

Public Accounts

Volume 3 – Supplementary Information
For the fiscal year ended March 31, 2018



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The *Public Accounts Volume 3—Supplementary Information* is produced in accordance with the Finance Act, which requires an annual reporting of all sums paid from the Province's General Revenue Fund during the fiscal year. In this publication, payments are reflected on a cash basis and include Tangible Capital Asset Acquisitions.

Accounts Payable, Tangible Capital Assets, and other adjustments are indicated to reconcile cash payments with the accrued charges to departmental expense appropriations. The appropriations are prepared on a gross basis with no netting of General Revenue Fund revenues, recoveries, or fees and other charges.

Transfers to (or from) other Accounts indicate that a portion of the payments have been charged to other accounts/departments.

Accumulative payments to individuals and suppliers within the fiscal year are reported as follows:

Salaries – \$25,000 and over;

Travel – \$3,500 and over; and

All other payments – \$5,000 and over.

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Public Accounts

Volume 3 - Supplement to the Public Accounts
for the fiscal year ended March 31, 2018

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Department of Transportation and Infrastructure Renewal

Wood, Lewis	5,744.73
Wood, Robert J	13,052.09
Woodworth, Laura Lee	6,578.78
Woodworth, Paul	9,732.53
Woolley, J Locke	5,882.47
Yeadon, Christina	11,642.05
Youden, William A	11,170.78
Accounts Under \$3,500	812,242.70
Accounts Payable Adjustments	(24,187.10)
	<u>\$4,434,334.29</u>

Grants and Contributions:

Aboriginal Affairs	\$50,000.00
Bay Ferries Ltd	13,964,393.00
Bicycle Nova Scotia	5,000.00
Canadian Association of Provincial Safety Councils Safety Services Nova Scotia	10,000.00
Child Safety Link	72,000.00
Ecology Action Centre	64,100.00
Injury Free Nova Scotia Society	16,000.00
Municipality of the County of Inverness	250,000.00
Northern Pulp Nova Scotia Corp	6,001,238.13
Public Policy Forum	12,500.00
Public Service Commission	5,000.00
Transport Canada	1,000,000.00
Transportation Association of Canada	15,804.00
Accounts Under \$5,000	11,278.32
Accounts Payable Adjustments	(2,198,416.13)
	<u>\$19,278,897.32</u>

Other:

2 Men and a Ladder Wood Construction Contracting	\$12,978.11
3006877 Nova Scotia Ltd	6,006.32
3051308 Nova Scotia Ltd	7,424.11
3237342 Nova Scotia Ltd	12,762.23

3277176 Nova Scotia Ltd	11,310.00
3278919 Nova Scotia Ltd	8,825.01
3M Canada Inc	255,227.87
9030-5814 Quebec Inc	79,692.50
98599 Canada Ltd	13,150.00
A & A Roofing (2016) Ltd	12,800.00
A & P Transmission & Automotive Repair Ltd	42,677.61
A and A Aggregates Ltd	61,780.38
A B Mechanical Ltd	351,198.34
A F Theriault & Son Ltd	708,831.77
A G Delaney Distributors Ltd	27,801.55
A H Roy & Associates Ltd	120,542.49
A Mackenzie Security Ltd	57,167.33
A W Leil Cranes & Equipment (1986) Ltd	27,626.48
A+ Quality Cleaners Inc	5,660.00
A-1 Building Cleaning Ltd	42,280.17
A-1 Refuse	21,216.02
A-1 Tires Ltd	27,049.85
Aaffinity Contracting & Environmental Ltd	207,681.91
Abbey's Smart Move Ltd	25,720.00
Abbott Brown Architects Inc	17,532.42
Aberdeen Paving Ltd	4,836,482.07
Able Engineering Services Inc	84,175.58
Absolute Traffic Services Ltd	446,330.40
Acadia Crushed Stone	25,927.09
Acadia Roofing & Contracting Ltd	47,928.67
Acadia University	80,964.00
Acart Equipment Ltd	148,887.07
Access Contracting Ltd	14,477.00
Ace Machining Ltd	22,580.75
Acklands-Grainger Inc	87,292.69
ACROW Ltd	484,601.13
Action Car and Truck Accessories	20,827.68
ADESA Auctions Halifax	192,324.00
ADT Security Services Canada Inc	7,668.89
Advanced Drainage Systems Inc	128,200.19
Advanced Energy Management Ltd	29,621.95

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Northern Pulp, Scotsburn Lumber, and U.S. tariffs

Morning File, Tuesday, January 8, 2019

JANUARY 8, 2019 BY TIM BOUSQUET

9 COMMENTS

News

1. Northern Pulp, Scotsburn Lumber, and U.S. tariffs

We are encouraging all of our employees, contractors, business owners, forest landowners and associated suppliers to call or write a letter to your local provincial or elected official to express your feelings towards the importance of this issue to you, your families, or your business. The proposed Effluent Treatment Facility will be a world class facility which will meet or exceed all federal & provincial guidelines. If you want to see more information regarding this proposal prior to contacting your elected official I encourage you to check the website at northernpulp.ca/environment/effluent-treatment-facility-replacement-project.

Last month, Scotsburn Lumber sent out a letter encouraging “all our employers, contractors, business owners, forest landowners and associated suppliers to call or write a letter to your local or elected official” to express support for Northern Pulp Mill and its efforts to continue operating after the deadline for stopping the dumping of mill effluent into Boat Harbour.

