



INSPECTOR'S DIRECTION
Pursuant to Section 87(1) of the *Nunavut Waters*
and *Nunavut Surface Rights Tribunal Act, 2002*

8 March 2013

CIDM: 645730
File: 2AM-JER1119

ISSUED TO: Shear Diamonds Ltd.

Attn: Julie Lassonde-Gray, President and CEO

Suite 3300, 421 – 7 Ave. SW, Calgary, AB T2P 4K9

And: Suite 220, 6 Adelaide St. E, Toronto, ON M5C 1H6

ISSUED TO: Shear Diamonds (Nunavut) Corp.

Attn: Julie Lassonde-Gray

Suite 220, 6 Adelaide St. E, Toronto, Ontario M5C 1H6

And: Suite 220, 17010-103rd Ave, Edmonton, AB T5S 1K7

RE: *Nunavut Waters and Nunavut Surface Rights Tribunal Act, 2002*
INSPECTOR'S DIRECTION

This document constitutes an Inspector's Direction to Shear Diamonds Ltd. AND Shear Diamonds (Nunavut) Corp., pursuant to subsection 87(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act, 2002*, hereinafter referred to as the "Act".

REASONABLE GROUNDS FOR BELIEF

I, Eva Paul, an Inspector designated by the Minister of the Aboriginal Affairs and Northern Development Canada under subsection 85(1) of the Act, have reasonable grounds to believe:

- That waste has been deposited in contravention of a water licence and contrary to s. 12(1) of the Act; and that a recurrence of this deposit or other deposits may occur.
- That the adverse effects of such deposits are causing or may cause a danger to property and the environment.

1. On July 4th 2012, the Inspector completed a site inspection of the Jericho Diamond Mine (the "Site") and noted instances of non-compliance with Nunavut Water Board Licence #2AM-JER1119 (the "Water Licence") and the Act which pose a danger to property or environment:

- Spills of hazardous materials (diesel, motor oil) around site have not been properly cleaned up.
- Fine processed kimberlite (FPK) has been dispersed by wind out of the Processed Kimberlite Containment Area (PKCA), including into a neighbouring pond.
- Heavy contamination of the substrate in the Hazardous Waste Transfer Area may leak out, as the liners are torn and exposed.



2. At the time of the July 4th 2012 inspection, and in order to address the non-compliances noted on-site, the Inspector requested that Shear Diamonds Ltd. (“Shear”) provide to the Inspector by September 30th 2012 a detailed compliance plan with timelines to achieve compliance with the Water Licence and the Act.
3. Shear vacated the Jericho site on September 2nd 2012. Official notification was given to the Inspector of the ‘temporary closure’ on September 6th 2012. No plans were provided to indicate Shear’s intent to maintain compliance with the licence while in temporary closure.
4. Shear’s approved Interim Closure and Reclamation Plan includes a provision for Temporary Shut Down. This plan indicates that during a temporary shut-down, the Care and Maintenance Plan will be followed. The approved Care and Maintenance Plan is the plan under which Shear was already operating prior to vacating the site. Now all activity is suspended and the site is vacant. There are no provisions under the approved Care and Maintenance plan for the site to be left unattended.
5. On September 11th 2012, Shear provided to the Inspector a draft memo, “Current Conditions at the Jericho Diamond Mine, and the Identification of Potential Environmental Hazards and Risks”, which identifies issues, non-compliances, and potential risk at the site. In this memo, Shear identifies two principal areas of risk to the environment from the deposit of waste: the potential for further windblown Fine Processed Kimberlite (FPK) from the Processed Kimberlite Containment Area (PKCA), and the potential for overtopping Cell B/C in spring freshet, due to the current water levels in Cell B/C. Shear also indicated that they failed to complete the monitoring required for 2012 under Part I of the Licence.
6. On September 13th 2012, a second inspection was conducted of the Jericho site, accompanied by Ms. Lassonde. The Inspector noted the following instances of non-compliance with the Water Licence or approved plans and dangers to property or the environment:
 - Site shut-down was incomplete: fuel tanks were not locked out, fuel hoses were not bled. These pose a risk of leaking and could be tampered with.
 - Barrels of hazardous waste were left open in Phase 2 of the fuel tank farm. They may fill with precipitation and over-top, causing further contamination.
 - Barrels of fuel were left at the lay-down area out of secondary containment.
 - Shear’s departure from site meant that they ceased to keep the FPK saturated; by which they planned freeze-in the tailings and prevent it from being dispersed by wind over winter. Drying was visible at the time of the inspection.
 - The wind break which had been constructed for the PKCA in order to prevent the dispersion of dry FPK was not installed.
7. During the inspection, Ms. Lassonde stated that in her view that the best course of action to mitigate the FPK dispersion would be to cap the tailings with a layer of Coarse Processed Kimberlite before winter.
8. On September 24th 2012 the Inspector issued an inspection report to Shear with respect to the September 13th inspection. The report outlined actions that would be necessary to mitigate known risks and rectify ongoing non-compliance with the Act and the Water Licence. Several items were to be addressed prior to freeze-up:



- To move outstanding barrels of fuel from the lay-down area into the Hazardous Waste Transfer Area.
 - To seal the barrels of Hazardous Waste that remained in Phase 2 of the fuel tank farm.
 - To continue pumping down Cell B/C (based on the September 11th Draft Memo),
 - To prevent FPK dispersion through the mitigation methods to be outlined in the Compliance Plan (due September 30).
 - To further document the site shut-down, and provide inventory of fuel, hazardous waste and chemicals was requested by the Inspector, because no such inventory could be provided at the time of the September 13th inspection.
9. The absence of information regarding fuel, hazardous waste and chemicals impedes the Inspector's ability to conduct a complete assessment of risk at the site.
10. On October 2nd 2012, the Inspector received from Shear two documents: a Compliance Plan, dated September 30th 2012 and a Temporary Shut Down Plan, dated October 2012.
11. The Compliance Plan, which appears to be a draft document, speaks to a number of the items raised in the July 4th inspection report, but it does not provide timelines to achieve compliance with the Water Licence and the Act as requested by the Inspector. This plan indicates that Shear will return to site three visits in the winter of 2012/13, to address the priority issues identified in the September 11th Draft Memo. These are further detailed in the Temporary Shut Down Plan. The Compliance Plan details other administrative items with which Shear is non-compliant but provides no plan or timeline for achieving compliance. It also lists some issues raised in the September 13th inspection without responses. Eg: "HAZMAT Inventory: Peter will supply the majority of this information; EC#s for each fuel cell? Cubes in truck shop?"
12. The Temporary Shut Down Plan includes a list of actions that were taken by Shear to prepare the site for temporary closure. However, several items are inconsistent with the Inspector's findings of the September 13th inspection:
- The plan indicates that all barrels of fuel were moved to the HWTA; however, the Inspector noted full barrels left in the lay-down area outside the HWTA.
 - The plan indicates that all perishable goods were incinerated; however, there was a large bin of perishable food left unburned.
 - The plan indicates that the water from the Oztek berm was emptied; however, the berm was full during the inspection.
 - The plan indicates that "everything was locked up"; however the fuel tanks were not locked out, and buildings were not locked, including the Fuel Transfer Station.

The Temporary Shut Down Plan provides a schedule of site visits for the winter of 2012/13 during which Shear planned to address the priority issues at site. The first of the visits was scheduled for November 2012 to address the time-sensitive issue of FPK dispersion and to conduct a site inspection.

The Temporary Shut Down Plan also includes a compliance audit, and indicates that Shear **will not** address non-compliances with respect to the Aquatic Effects Monitoring



Program, Seepage Sampling, Geotechnical Inspection, General Monitoring Plan, and Site Monitoring and Inspections while in temporary closure.

