

Ministry of the Environment

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Ministère de l'Environnement

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July 4, 2008

Bruce Power Nuclear Services & Regulatory Affairs
P.O. Box 1540
310 4th Floor
Tiverton ON N0G 2T0

Att: Mr. Frank Saunders

Site: Bruce Nuclear Generating Station B

Environmental Penalty Order No. 003

The Ministry received your "Request for Review of Environmental Penalty (NOI-003)" dated April 16, 2008, which was in response to the Notice of Intention to Issue an Environmental Penalty Order (NOI) served on March 20, 2008.

Bruce Power requested that I review the NOI-003 and consider not issuing the Environmental Penalty Order (EP Order) on the grounds that the discharge was not a contravention of the OWRA. I have considered Bruce Power's submission and believe that, based on review of the legislation and previous court decisions, the discharge was a contravention of the OWRA and, as such, I have the legal grounds to issue the EP Order.

I have also reviewed the reductions to the penalty amount that were requested in your April 16, 2008, letter. EP Order No. 003 requires Bruce Power to pay an environmental penalty amount of \$24,900. The basis for this penalty is found in that order which is attached.

If you have any questions, please call the undersigned at 519-873-5001.

Yours Truly,

J.D. Richardson
Director appointed under subsection 106.1(1) of the OWRA
Southwestern Region

Environmental Penalty Order

Environmental Protection Act, R.S.O. 1990, c. E 19 (EPA)
Ontario Water Resources Act, R.S.O. 1990, c. O. 40 (OWRA)

To: Bruce Power Inc.

Site: Bruce Nuclear Generating Station B
Part of Lots 11-20, Lake Range
Municipality of Kincardine
N0G 2T0 ON
(Formerly 177 Tie Road
Municipality of Kincardine
N0G 2T0)

1 Part 1: Definitions

1.1 For the purposes of this Environmental Penalty Order (“**EP Order**”), the following terms shall have the meanings described below:

“**Company**” means Bruce Power Inc.

“**Director**” means the undersigned Director or, in the event that the undersigned is unable to act, any other director authorized to act pursuant to the OWRA;

“**EP**” means environmental penalty;

“**EP Order**” means this Environmental Penalty Order 003;

“**ERT**” means the Environmental Review Tribunal;

“**Guideline**” means “Guideline for Implementing Environmental Penalties (Ontario Regulations 222/07 and 223/07), May 2007”;

“**OWRA**” means the *Ontario Water Resources Act*, R.S.O. 1990, c. E.19, as amended;

“**Ministry**” means the Ontario Ministry of the Environment;

“**O. Reg. 223/07**” means Environmental Penalties – Ontario Regulation 223/07, made under the OWRA;

“**Regulated Person**” is defined at clause (a) of subsection 1(1) of the OWRA as a person who belongs to a class of persons prescribed by the regulations and who holds or is

required to hold , (i) an approval, licence or permit under the Act. Additionally, clause (a) of subsection 3(1) of O. Reg. 223/07 provides that for the purposes of clause (a) of subsection 1(1) of the Act, a prescribed class of persons is persons who own or operate a plant that, (a) is listed at Table 1.

“**Site**” means the property known as Part of Lots 11-20, Lake Range, Municipality of Kincardine, N0G 2T0, formerly 177 Tie Road, Municipality of Kincardine, N0G 2T0, on which is situated Bruce Nuclear Generating Station B.

2 PART 2: LEGAL AUTHORITY AND REASONS

Legal Authority

Authority to Issue EP Order

2.1 Subsection 106.1(1) of the OWRA authorizes the Director to issue an EP to a Regulated Person that:

- (a) Contravenes,
 - i. Subsection 30(1),
 - ii. A provision of a regulation that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment,
 - iii. A provision of an order under the OWRA that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment, or
 - iv. A provision of a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under the OWRA that establishes or has the effect of establishing a numerical limit, including the limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment; or
- (b). The Regulated Person contravenes a provision, other than a provision referred to in clause (a) of,
 - i. This Act or the regulations,
 - ii. An order, notice, direction, requirement or report under this Act, , other than an order under section 84 of this Act or an order of a court,

- iii. A licence, permit or approval under this Act , or
- iv. An agreement under subsection (9).

