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**DIRECTION GÉNÉRALE DE
L'APPLICATION DE LA LOI**
Application de la loi en environnement

INSPECTOR'S DIRECTION

Fisheries Act
Subsection 38(6)

August 6, 2009

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PROTECTED B
ENFORCEMENT

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Village of Queen Charlotte
PO Box 580
Queen Charlotte, B.C.
V0T 1S0

Ms. Eunice Ludlow
Chief Administrative Officer
PO Box 580
Queen Charlotte, B.C.
V0T 1S0

RE: FISHERIES ACT INSPECTOR'S DIRECTION

This document constitutes an Inspector's Direction to the persons named above pursuant to subsection 38(6) of the federal *Fisheries Act* R.S.C. 1985, c. F-14, as amended, hereinafter referred to as the *Fisheries Act*.

This Direction confirms in writing the verbal direction given on July 3, 2009 to Eunice Ludlow, Chief Administrative Officer for the Village of Queen Charlotte in her capacity as Chief Administrative Officer.

REASONABLE GROUNDS FOR BELIEF

I, Andrew Smith, an Inspector designated under subsection 38(1) of the *Fisheries Act* have reasonable grounds to believe that, out of the normal course of events, there occurred a deposit of a deleterious substance in water frequented by fish and there is a serious and imminent danger of a deposit of a deleterious substance in water frequented by fish, that damage or danger to fish or fish habitat or the use by man of fish results or may reasonably be expected to result therefrom and that immediate action is necessary to take all reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent any such occurrence or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.



- 1) On November 6, 2009 the undersigned Inspector met with Village of Queen Charlotte Public Works staff and established that the Village of Queen Charlotte did not have any significant form of sewage treatment. Untreated sewage was being discharged to Bearskin Bay via a 1500 m underwater outfall.
- 2) Bearskin Bay is water frequented by fish, as defined by the *Fisheries Act*.
- 3) Untreated municipal sewage is a substance that is deleterious to fish.
- 4) On June 26, 2009, the undersigned Inspector took a 120 Litre liquid sample from the final sewage effluent at the Village of Queen Charlotte's outfall lift station. These samples were shipped to the Pacific Environmental Science Centre for several analyses. One test that was conducted was a standard rainbow trout LC50 toxicity test. The sample failed this test and was therefore found to be acutely lethal to rainbow trout, and deleterious to fish.

MEASURES TO BE TAKEN

Under the authority given to me pursuant to subsection 38(6) of the *Fisheries Act*, I hereby direct the persons named above to immediately take all reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent the above mentioned occurrence or to counteract, mitigate, or remedy, any adverse effects that have resulted or may reasonably be expected to result from the above mentioned occurrence, including

1. **Submit a written document to Environment Canada Fisheries Act Inspector Andrew Smith on or before October 31, 2009 outlining the initial strategy for the development of the written plan noted in #3 which, upon its completion and implementation will achieve compliance with this Inspector's Direction**
2. **Beginning January 30th, 2010 and quarterly thereafter on or before the 30th day of the month, submit a written interim report to Environment Canada Fisheries Act Inspector Andrew Smith outlining the measures that have been taken in the previous calendar months to meet the requirements of this Inspector's Direction**
3. **On or before June 1, 2010, finalize and submit a comprehensive written plan which shall include the timelines for implementation and completion to Environment Canada Fisheries Act Inspector, Andrew Smith. This plan shall specify how the Village of Queen Charlotte will treat sewage effluent such that it will be compliant with the *Fisheries Act*, which would include compliance with subsection 36(3) of the *Fisheries Act*.**

THE LAW

Fisheries Act

Deposit of Deleterious Substance Prohibited

- 36.(3) Subject to subsection (4), 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.
- 34.(1) For the purposes of sections 35 to 43, "deleterious substance" means

(a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, and without limiting the generality of the foregoing includes

(c) any substance or class of substances prescribed pursuant to paragraph (2)(a),

(d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (2)(b), and

(e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (2)(c);...

