

2005



Report of the  
**Auditor General  
of Canada**  
to the House of Commons

APRIL

**Chapter 6**  
Indian and Northern Affairs Canada—  
Development of Non-Renewable Resources  
in the Northwest Territories



Office of the Auditor General of Canada

*The April 2005 Report of the Auditor General of Canada comprises six chapters, and a Message From the Auditor General of Canada and Main Points. The main table of contents is found at the end of this publication.*

The Report is available on our Web site at [www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca).

For copies of the Report or other Office of the Auditor General publications, contact

Office of the Auditor General of Canada  
240 Sparks Street, Stop 10-1  
Ottawa, Ontario  
K1A 0G6

Telephone: (613) 952-0213, ext. 5000, or 1-888-761-5953  
Fax: (613) 943-5485  
E-mail: [distribution@oag-bvg.gc.ca](mailto:distribution@oag-bvg.gc.ca)

*Ce document est également publié en français.*

© Minister of Public Works and Government Services Canada 2005  
Cat. No. FA1-2005/1-6E  
ISBN 0-662-39697-9



Chapter

# 6

**Indian and Northern Affairs Canada**  
Development of Non-Renewable  
Resources in the Northwest Territories

*All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by the Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.*

# Table of Contents

<b>Main Points</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
Historical overview of non-renewable resources in the North	3
An evolving regulatory framework for developing resources	3
Parties involved in resource development	4
Process for approving resource development applications	6
Focus of the audit	7
<b>Observations and Recommendations</b>	<b>8</b>
<b>Governance of resource development</b>	<b>8</b>
A reduced operational role for the Department in regulating development	8
The Department needs to take a more active role to fulfill its responsibilities	9
Guidance on key terms in the legislation needs to be provided	9
Regulations for water should be established	10
The Department needs to establish an effective process to ensure that the boards have the appropriate resources	11
<b>Renewing the Department's role</b>	<b>12</b>
The Department needs to hold the boards accountable for managing the process	12
Good reporting begins with a clear understanding of the accountability relationship	14
The Department needs to establish an effective working relationship with the boards	15
<b>Conclusion</b>	<b>16</b>
<b>About the Audit</b>	<b>18</b>





# Indian and Northern Affairs Canada

## Development of Non-Renewable Resources in the Northwest Territories

---

### Main Points

**6.1** Non-renewable resources offer enormous potential for economic development in the Northwest Territories (NWT). Yet the investment climate for this development is uncertain, in part because Indian and Northern Affairs Canada has not adequately managed its role in the process that considers development projects.

**6.2** This includes not providing guidance on some of the ambiguous terms in the governing legislation or on establishing water standards permitted by legislation. It also includes not requiring boards to be accountable for managing their role in the process without impinging on the decisions they take as quasi-judicial bodies.

### Background and other observations

**6.3** Our audit examined how well Indian and Northern Affairs Canada (INAC) has managed its responsibilities that form part of the application and licensing process for the development of non-renewable resources in the Northwest Territories.

**6.4** With the signing of land claim agreements in the Northwest Territories and the passage of the *Mackenzie Valley Resource Management Act* (MVRMA), the federal government created a series of boards to regulate the use of land and water and protect the environment. When these boards were created, the Department felt that the federal government's best course of action was to leave the boards to administer the process on their own in order to ensure that the Aboriginal peoples of the NWT understood that the federal government was sincere in relinquishing control. That decision seven years ago has contributed to a regulatory environment that, today, needs strengthening.

**6.5** As the federal government continues negotiating the transfer of responsibilities to the Northwest Territories, it is important for Canadians that the process for developing non-renewable resources that the NWT may inherit is well managed.

**6.6** Furthermore, seven years since the passage of the Act, it is timely for the Department to re-examine its approach to managing the process and strengthen it in the areas described in this report to ensure that it is sufficiently robust to meet the challenges and realize the opportunities of the coming decade.

**The Department has responded.** Indian and Northern Affairs Canada agrees with all the recommendations and has committed to taking action to address the concerns we raise in this chapter.





## Introduction

### Historical overview of non-renewable resources in the North

**6.7** The development of non-renewable resources is vital to the economic development of Canada's North. In the Northwest Territories (NWT), this means the development of, primarily, minerals and natural gas.

**6.8** While the discovery of metals goes back to the 18th century, modern mining began with the Yukon gold rush in the late 1800s. Oil was later found at Norman Wells, NWT, in 1918. Fifty years later, gas was discovered in the Mackenzie-Beaufort Delta; however, it has remained inaccessible to North American markets because there has been no way to bring it south. Today, 30 years later, a new application has been made to build a pipeline.

**6.9** On the mining side, in addition to gold, lead and zinc are the two metals most commonly extracted in the NWT. But diamonds represent the new mining frontier.

