



## **Government of the Northwest Territories Response to Committee Report 39-19(2): Report on the Prevention and Management of Contaminated Sites**

### **Background**

On February 7, 2023, the Standing Committee on Economic Development and Environment Committee (Committee) provided its “Report on the Prevention and Management of Contaminated Sites” (Report) to the Legislative Assembly. The Report was reviewed in Committee of the Whole on February 9, 2023. The final recommendation of the Report and Committee Motion 363-19(2) recommended that the Government of the Northwest Territories (GNWT) provide a response to all recommendations of the Report within 120 days.

The Report includes fifteen additional recommendations. The GNWT appreciates the review conducted by Committee and is pleased to respond to each recommendation below. The GNWT agrees with the intent of many of the recommendations, but does not accept all of them, as described below.

### **Recommendation 1**

The Standing Committee on Economic Development and Environment recommends the Government of the Northwest Territories create a mandatory legislative requirement for companies to operate with approved closure and reclamation plans that are regularly reviewed and updated with appropriate adjustments of financial security.

### ***GNWT Response***

The GNWT is working to ensure the spirit and intent of this recommendation is realized and accepts this recommendation in principle.

Currently, the responsibility for reclamation securities is shared amongst several authorities: the GNWT, Indigenous governments and Indigenous organizations, the federal government and the Land and Water Boards. The GNWT works closely with all partners to ensure that securities protect the GNWT and the public from liabilities, and that projects are not double bonded. Where projects have Land and Water Board authorizations, the GNWT works through processes established by the Land and Water Boards for the regular review, update, and approval of closure and reclamation plans and reclamation security.

It is the Land and Water Boards' discretion regarding whether a proponent must submit or revise a closure and reclamation plan. The Water Regulations under the *Waters Act* require proponents to submit closure plans (Section 5.2(h)) as part of the initial application. The Water Regulations also outline that the Land and Water Boards set the amount of security required (Section 11). Approved closure and reclamation plans are the foundational piece used to determine the appropriate amount of security to set. Once security is set by the Land and Water Boards, it is ultimately accepted by the applicable landowner (i.e., GNWT, Indigenous government, etc.). The Land and Water Boards are responsible for managing public review processes and ultimately approving the closure and reclamation plans. The GNWT provides comments to the Land and Water Boards through public review processes and participates in any related workshops, sessions or water licence proceeding.

Specific to the *Waters Act* and Waters Regulations, to expand on current closure and reclamation plan and security requirements, legislative amendments would be required. However, co-management partner engagement on these amendments would be required and such amendments would need to be supported as per the Intergovernmental Council Legislative Development Protocol before the GNWT could move forward with amendments to the *Waters Act* and Waters Regulations.

Under the new *Public Land Act* (PLA), Section 10 provides clear authority to the Minister to require and maintain a security for a disposition in an amount and manner sufficient to protect the public interest, to reassess the amount or form of security posted and upon termination of a disposition ensure that the land has been restored. Additionally, PLA Section 65(e), (f), and (g) allows for the exemption of certain dispositions from requiring security and for the creation of regulations for posting of security including: factors for calculating security, application and reassessment of security, restoration standards and the refund of security.

Although the regulations to bring the PLA into force are still under development, it is anticipated that the new regulations will outline the requirement for an applicant for a disposition to be required to provide their restoration intentions or submit a restoration plan. The PLA regulations are also expected to allow for the GNWT to set requirements, timeframes, and conditions for when a restoration plan must be submitted reviewed and revised. The PLA regulations are also anticipated to outline how security will be determined, timelines and circumstances for when it should be re-assessed, the form of security acceptable, how security will be posted and under what conditions security can be returned.

## Recommendation 2

The Standing Committee on Economic Development and Environment recommends the GNWT keep closure and reclamation tools up to date and publicly available to ensure the GNWT is collecting enough security to reflect true costs of closure and reclamation.

### *GNWT Response*

The GNWT accepts this recommendation.

