Proposed *Environmental Protection Act* (EPA) Amendments

What We Heard Document

Reviewer/Organization	How & When Received	Comment/Context	Responder's Recommendations	ENR Response	#
Exemption Clause					
Fort Chipewyan Métis Local 125	email attachment, formal letter, July 7/16	• For the EPA regulations to be implemented and treated with serious regard, in emitters' operations plans, and as putting environmental protection and Aboriginal and Treaty Rights as priority concerns, then exemption contexts should be defined. Intentions to provide 'flexibility' for unforeseen circumstances should not be left up to the interpretation of, or influence on the regulating body by, conflicting political agendas looking for a 'back door'. Exemptions should be in the context of emergency or impartially reviewed, sound mitigation trade-offs based on proven science, not uncertain approaches justified through ad hoc monitoring. • Stringent regulations and appropriate exemption scenarios are of particular saliency when viewed concurrently with federal and provincial climate plans, and in light of recent federal endorsement of the UNDRIP, the Convention on Biodiversity Article 8(j), and related recommendations made in the spirit of reconciliation through the Truth & Reconciliation Commission Final Report.		• Specific uses of exemptions will be detailed in any regulations developed under the EPA, and would be subject to public input, or consultation if required, at the time of creation. For example, the proposed Air Regulatory Framework includes two instances of the use of exemptions: • Emergency releases are exempt from the ambient air quality standards; however there are requirements that must be undertaken during emergency releases to qualify as an emergency release and therefore be subject to the exemption; and, • Exemptions may be granted for a follow-up incinerator stack test, based on criteria stipulated in the regulations. These examples demonstrate that set criteria must be met in order to qualify for an exemption, and leaves limited room for exemptions to be granted that are not consistent with what would be laid out in the regulations. • Provisions for written notice regarding the issuance of an exemption for a second incinerator stack test will be developed for the Air Regulatory Framework. In the event of an exemption, the request and any reason for granting the exemption will be publically posted. • The issue of 'Dual compliance' will be addressed with the amendment of s. 5(3)(a) of the EPA, as detailed in the Non-Application Clause Section of this document. Specifically, s. 5(3)(a) is being amended to provide that if an operation is already authorized to discharge a contaminant (i.e. under a Water Licence), then the operation will not be out of compliance with s. 5(1) of the EPA.	**1**
Inuvialuit Regional Corporation	Email, formal letter, Sept.15/16	• **Inclusion of an Exemption Clause** - IRC seeks clarification on what kinds of operators will be considered for exemption and how to apply for exemption from application of the Act.			**2**
Kevin O'Reilly MLA Frame Lake	Email, formal letter, Sept.9/16	• Although the ability to grant exemptions may be a reasonable thing to do, there is potential for abuse of this provision or that political pressure may be used to persuade a Minister exempt certain projects from the Air Quality Regulatory Framework.	• To ensure greater accountability and public awareness, there should be a requirement for public notice of any exemption with written reasons, and perhaps a period for public comment before a final decision.		**3**
Independent Environmental Monitoring Agency	Email, formal letter, Sept.14/16	• ENR proposes to include an exemption clause under the EPA that allows regulations or other sub-authorities (note - this term is unclear) to include exemptions from their application. While this approach may resolve non-application issues on matters which are the subject of regulations under the EPA, it is unclear how 'dual compliance' matters under other Acts and regulations would be addressed.			**4**
Registries & Public Availability of Registries					
Inuvialuit Regional Corporation	Email, formal letter, Sept.15/16	• **Authority to establish Registries of Emitters** - IRC seeks clarity on how the Department of Environment and Natural Resources (ENR) will protect business information of companies while making registries public.		• Business information associated with activities/operations in Schedule A of the Air Regulatory Framework (i.e. registrants, not Air Permittees) are intended for use by ENR for information gathering purposes, and will therefore	**5**