**6.10** In 2003, the gross domestic product of the Northwest Territories was \$3,332 million, about 13 percent higher than the year before. Since 2000, about two years after miners extracted the first diamonds, the NWT economy has grown annually by about 10 percent. In the same period, the share of the economy represented by mining (excluding gas and oil) grew from just under 24 percent to about 42 percent, and the size of the mining industry more than doubled. The industry will get another boost once a third diamond mine is up and running, expected in 2006. The other potential impetus to the NWT economy is natural gas in the Arctic, which will depend on the construction of the proposed Mackenzie Valley pipeline.

### An evolving regulatory framework for developing resources

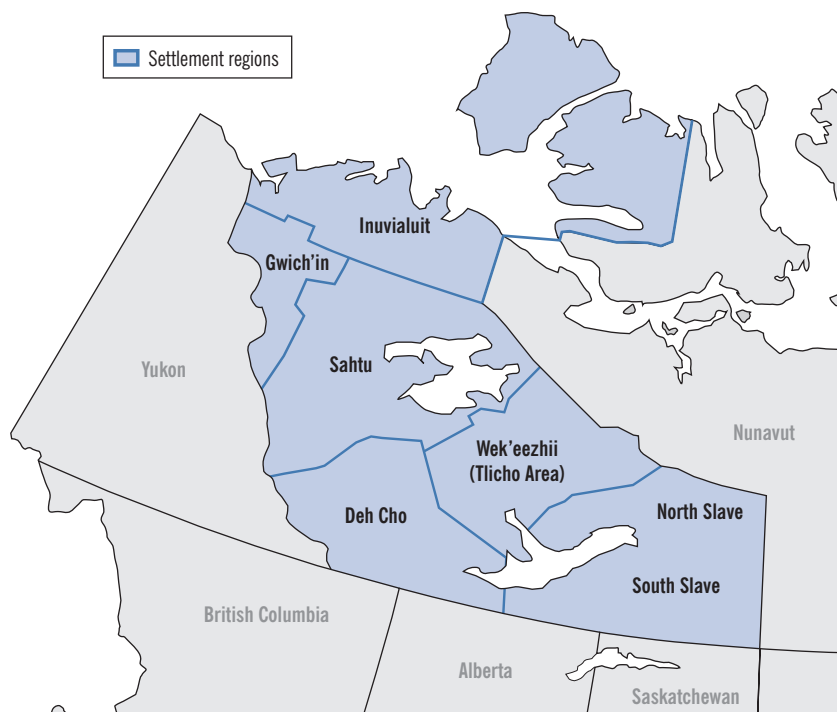
**6.11** The environmental consequences of resource development have been a matter of growing concern in Canada since the late 1960s. With the federal government's commitment in 1974 to review the environmental effects of federal decisions throughout Canada, all development projects on federal lands or in areas under federal jurisdiction became subject to screening to ensure the least possible damage to the environment. In 1984, the Environmental Assessment and Review Process Guidelines Order codified what had been a largely unwritten process arising from the 1974 Cabinet policy.

**6.12** In 1995, the *Canadian Environmental Assessment Act* (CEAA) replaced the Order and became the basis for conducting environmental assessments in areas of federal jurisdiction.

**6.13** The devolution of federal responsibilities to the territorial governments and the existence of Aboriginal land claim settlements have made environmental assessments in the North more complex. On 1 April 2003, the Government of Yukon took over the management of its non-renewable resources, except in areas where transboundary development is proposed. However, environmental assessment responsibilities will remain under federal

authority, but with significant participation from the Yukon First Nations. In Nunavut, the land claim settlement established a process for issuing land use permits and water licences as well as a process for dealing with environmental concerns. In the NWT, except in the Inuvialuit land claim area, environmental considerations and the issuing of licences and permits fall under the 1998 *Mackenzie Valley Resource Management Act* (MVRMA) and the Sahtu and Gwich'in land claims legislation (Exhibit 6.1). As other claims are settled, such as the Tlicho claim, where the ratifying legislation is before Parliament, and the Deh Cho claim, which is currently being negotiated, the MVRMA will be amended to incorporate them into the process.

**Exhibit 6.1** Aboriginal settlement areas in the Northwest Territories



**6.14** The MVRMA was created to meet a federal obligation under the Sahtu and Gwich'in land claim agreements and implementing legislation. It called for the creation of public boards to manage the application process for the development of renewable and non-renewable resources in the Mackenzie Valley.

#### Parties involved in resource development

**6.15** The application for non-renewable resources development begins when a developer applies to a MVRMA-created board for a land use permit and/or water licence (there are two types of water licence—Type A and Type B; Type A is for larger and/or more complex projects). Once an application is received, several organizations become involved.

**6.16 Minister for Indian and Northern Affairs.** The MVRMA assigns to the Minister several responsibilities for resource management in the Mackenzie Valley. These include operational and governance responsibilities. At the operational level, responsibilities include

- adopting, with or without modifications, or rejecting recommendations of the Mackenzie Valley Environmental Impact Review Board; and
- approving Type A water licences issued by the land and water boards.

