

**Mackenzie Valley Resource Management Act ( 1998, c. 25 )**

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Act current to December 13th, 2007

Attention: See coming into force provision and notes, where applicable.

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## Mackenzie Valley Resource Management Act

### 1998, c. 25

M-0.2

[Assented to June 18th, 1998]

An Act to provide for an integrated system of land and water management in the Mackenzie Valley, to establish certain boards for that purpose and to make consequential amendments to other Acts

#### Preamble

WHEREAS the Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Metis Comprehensive Land Claim Agreement require the establishment of land use planning boards and land and water boards for the settlement areas referred to in those Agreements and the establishment of an environmental impact review board for the Mackenzie Valley, and provide as well for the establishment of a land and water board for an area extending beyond those settlement areas;

WHEREAS the Agreements require that those boards be established as institutions of public government within an integrated and coordinated system of land and water management in the Mackenzie Valley;

AND WHEREAS the intent of the Agreements as acknowledged by the parties is to establish those boards for the purpose of regulating all land and water uses, including deposits of waste, in the settlement areas for which they are established or in the Mackenzie Valley, as the case may be;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

### SHORT TITLE

#### Short title

1. This Act may be cited as the *Mackenzie Valley Resource Management Act*.

### INTERPRETATION

#### Definitions

2. The definitions in this section apply in this Act.

"deposit of waste"  
«*dépôt de déchets*»

"deposit of waste" means a deposit of waste described in subsection 9(1) of the *Northwest Territories Waters Act*.

"environment"  
«*environnement*»

"environment" means the components of the Earth and includes

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

"federal Minister"  
«*ministre fédéral*»

"federal Minister" means the Minister of Indian Affairs and Northern Development.

"first nation"  
«*première nation*»

"first nation" means the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Deh Cho region of the Mackenzie Valley, but does not include the Tlicho First Nation or the Tlicho Government.

"Gwich'in Agreement"  
«*accord gwich'in*»

"Gwich'in Agreement" means the Comprehensive Land Claim Agreement between Her Majesty the Queen in right of Canada and the Gwich'in as represented by the Gwich'in Tribal Council, signed on April 22, 1992 and approved, given effect and declared valid by the *Gwich'in Land Claim Settlement Act*, as that Agreement is amended from time to time in accordance with its provisions.

"Gwich'in First Nation"  
«*première nation des Gwich'in*»

"Gwich'in First Nation" means the Gwich'in as represented by the Gwich'in Tribal Council referred to in the Gwich'in Agreement or by any successor to it.

"harvesting"  
«*exploitation*»

"harvesting", in relation to wildlife, means hunting, trapping or fishing activities carried on in conformity with a land claim agreement or, in respect of persons and places not subject to a land claim agreement, carried on pursuant to aboriginal or treaty rights.

"heritage resources"  
«*ressources patrimoniales*»

"heritage resources" means archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.

"land claim agreement"  
«*accord de revendication*»

"land claim agreement" means the Gwich'in Agreement, the Sahtu Agreement or the Tlicho Agreement.

"local government"  
«*administration locale*»

"local government" means any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community, settlement or government of a Tlicho community, whether incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws.

"Mackenzie Valley"  
«*vallée du Mackenzie*»

"Mackenzie Valley" means that part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by Yukon, on the north by the Inuvialuit Settlement Region, as defined in the Agreement given effect by the *Western Arctic (Inuvialuit) Claims Settlement Act*, and on the east by the Nunavut Settlement Area, as defined in the *Nunavut Land Claims Agreement Act*, but does not include Wood Buffalo National Park of Canada.

"Monfwi Gogha De Niitlee"  
«*Monfwi gogha de niitlee*»

"Monfwi Gogha De Niitlee" means the area described in part 1 of the appendix to chapter 1 of the Tlicho Agreement.

"Sahtu Agreement"  
«*accord du Sahtu*»

"Sahtu Agreement" means the Comprehensive Land Claim Agreement between Her Majesty the Queen in right of Canada and the Sahtu Dene and Metis as represented by the Sahtu Tribal Council, signed on September 6, 1993 and approved, given effect and declared valid by the *Sahtu Dene and Metis Land Claim Settlement Act*, as that Agreement is amended from time to time in accordance with its provisions.

"Sahtu First Nation"  
«*première nation du Sahtu*»

"Sahtu First Nation" means the Sahtu Dene and Metis as represented by The Sahtu Secretariat Incorporated, a corporation without share capital under Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970, being the successor, for the purposes of this Act, to the Sahtu Tribal Council referred to in the Sahtu Agreement, or by any successor to that corporation.

"settlement area"  
«*région désignée*»

"settlement area" means the area described in appendix A to the Gwich'in Agreement or in appendix A to the Sahtu Agreement.

"settlement lands"  
«*terres désignées*»

"settlement lands" means lands referred to as settlement lands in the Gwich'in Agreement or the Sahtu Agreement.

"territorial government"  
«*gouvernement territorial*»

"territorial government" means the government of the Northwest Territories.

"territorial law"  
«*règle de droit territoriale*»

"territorial law" means an ordinance of the Northwest Territories and any regulations made under such an ordinance.

"territorial Minister"  
«*ministre territorial*»

"territorial Minister", in relation to any provision of this Act, means the minister of the territorial government designated by instrument of the Executive Council of the Northwest Territories for the purposes of that provision.

"Tlicho Agreement"  
«*accord tlicho*»

"Tlicho Agreement" means the Land Claims and Self-Government Agreement among the Tlicho, the Government of the Northwest Territories and the Government of Canada, signed on August 25, 2003 and approved, given effect and declared valid by the *Tlicho Land Claims and Self-Government Act*, as that Agreement is amended from time to time in accordance with its provisions.

"Tlicho citizen"  
«*citoyen tlicho*»

"Tlicho citizen" means a person whose name is on the Register as defined in chapter 1 of the Tlicho Agreement.

"Tlicho community"  
«*collectivité tlicho*»

"Tlicho community" means a community for which a community government is established in accordance with chapter 8 of the Tlicho Agreement.

"Tlicho First Nation"  
«*première nation tlicho*»

"Tlicho First Nation" means the aboriginal people of Canada to whom section 35 of the *Constitution Act, 1982* applies, consisting of all Tlicho citizens.

"Tlicho Government"  
«*gouvernement tlicho*»

"Tlicho Government" means the government of the Tlicho First Nation established in accordance with chapter 7 of the Tlicho Agreement.

"Tlicho lands"  
«*terres tlichos*»

"Tlicho lands" means Tlicho lands as defined in chapter 1 of the Tlicho Agreement.

"Tlicho law"  
«*loi tlicho*»

"Tlicho law" means a law enacted by the Tlicho Government.

"Wekeezhii"  
«*Wekeezhii*»

"Wekeezhii" means the area described in part 2 of the appendix to chapter 1 of the Tlicho Agreement.

1998, c. 25, s. 2; 2000, c. 32, s. 50; 2002, c. 7, s. 205(E); 2005, c. 1, s. 15.

### Consultation

**3.** Wherever in this Act reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised

- (a) by providing, to the party to be consulted,
  - (i) notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,
  - (ii) a reasonable period for the party to prepare those views, and
  - (iii) an opportunity to present those views to the party having the power or duty to consult; and
- (b) by considering, fully and impartially, any views so presented.

### Delegation to territorial Minister

**4.** (1) The federal Minister may, by instrument in writing, delegate to the minister of the territorial government responsible for renewable resources any of the federal Minister's functions under this Act, either generally or as otherwise provided in the instrument of delegation.

### Included functions

(2) The functions of the federal Minister referred to in subsection (1) include the power to delegate duties pursuant to section 122.

### Delegation to aboriginal organizations

(3) A first nation may, in conformity with its land claim agreement, delegate any of the functions of the first nation under this Act to an aboriginal organization designated by it.

### Delegation by Tlicho Government

(4) The Tlicho Government may, in conformity with the Tlicho Agreement, delegate any of its functions under this Act to

- (a) a body or office established by a Tlicho law;
- (b) any department, agency or office of the federal or the territorial government;
- (c) a board or other public body established by or under an Act of Parliament or by a territorial law; or
- (d) a local government.

1998, c. 25, s. 4; 2005, c. 1, s. 16.

### Conflict

**5.** (1) Where there is any inconsistency or conflict between this Act and a land claim agreement, an Act giving effect to a land claim agreement or the *Indian Act*, the agreement, the Act or the *Indian Act* prevails over this Act to the extent of the inconsistency or conflict.

### Aboriginal rights

(2) For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

### Agreement between Tlicho Government and another aboriginal people

**5.1** The rights of the Tlicho First Nation, Tlicho citizens and the Tlicho Government under this Act are subject to the provisions of any agreement entered into between the Tlicho Government and an aboriginal people, other than the Tlicho First Nation, under 2.7.3 of chapter 2 of the Tlicho Agreement.

2005, c. 1, s. 17.

## APPLICATION AND CONSULTATION

### Application

**6.** Except where otherwise provided, this Act applies in the Mackenzie Valley.

### Application to Her Majesty

**7.** This Act is binding on Her Majesty in right of Canada or a province.

### Consultation

**8.** (1) The federal Minister shall consult the first nations and the Tlicho Government with respect to the amendment of this Act.

### Review of Act

(2) The federal Minister shall, in the course of any negotiations with a first nation relating to self-government, review the pertinent provisions of this Act in consultation with that first nation.

1998, c. 25, s. 8; 2005, c. 1, s. 18.

## PART 1 GENERAL PROVISIONS RESPECTING BOARDS

### ESTABLISHMENT AND ORGANIZATION

#### Definition of "board"

9. In this Part, "board" means any board established by this Act.

#### Purpose

9.1 The purpose of the establishment of boards by this Act is to enable residents of the Mackenzie Valley to participate in the management of its resources for the benefit of the residents and of other Canadians.

#### Capacity

10. A board has, for the purposes of its functions, the capacity, rights, powers and privileges of a natural person.

#### Appointment of members by federal Minister

11. (1) The members of a board — other than the chairperson, any members appointed pursuant to a determination under section 15 and any members appointed by the Tlicho Government under subsection 57.1 (2) or in accordance with an agreement referred to in that subsection — shall be appointed by the federal Minister in accordance with Parts 2 to 5.

#### Alternate members

(2) Except in the case of the Wekeezhii Land and Water Board, the federal Minister may appoint

(a) alternate members selected from persons nominated for that purpose by a first nation, or selected following consultation with first nations, to act in the event of the absence or incapacity of members appointed on such nomination or following such consultation, respectively; and

(b) alternate members agreed to by the territorial Minister to act in the event of the absence or incapacity of members other than members referred to in paragraph (a).

1998, c. 25, s. 11; 2005, c. 1, s. 19.

#### Chairperson

12. (1) Except in the case of the Wekeezhii Land and Water Board, the chairperson of a board shall be appointed by the federal Minister from persons nominated by a majority of the members.

#### Appointment by federal Minister

(2) Except in the case of the Wekeezhii Land and Water Board, if a majority of the members does not nominate a person acceptable to the federal Minister within a reasonable time, the Minister may appoint any person as chairperson of the board.

#### Wekeezhii Land and Water Board

(2.1) The chairperson of the Wekeezhii Land and Water Board shall be appointed jointly by the federal Minister and the Tlicho Government on the nomination of the members of the Board other than the chairperson.

#### Absence or incapacity of chairperson

(3) The board may designate a member to act as its chairperson during the absence or incapacity of the chairperson or a vacancy in the office of chairperson, and that person while so acting may exercise the powers

and shall perform the duties of the chairperson.

1998, c. 25, s. 12; 2005, c. 1, s. 20.

#### Duties of chairperson

**13.** The chairperson of a board is its chief executive officer and has the powers and duties prescribed by the by-laws of the board.

#### Term of office

**14.** (1) A member of a board holds office for a term of three years.

#### Reappointment

(2) A member may be reappointed in the same or another capacity.

#### Removal by federal Minister after consultation

(3) A member who has been appointed by the federal Minister may not be removed from office except after consultation by the federal Minister with the board and, where applicable, with the territorial Minister, the first nation or the Tlicho Government that nominated the member.

#### Removal by Tlicho Government after consultation

(4) A member of the Wekeezhii Land and Water Board who has been appointed by the Tlicho Government may not be removed from office except after consultation by the Tlicho Government with the Board and the federal Minister.

1998, c. 25, s. 14; 2005, c. 1, s. 21.

#### Implementation of right of representation of other aboriginal peoples

**15.** Despite any provision of this Act respecting members of a board, if an aboriginal people has a right under a land claim agreement to representation on that board in relation to a decision of the board that might affect an area used by that aboriginal people that is outside the board's area of jurisdiction, the board shall, in accordance with that land claim agreement, determine how to implement that right.

1998, c. 25, s. 15; 2005, c. 1, s. 22.

#### Conflict of interest

**16.** (1) A member of a board may not act in relation to an application to the board or participate in a decision of the board that would place the member in a material conflict of interest.

#### Status or entitlements under agreement

(2) A member of a board is not placed in a material conflict of interest merely because of any status or entitlement conferred on the member under the Gwich'in Agreement, the Sahtu Agreement, the Tlicho Agreement or any other agreement between a first nation and Her Majesty in right of Canada for the settlement of a claim to lands.

1998, c. 25, s. 16; 2005, c. 1, s. 23.

#### Remuneration

**17.** (1) Members of a board, other than any members appointed pursuant to a determination under section 15, shall be paid such fees or other remuneration as the federal Minister may fix.

#### Expenses

(2) Such members shall be paid such travel and living expenses, incurred by them while absent from their ordinary place of residence in the course of performing their duties, as are consistent with directives of the Treasury Board.

1998, c. 25, s. 17; 2005, c. 1, s. 24.

### Staff

**18.** (1) A board may employ such persons and engage the services of such agents, advisers and experts as are necessary for the proper conduct of its business and may fix the conditions of their employment or engagement and pay their remuneration.

### Sharing of staff and facilities

(2) The boards may share staff and facilities with one another for the effective and efficient conduct of their affairs.

### Benefits

**19.** The members of a board and its employees are deemed to be employees for the purposes of the *Government Employees Compensation Act* and to be employed in the federal public administration for the purposes of any regulations made pursuant to section 9 of the *Aeronautics Act*.

1998, c. 25, s. 19; 2003, c. 22, s. 224(E).

### Protection from personal liability

**20.** The members and employees of a board are not liable for anything done or omitted to be done in good faith in the exercise or purported exercise of any powers under this Act.

## GENERAL POWERS

### Decision by majority

**21.** (1) A decision of a majority of the members of a board present at a meeting is a decision of the board.

### Participation by telephone

(2) Subject to the by-laws of a board, any member may participate in a meeting by means of telephone or other communications facilities that are likely to enable all persons participating in the meeting to hear each other, and a member so participating is deemed to be present at the meeting.

### Government information

**22.** Subject to any other federal or territorial law and to any Tlicho law, a board may obtain from any department or agency of the federal or territorial government or the Tlicho Government any information in the possession of the department or agency or the Tlicho Government that the board requires for the performance of its functions.

1998, c. 25, s. 22; 2005, c. 1, s. 25.

### Enforcement of orders

**23.** A decision or order of a board may be made an order of the Supreme Court of the Northwest Territories by the filing of a certified copy of it with the registrar of the Court, and a decision or order so filed is enforceable in the same manner as an order of that Court.

### Hearings

**24.** In addition to hearings that a board is authorized or required to hold under this Act, a board may conduct any hearings that it considers to be desirable for the purpose of carrying out any of its functions.

1998, c. 25, s. 24; 2005, c. 1, s. 26.

