



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

To:
Scott Cooper
Director, Petroleum Products Division
Community and Government Services
Government of Nunavut
P.O. Box 590
Rankin Inlet, Nunavut XOC OGO

Revised and reissued on **October 2, 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 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:

- The Government of Nunavut’s Petroleum Products Division has and continues to supply fuel to the inhabitants of Bathurst Inlet and other travelers to the site since the creation of Nunavut and even before so when the Department was part of the Government of the Northwest Territories.
- The site has been identified in government documents and correspondence as an environmental hazard because of fuel drums that have accumulated over the years at the site that have not been removed.
- Currently there are over 2500 open, unwashed, barrels stored on site within 30 meters of water that continue to pose a significant environmental risk.
- Currently there are over 200 drums of gasoline belonging to the Government of Nunavut staged within 30 meters of water that are not in any form of containment.
- The Government of Nunavut continues to transport and sell fuel (gasoline and diesel) to the Bathurst Inlet Lodge and travelers at this site.
- Spills of fuel were noted at the 50000 l tank where it appears that maintenance work had recently been carried out.
- Examination of soil within the empty drum pile indicates that hydrocarbons have been released into the environment within 30 meters of water.
- The Petroleum Products Division of the Department of Community Government and Services, Government of Nunavut, as owner and distributor



of fuel in the Territory has caused or contributed to the unauthorized deposit of waste originating from fuel drums and bulk fuel transported to the site.

2. The Petroleum Products Division of the Department of Community Government and Services, Government of Nunavut does not have a Water License or other authorization allowing for the deposit of waste under the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* in Bathurst Inlet.
3. On July 12, 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 over 200 barrels of Gasoline were stored within 30 meters of water (Burnside River). The barrels were identified as belonging to the Petroleum Products Division of the Government of Nunavut.
- I observed that none of the 200 barrels of Gasoline were in any form of Secondary Containment nor was there present any form of spill containment or clean up equipment.
- I observed that at Bathurst Inlet Lodge, along the shoreline of the Burnside River there are 2500 opened and un-cleaned empty barrels of fuel stored within 30 meters of water. It was noted at the time that both an odor of fuel was evident at that location and staining on the ground indicates that waste has been deposited onto the ground from the barrels.
- I observed and determined in discussions during the inspection that the Government of Nunavut has continued to ship in barreled and bulk fuel for the residents of Bathurst Inlet and the Bathurst Inlet Lodge.

MEASURES TO BE TAKEN

Under the authority given to me pursuant to subsection 87(1) of the Act, I hereby direct the Petroleum Products Division of the Department of Community Government and Services, Government of Nunavut and Mr. Scott Cooper in his capacity as the Director of the Petroleum Products Division, to immediately take all reasonable measures to prevent the deposit of waste in contravention of subsections 12(1) of the Act 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 including the observed occurrences of non-compliance set out above.*



- (b) Upon receipt of this Direction to undertake such work as is required to remove from within 30 meters of water the 200 barrels of Gasoline currently situated on the shore of the Burnside River, and in the absence of a monthly monitoring program to contain such fuel in secondary containment such that it does not pose a threat to water. This work is to be completed by no later than the end of **September 30th, 2014**. The Inspector shall be notified when this is complete and date stamped photographs provided to the Inspector as proof of completion.
- (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 and others by the Government of Nunavut's Petroleum Products Division and any other empty barrels belonging to the Government of Nunavut or its predecessor the Government of the Northwest Territories. This work is to be completed before the end **September 30th, 2015**. 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 Government of Nunavut's plans and methods to be used to delineate and manage waste generated by leaking barrels and shall include activities that will be undertaken and provide dates when each progress measure and activity will be initiated and concluded such that all unauthorized deposits of waste will be removed from site or remediated as required by legislation.

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.

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 Petroleum Products Division fuel storage and transport activities at 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 Email- original filed
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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