

October 30, 2023

Diep Duong
Environmental Protection and Waste Management Division
Environment and Climate Change
Government of the Northwest Territories
PO Box 1320
5102 50th Ave.
Yellowknife NT X1A 2L9

Sent via email

Dear Diep Duong,

RE: Updates to the Environmental Guideline for Contaminated Sites Remediation

Staff from the Land and Water Boards of the Mackenzie Valley (LWBs) would like to thank the Government of Northwest Territories Department of Environment and Climate Change (GNWT-ECC) for meeting on October 11, 2023, regarding the draft updates to the Environmental Guideline for Contaminated Sites (the Guideline). LWB staff believe that this review was a very productive and important step given the overlapping jurisdiction between GNWT-ECC and the LWBs with respect to contaminated sites. LWB staff have provided a list of comments and recommendations for your consideration, as well as suggested wording for Section 4.0, as previously requested.

Given the substantive nature of the LWBs' recommended revisions and the likelihood that unclear and inaccurate information in the Guideline may result in confusion and uncertainty about the regulation of contaminated sites, LWB staff recommend that an opportunity for the LWBs to review a revised document be provided. LWB staff would be happy to meet with GNWT-ECC to discuss the attached comments and suggestions and a possible workplan for reviewing an updated draft Guideline at your earliest convenience.

Follow-up communication may be directed to Kathy Racher at (867) 766-7457 or via [email](#).

Sincerely,



Dr. Kathleen Racher
Executive Director
Mackenzie Valley Land and Water Board



Ryan Fequet
Executive Director
Wek'èezhìi Land and Water Board



Leonard DeBastien
Executive Director
Gwich'in Land and Water Board



Paul Dixon
Executive Director
Sahtu Land and Water Board

Attachments: LWB Review Comment Table – Oct 30_23
 Recommendations for LWB Summary Section – Sept 28_23
 Email Chain – June 6_23
 LWB Extension Request – Sept 28_23
 Email Chain – Oct 11_23

	A	B	C
1	TOPIC	COMMENT	RECOMMENDATION
2	1.0 Introduction	The use of "contaminated sites" throughout the document could be misleading to the reader, because this Guideline does not apply to all contaminated sites.	Recommend that the Introduction clearly qualify that throughout the Guideline, unless otherwise indicated, "contaminated site(s)" refers to sites that fall only within the jurisdiction of ECC under the EPA.
3	1.0 Introduction	The introduction section of this Guideline is not currently very reader-friendly, and it does not clearly outline where, when, and to what the Guideline applies. It would be helpful to restructure the introduction to allow the reader to quickly determine what the Guideline is and whether the Guideline applies to their situation. Further, the content of the subsections does not always correspond to the subsection title and, in some cases, overlaps with other subsections, so these should be reviewed.	<p>Suggested introduction:</p> <ul style="list-style-type: none"> - Summarize spills and contaminated sites in general, and the overall purpose of the Guideline. - Clearly state that this Guideline does not apply to all contaminated sites. Explain that various factors (such as size, nature, source, and location) will determine whether the remediation of a contaminated site is regulated by ECC under the EPA, or by a regional land and/or water board under the applicable water licensing and land use permitting legislation. - Summarize where and when ECC's authority under the EPA applies with respect to spills and contaminated sites. Explain that this Guideline does not apply when a licence and/or permit issued by a land and/or water board is already in place, or when the remediation of a contaminated site requires a permit and/or licence from a land and/or water board. - Fill out introductory subsections with more detailed information about the EPA, ECC's authority, the purpose of the guidelines, etc. (see additional recommendations below) to support the above. <p>Also suggest:</p> <ul style="list-style-type: none"> - Find an appropriate place in this introduction to provide hyperlinks to the LWBs' Guides to the Water Licensing and Land Use Permitting Processes (and similar guidance for the ISR land administration and water board), where readers can find out more information about when a permit or licence is required, so they can go to those resources right away if unsure. (This is also recommended in the LWBs' comments on section 4.0.)
4	1.2 Purpose	"The contaminated site Guideline Process has been established as a consistent and scientifically defensible process to ensure that human health and the environment is protected from any discharge that leads to a contaminated site."	Recommend revising to clarify that the Guideline is intended to provide protection from a contaminated site, not necessarily from the discharge/source that created the contaminated site - that would typically fall under the spill regulations and associated guidance. Note also that the Guideline cannot 'ensure' such protection, it can only intend to.
5	1.3 Scope and Application, 3.5 Department of Environment and Climate Change, and throughout Guideline	It should be clear that a contaminated site where a land use permit and/or water licence from a land and/or water board is in place or is required would not be regulated under this Guideline, regardless of whether it is located within municipal boundaries or on commissioner's or territorial lands.	Wherever ECC's jurisdiction under the EPA is explained, in addition to stating that this Guideline does not apply where a land use permit and/or water licence is in place or is required, recommend specifically clarifying that this is true regardless of site's location and the land type.
6	1.3 Scope and Application	Although the Guideline provides direction from ECC as per their authority under the EPA, the Guideline may also be a useful tool to other regulators.	<p>Recommend including:</p> <p>At their discretion, other regulators could choose to apply all or part of this Guideline to the remediation and/or closure and reclamation of contaminated sites they regulate.</p>