### Coordination

**24.1** A board shall coordinate its activities, including hearings, with the activities of

(a) other boards;

(b) departments and agencies of the federal government that have responsibility for the administration, management and control of parks to which the *Canada National Parks Act* applies or lands acquired pursuant to the *Historic Sites and Monuments Act*;

(c) committees established under any of the land claim agreements for the management of parks to which the *Canada National Parks Act* applies;

(d) committees, or similar bodies, established for the management of protected areas as defined in any of the land claim agreements;

(e) renewable resources boards established under any of the land claim agreements; and

(f) land use planning bodies established for Wekeezhii or any part of Wekeezhii.

2005, c. 1, s. 26.

#### Judicial powers of a board

**25.** In proceedings before a board established under Part 3, 4 or 5, the board has the powers, rights and privileges of a superior court with respect to the attendance and examination of witnesses and the production and inspection of documents.

### FINANCIAL PROVISIONS

#### Annual budget

**26.** (1) A board shall in each year submit for the consideration of the federal Minister an operating budget for the following fiscal year.

#### Accounts

(2) A board shall maintain books of account and related records in accordance with accounting principles recommended by the Canadian Institute of Chartered Accountants or its successor.

#### Consolidated financial statements

(3) A board shall annually prepare consolidated financial statements in accordance with the accounting principles referred to in subsection (2) and shall include in them such supporting information or statements as are required.

#### Audit

(4) The accounts, financial statements and financial transactions of a board may be audited by the Auditor General of Canada, who shall make a report of the audit to the board, which shall transmit the report to the federal Minister.

#### Funding

(5) The federal Minister may establish funding arrangements with each board specifying the manner in which funding will be made available pursuant to a budget approved by the federal Minister.

#### Payment of fees

**27.** Fees paid pursuant to any provision of this Act or the regulations shall be deposited to the credit of the Receiver General.

### REPORTS

### Annual report

**28.** (1) A board shall, within three months after the end of each fiscal year, submit to the federal Minister, in such form as the Minister may specify, a report on the activities of the board in that year including its financial statements for the year.

### Publication

(2) The federal Minister shall make the annual report of a board available to the public.

## BY-LAWS, RULES AND OTHER INSTRUMENTS

### By-laws

**29.** A board may make by-laws respecting the conduct and management of its internal administrative affairs, including by-laws providing for the maintenance at its office of the minutes of its meetings.

### Rules

**30.** (1) Subject to any other provisions of this Act, a board may make rules

(a) respecting its practice and procedure in relation to applications to the board and their disposition, including the service of documents, the imposition of reasonable time limits and the submission of comments by the public; and

(b) for preventing trade secrets and information described in section 20 of the *Access to Information Act* from being disclosed or made public as a result of their being used as evidence before the board, including rules providing for hearings to be held in private.

### Publication of notice

(2) Before making rules under this section, a board shall publish notice of its intention in the *Canada Gazette* and in a newspaper circulated in the Mackenzie Valley, inviting interested persons to submit written representations to the board with respect to the proposed rules within thirty days after the publication of notice.

### No further notice

(3) Where notice is published under subsection (2), further notice need not be published if the proposed rules are amended solely in response to representations submitted to the board.

### *Statutory Instruments Act*

**31.** (1) Sections 3, 5 and 11 of the *Statutory Instruments Act* do not apply in respect of rules under section 30, a land use plan or amendment thereto under Part 2, rules under subsection 49(2), guidelines or policies under section 65, policy directions under subsection 83(1) or (2), directions under section 106, policy directions under section 109 or 109.1 or guidelines under section 120.

### Notice in *Canada Gazette*

(2) A notice shall be published in the *Canada Gazette* immediately after policy directions are received by a board, a land use plan or amendment thereto is approved, or any other instrument referred to in subsection (1) is made or issued, stating that copies thereof are available to the public at the main office of the board and at such other locations as the board considers appropriate.

### *Statutory Instruments Act*

(3) For greater certainty, permits issued by a board under Part 3 or 4 either before or after the coming into force of this subsection are not statutory instruments within the meaning of the *Statutory Instruments Act*.

1998, c. 25, s. 31; 2005, c. 1, s. 27.

## JURISDICTION OF COURTS

### Concurrent jurisdiction

**32.** (1) Notwithstanding the exclusive jurisdiction referred to in section 18 of the *Federal Courts Act*, the Attorney General of Canada or anyone directly affected by the matter in respect of which relief is sought may make an application to the Supreme Court of the Northwest Territories for any relief against a board by way of an injunction or declaration or by way of an order in the nature of *certiorari*, *mandamus*, *quo warranto* or prohibition.

### Exclusive original jurisdiction

(2) Despite subsection (1) and section 18 of the *Federal Courts Act*, the Supreme Court of the Northwest Territories has exclusive original jurisdiction to hear and determine any action or proceeding, whether or not by way of an application of a type referred to in subsection (1), concerning the jurisdiction of the Mackenzie Valley Land and Water Board or the Mackenzie Valley Environmental Impact Review Board.

1998, c. 25, s. 32; 2002, c. 8, s. 182; 2005, c. 1, s. 28.

## PART 2

### LAND USE PLANNING

#### INTERPRETATION AND APPLICATION

#### Definition of "planning board"

**33.** In this Part, "planning board" means the Gwich'in Land Use Planning Board or the Sahtu Land Use Planning Board established by sections 36 and 38, respectively.

#### Application of Part 2

**34.** Subject to subsection 46(2), this Part does not apply in respect of lands in a settlement area that comprise a park to which the *Canada National Parks Act* applies, that have been acquired pursuant to the *Historic Sites and Monuments Act* or that are situated within the boundaries of a local government.

1998, c. 25, s. 34; 2000, c. 32, s. 51.

#### Guiding principles

**35.** Land use planning for a settlement area shall be guided by the following principles:

(a) the purpose of land use planning is to protect and promote the social, cultural and economic well-being of residents and communities in the settlement area, having regard to the interests of all Canadians;

(b) special attention shall be devoted to the rights of the Gwich'in and Sahtu First Nations under their land claim agreements, to protecting and promoting their social, cultural and economic well-being and to the lands used by them for wildlife harvesting and other resource uses; and

(c) land use planning must involve the participation of the first nation and of residents and communities in the settlement area.

### GWICH'IN LAND USE PLANNING BOARD

#### Board established

**36.** (1) There is hereby established, in respect of the settlement area referred to in the Gwich'in Agreement, a board to be known as the Gwich'in Land Use Planning Board.

#### Membership

(2) The Board shall consist of five members including, apart from the chairperson, two members appointed

on the nomination of the Gwich'in First Nation and one member appointed on the nomination of the territorial Minister.

#### Quorum

(3) A quorum of the Board consists of three members, including one of the members appointed on the nomination of the Gwich'in First Nation and one of the members not so appointed other than the chairperson.

#### Main office

**37.** The main office of the Board shall be located in the settlement area referred to in the Gwich'in Agreement.

## SAHTU LAND USE PLANNING BOARD

#### Board established

**38.** (1) There is hereby established, in respect of the settlement area referred to in the Sahtu Agreement, a board to be known as the Sahtu Land Use Planning Board.

#### Membership

(2) The Board shall consist of five members including, apart from the chairperson, two members appointed on the nomination of the Sahtu First Nation and one member appointed on the nomination of the territorial Minister.

#### Quorum

(3) A quorum of the Board consists of three members, including one of the members appointed on the nomination of the Sahtu First Nation and one of the members not so appointed other than the chairperson.

#### Main office

**39.** The main office of the Board shall be located in the settlement area referred to in the Sahtu Agreement.

## LAND USE PLANNING

#### Objectives and other factors

**40.** The planning board for a settlement area shall, after consultation with the federal Minister, the territorial Minister and the first nation of the settlement area, determine the objectives to be considered and the other factors to be taken into account in the preparation of a land use plan for the settlement area.

#### Preparation of land use plan

**41.** (1) A planning board shall prepare and adopt a land use plan for submission and approval under section 43.

#### Purpose of land use plan

(2) A land use plan shall provide for the conservation, development and use of land, waters and other resources in a settlement area.

#### Contents of land use plan

(3) A land use plan may include

- (a) maps, diagrams and other graphic materials;
- (b) written statements, policies, guidelines and forecasts;
- (c) descriptions of permitted and prohibited uses of land, waters and resources;

(d) authority for the planning board to make exceptions to the plan and the manner of exercising that authority; and

(e) any other information that the planning board considers appropriate.

### Settlement lands

(4) A planning board shall take into consideration a land use plan proposed by the first nation for its settlement lands in the settlement area, and may incorporate that plan into the land use plan for the settlement area.

### Public notice

**42.** (1) A planning board shall publish in the settlement area and in adjoining settlement areas in the Mackenzie Valley a notice inviting interested persons to examine at specified times and places a draft of the land use plan prepared by it.

### Public hearings

(2) A planning board may hold public hearings in relation to a proposed land use plan after publishing in the settlement area and in adjoining settlement areas in the Mackenzie Valley a notice specifying the times and places of the hearings and the procedure to be followed.

### Submission to first nation and Ministers

**43.** (1) Following the adoption of a land use plan, the planning board shall submit it to the first nation of the settlement area, the territorial Minister and the federal Minister.

### Approval by first nation

(2) Where a first nation approves a land use plan, it shall notify the federal Minister and the territorial Minister in writing of the approval.

### Territorial approval

(3) On being notified pursuant to subsection (2), the territorial Minister may approve the land use plan, and in that case shall notify the first nation and the federal Minister in writing.

### Federal approval

(4) On being notified under subsections (2) and (3), the federal Minister may approve the land use plan, which takes effect on the date of its approval by the federal Minister.

### Objections to plan

(5) Where a party to which a land use plan is submitted does not approve the plan, that party shall notify the other parties and the planning board, in writing, of the reasons for not approving the plan.

### Reconsideration of plan

(6) After a planning board has considered any reasons provided to it under subsection (5) and made any modifications to the land use plan that it considers desirable, it shall submit the plan for approval as provided in subsection (1).

### Functions after plan approval

**44.** Subsequent to the approval of a land use plan, a planning board shall

(a) monitor the implementation of the plan; and

(b) where so authorized by the plan, consider applications for exceptions to the plan.

### Cooperative planning

**45.** (1) The planning board for a settlement area may cooperate with any body responsible for land use planning in any other area, either within or outside the Northwest Territories, that is adjacent to the settlement area.

#### Joint land use plans

(2) A planning board may, in conjunction with a body referred to in subsection (1), prepare a land use plan for the settlement area and an adjacent area of the Mackenzie Valley, which shall be subject to the requirements of this Part in respect of the portion of the plan relating to the settlement area.

## COMPLIANCE WITH PLANS

#### First nations, governments and licensing bodies

**46.** (1) The Gwich'in and Sahtu First Nations, departments and agencies of the federal and territorial governments, and every body having authority under any federal or territorial law to issue licences, permits or other authorizations relating to the use of land or waters or the deposit of waste, shall carry out their powers in accordance with the land use plan applicable in a settlement area.

#### National parks and historic sites

(2) In particular, measures carried out by a department or agency of government leading to the establishment of a park subject to the *Canada National Parks Act*, and the acquisition of lands pursuant to the *Historic Sites and Monuments Act*, in a settlement area shall be carried out in accordance with the applicable land use plan.

1998, c. 25, s. 46; 2000, c. 32, s. 52.

#### Determination of conformity

**47.** (1) A planning board shall determine whether an activity is in accordance with a land use plan where

(a) the activity is referred to the planning board by a first nation or a department or agency of the federal or territorial government or by the body having authority under any federal or territorial law to issue a licence, permit or other authorization in respect of the activity; or

(b) an application for such a determination is made by any person directly affected by an activity for which an application has been made for a licence, permit or authorization.

#### Time of referral

(2) The referral or application must be made before the issuance of any licence, permit or other authorization required for the activity.

#### Transmission of decision

(3) A planning board shall transmit its decision to the first nation, department, agency, body or person that made a referral or application under subsection (1).

#### Final decision

(4) Subject to section 32, a decision of a planning board under this section is final and binding.

#### Amendment of plan

**48.** (1) A planning board may, on application or on its own motion, adopt any amendments to a land use plan that the planning board considers necessary.

#### Adoption and approval

(2) Sections 42 and 43 apply, with such modifications as are required, in respect of any amendment to a land use plan.

#### Record keeping and access

**49.** (1) A planning board shall

(a) keep a public record of all applications made to it and all decisions made by it;

(b) furnish, on request and on the payment of a fee prescribed under subsection (2), copies of a land use plan or of any decision made by it; and

(c) have the custody and care of all documents filed with it.

### Fees

(2) A planning board may, subject to the approval of the federal Minister, make rules prescribing fees for copies furnished pursuant to paragraph (1)(b), not exceeding the cost of furnishing them.

## COMPREHENSIVE REVIEW

### Periodic review

**50.** A planning board shall carry out a comprehensive review of a land use plan not later than five years after the plan takes effect and thereafter every five years or at any other intervals agreed to by the federal Minister, the territorial Minister and the first nation of the settlement area.

## PART 3

### LAND AND WATER REGULATION

#### INTERPRETATION AND APPLICATION

### Definitions

**51.** The definitions in this section apply in this Part.

"board"  
« *office* »

"board" means the Gwich'in Land and Water Board, the Sahtu Land and Water Board or the Wekeezhii Land and Water Board established by sections 54, 56 and 57.1, respectively.

"first nation lands"  
« *terres d'une première nation* »

"first nation lands" , in relation to a first nation, means

(a) settlement lands of the first nation; or

(b) lands situated within the boundaries of a local government and referred to in the first nation's land claim agreement as municipal lands.

"land"  
« *terres* »

"land" means the surface of land.

"licence"  
« *permis d'utilisation des eaux* »

"licence" means a licence for the use of waters or the deposit of waste, or both, issued by a board under the *Northwest Territories Waters Act* and this Part, and "licensee" has a corresponding meaning.

"management area"  
« *zone de gestion* »

"management area" means an area in respect of which a board has been established, namely,

(a) in the case of the Gwich'in Land and Water Board, the area described in appendix A to the Gwich'in Agreement;

(b) in the case of the Sahtu Land and Water Board, the area described in appendix A to the Sahtu Agreement; and

(c) in the case of the Wekeezhii Land and Water Board, Wekeezhii.

"permit"

« *permis d'utilisation des terres* »

"permit" means a permit for the use of land issued by a board under this Part, and "permittee" has a corresponding meaning.

"water authority"

« *autorité de gestion des eaux* »

"water authority" means a board or other authority having jurisdiction in relation to the use of waters or the deposit of waste in any portion of the Northwest Territories or Nunavut.

"waters"

« *eaux* »

"waters" means any inland waters, whether in a liquid or frozen state, on or below the surface of land.

1998, c. 15, s. 48, c. 25, s. 51; 2005, c. 1, s. 29.

#### National parks and historic sites

**52.** (1) This Part, except sections 78, 79, 79.2 and 79.3, does not apply in respect of the use of land or waters or the deposit of waste within a park to which the *Canada National Parks Act* applies or within lands acquired pursuant to the *Historic Sites and Monuments Act*.

#### Consultation with board

(2) Notwithstanding subsection (1), an authority responsible for authorizing uses of land or waters or deposits of waste in a portion of a management area excluded by that subsection from the application of this Part shall consult the board established for that management area before authorizing any such use or deposit.

#### Consultation with authority

(3) A board shall consult a responsible authority referred to in subsection (2) before issuing a licence, permit or authorization for a use of land or waters or deposit of waste that may have an effect in the portion of the management area in which the authority is responsible.

1998, c. 25, s. 52; 2000, c. 32, s. 53; 2005, c. 1, s. 30.

#### Local government

**53.** (1) This Part does not apply in respect of the use of land within the boundaries of a local government to the extent that the local government regulates that use.

#### Agreement

(2) The board established for a settlement area and the territorial Minister shall, in consultation with each local government, jointly determine the extent to which the local government regulates the use of land within its boundaries for the purposes of subsection (1).

#### Dissemination

(3) A determination under subsection (2) shall be made available to the public at the main office of the board and that of the local government.

