Federal Court Cour fédérale

Date: 20251023

Docket: T-2696-22

Citation: 2025 FC 1715

Ottawa, Ontario, October 23, 2025

PRESENT: Madam Associate Chief Justice St-Louis

BETWEEN:

TERRAPURE BR LTD.
TERRAPURE BR LP
RYAN REID
ANDRÉ CHAUVETTE
ANDREA ARAGON

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Terrapure BR Ltd. [Terrapure], is the general partner of the Applicant Terrapure BR LP (previously known as Revolution VSC LP) [collectively, "Terrapure"]. The named Applicants are employees or former employees of Terrapure.

[2] Terrapure operates a lead-acid battery recycling facility [Establishment] in the city of Sainte-Catherine [City], located within the Montréal Metropolitan Community. In the course of its operations, the Establishment generates process water that is treated together with the Establishment's storm water [Wastewater]. The treated Wastewater, hereinafter referred to as the Effluent, is discharged in the municipal storm sewer system, approximately 400-metre-long, which in turn discharges in the St. Lawrence Seaway, a man-made waterway that connects to the St. Lawrence River.

[3] The *Fisheries Act*, RSC, 1985, c F-14 [the Act] provides a framework for, amongst other things, the conservation and protection of fish and fish habitat, including by preventing pollution. The provisions that pertain to fish and fish habitat protection and pollution prevention are found at sections 34 and seq. of the Act. For instance, section 38 of the Act pertains to the designation, powers and duty of inspectors designated by the Minister for Environment and Climate Change Canada [Environment Canada] and subsection 38(7.1) pertains to the corrective measures an inspector may take, or that he or she may direct be taken by issuing a direction.

[4] On November 24, 2022, relying on subsection 38(7.1) of the Act, Ms. Joelle Brousseau, an Inspector and Fishery Officer designated by Environment Canada's minister [Inspector], issued a direction [Initial Direction]. On January 16, 2023, the Inspector amended the direction [Amended Direction] and on June 23, 2023, again amended it [Re-Amended Direction]. I will refer to all three directions collectively as the Direction. In its last version, the Direction named Terrapure and two of its employees.

[5] The Inspector confirmed having reasonable grounds to believe, *inter alia*, that (1) there occurs several deposits of deleterious substances (sulfate, lead and high pH) not authorized under the Act into a place where the deleterious substance that results from the deposit may enter waters frequented by fish; (2) 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; (3) 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; and (4) 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 Act.

[6] Invoking the authority given to her by subsection 38(7.1) of the Act, the Inspector directed those named to immediately take all reasonable measures to prevent the occurrence or to counteract, mitigate, or remedy, any adverse effects that result from it or might reasonably be expected to result from it, including, to:

1. Cease the immediate discharge in the storm drain connected to the St. Lawrence River from the facilities and infrastructure of the Establishment that is deleterious or likely to be deleterious to fish or fish habitat or to the use of fish by humans in waters frequented by fish or in any other place if there is a risk that the substance from its discharge will enter such waters;
2. Take all necessary measures to comply with the requirements of subsections 38(5) (duty to notify) and 38(6) (duty to take corrective measures) of the Act;

3. Develop an action plan;

4. Monitor the final Effluent by performing toxicity tests weekly in the manner prescribed; and

5. Implement all proposed measures to cease the release of deleterious substances, as identified in the action plan, by no later than July 1, 2023.

[7] On December 22, 2022, the Applicants filed their initial Notice of Application, challenging the Initial Direction. They twice amended it, with leave from the Court, and ultimately, on August 1, 2023, filed their Notice of Application as Re-Amended, challenging the Direction.

[8] In support of their Application for Judicial Review, the Applicants filed the affidavit of Mr. Took Whiteley, Chief Development Officer and General Counsel of Terrapure BR LP, who introduced 21 exhibits. Mr. Whiteley was not cross-examined.

[9] The Applicants submit, first, that the Direction is unreasonable (1) in light of the legal and factual constraints that bear on it and is *ultra vires* as it fails to comply with the governing statutory scheme of the Act, having been issued without meeting the statutory conditions provided by subsection 38(7.1) of the Act; the Applicants particularly highlight that certain powers granted to the Inspector by the Act are linked exclusively to *direct deposits* in water frequented by fish, as opposed to *indirect deposits,* and that the Inspector, in the presence of an *indirect deposit*, did not hold the power to issue the Direction nor to direct corrective measures be taken; (2) as it does not comply with the guidelines set out in the *Compliance and*

Enforcement Policy for Habitat and Pollution Provisions of the Fisheries Act [Compliance Policy]; (3) in any event, as the monitoring requirements found in the Direction, even as amended, remained irrational and illogical; and (4) in the alternative, as the individual Applicants were named unreasonably. The Applicants also submit that the Inspector breached the principles of natural justice and procedural fairness.

[10] The Respondent, the Attorney General of Canada [AGC], served the affidavit of Ms. Joelle Brousseau, who, as stated above, is the Inspector, introducing 67 exhibits. Ms. Brousseau was cross-examined. I comment more fully below on the issues that arose because of evidence introduced by the decision maker herself.

[11] The AGC essentially responds, first, that the Direction is reasonable as the Inspector had reasonable grounds to believe that (1) a deleterious substance was released in water frequented by fish; (2) corrective measures were not taken as soon as feasible; and (3) immediate measures were required and the monitoring requirements are reasonable. The AGC adds that the Inspector met the procedural fairness requirements and finally, that the Inspector's decision regarding the individuals that should be named in the Direction is reasonable.

[12] For the reasons that follow, I conclude the Applicants have met their burden to show that the Direction is unreasonable as they have demonstrated that the Inspector's interpretation of the term "deleterious substance" with respect to sulfate and that the monitoring requirements found in the Direction are fatally flawed.

II. Preliminary Issue: Improper Affidavit Evidence

[13] As mentioned above, the AGC served the affidavit of Ms. Brousseau, the Inspector who issued the Direction. Ms. Brousseau was cross-examined, and the Applicants included her affidavit, the transcript of her cross-examination and the response to the undertakings made during her cross-examination in their Applicants Record. The parties construed their arguments and memorandum with the evidence adduced by Ms. Brousseau.

[14] At the onset of the hearing, I raised concerns with the admissibility of some of the Inspector's evidence, as the decision maker. More specifically, in light of the relevant jurisprudence, I raised concerns that the affidavit and transcript of cross-examination, quite extensive, could impermissibly serve to amend, vary, qualify or supplement the Inspector's reasons (*Shahzad c Canada (Citizenship and Immigration)* 2017 FC 999 at para 19 [*Shahzad*] citing *Canada (Attorney General) v Quadrini*, 2010 FCA 246 at para 16) or to introduce, in the record before the Court, information or evidence that was not before her when she issued her Direction (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28; *Delios v Canada (Attorney General)*, 2015 FCA 117 at paras 41-42; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20; *Shahzad* at para 19).

[15] At the hearing, the parties acknowledged these concerns as legitimate; they agreed to and confirmed that they would adapt their oral representations in order to rely solely on the evidence contained in the Certified Tribunal Record [CTR]. I am satisfied that Ms. Brousseau, i.e., the Inspector's, affidavit, transcript of her cross-examination and related undertakings introduced

impermissible evidence that serve to amend, vary, qualify or supplement her reasons and/or introduce in the record before the Court evidence that was not before the decision maker, and that none of the limited exceptions apply except as outlined below (*Shahzad* at para 20). Therefore, apart from paragraphs 3, 4 and 11, which serve to introduce the CTR, and the Compliance Policy into evidence, the Court will give no weight to the Inspector's affidavit, the transcript of her cross-examination and the related undertakings. As the parties' arguments were elaborated, and their respective Memorandums were written with the impermissible information at hand, it has proven challenging both at the hearing and in writing these Reasons, to distinguish the admissible from the inadmissible so to consider only the admissible evidence, thus adding a layer of complication.

III. The Context

A. *The Applicants*

[16] Since August 17, 2021, Mr. Ryan Reid is the President of Terrapure. He is named in the Initial Direction, the Amended Direction as well as the Re-Amended Direction.

[17] On May 31, 2023, i.e., after this Application for Judicial Review had been filed, but before the Re-Amended Direction was issued, Mr. André Chauvette retired from his position as Manager, Environmental Affairs at Terrapure. He is named in the Initial Direction and the Amended Direction.

[18] On June 5, 2023, following Mr. Chauvette's retirement, Ms. Andrea Aragon joined Terrapure as Manager, Environmental Affairs. She is named only in the Re-Amended Direction.

B. *The Effluent*

[19] Terrapure operates a lead-acid battery recycling facility in his Establishment. In the course of its operations, the Establishment generates process water that is treated together with the Establishment's storm water in the Establishment's treatment plant. The treatment plant includes interconnected basins with a finite capacity that collect the Wastewater before it is treated. The Effluent is discharged to the approximately 400-metre-long municipal storm sewer system, which discharges in the St. Lawrence Seaway, a man-made waterway that connects to the St. Lawrence River. The treatment plant may, when necessary and for a limited period of time, operate in a closed loop.

[20] It is not disputed that, prior to discharge into the municipal storm sewer system, Terrapure collects a sample of its Effluent for analysis of the substances listed in CMM By-Law 2008-47 [By-Law]. It is not disputed either that, prior to the discharge into the seaway, the municipal sewer system collects discharges from various other sites, which are mixed with the Effluent in the municipal storm sewer.

C. *The Events Leading to the Initial Direction*

[21] On July 7, 2022, following an analysis of data relating to the Establishment in the National Pollutant Release Inventory and in other Environment Canada directories, the Inspector

opened an inspection file to verify Terrapure's compliance with the Act. She noted that Terrapure had no prior record of a compliance verification pursuant to subsection 36(3) of the Act.