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1	TOPIC	COMMENT	RECOMMENDATION
7	1.3 Scope and Application	The <i>Guideline for the Design, Operation, Monitoring, Maintenance and Closure of Petroleum Hydrocarbon-Contaminated Soil Treatment Facilities in the Northwest Territories</i> is referenced as guidance on the requirements for off-site disposal of petroleum contaminated soil, in Section 9.4. This reference is helpful. It should be made clear that the Guideline itself does not apply to soil treatment facilities. There has been some discussion and confusion about this in the past.	Recommend including: This Guideline does not directly apply to facilities constructed for the remediation of contaminated soils. Generally, soil treatment facilities in the NWT require a water licence and possibly a land-use permit for construction, operation, and closure, and specific guidance exists for these projects (refer to <i>Guideline for the Design, Operation, Monitoring, Maintenance and Closure of Petroleum Hydrocarbon-Contaminated Soil Treatment Facilities in the Northwest Territories</i>).
8	2.1 Spills and Uncontrolled Discharges	Section 2.0 is titled Sources and Discovery of Contamination, and the introduction of the section states that the subsections are about how contaminated sites are identified; however, the subsections that follow don't consistently cover both of these points, and subsection 2.1 includes basic management information. It could be that subsection 2.1 is intended to explain sources of contamination, and the remainder of the subsections are intended to describe various ways that contaminated sites are discovered.	Suggest reviewing and possibly rearranging the information in these subsections, and clarifying their roles in the introduction and the subsection titles. Also consider more clearly noting discovery and reporting of a spill by the RP is also a means of identifying a contaminated site (this is currently implied in subsection 2.1).
9	3.0 Roles and Responsibilities	The introduction to this section states that it 'identifies the roles and responsibilities of the key participants involved in the assessment, remediation and/or management of contamination and/or contaminated sites <u>in the NWT</u> '(...). This is not entirely correct, since it does not include the land and/or water boards that are described in section 4. Since some of the agencies listed might also be involved in contaminated sites regulated by the land and/or water boards, however, it would not be entirely correct to state that this list is only related to the contaminated sites regulated by ECC.	Consider revising to specify that the list applies to contaminated sites regulated by ECC, but noting that some of these agencies may also be involved in contaminated sites regulated by a land and/or water board, with a reference to the additional information in section 4.0.
10	3.5 Department of Environment and Climate Change	"A listing of relevant legislation and guidelines relating to the regulation of discharges and contamination is provided in Appendix 1. "	The list provided in Appendix 1 is not comprehensive with respect to the legislation and guidance documents relevant to the regional land and/or water boards. Suggest the list be limited to legislation and guidelines relating to discharges and contamination regulated by ECC, and that this statement be qualified accordingly. Links to the land and/or water boards' websites (where their governing legislation and guidance documents can be found) could be included in a separate subsection of Appendix 1 or another appropriate location in the Guideline. This would avoid errors and omissions.
11	4.0 Permitting Requirements	LWB staff provided comments on this section, which have not yet been incorporated into the draft Guideline. Only this section was provided to LWB staff for review at that time, so the suggestions were provided without the benefit of understanding how this section fit into the document as a whole. In the full context of the Guideline, LWB staff maintain that the previously-provided suggestions remain applicable as long as the additional clarifications provided above regarding jurisdiction and application of this Guideline are included. Note that LWB staff are not aware of whether the IWB and ILA were also given the opportunity to provide feedback on this section prior to the public review of the Guideline, and if so, whether comments from the IWB and ILA are compatible with LWB staff's comments. LWB staff are available to further assist in revising this section if needed to ensure this whole section is consistent and useful.	Recommend incorporating previously-provided comments on this section (see attached).
12	Sections 5 - 7, and Flowchart	These sections describe the process when ECC is the regulator/lead agency, but it is not clear when the lead agency is determined once a spill or contaminated site is identified. All spills should be reported to the Spill Line, but this doesn't necessarily mean ECC is the regulator. Additionally, during the assessment process or during the development of a remediation plan, the need for a water licence and/or land use permit from a land and/or water board may be identified (e.g., if an on-going discharge constitutes a deposit of waste under the MVRMA or Waters Act, or if the remediation activities will exceed licensing and/or permitting criteria).	Recommend that how and when the determination of who the lead agency/regulator is should be addressed in these sections. Further, in the flowchart and in the introduction to section 7, where more complex sites are discussed, recommend clarifying that the regional land and/or water board should be contacted if the need for a water licence and/or land use permit is identified at any point during the outlined process - links to the LWBs' guides could be provided here again for more information. Similarly, the potential requirement for other authorizations from other regulatory agencies should also be acknowledged in the introduction to section 7 and the flowchart.