**6.17** At the governance level, section 82 of the MVRMA sets out the principal responsibility of the Minister for Indian and Northern Affairs in relation to land and water regulation; it gives the minister the authority, after consultation with a board, to give written policy directions binding on that board regarding its responsibilities for land and water regulation. Other responsibilities include

- making regulations about water quality, after consultation with the Mackenzie Valley Land and Water Board;
- appointing board members where, except for the chair, half are selected from First Nation nominations and the other half from government nominations;
- appointing the board chairs; and
- specifying the form of the annual report that the boards must submit to the Minister.

**6.18 Gwich'in, Sahtu, and Mackenzie Valley land and water boards.**

These federally created boards are responsible for regulating the use of land and water and the deposit of waste in the Mackenzie Valley, for the benefit of NWT residents and all Canadians. The boards receive applications for the land permits and/or water licences needed before such projects can proceed. If a project is limited to Gwich'in or Sahtu land, the board for the region in question manages the application process. If the project crosses boundaries or is on land not covered by a settled land claim, the Mackenzie Valley Land and Water Board is responsible.

**6.19 Gwich'in and Sahtu land use planning boards.** Created by the federal government in 1998, these boards are responsible for preparing land use plans and overseeing land use in the Gwich'in and Sahtu settlement areas. When a developer submits an application for development on Gwich'in or Sahtu land, the proposal is forwarded to the planning board for the region in question to ensure that the application complies with the land use plan for the area.

**6.20 Parties affected by the development proposal.** Before the land and water board can proceed with an application, it must notify any organization or individual affected by the proposal. This could include any number of federal and territorial organizations and local governments, as well as organizations associated with the Gwich'in, Sahtu, or Tlicho land claims.

**6.21 Mackenzie Valley Environmental Impact Review Board (MVEIRB).** The federal government created this board in 1998 to conduct environmental

assessments and reviews of resource development applications referred to it by other boards and organizations or on its own motion.

### Process for approving resource development applications

**6.22** The steps in the approval or rejection of an application for a permit or licence are set out in the *Mackenzie Valley Resource Management Act*.

**6.23 The boards are key to making the process work.** This process involves four boards: the Mackenzie Valley Land and Water Board; its two panels, the Gwich'in Land and Water Board and the Sahtu Land and Water Board; and the Mackenzie Valley Environmental Impact Review Board.

**6.24** In the past, Indian and Northern Affairs Canada and the Northwest Territories Water Board had primary authority over resource development. With the Inuvialuit land claim agreement in 1984, the Sahtu and Gwich'in land claim agreements in the early 1990s, and the passage of the MVRMA, the creation of a number of boards in the Northwest Territories changed the Department's role by introducing a new way of managing resource development in the NWT. The federal government no longer directly controlled the issuing of permits and licences for land and water use. Nor was it responsible for assessing the potential environmental impacts of development. This meant that the First Nations and Inuvialuit obtained what they had been seeking for some time: participation in regulating the use of resources on their lands, with the boards being the vehicle for that participation.

**6.25** The boards have become the filter through which must pass every application for resource development that requires a land use permit or water licence. There are no exceptions; the Minister cannot bypass the process unilaterally or intervene before the process has run its course and reports have been issued.

**6.26 Timelines are established.** At the beginning of the process, a board will formally acknowledge that it has received an application only when it is satisfied that the application is complete. This acknowledgement establishes the period within which the applicant can expect a response, ranging from 42 days for a land use permit to up to 90 days for a water licence, unless the application is referred to the MVEIRB for an environmental assessment.

**6.27 Applications must conform to land use plans.** Land use plans provide for the conservation; development; and use of land, water, and resources in an area covered by a settled land claim. Once an application is complete, the board will check whether it conforms to the land use plan that applies; if it does not, and cannot be amended, it is rejected.

**6.28 Applications must go through a preliminary screening.** The first stage in the review of a complete application is a preliminary screening by the appropriate land and water board or any other regulatory authority that has a power to issue a license or permit. If any of these bodies determines that the proposed project "might have a significant impact on the environment or

might be a cause for public concern,” it refers the application to the MVEIRB for an environmental assessment.

**6.29** The land and water boards must send the application to various expert reviewers for their comments on the likelihood of environmental impact and public concern. These reviewers include various departments and agencies of both the federal government and the Government of the Northwest Territories, as well as the First Nation communities affected.

**6.30** If the proposed development is unlikely to cause a significant public concern or adverse environmental impact, either the Gwich'in, Sahtu, or Mackenzie Valley land and water boards decides whether the licence or permit should be issued and establishes the terms of the licence.

**6.31 The Mackenzie Valley Environmental Impact Review Board manages the environmental assessment process.** When any one of the preliminary screening bodies identified by the MVRMA believes that a proposed development outside of a local government boundary might cause a significant adverse impact on the environment or might be a cause of public concern, the Review Board is required to do an environmental assessment even without a referral from a land and water board. If the proposed development is inside a local government boundary, the condition for conducting an environmental assessment changes from “might” to will “likely” cause a significant adverse impact on the environment. The Review Board can also decide on its own to conduct an environmental assessment.

