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October 9, 2001

Your file - Votre référence

Nunavut Water Board
P.O. Box 119
Gjoa Haven, Nunavut
X0E 1J0

Our file - Notre référence

BY E-mail to

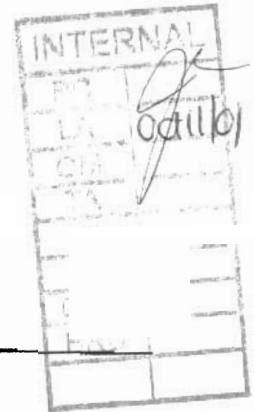
nunavutwaterboard@nt.sympatico.ca and
rbecker@polarnet.ca

Attention: Mr. Philippe di Pizzo,
Executive Director

NUNAVUT WATER

OCT 12 2001

Public Registry



Dear Mr. di Pizzo:

**Re: Municipality of Iqaluit -- Board file no. NWB3IQA0103;
Comments requested in Board's letter of September 28th**

Thank you for your letter of September 28th, and thank you for forwarding Mayor Matthews' letter of September 25th. I apologize for my delay in responding; urgent family circumstances arose on October 5th, as I communicated to you on that same date.

DIAND is of the view that there should be no resumption of the licence-amendment proceedings which were initiated by the Mayor's earlier, May 31st letter to the Board.

Instead, further to the letter of August 13th from Minister Nault to the Board, DIAND respectfully urges the Board to work toward the production of a revised licence, to be considered for approval by the Minister. DIAND submits that it would not be appropriate to delay the revision process until the Federal Court has dealt with the NTI's application: section 14(6) of the *Northwest Territories Waters Act* must be presumed to apply, and the Minister's decision of August 13th must be presumed valid. Water-licensing procedures should not be put on hold while the NTI's application is pending.

In his September 25th letter, the Mayor asks the Board to consider referring issues of jurisdiction to the Federal Court. As DIAND understands it, what the Mayor has in mind is a use of section 18.3(1) of the *Federal Court Act*. That would entail the Board's commencing in the Federal Court a proceeding distinct from the one that has been commenced by the NTI, but conceivably the Court could ultimately deal with the two matters together.

DIAND is of the view that the conditions which – in the licence signed by the Board on December 31, 2000 – dealt with the burning of wastes at the Municipality's waste disposal

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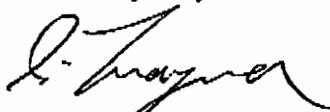
facility were clearly beyond the Board's jurisdiction to make. Accordingly, DIAND does not think there is a need to present the Federal Court with questions concerning jurisdiction to impose such conditions.

Furthermore, if the "reference" were aimed at questioning the contents of the December 31, 2000 licence, the Board would really be seeking judicial review, and not making a true reference. It would be seeking judicial review of its own decision. Also, it would be seeking judicial review of a decision that has been negated by the Minister's ruling of August 13th.

If the reference would be aimed at determining what could or could not go into a revised licence, then DIAND reiterates that there is simply no need for a reference. However, DIAND does not oppose a referring in this case – if the general criteria which govern the referring of questions are met, and subject to a review by DIAND of any draft question which might be proposed.

Thank you for your consideration of these submissions.

Yours very truly



Stephen Traynor
Director, Operations