in Lac de Gras and the degree and extent of water quality impairment and local impacts from the runoff.

### Page 2 - Board Response letter

*“The approach to regulating the new points of discharges was the main topic of this proceeding.”*

### GNWT’s response

The GNWT agrees, noting that the Board initiated the proceeding considering the application to be administrative in nature when it should be considered as a formal Type A Water Licence Amendment. The legislation does not contemplate administrative amendments processes for licence issuance, renewals or amendments. It was not until the technical workshop that a discussion on the scope of the amendment became clear. The GNWT’s summary of statements at the technical workshop are outlined below from Board supplied audio recording from the virtual Teams meeting:

### Technical Workshop - Dec. 8 – Dec 10, 2021

ENR expressed similar concerns as EMAB on the scope of the amendment. Specifically, concerns over an administrative amendment and lack of technical information on waste.

ENR explicitly disagreed with DDMI on the administrative only scope.

Deninu Kųé First Nation and Fort Resolution Métis Government both agreed with ENR on the scope concerns and lack of information.

ENR reiterated the need for more information on the expected water quality from the decommissioned ponds and the size of the mixing zones.

ENR made reference to our review of the ICRP that illustrated that lethal concentrations for some parameters of concern from the decommission ponds were modeled by DDMI.

Page 2 - Board Response letter

*“The Board heard a variety of opinions on how this specific waste, and waste in general, should be regulated. In its decision, the Board concluded that that not all components of Waste deposits may have the potential to adversely affect water quality in the receiving environment, and therefore, not all of the components of Waste necessarily require an EQC as outlined in the LWBs’ Water and Effluent Quality Management Policy.”*

Page 2 – Tłıchǫ Government letter

*“Tłıchǫ Government agrees with the law as stated by the Board. In making its recommendations to the Minister, the Board carefully considered both the facts and the law and rendered a thorough decision that is intelligible, transparent, and justified on the record before it.”*

GNWT’s response

The Minister takes the approval authority set out under the *Waters Act* seriously and does so with the utmost regard for the integrated resource management regime set out in Land Claim Agreements and the *Mackenzie Valley Resource Management Act* and *Waters Act*.

The issue identified in the Minister’s letter to the Board was that the proceeding was missing key foundational information that was required under the *Waters Regulations*. The letter notes that no information was available for the Board to consider or use as a basis to set EQC in this proceeding. Specifically, the information required under s. 5(2)(f) – i.e., *(i) the location, rate, timing, frequency and duration of the deposit, (ii) the anticipated constituents of the deposit and the concentration of the constituents, (iii) the methods proposed for the storage and treatment of the waste, and (iv) an assessment of the qualitative and quantitative effects on the waters into which the waste is to be deposited.*

Approving the water licence as recommended by the Board in the absence of this information, which is required under the *Waters Regulations*, would result in the Minister concurring that a proceeding could conclude without considering the specific information required under the *Waters Regulations*. Thus, the Minister returned the licence and indicated that the process was not complete as this information was not provided or heard as part of the Water Licence Amendment for pond decommissioning. The Minister suggested that the process continue for the Board to receive this information and consider the evidence provided by interveners prior to rendering its decision. Doing so would comply with statutory requirements set out under the *Waters Regulations*.

Regarding the Board’s position on regulating the deposit of waste, with no evidence provided for the Board to consider – the GNWT is not certain how the Board could conclude that *“not all components of Waste deposits [from the new waste deposit requested] may have the potential to adversely affect water quality”*. There was no evidence provided by the applicant for the Board to conclude that the decommissioning of a pond or ponds would not result in potentially adversely affected water quality in the receiving environment. Also, deferring the decision on how to regulate the new deposit of waste during a Type A Water Licence Amendment proceeding is not consistent with the requirements set out in the *Waters Regulations*.

During the proceeding, the GNWT did indicate a concern over the missing information and provided evidence to the Board early (dates bolded above) in the proceeding that the pond water was of poor quality and potentially acutely toxic to aquatic life. The GNWT noted these concerns and requested information from the company as it was needed to make a recommendation to the Board on waste limits and EQC.