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1	TOPIC	COMMENT	RECOMMENDATION
13	Flowchart	The flowchart does not distinguish between simple/small spills and more complex sites as described in the text in section 7. The pathway for small spills is identified, but there is no similar box in the flowchart that clearly identifies the alternate pathway for complex sites.	Recommend clearly outlining the pathway for complex sites in the flowchart.
14	7.3 Phase I ESA	The end of this section states: "For sites with federal land tenure or an authorization such as a LUP or WL, the Phase I ESA should be provided to lead regulatory agency as may be required." This implies that this Guideline and the process outlined within would still be applicable if another regulator is the lead agency, which wouldn't be true unless the other regulator had adopted the Guideline.	Remove this sentence.
15	7.8 Criteria for ARD and Metal Leaching	This section needs to be better contextualized within the Guideline. Why is it included? Why is the management of ARD and metal leaching potential relevant to the management of contaminated sites?	Suggest removing Section 7.8, or suggest that this section start with an introductory paragraph to briefly explain what ARD and metal leaching are, and how they are relevant to the Guideline/management of a contaminated site.
16	7.8 Criteria for ARD and Metal Leaching	This section refers to ARD/metal leaching guidance (which we believe is still in draft form) that has been developed specifically for <u>quarries</u> , and notes that ARD/metal leaching are contaminants, but the relevance to the assessment and remediation processes described in the Guideline, and in section 7 specifically, is not clear. Is this guidance intended to be applied as a reference for the initial identification and delineation of contamination, or to potential quarry materials used in remediation?	If Section 7.8 remains in the Guideline, suggest removing this reference or clarifying how the ARD/ML guidance should be used in the Guideline processes.
17	7.8 Criteria for ARD and Metal Leaching	"The Land and Water Board (LWB)/GNWT's Quarry Sampling and Testing Guideline for Identification of Acid Rock Drainage (ARD) and Metal Leaching (ML) Potential (GNWT, 2023) was developed to provide clarity and consistency for ARD/ML sampling and assessment." This document is noted as draft in the reference section, and since it is being referred as specific guidance to follow, it should only be included if finalized and publicly available. The title is also incorrect, since the LWBs are not involved in the publication of this guidance document.	If Section 7.8 remains, remove the reference to the ARD/ML guidance if not finalized, and update the title if included.
18	7.16 -7.17 Criteria for Groundwater and Surface Water Quality	If water quality is or could be affected (whether surface or groundwater), a water licence for the deposit of waste may be required in some cases. This will depend on various factors, including whether the source of contamination is still present, whether discharge is still occurring, whether the contamination is migrating into or through water, and other factors.	Recommend stating that LWB staff should be contacted for advice on whether a water licence is required if water quality has been, or could be, affected by the contamination. Clarify that this is the case even if ECC is initially identified as the regulator (see also comment above regarding the flowchart and sections 5-7).

