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Nunalingni Kavamatkunillu Pivikhaqautikkut

Department of Community and Government Services

Ministère des Services communautaires et gouvernementaux

NWB3CAP

NUNAVUT

800-555-0000

JUL 23 2004

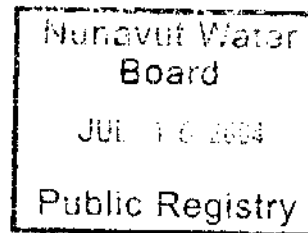
REF: INCT18NWB3CAP0207

Sewage Treatment System - ILAE

WITHOUT PREJUDICE

July 8, 2004

Mr. Scott Stewart  
Water Resources Officer  
Field Operations, Nunavut District Office  
Indian and Northern Affairs Canada  
P.O. Box 100  
Iqaluit, Nu  
X0A 0H0



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Dear Mr. Stewart:

We are in receipt of your letter of May 27, 2004 concerning the Cape Dorset Sewage Treatment system.

Without going into long details of history and background of our immediate problem, we are concerned and somewhat confused with the intent of your letter. As you indicate, both the Hamlet and the Government of Nunavut have received an Inspector's Direction from Environment Canada with respect to a potential violation of the Fisheries Act. The Government of Nunavut and the Hamlet of Cape Dorset have every intention of taking all reasonable actions to comply with the Inspector's Direction and that we take all of these issues very seriously.

Over the last several months we have found that Indian and Northern Affairs Canada (INAC) has been taking a very confrontational stand with respect to our infrastructure challenges across Nunavut. We would hope that INAC recognizes that there are many problems with our municipal infrastructure. Accordingly, we were somewhat disappointed that INAC declined to work with Infrastructure Canada in identifying funding under the Municipal Rural Infrastructure Fund, funding that would have helped to address some of our municipal infrastructure problems.

.../2

OFFICE OF THE DEPUTY MINISTER  
P.O. Box 1000, Station 700  
Government of Nunavut, Iqaluit, NU X0A 0H0  
☎ (867) 975-5306 • (867) 975-5305

We would like to reaffirm that the Government of Nunavut and the Hamlet of Cape Dorset are taking all reasonable actions to ensure the continued viability of the existing sewage treatment systems and to proceed with various planning and design so that construction of a permanent solution can proceed in the 2005 construction season. To this end, we have enclosed copies of our correspondence with Environment Canada on the matter.

Sincerely,

  
for Tom Rich  
Deputy Minister

Encl.

Cc Dionne Filiatrault, Nunavut Water Board (Gjoa Haven)  
Sid Bruinsma, Environment Canada (Iqaluit)  
Bruce Trotter, GN Health and Social Services (Iqaluit)  
Linda Tingley, GN Legal Counsel (Iqaluit)  
David Akoak, GN Community and Government Services  
Shawn Maley, GN Community and Government Services  
Art Stewart, SAO Cape Dorset

# INSPECTOR'S DIRECTION

Environment Canada  
Environmental Protection Branch  
Prairie and Northern Region  
Iqaluit District Office  
P.O. Box 1870  
Iqaluit, Nunavut.  
X0A 0H0

**PROTECTED**

13 May 2004

File No. 4408-2004-03-12-005

Acknowledged with receipt.

The purpose of this Inspector's Direction is to inform:

- 1) The Hamlet of Cape Dorset, Nunavut  
c/o Art Stewart  
Senior Administrative Officer  
Hamlet of Cape Dorset, Nunavut  
P.O. Box 30  
Cape Dorset, Nunavut  
X0A 0C0
- 2) The Nunavut Territorial Government  
c/o Mr. Tom Rich  
Deputy Minister  
Department of Community Government and Services  
Iqaluit, Nunavut

This letter constitutes an Inspector's Direction to the Hamlet of Cape Dorset, Nunavut and to the Nunavut Territorial Government, under section 38(6) of the Fisheries Act, R.S.C. 1985, c. F-14, as amended and relates to the serious and imminent danger of the deposit of raw sewage into the water frequented by fish, to wit: Telik Inlet, contrary to subsection 36(3) of the Fisheries Act, R.S.C. 1985, c.F-14, as amended.