**6.32** On completing an environmental assessment, the Review Board will determine whether, in its opinion, the project is likely to have a significant adverse impact on the environment or to be the cause of significant public concern. If the Board finds that a project does not give rise to one of these conditions, then it can determine that no further review need be done. If it finds that the proposal does meet one of these conditions, it can order a more extensive environmental impact review. It can also recommend approval, subject to sufficient mitigating conditions, or it can recommend that the Minister reject the proposal without any further review.

**6.33** The course of action open to the Minister upon receiving a report from the Review Board is limited. He or she can adopt the recommendations, refer them back to the Board for further consideration, reject them, or after consulting the Board, adopt the recommendation with modifications. The Minister cannot modify the recommendations without consulting the Board.

### Focus of the audit

**6.34** Our audit examined how well Indian and Northern Affairs Canada is managing its responsibilities for the process set out in the *Mackenzie Valley Resource Management Act* for the development of non-renewable resources in the Northwest Territories (apart from the Inuvialuit Settlement Region). We looked at the process from the point at which one of the regulatory and environmental assessment boards receives an application for a permit and/or licence until a decision by one of those boards is made.

**6.35** We did not audit any of the boards' responsibilities for their practices, procedures, or internal administration; nor did we examine the roles that other federal departments and agencies play in the process. However, we did interview officials from the boards to understand how the Department is managing its responsibilities.

**6.36** Further details on our audit objectives, scope, approach, and criteria are presented in **About the Audit** at the end of the chapter.

## Observations and Recommendations

### Governance of resource development

#### A reduced operational role for the Department in regulating development

**6.37** With the signing of land claims, the creation of the boards, and the passage of the *Mackenzie Valley Resource Management Act* (MVRMA), the federal government effectively transferred part of its existing responsibilities for managing the development of non-renewable resources—regulating the use of land and water and examining the environmental impacts of non-renewable development proposals—to several boards in the Northwest Territories. Those boards are the Mackenzie Valley Land and Water Board; its two panels, the Gwich'in Land and Water Board and the Sahtu Land and Water Board; and the Mackenzie Valley Environmental Impact Review Board.

**6.38** The Act provides an overall framework for that process that includes a series of discrete steps. All the parties we spoke to understood the framework, the steps in the process, and the decisions that must be made at each of the points.

**6.39** Having transferred this regulatory authority to the boards, the Department retained several responsibilities that need to be managed well if the process is to work as intended. It maintained those responsibilities because it recognized that the investment climate in the Northwest Territories (NWT) could be influenced by how well the process worked. Accordingly, we looked at how the federal government is managing its responsibilities associated with the process for the development of non-renewable resources in the NWT.

**6.40** In managing those responsibilities, we expected the Department to have provided adequate direction to ensure that the details to make the process run smoothly were in place. We also expected the Department to have determined that the boards had the required resources, both financial and non-financial, to carry out their functions. Finally, we expected the Department to have managed its responsibilities and authorities in a way that demonstrated that the roles, capacities, and accountabilities of those involved in the process are clear and fulfilled.

### The Department needs to take a more active role to fulfill its responsibilities

**6.41** While Indian and Northern Affairs has transferred some of its operational responsibilities for resource development in the Northwest Territories, it continues its governance role in several areas. Through the audit, we identified four areas where the decision the Department took some seven years ago regarding its scale of its involvement needs revisiting. These include

- providing guidance on key terms in the legislation,
- establishing regulations for water quality,
- ensuring the boards have the necessary resources to carry out their functions, and
- requiring the boards to be accountable not only for financial performance but also for the way in which they manage their responsibilities for the process.

**6.42** According to Indian and Northern Affairs officials, the Department decided to keep its involvement to a minimum given the need to assure Aboriginal peoples of the NWT that the federal government was sincere in relinquishing control. Seven years later, that decision has resulted in ambiguity surrounding the regulation of non-renewable resources, which has raised the uncertainty that the process will be applied consistently. It would seem timely today for the Department to address the issues we raise to help ensure that the process is sufficiently robust to meet the challenges and to realize the opportunities of the coming decade.

### Guidance on key terms in the legislation needs to be provided

**6.43** Under the *Mackenzie Valley Resource Management Act*, a land and water board or any regulatory authority must conclude at the preliminary screening of a proposal whether it “might have a significant impact on the environment or might be a cause for public concern.” If the authority believes the proposal might have a significant impact, it will refer the application to the Mackenzie Valley Environmental Review Board for an environmental assessment.

