



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

To:
Boyd Warner
Bathurst Inlet Lodge
Ltd. PO Box 820
Yellowknife, NT X1A 2N6

August 26, 2013

- 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 waters have been and may be used in contravention of subsection 11(1) of the Act and a condition of a license, and that waste has been and may be deposited in contravention of subsection 12(1) of the Act and a condition of a license, and that there has been a failure of a work related to the deposit of waste, and that the adverse effects of such use, deposit and 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:
 - Mr. Boyd Warner and Bathurst Inlet Lodge Ltd were issued on October 18, 2012 a Water license for the provision of accommodations and other Eco-tourism services to interested individuals and groups, mining companies located within the Kitikmeot Region, Nunavut.
 - The activities conducted at the site of the Lodge are classed as a Recreational Undertaking by the Nunavut Water Board.
 - Mr. Boyd Warner owns and operates with or without other known partners the Bathurst Inlet Lodge Ltd.
 - Mr. Boyd Warner, in his capacity as owner and operator has the charge, management and control over the activities of the Lodge and its staff and has caused or contributed to the causation of the operations of the Lodge and the unauthorized deposit of waste therefrom.
2. The Bathurst Inlet Lodge and Mr. Boyd Warner has a type B Water Licence 7BL-BIL1215 ("**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 Recreational undertaking. The Water License has terms and conditions applicable to this authorization. The Water Licence expires on October 17, 2015.
3. On July 19, 2013 I conducted a routine Water License Inspection on the Bathurst Inlet Lodge to determine compliance with the use of water and disposal of waste during



recreational activities including the provision of accommodations and other Eco-tourism services to interested individuals and groups, mining companies located within the Kitikmeot Region, Nunavut. Mr. Allen Kapolak of Bathurst Inlet Lodge was present on behalf of the Licensee. Advance notice of this Inspection was delivered by E-mail to Mr. Boyd Warner on April 22 2013 and acknowledged on that same day by Mr. Warner.

4. During the course of the July 12, 2013 inspection I made the following observations

These include;

- I observed that the Licensee has not taken such actions as would be required to address issues identified in previous inspection reports completed and filed by AANDC Inspectors.
 - Removal of empty fuel drums
 - Installation of some form of secondary containment at fuel transfer areas
 - Removal/segregation of hazardous materials on site
 - I observed and determined in discussions during the inspection that the Licensee continues to conduct open burning activities on “Garbage Island” contrary to the issued license condition Part D item 4.
 - I observed and determined in discussions during the inspection that the Licensee continues to land-fill domestic and other wastes on “Garbage Island” contrary to the issued license condition Part D item 2.
5. It is my information and belief that Boyd Warner and Bathurst Inlet Lodge Ltd. has not filed the following documents with the Nunavut Water Board within the time period required under the issued Water License:
- An Annual Report to the Nunavut Water Board as required by the Water License contrary to Part B item 2.
 - A revised Spill Contingency Plan within 60 days following the issuance of the current Water License contrary to Part H item 1.

MEASURES TO BE TAKEN

Under the authority given to me pursuant to subsection 87(1) of the Act, I hereby direct the Bathurst Inlet Lodge Ltd. and Mr. Boyd Warner in his capacity as the owner of Bathurst Inlet Lodge Ltd. 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 License 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.*
- (b) *To submit any and all outstanding documents, plans and reports due to the Nunavut water Board and/or the Inspector within 180 days of receipt of this Direction.*



- (c) *Upon receipt of this Direction undertake such work as is required to remove empty barrels brought in for the use of Bathurst Inlet Lodge Ltd by the Government of Nunavut's Petroleum Products Division and any other empty barrels belonging to Bathurst Inlet Lodge Ltd. This work is to be completed before the end of operations at the site in 2014. The Inspector shall be notified when this is complete and date stamped photographs provided to the Inspector as proof of completion.*
- (d) *To develop and submit a report to me Andrew Keim or a successor AANDC Water Resources Officer, in writing, no later than September 30th, 2013 on the Licensee's plans and methods to be used to manage the waste and wastewater effluent generated by lodge operations and shall include activities that will be taken and provide dates when each progress measure and activity will be initiated and concluded such that 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 B 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 \$15,000 or to imprisonment for a term not exceeding six months, 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 Bathurst Inlet Lodge Ltd. 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 Bathurst Inlet Lodge 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@AANDC.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

Sent by E-mail & Registered mail

Inspector's Signature



Cc:

Phyllis Beaulieu, Manager of Licensing, Nunavut Water Board

Erik Allain, Manager of Field Operations, AANDC

Contact Information:

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