

Regulatory Tools

My experience as an INAC Inspector

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Diavik diamond mine



Compliance through education & enforcement



Toolbox:

1. Working relationship
2. Inspection report
3. Inspection report with deadline
4. Inspector's order
5. Investigation

But really, what are the penalties?

- An offence is considered a contravention of:
 - provisions of the regulations
 - permit conditions
 - an order of an inspectorPenalty is up to \$15,000 fine, up to 6 months prison, or both
- If it is a continuing offence, it is a separate offence each day
- A person convicted of using land without a permit may be liable for repairs or limiting the damage
- A person who fails to provide the Inspector with reasonable assistance is liable to a fine up to \$2,000, up to 6 months prison, or both

How do you know what's happening when you're not there?



- Surveillance Network Program (SNP) sampling
- Confirmatory sampling
- Inspection frequency based on assessment of risk
- Progress reports (28, MVLUR)

Variety of project scales



Standard permit conditions



Management plans



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2003 09 02

Management plans



Adaptive management



Community capacity



Conclusions

- Wide range of enforcement tools
- Wide range of project sizes and complexity
- Challenges: increasing complexity, capacity
- Strengths: relationships, on-the-ground experience

Back pocket

- Designation of inspectors
- **84. (1) The federal Minister may designate qualified persons as inspectors for the purposes of this Part so far as it relates to uses of land.**
- Certificate to be produced
- (2) The federal Minister shall furnish every inspector with a certificate of designation, which the inspector shall produce at the request of a person in charge of any place entered by the inspector.
- Inspections of land
- **85. (1) For the purpose of determining whether the regulations or the conditions of a permit are being complied with, an inspector may**
- **(a) enter, at any reasonable time, any place on land owned or occupied by a permittee to which the permit relates, and conduct such inspections as the inspector considers necessary; and**
- **(b) take such samples in that place as the inspector considers necessary and examine and make copies of any books, records or documents found there that the inspector believes, on reasonable grounds, contain any information relating to the use of land.**
- Notice to first nation
- (2) Where the inspector considers it reasonable to do so, an inspector shall give the Gwich'in or Sahtu First Nation prior notice of entry by the inspector on its first nation lands.
- Notice to Tlicho Government
- (2.1) An inspector shall, if it is reasonable to do so, give the Tlicho Government prior notice of entry by the inspector on Tlicho lands.
- Exception for dwelling-place
- (3) An inspector may not enter any place designed to be used and being used as a permanent or temporary private dwelling-place.
- 1998, c. 25, s. 85; 2005, c. 1, s. 48.
- Inspector's order — adverse effects of land use
- **86. (1) Where an inspector has reasonable grounds to believe that a permitted use of land has resulted in or is likely to result in an adverse effect on the environment, the inspector may, in accordance with the regulations, order the permittee in writing to take such measures as the inspector considers reasonable to mitigate, remedy or prevent the adverse effect.**
- Inspector's order — contravention
- (2) Where an inspector has reasonable grounds to believe that a permittee is contravening the regulations or the conditions of a permit, the inspector may, in accordance with the regulations, order the permittee in writing to take such measures as the inspector considers reasonable in order to prevent the contravention from continuing.
- Failure to take measures
- (3) Where a permittee fails to take measures ordered under subsection (1) or (2), the inspector may take those measures and, for that purpose, may enter any place other than a place designed to be used and being used as a permanent or temporary private dwelling-place.
- Recovery of Her Majesty's costs
- (4) Any portion of the reasonable costs incurred by Her Majesty in right of Canada in the taking of measures pursuant to subsection (3) constitutes a debt due to Her Majesty recoverable from the permittee in a court of competent jurisdiction or by recourse to any security posted under section 71.
- Assistance to inspectors
- **87. (1) The owner or person in charge of a place entered pursuant to section 85 or subsection 86(3), and every person present there, shall give an inspector all reasonable assistance to enable the inspector to carry out the inspector's functions under this Act, and shall furnish the inspector with such information related to the administration of this Act as the inspector may reasonably request.**
- Obstruction and false statements
- (2) No person shall wilfully obstruct or otherwise interfere with, or knowingly make a false or misleading statement orally or in writing to, an inspector carrying out any functions under this Act.
- Review by board
- **88. A board shall, if so requested by a permittee, review without delay and confirm, vary or revoke an order issued by an inspector pursuant to subsection 86(1) or (2).**
- Notice to first nation by water inspector
- **89. (1) An inspector designated under the *Northwest Territories Waters Act* who considers it reasonable to do so shall give the Gwich'in or Sahtu First Nation prior notice of entry on its first nation lands.**
- Notice to Tlicho Government by water inspector
- (1.1) An inspector designated under the *Northwest Territories Waters Act* shall, if it is reasonable to do so, give the Tlicho Government prior notice of entry on Tlicho lands.
- Review of order by board
- (2) A board shall, if so requested by a person who is directed to take measures pursuant to subsection 37(1) of the *Northwest Territories Waters Act*, review without delay and confirm, vary or revoke the direction.
- 1998, c. 25, s. 89; 2005, c. 1, s. 49.