The letter is signed by four Scotsburn execs: general manager Mark Baillie, procurement manager Donald Hume, controller Tracey Ferguson, and purchaser Scott Standen.

You can read the entire letter [here](#).

There is of course nothing improper about people contacting government officials to express their concerns one way or another on any public matter, including the mill. But the letter caused me to wonder about the relationship between Scotsburn Lumber and Northern Pulp Mill, and so I spent considerable time over the holidays researching the history of each company, and in particular how the provincial government has financially supported the mill and perhaps, by extension, the forest industry generally.



Northern Pulp Mill. Photo: Halifax Examiner

The pulp mill has existed for many decades, but on April 28, 2009, Neenah Paper Company of Canada instructed Stewart McKelvey to incorporate Northern Pulp Nova Scotia Corporation “on our behalf.” Neenah was owned by two U.S.-based private equity firms — Blue Wolf Capital and Atlas Holdings — and the board of directors of the Northern Pulp consisted of various people from Georgia associated with the timber industry and New York financiers.

In 2011, the mill was [sold to Paper Excellence](#), and in June 2011 the directorship of Northern Pulp Nova Scotia Corporation shifted to people associated with the timber industry in British Columbia and, importantly, the Widjaja family in Indonesia ([which owns Paper Excellence](#)). Former premier John Hamm was also a director.

The next year, the closed lumber mill in Scotsburn was resurrected. [Reported CTV:](#)

Owners of the Northern Pulp Nova Scotia Pulp Mill in Abercrombie Point are hoping that acquiring the Ligni Bel sawmill will help to ensure a steady supply of woodchips, as the Northern Pulp mill requires a steady supply of woodchips in order to make its bleached kraft pulp.

The Ligni Bel sawmill in nearby Scotsburn used to supply Northern Pulp with woodchips, but it shut down last November when over half of its wood supply was lost due to the closure of the NewPage paper mill in Point Tupper, N.S.

Now, an affiliate of Northern Pulp has started the process to purchase the Ligni Bel sawmill.

I worked through the directorship history of both companies (Northern Pulp and Scotsburn Lumber) from 2012 to the present, and found that management of the companies was intertwined. Here are two examples:

G. Wayne Gosse

- Officer and director with Scotsburn from July 17, 2012 to June 20, 2013
- Officer with Northern Pulp from September 12, 2008 to June 20, 2013
- Director of Northern Pulp from December 8, 2009 to June 20, 2013, and then again from August 29, 2013 to March 16, 2017

Andreas Kammenos

- President of Scotsburn from May 22, 2014 to July 28, 2014
- Director of Scotsburn from August 29, 2013 to July 28, 2014
- President of Northern Pulp from August 29, 2013 to April 2, 2015
- Throughout that period, Kammenos was [a vice-president at Paper Excellence.](#)

There are more connections that are harder to nail down: shared addresses and the like, but I think those two make the point.

I mean, it makes sense, right? Northern Pulp needed a steady supply of pulp, so bought the local sawmill.

Throughout, Northern Pulp was getting and continues to get considerable financial support from the provincial government — in fact, so much financial support that I'm sure I've missed a lot of it. But here's what I've been able to piece together. First, let me just list the payments to either Northern Pulp or Scotsburn as reported in Public Accounts, with payments listed by department ("G&C" means "grants and contributions"):

2009

Northern Pulp Nova Scotia Corp

DNR: (G&C): 587,559.14

DNR: 109,742.44

Total: 697,301.58

2010

Northern Pulp Nova Scotia Corp

DNR: (G&C): 180,407.00

DNR: 160,184.14

Total: 340,591.14

2011

Northern Pulp Nova Scotia Corp

DNR: (G&C) 445,395.00

DNR: 9,760.27

Total: 455,155.27

2012**Northern Pulp Nova Scotia Corp**

DNR (G&C): 79,629.85

DNR: 4,541,077.27

Total: 4,620,707.122013**Northern Pulp Nova Scotia Corp**

DNR (G&C): 522,604.50

DNR: 196,732.00

Total: 719,336.502014**Northern Pulp Nova Scotia Corp**

Labour: 37,500.00

DNR (G&C): 969,837.64

DNR: 733,125.66

Total: 1,740,463.30**Scotsburn Lumber Ltd**

Labour: 12,500.00

DNR: 159,458.94

Total: 171,958.942015**Northern Pulp Nova Scotia Corp**

Economic & Rural Development: 61,411.25

Labour: 42,500.00

DNR (G&C): 445,652.49

DNR: 570,066.81

Total: 1,119,630.55

Scotsburn Lumber Ltd

DNR: 100,410.89

Total 100,410.89

2016

Northern Pulp Nova Scotia Corp

Labour: 16,540.00

DNR (G&C): 602,527.17

DNR: 78,719.53

Total: 697,786.70

Scotsburn Lumber Ltd

Labour: 20,000.00

DNR: 127,772.94

Total: 147,772.94

2017

Northern Pulp Nova Scotia Corp

Labour: 14,660.00

DNR (G&C): 457,143.68

DNR: 399,498.03

TIR: (G&C) 144,980.00

Total: 1,016,281.71

Scotsburn Lumber Ltd

Labour: 12,500.00

DNR (G&C): 160,742.26

Total: 173,242.26

2018

Northern Pulp Nova Scotia Corp

Labour: 29,076.50

DNR (G&C): 464,481.45

DNR: 31,353.38

TIR (G&C): 6,001,238.13

Total: 6,526,149.46

Scotsburn Lumber Ltd

Labour: 5,000.00

DNR: (G&C) 141,394.13

Total: 146,394.13

That's somewhat more than \$18 million in public money paid to Northern Pulp and about three-quarters of a million paid to Scotsburn Lumber since 2009.