**6.44** Interested parties we interviewed indicated that before submitting an application or registering a matter that could cause public concern, they should be entitled to guidance on how key terms such as “might have a significant impact on the environment” or “may be a cause for public concern” are to be interpreted. In this regard, the Department has given the land and water boards no such guidance, nor do applicants for permits receive any direction on how the land and water boards might interpret the terms. Yet, in other similar legislation such as the *Canadian Environmental Assessment Act*, Environment Canada has issued draft guidelines that are being used for assessing the role of public participation in similar processes under its jurisdiction.

**6.45** In 2004, the Review Board issued guidance on how the word “might” could be applied in practice, and there are several environmental publications that provide direction on interpreting the word “significant.” But the boards,

or any party in a similar position, are not required to use this guidance or any particular interpretation.

**6.46** Consequently, any of the land and water boards or any regulatory authority can require the Review Board to conduct an environmental assessment without having to be accountable for that decision. Environmental assessments, which by their nature take time and increase costs, are an important component in the regulatory process and should only be used when justified.

**6.47 Recommendation.** Indian and Northern Affairs Canada, in consultation with the boards under the *Mackenzie Valley Resource Management Act*, should develop guidelines for clarifying key terms in the legislation.

**Department's response.** The Department, with the boards throughout the Northwest Territories (NWT), has developed a process known as the NWT Board Forum. Through this forum, the Department will work with the boards to develop guidelines to clarify key terms of the legislation. These will be based on the precedent work already completed through the *Canadian Environmental Assessment Act*. A working draft for external consultation will be completed by 1 April 2006.

#### **Regulations for water should be established**

**6.48** When the land and water boards issue water licences under the authority of the *Northwest Territories Waters Act* and the MVRMA, they require the licensees to meet certain conditions such as measures to mitigate the environmental impacts of the use of water or the deposit of waste. Applicants for licences or permits should be able to know before they submit their proposals the standards for water use and waste disposal that they must meet. In that way, they would be able to demonstrate in their project plans how they will meet those standards.

**6.49** In fact, the *Northwest Territories Waters Act* provides for the Minister for Indian and Northern Affairs, working with the boards, to make regulations governing the quality of water. Similarly, the MVRMA gives the Minister the authority to provide written policy directions regarding land and water regulations.

**6.50** However, the Department has chosen not to exercise these authorities. Consequently, when completing an application for a water licence, applicants do not know whether they are to meet an international standard of water quality, a national or territorial standard, a standard specific to the development site's environment, or the highest standard established by science.

**6.51** This absence of direction on standards for water can raise the risk of confusion and uncertainty over the stringency of the requirements that applicants are to meet in order to have their applications approved.

**6.52 Recommendation.** Indian and Northern Affairs Canada, in consultation with the boards under the *Mackenzie Valley Resource Management*



Act, should develop standards for water and the Minister should direct the boards to use the standards.

**Department's response.** In consultation with the boards and water users, the Department will ascertain the information needs (with respect to water standards used by the boards to set licence terms and conditions) of water users and the best form to provide proponents with certainty. A report on information needs will be completed by the end of 2006.

In consultation with the boards, the Department will develop water standards and set them out in codes, guidelines, policy, or regulations, as best fits the need. A completion date will be determined as part of the consultation.

The Department will improve the system for notification to the boards of various standards. This will be an ongoing process.

**The Department needs to establish an effective process to ensure that the boards have the appropriate resources**

**6.53** The land and water boards are to conduct their business at arm's length from government and the First Nations that nominate them. Their business includes deciding on the use of land and water and protecting the environment. The business of the Mackenzie Valley Environmental Impact Review Board also includes recommending the approval of projects, subject to taking measures to mitigate significant adverse environmental impacts.

**6.54** It is important that the boards have the resources to carry out their functions, because their decisions and recommendations, once the Minister has accepted them, are binding. There is no appeal except to the courts. Given the significant consequences of the boards' decisions, we expected the Department to have made every effort to ensure that the boards had the resources to make informed decisions. Such resources are not only financial but also include appropriate guidance to ensure that the boards are well versed in the most appropriate techniques and approaches needed to carry out their tasks. They also include the kind of policy directives discussed earlier and clear direction on their roles and responsibilities. However, we saw no evidence that the Department carried out this responsibility.

**6.55** The lack of clarity in the roles and responsibilities is evident in a letter the Minister wrote the Review Board to question the relevance of some of its recommendations and to indicate the need to define roles and responsibilities as well as a process for consultation on future projects. He wrote that in all future environmental assessments, the Review Board should explain how each recommendation would prevent the environmental impacts identified in the assessment.

**6.56** When the boards were created, the federal government left them to determine how they would conduct their business. It provided no systematic orientation programs for board members and staff so they would understand, for example, the powers and procedures of federal boards with administrative tribunal responsibilities, the responsibility of federal boards to comply with federal requirements such as contracting policies, the various laws that

govern resource management in the NWT, and the extent of board members' responsibilities. Currently, the Minister's letter of offer to newly appointed board members says nothing about their responsibilities and duties as board members; it comments only on the requirement to comply with a code of conduct.