Agreements

- 2.2 Subsection 106.1(9) of the OWRA allows the Director and the Regulated Person against whom a Notice of Intention or an EP Order has been issued to enter into an agreement that
- (a) identifies the contravention in respect of which the order may be or has been made;
 - (b) requires the person against whom the order may be or has been made to take steps specified in the agreement within the time specified in the agreement; and,
 - (c) provides that the obligation to pay the penalty may be cancelled in accordance with the regulations or the amount of the penalty may be reduced in accordance with the regulations.

Publication of Agreements

- 2.3 Subsection 106.1(10) of the OWRA provides that the Ministry shall publish every agreement entered into under subsection 106.1(9) in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993.

Penalty Does Not Prevent Prosecution

- 2.4 Subsection 106.1(11) provides that a Regulated Person may be charged, prosecuted and convicted of an offence under this Act in respect of a contravention referred to in subsection 106.1(1) even if an EP has been imposed on or paid by the Regulated Person in respect of the contravention.

No Admission of Liability

- 2.5 Under subsection 106.1(12) a Regulated Person that pays the EP imposed under subsection 106.1(1) in respect of a contravention or enters into an agreement under subsection 106.1(9) in respect of a contravention, the payment or entering into the agreement is not, for the purposes of any prosecution in respect of the contravention, an admission that the person committed the contravention.

Failure to Pay When Required

- 2.6 Subsection 106.1(13) provides that if a person who is required to pay an environmental penalty fails to comply with the requirement,

- (a) the order or decision that requires the payment may be filed with a local registrar of the Superior Court of Justice and may be enforced as if it were an order of the court;
- (b) The Director may by order suspend any licence, permit or approval that has been issued to the person under this Act until the environmental penalty is paid; and,
- (c) The Director may refuse to issue any licence, permit or approval to the person under this Act until the environmental penalty is paid.

Reasons

- 2.7 The following outlines the key background facts, issues and concerns regarding this matter which provide me with the reasons for issuing this EP Order:

Details of the Orderee

- 2.7.1 Bruce Power is a company incorporated under the laws of Ontario. Bruce Power is the owner and operator of a nuclear generating facility in the Municipality of Kincardine. This facility, Bruce Nuclear Generating Station B, is listed in Table 1 under subsection 3(1)(a) of O. Reg. 223/07. Bruce Power is therefore a Regulated Person to whom the Director is authorized to issue an EP.

The Site

- 2.7.2 Bruce Power owns the Site on which is situated the Bruce Nuclear Generating Station B. Bruce Power operates four CANDU nuclear reactors at the Site. The Site is located on the shores of Lake Huron between the towns of Kincardine and Saugeen Shores. The Site is identified as Parts of Lots 11-20, Lake Range, Municipality of Kincardine, N0G 2T0 and was formerly identified as 177 Tie Road, Municipality of Kincardine N0G 2T0.

Events Leading Up To Issuing Environmental Penalty Order

- 2.8 On January 4, 2008, the Ministry's Spills Action Centre was notified of a spill of approximately 2,200 litres of 12% sodium hypochlorite solution into the Site's cooling water and domestic drinking water intake channel. The spill occurred during Bruce Power's winter maintenance of the zebra mussel chlorination system. The spill started at approximately 16:00 hours on January 3, 2008 and ended at 00:15 on January 4, 2008 when a leak from the sodium hypochlorite storage tanks was noticed by a worker and a controlling valve was shut off. The spilled material flowed to a nearby floor drain which directly discharged to the Site's water intake channel.