The GNWT continues to work with the Land and Water Boards and the Federal government to update guidelines regarding the closure and reclamation of mining, advanced mineral exploration, and oil and gas sites in the NWT. Currently, Canada is updating the primary security calculation tool used in the NWT (RECLAIM). The GNWT is supporting and providing input into this update. The RECLAIM tool will continue to be publicly available on the GNWT's website.

The GNWT worked with the Land and Water Boards, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), and other landowners to develop the "Guidelines for Closure and Reclamation Cost Estimates for Mines," first published in 2017 and updated in 2022.

Additionally, the GNWT worked with the Land and Water Boards, CIRNAC, and other landowners to update the *Land Use Closure Cost Estimator* (Estimator) that calculates, third-party closure and reclamation costs associated with projects requiring only land use permits. As of March 2023, the Land and Water Boards are seeking public comments on the *Policy and Support Manual* that supports the approved Estimator. The Estimator will then replace the existing *MVLWB Land Use Permit Application Security Template*, which dates from 2004.

### Recommendation 3

The Standing Committee on Economic Development and Environment recommends the GNWT work inter-departmentally with communities and their existing community-based monitoring programs to align monitoring efforts with the surveillance programs required under regulatory permits and licences.

### *GNWT Response*

The GNWT does not accept this recommendation.

The GNWT notes that existing community-based monitoring (CBM) programs have unique and very different monitoring objectives than water licence regulatory monitoring. The NWT-wide CBM program is designed to provide NWT residents the opportunity to build capacity and conduct water monitoring to answer community questions about water quality, such as if water is safe to drink. Indigenous and local knowledge and western science all play important roles in the CBM program. The CBM program is designed to allow community members to decide where to monitor water quality and to allow them to do the sampling themselves (community monitors or guardians). The

Department of Environment and Climate Change and other water partners play coordinating and supporting roles within this program. These roles include 1) providing ongoing training and support to the community monitors to collect water samples using standard methods; and 2) analyzing water quality data and providing results back to communities.

Regulatory monitoring by a licensee is intended to ensure waste is disposed according to specific licence conditions for compliance purposes. This monitoring is intended to fulfill legislative requirements.

There could be a potential for sharing training and community monitor capacity between licensees and groups conducting CBM monitoring. However, this capacity sharing would need to be discussed between the Licensee and the group dealing with the CBM near communities.

#### Recommendation 4

The Standing Committee on Economic Development and Environment recommends that the GNWT ensure it has the internal expertise to inform regulatory decision-making and inspection capacity to prevent further public liabilities.

#### *GNWT Response*

The GNWT accepts this recommendation in principle.

The GNWT has internal staff expertise and capacity to inform regulatory decision-making and plans to maintain staffing to fulfill this duty. The GNWT will also continue to retain external subject-matter experts in particular instances (such as on aspects of securities evaluations and closure plan reviews) when it is required.

Inspectors in the GNWT are specifically trained to oversee and enforce the land and water authorizations on territorial lands in the NWT. It should be noted that the GNWT has recently created and staffed a new Senior Water Resource Officer role within Environment and Climate Change. The Senior Water Resource Officer works at the Territorial level and oversees the Department's water resource inspection, compliance, and enforcement services by working with Water Resource Officers in each region. In addition to providing technical expertise internally, the Senior Water Resource Officer also provides those services to other GNWT departments, non-government organizations, and communities of the NWT.

With the merger of the Departments of Environment and Natural Resources and Lands on April 1, 2023, the GNWT expects to achieve greater integration of land and water compliance and

enforcement activities. Water Resource Officers and Lands Inspectors will be cross appointed and trained to ensure that inspection capabilities carry on should any vacancies exist or while staff are being trained.

### Recommendation 5

The Standing Committee on Economic Development and Environment recommends that the GNWT expand the Approach to Contaminated Sites guidance document to ensure policies and processes are in place to prevent future public environmental liabilities, most significantly projects that result in perpetual care situations. Further policy and guidance with respect to public disclosure are also required.

