



May 13, 2021

Mr. Ryan Fequet
Executive Director
Wek'èezhii Land and Water Board
#1-4905 48TH STREET
YELLOWKNIFE NT X1A 3S3

Dear Mr. Fequet:

Undertakings from the Kwetìzàà (Rayrock) Public Hearing – GNWT Response to Undertaking #7

The Government of the Northwest Territories' (GNWT) provides the following response to Undertaking #7, requested by the Wek'èezhii Land and Water Board (WLWB) on April 30, 2021 related to the Kwetìzàà (Rayrock) Type A Water Licence (W2020L8-0003) and Type A Land Use Permit (W2020X0005) applications from Crown-Indigenous Relations and Northern Affairs Canada – Contaminants and Remediation Division (CIRNAC- CARD).

Undertaking #7 for GNWT

Does the GNWT believe the updated closure objectives can be approved by the Board and why?

There are two aspects of this Undertaking that the GNWT would like to highlight for the Board. Specifically, the requirement for a water licence amendment or renewal and associated regulatory proceeding; and, the process for regulating licenced projects. The GNWT will describe these aspects further below.

Requirement for a water licence amendment or renewal and associated proceedings

The GNWT notes that the purpose of Type A Water Licence W2020L8-0003 is to seek authorization to conduct further remediation activities, as per the legislation, and that the process for obtaining a water licence is clear (i.e. the Board has rules of proceeding). The GNWT also notes that approval of closure objectives should occur when there is an updated and final plan submitted by the licensee following the issuance of a water licence. This is consistent with terms and conditions in water licences that specify that plans be submitted to the Board for approval within a specified time following issuance (e.g. 30, 60, 90 days).

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Over the years, many applicants to the Land and Water Boards of the Mackenzie Valley have solicited approvals by the Boards for plans, programs and other submissions, that are typically only required once a water licence is issued, as part of their application for a water licence. The GNWT has maintained over the years that the process to approve plans, programs and other submissions should commence following issuance of a water licence. The GNWT's rationale for this position is that the licence needs to be approved and issued to provide clarity regarding components that are required in the plan, program or other submission before a plan, program or other submission can be submitted or approved. For Type A Water Licences, this occurs after receiving approval of the appropriate Minister. The GNWT's position on this question has not changed.

Process for regulating licenced projects

The GNWT acknowledges that some early remediation activities have previously taken place at the site and the purpose of the Type A Water Licence is to conduct further remediation activities to complete the closure and post-closure phases. Again, a licence is required before this work can begin. However, in addition, a Closure and Reclamation Plan is required to ensure the work proposed aligns with the requirements of the Board. It is therefore important to consider the MVLWB/AANDC (2013) guidelines when considering closure objectives and closure criteria and whether they can or should be considered outside of an approved Closure and Reclamation Plan.

The Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories (MVLWB/AANDC, 2013), define closure objectives as: "statements that describe what the selected closure activities are aiming to achieve; they are guided by the closure principles. Closure objectives are typically specific to project components, are measurable and achievable, and allow for the development of closure criteria." The inherent part of this definition is that closure objectives should be part of a larger Closure and Reclamation Plan that links closure principles, objectives and criteria in a measurable and achievable way. Therefore, approving only part of the equation leaves a significant amount of uncertainty on whether closure principles and criteria are also approved, conditionally approved, or if they are even required.

The GNWT does not believe the Board should consider or approve the closure objectives at this time. Further, the GNWT has specific concerns with at least one closure objective, specifically, proposed Closure Objective #2. The proposed Closure Objective #2, states: *“The human health and environmental impact of the sites is reduced to the extent practicable.”* The GNWT is concerned with the ambiguity in the phrase “to the extent practicable”. Since this objective involves the ‘long-term’ human health and environmental impacts, it is important that the objective allows for the development of closure criteria that measure the success of selected closure activities in meeting the closure objective. Currently, this proposed objective does not provide sufficient guidance for the development of closure criteria.

Another concern with this proposed closure objective is the general reference to reduce “environmental impacts” at the site. Without this objective being further defined, it is unclear as to the specific aspects of the environment and related receptors that the objective aims to address and protect. The GNWT notes this could be clarified with the development of new objectives that address each environmental impact and expected receptors. Further, the GNWT is of the opinion that this work should be based on the future land use of the area as identified in collaboration with traditional land users. An example of such an objective could be: surface runoff and seepage water quality is safe for people, wildlife and aquatic life. The GNWT notes that objectives written this way would more clearly address closure principles, such as physical stability, chemical stability, and future use (including aesthetics and values) (please see the MVLWB/AANDC (2013) guidelines).

Reference:

MVLWB/AANDC. (2013). Guidelines for Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories.

If you have any questions or concerns, please contact Mr. Rick Walbourne, Manager, Water Regulatory and Assessment, at Rick.Walbourne@gov.nt.ca or 867-767-9234 ext. 53113.

Sincerely,



Nathen Richea
Director
Water Monitoring and Management
Environment and Natural Resources