#### Page 2 – Board Response letter

*“The Board did not include the GNWT-recommended EQC (i.e., MDMER limits) in the Amended Licence because there was no evidence provided to indicate that the recommended EQC would offer any additional protection, and because the setting of EQC without adequate evidence to consider whether they are protective of the receiving environment would not be consistent with the LWBs’ policies and guidelines.”*

#### GNWT’s response

No evidence from DDMI was required or requested by the Board. The GNWT provided evidence about the pond water quality being poor and potentially acutely toxic at the technical workshop, in its written intervention, in comments on the draft water licence and at the public hearing based on information provided by DDMI in the ICRP review process which indicated that significant mixing zones in Lac de Gras were required to meet aquatic benchmarks. The GNWT notes that the Board effluent quality management policy and mixing guidelines include setting EQC to ensure SSWQOs are met and that mixing zones are minimized to the extent possible to prevent chronic exposures.

#### Page 2- Board Response letter

*“In addition, and as indicated in the Reasons for Decision, the evidence necessary to allow identification of all parameters of potential concern, which may or may not include MDMER parameters was not provided for the proposed discharge.”*

#### GNWT’s Response

The GNWT, as demonstrated in the responses above and below, identified concerns from the start of the proceeding that this was an amendment request to approve a new deposit of waste (i.e., Type A Water Licence Amendment not an Administrative Amendment) and that information regarding the quality of the waste deposit was needed to provide advice to the Board on setting EQC. A company’s request for the Board to consider an amendment application without the necessary information set out in the *Waters Regulations* does not alter the need for that information during the proceeding.

#### Page 2- Board Response letter

*“The Board notes that the Letter reiterates the concerns raised by the GNWT-ENR regarding sections 27(5) and 37 of the Waters Act (i.e., Point 2 and 3 of the Letter) but does not appear to consider the legal arguments put forward by the Board in its decision.”*

#### GNWT’s Response

The Minister did consider the information and legal argument put forward by the Board in its decision. Please see Annex A for the GNWT’s interpretation of s. 27(5) of the *Waters Act* in relation to the *Metal and Diamond Mining Effluent Regulations*. As noted in the Decision Letter and above and

below, there was no evidence provided to the Board that the effluent from the decommissioned pond(s) would not have the potential to exceed MDMER parameters.

#### Page 2- Board Response letter

*“In addition, Point 1 raised in the Letter appears to imply that, in the GNWT’s opinion, the Application should not have been considered complete. This position was not previously raised as an issue that could interfere with Licence issuance and should have been raised in the initial review of the Application.”*

#### GNWT’s Response

As a quasi-judicial body, the Board must ensure the proceeding complies with the legal requirements set out in legislation and regulation, including s. 5 and Schedule C of the *Waters Regulations*. The GNWT did raise issues with the Board considering this water licence amendment as an administrative amendment early in the proceeding and continued to raise these issues at the technical workshop, in its written intervention, at the public hearing and in its closing argument. The GNWT requested that evidence be provided by the proponent on the quality of the waste associated with this new waste disposal.

#### Page 3 - Board Response letter

*“Section 8 of the Boards’ Water Licence Application form requires proposed waste management methods, including “For activities that involve the deposit of waste into water, provide proposed effluent quality criteria (EQC) in accordance with the MVLWB Water and Effluent Quality Management Policy and MVLWB/GNWT Guidelines for Effluent Mixing Zones.” Proposed EQC are one method of allowing the Board to fulfill its mandate regarding water management and environmental protection, so are not necessarily required for all water licence applications to be considered complete.”*

#### GNWT’s Response

The GNWT notes that applying to amend a water licence to include a new waste stream must include information about the quality of waste and the potential impact on the environment, as per s. 34 of the *Waters Act* and s. 5(1) and 5(2) of the *Waters Regulations*. This is consistent with the Board’s Water Licence Application form. This applicant did not request any limits for their waste disposal and the Board concluded that no waste limits or EQC were warranted at this time, not that the effluent would be regulated by some other means than EQC. The GNWT does not dispute that the Board could set limits for authorized waste disposals that do not include EQC. However, no information was available to consider the waste quality or impact to the receiving environment, which are statutory requirements.