#### *GNWT Response*

The GNWT accepts this recommendation.

The Department of Environment and Climate Change, in cooperation with the interdepartmental Contaminated Sites Working Group (CSWG), is currently developing required policies, procedures and operational items within the GNWT's Contaminated Sites Work Plan. These items will supplement the *GNWT Approach to Contaminated Sites Management* (Approach Document).

The GNWT Contaminated Sites Work Plan builds upon the Approach Document by outlining the government-wide work that needs to be done to address policy and process gaps related to prevention and management of contaminated sites. Each task has been assigned a lead and supporting department(s), as well as a timeline for completion. It is the lead department's responsibility to ensure its completion.

Tasks within the work plan include:

- Prevention of contaminated sites through updates to regulatory processes;
- Management tasks that develop and standardize procedures and processes;
- Governance tasks that help assign GNWT responsibilities and review jurisdictional authority between the GNWT and Canada; and
- Development of public-facing information and communications to ensure transparency.

Environmental liabilities which are the responsibility of the GNWT (with the exception of Giant Mine), have been publicly disclosed on the GNWT's environmental liabilities dashboard. Recommendation 13 provides additional details regarding the information that has been publicly disclosed.

As work progresses, additional policy and process gaps may be identified including gaps related to public disclosure. As these gaps are identified, items to address subsequent gaps will be proposed for addition to the work plan.

As these policies and procedures are developed, the Department will make them publicly available on the Environment and Climate Change website. Recommendation 6

The Standing Committee on Economic Development and Environment recommends the GNWT establish the internal capacity for an effective early warning system to prevent further public liabilities. This approach will also require clear measures to prevent perpetual care situations, including mandatory financial security that is regularly reviewed and adjusted.

#### *GNWT Response*

The GNWT accepts in principle the recommendation of mandatory financial security that is regularly reviewed and adjusted, but does not accept the recommendation to establish an early warning system.

Mandatory security and regular reviews and updates are discussed in the response to Recommendation 1. Although governments in Canada are limited in their available actions to prevent an insolvency, the GNWT believes the NWT's thorough regulatory regime is the best defense to insolvencies. There are a number of touch points that occur at key project milestones and/or on a regular basis that provide the GNWT with indicators of financial health, including the monitoring of permit compliance, as well as payments of securities, fees, royalties and taxes. In addition, regulatory boards in the NWT can and have requested companies to provide proof of their financial health when considering a proposed undertaking, prior to issuing a water licence, as per requirements under legislation.

There are many factors at play that impact the financial health of companies and government must be seen as both responsible for managing environmental and human risk while being careful not to unnecessarily interfere in the finances of companies, although GNWT departments do have established relationships with the territory's industry proponents to monitor project developments.

Several GNWT departments are working together to implement the GNWT's Approach to Contaminated Sites Management. This work has included clarifying departmental roles and internal communication protocols in any instance of insolvency with potential contaminated site implications.

#### Recommendation 7

The Standing Committee on Economic Development and Environment recommends the GNWT ensure legislation has clear and appropriate timelines for remediation and reclamation of inactive or suspended well sites.

#### *GNWT Response*

The GNWT does not accept the recommendation to legislate timelines for remediation and reclamation of inactive or suspended well sites.

Successful abandonment or decommissioning of a well site is a rigorous process. When proponents first apply for an authorization under the *Oil and Gas Drilling and Production Regulations* (OGDPR), a description of the future decommissioning and abandonment of the site, including methods for restoration of the site after its abandonment must be included. Sections 56 and 57 of the OGDPR are intended to ensure suspended or abandoned well sites are left in a condition that protects the environmental integrity of the area and that ongoing monitoring and inspection takes place with respect to suspended wells.

