



APPENDIX B
ENVIRONMENT AND CLIMATE CHANGE CANADA (ECCC) –
NOTICE OF INTENT TO ISSUE A DIRECTION AND
DIRECTION, DATED DECEMBER 2017



Environment
Canada

Environnement
Canada

**ENFORCEMENT
BRANCH**
Environmental Enforcement



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

**NOTICE OF INTENT TO ISSUE A DIRECTION
PURSUANT TO THE FISHERIES ACT**

FILE NUMBER: 8350-2017-11-15-4277

NAME OF PERSONS TO WHOM THIS NOTICE OF INTENT IS DIRECTED

This notice of intent is directed to the following persons:

1213427 Ontario Corporation, carrying on business as Picton Terminals
c/o Hendrik Doornekamp - President
588 Scotland Rd
Odessa, Ontario, K0H 2H0

Hendrik Doornekamp
President, 1213427 Ontario Corporation
588 Scotland Road,
R.R.#1 Odessa, ON
K0H 2H0

Ben Doornekamp
Owner/Operator, Picton Terminals
588 Scotland Road,
R.R.#1 Odessa, ON
K0H 2H0

The persons listed above are referred to as "you" in this document.

PURPOSE OF NOTICE OF INTENT

The purpose of this notice of intent is to notify you that I, the undersigned Inspector, intend to issue the attached direction to the aforementioned persons.

The authority to issue a direction is found in subsection 38(7.1) of the *Fisheries Act*.

OPPORTUNITY TO MAKE ORAL REPRESENTATIONS

You are being given a reasonable opportunity in the circumstances to make oral representations in relation to the proposed direction.

Participation in and statements given at oral representations are voluntary.

Canada

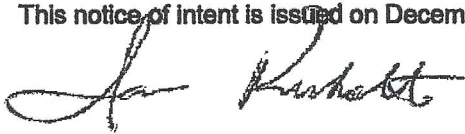
Oral representations enable you to provide information about the alleged contraventions or the contents of the attached direction or both.

Should you choose to make oral representations I, the undersigned Inspector, will consider them and will decide whether or not to issue the draft direction, modify or issue as is.

Please contact me by December 21, 2017 to let me know if you intend to take advantage of the opportunity to make oral representations.

If you wish to make oral representations and plan to bring any written documents to my attention at that time, please provide copies of the documents for my records.

This notice of intent is issued on December 18, 2017 at Ottawa, Ontario by:



Ian Rumbolt
Fisheries Act Inspector
Enforcement Officer | Agent de l'application de la loi,
Environmental Enforcement Directorate | Direction de l'application de la loi sur l'environnement
Enforcement Branch | Direction générale de l'application de la loi
Ontario Region | Région de l'Ontario
Environment Canada | Environnement Canada
335 River Road, Ottawa, ON, K1V 1C7
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DIRECTION GÉNÉRALE DE
L'APPLICATION DE LA LOI
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DIRECTION

**FISHERIES ACT
Subsection 38(7.1)**

File: 8350-2017-11-15-4277

**PROTECTED B
ENFORCEMENT**

December 22, 2017

Registered with acknowledgement of receipt

1213427 Ontario Corporation, carrying on business as Picton Terminals
c/o Hendrik Doornekamp - President
588 Scotland Rd
Odessa, Ontario, K0H 2H0

Hendrik Doornekamp
President, 1213427 Ontario Corporation
588 Scotland Road,
R.R.#1 Odessa, ON
K0H 2H0

Ben Doornekamp
Owner/Operator, Picton Terminals
588 Scotland Road,
R.R.#1 Odessa, ON
K0H 2H0

RE : FISHERIES ACT DIRECTION

This document constitutes a direction to the persons named above, pursuant to subsection 38(7.1) of the *Fisheries Act* as amended, hereinafter referred to as the *Fisheries Act*.

REASONABLE GROUNDS FOR BELIEF

I, Ian RUMBOLT, an Inspector designated by the Minister of Fisheries and Oceans under subsection 38(1) and 5(1) of the *Fisheries Act*, have reasonable grounds to believe:

Canada

1. That at the Picton Terminals, herein referred to as the location; there occurs a deposit of a deleterious substance in water frequented by fish that is not authorized under the Fisheries Act and/or there is a serious and imminent danger of a deposit of a deleterious substance in water frequented by fish.
2. That detriment to fish habitat or fish or to the use by humans of fish results or may reasonably be expected to result from the occurrence and that immediate action is necessary in order to take all reasonable measures consistent with the public safety and with the conservation and protection of fish and fish habitat to prevent the occurrence or to counteract, mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it.
3. That all reasonable measures consistent with public safety and with the conservation and protection of fish and fish habitat have not been taken as required by subsection 38(6) of the *Fisheries Act*.
4. That on November 3, 2017 Environment and Climate Change Canada (ECCC) received a complaint/Tip reported to the Spills Action Center (SAC) regarding uncovered salt piles and seepage water possibly containing salt entering Picton Bay.
5. That on November 5, 2017 EO's RUMBOLT and SCHEEPERS conducted an onsite inspection at the Picton Terminals to verify compliance with the Fisheries Act and confirm information in the SAC Report.
6. That during the onsite inspection on November 5, 2017 no representative was present at the Picton Terminals and the doors were locked. EO's accessed the adjacent property to inspect the bermed areas and seepage water that was exiting the Picton Terminals site.
7. That during the onsite inspection, it was verified that seepage water from the Picton Terminals site was entering the adjacent property and eventually into the Picton Bay.
8. That three sets of samples were taken on November 5, 2017; one at toe of berm where seepage exiting the Picton Terminals Site and entering the adjacent property, one set midway down the property and one set of samples just before the seepage entered Picton Bay.
9. That Picton Terminals is registered as 1213427 Ontario Corporation and Hendrik Doornekamp is listed as the President.
10. That Ben Doornekamp is listed as the Project Engineer and main contact for the Picton Terminals, and has charge, management or control of the salt and salt storage piles at the Picton Terminals.
11. That Picton Bay is part of the Bay of Quinte in Lake Ontario, which are known waters frequented by fish.
12. That samples collected by ECCC on November 5, 2017 from the seepage depositing into Picton Bay showed high levels of Aluminum (1300 ug/L), Chloride (20,400 mg/L & 21,400 mg/L) and Iron (3660 ug/L), as well as elevated Cyanide (5.69 mg/L).
13. That according to the Canadian Water Quality Guidelines for the Protection of Aquatic Life, the guidelines for Aluminum, Chloride, Iron and Cyanide entering freshwater are 100 ug/L for Aluminum, 640 mg/L (Short term) for Chloride or 120 mg/L (Long Term) for Chloride, 300 ug/L for Iron and 5 ug/L for Free Cyanide.
14. That according to a 2015 expert opinion from ECCC's Toxicology Laboratory (Acute Toxicity of Road Salt), runoff water containing Chlorides at concentrations of 20,400 mg/L and 21,400 mg/L would be acutely lethal and deleterious to fish and aquatic vertebrates.

MEASURES TO BE TAKEN

Under the authority given to me pursuant to subsection 38(7.1) of the *Fisheries Act*, I hereby direct the persons named above to immediately;

1. Take all reasonable measures consistent with public safety and with the conservation and protection of fish and fish habitat to prevent the above mentioned occurrence or to counteract, mitigate, or remedy, any adverse effects that result from the above mentioned occurrence or might reasonably be expected to result from it.
2. Develop and implement a plan to properly manage the salt piles and runoff associated with the site. The plan must identify all seepages from the Picton Terminals Site, as well as providing mitigation measures to deal with these seepages and to prevent future occurrences.
3. A report on the completion of these measures must be submitted to an Inspector/Fishery Officer on or before January 15, 2018

THE LAW

Fisheries Act

Deposit of deleterious substance prohibited

- 38(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.

Duty to notify – deleterious substance

- 38(5) If there occurs a deposit of a deleterious substance in water frequented by fish that is not authorized under this Act, or if there is a serious and imminent danger of such an occurrence, and detriment to fish habitat or fish or to the use by humans of fish results or may reasonably be expected to result from the occurrence, then every person shall without delay notify an inspector, a fishery officer or an authority prescribed by the regulations if the person at any material time
- (a) owns or has the charge, management or control of
 - (i) the deleterious substance, or
 - (ii) the work, undertaking or activity that resulted in the deposit or the danger of the deposit; or
 - (b) causes or contributes to the occurrence or the danger of the occurrence.

Duty to take corrective measures

- 38(6) Any person described in paragraph (4)(a) or (b) or 5(a) or (b) shall, as soon as feasible, take all reasonable measures consistent with public safety and with the conservation and protection of fish and fish habitat to prevent the occurrence or to counteract, mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it.

Report

- 38(7) As soon as feasible after the occurrence or after learning of the danger of the occurrence, the person shall provide an inspector, fishery officer or an authority prescribed by the regulations with a written report on the occurrence or danger of the occurrence.

Corrective measures

38(7.1) If an inspector or fishery officer, whether or not they have been notified under subsection (4) or (5) or provided with a report under subsection (7), is satisfied on reasonable grounds that immediate action is necessary in order to take any measures referred to in subsection (6), the inspector or officer may, subject to subsection (7.2), take any of those measures at the expense of any person described in paragraph (4)(a) or (b) or (5)(a) or (b) or direct such person to take them at that person's expense.

Offence and punishment

40(2) Every person who contravenes subsection 36(1) or (3) is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of an individual,

- (A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000, and
- (B) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000, or to imprisonment for a term not exceeding three years, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

- (A) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and
- (B) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and

(iii) in the case of a corporation that the court has determined to be a small revenue corporation,

- (A) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and
- (B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

(b) on summary conviction,

(i) in the case of an individual,

- (A) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000, and
- (B) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000, or to imprisonment for a term not exceeding six months, or to both,

(ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),

- (A) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and
- (B) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and

(iii) in the case of a corporation that the court has determined to be a small revenue corporation,

- (A) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and
- (B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Other offences

40(3) Every person who 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.

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.

Continuing offences

- 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.
- 78.2 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted.

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 Direction, prosecution, or the seeking of an Injunction from the court under the *Fisheries Act*, or any other Act.

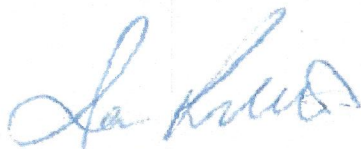
This direction and the circumstances to which it refers will form part of Environment Canada's records of Picton Terminals and its responsible officials, and will be taken into account in future responses to alleged violations and for internal purposes such as setting the frequency of inspections. Environment 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 the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. The complete text of this policy is available on Environment Canada's website:

<http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=D6B74D58-1>

The complete text of the *Fisheries Act* and/or the *Regulations* are available on the Department of Justice website : <http://laws-lois.justice.gc.ca/Search/>

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.



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