PERMITTING/LICENSING REQUIREMENTS IN THE NWT

In addition to the ECC Guideline Process, the following provides a summary of boards and agencies in the NWT that may need to be consulted ~~applied to~~ for applicable permits and/or licences depending on the scope and scale of the contaminated site remediation project. A brief overview of their authority and responsibility under their relevant legislative framework is provided as it relates to the management of contamination. The intent of this section is to provide a brief background of various boards and agencies that may need to be contacted for more information about whether a permit and/or licence is required for a project, ~~consulted for permits and licences~~.

MACKENZIE VALLEY LAND AND WATER BOARD LAND AND WATER BOARDS OF THE MACKENZIE VALLEY

Remediation and closure and reclamation activities may require a land use permit and/or water licence. In the Mackenzie Valley, these authorizations are issued by the Gwich'in, Sahtu, Wek'èezhìi, and Mackenzie Valley Land and Water Boards (collectively, the LWBs), which regulate:

- the use of water and deposit of waste through the issuance of water licences in accordance with the Waters Act and Waters Regulations, and the Mackenzie Valley Resource Management Act (MVRMA) and Mackenzie Valley Federal Areas Waters Regulations (MVFAWR); and
- the use of land through the issuance of land use permits in accordance with the MVRMA and the Mackenzie Valley Land Use Regulations (MVLUR).

The LWBs also conduct preliminary screenings of projects that require a water licence and/or land use permit.

Regional LWBs have been established in three management areas to date:

- In the Gwich'in Settlement Area, the Gwich'in Land and Water Board (GLWB), established under the Gwich'in Comprehensive Land Claim Agreement;
- In the Sahtu Settlement Area, the Sahtu Land and Water Board (SLWB), established under the Sahtu Dene and Métis Comprehensive Land Claim Agreement; and
- In the Wek'èezhìi Management Area, the Wek'èezhìi Land and Water Board (WLWB), established under the Tłı̄chǫ Land Claims and Self-Government Agreement.

Projects in other areas of the Mackenzie Valley, as well as transboundary projects, are under the jurisdiction of the Mackenzie Valley Land and Water Board (MVLWB).

The LWBs' Guide to the Land use Permitting Process and Guide to the Water Licensing Process offer detailed guidance on when licences and permits are required, how to prepare and submit applications,

Commented [SE1]: Generally, it is challenging to provide useful feedback without the context of the whole document. The current GNWT Guideline does not include the LWB process at all, so it is hard to envision how this information fits into the revised document.

In general, suggest trying to simplify some of the background information a bit, and increase the emphasis on why this is relevant to someone with a remediation project on their hands. At a minimum, suggest that is more clear that these types of projects may need a licence and/or permit, and that information is provided about where to access the LWBs' websites and guidance documents.

Commented [SE2]: Noting that the wording can be made more precise here to reflect that the LWBs do not need to be consulted.

Commented [DD3]: Just checking that we have flipped this to LWBS and they are ok with the wording for all of section 4?

Commented [DD4]: We did not, we are checking in on it now.

and what to expect during the regulatory process. The Guides, application forms, and other relevant guidance documents are available on any of the LWB websites (www.glwb.com, www.mvlwb.com, www.slwb.com, www.wlwb.ca/).

The Mackenzie Valley Land and Water Board (MVLWB) is the regulator of uses of land and water and deposits of waste in the Mackenzie Valley, other than those occurring wholly in the Sahtu Settlement Area, Gwich'in Settlement Area or the Wek'èezhìi Management Area. The MVLWB conducts preliminary screenings of applications as per the federal *Mackenzie Valley Resource Management Act* and issues Land Use Permits (LUPs) and Water Licences (WLs) as appropriate to regulate activities per the Mackenzie Valley Land Use Regulations, and Mackenzie Valley Federal Areas Waters Regulations. The MVLWB has the authority to approve remediation activities for sites that are being regulated through a land use permit or water licence.