The *Well Suspension and Abandonment Guidelines and Interpretation Notes* issued by the Office of the Regulator of Oil and Gas Operations (the Regulator) provide guidance to applicants and operators on the suspension and abandonment of wells and on the monitoring of suspended wells. The Guidelines set out the minimum requirements for well suspension and abandonment noting that applicants may suggest alternative approaches where those approaches are demonstrated to meet or exceed the same standards for the protection of human safety and the environment. Allowing flexibility for operators to identify the most suitable practices for decommissioning their well sites is important to ensure appropriate solutions and best practices are applied. It is the GNWT's view that this same flexibility should be extended to timelines to accommodate alternative approaches.

Nevertheless, the Guidelines do establish timeframes for the suspension of inactive wells and another for abandonment of suspended wells.

Exploratory wells must be suspended immediately after completion if flow testing is to be conducted through a dual-barrier configuration. If an alternative flow testing plan is proposed, the operator must propose a timeframe for suspension for the Regulator's consideration when applying to drill the well. Production wells must be suspended within two years of ceasing to produce.

Section 6 of the Guidelines states that all wells must be abandoned within six years of suspension.

### Recommendation 8

The Standing Committee on Economic Development and Environment recommends the GNWT study the Government of Saskatchewan, Institutional Control Program and develop an NWT model that better implements the polluter pays principle for the long-term and unforeseen remediation of mining sites while providing regulatory certainty with respect to industry relinquishment. An NWT model should be developed by the end of the 19<sup>th</sup> Assembly.

### *GNWT Response*

The GNWT does not accept this recommendation.

The GNWT is aware of the Institutional Control Program and will be reviewing processes for relinquishment as part of policy work under the *Public Land Act*.

This timeline for completing this work before the end of the 19<sup>th</sup> Assembly is not feasible. The GNWT also continues to work with other levels of government and the Land and Water Boards to update and improve closure and reclamation planning guidelines and procedures.

### Recommendation 9

The Standing Committee on Economic Development and Environment recommends the GNWT implement transparent and clear processes to ensure that securities are established, reviewed and coordinated among various Departments.

### *GNWT Response*

The GNWT accepts this recommendation.

The GNWT notes that the current merger of the former Departments of Environment and Natural Resources and Lands will help to increase coordination with respect to securities. The new Department of Environment and Climate Change is responsible for ensuring securities are established and reviewed for the GNWT as all land and water securities managed and administered now fall within the scope of the newly formed department.

As outlined in the applicable legislation and regulations, the Department will be responsible for working with proponents and Land and Water Boards on security estimates. The Minister of Environment and Climate Change will make decisions on the appropriate form of security.

Additionally, the GNWT continues to work with the Land and Water Boards on policy and guidelines to set clear expectations for proponents on closure and reclamation security.



### Recommendation 10

The Standing Committee on Economic Development and Environment recommends the GNWT review and amend all legislative requirements regarding the form of financial security for environmental compliance and remediation to ensure financial security must be irrevocable, absolute and unconditional.

#### *GNWT Response*

The GNWT accepts this recommendation in principle.

The GNWT remains committed to accepting only financial security for environmental compliance and remediation in forms that are irrevocable, absolute and unconditional. To meet this commitment, the GNWT is reviewing and, where required, updating legislative and regulatory requirements related to the form of security. It is important to note that requirements for the form of land use permit security in the Mackenzie Valley are set out in federal regulation, which the GNWT does not have the authority to amend.

### Recommendation 11

The Standing Committee on Economic Development and Environment recommends the GNWT undertake an immediate review of the *Oil and Gas Spills and Debris Liability Regulations* to ensure that the absolute liability caps are increased to fully implement the polluter pays principle, reflect best practices and protect the public from liabilities. This review and increases to the caps should be implemented before the end of the 19th Assembly.

#### *GNWT Response*

The GNWT does not accept this recommendation.

Decisions regarding amendments to oil and gas regulations have been deferred to the 20<sup>th</sup> Legislative Assembly.

### Recommendation 12

The Standing Committee on Economic Development and Environment recommends the GNWT make financial security information (including operator, land and water related securities, amounts,

location of project, form of security, expiry dates) public through a website to help build public confidence in resource management.

#### *GNWT Response*

The GNWT accepts this recommendation.