- 2.9 Water enters the intake channel at the Site from Lake Huron via an intake situated on the bed of Lake Huron (approximately 12 meters deep and 800 meters from the shore). The water then travels through a tunnel carved in the bedrock and emerges near the generating station in the intake channel. The intake channel runs beside a series of pumphouses and a water treatment plant where water is extracted for condenser cooling, firewater and domestic drinking water. Fish are able to swim into the intake, through the tunnel and into the intake channel. Due to the dynamics and volumes of flow through the intake channel, fish are permanently separated from the lake population once they enter the intake channel. These isolated fish are eventually impinged on intake screens that prevent foreign material from entering the condenser cooling system. Impinged fish are extracted from these screens on a periodic basis.
- 2.10 Following the spill (between January 5 and 6, 2008) a total of 806 dead fish were collected by Bruce Power from the intake channel. The majority of the collected fish were large bodied fish such as trout, salmon, pickerel and whitefish. Bruce Power has also stated that, typically, an average of 60 to 80 small bodied fish become impinged on the intake screens per month, a total which includes an average of 4 to 5 large bodied fish. The number of dead fish in the water intake channel reportedly decreased to normal numbers by January 7, 2008. Bruce Power reported the fish kill to the Ministry on January 9, 2008.
- 2.11 On January 7, 2008, 5 of the impacted fish were collected and samples were analyzed by the University of Guelph, Fish Pathology Lab. On February 12, 2008, Bruce Power informed the Ministry that the results suggest that the sampled fish died from toxic levels of sodium hypochlorite.
- 2.12 EP NOI-003 related to one (1) contravention:
- 2.12.1 The discharge of sodium hypochlorite to the water intake channel at the Site is a contravention of section 30(1) of the OWRA, a provision which prohibits any person from discharging or causing or permitting the discharge of any material of any kind into or in any waters or on the bank or shore thereof or into or in any place that may impair the quality of the water of any waters.
- 2.12.2 "Waters" is defined in section 1 of the OWRA as meaning a well, lake, river, pond, spring, stream, reservoir, artificial watercourse, intermittent watercourse, ground water or other water or watercourse.
- 2.12.3 Subsection 1(3)(a) of the OWRA provides that the quality of water shall be deemed to be impaired if the material or derivative of the material discharged directly or indirectly into the water causes injury to any living organism that lives in the water.

2.12.4 The discharge of approximately 2,200 litres of 12% hypochlorite solution into the intake channel at the Site impaired the quality of the waters of the intake channel at the Site, thereby contravening section 30(1) of the OWRA.

- 2.13 On March 20, 2008, the Director issued a Notice of Intent to Issue an Environmental Penalty (NOI-003) to Bruce Power. On March 26, 2008, Bruce Power requested the Director extend the submission date for their response. Pursuant to the Director's authority under subsection(s) 6(1) of O. Reg. 223/07, the Director extended the submission date to April 21, 2008 from April 4, 2008.
- 2.14 The Contravention is classified as a Type 3 contravention in accordance with item number 1 in Table 2 of O. Reg. 223/07. The seriousness of the Contravention was classified in accordance with subsection 10(3) of O. Reg. 223/07 which specifies that a contravention is serious if the contravention causes or may cause localized injury of damage to any animal life. The cell in Table 3 of O. Reg. 223/007 which corresponds to classification of Type 3 and serious provides for a penalty range of \$30,000 to \$50,000.

Application of Case-Specific Factors Listed in Paragraph 3 of s. 9(1) of O. Reg. 223/07

- 2.15 To determine the amount of the gravity component of an EP, the Director must look to section 9 of O. Reg. 223/07 and Appendix 3 of the Guideline. The Director will consider the factors identified in paragraph 3 of subsection 9(1) of O. Reg. 223/07 and Appendix 3 to determine what value within a penalty range in Table 3 shall be given for the contravention. Under Appendix 3, the penalty factors that apply to the contravention are identified and the corresponding point values are summed for each applicable factor. Then, it is determined if toxicity applies. The summed point value and determination on whether toxicity applies is then used to determine the gravity penalty value.
- 2.16 Under paragraph 3(i) of subsection 9(1) of O. Reg. 223/07, the Director can consider a Regulated Person's contravention history under the Environmental Protection Act and/or the OWRA when determining the gravity component of the EP. Bruce Power has not had any convictions within the last 5 years and no EPs within the last 3 years. Under Appendix 3 of the Guideline, no convictions in the previous 5 years and no EPs within the last 3 years results in -1 (minus one) point.
- 2.17 Under paragraph 3(iv) of subsection 9(1) of O. Reg. 223/07, the Director can consider whether the extent of the deviation from the requirement that was contravened is in the lower or upper part of the range for the seriousness classification for the contravention, as set out in sections 10 to 14 of O. Reg. 223/07. In this case, the impacts are difficult to remediate. Under Appendix 3 of the Guideline, impacts that are difficult to remediate result in 1 (one) point.