[22] On July 14, 2022, the Inspector and another official inspected the Establishment to verify its compliance with the Act. The same day, Terrapure provided the Inspector with a series of documents she requested, including Terrapure's internal laboratory analysis reports for the months of April and May 2022. These reports show the concentration of some substances found in the Effluent such as lead and sulfate, as well as the Effluent's pH, but they do not show any analysis of its toxicity. These reports indicate that the Effluent contained an average sulfate concentration of 44,393 mg/L in April 2022 and an average sulfate concentration of 51,879 mg/L in May 2022, while the By-Law's acceptable maximal concentration is of 1,500 mg/L.

[23] On that same day, i.e., July 14, 2022, the Establishment was not discharging its Effluent; the Inspector thus did not collect any samples.

[24] Per the report written by the Inspector following this inspection, Mr. Chauvette, who was at that time the Manager, Environmental Affairs of Terrapure, mentioned to the Inspector that Terrapure was facing difficulties with respect to concentrations of sulfate in its Effluent. He provided the Inspector with a copy of an agreement between Terrapure and the City, signed on November 13, 2020, according to which the latter (a) acknowledged the Effluent did not comply with the maximal concentration provided in the By-Law; and (b) tolerated this non-compliance in exchange for suretyships.

[25] On August 23, 2022, the Establishment received rainfall precipitations of some 59,1 mm between 4:00 a.m. and 12:00 p.m. As its basins could not retain all this rainfall, it proceeded to an emergency discharge of its Effluent, although partially treated, into the municipal storm sewer. It notified Environment Canada who sent officers to the Establishment to collect samples of the Effluent for testing in Environment Canada' internal laboratory. In their notes, the Environment Canada officers did not indicate where they collected the samples, but did indicate having been informed by Terrapure that an unreported discharge of partially treated Wastewater had also occurred in June 2022.

[26] On August 23, 2022, Terrapure collected samples every two hours and provided Environment Canada with a copy of the analysis results. Terrapure also provided Environment Canada with the June analysis results which, like the April and May results, showed sulfate concentrations higher than the By-Law's maximal concentration of 1,500 mg/L.

[27] On September 9, 2022, Environment Canada's laboratory issued the analysis certificate of the toxicity testing of the Effluent samples taken on August 23, 2022 [Toxicity Certificate]. The Toxicity Certificate shows *Daphnia magna* and *Hydra vulgaris* testing were made and a 100% mortality rate occurred in all diluted samples.

[28] Although she was not present at the Establishment on August 23, 2022, the Inspector authored the ensuing inspection report. Said report is undated but contains results from the September 9 Toxicity Certificate; it was thus presumably prepared after that date. In her report, the Inspector indicates that the samples were taken at the final discharge point of the Effluent

and, relying on the Toxicity Certificate, the Inspector concluded that the Effluent had a very high level of toxicity. She thus found there was a deposit of deleterious substances (sulfate, lead and high pH water) in a place where the deleterious substance enters water frequented by fish contrary to subsection 36(3) of the Act. The Inspector also noted that approximately 700 tons of sulfate were discharged in the sewer in each of the months of April, May, June and August 2022, presenting harmful concentration levels for fish. She noted that the sewer was directly connected to the St. Lawrence River.

[29] The Inspector indicated the gravity of the infraction provided in subsection 36(3) of the Act – i.e., the levels of sulfate discharged being highly harmful to fish -, that these discharges occurred several times over several years, and that Terrapure had not implemented an adequate water treatment system, nor modified their water treatment process to reduce the concentration levels of sulfate discharged. Ultimately, the Inspector recommended that a direction pursuant to subsection 38(7.1) of the Act be issued.

[30] On September 22, 2022, the Inspector issued a notice of intent to issue a direction [Notice of Intent] based on Terrapure's alleged non-compliant discharges in April, May and June 2022, and on the August 23, 2022, discharge. To her Notice of Intent, the Inspector attached a draft direction [Draft Direction], but did not attach the September 9 Toxicity Certificate.

[31] In her Notice of Intent, the Inspector outlined, *inter alia*, that high concentrations of sulfate in aquatic environments can cause adverse effects and that in the literature, a LC50 of 4,580 mg/L on *Daphnia magna* can be found. Regarding the toxicity results of the samples taken

during the August 23, 2022, inspection, she outlined that the Effluent then discharged was very deleterious, that the ecotoxicity analysis of the sample submitted to an acute lethality test on *Daphnia magna* caused 100% mortality in the undiluted Effluent sample, in the 50% diluted sample, in the 25% diluted sample and in the 12,5% diluted sample. She added that the pH of the Effluent was 9,67 and the sulfate concentration was 59,400 mg/L. Lastly, she stated that the result of the lead analysis was pending and would be communicated as soon as available.

[32] On September 27, 2022, Me Myriam Fortin, Terrapure's counsel, requested a copy of the sampling report and analysis certificates in relation to the samples collected by Environment Canada on August 23, 2022, and any other sample collected by Environment Canada, if applicable.

[33] On October 3, 2022, Environment Canada's laboratory provided the analysis certificate of the August 23, 2022, samples with respect to sulfate, lead and pH [Substance Certificate] to the Inspector. Also on October 3, 2022, the Inspector sent a copy of this Substance Certificate to Me Fortin, for Terrapure, but the Inspector still did not include a copy of the September 9 Toxicity Certificate. Ultimately, on November 10, 2022, following an Access to Information Request, Me Fortin received a copy of the Toxicity Certificate.

[34] On October 18, 2022, i.e., prior to obtaining a copy of the Toxicity Certificate, Me Fortin sent written submissions on behalf of Terrapure in response to the Notice of Intent [October 2022 Submissions]. Therein, Me Fortin essentially outlined (a) Terrapure's opinion on the circumstances in which a direction may be issued under the Act; (b) Terrapure's comments on

the addressees of the Draft Direction and on paragraphs 1 to 26 of the section of the Draft Direction titled *Reasonable Grounds to Believe*; (c) measures that Terrapure had already taken and measures it was in the process of taking with respect to (i) overflows in case of heavy rain and (ii) sulfate concentrations in its Effluent, as well as details and explanations on the final Effluent monitoring protocol that Terrapure had in place; (d) Terrapure's comments on certain procedural requirements; and (e) summary conclusions on the criteria for a direction to be issued.

[35] More specifically, Me Fortin stated, *inter alia*, that in Terrapure's view, it was not warranted or justified for Environment Canada to issue a direction under subsection 38(7.1) of the Act as:

1. Reasonable grounds have not been established that a deleterious substance was deposited in a place where it may enter water frequented by fish, notably due to errors in Environment Canada's assumptions and analysis;
2. Terrapure is and has been diligent in managing its Effluent, and has taken and is taking all reasonable prevention and mitigation measures as soon as feasible;
3. There is no urgency to take "immediate action" in light of the action plan put in place by Terrapure, which has and is fully collaborating with Environment Canada, the Quebec *Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs* and the City; and
4. Environment Canada has breached the rules of natural justice and procedural fairness by refusing to share documents relating to Environment Canada's sampling procedures and testing protocols, and to toxicity testing performed by Environment Canada.

[36] Me Fortin particularly highlighted that the Effluent is not discharged in water frequented by fish, but in the St. Lawrence Seaway, a man-made waterway in which the Draft Direction does not provide any evidence nor information regarding the presence of fish in this area.
Me Fortin also highlighted that the municipal storm sewer contains additional storm water from other neighbouring industrial users, causing the water ultimately discharged in the Seaway to be different from the Effluent.

[37] On November 21, 2022, the Inspector and Me Fortin spoke on the phone. Per the Inspector's notes on this call, Me Fortin asked the Inspector how the sulfate standard should be applied, referring to the LC50 of 4,580°mg/L on *Daphnia magna* mentioned in the Notice of Intent. The Inspector responded that since Terrapure was not subject to a regulation made pursuant to subsection 36(4) of the Act, it could not deposit any deleterious substance in waters frequented by fish.

[38] The Inspector also noted that according to Terrapure's representations, the Effluent discharges were made "by batch". The Inspector added that to be reasonable, meaning not to prevent the Establishment's activities, she would require *Daphnia magna* testing to assess the toxicity of each Effluent "batch" before discharge in the municipal storm sewer.

D. *The Initial Direction*

[39] On November 24, 2022, the Inspector issued the Initial Direction and named Terrapure, Mr. Reid and Mr. Chauvette as addressees. She directed them to monitor the Effluent and included the obligation to conduct toxicity testing for each batch of the Effluent, through

Daphnia magna testing first, and rainbow trout testing second in case of a non-compliant *Daphnia magna* sample, both by accredited laboratory. Should a rainbow trout test reveal a non-compliance, testing had to be continued until three consecutive compliant acute lethality on rainbow trout sample were obtained.

[40] Per the Initial Direction, the Effluent fails the *Daphnia magna* test when, at 100% concentration, it kills more than 50% of the *Daphnia magna* subjected to it during a 48-hour period. Further, the Effluent fails the rainbow trout acute lethality test when, at 100% concentration, it kills more than 50% of the rainbow trout subjected to it during a 96-hour period. This Initial Direction did not reference the LC50 of 4,580 mg/L on *Daphnia magna* for sulfate.

[41] The same day, the Inspector visited the Establishment, wrote an inspection report and outlined, *inter alia*, that:

- Unfortunately, the corrective measures described in Terrapure's October 2022 Submissions were insufficient as there were still deposits of deleterious substances into the municipal storm sewer, particularly sulfate;

- The case law on the Act clearly establishes that the Act applies to the non-diluted Effluent; the dilution of the Effluent is thus not considered in the Act;

- It is well established that the St. Lawrence River is a fish habitat, and the Effluent discharge occurs in a place where the deleterious substance may reach waters frequented by fish; more particularly, the water from the St. Lawrence Seaway is the same as the water from the St. Lawrence River, the seaway is in the river; and

- She tried to prevent as much as possible the impacts on the Establishment's activities; however, since the Act does not provide a standard for the rejection of sulfate and no regulation allows Terrapure to discharge this substance, the applicable standard is zero discharge of sulfate.