In the absence of this information or evidence being provided, other regulations apply to that waste disposal (i.e., MDMER as of June 1, 2018). Other requirements or more stringent limits, in addition to these minimum standards, could be set by the Board if evidence was provided on the quality of that waste and the impact of that waste being released into the environment.



Page 3 - Board Response letter

*“Once it is determined that all the basic requirements of Schedule C have been addressed, an application is distributed through the Online Review System (ORS). The Board relies on reviewer input, including the GNWT, to assist it in identifying any outstanding technical, procedural, or legal issues with an application and the Board has the authority to request additional information be provided for the record where required.”*

GNWT’s Response

The GNWT did provide comments and concerns about the scope and type of proceeding and requested information throughout the proceeding on the new deposit of waste. The GNWT specifically asked the company to provide information on the quality of waste at the technical workshop. The company refused this request. The GNWT is not able to compel or issue an IR to the company. The Board has authority over the proceeding and it must ensure the necessary requirements set out in the legislation and regulations are included.

Page 3 - Board Response letter

*“The WLWB also notes that this new legal position is not consistent with the GNWT’s recent approval of the Point Lake amendment for the Ekati Mine’s water licence. Similar to the DDMI Application and Amended Licence, information on water quality predictions for minewater was not provided during the proceeding, and the questions of whether additional EQC are required will also be determined based on a post-issuance submission. Additionally, although existing EQC apply to the new waste deposit in the interim, the evidence on the record identified parameters of potential concern that do not currently have an applicable EQC.”*

GNWT’s Response

The Ekati Point Lake process did include evidence on effluent quality from the project during the proceeding. The Ekati Point Lake proceeding included using existing approved waste disposal sites. The DDMI water licence process requested approval of a new location for waste disposal and did not provide any information on the quality of waste or its potential impact on the environment from its release. Ultimately, a decision was rendered in the DDMI proceeding that opted not to set effluent limits until a submission of a plan at some point in the future. This is not consistent with statutory requirements set out in legislation and regulations. The GNWT does not see these two processes as similar.

Page 4 - Board Response letter

*“The Amended Licence does not preclude the WLWB from determining that new EQC or other conditions will be required for these collection ponds. The Board relies on input from all Parties in review of submissions it receives, and the GNWT would have the opportunity to comment on the need for an amendment should there be evidence indicating need for EQC. It appears premature to conclude that the proposed process in the Licence and explained in the Board’s Reasons for Decision will not work as intended.”*

## Page 2 - Tłıchǫ Government letter

*“With respect, it is not the role of Public Government—neither GNWT nor Canada—to unilaterally dictate the approach that the Board must take in any particular licencing proceeding. To do so undermines the clear spirit and intent of the Tłıchǫ Agreement and undermines the very idea of co-management”.*

### GNWT’s Response

The GNWT recognizes the position and rationale provided by the Board and the Tłıchǫ Government. However, the issue that prevents the Minister from approving the licence is that the proceeding did not follow the requirements set out in the *Waters Act* s. 34 (i.e. applications must comply with the requirements in the regulations) and *Waters Regulations* (i.e. requiring information on the quality of waste or potential impact on the environment from the new waste discharge). Specifically, the requirements relevant under the Waters Regulations are s. 5(1) and s. 5(2) – part 8 of Schedule C regarding waste deposited and part 10 of Schedule C regarding potential impact to the environment.

To be clear, the GNWT is not trying to issue policy direction with this decision nor force the Board to set some new standard for water licence proceedings. The GNWT is requiring that the statutory requirements set out in the existing legislation and regulation be followed. This is a requirement of the quasi-judicial process for our integrated resource management regime in the NWT.

