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**DIRECTION GÉNÉRALE DE
L'APPLICATION DE LA LOI**
Application de la loi en environnement

WRITTEN WARNING

FISHERIES ACT

File: 8440-2017-07-05-2178

PROTECTED B
ENFORCEMENT

January 8, 2018

Registered with acknowledgement of receipt

The purpose of this warning is to inform:

Orbit Garant Drilling Inc
3200 Jean Jacques Cossette
Val-d'Or, QC J9P 6Y6

c/o

Marina Stavila

Conseillère santé et sécurité au travail
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That information received from Agnico Eagle Mines Limited (AEML), Meliadine Gold Project by the undersigned Fishery inspector designated by the Minister of Fisheries and Oceans under the *Fisheries Act*, gives me reasonable grounds to believe that Orbit Garant Drilling Inc and their responsible officials are in contravention of subsection 36(3) of the *Fisheries Act*.

Canada

ALLEGED FACTS

As a result of a review of information obtained, I, the undersigned Fishery inspector determined the following alleged facts:

1. That on May 18, 2017 Enforcement Officer MACDONALD received an email from AEML, Jessica Huza (Senior Environmental Coordinator) indicating she filed a spill report and submitted it to the NT/NU spills line as required by subsection 38(5) of the *Fisheries Act* stating that on May 17, 2017 while Orbit Garnet was drilling near lake A8, there was a small leak in the hose on the diesel fuel pump. The total spill volume is estimated at 50 L, which occurred at the shore of Lake A8. AEML Environment staff inspected the area and made no observation of fuel spilled on the lake ice. Additionally, a containment boom was placed on the edge of Lake A8 as a mitigation measure.
2. That on May 18, 2017 Enforcement Officer MACDONALD received an email with spill report number 2017-169 from the National Environmental Emergencies Centre indicating the same aforementioned information.
3. That on July 4, 2017 Enforcement Officer DIDHAM received an email with a document titled "2017-05-07 Follow-up report Drilling Fuel Spill A8" from Jessica Huza. This document indicated:
 - a. While Orbit Garant Drilling Inc operated a drill on the shore of Lake A8, the driller required more fuel to continue drilling. A pump was connected to a small fuel tank at the drill in order to transfer fuel from the main supply. There was a small pinhole leak in the tubing connecting the main supply to the pump at the drill. When the fuel transfer was completed, the driller turned off the pump but failed to isolate the drill from the fuel supply. This resulted in a slow spill of diesel throughout the shift of the worker. When the next shift arrived at the drill site, the spill was found by the incoming workers. The spill was cleaned up immediately.
 - b. It was determined that the main cause of the spill was due to not following the correct procedures. The secondary cause was due to equipment malfunction. The drillers are expected to isolate the main fuel supply from the drill following all fuel transfers. This procedure was not followed. In addition, the pinhole leak in the tubing (equipment malfunction) also contributed to the release of diesel resulting in the spill.
 - c. When the worker arrived for his shift and the spill was found, cleanup activities were initiated immediately. This included removing all contaminated snow and ice from the site. Environmental personnel arrived at the scene once notified of the spill occurrence. Containment booms were placed in the water at the shore of Lake A8 to contain any residual fuel to the localized area by the spill site. Since the spill occurrence, weekly inspections at the spill site have been completed by the AEML Environment Department in order to secure the booms and to ensure that the localized impacted area is contained. Samples of the water outside the containment boom ("A8 Lake") and within the contained area were collected ("A8 Shore").
 - d. Samples "A8-SHORE" were collected within the localized spill area, whereas "A8-LAKE" samples were collected from the lake a few meters at a distance from the booms. The results show that the localized area was impacted by the fuel as compared to the results further away from the spill site. What can also be observed in the two samples collected is that the hydrocarbons are breaking down over time. The current levels of hydrocarbons in the localized spill area have decreased significantly since the spill occurrence.
 - e. The AEML Environment department has been conducting weekly inspections of the site, including adjusting and securing the containment booms as required. A slight sheen remains at the localized spill area. Inspections will continue until this sheen is no longer apparent. Spill response and reporting procedure will be reviewed by AEML supervisors to ensure proper actions are taken immediately in the event of a spill.
4. That on July 4, 2017 Enforcement Officer DIDHAM received an email from Jessica Huza who stated that Lake A8 contains fish.
5. That on July 6, 2017 Anne Wilson (Environment & Climate Change Canada Water Quality Specialist) reviewed the AEML sampling results and stated in an email that "it looks like a very