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Kevin O'Reilly MLA Frame Lake	Email, formal letter, Sept.9/16	• There is a limited commitment to make public a small range of documents that will be generated as part of the Air Quality Regulatory Framework including the permit process. There is no mention of inspection reports, annual reports from companies and other documents, as to whether these materials will be public. The Land and Water Boards of the Mackenzie Valley routinely make all of their documentation received public via a web-based public registry system. There is a public expectation that air quality should be handled in a similar manner.	• All documents should be considered public automatically, unless there is some valid public interest or proprietary interest that might be argued.	not be made public. • For the Air Regulations, ENR intends to make a registry publically available when it relates to compliance with a requirement of the regulations (i.e. on an authorization); whereas registry information (i.e. collecting data as per registration requirements) that is being used by ENR solely for research and to inform future regulatory initiatives shall not be made publically available. In the former case, sharing information publically provides transparency that proponents' operations and government actions are occurring as indicated in the regulations. • This amendment to the EPA is simply to enable the creation of a registry and to allow for information to be made publically available; however the details on what information would be made publically available (including confidentiality or proprietary considerations) would be detailed in regulations, not in the Act.	**6**
Non-Application Clause – S.2(2)					
Rio Tinto	Email, formal letter, Sept.15/16	• DDMI understands that the removal of s. 2(2) (Non-Application) from the EPA will require those who are expressly authorized to discharge "contaminants" under existing permits and licences (e.g., water licences issued under the Mackenzie Valley Resource Management Act/Waters Act) to apply for new permits or licences under the EPA for the same discharges, unless exempted by regulation under the EPA. If our understanding is correct, then we are concerned with a number of adverse effects such as potentially-conflicting licence conditions or orders, duplication of monitoring, reporting and inspections, and a generally increased administrative burden, which would not be justified by any corresponding increase in environmental protection. Accordingly, we do not think that the Non-Application clause should be removed from the EPA.	• If it is removed, then the holders of certain types of licences (in particular, water licences) should be exempted by regulation and the EPA should contain effective means of coordinating the work of different regulators and to address conflicts between them in a way that does not impact license holders.	• This concern has been addressed by amending s. 5(3)(a). This amendment provides that if an operation is already authorized to discharge a contaminant (i.e. under a Water Licence), then the operation will not be out of compliance with S.5(1) of the EPA.	**7**
Independent Environmental Monitoring Agency	Email, formal letter, Sept.14/16	• ENR proposes that this clause be removed in its entirety, and a new clause be added allowing for exemptions from requirements under the Act and its Regulations. The rationale stated for the removal of the existing clause is that if a contaminant is discharged at a level above a limit set under the EPA (i.e. source performance standards) but below the limit set under another piece of legislation, the emitter will not be in violation of the EPA.	• ENR re-examine the removal of s. 2(2) of the EPA to ensure those operations which are authorized to discharge contaminants to the environment under other Acts and regulations, permits and licenses (i.e. water licences) do not violate s. 5(1) of the EPA.	• ENR has reexamined the removal of s. 2(2) and concludes that an additional amendment to s. 5(3)(a) is required to specify that discharges authorized by other Acts or regulations do not violate s. 5(1) of the EPA.	**8**

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		The Department is also concerned that the entire operation could be exempted from the requirements of the EPA by virtue of a very broad interpretation of this non-application clause. • The Agency is aware of the original intention of s. 2(2) as it was considered in 1990 – that developments operating under an existing valid federal or territorial permit or licence could continue to discharge contaminants at levels that are authorized by the permit or licence. For example, in the case of a discharge to water, a municipality could continue to discharge domestic sewage, or a mining operation could continue to discharge tailings effluent, to the receiving environment as long as the criteria established by the water licence are not exceeded. Without this non-application clause, the municipality or mining operation could be in violation of s. 5(1) the EPA. • The argument that the entire operation of an organization which received a lawful authorization to conduct an activity that results in a discharge of a contaminant could be considered exempt by virtue of s. 2(2) was examined but not considered valid at the time. • The Agency is concerned that, by removing s. 2(2) in its entirety, a situation of the "impossibility of dual compliance" could be established. As mentioned above, the possibility could exist that a municipality would be in violation of the EPA by discharging treated sewage, or a mining operation by discharging treated effluent, where it is otherwise in compliance with an existing valid water licence. This situation could lead to a policy challenge similar to that under the federal Fisheries Act. s. 36(3) of that Act reads: *Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.* The Government of Canada addressed this challenge by including s. 36(4) which sets out the following non-application conditions: *No person contravenes subsection (3) by depositing or permitting the deposit in any water or place of* *(a) waste or pollutant of a type, in a quantity and under conditions authorized by regulations applicable to that water or place made by the Governor in Council under any Act other than this Act;* *(b) a deleterious substance of a class and under conditions — which may include conditions with respect to quantity or concentration — authorized under regulations made under subsection (5) applicable to that water or place or to any work or undertaking or class of works or undertakings; or*			