The GNWT agrees that the Board can set EQC at any time, including after a submission on a plan. However, the GNWT notes that information on the quality of waste and the potential impact on the environment from the waste discharge must be provided when a water licence amendment request is made, as in the request DDMI made. Deferring the decision on EQC to a future submission of a plan at the completion of a Water Licence Amendment process is not consistent with the *Waters Act* s. 34 and *Waters Regulations* s. 5(1) and s. 5(2).

The GNWT shares the opinion that the Board can opt not to require waste limits or EQC if the Board rules based on evidence provided during the amendment process that certain parameters (regulated or not) are not of concern at the site or in the waste deposit.

## Page 4 - Board Response letter

*“Item 10 of Schedule C addresses the information required regarding potential environmental impacts and mitigations. DDMI indicated its position that the Application should be exempt from preliminary screening and, after public review and comment, the Board agreed stating “Acceptable criteria for reconnection and closure will be determined through a future regulatory process based on the evidence put forward at that time. Long-term water treatment remains a contingency should water quality not meet acceptable thresholds.”*

### GNWT’s Response

Please see the analysis of this matter in Annex A.

## Page 4 - Board Response letter

*“In the Board’s respectful view, Items 8 and 10 of Schedule C are not at issue.”*

#### GNWT’s Response

Please see the analysis of this matter in Annex A.

#### Page 4 - Board Response letter

*“The Board notes that very similar items were included in Schedule 8 in the Draft Licence that was distributed for public review on March 17, 2022.5 At that time, the GNWT-ENR raised no legal concerns about their inclusion in the Licence. However, in its Closing Arguments the GNWT-ENR stated that including requirements related to the discharge of waste in a schedule of a licence or in a document that is required by a licence, instead of a condition of a licence (e.g., EQC), circumvents the requirement for Ministerial approval and therefore is in contravention of section 37 of the Waters Act.*

#### GNWT’s Response

The GNWT did provide comments on the draft water licence suggesting that its position on the deposit of waste is that any criteria must be included in the water licence body not just a plan and that the Board include EQC in the licence similar to Option A. The GNWT also made its concerns known in the Closing Arguments.

In addition to the DDMI proceeding, in response to the Boards’ development of standard water licence conditions and schedules in 2020, the GNWT noted that *“over the years, much of the content of a Water Licence has been removed from the body of the licence and placed in Schedules. Further, the Boards have included provisions within the licence that allows the Schedules to be amended/updated by the Board on their own motion. This practice is concerning to ENR, who has legislated authority to approve Type A Water Licence and Type B Water Licence where a public hearing is held.”* And noted that *“legislated aspects such as the use of water and deposit of waste should not be included in Schedules or in Management Plans that ultimately restrict approval authorities”*.

As well, in response to the Boards’ recently circulated draft Waste Management Policy earlier this year, ENR recommended that *“the policy be revised to state that all discharge criteria be established directly through licence conditions, or amended licence conditions in the case of closure, as outlined in legislation.”*

Thus, the GNWT’s concerns and position on the use of schedules for certain aspects of water licences has been provided to the Board on multiple occasions in this proceeding and outside of this proceeding.

#### Page 5 - Board Response letter

*“The WLWB notes that this legal position is not consistent with the previous Ministerial approval of the Jay Project, which included similar information requirements in its schedule to support a re-evaluation of EQC. No concerns with the Jay schedule requirements were raised by the GNWT through that process and no legal concerns were raised before Ministerial approval. The rationale for this apparent contradiction of approach between these Licences is unclear to the Board.”*

### GNWT's Response

The Jay Project included EQC in the water licence. Only a re-evaluation report was required in the schedule. This is different than the application and process for DDMI's water licence amendment. The approach used to request amendments for these two licences and the Board decisions are not similar.

#### Part 5 - Board Response letter

*“Subsection 27(5) does not speak to the evidence required by the Board in order to include conditions in a licence. It speaks to minimum standards (i.e., conditions recommended by the Board may not be “less stringent than the provisions of those regulations”) for licence conditions addressing substances regulated by MDMER.”*

### GNWT's Response

The GNWT agrees with the Board that MDMER sets the minimum standard for waste discharge to fish frequented waters. The GNWT also agrees that s. 27(5) does not speak to the evidence required by the Board. It is the *Waters Regulations* that stipulate these requirements for a water licence application. Please see the GNWT's clarification of its position on s. 27(5) of the *Waters Act* in Annex A.

