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Nunavut Department of Justice

November 5, 1999

Mr. Phillipe di Pizzo, Executive Director

Nunavut Water Board
P.O. Box 119
Gjoa Haven, Nunavut
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By Fax 1 867 360 6369

Dear Mr. Pizzo, Members of the Board, and Counsel:

RE: Nunavut Written Submissions - Open Burning and Enforcement

Thank you once again for the opportunity to reply to the submissions you have received concerning:

- the enforcement powers of the Board and other parties
- the powers of the Board and other parties concerning open burning of municipal solid waste

1. Federal Powers of Monitoring and Enforcement

While there is no *Nunavut Waters Act* in place yet, we agree that the enforcement provisions of the NWT Waters Act may continue to operate in Nunavut under the authority of S.29 (4) of the *Nunavut Act*, until Nunavut-specific legislation is brought into force. Section 29(4) reads:

(4) The laws in force or having effect in the Northwest Territories on the day that section 3 comes into force, other than the ordinances and the laws made under them referred to in subsection (1), continue to be in force or to have effect in Nunavut to the extent that they can apply in Nunavut and in so far as they are not after that time repealed, amended, altered or rendered inoperable in respect of Nunavut. 1998 s.4

We also observe that, the Water Management Areas identified in Schedule 1 of the NWT Water Regulations SOR 93-303, currently in force, include "All the islands in James Bay, Hudson Bay, Ungava Bay, Hudson Strait and all the Arctic Islands", "Baffin Island", "All waters and river basins of the mainland draining into Hudson Bay or Foxe Basin", "All other waters and river basins draining into the Arctic Ocean or adjacent waters".

In our view, the provisions of the *NWT Waters Act* apply in Nunavut, except where overruled by similar provisions in the *Nunavut Land Claim Agreement*. This situation will continue until they are "repealed, amended, altered or rendered inoperable".

The powers under *NWT Waters Act* have the advantage of being administered by a qualified body, endowed with funding, and mandated with the specific task of enforcing Water Licenses.

Hence, our conclusion that, outside the terms decided for this License, an administrative agreement is needed to avoid unnecessary duplication of enforcement measures, and to ensure appropriate program funding to the activities assumed by each level of government. Nunavut will be exploring this idea in future.

Meanwhile, the Federal Government has confirmed for us, its own duty to either perform or formally delegate its obligations regarding conservation, uses, appointment of inspectors or analysts, requiring reports, monitoring and license enforcement, and even prosecutions under the *NWT Waters Act*. We agree that the provisions outlined in paragraph 14 of DIAND's submission would clarify this situation with respect to their exercise of power in Nunavut using authority of the *NWT Waters Act*.

2. Nunavut Powers of Monitoring and Enforcement

We were also pleased to see agreement in the submissions on the point that "any license conditions regulating airborne emissions would have to be constructed in such a way as to give the Municipality clear directions as to what it can and cannot do, and in such a way as to provide a workable scheme of emissions monitoring." [L. Webber, DIAND Legal Counsel at para. "11"]

Our written submission of October 25th, 1999 was based on a similar consensus within GN. A Municipal Water License which does not contain such limits, would activate s.2 (2) of the Nunavut *Environmental Protection Act*, and impose a barrier to the enforcement of the usual environmental protection levels and standards which would otherwise apply to municipal solid waste.

We also agree that the Water Board's jurisdiction must be exercised in such a manner as to connect the terms imposed to the potential impacts of burning on territorial waters which evoke concerns relating to public health or environmental stewardship. We differ from DIAND, in that we do not see this connection as being a difficult one to establish.

Solid Waste Burning will be an unavoidable reality in Nunavut for the next several years. The representative GN departments have benefited already from the pooling of information and arguments which has occurred at the hearings in Iqaluit, and from the opportunity to observe the very first Water Board hearing in which we have been privileged to participate. GN departments will be working together with the Municipality during the life of the license, to address the need for a viable, long-term, solid waste management plan for Iqaluit. It is GN's goal and hope that these efforts will eliminate the need for license enforcement action. In all the circumstances, however, the Board is well within its mandate to consider and implement

measures which address monitoring and enforcement concerns in this Municipal Water License

Sincerely,

Susan Hardy,
Legal Counsel,
Legal and Constitutional Division

c.c. Mr. Earl Badaloo, Mr. Robert Eno

Mr. Mike Ferris

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