I asked each department about the expenditures. Department of Labour spokesperson Shannon Kerr got back to me the very next day, with this chart:

Fiscal Year Public Accounts	2014	Program	Division	Northern Pulp	Scotsburn Lumber	Grand Total
		START	ENS	(37,500)	(12,500)	(50,000)
Total April 1 2013 - March 31 2014				(37,500)	(12,500)	(50,000)
	2015	Apprenticeship	Apprenticeship	(5,000)		(5,000)
	2015	START	ENS	(37,500)		(37,500)
Total April 1 2014 - March 31 2015				(42,500)	-	(42,500)
	2016	CO-OP	Youth Initiatives	(6,540)		(6,540)
	2016	START	ENS	(10,000)	(20,000)	(30,000)
Total April 1 2015 - March 31 2016				(16,540)	(20,000)	(36,540)
	2017	Apprenticeship	Apprenticeship	(5,000)	(12,500)	(17,500)
	2017	CO-OP		(9,660)		(9,660)
Total April 1 2016 - March 31 2017				(14,660)	(12,500)	(27,160)
	2018	Apprenticeship	Apprenticeship	(17,500)	(5,000)	(22,500)
	2018	CO-OP	Youth Initiatives	(11,577)		(11,577)
Total April 1 2017- March 31 2018				(29,077)	(5,000)	(34,077)
				(140,277)	(50,000)	(190,277)

I assume most large companies (and a lot of small ones) are taking advantage of these worker development programs.

Likewise, Transportation and Infrastructure Renewal spokesperson Marla MacInnis got back to me lickety-split, in just two hours, about the very large TIR payments to Northern Pulp. She wrote:

This is a contribution towards detailed design and engineering studies for a potential replacement effluent treatment facility.

The amount was determined based on estimates by design consultants. The overall total for design and engineering studies is \$6.146 million. \$6,001,238.13 flowed in fiscal 2017-2018, while \$144,980.00 began this work in 2016-2017 and can be found on page 326 of Public Accounts.

The contribution allows negotiations with Northern Pulp to continue and will be credited towards any future agreement. This cost is part of a larger discussion with Northern Pulp which is yet to be concluded.

The payments were never announced publicly, but the CBC found them tucked into Public Accounts.

Wrote John Laroche:

Nova Scotia Premier Stephen McNeil insisted Thursday there was no attempt to hide a \$6-million payment last year to Northern Pulp, despite the fact his government only disclosed the information as a single-line item in a 351-page document on July 26.

The payment is contained in volume three of the supplementary estimates filed to officially close the books on the 2017-18 fiscal year.

I appreciate the work of government spokespeople — we reporters can be demanding with our requests, and for the most part the spokespeople respond quickly and professionally. So I thank Kerr and MacInnis for their help.

Alas, I had less luck with Department of Natural Resources spokesperson Bruce Nunn. I emailed Nunn on December 17, asking “Can you tell me what those [DNR] payments were for? I’m guessing that that information will be self-explanatory in terms of the difference between ‘grants and contributions’ and ‘other,’ but if not, could you elaborate?”

It’s been 22 days, and I’ve had no response from Nunn. So your guess is as good as mine as to why DNR has paid Northern Pulp \$10 million or so.

But wait... that list of *payments* to Northern Pulp doesn’t include provincial *loans* to the company. Joan Baxter has provided me with the results of a Freedom of Information request she made related to the loans, for which she was provided this chart:

FOIPOP 2017-03648-BUS – Loans to Northern Pulp and Affiliates

12(1)(a)

17(1)

File #	Recipient	Authorized	Status	Interest Rate	Term	Amount Forgiven
300246	Northern Pulp NS	\$15,000,000	in good standing (amended 2013)	NS 10-year borrowing rate plus ██████████ (amended to NS 10-year rate plus ██████████)	10 years commencing July 1, 2009 (amended to 10 years commencing January 1, 2013)	n/a (fully repayable loan)
300273	Northern Timber NS	\$75,000,000	in good standing	NS 30-year borrowing rate plus ██████████	30 years commencing March 12, 2010	n/a (fully repayable loan)
300338	Northern Pulp NS	\$14,700,000	in good standing	NS 10-year cost of funds plus ██████████	10 years commencing January 1, 2013	n/a (fully repayable loan)
300337	Northern Pulp NS	\$2,500,000	in good standing	No interest (forgivable with conditions)	10 years commencing January 1, 2013	\$0
300336	Northern Pulp NS	\$3,600,000	paid in full as scheduled on August 1, 2016	NS cost of funds plus ██████████	4 years commencing October 1, 2013	n/a (fully repayable loan)
300335	Northern Pulp NS	\$900,000	incentive earned June 25, 2015	No interest (incentive earnable when conditions met)	n/a	\$900,000 incentive earned

Comments Baxter:

The total amount loaned or granted to the mill in that period, for which I had requested details (terms, payment rate, etc – all redacted), was \$111.7 million.