## GWICH'IN LAND AND WATER BOARD

### Board established

**54.** (1) There is hereby established, in respect of the settlement area referred to in the Gwich'in Agreement, a board to be known as the Gwich'in Land and Water Board.

### Membership

(2) The Board shall consist of five members including, apart from the chairperson, two members appointed on the nomination of the Gwich'in First Nation and one member appointed on the nomination of the territorial Minister.

### Quorum

(3) A quorum of the Board consists of three members, including one of the members appointed on the nomination of the Gwich'in First Nation and one of the members not so appointed other than the chairperson.

### Main office

**55.** The main office of the Board shall be located in the settlement area referred to in the Gwich'in Agreement.

## SAHTU LAND AND WATER BOARD

### Board established

**56.** (1) There is hereby established, in respect of the settlement area referred to in the Sahtu Agreement, a board to be known as the Sahtu Land and Water Board.

### Membership

(2) The Board shall consist of five members including, apart from the chairperson, two members appointed on the nomination of the Sahtu First Nation and one member appointed on the nomination of the territorial Minister.

### Quorum

(3) A quorum of the Board consists of three members, including one of the members appointed on the nomination of the Sahtu First Nation and one of the members not so appointed other than the chairperson.

### Main office

**57.** The main office of the Board shall be located in the settlement area referred to in the Sahtu Agreement.

## WEKEEZHII LAND AND WATER BOARD

### Board established

**57.1** (1) There is hereby established, in respect of Wekeezhii, a board to be known as the Wekeezhii Land and Water Board.

### Membership

(2) The Board shall consist of five members including, apart from the chairperson, two members who, subject to any agreement between the Tlicho Government and an aboriginal people of Canada to whom section 35 of the *Constitution Act, 1982* applies, other than the Tlicho First Nation, are appointed by the Tlicho Government and one member who is appointed on the nomination of the territorial Minister.

### Consultation

(3) The federal Minister and the Tlicho Government shall consult each other before making their appointments.

### Quorum

(4) A quorum of the Board consists of three members, or any larger number that is determined by the Board, including one of the members appointed by the Tlicho Government or in accordance with any agreement referred to in subsection (2) and one of the members appointed by the federal Minister, other than the chairperson.

2005, c. 1, s. 31.

### Main office

**57.2** The main office of the Board shall be located in Wekeezhii.

2005, c. 1, s. 31.

## GENERAL PROVISIONS

### Objectives — Gwich'in and Sahtu Land and Water Boards

**58.** The Gwich'in Land and Water Board and the Sahtu Land and Water Board shall regulate the use of land and waters and the deposit of waste so as to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit for residents of their respective management areas and of the Mackenzie Valley and for all Canadians.

1998, c. 25, s. 58; 2005, c. 1, s. 32.

### Objectives — Wekeezhii Land and Water Board

**58.1** The Wekeezhii Land and Water Board shall regulate the use of land and waters and the deposit of waste so as to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of its management area.

2005, c. 1, s. 32.

### Jurisdiction — land

**59.** (1) A board has jurisdiction in respect of all uses of land in its management area for which a permit is required under this Part and may, in accordance with the regulations, issue, amend, renew, suspend and cancel permits and authorizations for the use of land, and approve the assignment of permits.

### Subsurface rights

(2) For greater certainty, the jurisdiction of a board under subsection (1) includes a use of land that is required for the exercise of subsurface rights.

1998, c. 25, s. 59; 2005, c. 1, s. 33.

### Jurisdiction — water and waste

**60.** (1) A board has jurisdiction in respect of all uses of waters and deposits of waste in its management area for which a licence is required under the *Northwest Territories Waters Act* and may

(a) issue, amend, renew and cancel licences and approve the assignment of licences, in accordance with that Act, and

(b) exercise any other power of the Northwest Territories Water Board under that Act,

and, for those purposes, references in that Act to that Board shall be read as references to the board.

### Suspension power

(2) A board may suspend a licence for a specified period or until terms and conditions specified by the board are complied with, where the licensee contravenes a provision of the *Northwest Territories Waters Act* or of this Part or a term or condition of the licence.

#### Effect outside management area

(3) In respect of a use of waters or deposit of waste in a management area that has an effect in a region of the Northwest Territories or Nunavut outside the management area, subsections 14(4) and (5) of the *Northwest Territories Waters Act* apply in relation to the protection of the rights of licensees and other persons referred to in those subsections who are in such a region.

#### Inuit-owned lands

(3.1) Sections 15.1 to 15.5 of the *Northwest Territories Waters Act* apply to the board in relation to Inuit-owned lands referred to in those sections, even though those lands are outside the Mackenzie Valley.

#### *Northwest Territories Waters Act*

(4) Notwithstanding subsection (1), the following provisions of the *Northwest Territories Waters Act* do not apply in respect of a management area, namely, sections 10 to 13, subsection 14(6), sections 20 and 22, paragraphs 23(1)(b) and (2)(b), section 24, section 26 except in relation to type A licences under that Act, sections 27 and 28 and subsection 37(2).

#### *Northwest Territories Waters Act*

(5) Notwithstanding subsection (1), section 31 of the *Northwest Territories Waters Act* does not apply in respect of first nation lands or Tlicho lands.

1998, c. 15, s. 48, c. 25, s. 60; 2002, c. 10, s. 178; 2005, c. 1, s. 34.

#### Considerations

**60.1** In exercising its powers, a board shall consider

(a) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley; and

(b) any traditional knowledge and scientific information that is made available to it.

2005, c. 1, s. 35.

#### Conformity with land use plan — Gwich'in and Sahtu Boards

**61.** (1) The Gwich'in Land and Water Board and the Sahtu Land and Water Board may not issue, amend or renew a licence, permit or authorization except in accordance with an applicable land use plan under Part 2.

#### Conformity with land use plan — Wekeezhii Board

(2) The Wekeezhii Land and Water Board may not issue, amend or renew a licence, permit or authorization except in accordance with any land use plan, established under a federal, territorial or Tlicho law, that is applicable to any part of its management area.

1998, c. 25, s. 61; 2005, c. 1, s. 35.

#### Conformity with Tlicho laws — Wekeezhii Board

**61.1** The Wekeezhii Land and Water Board may not exercise its discretionary powers relating to the use of Tlicho lands except in accordance with any Tlicho laws enacted under 7.4.2 of chapter 7 of the Tlicho Agreement.

2005, c. 1, s. 35.

#### Requirements of Part 5

**62.** A board may not issue a licence, permit or authorization for the carrying out of a proposed development within the meaning of Part 5 unless the requirements of that Part have been complied with, and every licence, permit or authorization so issued shall include any conditions that are required to be included in it pursuant to a decision made under that Part.

#### Copies of applications

**63.** (1) A board shall provide a copy of each application made to the board for a licence or permit to the owner of any land to which the application relates and to appropriate departments and agencies of the federal and territorial governments.

#### Notice of applications

(2) A board shall notify affected communities and first nations of an application made to the board for a licence, permit or authorization and allow a reasonable period of time for them to make representations to the board with respect to the application.

#### Notice to Tlicho Government

(3) The Wekeezhii Land and Water Board shall notify the Tlicho Government of an application made to the Board for a licence, permit or authorization and allow a reasonable period of time for it to make representations to the Board with respect to the application.

#### Consultation with Tlicho Government

(4) The Wekeezhii Land and Water Board shall consult the Tlicho Government before issuing, amending or renewing any licence, permit or authorization for a use of Tlicho lands or waters on those lands or a deposit of waste on those lands or in those waters.

1998, c. 25, s. 63; 2005, c. 1, s. 36.

#### Heritage resources

**64.** (1) A board shall seek and consider the advice of any affected first nation and, in the case of the Wekeezhii Land and Water Board, the Tlicho Government and any appropriate department or agency of the federal or territorial government respecting the presence of heritage resources that might be affected by a use of land or waters or a deposit of waste proposed in an application for a licence or permit.

#### Wildlife resources

(2) A board shall seek and consider the advice of the renewable resources board established by the land claim agreement applicable in its management area respecting the presence of wildlife and wildlife habitat that might be affected by a use of land or waters or a deposit of waste proposed in an application for a licence or permit.

1998, c. 25, s. 64; 2005, c. 1, s. 37.

#### Guidelines and policies

**65.** Subject to the regulations, a board may establish guidelines and policies respecting licences, permits and authorizations, including their issuance under this Part.

#### Copies of licences and permits

**66.** A board shall provide the federal Minister with copies of licences, permits and authorizations issued under this Part and of decisions and orders relating to them.

#### Final decision

**67.** Subject to sections 32 and 81, every decision or order of a board is final and binding.

**68.** [Repealed, 2005, c. 1, s. 38]

## SPECIAL RULES FOR LAND USE

### Protection of the environment

**69.** Before issuing a permit for a use of land, a board shall, with respect to conditions of the permit for the protection of the environment, consult

- (a) the territorial Minister, in the case of land of which the Commissioner of the Northwest Territories has administration and control;
- (b) the minister of the Crown having administration of the land, in the case of any other land belonging to Her Majesty in right of Canada or that Her Majesty has power to dispose of; or
- (c) the owner of the land, in any other case.

### Delegation to staff

**70.** A board may, by instrument of delegation, specify permits from among a class prescribed by the regulations that an employee of the Board named in the instrument may issue, amend or renew and whose assignment the employee may approve.

### Posting security

**71.** (1) A board may require, as a condition of a permit or as a condition of the assignment of a permit, the posting of security with the federal Minister in a form prescribed by the regulations or a form satisfactory to the federal Minister and in an amount specified in, or determined in accordance with, the regulations.

### Notice

- (2) The federal Minister shall notify a board of the posting of security so required.

### Application of security

(3) Where damage to lands results from a permittee's contravention of any provision of the regulations or a permit, the board may request of the federal Minister that all or part of the security posted by the permittee be applied toward the costs incurred in repairing the damage.

### Liability not limited

(4) This section does not affect the liability of a permittee for any damages to land in excess of the amount of the posted security.

### Refund of security

(5) The federal Minister shall, in accordance with the regulations, refund any part of the security posted by the permittee that is not applied pursuant to this Part.

### Public register

**72.** (1) A board shall maintain at its main office, in such form as is prescribed by the regulations, a register convenient for use by the public in which shall be entered, for each application received and each permit issued, the information prescribed by the regulations.

### Register to be open to inspection

(2) The register shall be open to inspection by any person during normal business hours of the board, subject to the payment of any fee prescribed by the regulations.

### Copies of contents of register

(3) A board shall, on request and on payment of the fee prescribed by the regulations, make available copies of information contained in the register.

## ABORIGINAL WATER RIGHTS

### Wildlife harvesting and traditional use

**73.** (1) Notwithstanding sections 8 and 9 of the *Northwest Territories Waters Act*, the Gwich'in First Nation and the Sahtu First Nation have the right to use waters or to deposit waste without a licence for purposes of trapping and non-commercial wildlife harvesting other than trapping, for purposes of transportation related to those activities and for traditional heritage, cultural and spiritual purposes.

### Wildlife harvesting and traditional use — Tlicho citizens

(2) Despite sections 8 and 9 of the *Northwest Territories Waters Act* — and subject to any applicable Tlicho laws and, in relation to waters that are on settlement lands, any limitations under the applicable land claim agreement that are of the same type as those that apply in relation to waters on Tlicho lands — Tlicho citizens have the right to use water in the part of Monfwi Gogha De Niitlee that is in the Northwest Territories without a licence, for purposes of wildlife harvesting under 10.1.1 of chapter 10 of the Tlicho Agreement, for purposes of transportation related to such wildlife harvesting and for heritage, cultural or spiritual purposes of the Tlicho First Nation.

1998, c. 25, s. 73; 2005, c. 1, s. 39.

### Exclusive right

**74.** Notwithstanding section 4 of the *Northwest Territories Waters Act*, the Gwich'in First Nation and the Sahtu First Nation have the exclusive right to the use of waters when on or flowing through their first nation lands and to the deposit of waste in relation to those waters in accordance with the other provisions of this Part and that Act.

### Right to unaltered waters

**75.** Subject to sections 76 to 78, the Gwich'in First Nation and the Sahtu First Nation have, in relation to waters when on or flowing through their first nation lands or waters adjacent to their first nation lands, the right to have the quality, quantity and rate of flow remain substantially unaltered by any person.

### Issuance, amendment or renewal of licences, etc.

**76.** The Gwich'in Land and Water Board or the Sahtu Land and Water Board may issue, amend or renew a licence, permit or authorization where the use of land or waters or the deposit of waste proposed by the applicant would, in the opinion of the board, interfere with a first nation's rights under section 75, if the board is satisfied that

- (a) there is no alternative that could reasonably satisfy the requirements of the applicant;
- (b) there are no reasonable measures by which the applicant could avoid the interference; and
- (c) in the case of a licence, the requirements of section 77 are satisfied.

1998, c. 25, s. 76; 2005, c. 1, s. 40.

## COMPENSATION — GWICH'IN AND SAHTU FIRST NATIONS

### Conditions for licence

**77.** The Gwich'in Land and Water Board or the Sahtu Land and Water Board may not issue, amend or renew a licence pursuant to section 76 unless

- (a) the applicant and the first nation enter into an agreement to compensate the first nation for any loss or damage resulting from any substantial alteration to the quality, quantity or rate of flow of waters when on or flowing through its first nation lands, or waters adjacent to its first nation lands; or

(b) the applicant or the first nation applies to the board for a determination pursuant to subsection 79(1).

1998, c. 25, s. 77; 2005, c. 1, s. 41.

#### Application to water authority

**78.** (1) If the Gwich'in Land and Water Board or the Sahtu Land and Water Board determines that a use of waters or a deposit of waste that is proposed, in an application made to a water authority, to be carried out in

(a) an area of the Northwest Territories or Nunavut outside the board's management area, or

(b) a park to which the *Canada National Parks Act* applies, or lands acquired pursuant to the *Historic Sites and Monuments Act*, in the board's management area

would be likely to substantially alter the quality, quantity or rate of flow of waters when on or flowing through first nation lands of the Gwich'in or Sahtu First Nation or waters adjacent to those first nation lands, the board shall notify the water authority in writing of its determination.

#### Access to information

(2) A water authority shall provide a board with such information in its possession as the board requires in order to make a determination under subsection (1).

#### Conditions for authorization

(3) Notwithstanding any other Act, a water authority that is notified by a board under subsection (1) may not authorize the proposed use of waters or deposit of waste unless

(a) the applicant and the first nation have entered into an agreement to compensate the first nation for any loss or damage resulting from the alteration; or

(b) the applicant or the first nation applies to the board for a determination pursuant to subsection 79(1).

1998, c. 15, s. 48, c. 25, s. 78; 2000, c. 32, s. 54; 2005, c. 1, s. 42.

#### Referral of compensation to board

**79.** (1) If a compensation agreement referred to in section 77 or 78 is not entered into within the period allowed by the rules of the Gwich'in Land and Water Board or the Sahtu Land and Water Board, as the case may be, the applicant or the first nation may apply to the board for a determination of compensation.

#### Determination of compensation

(2) On an application pursuant to subsection (1), the board shall determine the compensation payable in respect of the proposed use of waters or deposit of waste, taking into consideration

(a) the effect of the proposed use or deposit on

(i) the first nation's use of waters when on or flowing through its first nation lands or waters adjacent to its first nation lands, and

(ii) its first nation lands, taking into account any cultural or special value of those lands to the first nation;

(b) the nuisance or inconvenience to the first nation, including noise, that may result on first nation lands;

(c) the effect on wildlife harvesting carried on by the first nation; and

(d) any other factor that the board considers relevant in the circumstances.

1998, c. 25, s. 79; 2005, c. 1, s. 43.