The GNWT notes that most of the information referred to in the recommendation is already publicly available on the Land and Water Boards' public registries. However, the GNWT understands that this information can be cumbersome to locate and could be presented in a consolidated report for easy accessibility. Note that the GNWT cannot publish confidential financial information (such as banking information). Information made available will only confirm that security has been paid, the amount required (or outstanding), authorizations associated with the location and proponent, form of security, and key expiration dates.

The GNWT commits to providing public information on financial securities via a GNWT website. This will include information that is currently publicly available as part of land and water regulatory processes, as well as information that implements the following provisions of the *Public Land Act* (PLA):

- Section 8(1)(c) requires the Minister to make available via a website timely information about the requirements for security, reassessment of securities, and the application of security under the PLA, and
- Section 56(1)(e) requires annual public reporting of securities in relation to the PLA, including all assessment, reassessment, and applications of security under the PLA.

#### Recommendation 13

The Standing Committee on Economic Development and Environment recommends the Department of Finance provide a plan with timelines to enhance reporting on the GNWT Environmental Liabilities Dashboard by matching reporting practices in the Treasury Board of Canada Secretariat's Federal Contaminated Sites Inventory.

#### *GNWT Response*

The GNWT does not accept this recommendation.

In 2022, the GNWT released its first environmental liabilities dashboard that provides a map view of contaminated sites that are under GNWT responsibility. The dashboard provides information by type,

and with more descriptions of each site than provided previously, to enhance the GNWT's transparency and accountability of these sites. Currently, there are no plans to modify the dashboard.

The GNWT believes this dashboard provides a useful tool for residents. If residents require additional details on any site, they can contact the Department of Environment and Climate Change for more information.

The dashboard required a significant amount of resources to implement and is updated on an annual basis in coordination with the completion of the public accounts. The GNWT believes it has included an appropriate level of detail. The dashboard does not include cost information due to potential implications for future procurement activities.

The dashboard only includes sites fully under GNWT control and those which the GNWT has taken full responsibility of from a contaminated sites perspective, with the exception of the Giant Mine site where the GNWT is co-proponent with Canada.

Further details comparing the GNWT's environmental liabilities dashboard and the Federal Contaminated Sites Inventory are as follows:

1. Federal Site ID – The GNWT site ID numbers are not provided on the public facing dashboard. It was determined that providing the GNWT site ID numbers was not required for the dashboard as these numbers are not used to identify the sites in public records. This is a number that is only required internally to identify the sites for annual updates.
2. DFRP number – A GNWT equivalent DFRP (Directory of Federal Real Property) number is not provided on the public facing dashboard as these numbers are not used to identify sites in public records.
3. Reporting Org – The GNWT determined that it was not necessary to identify for the public which department is responsible for each contaminated site. However, GNWT departments are responsible for their own contaminated sites and an internal working database has this information.
4. Location – Site coordinates are on the dashboard.
5. Map navigator – Map navigator is on the dashboard.
6. Classification – The GNWT is developing an approach to risk and priority assessment for contaminated sites which will guide how the GNWT's contaminated sites will be

classified. Once this approach is finalized, this information may be considered for inclusion in the dashboard in the future.

7. Contaminants – This information is provided in the Site Description on the dashboard.
8. Highest step completed – This information on the Federal Contaminated Site Inventory is based on the FCSAP 10-step process of federal contaminated sites decisions-making framework. The GNWT currently does not have a similar framework in place. However, the GNWT is developing a process to identify and assess contaminated sites which will guide how sites are assessed and managed. Once this process is finalized, this information may be considered for inclusion in the dashboard in the future.
9. Reason for federal involvement – This information is not yet disclosed on the dashboard nor the public accounts and would require further discussion to determine if it would be appropriate to include on the dashboard.
10. Site status – Work that has been completed at each site is provided in the Site Description on the dashboard. As stated above, the GNWT is developing an approach that will guide how the GNWT’s sites will be classified. Once this approach is finalized, this information may be reviewed for how it should be modified within the dashboard.