The \$75 million, 30-year loan in 2010 (for the land purchase of 475,000 acres from Neenah Paper) had a hidden gift to Northern Pulp (owned by NY companies Blue Wolf Capital and Atlas Holdings at the time) of \$7 million, because the province bought back as part of the same deal 55,000 acres of land at \$300 per acre, whereas NP had paid only \$172.63 per acre. This is detailed on page 179 in [her book, *The Mill*].

There was also the \$28.1 million federal grant from Peter MacKay and the Harper government in “green transformation” money in January 2011, just before the mill was acquired by Paper Excellence from two US private equity companies.

I recap some of the in-kind and financial gifts over the years between pages 215 and 219 in the book.

A few million here, a few million there, pretty soon we'll be talking real money.

But of even further interest is how all this money going to Northern Pulp affects lumber exports.

This issue came up explicitly in a January 25, 2013 letter from Duff Montgomerie, then the deputy minister of Nova Scotia's Department of Natural Resources, to Pedro Chang, the deputy CEO of Northern Pulp.

Wrote Montgomerie: “Although Northern Pulp does not own and control Scotsburn Lumber, we need to ensure that any support of Northern Pulp does not indirectly support Scotsburn Lumber under the Softwood Lumber agreement.” He goes on to say that the province's and Northern Pulp's lawyers have

figured out how to move forward “without putting the trade agreements at risk.” Alas, the details of that arrangement were redacted from the copy of the letter we obtained.

[You can read the letter here.](#)

This looks, well, sketchy. It appears that while *Northern Pulp* may not “own and control Scotsburn Lumber,” the Widjaja family controls both Northern Pulp and Scotsburn through different holding companies. So the legal control is one level up, but the actual management coordination is, or at least was, right there through the persons of Andreas Kammenos and G. Wayne Gosse, as I detailed above.

So, despite Montgomerie’s statement to the contrary, did the payments to Northern Pulp amount to backdoor subsidization of Scotsburn Lumber, and were the payments actually in violation of the Softwood Lumber agreement? I don’t know. I’ve asked Zoltan van Heyningen, the executive director of the U.S. Lumber Coalition, for comment, but he hasn’t responded.

The Softwood Lumber Agreement expired in 2015. In 2016, the U.S. Department of Commerce determined that the Canadian softwood lumber industry was being unfairly subsidized by Canadian governments, and therefore imposed a subsidy margin of 3.34% to 18.19% on Canadian lumber, depending on the firm. Nova Scotian firms, including Scotsburn Lumber, were excluded from the penalty tariffs.

I’ve asked Mark Baillie, the general manager at Scotsburn Lumber, for comment; as of publication time, he hasn’t responded.

Update, 2:30pm: Mark Baillie responds:

I am not sure how or why the letter was forwarded to you, but you should also be aware that all other sawmills in the province are starting to voice their concerns about a potential mill

closure and the impacts this would have on their business and the forestry industry in general.

As for the corporate relationship, the sawmill was purchased in 2012 by Northern Pulp and was re-sold in May of 2014. Scotsburn Lumber Ltd. the same as all other sawmills in the province, have contracts to sell their by-products to Northern Pulp and other Fiber agreements.

2. Pictou council on Northern Pulp



The aeration pond at Boat Harbour. Photo: Joan Baxter

Last night, the [Pictou County Municipal Council](#) voted on a resolution supporting the Boat Harbour Act and closure of Boat Harbour by January 31, 2020.

The resolution was brought forward by Deputy Warden Wayne Murray, and reads as follows:

RESOLUTION

WHEREAS, after a leak of 47 million litres of pulp effluent onto Pictou Landing First Nation land and nearby waters in 2014, the Boat Harbour Act was passed with all party support in the Nova Scotia Legislature in May 2015, ending the use of Boat Harbour for wastewater effluent reception and treatment on January 31, 2020;

WHEREAS Pictou Landing First Nation has consistently stated its desire and expectation that the Boat Harbour Act be honoured and that Boat Harbour close as scheduled on January 31, 2020;

WHEREAS Pictou Landing First Nation welcomes public support for the closing of Boat Harbour as scheduled;

BE IT RESOLVED by the Municipal Council for the Municipality of the County of Pictou that Council support the stated position of Pictou Landing First Nation to honour the Boat Harbour Act and that the Boat Harbour Effluent Treatment Facility close as scheduled on January 31, 2020.

Someone who attended the meeting supplied the following account:

Pictou Landing First Nation Chief Andrea Paul made an impassioned and powerful speech to the council.

There was a lot of discussion about the resolution, and fairly widespread agreement that the mill shouldn't close, that there must be a solution somewhere, and that by supporting the Boat Harbour Act, legislation that has already been passed provincially, the council would not be voting against industry or mill jobs.

But in the end, the council voted in favour of the resolution to support the Boat Harbour Act, and the closure date of January 31, 2020.

Those who voted against the resolution were: Randy Palmer, Andy Thompson and David Parker.

Those who voted to support the resolution were: Wayne Murray (Deputy Warden who introduced the resolution), Darla MacKeil, Deborah Wadden, Ronnie Baillie, Chester Dewar, Peter Boyles and Larry Turner.