## **REASONABLE GROUNDS FOR BELIEF**

I, Sid Bruinsma, an Inspector designated by the Minister of Fisheries and Oceans pursuant to subsection 38(1) of the *Fisheries Act*, R. S. C. 1985, c. F-14, as amended, have reasonable grounds to believe:

- 1) That on 05 March 2004 at 1330 hours Environment Canada was made aware of a capacity problem at the Cape Dorset sewage lagoons and that the community's Senior Administrative Officer, Art Stewart, reported that the community had to place raw sewage into the old lagoon system to prevent a collapse of the new sewage lagoon system.
- 2) That on 22 April 2004 at 1330 hours Environment Canada representatives met with representatives of the Territorial Government of Nunavut's Community Government and Services Department. The Department was advised that an inspection would be conducted at Cape Dorset based on the information provided by the Department. The Department of Community Government and Services outlined the problems at the site and provided information of future developments to address capacity and design issues at the Cape Dorset community sewage lagoons.
- 3) That during an inspection on 05 May 2004, representatives of the Hamlet of Cape Dorset, the Nunavut Territorial Government of Nunavut and I observed the conditions of the two sewage lagoons systems in Cape Dorset. The first system observed was the old lagoon it was in use and it appeared to be exfiltrating under the berm and under the roadway adjacent to the lagoon and heading down a high pitch gradient apparently depositing raw sewage into Telik Inlet.
- 4) That during the inspection on 05 May 2004 I observed the use of the second lagoon system had been discontinued. In this three celled lagoon, cells #1 and #2 had reached capacity and in cell #2 the effluent had reached the top of the berm and had overflowed causing erosion and potentially compromising the berms integrity.
- 5) That during the inspection on 05 May 2004 I observed the location of the new lagoon system and that it had reached capacity and posed an imminent threat due to the condition of the berm and that the impending freshet would add runoff water to the cell and overflow the cell walls resulting in deterioration and possible failure of the berm.
- 6) That the Hamlet of Cape Dorset and the Nunavut Territorial Government owns the deleterious substance or has the charge, management or control thereof, or has caused or contributed to the causation of a deposit of the deleterious substance or danger thereof.
- 7) That I am aware the Hamlet of Cape Dorset is responsible for the maintenance and repair of the sewage lagoon in the Hamlet of Cape Dorset, Nunavut and therefore responsible for the structural integrity of the berm surrounding the sewage lagoon.
- 8) That I am aware that Telik Inlet is a body of water frequented by fish because of information received by me from communications with Tania Gordanier, Habitat Management Biologist from the Department of Fisheries and Oceans.
- 9) I am aware from personal knowledge that human sewage is a deleterious substance.

- 10) That, to the best of my knowledge, reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent any occurrence or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom have not been taken by the Territorial Government of Nunavut and the Hamlet of Cape Dorset and that the parties continue to deposit raw sewage and that a serious and imminent danger exists that a deleterious substance may be discharged from the property via surface water runoff from rain or melted snow and that the deleterious substance may enter water frequented by fish or may be deposited in a place where it may enter such water.

**MEASURES TO BE TAKEN BY THE TERRITORIAL GOVERNMENT OF NUNAVUT AND THE HAMLET OF CAPE DORSET, NUNAVUT.**

Under the authority given to me pursuant to subsection 38(6) of the *Fisheries Act*, I do hereby direct the Territorial Government of Nunavut and the Hamlet of Cape Dorset, Nunavut to take or cause to be taken, immediately, all reasonable measures consistent with the safety and the conservation of fish and fish habitat to prevent the deposit of the aforementioned deleterious substance, that is, raw sewage in water frequented by fish, that is, Tellik Inlet, and to counteract, mitigate or remedy any adverse effects that result or may be expected to result there from, including:

Taking action to prohibit or minimize surface water runoff from entering the sewage lagoon systems containing raw sewage, and

Advising Environment Canada in writing with an interim report by June 1, 2004 and a final report August 1, 2004 of the measures that have been taken to comply with this Direction and with subsection 36(3) of the *Fisheries Act* to prevent the deposit of the aforementioned deleterious substance, that is, raw sewage in water frequented by fish, to wit, Tellik Inlet, and

Monitor the sewage lagoons until such a time that the risk of depositing the deleterious substance in waters frequented by fish, that is, Tellik Inlet, is eliminated.

