June 1, 2009

The Honourable Jim Prentice
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, Quebec
K1A 0H3
Jim.Prentice@ec.gc.ca

RE: Application for Investigation Under s. 17 of *CEPA 1999*

Applicant

I, Allan Williams, am at least 18 years of age and have been a resident of New Harbour, Newfoundland since 1939. My current address is:

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New Harbour, NL
A0B 2P0
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Pursuant to s. 17 of the *Canadian Environmental Protection Act, 1999* ("*CEPA 1999*"), I hereby submit the following application for investigation to request that the Minister of the Environment investigate the following contraventions of the Act and regulations.

Alleged Contraventions

Section 272 of *CEPA 1999* states:

> 272. (1) Every person commits an offence who contravenes
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> (a) a provision of this Act or the regulations;
> (b) an obligation or a prohibition arising from this Act or the regulations

Section 5 of the *PCB Regulations* (SOR/2008-273), made under *CEPA 1999*, reads as follows:

> 5. (1) No person shall release PCBs into the environment, other than from the equipment referred to in subsection (2), in a concentration of
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> (a) 2 mg/kg or more for a liquid containing PCBs; or
> (b) 50 mg/kg or more for a solid containing PCBs.

(2) No person shall release more than one gram of PCBs into the environment from equipment referred to in section 16 that is in use or from equipment in use for which an extension has been granted under section 17.

According to s. 3 of *CEPA 1999*, "environment" means the components of the Earth and includes air, land and water. Furthermore, "release" is defined to include "discharge, abandon, deposit, spill, leak, seep, pour, emit, throw, dump and place."

The Province of Newfoundland and Labrador has failed to adequately treat and contain PCB contaminants from transformer casings buried on the landfill site on the New Harbour Barrens ("the landfill site"). As a result, PCBs are being released from the landfill site into the environment in amounts and concentrations that exceed the limit set out in s. 5 of the *PCB Regulations*. In addition to endangering human health, this PCB contamination and release is also endangering the health of the local environment, including aquatic life, plant life and animal life.

The circumstances that have lead to the PCB contamination of the landfill primarily result from the disposal of transformer casings that took place in 1985 and then again during a remediation project in 1994, the circumstances of which are outlined in detail in my environmental petition to the Office of the Auditor General of Canada dated September 28, 2007.[1] A summary of the events and circumstances relevant to the offence alleged in this application is as follows:

- In 1986, the Newfoundland and Labrador Department of Environment sent 228 tandem truckloads of scrap metal from the Makinsons scrap yard site ("the Makinsons site") in Hodgewater Line, NL, owned by Mr. Jack Dickson, to the New Harbour landfill site, operated by Clifford Cooper Construction Ltd. These truckloads included a large number of transformer casings that were dumped at the landfill site without being treated or washed. These transformer casings were not tested for PCB levels at the time they were dumped, nor have they been tested since that time.[2]

- Then in 1994, SCC Environmental and TriWaste Reduction Services Inc. were granted a contract by the Newfoundland and Labrador Department of Environment to carry out site remediation of the Makinsons site as part of a National Contaminated Sites Remediation Program.

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[1] Allan Williams, *OAG Environmental Petition No. 218*, (October 1, 2007).

[2] Government of Newfoundland and Labrador, letter to Allan Williams (July 14, 2004); Requisition for Supplies or Services (January 27, 1986); Requisition for Supplies or Services (October 20, 1986); Lillian Simmons, "Zero Tolerance" in *The Compass* (July 4, 2006).

- Prior to treating the soil they removed from the Makinsons site, SCC Environmental and TriWaste measured the PCB concentration of the soil as ranging from 5.44 to 2210 mg/kg.[3]

- SCC Environmental and TriWaste excavated 198 transformer casings from the Makinsons site on August 9, 1994. As part of the excavation, SCC Environmental and TriWaste conducted swab testing and found that the casings contained high levels of PCBs. SCC Environmental and TriWaste then triple washed the casings with Varsol, using a pressure washer, and then re-washed the casings because they still failed to meet the <10ug/100cm^2 surface criteria set out by the Canadian Council of Ministers of the Environment (CCME) in the 1995 *PCB Transformer Decontamination Standards and Protocols* guideline.