13. In the September 24th report, the Inspector requested that Shear notify the inspector prior to Shear's November visit to site. No notification was given. The Inspector repeatedly tried to reach Shear through December and January 2013, but calls and e-mails were not returned. The Inspector has no basis to believe that Shear did return to site and conduct the necessary work.
14. Based on my observations, I believe that Shear has failed to comply with the Act, and with conditions of the water licence and approved plans, and that there is a danger to property and the environment resulting from the above actual and foreseeable deposits of waste.

Contraventions to the Water licence and the Act which have resulted or may result in an unlawful deposit of waste:

2AM-JER1119

- Part B (15): Failure to implement plans as approved by the Board:
 - Care and Maintenance Plan
 - Interim Closure and Reclamation Plan
 - General Monitoring Plan
 - Aquatic Effects Monitoring Plan.
- Part F (6)(e). Failure to permanently contain the processed kimberlite within the PKCA.
- Part H (1). Failure to consistently implement the Contingency Management Plan, resulting in incorrect and incomplete spill clean-ups.
- Part J (3): Failure to provide plans for maintaining compliance with the Terms and Conditions of the Licence and in accordance with Schedule J, item 1 while in Temporary Closure.

NWNSRTA

- S.12(1). Permitting the deposit of waste (Fine Processed Kimberlite) into water, or in dispersed locations where it may enter water, without the authorization of a licence.
- S.86(4) Failure to provide information requested by the Inspector.

MEASURES TO BE TAKEN

Pursuant to Section 87(1) of the Act, I hereby direct Shear to:

- (a) take all reasonable measures to prevent the deposit of waste as a result of the temporary closure and,
- (b) where such deposits have already occurred or cannot be prevented, to take all reasonable measures to counteract, mitigate or remedy the adverse effects to property or the environment as a result of the deposit of waste; including:
 1. To take such measures as are necessary to prevent the dispersal of FPK from the PKCA.



2. To locate and move all barrels of fuel and/or hazardous waste from the lay-down area into the Hazardous Waste Transfer Area.
3. To ensure that barrels containing Hazardous Waste are sealed and located in secondary containment.
4. To prepare an inventory of all Fuel, Hazardous Waste and Chemicals including location, quantities, and type of storage for submission to the Inspector.
5. To complete the shut-down of the site, including draining fuel hoses back into the tanks and locking out the tanks.
6. To complete the measures outlined in items 1-5 above by March 30th 2013 and to submit a written report, with photographic evidence of the completion of the measures outlined in items 1-5 above, to the Inspector by April 15th 2013.
7. To pump such water from Cell B/C as required to mitigate the risk of overtopping during spring freshet as identified in the September 11th Draft Memo. This water must meet discharge criteria prior to release.
8. To submit a written report including discharge volumes and dates, of the completion of the measure outlined in item 7 above, to the Inspector by June 30th 2013.
9. To implement the approved Care and Maintenance Plan.
10. To notify this Inspector without delay, and in any case no later than March 30, 2013, of Shear's plan to address the corrective measures required under this Direction. This response shall set out the proposed method to manage each corrective measure, along with a detailed chronology of activities and events that have been completed, or are to be taken, to address same.

If you fail to comply fully or in part with this Direction, an AANDC Water Resources Officer duly appointed under the Act may take the measures referred to and may, for that purpose, enter any place in Nunavut, other than a place that is designed to be used and is being used as a permanent or temporary private dwelling-place. Any portion of the reasonable costs incurred by Her Majesty in right of Canada for such action may be recovered as a debt due to Her Majesty from you.

Failure to comply fully or in part with an Inspector's Direction constitutes an offence under section 90(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* and may entail, upon summary conviction, a fine of \$100,000 or to imprisonment for a term of one year, or both.

Further, pursuant to section 90(4) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, each day on which the Inspector's Direction is not complied with is deemed to be a separate offence.



