



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

8 September 2014

ISSUED TO: Lupin Mines Incorporated

Attn: Patrick Downey, President and CEO
#1204 – 700 West Pender Street
Vancouver, BC V6V 1G8

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

This document constitutes an Inspector's Direction to Lupin Mines Inc., 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, pursuant to section 87(a)(iii) of the Act, there has been, or may be, a failure of a work related to the use of waters or the deposit of waste, AND;

That, pursuant to section 87(1)(b) of the Act, the adverse effects of that use, deposit or failure are causing, or may cause, a danger to persons, property or the environment.

It is my information and belief that:

1. Lupin Mines Incorporated ("LMI") holds the type 'A' water licence for Lupin Mine, 2AM-LUP0914 (the "Licence"). This licence expired on March 31 2014.
2. In the absence of a valid water licence, LMI has no authority to use water or deposit waste in relation to Lupin Mine.
3. On July 3, 2014 LMI requested an emergency amendment to the Licence in order to discharge contact water at the Lupin Mine.
4. On July 15, 2014 I conducted an inspection of Lupin Mine. In the subsequent inspection report, I identified concerns with the Lower Sewage Lagoon: less than 1 m freeboard in the cell, and a long crack running lengthwise in the lower berm. As the lower berm appeared considerably degraded from my previous inspections, I requested that a geotechnical inspection of the facility be undertaken.
5. On July 17, 2014 LMI submitted a report from SRK Consulting showing that the water requiring discharge from the lagoon is in compliance with parameters established in the expired licence.
6. On August 17, 2014 I conducted a site visit of the Lupin Mine Site. At this time there was less than 0.5 m freeboard in the Lower Sewage Lagoon, and it was raining heavily in the region. I expressed immediate concerns in writing to LMI and to the Board regarding the potential failure of this facility by way of accidental discharge.
7. On August 21, 2014 the Nunavut Water Board submitted to Minister Valcourt an emergency amendment to specific terms of 2AM-LUP0914 to permit the decant of the sewage lagoon.
8. Pursuant to subsection 56 (2) of the Act, the Minister has 45 days to make a decision on the licence issuance and may extend a further 45 days if necessary.
9. Based on my recent and past inspections at Lupin Mine, there is deterioration occurring of the Lower Sewage Lagoon berm that may lead to the failure of this waste containment facility.



MEASURES TO BE TAKEN

1. Under the authority given to me pursuant to subsection 87(1) of the Act, I hereby direct Lupin Mines Incorporated to immediately decant the Lower Sewage Lagoon and maintain the facility at a level that is consistent with safe operation. No new waste is to be deposited to the facility. This shall be carried out in compliance with Part E Items 4 and 8 of the expired Licence and until such time as a new licence is issued.
2. A geotechnical inspection is to be conducted of the Upper and Lower Sewage Lagoon. The engineer's report is to be submitted to the Nunavut Water Board and to the Inspector by October 31 2014, accompanied by a plan and timelines to implement the engineer's recommendations. Any repairs required are to be carried out without delay.

If you fail to comply 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 subsection 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 subsection 90 (4) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, each day on which the Inspector's Direction is not complied with shall be considered 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.

Duty to report deposits

12. (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.

Expiry or cancellation

46. The expiry or cancellation of a licence does not relieve the holder from any obligations imposed by the licence.

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.

Powers of inspector

87. (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

87. (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.

90. (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.

Continuing offences

90. (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.

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 AANDC 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 Lupin Mines Incorporated and its responsible officials 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*. 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.

Eva Paul

Inspector

Inspector's Signature

Cc: Phyllis Beaulieu, Manager of Licensing, Nunavut Water Board
Andrew Keim, A/Manager of Field Operations, AANDC
Ian D Gray, Regional Director General, Nunavut Regional Office, AANDC