3. Spring Garden Road

3

OPTION 3 DAYTIME TRANSIT CORRIDOR

- No vehicular throughfare during the day on select blocks and in certain directions (except buses)
- Vehicle through movements at Dresden Row are restricted, limiting "commuter" traffic along Spring Garden Road during the day. Buses are permitted to travel through the corridor at all times
- Vehicles pushed to north/south movements and parallel routes (eg. Sackville Street & Morris Street)
- Sidewalk extensions and bumpouts introduced for greater pedestrian amenity and shortened crosswalks
- No on-street loading permitted
- North block of Birmingham Street converted to one-way to increase on-street loading capacity



The city yesterday released three proposed options for the redesign of Spring Garden Road between Barrington and Robie Streets, although the most radical potential changes are between South Park and Queen Streets, where potentially cars and trucks will be eliminated completely during the day time.

I tried to work through the document to summarize the options, but they're just too complex for me this morning. You can see the three options [here \(large PDF\)](#), or read Zane Woodford's summary [here](#).

I don't have strong opinions about the proposed rebuild (anything we can do for the pedestrian experience is helpful) except to note that the entire neighbourhood around Spring Garden Road and Robie Streets is going to be an absolute mess for three or four years as the mini-Manhattan is constructed between Carleton Street and Robie Street. That construction is going to disrupt the entire peninsula, and especially the Spring Garden Road corridor. I know planners think these are different projects, that the building construction near Robie Street has nothing to do with the relatively minor construction needed to implement the changes a few blocks east, but I plead with them to consider the psychic disruption for a pedestrian walking from, say, the Central Library to the main Dalhousie campus.

4. Taxi driver charged with sexual assault

A police release from yesterday:

Police have charged a taxi driver with sexual assault in relation to an incident that occurred in Halifax over the weekend.

At approximately 5:45 a.m. on January 6 police responded to a report of a sexual assault that had occurred a short time earlier in Halifax. A taxi driver drove a female to a residence in Halifax and sexually assaulted her while she was in the vehicle.

To protect the identity of the victim, we are not releasing the address where the sexual assault occurred.

As a result of the investigation, officers arrested the taxi driver at a residence in Halifax without incident at approximately 3:30 that afternoon.

A 36-year-old Halifax man was charged with sexual assault and was released to appear in Halifax Provincial Court at a later date.

Sexual assault investigations are very complex. As part of our victim-centered, trauma-informed approach to sexualized violence, we work closely with victims to ensure they're willing to proceed with a police investigation, which includes giving a statement about the incident and providing a description of the suspect if possible. Police must also ensure the victim's privacy is upheld and well-being is fully considered; officers have been taking these measures since first speaking with the victim, and we're now in a position to report this incident to the public.

5. Violence

Yesterday's RCMP release is disturbingly detailed:

January 7, 2019, Yarmouth, Nova Scotia . . . On January 4 just before 8 p.m., an injured 17-year-old female entered a convenience store in Yarmouth. She was bleeding, had several injuries to her face and hands, and was screaming. Staff at the store called 911 for assistance. Police and paramedics attended the scene and the victim was transported to hospital via EHS.

The investigation has determined that the victim was picked up in blue Hyundai Tucson (small SUV) with Nova Scotia licence plate GGA 153, on Cliff St. by one female on a pretense, when the assaults began. Three people were in the back of the vehicle unbeknownst to the victim, and they started hitting her and punching her in the head.

They drove to Leighton St. in Hebron where the victim was further assaulted, including being dragged out of the vehicle, thrown to the ground and kicked and punched in the head. They then went to another person's residence on Baker St. They then drove to the NSLC on Starrs Rd., and the victim went into the store with one of the suspects. They got back in the vehicle, and drove to another location on Green St. where the assaults continued and the owner of a dog tried to get it to attack her. The suspects then poured water all over her face and down her throat. She was dragged to the car by her hair. With a total of six people in the vehicle, they left that location and went to the convenience store on Hwy. 3. The victim who had been between two people in the backseat, was able to flee the vehicle, run to the store, and get help.

This was a targeted incident and the victim and suspects were known to one another. One suspect was arrested that evening, and two other females were arrested on January 5 and 6. They are facing Aggravated Assault and Assault with a Weapon charges. The two remaining suspects were arrested this morning.

Government

City

Tuesday

Burnside Zoning Review – Public Open House, Case 21808 (Tuesday, 12pm and 4pm, in the building named after a bank, 259 Commodore Drive, Dartmouth) — Burnside is going to be turned into [Shangri-La](#).

Halifax and West Community Council (Tuesday, 6pm, City Hall) — among [other items](#), the council will consider [a two-storey addition](#) to the Delmore Buddy Daye Learning Institute at the corner of Cornwallis and Maitland Streets.

Wednesday

Audit and Finance Standing Committee (Wednesday, 10am, City Hall) — nothing terribly interesting on [the agenda](#), but these are the sort of meetings where they add wild shit at the last minute because they think no one is watching.

North West Planning Advisory Committee (Wednesday, 7pm, Silver and Gold Room, Sackville Heights Community Centre) — [here's the agenda](#).

Province

Tuesday

No public meetings today.

Wednesday

Public Accounts (Wednesday, 9am, Province House) — because the McNeil government doesn't want the opposition to ask untoward questions, all the committee does anymore is look at the Auditor General's reports. Ho-hum. This week, that means questions about the May 2018 report on Grant Programs.