[42] On this last point, the Inspector stressed that the discharge of the Effluent is prohibited if either the *Daphnia magna* or acute lethality on rainbow trout tests reveal a non-compliance. She added that the measures outlined in the Initial Direction would be in effect until Environment Canada determined that they were no longer required, and that an action plan had to be submitted in writing to her within 30 days and implemented by July 1, 2023.

[43] Still during this visit, and per the Inspector's report, Mr. Chauvette, and Mr. Benoit Deschenes, Vice President Technical Development of Terrapure, expressed concerns with respect to the volume of Effluent to retain, i.e., millions of litres per day, while awaiting the testing results, as it would require the Establishment stops its activities. Mr. Chauvette also questioned why his name appeared on the Initial Direction. The Inspector responded that if Terrapure could prove stability with respect to the sulfate in the Effluent and that its concentration was not deleterious to fish, she could cancel the Initial Directive. She added that Mr. Chauvette's name appeared on the Initial Direction considering his role, as he was the person responsible for coordinating the implementation of the corrective measures outlined in the Initial Direction.

E. *The Amended Direction*

[44] On December 7, 2022, the Inspector conducted an inspection to follow up on compliance. Mr. Chauvette informed the Inspector that Terrapure had, since the issuance of the Initial Direction, discharged the Effluent into the sewer without completing the toxicity tests. He mentioned that Terrapure's process had changed which resulted in lower sulfate levels which should not be deleterious to the *Daphnia magna* based on literature. Mr. Chauvette also stated that the Effluent discharge did not occur "by batch", contrary to the Inspector's understanding. The Inspector responded that discharging the Effluent without waiting for the toxicity results was non-compliant with the Initial Direction and that it could lead to an investigation for criminal prosecution. Before leaving the Establishment, she took two samples from the Effluent to test its toxicity.

[45] On December 22, 2022, the toxicity results from Terrapure's December 7, 2022, samples showed a certified 0% lethality rate of *Daphnia magna*.

[46] The same day, Me Fortin wrote to the Inspector outlining Terrapure's action plan. With respect to the monitoring of the Effluent, Me Fortin commented that by definition, toxicity testing for *Daphnia magna* requires a 48-hour exposure, that rainbow trout requires a 96-hour exposure, and that external laboratories take approximately 14 days to provide toxicity testing results. Me Fortin submitted that Terrapure could not stop operating the treatment plant for 14 days, or even for 48 hours, to wait for external laboratory results. Me Fortin added that the requirements under the Initial Direction to take another Effluent sample to be tested for acute

lethality on rainbow trout, and to continue acute lethality testing on rainbow trout “until three consecutive samples reveal that the final effluent is in compliance”, did not appear consistent or possible with the requirement to collect an Effluent sample to be tested for *Daphnia magna* “before allowing the discharge”. Me Fortin also clarified that the Effluent was actually released intermittently and not in batches.

[47] Accordingly, Me Fortin proposed that Terrapure continue its internal sampling and analysis. She asked Environment Canada to confirm that weekly sampling and testing for acute lethality on rainbow trout, by an approved laboratory and in accordance with the other conditions provided in the Initial Direction, would be satisfactory to Environment Canada. She added it would be understood that discharges would not necessarily cease pending receipt of the external laboratory results, as Terrapure’s internal laboratory results would provide a strong indicator of compliance, allowing Terrapure to stop or prevent any non-compliant discharge.

[48] At last, Me Fortin informed the Inspector that an Application for Judicial Review would be filed to reserve the rights of the Initial Direction’s addressees in the event that the action plan was not satisfactory to Environment Canada and that Terrapure and Environment Canada were unable to reach an agreement. The Notice of Application was indeed filed on December 22, 2022.

[49] On January 16, 2023, in light of the facts provided in the December 22, 2022, letter, the Inspector issued the Amended Direction, amending the monitoring requirements to reflect the fact that the Effluent is discharged on an intermittent basis rather than by batch, and providing

new monitoring requirements. The Amended Direction thus removed the requirement for three consecutive compliant acute lethality on rainbow trout test prior to discharge. Accordingly, a non-compliant sample following the *Daphnia magna* test would only require another water sample from the Effluent to be tested for acute lethality on rainbow trout.

[50] On February 15, 2023, Terrapure amended its Notice of Application to reflect the Amended Direction.

F. *The Re-Amended Direction*

[51] On March 21, 2023, Terrapure forwarded non-compliant toxicity results of samples taken on March 15, 2023, to the Inspector. Terrapure also confirmed it would proceed with the acute lethality on rainbow trout test pursuant to the Amended Direction.

[52] On May 17, 2023, the Inspector conducted an inspection and asked for the name of the person expected to replace Mr. Chauvette, who was retiring, as she would name this person in the Direction. Further, according to her inspection report, the Inspector was informed that several deposits of deleterious substances had occurred in the springtime. Mr. Deschenes also informed the Inspector that they could not identify the source of the non-compliant samples. He mentioned that an external firm was hired to characterize the toxicity of the Effluent and that they were waiting for this firm’s conclusion. Per her inspection report, the Inspector mentioned that, as there were still non-compliances with the Act, she would not cancel the Amended Direction.

[53] On June 1, 2023, Terrapure forwarded a letter to the Inspector to confirm that the samples tested for acute lethality test on rainbow trout were now compliant following the March 15, 2023, *Daphnia magna* non-compliant samples.

[54] On June 9, 2023, Terrapure communicated the name of the new Manager, Environmental Affairs, i.e., Ms. Aragon, to the Inspector. Terrapure also outlined that Ms. Aragon's employment level was one of lower management, her responsibilities did not include the management of the Wastewater treatment plant, and she had no decision-making power with respect to plant operations. Terrapure added that following Mr. Chauvette's retirement, Mr. Deschenes had assumed the functions previously undertaken by Mr. Chauvette in connection with Wastewater management and the recording of various sampling results of its Effluent discharges but had no final decision-making power over plant operations. Accordingly, Terrapure submitted that neither individual had the requisite degree of charge, management or control over the plant to be reasonably named in the Amended Direction.

[55] On June 23, 2023, the Inspector issued the Re-Amended Direction to replace Mr. Chauvette by Ms. Aragon as an addressee of the Direction.

[56] The monitoring requirements remained the same as in the Amended Direction and were thus as follows:

> 6. As soon as the amended direction is issued, collect a water sample from the final effluent once a week from the final effluent to be tested for *Daphnia Magna* using EPS 1/RM/14 Second Edition. The sample shall be collected weekly by randomly selecting a day of the week and shall represent the entire effluent discharged to the storm water drain. The test shall be performed by

> an accredited laboratory. All results shall be recorded in a logbook and shall include the random selection method;
>
> 7. If the test required in item 6 reveals a non-compliant sample, immediately upon learning of the non-compliant result, take a water sample from the final effluent to be tested for acute lethality on rainbow trout according to EPS 1/RM/13 Second Edition. The test shall be conducted by an accredited laboratory. All results shall be recorded in a paper logbook. In addition, corrective measures must be taken without delay to comply with 38(6);
>
> [Footnotes omitted.]

[57] On August 1, 2023, Terrapure re-amended its Notice of Application to reflect the Re-Amended Direction.

IV. Issues and Standard of Review

[58] As stated already, the Applicants argue that the Direction is unreasonable (1) in light of the legal and factual constraints that bear on it and is *ultra vires* as it fails to comply with the governing statutory scheme of the Act; (2) as it fails to comply with Environment Canada's established internal authority, ie the Compliance Policy; (3) as the monitoring requirements and the orders found in the Direction are irrational and illogical; and (4) in the alternative, as it is unreasonable for Environment Canada to address the Direction to Mr. Chauvette, Mr. Reid and Ms. Aragon.

[59] The Applicants also raise an issue of procedural fairness, namely whether Environment Canada contravened the principles of natural justice and procedural fairness afforded to the Applicants in issuing the Direction.

[60] With respect to the first three issues cited above, I agree with the parties that the applicable standard of review is reasonableness. The presumption of reasonableness as the standard of review for an administrative decision was confirmed by the Supreme Court of Canada and none of the situations warranting a rebuttal of this presumption arise in the present judicial review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 17, 25, 33, 53 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 44 [*Mason*]).

[61] Under the reasonableness standard, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine if the decision is based on "an internally consistent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 8). The reviewing court must consider "the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15).

[62] The Court must examine "whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99 citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74; *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

[63] Where reasons for decision are required, the decision "must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies" (*Vavilov* at para 86; *Mason* at para 59). A reasonableness review is concerned with both the outcome of the decision and the reasoning process leading to the outcome (*Vavilov* at para 83). The Court must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the decision the Court itself would have reached.

[64] The AGC aptly notes that "[when] decisions made by administrative decision makers lie more within the expertise and experience of the executive rather than the courts, courts must afford administrative decision makers a greater margin of appreciation" (*Mikisew Cree First Nation v Canadian Environmental Assessment Agency*, 2023 FCA 191 at para 120; see also *Safe Food Matters Inc v Canada (Attorney General)*, 2023 FC 1471 at paras 102-103).

[65] The Applicants bear the burden of showing that the Direction is unreasonable, which may be in light of two types of fundamental flaws, i.e., a "failure of rationality internal to the reasoning process" and/or a "failure of justification given the legal and factual constraints bearing on the decision" (*Vavilov* at paras 100-101; *Mason* at para 64).

[66] With respect to procedural fairness the Court's exercise of review is "best reflected in the correctness standard" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56 [*Canadian Pacific Railway Company*]; see also *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57). Most importantly, the Court must ask whether the process was fair in view of all the circumstances.

The ultimate question, regardless of the deference accorded to administrative tribunals, "remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific Railway Company* at para 54, see also at paras 55-56).

V. Analysis

A. *Legal Framework*

[67] The purpose of the Act is to provide a framework for the proper management and control of fisheries and the conservation and protection of fish and fish habitat, including by preventing pollution (s. 2.1 of the Act; *St Brieux (Town) v Canada (Fisheries and Oceans)*, 2010 FC 427 at para 43 [*St Brieux*]; see also *Rio Tinto Iron and Titanium Inc v Canada (Attorney General)*, 2025 FC 311 at para 54 [*Rio Tinto*]).