small volume of the spill entered the lake. Diesel is made up of molecules that mostly fall into the F2 (C10 – C16) group (~55-60%) and F2 (C16-C34) group (~ 45%). Both of these were measured in the A8-LAKE sample taken May 21st, although in very low concentrations”

6. On August 2, 2017 EO DIDHAM, EO MACDONALD and Jeffrey Pratt (AEML Senior Environmental Coordinator) conducted an on-site inspection of the spill site via helicopter and did not observe any hydrocarbons in the spill area.
7. That on December 18, 2017 Anne Wilson (Environment & Climate Change Canada Water Quality Specialist) stated in an email that “the FEIS information documents presence of fish in Lake A8 in Volume 7 Freshwater Environment. Figure 7.5-22 shows Arctic Grayling were found in Lake A8 (page 7-375)”
8. Based on 14 years of experience as a Government of Nunavut Fishery Officer and Environment and Climate Change Canada Fishery Inspector, I am aware that diesel fuel is known to be deleterious substance as defined in the *Fisheries Act*.
9. Based on the aforementioned facts, I have reasonable grounds to believe that Orbit Garant Drilling Inc. deposited a substance (Diesel Fuel) deleterious to fish in an area (Lake A8) frequented by fish in contravention of subsection 36(3) of the *Fisheries Act*.

THE LAW

Fisheries Act

Deposit of deleterious substance prohibited

- 36(3) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.

Subsection 36(4) refers to deposits made under the authority of certain types of regulations and does not apply in this instance.

Offence and punishment

- 40(2) Every person who contravenes subsection 36(1) or (3) is guilty of an offence and liable

(a) on conviction on indictment,

- (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000, or to imprisonment for a term not exceeding three years, or to both,
- (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and
- (iii) in the case of a corporation that the court has determined to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

(b) on summary conviction,

- (i) in the case of an individual,
 - (A) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000, or to imprisonment for a term not exceeding six months, or to both,
- (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and
- (iii) in the case of a corporation that the court has determined to be a small revenue corporation,
 - (A) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
 - (B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Continuing offences

78.1 Where any contravention of this Act or the regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which the contravention is committed or continued.

Offences by corporate officers, directors or agents

78.2 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted.

Offences by employers

78.3 In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without knowledge or consent of the accused.

CONCLUSION

This warning alleges a contravention of subsection 36(3) of the *Fisheries Act*. It is intended to bring this matter to your attention in order for you to take the necessary corrective action to ensure compliance with the *Fisheries Act* or to exercise due diligence in the future. This document is not a finding of guilt or civil liability, and is not an administrative adjudication.

This warning and the circumstances to which it refers will form part of Environment and Climate Change Canada's (ECCC) records of Orbit Garant Drilling Inc and their responsible officials and will be taken into account in future responses to alleged violations and for internal purposes such as setting the frequency of inspections. ECCC will consider taking further action if you do not take all necessary corrective steps to comply or do not exercise due diligence in the future.

This warning is issued in accordance with the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. The complete text of this policy is available on Environment Canada's website :

<http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=D6B74D58-1>

The complete text of the *Fisheries Act* available on the Department of Justice website: <http://laws->

lois.justice.gc.ca/Search/

For more information or to respond to the alleged facts contained in this warning, please call or write the undersigned. Your comments will be considered, and where appropriate, a response provided. Any comments you make, as well as ECCC's response, will be maintained on file with this warning in ECCC's records.

A handwritten signature in blue ink, appearing to read "Curtis Didham".

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