On campus

Dalhousie

Tuesday

Trustworthy and novel dietary guidelines: Early results of systematic reviews on red and processed meat (Tuesday, 12pm, Room 409, Centre for Clinical Research) — Bradley Johnston from Dalhousie and Regina El Dib from Estadual Paulista University (Unesp), Brazil, will speak.

SURGE: Nova Scotia's newest sandbox (Tuesday, 2pm, Room 2660, Life Sciences Centre) — I wrote about this [yesterday](#).

Wednesday

Biomolecular interactions at the cell surface: My journey from helpful hormones to the deadly plague (Wednesday, 4pm, theatre A, Tupper Medical Building) — Kyungsoo Shin, from Sanford Burnham Prebys Medical Discovery Institute, San Diego, will speak.

Mount Saint Vincent

Wednesday



Elder Albert Marshall and Cheryl Bartlett

Two-Eyed Seeing (Wednesday, 11am, Multipurpose Room, Rosaria Student Centre) — Elder Albert Marshall, Cheryl Bartlett, and other Indigenous and Non-Indigenous “Knowledge Holders” present a workshop, free to Mount faculty, students and staff, \$75 for public. Includes lunch. [Register here.](#) [More info here.](#)

Transforming Teaching and Learning Through Etuaptmuk [Two-Eyed Seeing] (Wednesday, 7pm, Multipurpose Room, Rosaria Student Centre) — Info: foodsecurity@msvu.ca

In the harbour

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Got it



157K MarineTraffic.com (<http://www.marinetraffic.com/>)

Mobile App: iOS (<http://itunes.apple.com/us/app/marinetraffic/id563910324>) | Android (<https://play.google.com/store/apps/details?id=com.marinetraffic.android>)

18:00: **Thorco Liva**, cargo ship, moves from Pier 9 to Bedford Basin anchorage

No arrivals or departures listed as of 9am.

Footnotes

I dislike winter.

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FILED UNDER: FEATURED

COMMENTS



Ken Donnelly says

[January 8, 2019 at 12:13 pm](#)

Tremendous work on the money being given and loaned to Northern Pulp and Scotsburn Lumber. I look forward to more enlightenment as you get more responses to you queries.

Has Nunn taken a vow of silence?

[Log in to Reply](#)



Peter Ritchie says

[January 8, 2019 at 1:55 pm](#)

I thought Mr. Nunn billed himself as 'Mr. Nova Scotia Know-it-all'; it would appear that while he may claim to know it all, he doesn't seem particularly eager to share what he knows about the skulduggery at LAF (formerly DNR).

Excellent work, Tim and Joan.

[Log in to Reply](#)



rangeroad says

[January 8, 2019 at 1:03 pm](#)

Great work on the Northern Pulp racket, Tim. That is a serious amount of cash-ola being funnelled around from the province and those companies. Many people have been wondering what the stumpage fees the province has been paying Westfor, and what other 'incentives' might be coming Westfor's way for their exclusive contract to log crown land. Perhaps worth looking into if you can?

[Log in to Reply](#)



Barbara Darby says

[January 8, 2019 at 1:33 pm](#)

Terrific work. Follow the money.

[Log in to Reply](#)



Yulinyhz says

[January 8, 2019 at 11:05 pm](#)

Agreed! Over 20 million\$ tax dollars to these 2 companies in 10 years... So this is like the Yarmouth ferry except it pollutes more, deforests and directly employs more people? Great. Bring on the gold mines, fracking, space ports, convention centres and stadiums. The future will be bold/innovative/disruptive/collaborative/bleak.

[Log in to Reply](#)



Colin May says

[January 8, 2019 at 2:25 pm](#)

Governments have always propped up employment by providing direct/indirect financial assistance/incentives to employers. I doubt it will ever change because it is mainly an argument over which industries get the assistance/subsidy.

[Log in to Reply](#)



Colin May says

[January 8, 2019 at 3:26 pm](#)

Look what popped up in a email to me from LinkedIn :

Huawei Technologies

Public Relations Director

Huawei Technologies · Markham, Ontario, Canada

LinkedIn

Easy Apply

[Log in to Reply](#)



scott adamson says

[January 8, 2019 at 8:36 pm](#)

Great to read coverage of the Council actions last night (Municipality of Pictou County). Impressed that the Examiner stated clearly the resolution and identified who supported the resolution and who did not. I attended the meeting, and, if my recollection is correct, Warden Robert Parker also supported the resolution.

Credit to the entire Council for unanimously agreeing to hear from Chief Paul- this was necessary as her name was not put on the agenda as a presenter until after the deadline for such things had gone by.

After Andrea Paul had made her presentation, she made the rounds of the Council itself and shook hands with each of the councillors, including the three that did not support the resolution pertaining to sticking to the hard date for the closure of Boat Harbour.

There is leadership at the local level that could possibly have an answer to the pulp effluent problem – an answer that might satisfy all parties.

As several councillors mentioned last night- 'Where's the leadership from the province of Nova Scotia?' The classification of this as a class one assessment was made by a deputy-minister. It was the wrong designation, yet the political leadership in the province supported it, and the existing government is simply letting things unfold as the locked-in process grinds away.

What chance does this display of local leadership have when any option other than a pipe into the Northumberland Strait has never been entertained seriously?