34(2) The Governor in Council may make regulations prescribing

(a) substances and classes of substances,

(b) quantities or concentrations of substances and classes of substances in water, and

(c) treatments, processes and changes of water for the purpose of paragraphs (c) to (e) of the definition "deleterious substance" in subsection (1).

Duty to Report

38.(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 charge, management or controls 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.

Duty to take all reasonable measures

38.(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.

Power to take or direct remedial measures

38.(6) Where an inspector, whether or not a report has been made under subsection (4), is satisfied on reasonable grounds that there is an occurrence referred to in subsection (4) and that immediate

action is necessary in order to carry out any reasonable measures referred to in subsection (5), he may, subject to subsection (7) and the regulations, take any such measures or direct that they be taken by any person referred to in paragraph (4)(a) or (b).

Power to recover costs

42.(2) All the costs and expenses referred to in subsection (1) are recoverable by Her Majesty in right of Canada or a province with costs in proceedings brought or taken therefor in the name of Her Majesty in any such right in any court of competent jurisdiction.

OFFENCE(S)

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*

40.(3) Every person 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, or

(f) fails to comply with the whole or any part of a direction of an inspector under subsection 38(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 imprisonment for a term not exceeding six months, or to both.

78.1 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.

CONCLUSION

This Direction is WITHOUT PREJUDICE to any further course of action that Environment Canada may take with respect to any violation of the *Fisheries Act*, including an amended Inspector's Direction, prosecution or injunction under this Act or any other Act.

This Direction and the circumstances to which it refers will form part of Environment Canada's records of the Village of Queen Charlotte and the person named above and will be taken into account in future responses to alleged violations and for internal purposes such as setting the frequency of inspections. Environment Canada will consider taking further action if you do not take all necessary corrective steps to comply.

This Direction is issued in accordance with the Compliance and Enforcement Policy for Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. The complete text of this policy is available at Environment Canada's website: <http://www.ec.gc.ca/ele-ale/default.asp?lang=En&n=D6765D33-1>. The complete text of the *Fisheries Act* is available at the Department of Justice website: <http://laws.justice.gc.ca/en/search?noCookie>.

For more information or to respond to the alleged facts contained in this direction, please call or write the undersigned. Your comments will be considered, and where appropriate, a response provided. Any comments you make, as well as Environment Canada's response, will be maintained on file with this direction in Environment Canada's records.

Sincerely,

Andrew Smith
Inspector under the *Fisheries Act*
Environment Canada
Environmental Enforcement Division
Enforcement Branch
Pacific and Yukon Region
PO Box 2259
Smithers, B.C.
V0J 2N0

c.c.

Carol Kulesha
Mayor, Village of Queen Charlotte
PO Box 700
Queen Charlotte, B.C.
V0T 1S0

Greg Martin
Councillor, Village of Queen Charlotte
PO Box 808
Queen Charlotte, B.C.
V0T 1S0

Gladys Noddin
Councillor, Village of Queen Charlotte
PO Box 192
Queen Charlotte, B.C.
V0T 1S0

Kirsten Olsen
Councillor, Village of Queen Charlotte
PO Box 271
Queen Charlotte, B.C.
V0T 1S0

Leslie Johnson
Councillor, Village of Queen Charlotte
PO Box 638
Queen Charlotte, B.C.
V0T 1S0

Mark Love
Section Head
Environmental Management Section
B.C. Ministry of Environment
Smithers, B.C.

Manon Bombardier
Deputy Director
Enforcement Branch
Environmental Enforcement Directorate
Environment Canada
Gatineau, Québec

Martin Pomeroy
Regional Director
Enforcement Branch
Environmental Enforcement Division
Pacific and Yukon Region
Environment Canada
Vancouver, B.C.

Brock Bailey
Manager of Enforcement
Central and Northern B.C. Enforcement Section
Enforcement Branch
Pacific and Yukon Region
Environment Canada
Prince George, B.C.