The Gwich'in, Sahtu and Wek'èezhìi Land and Water Boards act as regional panels of the MVLWB in issuing LUPs and WLs on public and private lands in their respective areas. Further details are provided in the sections below.

~~GWICH'IN LAND AND WATER BOARD~~

The Gwich'in Land and Water Board (GLWB) is a regulator established under the Gwich'in Comprehensive Land Claim Agreement and given effect by the *Mackenzie Valley Resource Management Act*. The GLWB has the same powers and functions as the MVLWB within the Gwich'in Settlement Area.

~~SAHTU LAND AND WATER BOARD~~

The Sahtu Land and Water Board (SLWB) is a regulator established under the Sahtu Dene and Métis Comprehensive Land Claim Agreement and given effect by the *Mackenzie Valley Resource Management Act*. The SLWB has the same powers and functions as the MVLWB within the Sahtu Settlement Area.

~~WEK'ÈEZHÌI LAND AND WATER BOARD~~

The Wek'èezhìi Land and Water Board (WLWB) is a regulator established under the Tłı̨chə Land Claims and Self-Government Agreement and given effect by the *Mackenzie Valley Resource Management Act*. The WLWB has the same powers and functions as the MVLWB within the Wek'èezhìi Management Area.

Commented [SE5]: Noting that only the federal water legislation is referenced here.

Commented [SE6]: This doesn't convey the potential need for a permit and/or licence to conduct these activities even if a site is not currently regulated.

Heather Scott

From: Sarah Elsasser
Sent: June 6, 2023 2:12 PM
To: Lee_Ross@gov.nt.ca
Cc: Benjamin_Elkin@gov.nt.ca; Harvey_Gaukel@gov.nt.ca
Subject: RE: Question regarding LWB permitting requirements
Attachments: LWB Requirements in the NWT.docx

Hello Lee,

Your request below made its way to me and I have organized some LWB comments on the document. Please find LWB comments/suggestions attached.
Happy to discuss if you have any questions or comments.

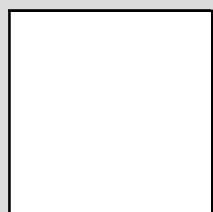
Thanks,

Sarah Elsasser, Ph.D., PMP (she/her)
Senior Regulatory Policy Advisor
Wek'èezhìi Land and Water Board
#1-4905 48th St. | Yellowknife, NT | X1A 3S3
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All correspondence to the Board, including emails, letters, faxes, and attachments are public documents and may be posted to the public registry.

From: Lee Ross <Lee_Ross@gov.nt.ca>
Sent: Wednesday, May 17, 2023 11:43 AM
To: Anneli Jokela <ajokela@wlwb.ca>
Cc: Benjamin Elkin <Benjamin_Elkin@gov.nt.ca>; Harvey Gaukel <Harvey_Gaukel@gov.nt.ca>
Subject: Question regarding LWB permitting requirements



IRONSCALES couldn't recognize this email as this is the first time you received an email from this sender Lee_Ross@gov.nt.ca

Hi Anneli,

I was going to give you a call about this, but our phones are not working at the moment....

I am not sure if you are the right person to ask, we have been working with Shannon Allerston on another Guideline.

But in short, GNWT-ECC is revising our Contaminated Site Remediation Guideline, it is hoped to come out for public review in the next month or so.

Within the Guideline is a section on licencing and permitting requirements for the LWBs of the Mackenzie Valley.

Would it be possible for someone in your shop to have a look at the attached and let us know if ok?

I was going to send the entire Guideline for background info, but there are still a few comments and tracked changes that need to be addressed.

Thanks in advance,

Lee

Mársı | Kinanāskomitin | Thank you | Merci | Hąj' | Quana | Qujannamiik | Quyanainni | Máhsı | Máhsı | Mahsı

Lee Ross

Regulatory and Science Advisor
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Department of Environment and Climate Change
Government of the Northwest Territories

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the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete it immediately and notify us by telephone. Thank you.

