



INSPECTOR'S DIRECTION

Pursuant to Section 87(1) of the *Nunavut Waters And Nunavut Surface Rights Tribunal Act, S.C. 2002, c.10*

October 6, 2016

ISSUED TO:

Benjamin Cox, Managing Director and CEO
Roche Bay PLC
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Gibraltar
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John Gingerich President and CEO
Advanced Explorations Inc.
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**RE: *Nunavut Waters and Nunavut Surface Rights Tribunal Act*
INSPECTOR'S DIRECTION**

This document constitutes an **Inspector's Direction** issues 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, Andrew Keim, an Inspector designated by the Minister of Indigenous and Northern Affairs Canada (INAC) under subsection 85(1) of the Act, have reasonable grounds to believe:

That, pursuant to section 87(1)(a)(iii) of the Act, there has been a failure of a work related to the use of waters, AND;

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

I have personal knowledge of the matters set out herein except where I have stated these to be based upon my information and belief, and where so stated, I believe the same to be true.

It is my information and belief that:

1. On March 31, 2016 Water License (2BE-RBP1015) issued by the Nunavut Water Board (hereafter referred to as the Board) to both Mr. Cox and Mr.



Gingerich (hereafter referred to collectively as the Licensee) pursuant to an application for renewal filed with the Board on November 16, 2010 and subsequently issued on March 28, 2011, did expire.

2. On July 30th, 2016 Inspectors with the Department of Indigenous and Northern Affairs (INAC) did attend the site known and licensed as the Roche Bay project to conduct a compliance inspection.
3. The site was found to be unattended by any representatives of the Licensee.
4. The Inspector found and documented areas where evidence of hydrocarbon contamination of the ground and surrounding area had occurred and was continuing to occur.
5. The Inspector also found and documented hazardous waste materials that were found outside secondary containment and leaking into the environment.
6. The Inspector found evidence that the site had been subject to looting and theft and that the site had not been maintained by the Licensee in a substantial period of time.
7. The Inspector conducted the compliance inspection at the four locations licensed as the appurtenant undertaking including; The Airstrip, Beach Laydown, Camp and Drillers workshop. At each location a number of compliance issues and contraventions of the Act and License were identified. These were recorded and detailed in an Inspection Report that has been provided to the Licensee.

MEASURES TO BE TAKEN

Based upon the above grounds, I hereby direct, Mr. Cox and Mr. Gingerich (the Licensee) its principles, agents, employees, and/or contractors:

1. To immediately take and put in place such actions as may be necessary to remedy the failure of a work that is causing, or may cause a danger to persons.
 - a. This includes the containment and cleanup and removal of all hydrocarbon or other hazardous material spills originating from materials and containers on the Roche Bay project sites and posing a risk to water before October 31st, 2017.
2. To provide a plan to give effect to the above actions for the approval of the Inspector within 30 days of receipt of this Inspectors Direction.
3. To provide a final summary of all works completed in carrying out the approved plan to the Inspector in writing. This report shall be provided to the Inspector on or before October 31th, 2017 and shall include a complete list of materials and items removed from site during the remediation of the site.

Please be aware that the Licensee, its principles, agents, employees, and/or contractors, involved with any work to remedy deficiencies related to the issued License at the Roche Bay Project and related infrastructure may be held responsible under the *Act* or any other Act where acts or omissions that do not exercise due diligence occur.



This includes but is not limited to having in place all required Federal or Territorial authorizations that may be necessary to legally undertake and effect this remediation and / or any other failure of a work that results in an uncontrolled spill or unauthorized discharges of waste water or other substances into any place that it may affect water.

This **Inspector's Direction** does not exempt those persons or parties conducting the directed activities at the Roche Bay Project sites from following or meeting other relevant legislation and it must be understood that one or more federal or territorial agencies may stop the activities prematurely where events occur that require early intervention.

Failure to Comply

Pursuant to subsection 90(1) of the *Act*, any person that fails to comply with a direction given by an inspector under 87(1), is guilty of an offence and is liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year, or to both.

Procedural Fairness

Procedural fairness requires that any person or parties are notified of the case against them that may affect their rights, privileges and interests and that the person or parties are given the opportunity to speak to the Inspector about any administrative order.

The opportunity to be heard prior to the issuance of an administrative order, namely an inspector's direction, allows the person or party to correct or contradict any incorrect information and to ensure that the Inspector has all relevant information prior to the issuance of the inspector's direction.

The duty to provide procedural fairness and actions required when issuing an inspector's direction will be weighed against the level of emergency and the requirement for expediting action.

Signed this 31 day of October, 2016 at Iqaluit, Nunavut.

Andrew Keim
Water Resource Officer
Indigenous and Northern Affairs Canada
Iqaluit, Nunavut
867-975-4289

CC: Erik Allain, Indigenous Affairs and Northern Development Canada
Karen Kharatyan, Manager of Licensing, Nunavut Water Board



THE LAW

Nunavut Waters and Nunavut Surface Rights Tribunal Act, S.C. 2002, c. 10, Assented to 2002-04-30

Definitions

“**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 license.



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.

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 INAC 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 INAC's records of the Licensee and their activities in relation to the Roche Bay Project 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. INAC will consider taking further action if you do not take all necessary corrective steps to comply.

INAC 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 Roche Bay Project license. 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 License is available at the Nunavut Water Board Public Registry, which may be accessed through the Board's website: <http://www.nunavutwaterboard.org/en/>.

Review

This Inspector's Direction may be reviewed, pursuant to subsection 87(3) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, by the Minister of Indigenous Affairs and Northern Development Canada. The Minister may, after review, alter or revoke the direction.