- 2.18 Adding the factors outlined in paragraphs 2.16 and 2.17 together results in 0 (zero) points. Under Appendix 3 of the Guideline, a \$30,000 (thirty thousand dollar) gravity component is imposed for a score of 0 (zero) points or less.

Director's Response to Regulated Person's Request for Review of Notice of Intention

- 2.19 On March 20, 2008, I issued a Notice of Intention to issue an EP Order to Bruce Power. Bruce Power responded on April 16, 2008 and asked me to review the Notice of Intention.

A copy of the Notice of Intention issued on March 20, 2008 is attached to and forms part of this EP Order.

A copy of your written request that I review the Notice of Intention dated April 16, 2008 is attached to this EP Order.

- 2.20 I have reviewed both your April 16, 2008 written request and the additional materials you provided via email on May 26, 2008. My responses to your request(s) are as follows:

A. Violations:

- 2.20.1 Bruce Power contends that the spill of approximately 2,200 litres of 12% hypochlorite solution into the intake channel at the Site is not a contravention of Section 30(1) of the OWRA because the waters of the intake channel are not considered "waters" as defined in Section 1 of the OWRA and as a result, there is no legal basis for the Director to issue an Environmental Penalty Order under Section 106.1(1)(a)(i) of the OWRA. Bruce Power bases this argument on the following:

- the intake channel is a man-made structure which is an extension and integral part of the facility;
- fish that enter the intake channel are not able to exit due to the strong flow created by the Condenser Cooling Water pumps and will eventually die once they come in contact with the pumphouse screens;
- the intake channel for the Bruce A facility is considered part of the sewage works as identified in the Certificate of Approval (Sewage) for Bruce A and therefore, the water contained in the intake channel should be viewed no differently than water in other components that make up the sewage works. Although the Certificate of Approval (Sewage) for Bruce B does not describe the intake channel as part of the facility's overall sewage works, it is very similar to that of Bruce A;
- the federal Department of Fisheries and Oceans declined to take action on this spill incident on the grounds that the entire intake

structure is private and man-made and thus not considered Canadian Fisheries Waters; and,

- the spill did not result in any exceedance of the Certificate of Approval (Sewage) effluent objectives or effluent requirements for residual chlorine.

2.20.2 I have reviewed this information and have reached the following conclusions:

- the definition of “waters” in the OWRA is very broad and has been interpreted by the courts as including the waters of municipal ditches with intermittent and/or infrequent flow, man-made ponds on private property and those that are part of sewage systems approved by the ministry (R. v Celanese). Furthermore, the intake channel, the flow of which is controlled, can be considered an “artificial watercourse” which is included as a term in the definition of “waters”. The intake channel contains “waters” as defined under the OWRA and a material under the care and control of the Company, with the capability of impairing those waters, was discharged from the Company’s facility into those waters. This is all that is required to confirm a breach of subsection 30(1). The fact that laboratory analysis of the sampled dead fish subsequently found in the intake channel suggest that the fish were killed by the discharge would be considered an aggravating factor going to sentence in the event of a prosecution;
- the discharge of the sodium hypochlorite was into or in any place that may have impaired the waters of the discharge channel and the waters of Lake Huron; and
- the decision of the federal Department of Fisheries and Oceans to not get involved with the incident is irrelevant to the violations that occurred under the OWRA and does not preclude provincial regulatory action.

I therefore conclude that the sodium hypochlorite spill did contravene section 30(1) of the OWRA as identified in paragraph 2.12.