### COMPENSATION — TLICHO FIRST NATION

### Conditions for licence

**79.1** The Wekeezhii Land and Water Board may not issue, amend or renew a licence for the use of waters or the deposit of waste if, in its opinion, that use or deposit is likely to substantially alter the quality, quantity or rate of flow of waters when on or flowing through Tlicho lands or waters adjacent to Tlicho lands unless

(a) the Board is satisfied that there is no alternative that could reasonably satisfy the requirements of the applicant and that there are no reasonable measures by which the applicant could avoid the alteration; and

(b) the applicant has entered into an agreement with the Tlicho Government to compensate the Tlicho First Nation for any loss or damage that may be caused by the alteration, or the applicant or the Tlicho Government has applied to the Board under subsection 79.3(1) for a determination of compensation for that loss or damage.

2005, c. 1, s. 44.

### Application to water authority

**79.2** (1) If the Wekeezhii Land and Water Board determines that a use of waters or a deposit of waste that is proposed, in an application made to a water authority, to be carried out in

(a) Nunavut or an area of the Northwest Territories outside Wekeezhii, or

(b) a park to which the *Canada National Parks Act* applies, or lands acquired pursuant to the *Historic Sites and Monuments Act*, in Wekeezhii

would be likely to substantially alter the quality, quantity or rate of flow of waters when on or flowing through Tlicho lands or waters adjacent to Tlicho lands, the Board shall notify the water authority in writing of its determination.

### Access to information

(2) A water authority shall provide the Board with any information in its possession that the Board requires in order to make a determination under subsection (1).

### Conditions for authorization

(3) Despite any other Act, a water authority that is notified by the Board under subsection (1) may not authorize the proposed use of waters or deposit of waste unless

(a) the applicant and the Tlicho Government have entered into an agreement to compensate the Tlicho First Nation for any loss or damage that may be caused by the alteration; or

(b) the applicant or the Tlicho Government applies to the Board under subsection 79.3(1) for a determination.

2005, c. 1, s. 44.

### Referral of compensation to Wekeezhii Board

**79.3** (1) If a compensation agreement referred to in paragraph 79.1(b) or 79.2(3)(a), as the case may be, is not entered into, the applicant or the Tlicho Government may, after having participated in mediation under chapter 6 of the Tlicho Agreement, apply to the Wekeezhii Land and Water Board for a determination of compensation.

### Determination of compensation

(2) On an application under subsection (1), the Board shall determine the compensation payable in respect of the proposed use of waters or deposit of waste, taking into consideration

(a) the effect of the proposed use or deposit on

- (i) the use by Tlicho citizens of waters when on or flowing through Tlicho lands, or waters adjacent to Tlicho lands,
  - (ii) Tlicho lands, taking into account any cultural or special value of those lands to the Tlicho First Nation, and
  - (iii) wildlife harvesting carried on by Tlicho citizens;
- (b) the nuisance or inconvenience, including noise, caused by the proposed use or deposit to Tlicho citizens on Tlicho lands; and
- (c) any other factor that the Board considers relevant in the circumstances.

#### Form of compensation

(3) The compensation may be in the form of a lump sum payment or periodic payments or non-monetary compensation, including replacement of, or substitution for, damaged or lost property or relocation of Tlicho citizens or their property, or any combination of those forms of compensation.

2005, c. 1, s. 44.

## ACCESS TO CONSTRUCTION MATERIALS

#### Duty to supply

**80.** (1) The Gwich'in or Sahtu First Nation shall supply and permit access to sand, gravel, clay and like construction materials situated on its first nation lands to any person or any department or agency of the federal or territorial government that requests the same where no alternate source of supply is reasonably available in the surrounding area.

#### Compensation

(2) The Gwich'in or Sahtu First Nation is entitled to fair and reasonable compensation for any construction materials supplied or obtained from its first nation lands.

#### Reference to Board

(3) On application by the person or department or agency requesting the supply or access, the Gwich'in Land and Water Board or the Sahtu Land and Water Board, as the case may be, shall

- (a) determine whether an alternate source of supply is reasonably available in the surrounding area; or
- (b) resolve any dispute concerning terms or conditions of supply or access or priorities between a first nation and other users of the construction materials.

#### Settlement lands outside settlement area

(4) Where first nation lands from which construction materials are requested are situated outside the first nation's settlement area but within the Northwest Territories, the board shall consult the resource management authority having jurisdiction in respect of those lands before making any determination under subsection (3).

1998, c. 25, s. 80; 2005, c. 1, s. 45.

#### Duty to supply — Tlicho Government

**80.1** (1) The Tlicho Government shall supply, and permit access to, sand, gravel, clay and like construction materials situated on Tlicho lands to any person that requests it, including any department or agency of the federal or territorial government or any local government of a Tlicho community.

#### Exception

(2) Subsection (1) does not apply if the materials are to be used on lands other than Tlicho lands, unless no alternate source of supply is reasonably available in an area closer to the lands where the materials are to be used.

### Compensation — Tlicho Government

(3) The Tlicho Government is entitled to be paid for the value of materials supplied under subsection (1) and for the exercise of a right of access to the materials under that subsection, unless the materials are to be used for a public purpose on Tlicho lands or in a Tlicho community or for a public road contiguous to Tlicho lands or to a Tlicho community.

### Reference to Wekeezhii Land and Water Board

(4) On application by any person, department, agency or government requesting the supply of, or access to, materials under subsection (1) and after the applicant has participated in mediation under chapter 6 of the Tlicho Agreement, the Wekeezhii Land and Water Board shall

- (a) determine, for the purpose of subsection (2), whether an alternate source of supply is reasonably available in an area closer to the lands where the materials are to be used;
- (b) determine, for the purpose of subsection (3), whether the materials are to be used for a public purpose on Tlicho lands or in a Tlicho community or for a public road contiguous to Tlicho lands or a Tlicho community;
- (c) resolve any dispute concerning terms or conditions of supply or access, excluding the amount to be paid under subsection (3); or
- (d) resolve any dispute concerning conflicting uses of materials referred to in subsection (1) by the applicant and by the Tlicho Government or Tlicho citizens.

### Reference to Board by Tlicho Government

(5) In the case of a dispute referred to in paragraph (4)(d), an application for its resolution may also be made to the Board by the Tlicho Government after it has participated in mediation under chapter 6 of the Tlicho Agreement.

2005, c. 1, s. 46.

## POWERS AND DUTIES OF FEDERAL MINISTER

### Ministerial approval of type A licences

**81.** (1) A board may not issue a type A licence referred to in the *Northwest Territories Waters Act* without the approval of the federal Minister.

### Notification

(2) The federal Minister shall, within thirty days after receiving a type A licence prepared by a board, notify the board whether or not the licence is approved and provide written reasons in the notification.

### Time extension

(3) The federal Minister may extend the period of thirty days allowed by subsection (2) by not more than thirty additional days.

### Consultation with first nations and Tlicho Government

**82.** (1) The federal Minister shall consult the Gwich'in and Sahtu First Nations and the Tlicho Government with respect to the amendment of the *Northwest Territories Waters Act* or regulations made under that Act.

### Consultation with boards

(2) The federal Minister shall consult the boards with respect to the amendment of this Act or the *Northwest Territories Waters Act* or the making or amendment of any instrument pursuant to this Act or that Act.

1998, c. 25, s. 82; 2005, c. 1, s. 47.

## POLICY DIRECTIONS

### Minister's policy directions to board

**83.** (1) The federal Minister may, after consultation with a board, give written policy directions binding on the board with respect to the exercise of any of its functions under this Part. The federal Minister shall also consult the Tlicho Government before giving such written policy directions to the Wekeezhii Land and Water Board.

### Policy directions by the Tlicho Government to the Wekeezhii Board

(2) The Tlicho Government may, after consultation with the Wekeezhii Land and Water Board and the federal Minister, give written policy directions with respect to the exercise of any of its functions under this Part in relation to the use of Tlicho lands. Policy directions shall be binding on the Board to the extent that compliance with them does not require the Board to exceed its approved budget.

### Limitation

(3) Except as provided by subsection (4), policy directions do not apply in respect of any application that, at the time the directions are given, is pending before a board or has been approved by a board and is awaiting approval under section 81.

### Exception

(4) Policy directions apply in respect of an application referred to in subsection (3) if their non-application could result in the inconsistency of a licence, permit or authorization with another Act or with a regulation or order made under another Act.

### Conflict between policy directions

(5) If there is a conflict between policy directions given by the federal Minister under subsection (1) and policy directions given by the Tlicho Government under subsection (2), the policy directions given under subsection (2) prevail to the extent of the conflict.

### Conflict between legislation and policy directions

(6) If there is a conflict between policy directions given by the federal Minister or the Tlicho Government under this section and the provisions of any Act of Parliament, any regulations made under an Act of Parliament or any territorial law, those provisions prevail to the extent of the conflict.

1998, c. 25, s. 83; 2005, c. 1, s. 47.

## ENFORCEMENT

### Designation of inspectors

**84.** (1) The federal Minister may designate qualified persons as inspectors for the purposes of this Part so far as it relates to uses of land.

### Certificate to be produced

(2) The federal Minister shall furnish every inspector with a certificate of designation, which the inspector shall produce at the request of a person in charge of any place entered by the inspector.

### Inspections of land

**85.** (1) For the purpose of determining whether the regulations or the conditions of a permit are being complied with, an inspector may

(a) enter, at any reasonable time, any place on land owned or occupied by a permittee to which the permit relates, and conduct such inspections as the inspector considers necessary; and

(b) take such samples in that place as the inspector considers necessary and examine and make copies of any books, records or documents found there that the inspector believes, on reasonable grounds, contain any information relating to the use of land.

### Notice to first nation

(2) Where the inspector considers it reasonable to do so, an inspector shall give the Gwich'in or Sahtu First Nation prior notice of entry by the inspector on its first nation lands.

### Notice to Tlicho Government

(2.1) An inspector shall, if it is reasonable to do so, give the Tlicho Government prior notice of entry by the inspector on Tlicho lands.

### Exception for dwelling-place

(3) An inspector may not enter any place designed to be used and being used as a permanent or temporary private dwelling-place.

1998, c. 25, s. 85; 2005, c. 1, s. 48.

### Inspector's order — adverse effects of land use

**86.** (1) Where an inspector has reasonable grounds to believe that a permitted use of land has resulted in or is likely to result in an adverse effect on the environment, the inspector may, in accordance with the regulations, order the permittee in writing to take such measures as the inspector considers reasonable to mitigate, remedy or prevent the adverse effect.

### Inspector's order — contravention

(2) Where an inspector has reasonable grounds to believe that a permittee is contravening the regulations or the conditions of a permit, the inspector may, in accordance with the regulations, order the permittee in writing to take such measures as the inspector considers reasonable in order to prevent the contravention from continuing.

### Failure to take measures

(3) Where a permittee fails to take measures ordered under subsection (1) or (2), the inspector may take those measures and, for that purpose, may enter any place other than a place designed to be used and being used as a permanent or temporary private dwelling-place.

### Recovery of Her Majesty's costs

(4) Any portion of the reasonable costs incurred by Her Majesty in right of Canada in the taking of measures pursuant to subsection (3) constitutes a debt due to Her Majesty recoverable from the permittee in a court of competent jurisdiction or by recourse to any security posted under section 71.

### Assistance to inspectors

**87.** (1) The owner or person in charge of a place entered pursuant to section 85 or subsection 86(3), and every person present there, shall give an inspector all reasonable assistance to enable the inspector to carry out the inspector's functions under this Act, and shall furnish the inspector with such information related to the administration of this Act as the inspector may reasonably request.

### Obstruction and false statements

(2) No person shall wilfully obstruct or otherwise interfere with, or knowingly make a false or misleading statement orally or in writing to, an inspector carrying out any functions under this Act.

### Review by board

**88.** A board shall, if so requested by a permittee, review without delay and confirm, vary or revoke an order issued by an inspector pursuant to subsection 86(1) or (2).

### Notice to first nation by water inspector

**89.** (1) An inspector designated under the *Northwest Territories Waters Act* who considers it reasonable to do so shall give the Gwich'in or Sahtu First Nation prior notice of entry on its first nation lands.

### Notice to Tlicho Government by water inspector

(1.1) An inspector designated under the *Northwest Territories Waters Act* shall, if it is reasonable to do so, give the Tlicho Government prior notice of entry on Tlicho lands.

### Review of order by board

(2) A board shall, if so requested by a person who is directed to take measures pursuant to subsection 37(1) of the *Northwest Territories Waters Act*, review without delay and confirm, vary or revoke the direction.

1998, c. 25, s. 89; 2005, c. 1, s. 49.

## REGULATIONS AND RULES

### Regulations respecting the use of land

**90.** The Governor in Council may, following consultation by the federal Minister with first nations and the Tlicho Government, make regulations respecting the protection, control and use of lands in the Mackenzie Valley and, in particular, may make regulations

- (a) prohibiting uses of land or classes of uses except under the authority of permits or, where the regulations so provide, under the written authority of an inspector;
- (b) respecting the issuance, amendment, renewal, suspension, cancellation, and approval of the assignment, of permits;
- (c) respecting eligibility for permits, prescribing the conditions or kinds of conditions that a board may include in permits and respecting the duration of permits;
- (d) providing for the issuance to permittees by a board of authorizations for uses of land not authorized in their permits;
- (e) prescribing the procedure to be followed and forms to be used by applicants for permits, the information to be submitted in connection with applications and the manner of its submission, and respecting the fees to be paid on the filing of applications;
- (f) respecting fees to be paid by permittees in respect of permitted uses of lands belonging to Her Majesty in right of Canada or lands that Her Majesty has power to dispose of, other than such lands the administration and control of which has been transferred by the Governor in Council to the Commissioner of the Northwest Territories;
- (g) prescribing classes to which permits referred to in an instrument of delegation under section 70 must belong;
- (h) specifying the amount, or the manner of determining the amount, of the security referred to in subsection 71(1) or empowering a board to fix the amount of that security, subject to any maximum that may be specified for that purpose, prescribing the form and conditions of the security, and specifying the circumstances and manner in which it shall be refunded;
- (i) prescribing the form of the register to be maintained by a board pursuant to section 72 and the information to be entered in it, and respecting the fees, if any, to be paid to examine the register or to obtain copies from it;
- (j) respecting the power of inspectors to order the taking of measures pursuant to subsection 86(1) or (2);
- (k) authorizing inspectors to enter and inspect lands to which an application relates;
- (l) respecting the restoration of lands to which a permit applies;
- (m) authorizing a board or an inspector to relieve permittees from specified obligations under the regulations;

and

(n) authorizing a board or an inspector to require permittees to submit reports to them on specified matters.

1998, c. 25, s. 90; 2005, c. 1, s. 50.

#### Prohibition — Tlicho lands

**90.1** Even if the regulations do not require a permit or authorization under Part 3 or 4 for a particular use of land, no person shall use Tlicho lands without such a permit or authorization if one is required by a Tlicho law for uses of that type.

2005, c. 1, s. 51.

#### Exemption for use of land in Tlicho communities

**90.2** Despite the regulations, a permit or authorization under Part 3 or 4 for a particular use of land in a Tlicho community is not required if the local government of that community has enacted a bylaw providing that one is not required for uses of that type.

2005, c. 1, s. 51.

#### Rules

**91.** A board may make rules

(a) specifying the period of time within which compensation agreements referred to in sections 77 and 78 must be entered into; and

(b) respecting the determination of matters in dispute under section 80 or 80.1.

1998, c. 25, s. 91; 2005, c. 1, s. 52.

## OFFENCES AND PUNISHMENT

#### Principal offences

**92.** (1) Every person who contravenes section 90.1, any provision of the regulations, any condition of a permit or an order of an inspector under subsection 86(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding six months, or to both.

#### Reparation

(2) In addition to the penalty provided by subsection (1), a court that convicts a person of using land without a permit may, taking into account the nature of the offence and the circumstances of its commission, order the person to take any measures that it considers reasonable in order to repair or limit any damage resulting from the act or omission that constituted the offence.