[68] The definition of the term *deleterious substance* is found in subsection 34(1) of the Act. It is broadly defined as:

> **(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.

[69] Subsection 36(3) of the Act prohibits the deposit of deleterious substances and states that "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" (emphasis added).

[70] Subsection 34(1) defines the expression *water frequented by fish* as "Canadian fisheries waters", which in turn is defined at subsection 2(1) as meaning "all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada".

[71] Subsection 37(1) provides that the Minister may require plans and specifications and, like subsection 36(3), it refers to "… the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such waters …" (emphasis added).

[72] Per section 38 of the Act, the Minister may designate persons as inspectors for the purpose of the administration and enforcement of the Act and may limit in any manner he or she considers appropriate the powers that an inspector may exercise under the Act.

[73] Subsection 38(5) creates a duty to notify an inspector if there occurs a deposit of a deleterious substance in water frequented by fish that is not authorized. This duty is particularly directed at persons who at any material time (a) own or have 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) cause or contributes to the occurrence or the danger of the occurrence.

[74] Under subsection 38(6) of the Act, any person described in paragraph 38(5)(a) or (b), amongst others, shall, as soon as feasible, take all reasonable measures (*mesures nécessaires*) to prevent the occurrence or to counteract, mitigate or remedy any adverse effects that result from or might reasonably be expected to result from the deposit of the deleterious substance (*Rio Tinto* at para 56).

[75] Pursuant to subsection 38(7.1), if an inspector is satisfied on reasonable grounds that immediate action is necessary (*de l'urgence de ces mesures*) in order to take any measures referred to in subsection 38(6), the inspector may, subject to the provided exception, take any of those measures at the expense of any person described in paragraph (5)(a) or (b), amongst others, or direct that person to take the measures at their expense.

B. *Whether the Direction is Reasonable in Light of the Legal and Factual Constraints that Bear on it or is* ultra vires

(1) Whether the Direction complies with the governing statutory scheme of the Act

[76] Under this heading, the Applicants argue that the Direction is untenable in light of the legal and factual constraints that bore on it. They acknowledge that an administrative decision maker has some discretion to issue a direction, but stress that the "exercises of state power are subject to the rule of law" (*Vavilov* at para 82; *Mason* at para 57) and that where Parliament has

stated clear conditions for a decision maker to exercise its authority, they must be strictly adhered to (*Parker v Canada (Attorney General)*, 2023 FC 1419 at para 199 citing *Vavilov* at paras 68, 90).

[77] They argue that the Direction is *ultra vires* and unreasonable because it was issued without meeting the statutory conditions provided by subsection 38(7.1) of the Act. They raise that (a) there were no deposits in water subject to the Act; (b) the Inspector's flawed understanding of the notion of deleterious substances serves as a distorting lens; and (c) there were no reasonable grounds for justifying the issuance of the Direction.

(a) *Deposits in water subject to the Act*

[78] The Applicants assert there were no deposits in water subject to the Act as (a) the Effluent is discharged in the municipal storm sewer, which discharges in the seaway, a man-made navigable waterway which, they submit, cannot be considered to be water under the Act; and (b) the text of subsection 38(5) is clear and refers only to deposits made in water frequented by fish (*direct deposit* in water) and not to deposits in sewer systems (*indirect deposit* in water). I do not agree with the Applicants' first assertion; but I share their concerns regarding their second assertion.

(i) The St. Lawrence Seaway: Water under the Act

[79] As mentioned above, the Effluent is discharged in the municipal sewer, which discharges in the St. Lawrence Seaway, a man-made navigable waterway which is connected to the St. Lawrence River.

[80] The Applicants contend that the man-made seaway cannot be considered to be water frequented by fish under the Act. They submit that, contrary to the text of other statutes adopted by Parliament, such as the *Canadian Navigable Waters Act*, RSC 1985, c N-22, the definition of "Canadian fisheries waters" in the Act does not refer to a man-made waterway. The Applicants further argue that since statutes are presumed to be drafted with one another in mind to offer a coherent and consistent treatment (Pierre-André Côté et Mathieu Devinat, *Interprétation des lois*, 5th ed. (Montréal: Éditions Thémis, 2021) at para 1065), Parliament's intent must be understood as to exclude the seaway from the definition of "Canadian fisheries waters." The Applicants add that, if Parliament wanted to include such man-made structures in the Act, it would have done so expressly.

[81] The AGC responds that the St. Lawrence River is known as water frequented by fish, and that a man-made waterway like the St. Lawrence Seaway which shares the same water frequented by fish as the St. Lawrence River fall within the broad definition of water frequented by fish in the Act.

[82] I agree with the AGC, and I am satisfied it is reasonable to conclude that the water of the St. Lawrence Seaway is indeed water frequented by fish under the Act. I reiterate that subsection 34(1) of the Act defines the notion of *water frequented by fish* as meaning: “Canadian fisheries waters (*eaux où vivent des poissons*)”. In turn, *Canadian fisheries waters* is defined at section 2 of the Act as “means all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada; (*eaux de pêche canadiennes*)”.

[83] The term *internal waters of Canada* has been interpreted by the courts as including “harbours, bays, estuaries and other waters lying between the jaws of the land” (*R v Newfoundland Recycling ltd* 2004 NJ no 332 at para 51), while the Quebec Court of Appeal has stated that all Canadian internal waters are presumed to be waters frequented by fish pursuant to subsections 2(1) and 34(1) of the Act (*R c ArcelorMittal Canada inc*, 2021 QCCQ 10578 available in French only, aff’d on other grounds 2023 QCCA 1564, leave to appeal to SCC refused, 41119 (September 19, 2024)). The fact that the definition of another term in another statute such as the *Canadian Navigable Waters Act* specifically refers to man-made structures is of no moment in this case given the distinct purpose of the Act.

[84] The Applicants have not convinced me that this argument has merit. Rather, I am satisfied it was reasonable for the Inspector to conclude that the water of the St. Lawrence Seaway, a man-made seaway, is water frequented by fish under the Act.

(ii) Direct vs indirect deposit in water frequented by fish

[85] The Applicants argue that the Act makes a distinction between *direct* and *indirect* deposits in water frequented by fish, that the Inspector's powers are linked strictly to situations where a direct deposit occurs, and that the situation at the Establishment is of an indirect deposit with the consequence that the Inspector did not have the power to give notice and to direct corrective measures.

[86] The Applicants highlight that the language used by the legislator in sections 36(3), 37(1) and 38(3)(b)(ii) of the Act, for example, prohibits deposits of substance in both (1) "water frequented by fish", defined as *direct deposit* by the Applicants, and (2) "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", defined as *indirect deposit* by the Applicants.

[87] The Applicants contrast the language of these sections, which refers to both *direct* and *indirect* deposits, with the language used by the legislator in subsection 38(5) of the Act, under Duty to Notify, that refers solely to a deposit of a deleterious substance in water frequented by fish, i.e., a *direct deposit*, and does not refer to a deposit in any other place, i.e., an *indirect deposit*. The Applicants stress that subsection 38(6) of the Act, under the title Duty to Take Corrective Measures, refers to subsection 38(5) and thus also omits reference to the indirect deposit, and that ultimately subsection 38(7.1), under the title Corrective Measures, likewise omits the indirect deposit.

[88] In other words, the Applicants argue that the text of subsection 38(5) is clear and refers only to deposits made in water frequented by fish (*direct deposits*) and not to deposits first made in sewer systems (*indirect deposits*), and that this has an impact on the Inspector's power and authority under subsections 38(6) and 38(7.1) of the Act. Given the distinct language of the Act, the Applicants assert that certain powers are strictly linked to the occurrence of *direct deposits* and that these powers are not available when the deposit is in "any other place", i.e., when it is an *indirect deposit*. They stress that the parties agree the Effluent deposits are made in the municipal storm sewer, that they are therefore not directly made in water frequented by fish, and that they are thus clearly indirect deposits. In the words of the legislator, the deposits are made in "any place under any conditions where the deleterious substance or any other substance that results from the deposit of the deleterious substance may enter any such water", a situation omitted in subsection 38(5) of the Act.

[89] At the hearing, the Applicants further stressed that the legislator does not speak in vain, that different terms in the same legislation mean different things and that the legislator's language excluded *indirect deposits* from subsections 38(5), 38(6) and 38(7.1) of the Act. The Applicants cited paragraphs 19, 32 and 33 of a decision I rendered in *Tshimuangi v Canada (Citizenship and Immigration)*, 2024 FC 1354 to support their position.

[90] More specifically, citing *R v Multiform Manufacturing Co*, 1990 CanLII 79 (SCC), [1990] 2 SCR 624, the Applicants stressed that "[t]he rule of construction is 'to intend the Legislature to have meant what they have actually expressed.'" Further, that "[t]here is no doubt that the duty of the courts is to give effect to the intention of the Legislature as expressed in the

words of the statute. And however reprehensible the result may appear, it is our duty if the words are clear to give them effect." (*R v McIntosh*, 1995 CanLII 124 (SCC), [1995] 1 SCR 686 at para 28 citing *New Brunswick v Estabrooks Pontiac Buick Ltd* (1982), 1982 CanLII 3042 (NB CA), 44 NBR (2d) 201 at 210).

[91] The AGC opposes the Applicants' proposed interpretation and asserts that there was a certain basis in the Act to include the *indirect deposits* in subsections 38(5) and (6) despite they being omitted. At the hearing, the AGC first pointed to the words "if there is a serious and imminent danger of [a deposit of a deleterious substance in water frequented by fish]" found in subsection 38(5) and argued that a discharge in a municipal storm sewer which in turn discharges in the St. Lawrence Seaway some 400 metres later is an example of such a serious and imminent danger of a deposit.