B. Reductions for Prevention:

2.20.3 Reductions to the gravity component are determined in accordance with section 15 of O. Reg. 223/07 on the grounds that the Regulated Person took steps to prevent the contravention or mitigate its effects. Section 4.1 in Appendix 4 of the Guideline specifically lists the preventive measure modifiers considered for discharge violations. A Regulated Person is eligible for up to a 20% reduction to the gravity component of a penalty for the steps the person took to prevent the discharge violations. For each consideration that has a “yes” answer in Table A1 of the Guideline, the appropriate point value from the last 3 columns is assigned. The points are totalled and Table A2 is used, based on the violation type, to determine the percentage reduction for the preventive measures taken by the Regulated Person.

2.20.4 Preventative Monitoring Systems

Bruce Power's April 16, 2008, letter and a May 26, 2008 follow up email, identifies preventative measures that were in place that the Company contends should contribute to reductions. Bruce Power has a chlorine concentration high alarm to provide notification of elevated chlorine levels and routine field operation surveillance (i.e. every 12 hours) of the zebra mussel chlorination system. Bruce Power also has an operating manual for the zebra mussel chlorination system including procedures in the event of a sodium hypochlorite spill which was invoked once the operators became aware of the spill to the intake channel.

I have reviewed this information and accept that Bruce Power has preventative monitoring systems in place specific to the process/areas where the incident occurred.

In Appendix 4.1 of the Guideline, a Yes for 4(a) results in 1 point and a Yes for 4(b)– Preventative Monitoring Systems, results in 2 points for a total of 3 points.

2.20.5 Training

Personnel trained on the prevention of unlawful discharges were present during the spill event.

I have reviewed this information and accept that Bruce Power has appropriately trained personnel that were involved specific to the process/areas where the incident occurred.

In Appendix 4.1 of the Guideline, a Yes for 6(a) – Training, results in 1 point.

2.20.6 Adding the factors for prevention outlined in paragraphs 2.20.4 and 2.20.5 results in 4 points. Using Table A1, 4-5 points for spills results in an 8% reduction to the gravity component. This is a two thousand, four hundred dollar (\$2400.00) reduction to the gravity component for prevention measures.

C. Reductions for Mitigation:

2.20.7 Reductions to the gravity component are determined in accordance with section 15 of O. Reg. 223/07 on the grounds that the Regulated Person took steps to prevent the contravention or mitigate its effects. Section 4.2 in Appendix 4 of the Guideline lists all the mitigative measures that may be considered. A Regulated Person is eligible for up to a 10% reduction to the gravity component of a penalty for the steps the person took to mitigate the effects of the discharge violation. For each consideration in Table B1 of the Guideline, the appropriate point value from the last 3 columns is assigned.

Points are totalled and Table B2 is used to determine the percentage reduction for the mitigative measures taken by the Regulated Person.

2.20.8 Response

Bruce Power's April 16, 2008, letter contends that measures were in place that identified the spill within 1-2 hours. On January 3, 2008, at approximately 21:00, a Company operator observed the chlorine concentration high alarm. A failed controller was suspected and the set point was reduced. At 23:30, the residual chlorine level was observed to be continuing to rise which was not expected as it takes at least 4 hours from the time of the adjustment to a reverse in the trend. On January 4, 2008, at 00:15, it was identified that the sodium hypochlorite levels in Tank 1 had dropped from its level at 21:00 on January 3, 2008. At this point in time, the spill was identified and the reason for the chlorine concentration high alarm being triggered was isolated.

I have reviewed this information and do not accept that Bruce Power had measures in place that identified the spill within 1-2 hours. The January 16, 2008 spill follow up report, notes that the duration of the spill was estimated to be 9 hours based on a worst case scenario, due to the time that work protection permits were applied to the valves for the zebra mussel chlorination system. Bruce Power estimates that the spill occurred sometime after the work protection permits were applied at approximately 16:00 on January 3, 2008. Given this scenario, the spill could have been occurring for 8 hours and 15 minutes before the Company identified the source. Although the chlorine concentration high alarm did initially alert the Company of a potential issue at 21:00, the spill was not identified until 3 hours and 15 minutes later. Therefore, Bruce Power did not have measures in place that identified the spill within 1-2 hours and no reductions will be given for this modifier.