#### Part 5 - Board Response letter

*“The GNWT did not offer any evidence to support its position or to demonstrate that the proposed EQC would be consistent with the LWBs' Water and Effluent Quality Management Policy. When asked in the hearing whether the MDMER could be inserted into the Licence by force of law, the GNWT representative demurred.”*

### GNWT's Response

The GNWT provided information for the Board's consideration about MDMER and the need to set them as a minimum standard in multiple submissions during the proceeding, including the IR to the GNWT. The GNWT maintained throughout the proceeding that the lack of evidence on the quality of waste in the application impeded the ability to propose EQC for the Board's consideration and thus s. 27(5) of the *Waters Act* and MDMER applied. The GNWT also maintained that MDMER applied because certain parameters of concern could not be dismissed by the Board without evidence on the quality of pond water. Again, on several occasions, as early as the technical workshop, the GNWT introduced evidence from the ICRP review process during the proceeding that suggested that the pond water was of poor quality and had the potential to be acutely lethal to aquatic life.

The GNWTs submissions and comments suggested that the waste was deleterious and the prohibition under the *Fisheries Act* would apply and thus s. 27(5) of the *Waters Act* applied. The only way to dismiss any regulated MDMER parameters from the list of EQC (such as Cyanide, Radium 226 or any other parameter) would be through evidence that the parameter was not a concern in the pond water.

The GNWT and the Board agree that MDMER parameters need not be EQC in a licence if evidence suggests those parameters are not of concern in the new waste discharge. The issue over the

application of s. 27(5) or whether MDMER limits must be set as a minimum standard would likely have been averted if:

1. The applicant met the requirements set out in the *Waters Regulations* (Schedule C);
2. The Board refused to accept the application based on not meeting the requirements set out under the *Waters Regulations*; or
3. The Board sent an IR to the company requesting information on the pond water quality and the potential impact to the environment as per the *Waters Regulations* and then the Board dismissed the parameters regulated by MDMER not considered of concern in the waste discharge in line with the LWB Water and Effluent Quality Management Policy.

The third option to hear evidence from the applicant on the quality of the pond water is the recommended path forward to complete this proceeding. If evidence is provided and a decision rendered on what is not a concern and EQC are only set for those parameters of concern, the issue is resolved.

#### Part 6 - Board Response letter

*“The WLWB is of the view that the onus of proof to support this position and the associated recommendation was on the GNWT; however, the Letter suggests that the Board was in error by not insisting the information required to support the GNWT’s recommendation was provided in the Application.”*

#### GNWT’s Response

The GNWT did not intend for the Minister’s letter to imply that the Board was to support the GNWT’s recommendations. The letter was intended to outline why the DDMI Water Licence Amendment could not be approved at this time. The GNWT agrees the onus of proof to support a position or recommendation rest with those whom make the recommendation. However, Issue 1 (information on the quality of waste and potential impact on the environment if released) noted in the Minister’s letter was a requirement set out in the *Waters Regulations* pertaining to the water licence amendment application which is submitted by the company.

#### Part 6 - Board Response letter

*“Regarding point #3, the Board suggests that an expedited effort to secure a binding interpretation on the proper interpretation of subsection 27(5) of the Waters Act be sought.”*

#### GNWT’s Response

The GNWT is of the opinion that, if the GNWT and the Board can agree that an application for a new, renewal or amendment to the water licence must include the information about a new waste disposal and its potential impact to the environment, as stipulated in s. 5(2) and Schedule C of the *Waters Regulations*, and that this information is required for the application to be deemed compliant or complete, there is no need to seek an interpretation of the application of s. 27(5). As noted above, the GNWT agrees with the Board that it doesn’t need to set EQC for MDMER parameters

if evidence is provided that suggests those parameters are not of concern in the effluent consistent with the LWB Water and Effluent Quality Management Policy.