



INSPECTOR'S DIRECTION
**Pursuant to Section 87(1) of the Nunavut Waters
and Nunavut Surface Rights Tribunal Act**

To:

Kevin Niptanatiak
Regional Director
Kitikmeot Region
Department of Community and Government Services
Government of Nunavut
Cambridge Bay – Nunavut

August 26, 2014

- Inspector's Direction -

I, Andrew Keim, a duly designated Inspector under subsection 85(1) *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (the "**Act**"), have reasonable grounds to believe that waste has been and may be deposited in contravention of subsection 12(1) of the Act, and that the adverse effects of such a deposit and or failure are causing, or may cause, a danger to persons, property or the environment.

REASONABLE GROUNDS FOR BELIEF

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.

My reasonable grounds for belief are as follows:

1. It is my information and belief that:

- Employees of Kudlik Construction Ltd. under the direction of representatives of Dillon Consulting Ltd., specifically Mr. Mahyar Niroumand, did on August 20th 2014 remove or cause to be removed from the site of the Gjoa Haven Community Sewage Lagoon:
 - berm wall materials from the constructed berm wall of the Community Sewage Lagoon, which resulted in the release of effluent and sludge from the lagoon to the environment.
- The Gjoa Haven Community Sewage Lagoon was a primary treatment facility and received waste water from the community of Gjoa Haven for the last 20 years. Sewage and waste water was pumped and transported via vacuum truck from buildings in the municipality and discharged at the Gjoa Haven Community Sewage Lagoon.
- The Municipality of Gjoa Haven owned and operated the Community Sewage Lagoon or had the charge, management, or control thereof. The municipality now owns and operates the new sewage lagoon.



- The abandonment and restoration of Gjoa Haven's old Community Sewage Lagoon is work authorized and Licensed by the Nunavut Water Board under the authority of Water License 3BM-GJO1318 and is to be completed in accordance with an approved Abandonment and Restoration Plan.
 - This work is being undertaken under a contract between the Government of Nunavut Department of Community and Government Services and both Kudlik Construction Ltd and Dillon Consulting Ltd. to remediate and abandon Gjoa haven's old Community Sewage Lagoon.
 - Employees of Kudlik Construction Ltd and Dillon Consulting Ltd. were contracted by the Government of Nunavut's Department of Community and Government Services.
 - The Government of Nunavut Department of Community and Government Services now owns, or has the charge, management, or control of the Gjoa Haven Sewage Lagoon Abandonment and Restoration Project.
 - Mr. Kevin Niptanatiak, in his capacity as Regional Director of Community and Government Services, Government of Nunavut, has the charge, management and control over the Abandonment and Restoration of the Gjoa Haven Sewage Lagoon and any materials or effluent discharged therefrom, or has caused or contributed to the Abandonment and Restoration of the Gjoa Haven Sewage Lagoon and deposits of Waste therefrom.
2. The community of Gjoa Haven has a type B Water Licence 3BM-GJO1318 ("**Water Licence**") issued by the Nunavut Water Board under the Act which authorizes the use of water and the deposit of waste with respect to a municipal undertaking. The Water License contains terms and conditions applicable to this authorization.
 3. On August 20th, 2014 I conducted a scheduled annual inspection of the community of Gjoa Haven's use of water and disposal of waste for municipal undertakings located within the Municipality of Gjoa Haven in the Kitikmeot Region, Nunavut and did witness the above noted occurrences.
 4. It is my information and belief that the Government of Nunavut has not received the approvals required or necessary and did not file the following document within the time period required under Part G of the Water Licence:
 1. The Licensee shall submit to the Board for approval, an Abandonment and Restoration Plan at least three (3) months prior to abandoning any facilities or the construction of new facilities to replace existing ones. Where applicable, the Plan shall include information on the following:
 - water intake facilities;
 - the water treatment and waste disposal sites and facilities;
 - abandoned water and waste facilities;
 - petroleum and chemical storage areas;
 - any site affected by waste spills;
 - leachate prevention;