2.20.9 Response

Bruce Power's April 16, 2008, letter contends that once the spill was identified, a detailed cause analysis was conducted to determine the source of the violation. Once the sodium hypochlorite levels were noticed to have dropped in Tank 1, the tank was immediately isolated and the spill was determined to have occurred as a result of the winterization process for the zebra mussel chlorination system.

I have reviewed this information and accept that Bruce Power did conduct a detailed caused analysis to determine the source of the spill.

In Appendix 4.2 of the Guideline, a Yes for 2(c) – Response, results in 1 point.

2.20.10 Response

Bruce Power's April 16, 2008, letter contends that once the incident was identified, mitigative measures were implemented swiftly and fully to rectify the problem as per industry best practices. Once Tank 1 was identified as the source of the sodium hypochlorite spill, the tank was immediately isolated and a stop consumption work order was issued on the domestic water system and the system was flushed until levels of residual chlorine returned within normal operation limits.

I have reviewed this information and accept that Bruce Power implemented mitigation measures swiftly and fully once the spill was isolated.

In Appendix 4.2 of the Guideline, a Yes for 2(d) – Response, results in 2 points.

2.20.11 Response

Bruce Power's April 16, 2008, letter contends that once the incident was identified, the Company employed additional monitoring and sampling to minimize risk to the environment and/or human health. Following the identification of the spill, grab samples for total chlorine were collected from the Site's outfall and the intake channel at 8:15 AM, 9:17 AM, 11:30 AM, 13:20 AM and at 10:55 AM and 13:45 PM respectively, on January 4, 2008. The outfall samples were found to have non-detectable levels of chlorine and the intake channel samples were found to be 0.67 and 0.46 mg/kg respectively. In addition, on January 7, 2008, 5 fish impacted fish were collected from the spill area and on January 8, 2008, gill and tissue samples were taken and sent for analysis.

I have reviewed this information and accept that Bruce Power did employ additional monitoring and sampling.

In Appendix 4.2 of the Guideline, a Yes for 2(e) – Response, results in 2 points.

- 2.20.12 Adding the factors for reductions outlined in paragraphs 2.20.8, 2.20.9, 2.20.10 and 2.20.11 results in 5 points. Using Table B2, 4-6 points for spills results in a 4% reduction to the gravity component. This is a twelve hundred dollar (\$1200) reduction to the gravity component for mitigative measures.

D: Reduction for environmental management system

- 2.20.13 Under section 16 of O. Reg. 223/07, the Director shall grant a reduction equal to 5% of the gravity component if at the time of the contravention, the Regulated Person had in place an environmental management system described in section 16 of O. Reg. 223/07. In this case, Bruce Power held a valid ISO 14001:2004 environmental management system at the time of the contravention. This results in a fifteen hundred dollar (\$1500)

reduction to the gravity component for having a valid environmental management system.

Amount of Environmental Penalty

- 2.21 Under section 7 of O. Reg. 223/07, the amount of the environmental penalty for a contravention is calculated by adding the monetary benefit (section 8 of O. Reg. 223/07) to the gravity component (section 9 of O. Reg. 223/07) which includes subtracting the reduction for prevention or mitigation measures (section 15 of O. Reg. 223/07), the reduction for an environmental management system (section 16 of O. Reg. 223/07) and the reduction for an agreement (section 17 of O. Reg. 223/07), as applicable.
- 2.22 For the contravention, no monetary benefit component is being determined for this EP. The gravity component, as identified in paragraph 2.18, is thirty thousand dollar (\$30,000). The reduction for prevention measures as identified in paragraph 2.20.6 is two thousand four hundred dollars (\$2400), the reduction for mitigative measures as identified in paragraph 2.20.12 is twelve hundred dollars (\$1200) and the reduction for a valid EMS as identified in paragraph 2.20.13 is fifteen hundred dollars (\$1500). This results in an EP of twenty-four thousand, nine hundred dollars (\$24,900).