[Log in to Reply](#)

Trackbacks

[Tall Timber, Trade and Trump... and a Tracking Technology Technicality – Tree Frog](#)

[creative](#) says:

[January 8, 2019 at 12:09 pm](#)

[...] In Business news: the China trade war is taking its toll on hardwood producers; and a PR effort for Northern Pulp is [...]

[Log in to Reply.](#)

Tall Timber, Trade and Trump... and a Tracking Technicality – Tree Frog creative says:

January 8, 2019 at 12:11 pm

[...] In Business news: the China trade war is taking its toll on hardwood producers; and a PR effort for Northern Pulp is [...]

[Log in to Reply.](#)

LEAVE A REPLY

You must be [logged in](#) to post a comment.

DEAD WRONG



A botched police investigation and a probable wrongful conviction shed light on the murders of dozens of women in Nova Scotia.

This is a multi-part series still in publication. [Click here to go to the DEAD WRONG home page.](#)

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The Halifax Examiner was founded by investigative reporter Tim Bousquet, and now includes a growing collection of writers, contributors, and staff. Above, top row, left to right: Russell Gragg, Jennifer Henderson, Admin person extraordinaire Iris, Tim Bousquet, Stephen Kimber, Linda Pannozzo, Evelyn White, Katie Toth. Bottom row: Erica Butler, Tempa Hull, El Jones [More about the Examiner.](#)

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[UARB submission raises safety concerns about Alton Gas project](#) January 14, 2019

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Grant, Hunter A

From: MacInnis, Marla J
Sent: August 22, 2018 1:47 PM
To: Porter, Gary S
Cc: Trainor, Royden
Subject: RE: Issue Summary: Northern Pulp

No worries, Gary. Thanks!

From: Porter, Gary S
Sent: Wednesday, August 22, 2018 1:47 PM
To: MacInnis, Marla J <Marla.MacInnis@novascotia.ca>
Cc: Trainor, Royden <Royden.Trainor@novascotia.ca>
Subject: Re: Issue Summary: Northern Pulp

I am good with the messages. I can't be at the briefing though as I am out of the office and out of town.

Sent from my iPhone

On Aug 22, 2018, at 12:39 PM, MacInnis, Marla J <Marla.MacInnis@novascotia.ca> wrote:

Hi Gary and Royden,

We've been asked to provide a brief issue summary on Northern Pulp to CNS/Premier's Office ahead of post-cabinet scrums tomorrow. Any concerns with this? I added a new message to the bottom as well.

Daily Issues Summary (Advice to Ministers) July 22, 2018

Lead: Department of Transportation and Infrastructure Renewal

Issue: Northern Pulp

The Northumberland Fisherman's Association issued a news release this week outlining concerns with the Province providing \$6 million to Northern Pulp for design of the proposed new effluent treatment facility. This money was listed as a grant in Public Accounts 2017-2018. The Association is concerned the provincial government cannot conduct an unbiased environmental assessment when they are funding the project.

Messages

- The Government of Nova Scotia is committed to the closure of the existing Boat Harbour Effluent Treatment Facility, which it owns, by Jan. 31, 2020. The Boat Harbour Act requires the closing of this facility ten years earlier than the lease between the Province and Northern Pulp.

- We are working to find a solution which ensures an environmentally and economically sustainable future for the Pictou Landing First Nation, the Pictou area, Northern Pulp and other stakeholders.
- This has required a contribution towards detailed design and engineering studies for a potential replacement effluent treatment facility. The contribution allows negotiations with Northern Pulp to continue and will be credited towards any future agreement.
- This cost is part of a larger discussion with Northern Pulp which is yet to be concluded. Final construction costs could be north of \$100 million.
- The Department of Transportation and Infrastructure Renewal is not involved in the Department of Environment's independent environmental assessment process.

Marla MacInnis

Media Relations Advisor, Province of Nova Scotia

Transportation and Infrastructure Renewal | Service Nova Scotia

t: 902-424-1750 | c: 902-499-6428 | e: marla.macinnis@novascotia.ca

[Advice to Executive Council]

DRAFT

**Memorandum
to the Executive Council**



Number:
Dept.:
Date:

Title: Northern Pulp – Effluent treatment facility negotiation mandate

Submitted By: Honourable Lloyd Hines, Minister, Transportation and Infrastructure Renewal *[Signature]*

Prepared By: Bonnie Rankin, Director of Policy

Reviewed By: Diane Saurette, Executive Director, Finance and Strategic Capital and Infrastructure Planning *[Signature]*
Royden Trainor, Senior Executive Director, Policy and Planning

Deputy Minister: Paul LaFleche, Ph. D., P. Geol. *[Signature]*

SUMMARY:

[Redacted Summary]

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CURRENT SITUATION AND PURPOSE FOR THIS REQUEST

The *Boat Harbour Act* mandates the closure of the Boat Harbour Effluent Treatment Facility (the Facility) by January 31, 2020, which will require either:

1. A new effluent treatment system to be commissioned and operating; or
2. The Northern Pulp Mill to cease operations.

There are a number agreements in place which define the current relationship between the Province and the Mill including (a) the *Scott Maritimes Limited Agreement Act*; (b) a Memorandum of Understanding dated December 1, 1995; (c) water supply agreement dated December 31, 1995; (d) a lease agreement dated December 1, 1995; and (e) an indemnity agreement dated December 31, 1995. In addition, by acknowledgement dated May 12, 2008 the Province provided an assurance that these agreements were in good standing and would continue to benefit the Mill.

