

*Government Orders*

The Northern Inland Waters Act aimed to achieve a comprehensive and co-ordinated water management regime in the northern territories. It vested the property and the right to the use of surface and ground waters in the Crown. It provided that the right to the use of waters or the right to deposit waste would be granted through the issuance of a licence or through regulations pursuant to the act.

It established quasi-judicial water boards, one in Yukon and one in the Northwest Territories, to issue the licences with the approval of the Minister of Indian Affairs and Northern Development.

Until now there have been no changes to the act except for some amendments in 1978 when the Northern Pipeline Act was passed. Despite the worth-while goals of the legislation, problems have been experienced in practice. Shortly after the act was proclaimed the water boards were overwhelmed with applications they could not handle. Consequently the Department of Indian and Northern Affairs used a provision of the act permitting the authorization of specified minor water uses by regulation.

Authority was provided through the regulations for a controller of water rights in each territory to approve all minor water uses which met the specified non-licensing criteria. The result was that over 90 per cent of water applications were approved by the controllers.

In 1981 the Dene nation and the Métis Association of the Northwest Territories filed a claim with the Federal Court. They challenged the legality of the department's non-licensing practice because of the lack of public input. The Federal Court ruled in 1984 that the practice was *ultra vires* the act.

The department then amended the regulations to exempt certain water users from any approval process. This situation was equally unsatisfactory. The 1985 report of the federal water policy inquiry recommended several changes to the current system. The report said that the arrangement for authorizing minor water uses in Yukon and Northwest Territories should be revised and clarified in consultation with the territorial water boards and other interested parties.

New procedures needed to be established to ensure that all uses of water would be authorized in some way. The complexity of the procedure for processing applications for minor water uses would be commensurate with their importance. Those water uses that may be exempted from the full licensing procedure would be clearly identified in regulations. The water boards would have the power to require a full licensing procedure when they believed it was appropriate. Finally procedures for approving minor as well as major uses would be open to the public and responsive to its concerns.

In 1986 water management concerns in Yukon led to the establishment by the department of a task force on placer mining. Its final report also made recommendations to amend the Northern Inland Waters Act. It recommended that the Northern Inland Waters Act be separated to create two separate acts, one for Yukon and one for the Northwest Territories, and that the regulations also be separated for each territory. It also recommended the establishment of a two-licence concept, class A and class B licences. As well it recommended stop work orders in situations where non-compliance licence conditions pose serious and imminent dangers.

A consultation process was initiated by the department in response to the growing number of calls for changes to the act. The department produced a discussion paper in May 1987. In October 1990 the Yukon Mining Advisory Committee was established. Its report to the minister was submitted in April 1991. All its recommendations except one have apparently been included in the proposed legislation before us which was tabled in the House last December.

It is important and relevant at this time to point out that the Auditor General's 1990 report was extremely critical of the management of the Department of Indian and Northern Affairs and particularly its water management. The Auditor General noted, for example, that although the department does have some information on water quantity, it has very little information on water quality.

The Auditor General also indicated that the department does not carry out water licence inspection and enforcement vigorously and that several significant wa-