PART 3: ORDER TO PAY ENVIRONMENTAL PENALTY

- 3.1 For the reasons stated above and pursuant to my authority under subsection 106.1(1) of the OWRA, I order you to pay an EP in the amount of twenty-four thousand nine hundred dollars (\$24,900) to the Minister of Finance by September 2, 2008. This payment shall be made by certified cheque and sent to the following address: District Manager, Owen Sound District Office, 1580-20th Street, Owen Sound, Ontario.

PART 4: GENERAL

- 4.1 All orders are issued in the English language and may be translated into the French language. In the event that there should be a conflict between the English original and the French translation, the English original shall prevail.
- 4.2 Subsection 13(1) of the OWRA provides that an order of the Director is binding upon the successor or assignee of the person to whom it is directed.
- 4.3 The requirements of this order are minimum requirements only and do not relieve you from:
- complying with any other applicable order, statute, regulation, municipal, provincial or federal law

- obtaining any approvals or consents not specified in this order

4.4 Notwithstanding the issuance of this order, further or other orders may be issued in accordance with legislation as circumstances require.

4.5 In the event that any party to this order is, in the opinion of the Director, rendered unable to perform or comply with any obligations herein because of

- natural phenomena of an exceptional, inevitable or irresistible nature, or insurrections, or
- strikes, lockouts or other labour disturbances
- inability to obtain materials or equipment for reasons beyond the control of the company or
- any other cause whether similar to or different from the foregoing beyond the reasonable control of the parties,

the obligations hereof, as they are affected by the above shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the party must notify the Director immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the compliance dates in question.

4.6 Failure to comply with a requirement of this order by the date specified does not absolve the parties from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.

4.7 This order has no expiry date.

PART 5: APPEAL RIGHTS

5.1 Under section 100 of the OWRA, you may require a hearing before the Environmental Review Tribunal, if, within fifteen days after service upon you of this order, you serve written notice upon the Review Tribunal and the Director.

5.2 Section 101 of the OWRA provides that the notice requiring the hearing must include a statement of the portions of the order for which the hearing is required and the grounds on which you intend to rely at the hearing. Except by leave of the Environmental Review Tribunal, you are not entitled to appeal a portion of the order or to rely on grounds of appeal that are not stated in the notice requiring the hearing.

5.3 Written notice requiring a hearing shall be served in accordance with the applicable Act(s) or Service Regulations on the following:

The Secretary
Environmental Review Tribunal

655 Bay Street, 15th Floor
Toronto ON M5G 1E5

and Director
Ministry of the Environment
Southwest Region
733 Exeter Road
London ON N6E 1L3
Fax: 519-873-5020

Where service is made by mail, the service shall be deemed to be made on the fifth day after the day of mailing and the time for requiring a hearing is not extended by choosing service by mail.

Refer to Service of Documents Regulation 226/07 for further rules regarding service by fax.

PART 6: PROCESS OF APPEAL BEFORE ENVIRONMENTAL REVIEW TRIBUNAL

- 6.1 Subsection 102.1(1) of the OWRA provides that the regulations made under clause 106.1(15)(d) governing the determination of the amounts of an EP apply to the Environmental Review Tribunal ("**ERT**").
- 6.2 Subsection 102.1(2) of the OWRA provides that the ERT shall not substitute its opinion for that of the Director with respect to the amount of the EP Order unless the ERT considers the amount to be unreasonable.
- 6.3 Subsection 102.2(2) of the OWRA provides that, if the subject of the hearing relates to a contravention of subsection 30(1), the onus is on the Regulated Person requesting the hearing before the ERT to prove that the material that was discharged into the natural environment is not a material that may impair the quality of water of any waters described in the order. .

- 6.4 Subsection 102.2(3) of the OWRA provides that if the order that is the subject of the hearing relates to a discharge into the natural environment in contravention of a provision referred to in subclause 106.1(1)(a)(ii), (iii), or (iv), the onus is on the person requesting the hearing before the ERT to prove that the person did not contravene the provision.



J.D. Richardson

Director appointed under subsection 106.1 (1) of the OWRA
Southwest Region
733 Exeter Road
London ON N6E 1L3
Tel: 519-873-5000
Fax: 519-873-5020

Date: _____