**THE LAW**

Subsection 36(3) of the *Fisheries Act* states:

*(3) that 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, except in accordance with prescribed Regulations.*

Subsection 38(4) of the *Fisheries Act* states:

*(4) Where, out of the normal course of events, there occurs a deposit of a deleterious substance in water frequented by fish or a serious and imminent danger thereof by reason of any condition, and where any damage or danger to fish habitat or fish or the use by man of fish results or may reasonably be expected to result therefrom, any person who at any material time*

*(a) owns the deleterious substance or has the charge, management or control thereof, or*

*(b) causes or contributes to the causation of the deposit or danger thereof, shall, in accordance with any regulations applicable thereto, report such occurrence to an inspector or such other person or authority as is prescribed by the regulations.*

Subsection 38(5) of the *Fisheries Act* states:

*(5) Every person referred to in paragraph (4)(a) or (b) shall, as soon as possible in the circumstances, take all reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent any occurrence referred to in subsection (4) or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.*

Subsection 40(2) of the *Fisheries Act* states that every person who contravenes section 36(3) of the aforementioned Act is guilty of:

*"an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both; or an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or to both."*

Failure to take reasonable measures as required by subsection 38(5) of the *Fisheries Act* and failure to comply with an inspector's direction issued under subsection 38(6) of the *Fisheries Act* are offences under paragraphs 40(3)(e) and 40(3)(f) of the *Fisheries Act*.

Paragraph 40(3) provides that everyone who...

*(e) fails to take any reasonable measures that he is required to take under subsection 38(5) or fails to take such measures in the required manner; and,*

*(f) fails to comply with the whole or any part of a direction of an inspector under subsection 36(6),*

*is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars, and for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to a term of imprisonment for a term not exceeding six months, or to both.*

*Paragraph 78.1 provides that 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.*

*Paragraph 78.2 states that 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.*

### **CONCLUSION**

Please be advised that this Inspector's Direction is **WITHOUT PREJUDICE** to any further course of action that Environment Canada or any other enforcement agencies may take with respect to this alleged violation of subsection 36(3) of the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended, or any other Act, including applying for an injunction, issuing a Minister's Request under subsection 37(1) of the *Fisheries Act* or initiating a prosecution.

Also be advised that any future release of a deleterious substance from the property owned or controlled by the Territorial Government of Nunavut or The Hamlet of Cape Dorset into waters frequented by fish may constitute a violation of subsection 36(3) of the *Fisheries Act* which could result in charges being laid against the Territorial Government of Nunavut or The Hamlet of Cape Dorset or their responsible officials.

For more information about the pollution prevention provisions of the *Fisheries Act*, I enclose a copy of the *Compliance and Enforcement Policy for the Habitat Protection and Pollution Provisions of the Fisheries Act*.

For more information, or to respond to the alleged facts contained in this warning, please contact the undersigned by telephone at (867) 975-4644 or by writing to Environment Canada, P.O. Box 1870, Iqaluit, Nunavut, X0A 0H0. Any submissions will be taken into consideration and a response will be provided where appropriate. All submissions received, as well as any response issued by Environment Canada, will be maintained on file with this Inspector's Direction.

I wish to further advise the **Territorial Government of Nunavut** and the **Hamlet of Cape Dorset, Nunavut** that Environment Canada will be conducting further inspections of the site to verify compliance with this Inspector's Direction.

Sincerely,

**Sidney F. Bruinsma**  
**Fishery Officer / Inspector**

cc:

**Mr. Hal Sommerstad**  
**Manager, Regional Enforcement**  
**& Emergencies Division**  
**Prairie and Northern Region**  
**Edmonton, Alberta**

**Mr. Peter Blackall**  
**Regional Director**  
**Environmental Protection Branch**  
**Prairie and Northern Region**  
**Edmonton, Alberta**

**Mr. Charles Brumwell**  
**Manager, Northern Division**  
**Environment Protection Branch**  
**Prairie and Northern Region**  
**Yellowknife, Northwest Territories**

**Mr. Robert Chouinard**  
**Manager, Regional Support Division,**  
**National Programs Directorate**  
**Enforcement Branch**  
**Hull, Quebec**

**Mr. Craig Broome**  
**Head of Enforcement, Northern Division**  
**Environmental Protection Branch**  
**Prairie and Northern Region**  
**Yellowknife, Northwest Territories**

**Mr. Doug Sitland, P.Eng.**  
**Community Government and Services**  
**Nunavut Territorial Government**  
**Iqaluit, Nunavut**