- an implementation schedule;
 - maps delineating all disturbed areas, and site facilities;
 - consideration of altered drainage patterns;
 - type and source of cover materials;
 - future area use;
 - hazardous wastes; and
 - a proposal identifying measures by which restoration costs will be financed by the Licensee upon abandonment
5. On August 20, 2014, in my capacity as the Water Resources Officer with the Nunavut Regional Office of the Department of Aboriginal Affairs and Northern Development Canada (AANDC), I ordered that the work as witnessed on site during the Inspection to stop immediately to prevent the release of further contaminated soils, sludge and effluent. Further this information was related to two on site Dillon employees (Mahyar Niroumand and Crystal Sable) and then followed up in writing and delivered by e-mail to the above as well as representatives of the Government of Nunavut Department of Community and Government Services.
6. On August 22nd, 2014 while traveling back from Taloyoak to Yellowknife, NWT. I attended the scene of the Gjoa Haven Community Lagoon and found that work had continued to remove materials from the berm wall and to begin construction of a roadway into the community of Gjoa Haven with this material. This is two days following the issuance of the Stop Work Order made both verbally and in writing to the above noted persons and does constitute an Offence under the Act.

MEASURES TO BE TAKEN

Under the authority given to me pursuant to subsection 87(1) of the Act, I hereby direct the Government of Nunavut Department of Community and Government Services and Mr. Kevin Niptanatiak in his capacity of Regional Director to immediately take all reasonable measures to prevent the use of water or deposit of waste in contravention of subsections 11(1) and 12(1) of the Act or of a condition of the Water Licence and to counteract, mitigate or remedy the adverse effects of any such deposit causing, or which may cause, danger to persons property or the environment, including, without limitation:

- (a) *To rectify existing non-compliance with the Act and the Water Licence including the observed occurrences of non-compliance set out above by complying with the Stop Work order issued by the Inspector on August 20th, 2014 and to repatriate all contaminated soils to their original location.*
- (b) *To submit any and all outstanding documents, plans and reports due to the Nunavut Water Board and/or the Inspector within 10 days of receipt of this Direction.*
- (c) *To undertake such work as is required to ensure that undiluted effluent is no longer released from the Gjoa Haven Community Sewage Lagoon unless it is treated and meets applicable Water Licence discharge criteria.*



- (d) *To develop and submit a report to me, Andrew Keim, or a successor AANDC Water Resources Officer, in writing, no later than October 1, 2014 on the Government of Nunavut's Plan to address this further occurrence of Non-compliance in a community already under an earlier Direction to achieve compliance with an issued Water License.*
- a. *This plan shall specify the proposed method to manage the Sewage and Wastewater effluent and/or the planned works to be undertaken at the Gjoa Haven Community Sewage Lagoon and shall include a detailed chronology of the short and long term progress, measures and activities that have and will be taken and provide dates when each progress measure and activity was initiated and concluded such that the Gjoa Haven Community Sewage Lagoon may be reclaimed and all deposits of waste will be compliant with the Water Licence (as it may be amended, renewed or replaced from time to time), and the Act.*

If you fail to comply with this Direction, an AANDC Water Resources Officer duly appointed under the Act may take the measures referred to 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. Any portion of the reasonable costs incurred by Her Majesty in right of Canada for such action may be recovered as a debt due to Her Majesty from you.

Failure to comply fully or in part with an **Inspector's Direction** constitutes an offence under subsection 90 (1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* and may entail, upon summary conviction, a fine of \$100,000 or to imprisonment for a term of one year, or both.

Further pursuant to subsection 90 (4) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, each day on which the **Inspector's Direction** is not complied with shall be considered a separate offence.



THE LAW

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

Definitions

4. “**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 licence.

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.

90. (2) A licensee holding a type A licence who



- (a) contravenes any condition of the licence, where the contravention does not constitute an offence under section 91, or
- (b) fails, without reasonable excuse, to furnish or maintain security as required under subsection 76(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 AANDC 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 AANDC's records of the Government of Nunavut Department of Community and Government Services and its responsible officials 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. AANDC will consider taking further action if you do not take all necessary corrective steps to comply.

AANDC 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 City of Iqaluit Water licence. 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 Licence is available at the



Nunavut Water Board Public Registry, which may be accessed through the Board's website:
<http://www.nunavutwaterboard.org/en/>.

If you require further information, have any questions or concerns, or wish respond to the alleged facts contained in this Direction, please call or write to the undersigned at (867) 975-4289 or Andrew.Keim@inac.gc.ca. Your comments will be considered, and where appropriate, a response provided. Any comments you make, as well as AANDC's response, will be maintained on file with this Direction in AANDC's records.

Andrew Keim

Inspector

Inspector's Signature

Cc:

Phyllis Beaulieu, Manager of Licensing, Nunavut Water Board

Erik Allain, Manager of Field Operations, AANDC