[92] Further, the AGC argued that section 38 of the Act, read as a whole, clearly provides the means to give effect to subsection 36(3) of the Act. The AGC stressed that the structure and the purpose of the Act, particularly pollution prevention, as well as the modern principle of statutory interpretation, all support the conclusion that subsection 38(5) includes *indirect deposits* although it does not name them. That said, the AGC did acknowledge that subsections 38(5) and (6) of the Act are worded differently than sections 36(3), 37(1) and 38(3)(b)(ii).

[93] After the hearing, I raised concerns about the fact that this argument relating to the principles of statutory interpretation had not been put to the Inspector before she issued the

Direction, questioning whether or not it could be raised, for the first time, on judicial review before the Court.

[94] I invited the parties to submit written submissions addressing (1) whether this issue was raised before the Inspector; and (2) if not, whether the Court could and/or should address it in light of the relevant case law (e.g., *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61; *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245; and *Benito v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1628).

[95] For their part, the Applicants essentially submitted that this issue is not entirely new, as it is a refined argument related to an issue already raised before the Inspector. In the alternative, should the Court determine that this is a new issue, they argued that the Court should nonetheless consider it since it does not cause unfair prejudice to the other party and no additional evidence is necessary for the Court to decide this issue (*Alberta Teachers* at para 26). The Applicants added that (1) Environment Canada's interpretation of the term "waters frequented by fish" would allow it to arrogate powers that the Act does not grant it, thereby rendering the Direction unreasonable; and (2) in any event, this Court should be flexible in applying the general rule set out in *Alberta Teachers*, as it has done in several similar situations (*Phan v Canada (Citizenship and Immigration)*, 2022 FC 916 at paras 52, 54; *Sedki v Canada (Citizenship and Immigration)*, 2021 FC 1071 at paras 50ss; *Natco Pharma (Canada) Inc v Canada (Health)*, 2020 FC 788 at paras 82ss).

[96] The AGC responded that this statutory interpretation issue was not raised before the Inspector. The AGC added that the Court should not decide this issue as (1) the legislator has entrusted inspectors to apply the Act; (2) the Court cannot ensure that it has all the factual and contextual elements necessary to decide the issue; and (3) contrary to the Applicants' assertion, the subject matter of the issue is not a relevant consideration for the Court to determine whether it should exercise its discretion (e.g., *Eadie v MTS Inc*, 2015 FCA 173 at paras 59-65, 69, 71; *Gomez v Canada (Attorney General)*, 2021 FC 1300 at paras 74-79, 84; *Tan v Canada (Citizenship and Immigration)*, 2024 FC 600 at paras 22, 26, 31, 37-38; *Benito* at paras 54-57; *Forest Ethics* at paras 37, 41-43).

[97] First, I agree with the AGC, and I am satisfied, based on the record, that the statutory interpretation argument that the Applicants have raised before the Court was not raised before the Inspector.

[98] Second, I am mindful of the principles of statutory interpretation, and specially the recognized principle that "Parliament does not speak in vain" (*Davis v Canada (Royal Canadian Mounted Police)*, 2024 FCA 115 at para 71 citing *Ebadi v Canada*, 2024 FCA 39 at para 35; *R v DAI*, 2012 SCC 5 at para 31 citing *Attorney General of Quebec v Carrières Ste-Thérèse Ltée*, 1985 CanLII 35 (SCC), [1985] 1 SCR 831 at 838); and that "[w]hen the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process." (*Canada Trustco Mortgage Co v Canada*, 2005 SCC 54 at para 10).

[99] Third, as instructed in *Mason* at paragraphs 64 and 69, any administrative decision must be justifiable given the applicable legal constraints bearing on the decision, one of which are the principles of statutory interpretation (see *Vavilov* at para 101, 119-123). Therefore, administrative decisions "must be consistent with the "modern principle" of statutory interpretation, which focusses on the text, context, and purpose of the statutory provision. The decision maker must demonstrate in its reasons that it was alive to those essential elements. […] And even if a decision does not explicitly consider the meaning of a relevant provision, the court may be able to discern the interpretation adopted from the record and evaluate whether it is reasonable" (*Mason* at para 69, see also *Rio Tinto* at paras 41-43, 47, 83). In *Mason*, at paragraphs 104 and 117, the Supreme Court of Canada proceeded with an analysis of the principles of statutory interpretation and specifically considered an argument that had not been presented to the decision maker.

[100] In any event, even if the Applicants' argument relating to the principles of statutory interpretation could be raised for the first time in judicial review, I do not need to rule on it in light of my conclusion regarding the unreasonableness of the Direction in the following sections and given that I will allow the application. As a result, the parties will have the opportunity to raise the issue before the administrative decision maker upon redetermination.

(b) *The Inspector's unreasonable interpretation of the term "deleterious substances" with respect to sulfate.*

[101] The Applicants argue that the Inspector's starting assumption was a flawed understanding of the notion of "deleterious substance", which acted as a distorting lens that tainted her entire approach, causing the Inspector to act and decide unreasonably.

[102] The Applicants cite subsection 34(1) of the Act and note that sulfate is not a prescribed substance pursuant to paragraph 34(2)(a) such that paragraph (c) under the definition of *deleterious substance* does not apply. They add that, as Terrapure deposits an Effluent that contains sulfate, rather than depositing pure sulfate, only paragraph (b) under the definition of *deleterious substance* applies in their case.

[103] The Applicants further argue that the Inspector's erroneous understanding of the Act stated in her inspection notes is that "le rejet [de sulfate] devrait être de zéro" [TRANSLATION] "the discharge [of sulfate] should be zero". According to the Applicants, water containing sulfate is not, in and of itself, deleterious to fish and that it depends on its concentration. The Applicants submit the proof of this is that a sample collected at the Establishment by the Inspector on December 7, 2022, which contained a sulfate concentration of 2,970 mg/L, was harmless to *Daphnia magna*. As such, the Applicants submit the distorting lens through which the Inspector analyzed this matter led her to adopt an intransigent, inflexible and unrealistic approach to resolving the matter and dealing with Terrapure.

[104] The AGC responds that “deleterious substance” is broadly defined at subsection 34(1) of the Act (*St Brieux* at para 44), and that in this case, the Inspector concluded from laboratory test results that the Effluent contained a high sulfate and lead concentration that is likely to be deleterious to fish or fish habitat or to the use by man of fish that frequent that water. As such, the consistently high concentration levels of sulfate and lead in the Effluent gave the Inspector reasonable grounds to believe that it was a deleterious substance.

[105] The AGC adds that although the By-Law’s sulfate concentration limit of 1,500 mg/L is not incorporated in the Act, the important gap between this limit in the By-Law and the sulfate concentration of the Effluent, i.e., a concentration up to 50 times higher than the By-Law’s limit in April, May and June 2022, is relevant information that supports the Inspector’s position that she had reasonable grounds to believe that the Effluent was a deleterious substance.

[106] With respect to lead, the AGC stresses the Direction explains that, according to the Quebec *Ministère de l’Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs*’ surface water quality criteria, lead concentration should not exceed 0.22°mg/L for the protection of aquatic life. In addition, according to the *Federal Environmental Quality Guidelines-Lead*, a concentration of 0,007 mg/L would cause a chronic toxic effect on rainbow trout. The AGC points to the Direction which states that in the literature, lead toxicity varies amongst fish species, but it is well known that fish eggs and alevins are more susceptible than adult fish.

[107] In this case, the AGC notes that inorganic chemical analysis from tests by Environment Canada on samples taken by fishery officers from the Effluent on the day of the emergency discharge, i.e., August 23, 2022, indicate that their sulfate concentration was 59,400 mg/L, and that their lead concentration was 0,375 mg/L. This was also a relevant fact which supported the Inspector's reasonable grounds to believe that the Effluent was a deleterious substance.

[108] The AGC further argues that contrary to the Applicants' position, the fact that one test performed after the issuance of the Initial Direction on a sample collected on December 7, 2022 with a sulfate concentration of 2,970°mg/L was harmless to *Daphnia magna* is irrelevant in assessing the reasonableness of the Direction. One test with results that shows a concentration that would not cause harm to the *Daphnia magna* is insufficient to lift the Direction.

[109] On this, the AGC notes that the results from the only other *Daphnia magna* test on file that was conducted after the Amended Direction shows that the Effluent sample collected on March 15, 2023, was harmful to *Daphnia magna*. The AGC stresses that the Inspector must be satisfied that the Applicants will be able to comply with their obligations under the Act for a prolonged period and across seasons before lifting it.

[110] Lastly, at the hearing, the AGC stressed that contrary to the Applicants' assertion, the Direction itself does not refer to a "zero sulfate deposit", but rather to a zero deposit of deleterious substances, as prescribed by the Act.

[111] I am satisfied the Applicants have established that the Inspector's interpretation of "deleterious substance" is unreasonable. First, the AGC's argument that the Direction itself does not refer to a "zero sulfate deposit" is irrelevant; the record shows the Inspector's interpretation of the Act was that the "no deposit standard" applied as no regulation made pursuant to subsection 36(4) allowed Terrapure to deposit water containing sulfate. Though it may have been reasonable for the Inspector to interpret the Act such that a standard of zero discharge applies to sulfate given that no regulations apply to Terrapure's activities, the record shows this interpretation was unintelligible in this case.

[112] As mentioned above, in the Draft Direction attached to her Notice of Intent, the Inspector initially referred to literature which mentioned a LC50 of 4,580 mg/L for sulfate. In her analysis of Me Fortin's October 2022 Submissions, the Inspector outlined that [original in French]:

> J'ai inscrit une référence toxicologique à la directive proposée dans l'avis d'intention afin de démontrer que la nocivité de cette substance chez le poisson et chez *Daphnia Magna* est bien connue. La Loi sur les pêches ne permet pas le rejet de substance nocive et ne prévoit pas de norme de rejet à moins qu'il y ait une permission par règlement pris en vertu de 36(4).
>
> J'ai retiré la référence littéraire de la directive finale pour éviter les confusions puisque Terrapure semble avoir conclu qu'ils ont la permission de rejeter du sulfate en dessous de la limite de toxicité aiguë de 4 580mg/L.
>
> Terrapure ne peut pas assumer que leur effluent sera conforme à la Loi sur les pêches en respectant ces concentrations en sulfates puisque l'effluent peut contenir d'autres substances nocives pour le poisson. Un système de suivi incluant des tests d'écotoxicité est nécessaire pour s'assurer que leur effluent n'est pas nocif et ainsi démontrer toute diligence raisonnable pour se conformer à la Loi sur les pêches.