- According to SCC Environmental and TriWaste's April 1996 report, *Final Report: Makinsons Remediation Project*, after the re-washing, approximately half of the casings still tested above the surface criteria. Therefore, efforts to clean transformer casings were ineffective and the method of double rinsing recommended by the CCME proved inadequate to clean the casings.[4]

- Despite the failure to meet the surface criteria guidelines, a management decision was made by the NCSRP Management Committee within the Newfoundland and Labrador Department of Environment to proceed with disposal of the casings at the landfill site.[5] SCC Environmental and TriWaste carried out this disposal as instructed.

- When the Newfoundland and Labrador Department of Environment was questioned about the transformer casings being dumped at the landfill site, their representative initially denied that waste from the Makinsons site ever went to the New Harbour landfill site. However, when the April 1996 report, *Final Report: Makinsons Remediation Project* was brought to the Department's attention, the earlier statement was rescinded. Contrary to the report, however, the Department still stated that the transformer casings brought to the New Harbour landfill site had been cleaned of all PCBs.[6]

- Due to public concern surrounding contamination of the New Harbour landfill site, a public meeting was held and a committee was elected to deal with the situation. The committee and local residents put pressure on the Newfoundland and Labrador Department of Environment to do some objective and transparent

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[3] SCC Environmental and TriWaste Reduction Services Inc., *Final Report: Makinsons Remediation Project* (April 22, 1996), pg. 20.
[4] *OAG Environmental Petition No. 218*, (October 1, 2007), Environment Canada Response; *Final Report: Makinsons Remediation Project* (April 22, 1996), pg. 32, 64.
[5] *OAG Environmental Petition No. 218*, (October 1, 2007), at Environment Canada Response.
[6] *Ibid*. at Question 1.

testing of the landfill site to determine the numbers of transformer casings and levels of PCBs present.

- In 2003, the Newfoundland and Labrador Department of Environment hired an excavator (SGE Acres) to dig a trench through the area where the transformer casings were buried. The actual number of transformer casings removed from the trench by the excavator was double or triple the number given in the *Final Report: Makinsons Remediation Project* (April 1996).[7]

- The trench that was dug by the excavator measured 500 square feet at a depth of 10 to 12 feet. The actual area where the transformer casings are land filled is estimated by Mr. Howard Thorne of Hobbs Construction to measure at least 15,000 square feet at a depth of 10 to 12 feet – thirty times that of the trench dug during the 2003 testing.[8]

- In November 2005 and November 2006, more testing for PCBs was conducted at the landfill site by AMEC Earth and Environmental. This testing revealed a soil sample indicating levels of PCBs above the CCME recommended criteria for industrial and commercial sites. The concentration of PCBs detected in this soil sample was 66.7 mg/kg. The CCME Canadian Soil Quality Guideline is 33 mg/kg for PCBs in soil at a commercial site and 1.3 mg/kg for soil at a residential/parkland site.[9] The PCB concentration of 66.7 mg/kg also exceeds the 50 mg/kg limit set out in s. 5 of the *PCB Regulations*.

- AMEC Earth and Environmental's *Final Report* (March 2007) on the November 2006 testing also noted that leachate is actively migrating away from the landfill and recommended that, given the test results, an assessment to determine an amount of soil to be removed from the landfill site may be appropriate. Such an assessment should be based on PCB soil analysis carried out to date and should aim to minimize the potential of PCBs migrating off site.[10]

- The continued operation of the landfill site under current operating conditions is releasing many contaminants, including PCBs, into the environment. At this time, there is a settling pond in place to collect PCBs or other contaminants and prevent them from being carried out to local ponds. However, much of the water running off the landfill site does not travel in the direction of the settling pond. The settling ponds are also ineffective because overflow water leaves the settling pond to enter local waterways. Furthermore, open test pit holes have filled up with water and created runoff, which has now formed a new pool of contaminated

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[7] Lillian Simmons, "Why so long?" in *The Compass*, July 19, 2007.
[8] *OAG Environmental Petition No. 218*, (October 1, 2007), Question 1.
[9] AMEC Earth and Environmental, *Final Report Upper Trinity South (New Harbour) Waste Disposal Site Implementation of the Leachate Control System* (March 2007) at pg. ii, 11, 12, Certificate of Analysis.
[10] *Ibid.* at pg. 20.