#### Continuing offences

(3) Where an offence under subsection (1) is committed on or continued for more than one day, it is deemed to be a separate offence for each day on which it is committed or continued.

#### Contravening orders

(4) Every person who contravenes section 87 is guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months, or to both.

1998, c. 25, s. 92; 2005, c. 1, s. 53.

#### Limitation period

93. Proceedings in respect of an offence under section 92 may not be instituted later than two years after the time when the subject-matter of the proceedings arose.

## EXEMPTIONS

### Posting of security

94. Notwithstanding section 7, Her Majesty in right of Canada and, for greater certainty, the territorial government shall not be required to post security pursuant to section 71.

### Fees

95. Notwithstanding subsection 14(1) of the *Northwest Territories Waters Act*, the Gwich'in and Sahtu First Nations and the Tlicho Government are not required to pay any fee in respect of the use of waters or the deposit of waste for non-commercial purposes on their first nation lands or Tlicho lands, as the case may be.

1998, c. 25, s. 95; 2005, c. 1, s. 54.

## PART 4

### MACKENZIE VALLEY LAND AND WATER BOARD

#### INTERPRETATION AND APPLICATION

### Definitions

96. (1) The definitions in this subsection apply in this Part. "Board"  
« Office »

"Board" means the Mackenzie Valley Land and Water Board established by subsection 99(1).

"licence"  
« permis d'utilisation des eaux »

"licence" means a licence for the use of waters or the deposit of waste, or both, issued by the Board under the *Northwest Territories Waters Act* and this Part, and "licensee" has a corresponding meaning.

"permit"  
« permis d'utilisation des terres »

"permit" means a permit for the use of land issued by the Board under this Part, and "permittee" has a corresponding meaning.

### Terms defined in Part 3

(2) In this Part, the expressions "first nation lands", "land", "management area" and "waters" have the same meaning as in Part 3.

### Meaning of "permit"

(3) For the purposes of this Part, references to a permit in section 90, in the regulations made pursuant to that section and in sections 90.1, 90.2 and 92 include a permit as defined in subsection (1).

1998, c. 25, s. 96; 2005, c. 1, s. 55.

### National parks and historic sites

97. (1) Subject to paragraph 102(2)(b), this Part does not apply in respect of the use of land or waters or the deposit of waste within a park or park reserve to which the *Canada National Parks Act* applies or within lands acquired pursuant to the *Historic Sites and Monuments Act*.

### Consultation with Board

(2) Notwithstanding subsection (1), an authority responsible for authorizing uses of land or waters or deposits of waste in a portion of the Mackenzie Valley excluded by that subsection from the application of this Part shall consult the Board before authorizing any such use or deposit.

#### Consultation with authority

(3) The Board shall consult the responsible authority referred to in subsection (2) before issuing a licence, permit or authorization for a use of land or waters or deposit of waste that may have an effect in the portion of the Mackenzie Valley excluded by subsection (1) from the application of this Part.

1998, c. 25, s. 97; 2000, c. 32, s. 68.

#### Local government jurisdiction

**98.** (1) This Part does not apply in respect of the use of land within the boundaries of a local government to the extent that the local government regulates that use.

#### Agreement

(2) The Board and the territorial Minister shall, in consultation with each local government, jointly determine the extent to which the local government regulates the use of land within its boundaries for the purposes of subsection (1).

#### Dissemination

(3) A determination under subsection (2) shall be made available to the public at the main office of the Board and that of the local government.

## ESTABLISHMENT OF BOARD

#### Board established

**99.** (1) There is hereby established a board to be known as the Mackenzie Valley Land and Water Board.

#### Regional panels — Gwich'in and Sahtu Boards

(2) On the coming into force of this Part, a board established by section 54 or 56 continues as a regional panel of the Board under the same name and in respect of the same management area as that of the board. Its members become members of the Board.

#### Regional panel — Wekeezhii Board

(2.1) Six months after the coming into force of section 57.1, the board established by that section continues as a regional panel of the Board under the same name and in respect of the same management area as that of the board. Its members become members of the Board.

#### Applicable provisions

(3) The provisions of Part 1 respecting the appointment, tenure and removal from office of members of a board and respecting the chairperson of a board, and the provisions of Part 3 respecting the appointment of members of a board, the quorum of a board and its main office, continue to apply to a regional panel.

#### Composition

(4) In addition to the members of the regional panels referred to in subsections (2) and (2.1) and a chairperson, the Board shall, subject to subsection 108(7), consist of

(a) two members appointed following consultation by the federal Minister with the first nations and the Tlicho Government;

(b) one member appointed on the nomination of the territorial Minister; and

(c) one other member.

1998, c. 25, s. 99; 2005, c. 1, s. 56.

### Annual meeting

**100.** The Board shall hold at least one plenary meeting in each year.

### Main office

**101.** The main office of the Board shall be at Yellowknife or at such other place in the Mackenzie Valley as is designated by the Governor in Council.

## MANDATE OF BOARD

### Objectives — Board

**101.1** (1) The objectives of the Board are to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of the Mackenzie Valley.

### Objectives — Gwich'in and Sahtu regional panels

(2) The objectives of a regional panel referred to in subsection 99(2) are to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit for residents of its management area and of the Mackenzie Valley and for all Canadians.

### Objectives — Wekeezhii regional panel

(3) The objectives of the regional panel referred to in subsection 99(2.1) are to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of its management area.

2005, c. 1, s. 58.

### Jurisdiction — Board

**102.** (1) The Board has jurisdiction in respect of all uses of land or waters or deposits of waste in the Mackenzie Valley for which a permit is required under Part 3 or a licence is required under the *Northwest Territories Waters Act*, and for that purpose the Board has the powers and duties of a board established under Part 3, other than powers under sections 78, 79 and 79.2 to 80.1, as if a reference in that Part to a management area were a reference to the Mackenzie Valley, except that, with regard to subsection 61(2), the reference to management area continues to be a reference to Wekeezhii.

### Jurisdiction — regional panels

(2) A regional panel of the Board shall exercise

(a) the powers and duties referred to in subsection (1) in respect of a use of land or waters or a deposit of waste that is to take place, and that is likely to have an impact, wholly within the management area of the regional panel; and

(b) the powers conferred by sections 78, 79 and 79.2 to 80.1 on the board established under Part 3 for that management area.

1998, c. 25, s. 102; 2005, c. 1, s. 58.

### Applications to Board

**103.** (1) An application shall be made to the Board where the application relates to a use of land or waters or a deposit of waste

(a) that is to take place, or is likely to have an impact, in more than one management area, or in a management area and an area outside any management area; or

(b) that is to take place wholly outside any management area.

### Applications to regional panel

(2) An application relating to a use of land or waters or a deposit of waste described in subsection 102(2), including an application relating to a licence or permit for such a use or deposit issued pursuant to Part 3 before the coming into force of this Part, shall be made to the regional panel of the Board for the management area referred to in that subsection.

### Copies of panel applications

(3) A regional panel of the Board shall provide the Board with a copy of every application made to the regional panel.

### Referral between Board and panels

(4) Where the Board determines that an application made to a regional panel of the Board should have been made to the Board, the Board shall dispose of the application, and where it determines that an application made to it should have been made to a regional panel, it shall refer the application to the regional panel for disposition.

### Decisions of regional panels

(5) For greater certainty, a decision made by a regional panel of the Board on an application is a decision of the Board.

1998, c. 25, s. 103; 2005, c. 1, s. 59.

### Power of chairperson

**104.** Applications referred to in subsection 103(1) shall be disposed of by three or more members of the Board designated by the chairperson for that purpose, including at least one of the members appointed to a regional panel — on the nomination of a first nation or by the Tlicho Government — or appointed to the Board following consultation with first nations and the Tlicho Government and at least one of the members of the Board not so appointed.

1998, c. 25, s. 104; 2005, c. 1, s. 60.

### *Northwest Territories Waters Act*

**105.** The provisions of the *Northwest Territories Waters Act* referred to in subsection 60(4) do not apply in respect of any part of the Mackenzie Valley.

### Board directions

**106.** The Board may issue directions on general policy matters or on matters concerning the use of land or waters or the deposit of waste that, in the Board's opinion, require consistent application throughout the Mackenzie Valley.

### Requirement to make recommendations

**106.1** (1) The Board shall, at the request of the federal Minister, make recommendations to the federal Minister with respect to the amendment of this Act or the *Northwest Territories Waters Act* or the making or amendment of any instrument under this Act or that Act.

### Discretion to make recommendations

(2) The Board may make recommendations to

(a) the Minister responsible for any Act of Parliament regarding the use of land or waters or the deposit of waste, with respect to the amendment of that Act or the making or amendment of any instrument under that Act;

(b) the territorial Minister with respect to the amendment of territorial laws regarding the use of land or waters or the deposit of waste;

(c) a local government with respect to the amendment of bylaws enacted by that government regarding the use of land or waters or the deposit of waste; and

(d) the Tlicho Government with respect to the amendment of Tlicho laws regarding the use of Tlicho lands or waters on those lands or a deposit of waste on those lands or in those waters.

2005, c. 1, s. 61.

## COOPERATION WITH OTHER AUTHORITIES

### Coordination

**107.** Where a use of land or waters or a deposit of waste proposed by an applicant for a licence or permit is likely to have an impact in an area outside the Mackenzie Valley, whether within or outside the Northwest Territories, the Board may consult any government, aboriginal group or other body responsible for the regulation of such uses or deposits in that area and may, with the approval of the federal Minister, hold joint hearings with or enter into agreements with any of them for the coordination of activities and the avoidance of duplication.

## POWERS OF GOVERNOR IN COUNCIL AND FEDERAL MINISTER

### Establishment of additional panels

**108.** (1) The Governor in Council may, on the recommendation of the federal Minister, establish up to two regional panels of the Board in addition to those referred to in subsections 99(2) and (2.1).

### Powers

(2) The area of the Mackenzie Valley in which such a regional panel has jurisdiction shall be specified by the Governor in Council, following consultation with affected first nations, which area must be wholly outside any management area. Subsections 102(2) and 103(2) to (5) apply in relation to that area with such modifications as are required.

### Appointment

(3) The members of such a regional panel shall be appointed by the federal Minister and must include one of the members of the Board referred to in paragraph 99(4)(a) and one of the members referred to in paragraph 99(4)(b) or (c).

### Chairperson

(4) The chairperson of such a regional panel shall be appointed by the federal Minister from persons nominated by a majority of the members of the regional panel.

### Appointment by federal Minister

(5) If a majority of the members do not nominate a person acceptable to the federal Minister within a reasonable time, the Minister may appoint any person as chairperson.

### Absence or incapacity of chairperson

(6) A regional panel established under this section may designate a member to act as chairperson during the absence or incapacity of the chairperson or a vacancy in the office of chairperson, and that person may exercise the powers and shall perform the duties of the chairperson while so acting.

### Members of Board

(7) The chairperson and the members of such a regional panel who are not already members of the Board become members of the Board on their appointment to the regional panel.

### Notice

(8) A notice of the establishment of a regional panel under this section shall be published in a newspaper circulated in the Mackenzie Valley.

1998, c. 25, s. 108; 2005, c. 1, s. 62.

### Minister's functions

**109.** The federal Minister may exercise the same powers and shall perform the same duties in relation to the Board and its regional panels as are conferred or imposed on the federal Minister in relation to a board established by Part 3.

## POWERS OF TLICHO GOVERNMENT

### Policy directions by the Tlicho Government

**109.1** The Tlicho Government may exercise the same powers and shall perform the same duties in relation to the Board and the regional panel of the Board referred to in subsection 99(2.1) as those that the Tlicho Government has under section 83 in relation to the Wekeezhii Land and Water Board.

2005, c. 1, s. 63.

## PRECEDENCE RELATING TO POLICY DIRECTIONS

### Conflict between policy directions

**109.2** (1) If there is a conflict between policy directions given by the federal Minister under section 109 and policy directions given by the Tlicho Government under section 109.1, the policy directions under section 109.1 prevail to the extent of the conflict.

### Conflict between legislation and policy directions

(2) If there is a conflict between policy directions given by the federal Minister under section 109 or by the Tlicho Government under section 109.1 and the provisions of any Act of Parliament, any regulations made under an Act of Parliament or any territorial law, those provisions prevail to the extent of the conflict.

2005, c. 1, s. 63.

## ENFORCEMENT

### Inspectors

**110.** An inspector designated under subsection 84(1) may exercise and shall perform, in relation to land to which a permit applies, the powers and duties of an inspector under Part 3.

## PART 5

### MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

## INTERPRETATION AND APPLICATION

### Definitions

**111.** (1) The following definitions apply in this Part. "designated regulatory agency"  
«*organisme administratif désigné*»

"designated regulatory agency" means an agency named in the schedule, referred to in a land claim agreement as an independent regulatory agency.

"development"  
«*projet de développement*»

"development" means any undertaking, or any part or extension of an undertaking, that is carried out on land or water and includes an acquisition of lands pursuant to the *Historic Sites and Monuments Act* and measures carried out by a department or agency of government leading to the establishment of a park subject to the

Canada National Parks Act or the establishment of a park under a territorial law.

"environmental assessment"  
«*évaluation environnementale* »

"environmental assessment" means an examination of a proposal for a development undertaken by the Review Board pursuant to section 126.

"environmental impact review"  
«*étude d'impact* »

"environmental impact review" means an examination of a proposal for a development undertaken by a review panel established under section 132.

"follow-up program"  
«*programme de suivi* »

"follow-up program" means a program for evaluating

( a) the soundness of an environmental assessment or environmental impact review of a proposal for a development; and

( b) the effectiveness of the mitigative or remedial measures imposed as conditions of approval of the proposal.

"impact on the environment"  
«*répercussions environnementales* » ou  
«*répercussions sur l'environnement* »

"impact on the environment" means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

"mitigative or remedial measure"  
«*mesures correctives ou d'atténuation* »

"mitigative or remedial measure" means a measure for the control, reduction or elimination of an adverse impact of a development on the environment, including a restorative measure.

"preliminary screening"  
«*examen préalable* »

"preliminary screening" means an examination of a proposal for a development undertaken pursuant to section 124.

"regulatory authority"  
«*autorité administrative* »

"regulatory authority" , in relation to a development, means a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law, but does not include a designated regulatory agency or a local government.

"responsible minister"  
«*ministre compétent* »

"responsible minister" , in relation to a proposal for a development, means any minister of the Crown in right of Canada or of the territorial government having jurisdiction in relation to the development under federal or territorial law.

"Review Board"  
«*Office* »

"Review Board" means the Mackenzie Valley Environmental Impact Review Board established by subsection 112(1).

## Application

(2) This Part applies in respect of developments to be carried out wholly or partly within the Mackenzie Valley and, except for section 142, does not apply in respect of developments wholly outside the Mackenzie Valley.

1998, c. 25, s. 111; 2000, c. 32, s. 55; 2005, c. 1, s. 65.

## ESTABLISHMENT OF REVIEW BOARD

### Review Board established

**112.** (1) There is hereby established a board to be known as the Mackenzie Valley Environmental Impact Review Board consisting of not less than seven members including a chairperson.

### Nominations by first nations and the Tlicho Government

(2) One half of the members of the Review Board other than the chairperson shall be persons appointed on the nomination of first nations and the Tlicho Government, including at least one nominated by the Gwich'in First Nation, one nominated by the Sahtu First Nation and one nominated by the Tlicho Government.

### Government members

(3) Of the members of the Review Board other than the chairperson and those appointed in accordance with subsection (2), at most one half shall be nominated by the territorial Minister.

### Quorum

(4) A quorum of the Review Board consists of five members, including two of the members appointed in accordance with subsection (2) and two of the members not so appointed other than the chairperson.

1998, c. 25, s. 112; 2005, c. 1, s. 66.