[113] During the November 21, 2022, phone call, and in response to Me Fortin's question to the applicable standard according to the Notice of Intent, the Inspector confirmed that zero discharge was the standard and, when she issued the Initial Direction, she removed the reference to the LC50 of 4,580 mg/L. Moreover, the Direction does not include a reference to the literature.

[114] I am satisfied that it was unreasonable and illogical for the Inspector to conclude that Terrapure could not assume that their Effluent would comply with the Act by respecting the literature reference for sulfate of LC50 of 4,580°mg/L, particularly given that this reference was provided by the Inspector herself from the onset, in addition to the fact that she pointed the Effluent may be toxic for other reasons. Moreover, the By-Law provides for a maximal standard of 1,500 mg/L for sulfate, which implies that a certain sulfate concentration may not be a deleterious substance. This is all the more confirmed by the December 7, 2022, sample toxicity results which revealed that a LC50 of 2,970°mg/L resulted in a 0% lethality rate for *Daphnia magna*.

[115] As a side note, although this is not determinative, I highlight that Terrapure submitted in their October 2022 Submissions that their mixing and dispersion modelling for the Effluent ensured that its sulfate concentration was nontoxic by the time it reached the St. Lawrence Seaway. They also submitted that their Effluent was mixed with additional storm water in the municipal storm sewer and potentially with other neighbouring industrial users, thereby changing its final composition.

[116] In response, the Inspector outlined that subsection 36(3) of the Act applied to the non-diluted Effluent leaving the Establishment before entering the water frequented by fish. She referred to an article which, in turn, cites case law establishing that it is the deleteriousness of a substance which must be shown, and not that of the water frequented by fish (Paule Halley, "La *Loi fédérale sur les pêches* et son régime pénal de protection environnementale" (1992) 33:3 C de D 759 at 773-777). Amongst that case law is the decision *R v MacMillan Bloedel (Alberni) Limited*, 1979 CanLII 495 (BC CA), in which the Court of Appeal for British Columbia outlined that "[w]hat is being defined is the substance that is added to the water, rather than the water after the addition of the substance".

[117] As I stated at the hearing, I am reluctant to subscribe to the Inspector's interpretation given the language of the Act and could find differently if presented with the occasion. In this case, however, I am not tasked with this interpretation. The Inspector was and as she relied on case law, it was reasonable for her to apply this interpretation to the deleteriousness of a substance in the non-diluted Effluent. On the other hand, as detailed above, I am satisfied that her interpretation of the deleteriousness of sulfate is, in this case, unreasonable.

(c) *The Inspector had reasonable grounds to issue the Direction.*

[118] The Applicants argue that a direction can be issued by Environment Canada only where it is satisfied on reasonable grounds that reasonable measures have not been taken to prevent the deposits of deleterious substances, and that immediate action is necessary to take those measures (*urgence de ces mesures*) (subsections 38(6) and (7.1) of the Act).

[119] Here, the Applicants assert that there were no reasonable grounds justifying the issuance of the Direction as there was no urgency, that reasonable measures had in fact been taken following the issuance of the Notice of Intent, prior to the issuance of the Initial Direction and afterwards. They add that the Inspector was informed of these measures through the October 2022 Submissions and stress that the samples collected by Environment Canada on December 7, 2022 – which contained a sulfate concentration of 2,970 mg/L – confirmed that the reasonable measures had successfully reduced the sulfate concentrations to a point where the Effluent was not deleterious since the samples showed a certified 0% lethality rate of *Daphnia magna*, per the toxicity results of these samples.

[120] Further, the Applicants highlight that following the exceptional emergency discharge of August 23, 2022, Terrapure had also taken all of the reasonable measures necessary to avoid another similar discharge and that there were no subsequent similar emergency discharges. There was thus no immediate action necessary.

[121] At last, according to the Applicants, even if there had been reasonable grounds for the issuance of the Direction, which they deny, they assert that subsection 38(7.1) of the Act only authorizes Environment Canada to force a person to take reasonable measures "as soon as feasible" (subsection 38(6) of the Act), and that the Inspector therefore did not have the authority to order that measures be taken *immediately*, as she did.

[122] The AGC responds that the Applicants did not act as soon as feasible to address their sulfate problem or any other problem that led them to discharge a deleterious substance. The

AGC highlights that Terrapure has known about its sulfate problems for several years, pointing to the agreement it signed with the City in November 2020 which allowed Terrapure to discharge its Effluent into the municipal storm sewer even though it exceeded the sulfate concentration levels required by the By-Law.

[123] The AGC notes that in its agreement with the City, Terrapure agreed to choose a permanent solution to the sulfate problem by September 30, 2021, and to bring itself in conformity with the 1,500 mg/L sulfate concentration limit of the By-Law by November 14, 2023. However, the AGC stresses that Terrapure has done neither of these things.

[124] Further, the AGC notes that Terrapure did mention several “potential solutions” to prevent the deposit of a deleterious substance to the Inspector, but that the corrective measures suggested were either insufficient or unfeasible in the foreseeable future. For example, the AGC refers to the October 2022 Submissions in which Me Fortin mentioned discharging the Effluent into the City’s sanitary sewer system (which the City refused) and trucking the water off-site for treatment in third party facilities (which Terrapure deemed unfeasible). Accordingly, the AGC submits that based on the evidence before the Inspector at the time that she issued the Initial Direction and the Amended Direction, it was reasonable for her to conclude that corrective measures had not been taken as required by subsection 38(6) of the Act.

[125] In other words, the AGC highlights that following the Inspector’s assessment that the Applicants did not comply with their obligations under subsection 36(3) of the Act and that they were not taking corrective measures as soon as feasible in accordance with subsection 38(6), the

Inspector concluded that she had reasonable grounds to believe that action was needed immediately. The AGC contends that the conditions were therefore met for her to issue a direction under subsection 38(7.1) of the Act.

[126] At last, the AGC submits the fact that the Direction requires the Applicants to take immediate action to cease the deleterious deposits is not incompatible with the corrective measures listed by the Inspector in the Direction. The AGC adds that the primary obligation under the Act is to prevent occurrences where there is a deposit of deleterious substance; the Inspector cannot order less than what is required under the Act. The AGC notes that the Applicants might deem it necessary to cease their operations in the short term to comply with the Act, but that is not what the Inspector required; she simply ordered that they comply with the Act.

[127] I am satisfied that it was not unreasonable for the Inspector to conclude that Terrapure had not taken reasonable measures to prevent the deposits of deleterious substances. As the AGC asserts, based on the evidence before her at the time she issued the Initial Direction and the Amended Direction, it was reasonable for her to conclude that corrective measures had not been taken as required by subsection 38(6) of the Act. More specifically, the Inspector reasonably concluded as such given the admissions made by Terrapure in the October 2022 Submissions, i.e., that their sulfate crystal recovery plant, which was contemplated as the final sulfate solution, was expected to be in operation only by the end of 2024.

[128] The March 15, 2023, sample results also showed that the correctives measures Terrapure had put in place were insufficient as a 90% lethality rate on *Daphnia magna* was revealed. This non-compliance was compounded by Terrapure's admissions to the Inspector during the May 17, 2023, inspection that (1) several deposits of deleterious deposits had occurred in the springtime; (2) they could not identify the source of the Effluent's toxicity; and (3) an external firm was hired to characterize the toxicity of the Effluent, but it was a complex and long procedure to identify the exact cause of the non-compliance.

[129] Given that after the May 17, 2023, inspection, there was no new information before the Inspector which would have shown that the Amended Direction was no longer required, I am satisfied the Inspector still had reasonable grounds to issue the Direction on June 23, 2023.

(2) Whether the Direction complies with Environment Canada's Compliance Policy

[130] The Applicants submit that in addition to not complying with the conditions set out in the Act, the Inspector did not comply with the guidelines set out in the Compliance Policy to issue the Direction, despite the fact that it was purportedly issued in accordance with it.

[131] The Applicants refer to the factors to evaluate the gravity of the alleged violation and which intervention can be undertaken following the Compliance Policy, namely (a) the severity of the actual or eventual damages; (b) the intention of the alleged offender; (c) the recurrence of offences; (d) the collaboration of the persons named in the direction or their representative and whether they're trying to hide information or circumvent the Act; and (e) the corrective measures

taken. The Applicants add that the Compliance Policy states that a direction shall only be issued if an immediate intervention is necessary.

[132] The Applicants stress that Environment Canada must follow the Compliance Policy, an established internal authority, before issuing a direction; if it wishes to depart from it, Environment Canada bears the burden of explaining it in its reasons (*Vavilov* at para 131). As such, the Applicants argue they had a legitimate expectation they would be treated pursuant to the Compliance Policy. They also argue that the doctrine of legitimate expectations "is part of the doctrine of fairness or natural justice" and it acknowledges that fairness may require more extensive procedural rights when the administration acts contrary to its "clear, unambiguous and unqualified" practice (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 26; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 95 [*Agraira*]).

[133] The Applicants assert the Inspector departed from the principles included in the Compliance Policy without justification in that:

a) Terrapure has never previously been inspected nor subject to any enforcement action under the Act, as there has been no past record of violations, warnings or sanctions under the Act;

b) Terrapure and its representatives provided their full collaboration to Environment Canada. They candidly and voluntarily provided information to Environment Canada;

c) Terrapure's Effluent is not, in and of itself, a deleterious substance and did not, in the normal course of operations, present a risk of severe damage to fish or fish habitat; and

d) Terrapure was already taking the corrective measures, as soon as feasible, to prevent, counteract, mitigate or remedy any potential adverse effects.