As the GNWT advances its work on the development of policies and procedures as laid out in the GNWT-wide Contaminated Sites Work Plan, changes to the dashboard may be considered.

#### Recommendation 14

The Standing Committee on Economic Development and Environment recommends the GNWT develop a plan with a budget and schedule to better support communities in the management of landfills, that includes training, capacity building, best practices in waste management, diversion, backhaul and related matters. This plan should be developed by the end of the 19th Assembly.

#### *GNWT Response:*

The GNWT accepts this recommendation in principle, but does not agree that an additional plan is required.

The Department of Municipal and Community Affairs partnered with the Department of Environment and Climate Change on the development and implementation of the *Northwest Territories Waste Resource Management Strategy* (the Strategy). The Strategy integrates waste reduction and diversion

with better waste disposal practices, including implementing support in solid waste facility management, training, and diversion.

One of the specific actions expected of the Strategy is to facilitate diversion of materials from solid waste facilities by helping to create inventories, segregate materials, and prepare materials for removal. To address this action, MACA partnered with 25 communities who wanted to implement the Clean Up, Clean Start program which will see the implementation of Regional Waste Removal Projects (RWRPs). Five RWRPs are currently underway which are funded by community governments and the federal government under the Investing in Canada Infrastructure Program (ICIP). The cost share for the RWRPs is 25% community government funding and 75% ICIP funding.

This work is supporting community landfills through two phases:

- Depollute scrap metal (appliances, vehicles, fuel tanks etc.) and remove stockpiles of hazardous waste; and
- Manage the remaining stockpiles of inert metal through re-use or recycling.

The results and inventories of the first phase of the RWRPs will help inform the second phase.

Currently, the project is in the “Clean Up” phase of the “Clean Up – Clean Start” vision for community solid waste sites. The “Clean Start” phase will focus on the prevention of stockpiles through the regular diversion (e.g., backhaul) of hazardous and bulky materials from the entire Industrial, Commercial, and Institutional (ICI) sector in the NWT.

Another key initiative has been to develop a risk ranking tool to identify the most important risk factors at community solid waste sites by October 2023. The results of the risk ranking will help MACA and community governments to identify the specific needs in each solid waste site, as well as the common risk factors among many of the community solid waste sites. As a result, MACA and ECC will be able to provide a more detailed and targeted budget that would support the mitigation of specific risk factors such as wildlife, hazardous waste stockpiles, or leachate. Some examples of mitigations include the introduction of additional reduction/diversion programs, infrastructure improvements such as regular cover and fencing, and enhanced waste management training.

MACA and ECC will update progress on implementation of the Strategy and provide an interim budget and workplan for the next 5 years that will continue to address a broad scope of activities, consistent with those referenced in the Standing Committee’s recommendation.

### Recommendation 15

The Standing Committee on Economic Development and Environment recommends the GNWT explore partnerships with industry and industry associations to provide hands-on practical training for landfill managers across the territory.

### *GNWT Response*

The GNWT accepts this recommendation in principle.

MACA understands that shifting from open dumps to modern solid waste facilities requires additional infrastructure and training to meet modern expectations of the function of a solid waste facility. MACA also understands that shifting from waste disposal to reduction and diversion requires a different set of skills, for which additional training is needed.

Engaging with qualified industry technicians is currently a part of the Investing in Canada Infrastructure Program (ICIP) Regional Waste Removal Projects (RWRPs). These contractors will go into each community to help depollute various types of scrap metal and consolidate and prepare hazardous waste for transportation and disposal. The work involves both labour and equipment from the communities and provides an opportunity for community government staff to gain additional technical experience working alongside experienced technicians. MACA will explore and pursue opportunities like this to provide more hands-on training to community government staff in their own solid waste sites.

Through MACA's School of Community Government, Solid Waste Operator training is offered regularly. This training is being updated and MACA will engage with the Northern Lights Chapter of the Solid Waste Association of North America (SWANA) to develop a course for northern and remote communities.