> water. In September-October 2008, the Newfoundland and Labrador Department of Environment tried to remedy this situation by filling the test pit holes with pieces of waste plywood and covering it with soil and a "waterproof" covering. This action has been insufficient to remedy the problem.[11]

The contamination of the landfill site and the failure to deal adequately with the contamination results in illegal discharge of PCBs into the environment in violation of the above provision in the *PCB Regulations*. Tests by AMEC Earth and Environmental have shown that the concentration of PCB solids in at least one area of the landfill where transformer casings are buried is 66.7mg/kg and the concentration limit set out in the regulation for solids is 50mg/kg.

PCBs are being released into the environment from the New Harbour landfill site on an ongoing basis, in violation of the *PCB Regulations* under *CEPA 1999* and will continue to do so, until the Province or the operator of the landfill takes measures to stop these releases.

Therefore, the Province of Newfoundland and Labrador is in violation of s. 5 of the *PCB Regulations* and is committing an offence under *CEPA 1999*. In order to protect the environment of New Harbour and human life and health, I am therefore requesting an investigation of this matter under s. 17 of *CEPA 1999*.

Furthermore, given that PCBs in a concentration of 50 mg/kg or more exist at the New Harbour landfill site and the large amount of contaminated transformer casings and/or soil located there (likely greater than 100kg), the landfill site may also meet the criteria set out in s. 18(1) of the *PCB Regulations* and, therefore, be subject to Part 3 of the Regulations regarding storage of PCBs. Therefore, the person who owns, controls or possesses the PCBs or products containing PCBs was required by s. 19(1) of the Regulations to send the PCBs or products to an authorized facility for their destruction or store the PCBs or products at a PCB storage site within 30 days of the Regulations coming into force.

Since the PCBs at the New Harbour landfill site were not sent away for destruction, either s. 19(1) of the *PCB Regulations* is also being contravened OR the landfill site is acting as a PCB Storage Site. If the landfill site is a PCB Storage Site, then s. 24 of the Regulations require that the site be enclosed by a fence or wall at least 1.83m high. Furthermore, the owner or operator of a PCB storage site is required to store all PCBs or products containing PCBs in accordance with the requirements set out in ss. 25-28 of the *PCB Regulations*. These requirements, regarding containment of PCBs or products containing PCBs; restricting access to the PCB storage site; regular inspections of the PCB storage site; and fire protection and emergency procedures plans are also not being followed at the New Harbour landfill site.

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[11] "Photographs #1-#7" (taken September-October 2008).

Alleged Contravenor(s)

1. The Province of Newfoundland and Labrador is responsible for the licensing and operation of waste disposal sites in the province.[12] The Province also owned the utility company that originally sold material containing PCBs to Mr. Jack Dickson, owner of the Makinsons site, as scrap metal. This was done without informing Mr. Dickson that the material he was buying contained PCBs. Furthermore, the Newfoundland and Labrador Department of the Environment was responsible for having hundreds (possibly thousands) of transformer casings transported from the Makinsons site to the New Harbour landfill site both in 1986 and 1994. The Province has caused the current PCB contamination at the landfill site and is responsible for the ongoing release of PCBs from the site.

2. Mr. Clifford Cooper and/or Clifford Cooper Construction Ltd. is the local contractor who took over operation of the landfill site in 1996 and is currently operating the landfill site.[13]

3. The Municipality of Trinity, Upper Trinity South, or the Local Service District of New Harbour, to the extent that they are responsible for the operation and management of the landfill site.