THE LAW

Nunavut Waters and Nunavut Surface Rights Tribunal Act, S.C. 2002, c. 10

Definitions

4. “waste” means any substance that, by itself or in combination with other substances found in water, would have the effect of altering the quality of any water to which the substance is added to an extent that is detrimental to its use by people or by any animal, fish or plant, or any water that would have that effect because of the quantity or concentration of the substances contained in it or because it has been treated or changed, by heat or other means, and includes

- (a) any substance or water that, for the purposes of the *Canada Water Act*, is deemed to be waste;
- (b) any substance or class of substances specified by the regulations;
- (c) water containing any substance or class of substances in a quantity or concentration that is equal to or greater than that prescribed by the regulations; and
- (d) water that has been subjected to a treatment or change described by the regulations.

“waters” means, except for the purposes of subsection 41(2), inland waters, whether in a liquid or solid state, on or below the surface of land.

Prohibitions

Use of waters

11. (1) Subject to subsection (2), no person shall use, or permit the use of, waters in Nunavut except in accordance with the conditions of a licence.

Deposit of waste

12. (1) Subject to subsection (2) and except in accordance with the conditions of a licence, no person shall deposit or permit the deposit of waste

- (a) in waters in Nunavut; or
- (b) in any other place in Nunavut under conditions in which the waste, or any other waste that results from the deposit of that waste, may enter waters in Nunavut.

(3) Where waste is deposited in contravention of this section, every person who owns or has the charge, management or control of the waste, or who caused or contributed to the deposit, shall, subject to the regulations, without delay report the deposit to an inspector.

Enforcement

86. (1) For the purpose of ensuring compliance with this Part, the regulations or a licence, an inspector may, subject to subsection (3), at any reasonable time,

- (a) enter any place in Nunavut in which the inspector believes, on reasonable grounds,
 - (i) a work is being constructed that, on completion, will form part of an appurtenant undertaking, or
 - (ii) any alteration or extension is being carried out on a work that forms part of an appurtenant undertaking;
- (b) conduct such inspections of a work described in paragraph (a) as the inspector considers necessary in order to determine
 - (i) whether plans and specifications forming part of an application for a licence, filed with the Board by the person constructing the work, are being complied with, or
 - (ii) whether the alteration or extension of the work is likely to result in a contravention of any condition of a licence; and
- (c) enter any place in Nunavut, except in a national park, in which the inspector believes, on reasonable grounds, that
 - (i) waters are being used,
 - (ii) there is being or has been carried out any process that may produce or has produced waste, or
 - (iii) there is any waste that may be added to waters,



and, in that place, examine any works, waters or waste, open any container that the inspector believes, on reasonable grounds, contains any waters or waste, and take samples of any such waters or waste.

(2) An inspector who enters any place under subsection (1) may examine and copy any books, records or documents in that place that the inspector believes, on reasonable grounds, contain any information relating to the object of the inspection or examination under that subsection.

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

(4) The owner or person in charge of any place referred to in this section and every person found in the place shall give an inspector all reasonable assistance to enable the inspector to carry out the inspector's functions under this Part, and shall furnish the inspector with such information for purposes of the administration of this Part as the inspector may reasonably request.

Remedial measures

87. (1) An inspector may direct any person to take such reasonable measures as the inspector may specify, including the cessation of an activity, to prevent the use of waters or the deposit of waste or the failure of a work related to the use of waters or the deposit of waste, or to counteract, mitigate or remedy the resulting adverse effects, where the inspector believes, on reasonable grounds,

(a) that

(i) waters have been or may be used in contravention of subsection 11(1) or of a condition of a licence,

(ii) waste has been or may be deposited in contravention of subsection 12(1) or of a condition of a licence, or

(iii) there has been, or may be, a failure of a work related to the use of waters or the deposit of waste, whether or not there has been compliance with any standards prescribed by the regulations or imposed by a licence; and

(b) that the adverse effects of that use, deposit or failure are causing, or may cause, a danger to persons, property or the environment.