**6.57** We noted that the September 2004 report to the government by the External Advisory Committee on Smart Regulation, *Smart Regulation: A Regulatory Strategy for Canada*, addressed some of these issues.

**6.58** We believe that Indian and Northern Affairs can help the boards to carry out their functions if it develops a way for boards to share information with each other regularly and receive updates on federal expectations and recent legal rulings and interpretations. Yet the Department has not made sufficient effort to ensure that a means of sharing information is in place.

**6.59 Recommendation.** Indian and Northern Affairs Canada should work with the boards under the *Mackenzie Valley Resource Management Act* to identify best practices and to assess training needs and provide for them, where appropriate.

**6.60 Recommendation.** Indian and Northern Affairs Canada should work with the boards under the *Mackenzie Valley Resource Management Act* and other boards in the Northwest Territories to develop a permanent process for sharing best practices and solutions to the challenges they face.

**Department's response.** The Department has already met with some boards to discuss outstanding issues (for example, best practices, training needs, etc.) and has developed a process, which includes the NWT Board Forum, for ongoing dialogue to resolve those issues. This will become an ongoing agenda item at the next NWT Board Forum, scheduled for fall 2005.

The Department will research and compile, as a starting point, best practices of other institutions of public government or expert organizations. The Department will prepare a preliminary report by fall 2005.

The boards and government will utilize the NWT Board Forum as a key vehicle for discussing best practices and to assess training needs. The Board Forum meets regularly during each year. The Department expects that changes to the boards' operations resulting from these discussions will start to be reflected in 2006–07 strategic, business, and expenditure plans of the boards.

## Renewing the Department's role

### The Department needs to hold the boards accountable for managing the process

**6.61** The Mackenzie Valley Land and Water Board, the Sahtu and the Gwich'in land and water boards, and the Mackenzie Valley Environmental Impact Assessment Board were all created by federal legislation and are wholly funded by the federal government. The Minister for Indian and Northern Affairs also appoints all board members.

**6.62** The boards are required to produce audited financial statements of their operations each year, and they do. Beyond that, the annual reports of

each board contain little information to demonstrate the board's accountability for managing their responsibilities in the best interests of the residents of the Mackenzie Valley and all Canadians. Nor has the Department requested that they do so.

**6.63** The Department has the responsibility to request such accountability reporting from the boards, because the federal government funds them through flexible transfer agreements. Under the Policy on Transfer Payments, the federal government calls for a results-based management and accountability framework. Specifically, it calls for a written agreement between the department and the recipient that identifies the expected results. Furthermore, it requires the recipient to account for and report on the results actually achieved. It also identifies the flexible transfers Indian and Northern Affairs uses for funding the boards as being covered by this policy.

**6.64** These boards are not accountable for decisions they make when acting in a quasi-judicial capacity.

**6.65** One vehicle for demonstrating accountability for results is an annual report. A good annual report provides information that stakeholders can use to hold management accountable for performance against the organization's responsibilities. A good report also indicates what is working and what is not.

**6.66** The Smart Regulation report provides further support for such an accountability framework:

When taking regulatory action, regulators should announce the results they wish to attain, the manner in which they intend to measure them, as well as when and at what frequency they will report on them. They must demonstrate their progress in achieving these results and be prepared to modify their approach if necessary. Evidence of performance is essential to sustain public trust.

**6.67** Annual reporting to the Minister could be, for example, the vehicle whereby a board establishes and reports on the kind of service any applicant or intervener should expect to receive and how well the board is meeting those standards. In effect, it could become an accountability report that includes information on finances and on the way the board manages its responsibilities for the process.

**6.68 Recommendation.** Indian and Northern Affairs Canada should require that boards include in their annual reports to the Minister information not only on the board's financial performance but also on the way they manage their responsibilities for the process.

**Department's response.** All boards currently report on their financial performance annually.

The Department will continue discussions with the boards to implement changes to their reporting requirements to reflect not only their financial performance but also on the way in which they manage responsibilities for the

process. Changes to the boards' reporting documentation will be evident by the 2005–06 reports.

This initiative will be linked to the development or improvement of strategic plans.

**6.69 Recommendation.** Indian and Northern Affairs Canada should require that reporting on financial and non-financial performance begin with the annual reports for 2005–06 and the Minister should make the reports public.

**Department's response.** Discussions regarding changes to the reporting requirements are already underway. The Department will work with the boards to expand and strengthen the content of the annual reports. Initial changes will be evident in time to be reflected in the 2005–06 annual reports.

#### **Good reporting begins with a clear understanding of the accountability relationship**

**6.70** Before the boards can develop appropriate accountability reports, there is a need for clear direction from the government on the roles and responsibilities of the boards.

**6.71** The Act provides a start; it indicates that the objective of the Mackenzie Valley Land and Water Board is to regulate land and water use to provide optimum benefit to residents of the Mackenzie Valley and to all Canadians. It also specifies that the Mackenzie Valley Environmental Impact Review Board is to protect the environment from significant adverse impacts of development and to protect the social, cultural, and economic well-being of people in the Valley.

