

TECHNICAL APPENDIX
Proposed Amendments to the *Environmental Protection Act*

EPA SECTIONS	PROPOSED AMENDMENTS	RATIONALE & REFERENCES
Non-Application Clause – s.2(2)	<p>This section currently reads:</p> <p><i>“This Act does not apply to any person who is authorized under an Act of the Parliament of Canada or the Northwest Territories to do those things that, but for such Act, are in contravention of this Act or the regulations.”</i></p> <p>Environment and Natural Resources (ENR) recommends that s. 2(2) be removed.</p>	<p>Subsection 2(2) creates a situation in which the <i>Environmental Protection Act</i> (EPA) may not apply to an activity that is being regulated under another piece of legislation. The way the section is currently written is overly broad and not in line with similar clauses in other environmental legislation in Canada. The concern is that if a contaminant is discharged at a level above a limit set under the EPA but below the limit under another piece of legislation, the emitter will not be in violation of the EPA.</p> <p>Further, because s. 2(2) is overly broad and pre-emptive, in its broadest sense this could mean that any organization that has received a lawful authorisation to conduct an activity in the Northwest Territories (NWT) that results in a discharge of contaminants, that activity would be exempt from the application of the EPA by virtue of the operation of s. 2(2)'s very broad exclusion clause.</p> <p>In consultation with the Department of Justice it has been determined that removing s. 2(2) from the EPA removes that ambiguity and allows for full and effective application of the EPA and its Regulations to all activities where contaminants are being discharged. Therefore it is suggested that this section be removed.</p>
Exemption Clause	<p>ENR recommends that an exemption clause be added to the EPA that allows regulations or other sub-authorities of the EPA to include exemptions from their application.</p>	<p>The proposed NWT Air Regulations propose a variety of requirements of emitters, and for many of those requirements, ENR wishes to include an opportunity for exemption. This allows ENR some flexibility, and is considered necessary in order to allow the proposed Air Regulations to cover off any unforeseen circumstances in the future where the requirements of the Regulations may not be</p>

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		<p>ideal.</p> <p>It is suggested that a clause be added to the EPA allowing for exemptions from requirements under the Act and its Regulations.</p>
Registries	<p>ENR recommends that the EPA be amended to give the Minister/Chief Environmental Protection Officer the authority to:</p> <ul style="list-style-type: none"> • Create a registry, or registries; • To require registration of proponents/emitters (as defined in a regulation); and • To require that proponents/emitters (as defined in a regulation) become registered. 	<p>The proposed NWT Air Regulations require that certain emitters (operators) submit information including but not limited to: emission-generating equipment make, model, serial number, fuel use, business name and details. This information would be compiled in a 'registry', the operator would be considered 'registered', and enforcement measures would be pursued by those emitters who did not comply with registration requirements. The objective of this registry is for information gathering purposes, to inform future regulatory decision-making.</p> <p>Furthermore, the proposed Air Permits propose a requirement for certain emitters where all documents associated with the process including the Permit itself will be contained in a registry.</p> <p>It is suggested that a clause is added to the EPA providing the Minister with the authority to establish a registry, or multiple registries.</p>
Public Availability of Registries	<p>ENR recommends that the EPA be amended to give the Minister the authority to make any registry or registries, created under the EPA, publicly available.</p>	<p>The proposed Air Permit process and documents associated with it are intended to be made publically available through an ENR registry, in order to align with the current environmental management regime (e.g. Land and Water Board submissions are publically posted on their registries).</p> <p>At the same time, the equipment registration requirements for</p>