Report to Minister

(2) The inspector shall advise the Minister and the Board of any direction given under subsection (1).

Review by Minister

(3) Where an inspector gives a direction to a person under subsection (1), the Minister may, and if so requested by the person shall, review the direction without delay, and after completion of the review may alter or revoke the direction.

Powers of inspector

(4) Where a person fails to comply with a direction given under subsection (1), the inspector may take the measures referred to in that subsection and may, for that purpose, enter any place in Nunavut, other than a place that is designed to be used and is being used as a permanent or temporary private dwelling-place.

Recovery of Her Majesty's costs

(5) Any portion of the reasonable costs incurred by Her Majesty in right of Canada under subsection (4) that is not recoverable from the security furnished and maintained under section 76 may be recovered as a debt due to Her Majesty from the person to whom the direction was given.

Offences and Punishment

90. (1) Any person who contravenes subsection 11(1) or section 12, or fails to comply with subsection 11(3) or with a direction given by an inspector under subsection 87(1), is guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year, or to both.



Type A licences

(2) A licensee holding a type A licence who

- (a) contravenes any condition of the licence, where the contravention does not constitute an offence under section 91, or
- (b) fails, without reasonable excuse, to furnish or maintain security as required under subsection 76(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year, or to both.

Type B licences

(3) A licensee holding a type B licence who

- (a) contravenes any condition of the licence, where the contravention does not constitute an offence under section 91, or
- (b) fails, without reasonable excuse, to furnish or maintain security as required under subsection 76(1) 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.

Continuing offences

(4) Where an offence under this section 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.

Other Offences

91. Any person is guilty of an offence punishable on summary conviction who

- (a) contravenes subsection 86(4) or section 88, or any regulations made under paragraph 82(1)(o), (p) or (q); or
- (b) wilfully obstructs or otherwise interferes with a licensee or any person acting on behalf of a licensee in the exercise of the licensee's rights under this Part, except as authorized under this or any other Act of Parliament.

Action to enjoin not prejudiced by prosecution

93. (1) Notwithstanding that a prosecution has been instituted in respect of an offence under section 90, the Attorney General of Canada may commence and maintain proceedings to enjoin conduct that constitutes an offence under that section.

Civil remedy not affected

93. (2) No civil remedy for any act or omission is affected because the act or omission is an offence under this Part.

CONCLUSION

This Direction is **WITHOUT PREJUDICE** to any further course of action that Inspectors may take with respect to any contravention of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, including an amended or subsequent Inspector's Direction, prosecution or injunction under any Act.

This Direction and the circumstances to which it refers will form part of AANDC's records of Shear Diamonds Ltd. and Shear Diamonds (Nunavut) Corp., and will be taken into account in future responses to alleged contraventions of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* and for internal purposes such as setting the frequency of inspections. AANDC will consider taking further action if you do not take all necessary corrective steps to comply.

AANDC will be conducting further inspections of the site to verify compliance under the Act and with the Inspector's Direction.

This Direction is issued in accordance with the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* and the Jericho Project water licence. The complete text of the *Nunavut Waters*



and Nunavut Surface Rights Tribunal Act is available at the Department of Justice website: <http://laws.justice.gc.ca/en/search>. The complete text of the Water Licence is available at the Nunavut Water Board Public Registry, which may be accessed through the Board's website: <http://www.nunavutwaterboard.org/en/>.

If you require further information, have any questions or concerns, or wish respond to the alleged facts contained in this Direction, please call or write to the undersigned at (867) 975-4548 or Eva.Paul@aadnc-aadnc.gc.ca. Your comments will be considered, and where appropriate, a response provided. Any comments you make, as well as AANDC's response, will be maintained on file with this Direction in AANDC's records.

Original Signed

March 8, 2013

Signature of the Inspector

Date

Eva Paul
Water Resources Officer
Nunavut Regional Office
Aboriginal Affairs and Northern Development Canada
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