### Main office

**113.** The main office of the Review Board shall be at Yellowknife or at such other place in the Mackenzie Valley as is designated by the Governor in Council.

## GENERAL PROVISIONS

### Purposes

**114.** The purpose of this Part is to establish a process comprising a preliminary screening, an environmental assessment and an environmental impact review in relation to proposals for developments, and

- (a) to establish the Review Board as the main instrument in the Mackenzie Valley for the environmental assessment and environmental impact review of developments;
- (b) to ensure that the impact on the environment of proposed developments receives careful consideration before actions are taken in connection with them; and
- (c) to ensure that the concerns of aboriginal people and the general public are taken into account in that process.

### Guiding principles

**115.** The process established by this Part shall be carried out in a timely and expeditious manner and shall have regard to

- (a) the protection of the environment from the significant adverse impacts of proposed developments;
- (b) the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley; and

(c) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley.

1998, c. 25, s. 115; 2005, c. 1, s. 67.

### Considerations

**115.1** In exercising its powers, the Review Board shall consider any traditional knowledge and scientific information that is made available to it.

2005, c. 1, s. 68.

### *Canadian Environmental Assessment Act*

**116.** The *Canadian Environmental Assessment Act* does not apply in the Mackenzie Valley in respect of proposals for developments other than

(a) proposals referred to the Minister of the Environment pursuant to paragraph 130(1)(c), to the extent provided by that Act; or

(b) proposals that are the subject of agreements referred to in paragraph 141(2)(a) or (3)(b), to the extent provided by such agreements.

1998, c. 25, s. 116; 2005, c. 1, s. 69.

### Scope of developments

**117.** (1) Every environmental assessment of a proposal for a development shall include a determination by the Review Board of the scope of the development, subject to any guidelines made under section 120.

### Factors to be considered

(2) Every environmental assessment and environmental impact review of a proposal for a development shall include a consideration of

(a) the impact of the development on the environment, including the impact of malfunctions or accidents that may occur in connection with the development and any cumulative impact that is likely to result from the development in combination with other developments;

(b) the significance of any such impact;

(c) any comments submitted by members of the public in accordance with the regulations or the rules of practice and procedure of the Review Board;

(d) where the development is likely to have a significant adverse impact on the environment, the need for mitigative or remedial measures; and

(e) any other matter, such as the need for the development and any available alternatives to it, that the Review Board or any responsible minister, after consulting the Review Board, determines to be relevant.

### Additional factors

(3) An environmental impact review of a proposal for a development shall also include a consideration of

(a) the purpose of the development;

(b) alternative means, if any, of carrying out the development that are technically and economically feasible, and the impact on the environment of such alternative means;

(c) the need for any follow-up program and the requirements of such a program; and

(d) the capacity of any renewable resources that are likely to be significantly affected by the development to meet existing and future needs.

#### Joint panels

(4) Subsections (2) and (3) apply in respect of an examination of a proposal for a development by a review panel, or a joint panel, established jointly by the Review Board and any other person or body.

1998, c. 25, s. 117; 2005, c. 1, s. 70.

#### Implementation of proposals

**118.** (1) No licence, permit or other authorization required for the carrying out of a development may be issued under any federal, territorial or Tlicho law unless the requirements of this Part have been complied with in relation to the development.

#### Implementation of proposals

(2) Where the Gwich'in or Sahtu First Nation, the Tlicho Government, a local government or a department or agency of the federal or territorial government proposes to carry out a development that does not require a licence, permit or other authorization under any federal, territorial or Tlicho law, it shall comply with the requirements of this Part before taking any irrevocable action in relation to the development.

1998, c. 25, s. 118; 2005, c. 1, s. 71.

#### Emergencies excluded

**119.** No preliminary screening, environmental assessment or environmental impact review is required to be conducted in relation to a proposal for a development

(a) that is carried out in response to a national emergency for which special temporary measures are being taken under the *Emergencies Act*, or

(b) that is carried out in response to an emergency in circumstances such that it is in the interest of protecting property or the environment or in the interest of public welfare, health or safety to carry out the proposal forthwith.

#### Guidelines

**120.** Following consultation with first nations, the Tlicho Government and the federal and territorial Ministers and subject to any regulations made under paragraph 143(1)( a), the Review Board may establish guidelines respecting the process established by this Part, including guidelines

(a) for the determination of the scope of developments by the Review Board;

(b) for the form and content of reports made under this Part; and

(c) for the submission and distribution of environmental impact statements and for public notification of such submission pursuant to paragraphs 134(1)( b) and ( c).

1998, c. 25, s. 120; 2005, c. 1, s. 72.

#### Written reasons

**121.** The Review Board, a review panel thereof, a review panel, or a joint panel, established jointly by the Review Board and any other person or body, the federal Minister, a responsible minister, a designated regulatory agency, a regulatory authority, a department or agency of the federal or territorial government, a local government, the Gwich'in or Sahtu First Nation or the Tlicho Government shall issue and make available to the public written reasons for any decision or recommendation made under the process established by this Part.

1998, c. 25, s. 121; 2005, c. 1, s. 73.

### Delegation by federal Minister

**122.** The federal Minister may, in relation to a proposed development, delegate to any responsible minister the federal Minister's duty to distribute reports made under this Part, to participate in decisions made following the consideration of such reports and to distribute decisions so made.

### Exercise of powers under other Acts

**123.** For greater certainty, the Review Board may exercise any function conferred on it by or under any Act of Parliament or delegated to it under any Act of Parliament.

### Consultation

**123.1** In conducting a review or examination of the impact on the environment of a development, a review panel of the Review Board or a review panel, or a joint panel, established jointly by the Review Board and any other person or body,

(a) shall carry out any consultations that are required by any of the land claim agreements; and

(b) may carry out other consultations with any persons who use an area where the development might have an impact on the environment.

2005, c. 1, s. 74.

### Conflict of interest

**123.2** (1) A person shall not be appointed, or continue, as a member of a review panel of the Review Board or of a review panel, or a joint panel, established jointly by the Review Board and any other person or body, if doing so would place the member in a material conflict of interest.

### Status or entitlements under agreement

(2) A person is not in a material conflict of interest merely because of any status or entitlement conferred on the person under the Gwich'in Agreement, the Sahtu Agreement, the Tlicho Agreement or any other agreement between a first nation and Her Majesty in right of Canada for the settlement of a claim to lands.

2005, c. 1, s. 74.

### Nominations

**123.3** In appointing a review panel of the Review Board or a review panel, or a joint panel, established jointly by the Review Board and any other person or body, the Review Board and those other persons or bodies shall comply with the requirements of land claim agreements respecting nominations for appointment.

2005, c. 1, s. 74.

## PRELIMINARY SCREENING

### Application to regulator

**124.** (1) Where, pursuant to any federal or territorial law specified in the regulations made under paragraph 143(1)(b), an application is made to a regulatory authority or designated regulatory agency for a licence, permit or other authorization required for the carrying out of a development, the authority or agency shall notify the Review Board in writing of the application and conduct a preliminary screening of the proposal for the development, unless the development is exempted from preliminary screening because

(a) its impact on the environment is declared to be insignificant by regulations made under paragraph 143(1)(c); or

(b) an examination of the proposal is declared to be inappropriate for reasons of national security by those regulations.

### Proposal not requiring application

(2) Where a development that does not require a licence, permit or other authorization under any federal or territorial law is proposed to be carried out by a department or agency of the federal or territorial government or by the Gwich'in or Sahtu First Nation or the Tlicho Government, the body proposing to carry out that development shall, after notifying the Review Board in writing of the proposal for the development, conduct a preliminary screening of the proposal, unless

- (a) in its opinion, the impact of the development on the environment will be manifestly insignificant; or
- (b) the development is exempted from preliminary screening for a reason referred to in paragraph (1)( a) or ( b).

### Preliminary screening by Gwich'in, Sahtu or Tlicho

(3) The Gwich'in First Nation, the Sahtu First Nation or the Tlicho Government, as the case may be, may conduct a preliminary screening of a proposal for a development to determine whether to refer the proposal for an environmental assessment in accordance with paragraph 126(2)(b) or (c).

### Cooperation

(4) Where more than one body conducts a preliminary screening in respect of a development, any of them may consult the others, adopt another's report or participate in a joint preliminary screening and, where one of them is a board established under Part 3 or 4, the others are not required to conduct a preliminary screening.

1998, c. 25, s. 124; 2005, c. 1, s. 75.

### Outside local government territory

**125.** (1) Except as provided by subsection (2), a body that conducts a preliminary screening of a proposal shall

- (a) determine and report to the Review Board whether, in its opinion, the development might have a significant adverse impact on the environment or might be a cause of public concern; and
- (b) where it so determines in the affirmative, refer the proposal to the Review Board for an environmental assessment.

### Within local government territory

(2) Where a proposed development is wholly within the boundaries of a local government, a body that conducts a preliminary screening of the proposal shall

- (a) determine and report to the Review Board whether, in its opinion, the development is likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern; and
- (b) where it so determines in the affirmative, refer the proposal to the Review Board for an environmental assessment.

## ENVIRONMENTAL ASSESSMENT

### Referral on preliminary screening

**126.** (1) The Review Board shall conduct an environmental assessment of a proposal for a development that is referred to the Review Board following a preliminary screening pursuant to section 125.

### Referral from department, agency, first nation or local government

(2) Notwithstanding any determination on a preliminary screening, the Review Board shall conduct an environmental assessment of a proposal for a development that is referred to it by

- (a) a regulatory authority, designated regulatory agency or department or agency of the federal or territorial government;

(b) the Gwich'in or Sahtu First Nation, in the case of a development to be carried out in its settlement area or a development that might have an impact on the environment in that settlement area;

(c) the Tlicho Government, in the case of a development to be carried out wholly or partly in the part of Monfwi Gogha De Niitlee that is in the Northwest Territories or a development that might have an impact on the environment in that part; or

(d) a local government, in the case of a development to be carried out within its boundaries or a development that might have an impact on the environment within its boundaries.

#### Review Board's own motion

(3) Notwithstanding any determination on a preliminary screening, the Review Board may conduct an environmental assessment of a proposal for a development on its own motion.

#### For greater certainty

(4) For greater certainty, subsections (2) and (3) apply even if a preliminary screening has not been commenced or, if commenced, has not been completed.

#### Notice

(5) The Review Board shall give notice of a referral of a proposal under subsection (2), or of its decision to conduct an environmental assessment under subsection (3), to the person or body that proposes to carry out the development.

1998, c. 25, s. 126; 2005, c. 1, s. 76.

#### Application of *EARP Order* and *CEAA*

**127.** In an environmental assessment of a proposal for a development, the Review Board shall take into account any report made in relation to that proposal before the coming into force of this Part pursuant to the *Environmental Assessment and Review Process Guidelines Order*, approved by Order in Council P.C. 1984-2132 of June 21, 1984, and registered as SOR/84-467, or pursuant to the *Canadian Environmental Assessment Act*.

#### Consultation

**127.1** Before completing an environmental assessment of a proposal for a development that is to be carried out wholly or partly on first nation lands as defined in section 51 or on Tlicho lands, the Review Board shall consult the first nation on whose lands the development is to be carried out or, if the development is to be carried out on Tlicho lands, the Tlicho Government.

2005, c. 1, s. 77.

#### Assessment by Review Board

**128.** (1) On completing an environmental assessment of a proposal for a development, the Review Board shall,

(a) where the development is not likely in its opinion to have any significant adverse impact on the environment or to be a cause of significant public concern, determine that an environmental impact review of the proposal need not be conducted;

(b) where the development is likely in its opinion to have a significant adverse impact on the environment,

- (i) order that an environmental impact review of the proposal be conducted, subject to paragraph 130(1)(c), or
- (ii) recommend that the approval of the proposal be made subject to the imposition of such measures as it considers necessary to prevent the significant adverse impact;

(c) where the development is likely in its opinion to be a cause of significant public concern, order that an

environmental impact review of the proposal be conducted, subject to paragraph 130(1)(c); and

(d) where the development is likely in its opinion to cause an adverse impact on the environment so significant that it cannot be justified, recommend that the proposal be rejected without an environmental impact review.

#### Report to ministers, agencies and Tlicho Government

(2) The Review Board shall make a report of an environmental assessment to

(a) the federal Minister, who shall distribute it to every responsible minister;

(b) any designated regulatory agency from which a licence, permit or other authorization is required for the carrying out of the development; and

(c) if the development is to be carried out wholly or partly on Tlicho lands, the Tlicho Government.

#### Copies of report

(3) The Review Board shall provide a copy of its report to any body that conducted a preliminary screening of the proposal, to any body that referred the proposal to the Review Board under subsection 126(2) and to the person or body that proposes to carry out the development.

#### Areas identified

(4) The Review Board shall identify in its report any area within or outside the Mackenzie Valley in which the development is likely, in its opinion, to have a significant adverse impact or to be a cause of significant public concern and specify the extent to which that area is affected.

1998, c. 25, s. 128; 2005, c. 1, s. 78.

#### Delay

**129.** Where the Review Board makes a determination under paragraph 128(1)(a),

(a) a regulatory authority, a designated regulatory agency or the Tlicho Government shall not issue a licence, permit or other authorization for the development, and

(b) where no licence, permit or authorization is required under any federal, territorial or Tlicho law for the development, the person or body that proposes to carry it out shall not proceed,

before the expiration of ten days after receiving the report of the Review Board.

1998, c. 25, s. 129; 2005, c. 1, s. 79.

#### Decision by ministers

**130.** (1) After considering the report of an environmental assessment, the federal Minister and the responsible ministers to whom the report was distributed may agree

(a) to order an environmental impact review of a proposal, notwithstanding a determination under paragraph 128(1)(a);

(b) where a recommendation is made under subparagraph 128(1)(b)(ii) or paragraph 128(1)(d),

(i) to adopt the recommendation or refer it back to the Review Board for further consideration, or

(ii) after consulting the Review Board, to adopt the recommendation with modifications or reject it and order an environmental impact review of the proposal; or

(c) irrespective of the determination in the report, to refer the proposal to the Minister of the Environment, following consultation with that Minister, for the purpose of a joint review under the *Canadian Environmental*

*Assessment Act*, where the federal Minister and the responsible ministers determine that it is in the national interest to do so.

### Consultation

(1.1) Before making an order under paragraph (1)(a) or a referral under paragraph (1)(c), the federal Minister and the responsible ministers shall consult the Tlicho Government if the development is to be carried out wholly or partly on Tlicho lands.

### Areas identified

(2) Where an environmental impact review of a proposal is ordered under subsection (1), the federal Minister and responsible ministers shall identify any area within or outside the Mackenzie Valley in which the development is likely, in their opinion, to have a significant adverse impact or to be a cause of significant public concern and specify the extent to which that area is affected.

### Additional information

(3) If the federal Minister and responsible ministers consider any new information that was not before the Review Board, or any matter of public concern not referred to in the Review Board's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)(b).

### Distribution of decision

(4) The federal Minister shall distribute a decision made under this section to the Review Board and to every first nation, local government, regulatory authority and department and agency of the federal or territorial government affected by the decision.

### Effect of decision

(5) The federal Minister and responsible ministers shall carry out a decision made under this section to the extent of their respective authorities. A first nation, local government, regulatory authority or department or agency of the federal or territorial government affected by a decision made under this section shall act in conformity with the decision to the extent of their respective authorities.

1998, c. 25, s. 130; 2005, c. 1, s. 80.

### Decision by designated agency

**131.** (1) A designated regulatory agency shall, after considering a report of the Review Board containing a recommendation made under subparagraph 128(1)(b)(ii) or paragraph 128(1)(d),

(a) adopt the recommendation or refer it back to the Review Board for further consideration; or

(b) after consulting the Review Board, adopt the recommendation with modifications or reject it and order an environmental impact review of the proposal.