**6.72** These objectives represent high-level outcomes of the Act. They are primarily the responsibility of the Department and are difficult to report against except through periodic evaluations. Moving from these high-level intentions to an operational level means developing a working management framework for the boards' operations. Such a management framework would require a clear statement of the boards' roles and responsibilities. It also would require strategic plans that include annual operational plans that describe how the boards are to carry out their responsibilities and appropriate indicators to hold them accountable for doing so.

**6.73** The American Society for Quality defines strategic planning as “the process by which an organization envisions its future and develops strategies, goals, objectives, and action plans to achieve that future.” We expected that with the creation of these boards, or relatively soon after, the Department would have provided direction on their roles and responsibilities and the role of strategic planning in reporting performance. But this was not the case.

**6.74** We found that the Review Board, on its own initiative, has made some progress by developing a strategic plan that includes possible performance measures and recognizes the need to develop service standards.

**6.75** Demonstrating performance could include establishing and reporting against service standards. It could also include working with such

organizations as the American Society for Quality or the International Organization for Standardization to develop service standards and demonstrate levels of quality achieved. In this regard, we do not mean measures that relate to any quasi-judicial functions of the boards.

**6.76 Recommendation.** Indian and Northern Affairs Canada, in consultation with the boards under the *Mackenzie Valley Resource Management Act*, the Aboriginal communities in the Northwest Territories, and other stakeholders, should clarify the roles and responsibilities of the boards.

**Department's response.** Bilateral discussions on roles and responsibilities with some of the boards are already underway and replies to our invitation from the others are pending. In addition, this will become an agenda item for the NWT Board Forum. The Department will also initiate discussions with the representatives of groups with settled claims to ensure that roles and responsibilities reflect the claims agreements and legislation. This is an ongoing process of updating, renewal, and evolution. First results will be evident by April 2006.

**6.77 Recommendation.** Indian and Northern Affairs Canada should work with each board under the *Mackenzie Valley Resource Management Act* to develop a strategic plan that includes a statement about the board's mandate, vision, and mission; strategies for achieving them; and measures to demonstrate performance.

**Department's response.** Discussions with some boards on the development of, or strengthening existing, strategic plans is already under way and will continue. Other boards will be contacted for bilateral discussions. In addition, this will become an ongoing agenda item for the NWT Board Forum. All the boards will be requested to develop a strategic plan by April 2006.

The Department recognizes that strategic plans and performance measurements are not static and improvements will be ongoing.

**6.78 Recommendation.** Indian and Northern Affairs Canada should include in its *Report on Plans and Priorities* for 2005–06 a section that indicates how it plans to address the recommendations in this chapter. In subsequent performance reports, it should demonstrate its performance against these plans.

**Department's response.** The Department will include in its Report on Plans and Priorities (RPP) an action/work plan that indicates how it plans to address the recommendations in this chapter and report on progress. The action/work plan will be completed by April 2006. Future RPPs will report progress and achievements.

#### **The Department needs to establish an effective working relationship with the boards**

**6.79** We observed little formal communication between the boards and the Department to identify common challenges and find common solutions, as reported earlier in the chapter. We saw little indication that the Department, whose Minister has the authority to consult with the boards in providing policy direction, has worked with the boards to develop a shared

interpretation of key terms in the legislation. We saw no indication that the Department has made any effort to establish reasonable standards for water quality. We also saw no evidence of any kind of accountability reporting except for financial reporting.

**6.80** Indian and Northern Affairs Canada has a responsibility to improve the state of resource management in the Northwest Territories. In our view, the Department needs to strengthen its relations with the boards in order to meet its responsibilities over the coming decade. This includes exercising its authority under the *Mackenzie Valley Resource Management Act* and consulting more closely with the boards.

**6.81** We noted that the Department has made some effort in the last two years to improve its relationship with the boards. For example, it established a Board Relations Secretariat in Yellowknife. The Secretariat's purpose is to improve communication between the Department and the boards, to help resolve operational issues and interpretation differences that arise in implementing the Act, to administer board appointments by the Minister and funding arrangements for the regional boards, and to provide day-to-day advice and support to the boards.

**6.82** We saw, however, no evidence of the Department going beyond developing a relationship at the operational level. For example, we saw little effort by the Department to develop an ongoing relationship among the chairs and executive directors of the boards and senior officials in the Northern Affairs branch of the Department.

**6.83 Recommendation.** Indian and Northern Affairs Canada should establish an ongoing process of consultation between the heads of the boards under the *Mackenzie Valley Resource Management Act* and the senior officials of the Department.

**Department's response.** The Department has requested that the boards increase and regularize their consultation with the government on key issues and will undertake bilateral meetings as required. In addition, the NWT Board Forum will be utilized as a key vehicle for ongoing consultation with the heads of the boards and senior departmental officials.

