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NUNAVUT IMALIRIYIN KATIMAYINGI
NUNAVUT WATER BOARD
OFFICE DES EAUX DU NUNAVUT

August 8, 2007

Michael Nadler
Regional Director General
Indian and Northern Affairs Canada
Nunavut Region
P.O. Box 2200
Iqaluit, NU X0A 0H0
Via email: nadlerm@inac-ainc.gc.ca

Dear Mr. Nadler,

Re: **Water License Application: 3BM-CAP0207**

Pursuant to water license application 3BM-CAP0207 (Application), the Hamlet of Cape Dorset (Applicant), with the assistance of the Government of Nunavut – Community Government Services has applied to the Nunavut Water Board (NWB or Board) for a Type B water license for construction of a municipal sewage treatment facility. The Application is currently before the Board and a public hearing is scheduled imminently, with hearing dates to be set shortly.

Sections 11 and 12 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA) prohibits the use of water or deposition of waste except in accordance with the conditions of a license. It has come to the attention of the Board that construction has commenced on the municipal sewage treatment facility that is the subject of the Application. In particular the Board draws attention to the following statement made by GN-CGS in the attached letter dated July 30, 2007: “Construction is still on going, and is expected to reach substantial completion in the coming weeks.”

The Board is concerned the construction has commenced in contravention of the NWNSRTA, as well as Article 13 of the Nunavut Land Claims Agreement. The Board is providing a copy of this letter to the Hamlet of Cape Dorset and the Government of Nunavut – Community Government Services, as the Applicant may wish to reply to clarify the facts.

The Board recently wrote to you regarding three other municipal facilities that were constructed prior to the issuance of a water license.¹ In that letter the Board stated it cannot and will not

¹ Letter from Dionne Filiatrault, Nunavut Water Board, to Jim Rogers, Manager, Water Resources, Indian and Northern Affairs Canada, re: Water License Applications: 1BR-TAL, 3BM-REP0409 and 3BM-WHA0207, May 28, 2007.

condone an applicant's failure to comply with the NWNSRTA. In this regard, the Board stated it is keenly aware of the decision in *R v. City of Dawson* and Chief Judge Lilles finding that the conduct of the subject water board in granting a second and then third water-use license to the City of Dawson in circumstances where the City was in substantial breach of the first and then the second, constituted passive encouragement of non-compliance by the City.²

In reply to the Board's letter, Indian and Northern Affairs Canada advised the Board that Water Resource Officers from Indian and Northern Affairs Canada will be inspecting all Nunavut communities in the coming months for compliance with sections 11 and 12 of the NWNSRTA, in accordance with sections 86 and 87 of that Act.³ Accordingly, the Board asks that pursuant to sections 86 and 87 of the NWNSRTA the Water Resource Officers undertake appropriate inspection of the Hamlet of Cape Dorset for compliance with the NWNSTRA and if required, appropriate enforcement action taken. The Board appreciates being advised of the outcome of the inspection.

The Board further notes from the Canadian Environmental Assessment Registry that the Cape Dorset sewage treatment undertaking is currently undergoing screening pursuant to the *Canadian Environmental Assessment Act* (CEAA).⁴ The Board is of the view that while responsible authorities, in this case Infrastructure Canada and Indian and Northern Affairs Canada, are bound to comply with restrictions placed on a responsible authority's exercise of its power or duties pursuant to subsection 11(2) of the CEAA until such time as the CEAA screening is complete, the NWB is not.⁵ Furthermore, pursuant to Article 12 and Schedule 12-1(5) of the NLCA, the Application is exempt from environmental impact assessment by the Nunavut Impact Review Board, and while that is a matter for NIRB, duplication affects the entire regulatory regime.

The Board supports the view that licensing should not take place prior to environmental assessment, but the Board believes that in the absence of an impact assessment pursuant to Article 12 of the NLCA it is obligated to proceed with the Application. In order to address the apparent regulatory redundancy of a CEAA screening in circumstances where a project is exempt from screening pursuant to the NLCA, the Board is providing a copy of this letter to NIRB and the Nunavut Tunngavik Incorporated for their consideration.

² See *R. v. City of Dawson*, 2003 YKTC 16, at para. 46.

³ Letter from Spenser Dewar, A/Director of Operations, Indian and Northern Affairs Canada, to Dionne Filiatrault, A/Executive Director, Nunavut Water Board, re: Water Licence applications 1BR-TAL, 3BM-REP0409 and 3BM-WHA0207, July 20, 2007.

⁴ See http://www.acee.gc.ca/050/Viewer_e.cfm?CEAR_ID=29993 as of August 2, 2007.

⁵ Canadian Environmental Assessment Act (1992, c. 37):

11. (1) Where an environmental assessment of a project is required, the federal authority referred to in section 5 in relation to the project shall ensure that the environmental assessment is conducted as early as is practicable in the planning stages of the project and before irrevocable decisions are made, and shall be referred to in this Act as the responsible authority in relation to the project.

(2) A responsible authority shall not exercise any power or perform any duty or function referred to in section 5 in relation to a project unless it takes a course of action pursuant to paragraph 20(1)(a) or 37(1)(a).

If you wish to discuss this matter further, please contact the undersigned at (867) 360-6338 extension 27 or via email at exec@nunavutwaterboard.org.

Regards,



Dionne Filiatrault, P. Eng.
A/Executive Director
Nunavut Water Board

Attachment: Letter GN-CGS dated July 30, 2007

cc: Spencer Dewar, A/Director Operations, Indian and Northern Affairs Canada
Art Stewart, Hamlet of Cape Dorset
J. Dawe, Government of Nunavut – Community Government Services
Stephanie Briscoe, Executive Director, Nunavut Impact Review Board. Proponents
G. Hakongak, Nunavut Tunngavik Incorporated