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NUNAVUT IMALIRIYIN KATIMAYINGI
NUNAVUT WATER BOARD
OFFICE DES EAUX DU NUNAVUT

File No(s): 1BR-TAL (unlicensed)
3BM-REP0409
3BM-WHA0207

May 28, 2007

Mr. Jim Rogers
Manager, Water Resources
Indian and Northern Affairs Canada
P.O. Box 100
Iqaluit, NU X0A 0H0
Email: rogersji@inac-ainc.gc.ca

Re: Water License Applications: 1BR-TAL, 3BM-REP0409 and 3BM-WHA0207

Dear Mr. Rogers:

I am writing to you on behalf of the Nunavut Water Board (NWB or the Board). It has recently come to the attention of the Board that several facilities have been built prior to obtaining a required license pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA) and Article 13 of the NLCA. According to our information, this includes:

- Application 1BR-TAL: This is an application for a Type B water license filed by the Government of Nunavut for a land farm to dispose of hydrocarbon contaminated soils. The application was filed in December 2004 and distributed by the NWB for comment in April 2005. Comments were received by the parties; however, a license was not issued. The facility is now built and the Government of Nunavut has provided the NWB with “as built drawings”.
- Applications 3BM-REP0409 and 3BM-WHA0207: These are applications for amendments to Type B water licenses filed by the Hamlet of Repulse and Whale Cove respectively for an existing contaminated soil storage facility (not a landfarm). The amendment applications were filed on June 23, 2005 for Repulse and June 2, 2006 for Whale Cove respectively. The amendment applications have not been circulated for comment.

As you know, there has been a change in the administration of the NWB and the Board is currently in the process of clearing a backlog of applications; this is how we discovered this information. As you will concur, an NWB delay in processing an application—as inexcusable as that is—cannot be

construed by the applicant as authorizing a water use or deposition of waste in contravention of sections 11 and 12 of the NWNSRTA.

The Board does not condone the applicants' failure to comply with the NWNSRTA, and we suspect, neither would the courts. In this regard, the Board is keenly aware of the decision in *R v. City of Dawson* and Chief Judge Lilles finding that the conduct of the subject water board in granting a second and then third water-use license to the City of Dawson in circumstances where the City was in substantial breach of the first and then the second, constituted passive encouragement of non-compliance by the City.¹

Accordingly, we are writing to you pursuant to sections 86 and 87 of the NWNSRTA to make you aware of the status of these facilities, the related applications, and your advice in moving forward.

Presently, the Board and applicants are in the unfortunate position of the facilities being built without a license. Accordingly, the Board is seeking your comments on the (a) issuing of a license of the existing facilities for past activities, and/or (b) issuing a license to these facilities for purposes of monitoring the future operations.

Any other information that you or the unlicensed facilities may have with respect to the matters raised in this letter would be appreciated.

Please provide your comments to Dionne Filiatrault, Acting Executive Director by Monday, June 4, 2007.

Regards,

Original signed by:

Dionne Filiatrault, P. Eng.,
A/Executive Director

Cc: Navjit Sidhu, EIT – GN - nsidhu@gov.nu.ca
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¹ See *R. v. City of Dawson*, 2003 YKTC 16, at para. 46.