September 28, 2023

Diep Duong
Environmental Protection and Waste Management Division
Environment and Climate Change
Government of the Northwest Territories
PO Box 1320
5102 50th Ave.
Yellowknife, NT X1A 2L9

Sent via email

Dear Ms. Duong,

RE: Updates to the Environmental Guideline for Contaminated Sites Remediation

It has recently been brought to the attention of the Land and Water Boards of the Mackenzie Valley (LWBs) that a draft update to the *Environmental Guideline for Contaminated Sites Remediation* (the Guideline) is available for [public review](#) on the Government of Northwest Territories (GNWT) website. The engagement period for the draft appears to have commenced on August 4 and closes on September 30, 2023. The LWBs are uncertain what notification process the GNWT used but do not believe that the LWBs were notified about the publication of this draft or the review period.

Upon cursory review of the draft, the LWBs believe that there is incorrect, deficient, and misplaced information in the Guideline, which runs significant risk of creating confusion and uncertainty about the regulatory system both in general and in relation to the Guideline.

Given the recent wildfire evacuations throughout the NWT and the lack of notification regarding this review, the LWBs will be unable to conduct a comprehensive review and provide an informed response by the review deadline. As the GNWT and the LWBs have overlapping jurisdiction with respect to contaminated sites, the LWBs respectfully request an extension to the review deadline to, at minimum, October 30, 2023.

Further, in order to assist with preparing a response, the LWBs also request to meet with GNWT staff, as soon as possible, in order to gain a better understanding of the Guideline including:

- To whom, where, and when does the Guideline apply;
- The relationship between activities covered by the Guideline, the *Environmental Protection Act*, and the *Waters Act*; and
- How previous LWB staff feedback (as requested by GNWT staff) provided (*email enclosed from S. Elsasser to L. Ross on June 6, 2023*) on what is now section 4 of the draft Guideline was considered.

Follow-up communication may be directed to [Dr. Kathy Racher](#) at (867) 766-7457.

Sincerely,
(original signed by)

Dr. Kathleen Racher
Executive Director
Mackenzie Valley Land and Water Board

Ryan Fequet
Executive Director
Wek'èezhii Land and Water Board

Leonard DeBastien
Executive Director
Gwich'in Land and Water Board

Paul Dixon
Executive Director
Sahtu Land and Water Board

Heather Scott

From: Diep Duong <Diep_Duong@gov.nt.ca>
Sent: October 11, 2023 11:23 AM
To: Paul Dixon; Leonard DeBastien; Ryan Fequet; Angela Plautz; Heather Scott; Lindsey Cymbalisky
Cc: Harvey Gaukel
Subject: Environmental Guideline for Contaminated Site Remediation

Hi everyone,

Thanks again for meeting with us this morning. Here is the link to ECC's the Have Your Say website to get more background information: <https://haveyoursay.nwt-tno.ca/eqcsr>

Our official engagement period ends on October 15, 2023 so the site has to be taken down (election blackout period) but we will accept your comments until October 30, 2023. You might want to download any of the background documents this week in case it gets taken down on the website.

I also want to follow up with the question that Angela asked about whether the EPA could be used to get a proponent to obtain a water licence/land use permit when the authorization runs out. While the EPA does clauses that can compel the responsible party to not discharge a contaminant in to the environment, it would make more sense to me that we would use the existing legislation that the project was authorized under (i.e. *Waters Act* and MVRMA) to get compliance. Like I mentioned in the meeting, we will be meeting with our officers here this fall to update them on where we are with the Guideline and to also talk to the Lands officers about the Guideline.

If you have any further questions, please feel free to reach out to Harvey or me.

Thanks.

Diep

Mársı | Kinanāskomitin | Thank you | Merci | Hąı̄ | Quana | Qujannamiik | Quyanainni | Máhsı | Máhsı | Mahsı

Ms. Diep Duong, P.Eng.

Pronouns: she/her/hers

Director, Environmental Protection and Waste Management Division

Department of Environment and Climate Change, Government of the Northwest Territories

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