## Conclusion

**6.84** We believe that Indian and Northern Affairs Canada is not adequately managing its responsibilities that form a key part of the process for approving the development of non-renewable resources in the Northwest Territories.

**6.85** It has not yet exercised its authority under the *Mackenzie Valley Resource Management Act* to provide adequate direction to the public boards that manage the application process for the development of renewable and non-renewable resources in the Mackenzie Valley. Such direction would ensure that the details to make the process run smoothly are in place. These

include standards for water quality and guidance on key terms in the legislation.

**6.86** The Department has not taken steps to ensure that the boards have the appropriate management foundation and ongoing assistance to help them carry out their responsibilities.

**6.87** The Department also has not obliged the boards to comply with the requirement to be accountable for managing their responsibilities under the process in the best interests of the residents of the Mackenzie Valley and all Canadians.

**6.88** These matters are important for two reasons. First, while we recognize that the boards and the federal government need time to iron out their working relationships in this relatively new process, the continued absence of policy direction in crucial areas, the lack of support for effective knowledge building, and the lack of an appropriate accountability model have put the investment climate in the Northwest Territories at risk. Second, in the current negotiations to devolve federal responsibilities to the territories, control over non-renewable resources is high on the agenda.

**6.89** In the *Indian and Northern Affairs Canada and Canadian Polar Commission Performance Report for the period ending March 31, 2003* the Department noted that the investment climate in the North is influenced by the efficiency, transparency, and fairness of regulatory frameworks and the new powers of public institutions to manage land and resources. It also noted the concerns expressed by industry that uncertainty, instability, and inefficiencies are constraining investment and limiting business opportunities. We believe that implementing our recommendations will contribute to remedying these concerns.

## About the Audit

### Objectives

The objective of the audit was to determine how well the federal government is managing its responsibilities associated with the process for the development of non-renewable resources in the Northwest Territories, other than the Inuvialuit Settlement Region.

### Scope and approach

We audited the process that was established by the *Mackenzie Valley Resource Management Act* (1998), and focussed mainly on Indian and Northern Affairs Canada.

In particular, we looked INAC's responsibilities that form part of the process beginning with the application for a land permit and/or water licence and ending with the decision on the application.

We conducted the audit mainly through interviews of officials and review of documents from the departments involved, primarily Indian and Northern Affairs Canada. We also reviewed publicly available documents associated with resource development applications. In addition, we interviewed key stakeholders, including representatives of the mining companies and industry, the Government of the Northwest Territories, and Aboriginal groups.

This process for development involves four boards: the Mackenzie Valley Land and Water Board; its two panels, the Gwich'in Land and Water Board and the Sahtu Land and Water Board; and the Mackenzie Valley Environmental Impact Review Board. We did not audit any of the boards' practices, procedures, or internal administration associated with their responsibilities; nor did we examine the roles that other federal departments and agencies play in the process. We did however interview officials from the boards to understand how Indian and Northern Affairs is managing its responsibilities.

### Criteria

We expected that Indian and Northern Affairs Canada would manage the process by the following:

- communicating the process to stakeholders in a way that is timely, transparent, understandable, and predictable;
- conducting periodic reviews and making adjustments where necessary;
- ensuring that the process has timelines that are clear, managed, and reviewed;
- ensuring that the process has service standards that are clear, managed, and reviewed; and
- developing and managing a risk management process.

We expected that Indian and Northern Affairs Canada would manage the need for appropriate capacity in all steps, including

- conducting periodic reviews to determine if there are any gaps in resources needed to carry out its responsibilities, and
- preparing and implementing a plan for filling any gaps.

We expected that Indian and Northern Affairs Canada would ensure accountability for the organizations involved in the process, including having

- a clear understanding by all federal entities involved in the process of their roles, responsibilities, and accountability relationships;
- a clear leadership role for the process in the government;



- an appropriate accountability framework between the various organizations involved in the process and with Parliament;
- a clear understanding by participants that the process is fair; and
- a process for assessing performance.

**Audit team**

Assistant Auditor General: Ron Thompson

Principal: Jeff Greenberg

Director: Martin Ruben

Stacey Wowchuk

Lena Zecchino

For information, please contact Communications at (613) 995-3708 or 1-888-761-5953 (toll free).



# Report of the Auditor General of Canada to the House of Commons—April 2005

## Main Table of Contents

	Message From the Auditor General of Canada
	Main Points
<b>Chapter 1</b>	Natural Resources Canada—Governance and Strategic Management
<b>Chapter 2</b>	National Security in Canada—The 2001 Anti-Terrorism Initiative: Air Transportation Security, Marine Security, and Emergency Preparedness
<b>Chapter 3</b>	Passport Office—Passport Services
<b>Chapter 4</b>	National Defence—C4ISR Initiative in Support of Command and Control
<b>Chapter 5</b>	Rating Selected Departmental Performance Reports
<b>Chapter 6</b>	Indian and Northern Affairs Canada—Development of Non-Renewable Resources in the Northwest Territories