Summary of Evidence

Evidence supporting the above allegations can be found in the following documents, attached to this application:

- Requisition for Supplies or Services (January 27, 1986 and October 20, 1986) re: 1986 transportation of scrap metal from Makinsons site to the New Harbour landfill site.
- SCC Environmental & TriWaste Reduction Services Inc., *Final Report Makinsons Remediation Project* (April 22, 1996) re: remediation processes and PCB concentrations recorded during the Makinsons remediation project.
- Government of Newfoundland and Labrador, letter to Allan Williams (July 14, 2004) re: no report on cleanup of Makinsons site in the mid-1980s.
- AMEC Earth and Environmental, *Final Report Upper Trinity South (New Harbour) Waste Disposal Site Implementation of the Leachate Control System* (March 2007) re: PCB concentrations at the landfill site that exceed the regulated limit.
- Lillian Simmons, "Zero Tolerance" in *The Compass*, July 4, 2006.

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[12] Allan Williams, *OAG Environmental Petition No. 218B* (March 26, 2008), Environment Canada Response.

[13] AMEC Earth and Environmental, *Final Report Upper Trinity South (New Harbour) Waste Disposal Site Implementation of the Leachate Control System* (March 2007) at pg. i.

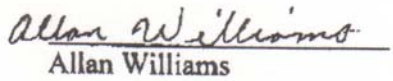
- Lillian Simmons, "Why so long?" in *The Compass*, July 19, 2007.
- Allan Williams, *Petition No. 218 to the Office of the Auditor General – CESD* (October 1, 2007).
- Allan Williams, *Petition No. 218B to the Office of the Auditor General – CESD* (March 26, 2008).
- "Photograph #1: Settling pond to collect PCBs and other contaminants" (taken October 2008).
- "Photograph #2: Overflow water leaving the settling pond to enter local waterways" (taken October 2008).
- "Photographs #3-#4: New pools of contaminated water that have formed as a result of runoff from test pit holes that filled up with water" (taken September 2008).
- "Photographs #5-#7: 'Waterproof' covering put over the test pit holes by Newfoundland and Labrador Department of Environment to address runoff from test pit holes" (taken October 2008).

A list of potential witnesses who have knowledge relevant to the above allegations is as follows:

- [redacted] ([redacted]): [redacted] was contracted to bury the contaminated waste received at the landfill site both in the mid-1980s and in 1994. He estimates that the area where the transformer casings are land-filled is at least 15,000 square feet and 10 to 12 feet deep. [redacted] is also one of the local residents who saw large volumes of transformers on the landfill site in 1986.
- [redacted] ([redacted]): A local lab technologist who has reviewed the sampling reports regarding the landfill site.
- [redacted] ([redacted]): A local family physician who works at the New Harbour Medical Clinic. During the course of his practice in Trinity South, [redacted] has become concerned about what appears to be an abnormally high incidence of brain cancer in the region.
- [redacted] ([redacted]) ([redacted]): [redacted] has extensively toured the landfill site. While serving as president of the Newfoundland and Labrador Wildlife Federation in 2002, [redacted] exchanged correspondence with then provincial Minister of Environment, Kevin Alyward, who claimed that no transformers were sent to the landfill site.
- [redacted] ([redacted]): [redacted] was contracted to transport the PCB waste from the Makinsons site to the New Harbour landfill site in 1986.
- [redacted] ([redacted]): A local resident who has witnessed large volumes of transformers on the landfill site and oil being dumped out of them.
- [redacted] ([redacted]): A local resident who witnessed large volumes of transformers on the landfill site in 1986.
- [redacted] ([redacted]): A local resident who has witnessed large volumes of transformers on the landfill site.

I hereby submit the above application for investigation pursuant to s. 17 of *CEPA 1999* to request that the Minister of the Environment investigate the alleged contraventions of the Act and regulations.

Sincerely,



Allan Williams