[134] The AGC responds that the Inspector's decision is compatible with the Compliance Policy. He adds that while the Applicants could have a "legitimate expectation" that the Inspector would take the Compliance Policy into consideration and that it would inform her interpretation of the relevant provisions of the Act, they could not have a legitimate expectation of a particular outcome.

[135] The AGC notes that the Compliance Policy cannot undermine the requirements under the Act and the discretionary power granted to the Inspector by subsection 38(7.1) to issue a direction. He adds that the Compliance Policy clearly states that it is intended to provide general guidance only and is not a substitute for the Act. The AGC highlights that the Supreme Court of Canada has explained that "guidelines are useful in indicating what constitutes a reasonable interpretation of a given provision" but "are not 'legally binding' and are 'not intended to be either exhaustive or restrictive'" and that decision makers "should not fetter their discretion by treating these informal Guidelines as if they were mandatory requirements." (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32 [*Kanthasamy*]; see also *Agraira* at para 60)

[136] Further, the AGC asserts that no single factor listed in the Compliance Policy is decisive. For example, the Inspector is not prevented from issuing a direction simply because the Applicants had not previously been inspected by Environment Canada or shown to have committed violations of the Act. The AGC notes the Inspector considered the severity of the actual or eventual damages, as explained in the Direction that the Effluent discharge was at the time very deleterious.

[137] The AGC adds that the Direction explains that it is also based on the fact that Terrapure knew for years that its Effluent was significantly above sulfate concentration limits in the municipal by-Law and did not take measures to correct the situation, despite having committed to do so in their agreement with the City. At last, the AGC states the Inspector considered the corrective measures proposed by the Applicants, but she concluded that they did not meet the requirements of subsection 38(6) of the Act.

[138] This argument cannot succeed. I agree with the AGC that guidelines or internal policies are not legally binding and do not supersede the law. At best, they serve as interpretive tools (*Kanthasamy* at para 32; *Agraira* at para 60; see also *Turp v Canada (Foreign Affairs)*, 2018 FCA 133 at para 59, citing *Kanthasamy*; *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at para 75 [*JP Morgan*]; *Council of the Innu of Ekuanitshit v Canada (Fisheries and Oceans)*, 2015 FC 1298 at para 86 citing *Spencer v Canada (Attorney General)*, 2010 FC 33 at para 27; *Leahy v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 227 at para 92). The Applicants have not provided any authority to support their

argument that the Compliance Policy is an established internal authority that the Inspector had to follow before issuing a direction.

[139] Rather, and as noted by the AGC, the Compliance Policy specifically states that it does not supersede the Act: “This document and its annexes are intended to provide general guidance only. They are not a substitute for the *Fisheries Act*. In the event of an inconsistency between this document and the Act, the latter prevails.” (Whiteley Affidavit, Exhibit 2, AR at 183; see also in French, Brousseau Affidavit, Exhibit 3, AR at 1220).

[140] The Applicants have also not convinced me that the Inspector departed from the Compliance Policy by issuing the Direction. For example, the record shows that throughout her investigation, the Inspector stated to Terrapure’s representatives that she had the authority and responsibility to verify compliance with the Act, and to enforce its application. This is explicitly provided in the Compliance Policy’s guiding principles and its chapter 3.

[141] The Inspector also stressed that the Direction was aimed to ensure Terrapure complied with the Act and that she would cancel the Direction if Terrapure could show that it was compliant with the Act. She also mentioned that she tried to limit as much as possible the impact of the Direction on Terrapure’s operations, which again follows the Compliance Policy’s guiding principles.

[142] When Terrapure's representatives mentioned incidents of non-compliance, the Inspector explained the consequences they would be facing, including criminal prosecution if they did not comply with the Direction. This is in accordance with the Compliance Policy's chapter 6.

[143] Lastly, I agree with the AGC that the Applicants' legitimate expectations did not entitle them to a particular outcome. This doctrine does not create substantive legal rights, only procedural ones; as such, "even where a person has 'a legitimate expectation that a particular outcome will be reached, that expectation is not enforceable'" (*Jennings-Clyde, Inc (Vivatas, Inc) v Canada (Attorney General)*, 2024 FC 1141 at para 40 citing *JP Morgan* at para 75; see also *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)*, 2001 SCC 41 at paras 29, 32-35).

(3) Whether the monitoring requirements found in the Direction were rational and logical

[144] The Applicants submit that the monitoring requirements remained irrational, illogical and unreasonable in the Direction. The Applicants raise four arguments in this regard.

[145] First, the Applicants argue that under the current monitoring requirements, if the sample fails the *Daphnia magna* test, the Direction requires that Terrapure collect another sample to have it tested for acute lethality on rainbow trout and orders that the Applicants take corrective measures "without delay" to comply with subsection 38(6), i.e., without waiting for the results of the rainbow trout test. However, according to the Applicants, a rainbow trout test requires a 96-hour exposure of the Effluent and external laboratories take approximately 14 days to provide the

final signed testing results. Thus, Terrapure would not be able to discharge its Effluent for a period of 14 days, without even knowing the result of the rainbow trout test. The Applicants assert that this period of 14 days is unreasonably long in and of itself.

[146] Second, the Applicants assert the monitoring requirements are inconsistent with and more onerous than the overarching statutory scheme of the Act and, are consequently, unreasonable. They argue that it is not disputed that the Direction provides a series of monitoring requirements that go beyond the provisions of the Act. For example, the Applicants refer to the *Pulp and Paper Effluent Regulations*, SOR/92-269 and the *Metal and Diamond Mining Effluent Regulations*, SOR/2002-222. They submit that both these regulations, which require *Daphnia magna* testing in certain circumstances, do not require that corrective measures be taken as soon as there is a failed *Daphnia magna* test, contrary to what is ordered in the Direction.

[147] The Applicants stress that there is no principled basis upon which the more stringent monitoring scheme and requirement for corrective measures found in the Direction could be justified, as the purportedly deleterious substances to which the Direction relates are by no means more of a risk to fish or fish habitat than those targeted by these two regulations.

[148] Third, the Applicants argue the monitoring requirements are convoluted, contradictory, arbitrary and are not based on a logical and rational chain of analysis. This argument is largely founded on inadmissible evidence, located in the Inspector's affidavit and cross-examination and will consequently not be considered.

[149] Fourth, the Applicants argue the Direction simultaneously requires the Applicants to cease the discharging of deleterious substances on two different dates that cannot be reconciled. The Applicants highlight that they may be subject to significant fines if they fail to comply with the Direction, so they are entitled to know and understand precisely the orders found in the Direction with which they must comply.

[150] In response, the AGC asserts that the Inspector's monitoring requirements are logical and intelligible. They allow the Applicants to quickly assess the deleteriousness of their Effluent with a first toxicity test on *Daphnia magna* and, if it fails, to better understand the level of deleteriousness of the Effluent and the measures that need to be taken by doing a second toxicity test on rainbow trout.

[151] More specifically, in response to the first and third point raised by the Applicants, the AGC argues that when a test on *Daphnia magna* fails, the Applicants do not necessarily need to cease the discharges of the Effluent. Subsection 38(6) provides that when there is an occurrence of deposit of a deleterious substance, which is what failed *Daphnia magna* test reveals given that *Daphnia magna* is considered fish under the Act, the person must take all reasonable measures to "counteract, mitigate or remedy any adverse effects." The AGC highlights the Applicants are in the best position to identify the corrective measure that will address the adverse effect of an occurrence. It also refers to the Inspector's cross-examination and to inadmissible evidence which, again, will not be considered.

[152] In response to the second point raised by the Applicants, the AGC asserts that it is irrelevant if the operating, monitoring, and discharge requirements are less stringent in the regulations cited by the Applicants since they do not apply in the case of the Applicants; no regulation applies in this case. The AGC highlights that subsections 36(4) to (5.2) of the Act allow the Governor in Council to adopt regulations that can create exemptions to the general prohibition of subsection 36(3). The AGC notes Parliament's intent is clear: the deposit of deleterious substance is prohibited under the Act, and the only way to be exempted from this general prohibition is through the adoption of regulations. It would be contrary to the legislative intent to use regulatory exemptions that do not apply in this case as an interpretative tool to limit the general prohibition under subsection 36(3).

[153] The AGC did not respond to the fourth point raised by the Applicants.

[154] I agree with the Applicants' first argument. First, the Inspector, in her monitoring requirements, orders Terrapure to cease discharge of its Effluent if the *Daphnia magna* test reveals a non-compliance, and then to proceed with the acute lethality rainbow trout test, which requires a period of 14 days following sampling. This means Terrapure may not discharge its Effluent and may not, essentially, per the evidence, operate its plant once its basins are full.

[155] Though the AGC argues that the Inspector did not require for the Applicants to cease Terrapure's operations, the Inspector's inspection notes show that Terrapure's representatives did mention to her that if they could not discharge during this period, they would be forced to stop the Establishment's activities. The fact that the AGC argues the Inspector did not want

Terrapure to cease its operations for weeks on end acknowledges somehow that it would be unreasonable for Terrapure to be obliged to do so in these circumstances.

[156] The AGC does not dispute that the rainbow trout test results may require a waiting period of 14 days. However, as it was communicated to the Inspector by Terrapure's representatives, the Direction's current monitoring requirements would oblige Terrapure to cease its activities during the waiting period, and this, even if the rainbow trout test reveals a compliant sample.

[157] Further, per the Direction, it is only after the *Daphnia magna* test results are received that Terrapure must then proceed with the rainbow trout test in the event of a non-compliant *Daphnia magna* sample. Given that the samples are taken at different times and from a different Effluent, this does not necessarily imply that the *Daphnia magna* non-compliant sample will still be non-compliant when the second sample is taken for rainbow trout testing. This is seemingly what the March 15, 2023, *Daphnia magna* non-compliant sample and subsequent rainbow trout compliant sample revealed.