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		(c) a deleterious substance the deposit of which is authorized by regulations made under subsection (5.2) and that is deposited in accordance with those regulations.			
Inuvialuit Regional Corporation	Email, formal letter, Sept.15/16	• **Removal of the Non-Application clause** - As a consequence, operators that are currently governed by legislation other than the EPA will now be subject to the limits and standards. IRC seeks clarification on how the EPA will achieve consistency with other environmental legislation where a business is subject to another statute.		• S. 5(3)(a) will be amended to clarify discharges authorized under other Acts or regulations do not violate s. 5(1) of the EPA.	**9**
Vehicle Sources – s.5(3)(c), and s.5(4)					
Inuvialuit Regional Corporation	Email, formal letter, Sept.15/16	• **Inclusion of "vehicles"** - In the proposal, aircraft, marine vehicles and all-terrain vehicles are exempt. In the presentation, ENR indicated that all personal vehicles are exempt. IRC wants confirmation that personal vehicles and vehicles used for the purposes of harvesting country food remain exempt. IRC further submits that snowmobiles must be listed in the exemption as they are not clearly ''all terrain". IRC believes that an exemption for all personal vehicles where there are no facilities to certify that vehicles are performing properly is necessary.	• Officially and clearly exempt snowmobiles	• Based on feedback received on the Air Regulatory Framework and a resulting change in approach to this component of the Air Regulatory Framework, the proposed amendment to the Vehicle Sources exception clause will not be pursued. Therefore, the Vehicle Sources exception currently in the EPA will remain unchanged. At this time, ENR is not proposing to regulate emissions from personal vehicles, including snowmobiles.	**10**
Domestic Sources – s.5(3)(b), and s.5(4)					
Inuvialuit Regional Corporation	Email, formal letter, Sept.15/16	• **Future inclusion of domestic sources of emissions (i.e. furnace/wood smoke)** - While these are currently excluded in the proposed amendments, IRC submits that because of the essential nature of domestic heat and because many Inuvialuit homes still use wood-burning appliances, consultation must take place before these are included in future versions of the statute.		• If ENR were to propose to regulate woodstoves at a future time, ENR would conduct engagement at that time, or consultation if required. At this time, ENR will not be removing wood burning appliances from the Domestic Sources exception clause, as originally proposed. Instead, ENR will amend the EPA to focus on the release of nuisance discharges through amendments to ss. 2.2 and 5(4).	**11**
Tlicho Government	Email, formal letter, Sept.16/16	• The proposed Environmental Protection Act changes relating to Domestic sources (section 5(3)(b) – section 5(4)) propose that emission sources from inside the home—i.e., woodstoves or furnace emissions—are exempt, unless they are considered a nuisance. In that case it is proposed that the GNWT's department of Environment and Natural Resources would have the ability to act. Many Tłı̨chǫ rely on woodstoves for heating our homes, and while we do not want to create an environment that is bad for the health of our people and environment, we believe that our	• Ensure that any public nuisance actions relating to woodstove use remain in the hands of Community Governments. (Tłı̨chǫ Government notes that Tłı̨chǫ Community Governments are provided legislative power under the Tłı̨chǫ Agreement (section 8.4) and the Tłı̨chǫ Community Government Act (part 4) to enact bylaws relating to matters of a local nature).	• ENR is not proposing to regulate woodstoves at this time. Instead the legislative amendments to the EPA will focus on nuisance emissions. This would not prevent a Tłı̨chǫ Community Government from enacting their own local bylaws as per the referenced sections of the Tłı̨chǫ Agreement.	**12**

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		communities have both the legislative power and are in the best position to assess the potential nuisance from woodstove use. We would more than likely request the support of GNWT expertise in reviewing potential cases of nuisance, but request recognition of our Community Governments' abilities to work with our people to manage these situations.			