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		<p>select emitters are not intended to be a publically available registry as registration is intended for information gathering purposes, not to be compared to proposed requirements under the regulations.</p> <p>Therefore, ENR would want the authority to conduct both methods under the EPA, depending on the requirements of the Regulations. It is suggested the EPA be amended to give the Minister authority to make registries created under the EPA publically available.</p>
Vehicle Sources – s.5(3)(c), and s.5(4)	<p>These sections read:</p> <p><i>"(3) Subsection (1) does not apply where the person who discharged the contaminant or permitted the discharge of the contaminant establishes that...</i></p> <p><i>(c) the contaminant was discharged from the exhaust system of a vehicle;...</i></p> <p><i>(4) The exceptions set out in subsection (3) do not apply where a person discharges a contaminant that the inspector has reasonable grounds to believe is not usually associated with a discharge from the excepted activity."</i></p> <p>ENR recommends that s.5(3)(c) be amended.</p>	<p>ENR understands that this section of the EPA means that unless a vehicle's exhaust system isn't performing or being used as designed, then it is exempt from the EPA.</p> <p>Note that the term 'vehicle' is not defined in the EPA, but the NWT <i>Motor Vehicles Act</i> defines 'vehicle' as:</p> <p style="padding-left: 20px;">"vehicle" includes any vehicle designed to travel on land that is draw, propelled or driven by any kind of power, including muscular power, but does not include an all-terrain vehicle or a device that is designed to run on rails; (<i>véhicule</i>)</p> <p>And 'motor vehicle' as:</p> <p style="padding-left: 20px;">"motor vehicle" means a vehicle propelled or driven by power other than muscular power</p> <p style="padding-left: 20px;">and includes a trailer, but does not include</p> <p style="padding-left: 40px;">(a) an aircraft, a marine vehicle or an all-terrain vehicle,</p> <p style="padding-left: 40px;">(b) a device that runs or is designed to run exclusively on rails, or</p> <p style="padding-left: 40px;">(c) a mechanically propelled wheelchair; (<i>véhicule automobile</i>)</p>

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		<p>Mobile sources (i.e. motor vehicles), including passenger vehicles, light-duty and heavy-duty trucking, construction equipment, etc, are all significant contributors to Canada's and the NWT's emission inventory, and are a focus of the national/CCME's Air Quality Management System due to their contribution of oxides of nitrogen, black carbon, and particulate matter to the environment. It is therefore imperative that the proposed Air Regulations have the authority to regulate those emission sources and emissions.</p> <p>If significant concern is raised on this amendment during the engagement period, ENR may propose to modify the amendment to uphold the exemption for light-duty, personal vehicles (in the hopes of alleviating public concern that the GNWT will be placing emission restrictions on their personal vehicles).</p> <p>ENR suggests that the exception for vehicles in the EPA be amended.</p>
Domestic Sources – s.5(3)(b), and s.5(4)	<p>These sections read:</p> <p><i>"(3) Subsection (1) does not apply where the person who discharged the contaminant or permitted the discharge of the contaminant establishes that...</i></p> <p><i>(b) the contaminant has been used solely for domestic purposes and was discharged from within a dwelling-house;...</i></p> <p><i>(4) The exceptions set out in subsection (3) do not apply where a person discharges a contaminant that the inspector has reasonable grounds to believe is not usually associated with a discharge from the excepted activity."</i></p>	<p>ENR understands that this section of the EPA means that emission sources from inside the home, such as woodstove or furnace emissions, are exempt from the EPA unless they're not performing or being used as designed.</p> <p>Smoke from woodstoves is a known contributor to local air quality. ENR is not proposing to regulate woodstoves specifically at this time; however, we would like the ability to act on nuisance emissions (e.g. smoke causing unreasonable interference with neighbours' or a neighbourhood's use and enjoyment of their property), and poor local air quality situations arising from woodstove use.</p>

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	ENR recommends that the term “domestic purposes” be clarified and that wood burning appliances not be included within that term.	ENR suggests that the term “domestic purposes” in the EPA be defined and that wood burning appliances not be included within that definition.
Regulations	Section 34 sets out areas in which Regulations can be developed. ENR recommends that the list be broadened to reflect the proposed air regulatory scheme.	In order for components of the proposed air regulatory scheme to be included in the proposed NWT Air Regulations, they need to be reflected in the list of Regulation making powers under the EPA. ENR suggests broadening the list of Regulation making powers to reflect the proposed air regulatory scheme (e.g., operation and maintenance of equipment that could affect the manner in which contaminants are generated).