[158] Consequently, I am satisfied that the monitoring requirements are unreasonable and illogical. This flaw is sufficiently central to render the Direction unreasonable (*Vavilov* at para 100).

C. *In the alternative, whether it was reasonable for Environment Canada to name André Chauvette, Ryan Reid and Andrea Aragon as addressees*

[159] In brief, the Applicants argue the Inspector misconstrued the statutory conditions to name a person in a direction under subsection 38(5) of the Act when she named Mr. Reid,

Mr. Chauvette and Ms. Aragon in the Direction. In doing so, she entirely disregarded Terrapure's representations with respect to the individuals' actual roles and powers, which led her to issue the Direction to persons who were clearly not meeting the standard of subsection 38(5) and to breach the principles of natural justice and procedural fairness in the process.

[160] More precisely, the Applicants argue Mr. Chauvette was Terrapure's Manager, Environmental Affairs until he retired from full employment on May 31, 2023. When he occupied that position, his employment level was one of lower management. He had no decision-making power over plant operations and his role with respect to discharges was to collect the data for the purpose of Terrapure's issuance of various environmental reports. Mr. Chauvette did not have authority on Terrapure's discharges but was only responsible for environmental reporting.

[161] The Applicants submit Ms. Aragon took over some of the functions previously undertaken by Mr. Chauvette, except for the ones in connection with Wastewater management and Effluent sampling, which were since then assumed by another person. Ms. Aragon is responsible, in particular, to compile and submit various annual reports to regulatory authorities and to submit applications for permits as required. Therefore, the Applicants argue that Ms. Aragon has no decision-making power with respect to plant operations and no direct power or capacity to implement preventive and corrective measures for Terrapure to comply with the legal obligations established by the Act and the Direction.

[162] Lastly, the Applicants cite paragraphs 38(5)(a) and (b) of the Act and argue that these paragraphs refer only to persons who actually, and not hypothetically, satisfy the listed

conditions. On this, the Applicants also refer to the Inspector's affidavit and her cross-examination, and to information that is not found in the CTR and cannot thus be considered.

[163] At last, the Applicants highlight that not only was the Inspector's decision to include the individuals unreasonable, but the Inspector also completely disregarded and failed to substantially address the Applicants' representations with respect to the individuals' actual roles in Terrapure, despite the fact that the individuals were entitled to understand the decision maker's process.

[164] The Applicants argue this constituted another breach of the principles of natural justice and procedural fairness which cannot be endorsed by this Court since the Inspector's decision "involved significant failures of 'responsive justification' that would cause a reviewing court to lose confidence in the decision" (*Mason* at para 10) and especially here, where the Direction may have "particularly harsh consequences for the affected individual[s]." (*Vavilov* at para 133)

[165] In response, the AGC submits the Inspector designated Ms. Aragon and Mr. Reid in the Direction because, together, they have the authority, the responsibility and on-site presence to ensure compliance with the Direction. The AGC argues subsection 38(7.1) of the Act allows the Inspector to designate persons that are mentioned in paragraphs 38(4)(a) or (b), 38(5)(a) or (b). As such, the AGC argues that Ms. Aragon is the only physical person directly subject to the Directive that is on-site at the Establishment, and that somebody on-site needs to be included in the Direction to ensure that the proper tests are made and the proper notifications are raised, if necessary. He adds that contrary to the Applicants' position, the Act does not require a person to have "direct power or capacity" to be subject to a Direction, but simply to "cause or contribute"

to the occurrence or the danger of the occurrence while outlining that contributing to an occurrence does not require active participation to the deposit of the substance; it is sufficient to allow the violation to take place.

[166] With respect to Mr. Chauvette, the AGC submits the Court should not rule on whether he should have been named because this issue is now moot. In any case, he was named in the previous directions for the same reasons that Ms. Aragon is named in the most recent one.

[167] The AGC highlights the Applicants submitted no arguments in their Memorandum to challenge the designation of Mr. Reid. The AGC adds that the Inspector named Mr. Reid because as President, he has the authority in the corporation to approve the corrective measures necessary to meet the obligations under the Act as well as the budgets necessary for their implementation.

[168] The AGC also notes Terrapure has not provided any alternative name for the Direction, they are simply asking that no physical person be responsible for the Direction.

[169] Lastly, the AGC submits that contrary to the Applicants' claims, the Inspector considered their representations regarding the persons submitted, referring to the analysis of the October 2022 Submissions the Inspector made.

[170] Respectfully, the Applicants' argument cannot succeed. First, I agree with the AGC that the issue of Mr. Chauvette as an addressee is moot given that his name was removed in the Direction. Mr. Chauvette will not be directly affected by this decision regardless of its disposition (*Federal Courts Act*, RSC 1985, c F-7, s. 18.1(1); *Laurentian Pilotage Authority v*

Corporation des Pilotes de Saint-Laurent Central Inc, 2019 FCA 83 at paras 31-32). The Applicants have not convinced me that I should rule on this issue despite it being moot (*Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 at 353, 358-363).

[171] Further, as noted by the AGC, the Applicants do not contest before this Court that Mr. Reid is the highest person in authority at Terrapure. I find that it was reasonable for the Inspector to name Mr. Reid given that he is the person who, at the material time, "had the charge, management or control of the work, undertaking or activity that resulted in the deposit" (s.38(5)(a) of the Act).

[172] The Applicants have also not convinced me that it was unreasonable for the Inspector to name Ms. Aragon in the Direction. Her role as the Manager of Environmental Affairs of Terrapure and her on-site presence at the Establishment imply that she is responsible for ensuring compliance with environmental laws, including subsection 38(5)(a) of the Act.

[173] Moreover, I am satisfied that the Inspector did not fail to substantially address Terrapure's representations with respect to the individuals' actual roles. The Inspector's detailed analysis of the October 2022 Submissions found in the CTR shows she considered their representations but did not agree with them. In any event, the Applicants have not specified what part of their representations was disregarded and/or not substantially addressed.

[174] In my view, the Applicants' assertion is rather based on their disagreement with the Inspector's decision to ultimately name these individuals in the Direction, which is not a

reviewable flaw in and of itself. As noted by the AGC, the Applicants did not offer any alternative physical person to be responsible for the Direction; thus, I am satisfied it was reasonable for the Inspector to name these individuals given subsection 38(7.1) of the Act.

D. *Whether the Inspector contravened the principles of natural justice and procedural fairness afforded to the Applicants in issuing the Direction*

[175] Both parties agree that the relevant question is whether the Applicants were given a right to be heard and the opportunity to know the case against them (*Canadian Pacific Railway Company* at para 56). In light of the record, I am satisfied that they did, and that the Inspector did not breach the principles of procedural fairness.

[176] The Applicants' main contention is that they did not initially receive a copy of the September 9 Toxicity Certificate in a timely manner and when they did, it did not contain the sampling procedures and testing protocols. However, the Applicants do not establish that the delay in obtaining the Toxicity Certificate impaired their ability to respond to the Notice of Intent or to otherwise present submissions (*Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 102).

[177] The record shows that the toxicity results were effectively included in the Notice of Intent; the Applicants therefore knew of this information when they made their October 2022 Submissions. I agree with the AGC that the Applicants do not establish that the case they had to meet would have been different if Environment Canada had disclosed the testing protocols and documents relating to the state of the samples.

[178] Moreover, I disagree with the Applicants' assertion that the Toxicity Certificate that was ultimately provided was incomplete. The evidence in the CTR shows that the Toxicity Certificate the Applicants received on November 10, 2022, was the same as the one the Inspector received on September 9, 2022. This Toxicity Certificate includes sampling procedures and testing protocols as well as signed declarations from the analysts who conducted the toxicity tests. The Applicants have not argued what other sampling procedure or testing protocol should have been included.

[179] The Applicants do not otherwise dispute that the Inspector explained the Act and gave them a copy of the Compliance Policy during her initial visit in July 2022, making them aware of the applicable governing statutory scheme. They also do not dispute that the Inspector outlined the Notice of Intent during her September 2022 visit and afforded them time to present detailed written submissions in response. The Amended Direction was also changed following corrections made by Terrapure's counsel. In my view, the Applicants were therefore heard and knew the case against them throughout the entire process, namely from the Notice of Intent to the Direction.

VI. Conclusion

[180] For the reasons outlined above, I find the Direction is unreasonable as the Inspector made a flawed interpretation of a "deleterious substance" with respect to sulfate and as the monitoring requirements she ordered were illogical and irrational.

[181] The Applicants have not argued that a particular outcome is inevitable in this matter. Given her broad discretion under subsection 38(7.1) and her expertise, I am satisfied that the appropriate remedy is to remit the matter back to the Inspector (*Vavilov* at paras 140-142). The parties will have the opportunity to present submissions in regard to the Applicants' issue relating to the statutory interpretation of *direct deposits* vs *indirect deposits*, if they choose to do so.

[182] Both parties sought costs. At the hearing, the Applicants specifically sought a lump sum of $8,958.61 according to Tariff B while the AGC sought $8,370.00.

[183] Considering that the judicial review is to be granted, costs of $8,958.61 will be awarded to the Applicants.

JUDGMENT in T-2696-22

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to name only the Attorney General of Canada as the Respondent, in accordance with Rule 303(2) of the *Federal Courts Rules*.
2. The Application for Judicial Review is granted.
3. The Direction is set aside.
4. The matter is sent back for redetermination taking these reasons into consideration.
5. Costs are awarded to the Applicants in the all-inclusive amount of $8,958.61.

"Martine St-Louis"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2696-22
STYLE OF CAUSE:	TERRAPURE BR LTD. ET AL v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 3, 2024
DATE OF ADDITIONAL WRITTEN SUBMISSIONS SUBMITTED AFTER HEARING DATE:	MAY 30, 2025 JUNE 6, 2025 JUNE 11, 2025
DATE DECISION SENT TO TRANSLATION	AUGUST 20, 2025
JUDGMENT AND REASONS:	ST-LOUIS ACJ
DATED:	OCTOBER 23, 2025

APPEARANCES:

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