### Effect of decision

(2) A designated regulatory agency shall carry out, to the extent of its authority, any recommendation that it adopts.

### Areas identified

(3) Where an environmental impact review of a proposal is ordered under subsection (1), the designated regulatory agency shall identify any area within or outside the Mackenzie Valley in which the development is likely, in its opinion, to have a significant adverse impact or to be a cause of significant public concern and specify the extent to which that area is affected.

### Additional information

(4) If a designated regulatory agency considers any new information that was not before the Review Board, or any matter of public concern that was not referred to in the Review Board's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)

(b).

#### Decision by Tlicho Government

**131.1** (1) If a development is to be carried out wholly or partly on Tlicho lands, the Tlicho Government shall, after considering a report of the Review Board containing a recommendation made under subparagraph 128(1)(b)(ii),

(a) adopt the recommendation or refer it back to the Review Board for further consideration; or

(b) after consulting the Review Board, adopt the recommendation with modifications or reject it.

#### Effect of decision

(2) The Tlicho Government shall carry out, to the extent of its authority, any recommendation that it adopts.

#### Additional information

(3) If the Tlicho Government considers any new information that was not before the Review Board, or any matter of public concern that was not referred to in the Review Board's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)(b).

2005, c. 1, s. 81.

#### Conservation

**131.2** In making a decision under paragraph 130(1)(b) or subsection 131(1) or 131.1(1), the federal Minister and the responsible ministers, a designated regulatory agency or the Tlicho Government, as the case may be, shall consider the importance of the conservation of the lands, waters and wildlife of the Mackenzie Valley on which the development might have an impact.

2005, c. 1, s. 81.

## ENVIRONMENTAL IMPACT REVIEW

#### Appointment of review panel

**132.** (1) Subject to sections 138 to 141, an environmental impact review of a proposal for a development shall be conducted by a review panel consisting of three or more members appointed by the Review Board, including a chairperson.

#### Expert members

(2) A review panel may, in addition to members of the Review Board, include as members of the panel persons having particular expertise related to the development.

#### Board members to participate in appointments

(3) The members of the Review Board who participate in the appointment of a review panel must include in equal numbers

(a) members who were appointed on the nomination of a first nation or the Tlicho Government; and

(b) members not so appointed, other than the chairperson.

(4) [Repealed, 2005, c. 1, s. 82]

1998, c. 25, s. 132; 2005, c. 1, s. 82.

#### Powers and duties of panel

**133.** (1) A review panel may exercise the powers and shall perform the duties of the Review Board in the conduct of an environmental impact review.

### Instructions

(2) A review panel may issue, with respect to an impact statement referred to in paragraph 134(1)(b), special instructions not inconsistent with any guidelines issued under section 120.

### Coordination

**133.1** The Review Board shall to the extent possible coordinate any environmental impact review conducted by a review panel of a proposal for a development that, as determined by the Review Board, is to be carried out partly outside the Mackenzie Valley with any examination of the environmental impact of that development conducted by another authority responsible for the examination of environmental effects of the part of the development to be carried out outside the Mackenzie Valley.

2005, c. 1, s. 83.

### Components of review

**134.** (1) An environmental impact review of a proposal for a development includes

(a) the preparation by the Review Board of terms of reference for the review panel, after consultation with the responsible ministers, with any first nation affected by the proposal and, if the Board has determined that the development is likely to have a significant adverse impact on the environment, or to be a cause of significant public concern, in Monfwi Gogha De Niitlee, with the Tlicho Government;

(b) the submission of an impact statement by the applicant for a licence, permit or other authorization or such other person or body as proposes to carry out the development, and its distribution in accordance with any guidelines issued under section 120 and any special instructions issued under subsection 133(2);

(c) public notification, in accordance with any such guidelines, of the submission of the impact statement;

(d) such analysis of the proposal as the review panel considers appropriate; and

(e) public consultations or hearings in communities that will be affected by the development.

### Report

(2) A review panel shall issue a report containing a summary of comments received from the public, an account of the panel's analysis, the conclusions of the panel and its recommendation whether the proposal for the development be approved, with or without mitigative or remedial measures or a follow-up program, or rejected.

### Submission to ministers, agencies and Tlicho Government

(3) The report of a review panel shall be submitted to

(a) the federal Minister, who shall distribute it to every responsible minister;

(b) any designated regulatory agency from which a licence, permit or other authorization is required for the carrying out of the development; and

(c) the Tlicho Government, if the development is to be carried out wholly or partly on Tlicho lands.

1998, c. 25, s. 134; 2005, c. 1, s. 84.

### Consideration of report by ministers

**135.** (1) After considering the report of a review panel, the federal Minister and responsible ministers to whom the report was distributed may agree to

(a) adopt the recommendation of the review panel or refer it back to the panel for further consideration; or

(b) after consulting the review panel, adopt the recommendation with modifications or reject it.

#### Additional information

(2) If the federal Minister and responsible ministers consider any new information that was not before the review panel, or any matter of public concern not referred to in the panel's reasons, the new information or the matter shall be identified in the decision made under this section and in their consultations under paragraph (1)(b).

#### Distribution of decision

**136.** (1) The federal Minister shall distribute a decision under section 135 to every first nation, local government, regulatory authority and department or agency of the territorial or federal government affected by the decision.

#### Effect of decision

(2) The federal Minister and responsible ministers shall carry out a decision made under section 135 to the extent of their respective authorities. A first nation, local government, regulatory authority or department or agency of the federal or territorial government affected by a decision under that section shall act in conformity with the decision to the extent of their respective authorities.

1998, c. 25, s. 136; 2005, c. 1, s. 85.

#### Consideration of report by agencies

**137.** (1) A designated regulatory agency shall, after considering the report of a review panel,

(a) adopt the recommendation of the review panel or refer it back to the panel for further consideration; or

(b) after consulting the review panel, adopt the recommendation with modifications or reject it.

#### Additional information

(2) If a designated regulatory agency considers any new information that was not before the review panel, or any matter of public concern that was not referred to in the panel's reasons, such new information or such matter shall be identified in the decision of the agency and in any consultation under paragraph (1)(b).

#### Effect of decision

(3) A designated regulatory agency shall carry out, to the extent of its authority, any recommendation that it adopts.

#### Decision by Tlicho Government

**137.1** (1) If a development is to be carried out wholly or partly on Tlicho lands, the Tlicho Government shall, after considering the report of a review panel,

(a) adopt the recommendation of the review panel or refer it back to the panel for further consideration; or

(b) after consulting the review panel, adopt the recommendation with modifications or reject it.

#### Additional information

(2) If the Tlicho Government considers any new information that was not before the review panel, or any matter of public concern that was not referred to in the review panel's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)(b).

#### Effect of decision

(3) The Tlicho Government shall carry out, to the extent of its authority, any recommendation that it adopts.

2005, c. 1, s. 86.

### Conservation

**137.2** In making a decision under subsection 135(1), 137(1) or 137.1(1), the federal Minister and the responsible ministers, a designated regulatory agency or the Tlicho Government, as the case may be, shall consider the importance of the conservation of the lands, waters and wildlife of the Mackenzie Valley on which the development might have an impact.

2005, c. 1, s. 86.

### Consultation

**137.3** Before making a decision under subsection 135(1), 137(1) or 137.1(1) in respect of a proposal for a development that, as determined by the Review Board, is to be carried out partly outside the Mackenzie Valley, the person or body making the decision shall take into consideration any report in respect of the proposal that is submitted by a review panel established under the *Canadian Environmental Assessment Act* and shall consult every responsible authority to whom the report is submitted under that Act.

2005, c. 1, s. 86.

## COOPERATION AND JOINT REVIEWS

### Report by review panel — national interest referral

**138.** (1) A review panel established under subsection 40(2.1) of the *Canadian Environmental Assessment Act* in respect of a proposal for a development that was referred pursuant to paragraph 130(1)(c) of this Act shall, in addition to satisfying the requirements of paragraph 41(f) of that Act, submit the report of its recommendations to

- (a) the federal Minister, who shall distribute it to every responsible minister;
- (b) any designated regulatory agency from which a licence, permit or other authorization is required for the carrying out of the development; and
- (c) the Tlicho Government, if the development is to be carried out wholly or partly on Tlicho lands.

### Provisions applicable

(2) An examination by a review panel referred to in subsection (1) stands in lieu of an environmental impact review and paragraphs 134(1)(b), (d) and (e) and sections 135 to 137.2 apply, with such modifications as may be required, in respect of the examination, except that a recommendation of a panel may not be referred back to the panel for further consideration.

1998, c. 25, s. 138; 2005, c. 1, s. 87.

### Agreement — national interest referral

**138.1** (1) If a proposal for a development that, as determined by the Review Board, is to be carried out partly outside the Mackenzie Valley and either is to be carried out partly in Wekeezhii or might have an impact on the environment in Wekeezhii is referred to the Minister of the Environment under paragraph 130(1)(c), then the Review Board shall enter into an agreement with the Minister of the Environment for the purpose of jointly establishing a review panel and prescribing the manner of its examination of the impact on the environment of the development in accordance with subsection 40(2.1) of the *Canadian Environmental Assessment Act*.

### Mediation

(2) If the Review Board and the Minister of the Environment have not entered into an agreement under subsection (1) within the period fixed by any regulations, they shall participate in mediation in accordance with those regulations for the purpose of reaching an agreement under subsection (1).

### Arbitration

- (3) If the Review Board and the Minister of the Environment have not entered into an agreement under

subsection (1) by the end of any mediation required under subsection (2), they may, within the period fixed by any regulations, by mutual agreement refer any unresolved matter to arbitration in accordance with those regulations.

#### Where no agreement

(4) Despite subsections (1) to (3), if, within the period fixed by the regulations, an agreement has not been entered into under this section, a panel of the Review Board shall conduct an environmental impact review of the development, but the review shall be limited to the part of the development to be carried out in the Mackenzie Valley.

2005, c. 1, s. 87.

#### Agreement — designated regulatory agency

**139.** (1) Where an environmental impact review of a proposal for a development that, as determined by the Review Board, is to be carried out wholly in the Mackenzie Valley, other than a development that has been referred to the Minister of the Environment under paragraph 130(1)(c), is ordered under this Part, and a licence, permit or other authorization must be issued by a designated regulatory agency in order for the proposed development to be carried out, the Review Board and the agency may enter into an agreement for the examination of the impact of the development on the environment by a joint panel established for that purpose.

#### Report to ministers, agencies and Tlicho Government

(2) A joint panel so established shall make a report of its examination to

(a) the federal Minister, who shall distribute it to every responsible minister;

(b) any designated regulatory agency from which a licence, permit or other authorization is required for the carrying out of the development; and

(c) the Tlicho Government, if the development is to be carried out wholly or partly on Tlicho lands.

#### Provisions applicable

(3) An examination by a joint panel established under this section stands in lieu of an environmental impact review and paragraphs 134(1)(b), (d) and (e) and sections 135 to 137.2 apply, with such modifications as may be required, in respect of the examination, except that a recommendation of a panel may not be referred back to the panel for further consideration.

1998, c. 25, s. 139; 2005, c. 1, s. 87.

#### Transboundary effects

**140.** (1) Where it appears to the Review Board, during the environmental assessment of a development proposed to be carried out wholly within the Mackenzie Valley, that the development might have a significant adverse impact on the environment in a region outside the Mackenzie Valley, the Review Board shall so advise the authority responsible for the examination of environmental effects in that region and request its cooperation in the conduct of the assessment.

#### Agreement — other authority

(2) Where the Review Board has determined that a development referred to in subsection (1), other than a development that has been referred to the Minister of the Environment under paragraph 130(1)(c), is likely to have a significant adverse impact on the environment in a region outside the Mackenzie Valley, the Review Board may, with the approval of the federal Minister, enter into an agreement with the authority responsible for the examination of environmental effects in that region to provide for

(a) the coordination of the respective examinations of the environmental impact of the development; or

(b) the examination of the environmental impact of the development by a joint panel established for that purpose.

#### Report to ministers, agencies and Tlicho Government

(3) A joint panel established under subsection (2) shall make a report of its recommendations to

(a) the federal Minister, who shall distribute it to every responsible minister;

(b) any designated regulatory agency from which a licence, permit or other authorization is required for the carrying out of the development; and

(c) the Tlicho Government, if the development is to be carried out wholly or partly on Tlicho lands.

#### Provisions applicable

(4) An examination by a joint panel established under subsection (2) stands in lieu of an environmental impact review of the proposal and paragraphs 134(1)(b), (d) and (e) and sections 135 to 137.2 apply, with such modifications as may be required, in respect of the examination, except that a recommendation of a panel may not be referred back to the panel for further consideration.

1998, c. 25, s. 140; 2005, c. 1, s. 88.

## TRANSREGIONAL AND EXTERNAL DEVELOPMENTS

#### Environmental assessment

**141.** (1) In relation to a development that is proposed to be carried out partly in the Mackenzie Valley and partly in a region of the Northwest Territories, Yukon or Nunavut adjacent to the Mackenzie Valley, or partly in a province, as the case may be, the Review Board shall to the extent possible coordinate its environmental assessment functions with the functions of any authority responsible for the examination of environmental effects of the development in that region or province.

#### Agreement — cases other than Wekeezhii

(2) If an environmental impact review is ordered under subparagraph 128(1)(b)(i), paragraph 128(1)(c) or 130(1)(a), subparagraph 130(1)(b)(ii) or paragraph 131(1)(b) in respect of a proposal for a development referred to in subsection (1), other than a development referred to in subsection (3), the Review Board may, with the approval of the federal Minister,

(a) enter into an agreement with the Minister of the Environment in accordance with sections 40 and 41 of the *Canadian Environmental Assessment Act* to provide for an examination by a review panel, in any case where that Act applies in respect of the development in the region or province referred to in subsection (1); and

(b) in any other case, enter into an agreement with an authority responsible for the examination of environmental effects of such developments in that region or province to provide for the coordination of their respective examinations of the environmental impact of the development or to provide for the examination of that impact by a joint panel established for that purpose.

#### Agreement — Wekeezhii

(3) If an environmental impact review is ordered under subparagraph 128(1)(b)(i), paragraph 128(1)(c) or 130(1)(a), subparagraph 130(1)(b)(ii) or paragraph 131(1)(b) in respect of a proposal for a development that, as determined by the Review Board, is to be carried out partly outside the Mackenzie Valley and either is to be carried out partly in Wekeezhii or might have an impact on the environment in Wekeezhii, the Review Board shall enter into an agreement for the purpose of jointly establishing a review panel and prescribing the manner of its examination of the impact on the environment of the development

(a) with an authority responsible for the examination of environmental effects of the part of the development that is to be carried out outside the Mackenzie Valley; or

(b) with the Minister of the Environment if that Minister is authorized under section 40 of the *Canadian Environmental Assessment Act* to enter into such an agreement.

#### Where no agreement

(4) Despite subsection (3), if, within the period fixed by the regulations, an agreement has not been entered into under that subsection, a panel of the Review Board shall conduct an environmental impact review of the

development, but the review shall be limited to the part of the development to be carried out in the Mackenzie Valley.

### Report

(5) A review panel or joint panel established by an agreement referred to in subsection (2) or (3) shall make a report of its examination to

- (a) the federal Minister, who shall distribute it to every responsible minister;
- (b) any designated regulatory agency from which a licence, permit or other authorization is required for the carrying out of the development;
- (c) in the case of a joint panel referred to in paragraph (2)(b) or (3)(a), the minister of the federal, provincial or territorial government having jurisdiction in relation to examinations conducted by the authority referred to in that paragraph; and
- (d) the Tlicho Government, if the development is to be carried out partly on Tlicho lands.

### Provisions applicable

(6) An examination by a review panel or joint panel referred to in subsection (2) or (3) stands in lieu of an environmental impact review of the proposal referred to in that subsection and paragraphs 134(1)(b), (d) and (e) and sections 135 to 137.2 apply, with such modifications as may be required, in respect of the examination, except that a recommendation of a panel may not be referred back to the panel for further consideration.

1998, c. 15, s. 48, c. 25, s. 141; 2002, c. 7, s. 206(E); 2005, c. 1, s. 89.

### Transregional impact

**142.** Where a development proposed to be carried out wholly in a region of the Northwest Territories, Yukon or Nunavut adjacent to the Mackenzie Valley, or wholly in a province, might have a significant adverse impact on the environment in the Mackenzie Valley, the Review Board may, with the approval of the federal Minister, enter into an agreement with the authority responsible for the examination of the environmental effects of such developments in that region or province to provide for the participation of the Review Board in the examination of the environmental effects of the development by that authority.

1998, c. 15, s. 48, c. 25, s. 142; 2002, c. 7, s. 207(E).

## REGULATIONS

### Regulations

**143.** (1) The Governor in Council may, following consultation by the federal Minister with the territorial Minister, first nations and the Tlicho Government, make regulations for carrying out the purposes and provisions of this Part and, in particular, regulations

- (a) prescribing procedures in relation to preliminary screenings, environmental assessments and environmental impact reviews generally, including
  - (i) limits on the time for making any decision or recommendation, including a decision of a responsible minister, and
  - (ii) the form and content of reports required by this Part;
- (b) specifying the federal and territorial laws in respect of which preliminary screenings of proposals must be conducted by regulatory authorities and designated regulatory agencies before the issuance of licences, permits or other authorizations;
- (c) exempting any development or class of development from a preliminary screening for a reason referred to in paragraph 124(1)( a) or ( b);
- (d) respecting the establishment, maintenance and operation of a public registry, public accessibility to records contained in the registry, the time and manner in which those records may be examined or copied

and fees that may be charged to the public therefor;

(e) fixing a period for the purposes of subsection 138.1(2) and respecting mediation referred to in that subsection;

(f) fixing the period within which a matter may be referred to arbitration under subsection 138.1(3) and respecting arbitration under that subsection; and

(g) fixing a period for the purposes of subsections 138.1(4) and 141(4).

### Consultation with Review Board

(2) Regulations may only be made under paragraph (1)(a), (d), (e), (f) or (g), or amended under paragraph (1)(b) or (c), following consultation by the federal Minister with the Review Board.

### Exemptions

(3) No development may be exempted for a reason set out in paragraph 124(1)(b) if

(a) it is a project or belongs to a class of projects, within the meaning of the *Canadian Environmental Assessment Act*, by virtue of regulations made pursuant to paragraph 59(b) of that Act; or

(b) it is a project or belongs to a class of projects for which a comprehensive study is required under that Act by regulations made pursuant to paragraph 59(d) of that Act.

1998, c. 25, s. 143; 2005, c. 1, s. 90.

### Schedule

**144.** (1) The Governor in Council may, by regulations made following consultation by the federal Minister with the territorial Minister, the Review Board, the first nations and the Tlicho Government, amend the schedule by adding, or by deleting, the name of any agency, other than a land and water board established by Part 3 or 4, that exercises regulatory powers pursuant to territorial or federal laws and that is not subject to specific control or direction by a minister of the federal or territorial government or the Governor in Council.

### Exception

(2) Policy directions of general application governing an agency, or the power to approve, vary or rescind an agency's decisions, do not constitute specific control or direction for the purposes of subsection (1).

1998, c. 25, s. 144; 2005, c. 1, s. 91.

## PART 6

### ENVIRONMENTAL MONITORING AND AUDIT

#### Definitions

**145.** The definitions in this section apply in this Part.

"impact on the environment"  
«*répercussions environnementales*»

"impact on the environment" has the same meaning as in Part 5.

"responsible authority"  
«*autorité compétente*»

"responsible authority" means the person or body designated by the regulations as the responsible authority or, in the absence of a designation, the federal Minister.

#### Cumulative environmental impact

**146.** The responsible authority shall, subject to the regulations, analyze data collected by it, scientific data, traditional knowledge and other pertinent information for the purpose of monitoring the cumulative impact on the environment of concurrent and sequential uses of land and water and deposits of waste in the Mackenzie Valley.

#### Consultation with first nations and Tlicho Government

**147.** (1) A responsible authority that is a minister of the Crown in right of Canada shall carry out the functions referred to in section 146 in consultation with the first nations and the Tlicho Government.

#### Role of first nations and Tlicho Government

(2) Where a responsible authority is other than a minister of the Crown in right of Canada, the Gwich'in and Sahtu First Nations and the Tlicho Government are entitled to participate in the functions referred to in section 146 in the manner provided by the regulations.

1998, c. 25, s. 147; 2005, c. 1, s. 92.

#### Environmental audit

**148.** (1) The federal Minister shall have an environmental audit conducted at least once every five years by a person or body that is independent.

#### Terms of reference

(2) The federal Minister shall, after consulting the Gwich'in First Nation, the Sahtu First Nation, the Tlicho Government and the territorial government, fix the terms of reference of an environmental audit, including the key components of the environment to be examined.

#### Content of audit

(3) An environmental audit shall include

(a) an evaluation of information, including information collected or analyzed under section 146, in order to determine trends in environmental quality, potential contributing factors to changes in the environment and the significance of those trends;

(b) a review of the effectiveness of methods used for carrying out the functions referred to in section 146;

(c) a review of the effectiveness of the regulation of uses of land and water and deposits of waste on the protection of the key components of the environment from significant adverse impact; and

(d) a review of the response to any recommendations of previous environmental audits.

#### Report of audit

(4) A report of the environmental audit, which may include recommendations, shall be prepared and submitted to the federal Minister, who shall make the report available to the public.

#### Participation by first nations and Tlicho Government

(5) The Gwich'in and Sahtu First Nations and the Tlicho Government are entitled to participate in an environmental audit in the manner provided by the regulations.

1998, c. 25, s. 148; 2005, c. 1, s. 93.

#### Information

**149.** Subject to any other federal or territorial law, a responsible authority or a person or body who performs an environmental audit may obtain, from any board established by this Act or from any department or agency of the federal or territorial government, any information in the possession of the board, department or agency that is required for the performance of the functions of the responsible authority or person under this Part.

## Regulations

**150.** The Governor in Council may, after consultation by the federal Minister with affected first nations, the Tlicho Government and the territorial Minister, make regulations for carrying out the purposes and provisions of this Part and, in particular, regulations

- (a) respecting the collection of data and the analysis of data so collected and scientific data, traditional knowledge and other information, for the purposes of section 146;
- (b) designating a person or body as the responsible authority for the purposes of this Part; and
- (c) respecting the manner of participation of the Gwich'in and Sahtu First Nations and the Tlicho Government in the functions of a responsible authority that is not a minister of the Crown or in an environmental audit.

1998, c. 25, s. 150; 2005, c. 1, s. 94.

## PART 7

### TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND COMING INTO FORCE

#### TRANSITIONAL PROVISIONS

##### Existing permits continued

**151.** (1) Permits issued under regulations made pursuant to the *Territorial Lands Act* or under any territorial law respecting a use of land in a settlement area, or in any other portion of the Mackenzie Valley, that exist on the coming into force of sections 54 and 56 or section 99, as the case may be, continue in effect, subject to any terms and conditions attached to those permits.

##### Permits under former law

(2) A board established by section 54 or 56, or by section 99, may, in accordance with regulations made pursuant to the *Territorial Lands Act* or in accordance with any applicable territorial law, amend, renew or cancel a permit referred to in subsection (1) and issued in respect of a settlement area or other portion of the Mackenzie Valley, as the case may be, or approve the assignment of such a permit and may, in relation to such a permit, carry out any other power conferred by those regulations on the Engineer, as defined in those regulations, or conferred by that territorial law on any authority specified in it.

##### Public register

(3) Information prescribed by regulations made under section 90 relating to permits referred to in subsection (1) shall be entered in the register referred to in subsection 72(1).

##### Regional panels

(4) For greater certainty, in cases referred to in subsection 102(2), the powers conferred by this section on the Board established by section 99 shall be carried out by the appropriate regional panel of the Board and applications for that purpose shall be made to that regional panel.

##### Existing rights and interests

**152.** Rights to the use of land under any lease, easement or other interest in land that was granted under the *Territorial Lands Act* or the regulations made pursuant to that Act, or under any territorial law, and that exist on the coming into force of sections 54 and 56 or section 99 continue in effect, subject to the terms and conditions of exercising those rights.

##### Existing licences continued

**153.** Licences issued under the *Northwest Territories Waters Act* respecting a use of waters or deposit of waste in a settlement area, or in another portion of the Mackenzie Valley, that exist on the coming into force of

sections 54 and 56 or of section 99, continue in effect and are deemed to be licences within the meaning of Part 3 or 4, as the case may be.

#### Pending applications for permits

**154.** (1) An application made before the coming into force of sections 54 and 56 or of section 99 under regulations made pursuant to the *Territorial Lands Act* in respect of a use of land in a settlement area or in another portion of the Mackenzie Valley, as the case may be, shall be disposed of under those regulations as they read at the time of the application.

#### Deeming

(2) A permit or an amendment thereto or renewal thereof issued pursuant to such an application is deemed to have been issued by the appropriate board under Part 3 or 4, as the case may be.

#### Pending applications for licences

**155.** (1) An application made before the coming into force of sections 54 and 56 or of section 99 under the *Northwest Territories Waters Act* in respect of a use of waters or deposit of waste in a settlement area or in another portion of the Mackenzie Valley, as the case may be, shall be disposed of under that Act as it read at the time of the application where a notice of hearing was published in respect of the application under subsection 23(2) of that Act before the coming into force of that section.

#### Deeming

(2) A licence or an amendment thereto or renewal thereof issued pursuant to subsection (1) is deemed to have been issued by the appropriate board under Part 3 or 4, as the case may be.

#### Where no notice of hearing

(3) Where a notice of hearing was not issued under subsection 23(2) of the *Northwest Territories Waters Act* in respect of an application referred to in subsection (1), the application shall be disposed of by the appropriate board under Part 3 or 4, as the case may be.

#### Transfer of records

(4) The Northwest Territories Water Board shall transfer to the boards established by Parts 3 and 4 its records relating to applications to which subsection (3) applies and shall provide those boards with any other information in its possession that is required by them in the consideration of those applications.

#### Permit outside jurisdiction of boards

**156.** Where a use of land is proposed, prior to the coming into force of section 99, in a portion of the Mackenzie Valley not within a settlement area, that would but for this section require a permit under Part 3, an application shall be made for a permit under the regulations made pursuant to the *Territorial Lands Act* as if the regulations under Part 3 did not apply in that portion of the Mackenzie Valley.

#### Inspectors

**157.** (1) A person acting, before the coming into force of section 84, as an inspector for the purposes of regulations made pursuant to the *Territorial Lands Act* is deemed to be an inspector designated under that section.

#### Existing permits

(2) In relation to permits applicable in the Mackenzie Valley issued under regulations made pursuant to the *Territorial Lands Act*, an inspector designated pursuant to section 84 may exercise the powers of inspection conferred by those regulations.

#### Application of Part 5

**157.1** Part 5 does not apply in respect of any licence, permit or other authorization related to an undertaking that is the subject of a licence or permit issued before June 22, 1984, except a licence, permit or other authorization for an abandonment, decommissioning or other significant alteration of the project.

### Application of *EARP Guidelines Order*

**158.** (1) The *Environmental Assessment and Review Process Guidelines Order*, approved by Order in Council P.C. 1984-2132 of June 21, 1984, and registered as SOR/84-467, continues to apply in respect of any proposal for a development, as defined in Part 5 of this Act, that is, on the coming into force of that Part, before an environmental assessment panel established pursuant to that Order.

### Application of *EARP Guidelines Order*

(2) The Order referred to in subsection (1) continues to apply in respect of any proposal for a development, as defined in Part 5 of this Act, for which an environmental screening or initial assessment under that Order was commenced but not completed before the coming into force of Part 5, but on the referral of any such proposal to the Minister of the Environment for public review pursuant to section 20 of that Order, Part 5 applies in respect of the proposal as if an environmental impact review of the proposal had been ordered under paragraph 130(1)(a) with such modifications as may be required.

### Application of *Canadian Environmental Assessment Act*

**159.** (1) The *Canadian Environmental Assessment Act* continues to apply in respect of a proposal for a development, as defined in Part 5 of this Act, that was referred before the coming into force of that Part to a mediator or a review panel pursuant to subsection 29(1) of that Act.

### Screening or comprehensive study

(2) The *Canadian Environmental Assessment Act* continues to apply in respect of a proposal for a development, as defined in Part 5 of this Act, for which a screening or comprehensive study was commenced under that Act before the coming into force of Part 5 without a determination being made pursuant to subsection 20(1) or section 23 or, in the case of a referral under paragraph 23(a), pursuant to subsection 37(1), of that Act, and that determination may only be made after the screening report or comprehensive study report is submitted to the Mackenzie Valley Environmental Impact Review Board and after consultation with that Board.

### Application of Part 5

(3) Where a responsible authority, within the meaning of the *Canadian Environmental Assessment Act*, or the Minister of the Environment, in relation to a project referred to in subsection (2), takes the course of action pursuant to paragraph 20(1)(c) or 23(b) of that Act, as the case may be, the project is thereby referred to the federal Minister and the responsible Ministers, within the meaning of Part 5, who shall make a determination in accordance with

(a) paragraph 130(1)(a), in which case that Act ceases to apply and Part 5 of this Act commences to apply in respect of the proposal; or

(b) paragraph 130(1)(c), in which case that Act continues to apply to the extent provided for in that paragraph.

## CONSEQUENTIAL AMENDMENTS

**160. to 167.** [Amendments]

## COMING INTO FORCE

### Coming into force — order in council

**\*168.** (1) Subject to subsection (2), this Act comes into force on a day to be fixed by order of the Governor in Council.

### Coming into force — Part 4

(2) Part 4 and subsections 160(2), 165(2) and 167(2) come into force on a day to be fixed by order of the Governor in Council.

\* [Note: Act, other than Part 4 and subsections 160(2), 165(2) and 167(2), in force December 22, 1998, see SI/99-1; Part 4 and subsections 160(2), 165(2) and 167(2) in force March 31, 2000, see SI/2000-17.]

SCHEDULE  
(Sections 111 and 144)

DESIGNATED REGULATORY AGENCIES

National Energy Board

*Office national de l'énergie*

**RELATED PROVISION**

-- 2005, c. 1, s. 95:

[Wekeezhii Land and Water Board](#)

95. (1) The Wekeezhii Land and Water Board established by section 57.1 of the *Mackenzie Valley Resource Management Act*, as enacted by section 31 of this Act, may not exercise its powers or perform its duties under sections 58.1 and 59, subsections 60(1) and (2), sections 79.1 to 79.3, 80.1 and 88 and subsection 89(2) of the *Mackenzie Valley Resource Management Act* until six months after the coming into force of this Act.

[Mackenzie Valley Land and Water Board](#)

(2) Despite subsection 102(1) of the *Mackenzie Valley Resource Management Act*, the Mackenzie Valley Land and Water Board shall exercise the powers and perform the duties of the Wekeezhii Land and Water Board under sections 58.1, 79.1 to 79.3, 80.1 and 88 and subsection 89(2) of that Act during the period of six months after the coming into force of this Act.

[Exclusive original jurisdiction](#)

(3) Despite subsection 32(1) of the *Mackenzie Valley Resource Management Act* and section 18 of the *Federal Courts Act*, the Supreme Court of the Northwest Territories has exclusive original jurisdiction to hear and determine any action or proceeding, whether or not by way of an application of a type referred to in subsection 32(1) of the *Mackenzie Valley Resource Management Act*, concerning the jurisdiction of the Wekeezhii Land and Water Board during the period of six months after the coming into force of this Act.

Last updated: 2008-01-14



[Important Notices](#)