The lease agreement between the Province (as owner) and the Mill for the use of the Boat Harbour Effluent Treatment System has a termination date of December 31, 2030, however, the enactment of the *Boat Harbour Act* in 2015 effectively shortened the period which the Mill may use the facility by ten years and eleven months.

[Redacted]

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[Redacted]

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Treasury and Policy Board had approved cost sharing for the preliminary design of the replacement facility, now complete, including a Receiving Water study of the Outfall, and hiring a consultant to undertake an Environmental Assessment, including stakeholder consultations and Aboriginal engagement, and preparation of an Environmental Assessment Report that is necessary for the registration for a Class I Environmental Assessment (MIRA). Nova Scotia Department of Environment has announced this project as a Class I Environmental Assessment since it is a modification to an existing undertaking. The registration by the Mill is currently pending.

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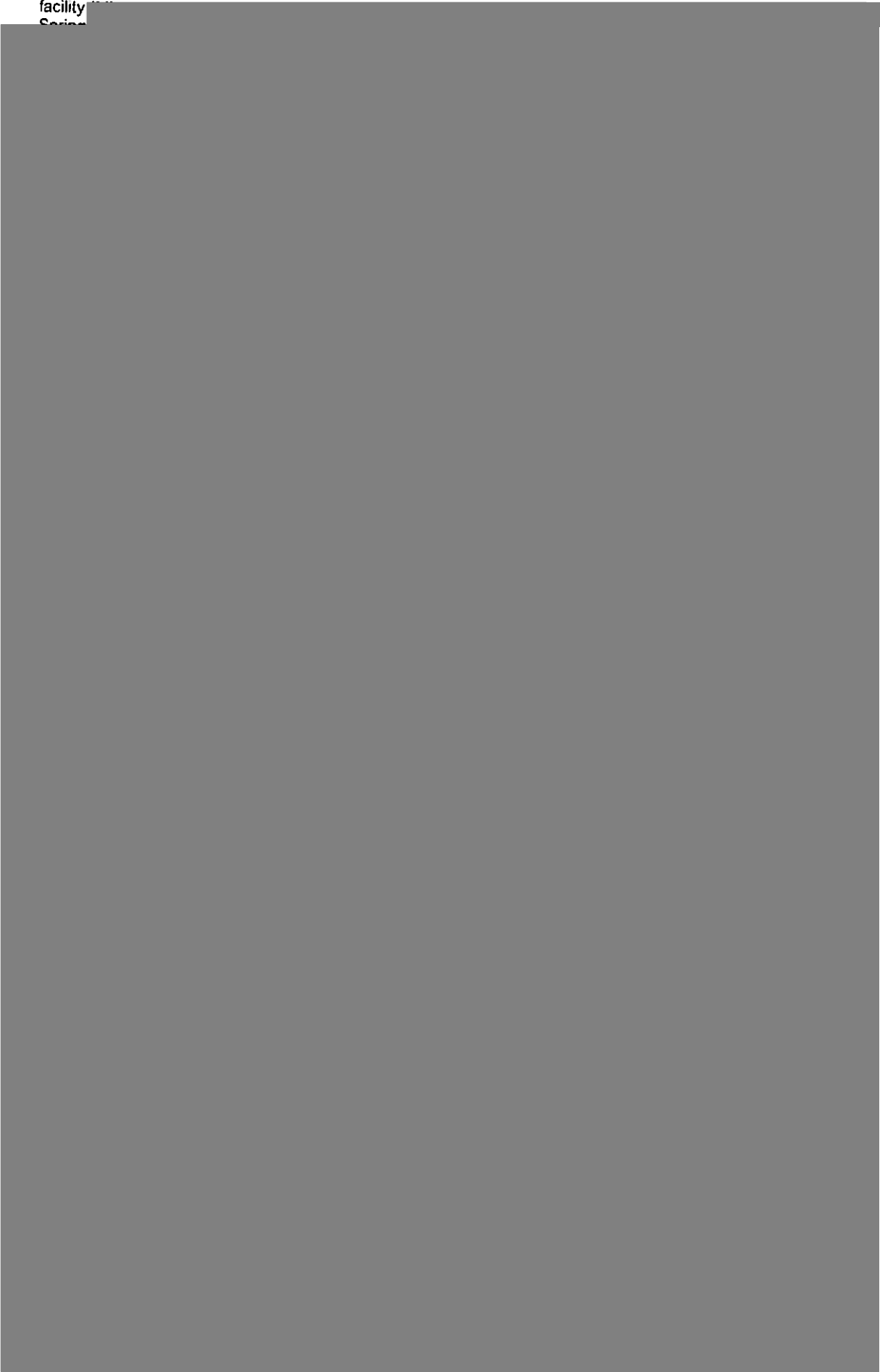
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Treasury and Policy Board approved a contribution of up to \$8 million for a detailed design and engineering study for a replacement effluent treatment

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facility
Series



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BACKGROUND

In the mid-1960s, the Province of Nova Scotia agreed to provide fibre and water to the Abercrombie Point Pulp Mill (currently Northern Pulp Mill, or the Mill) and to treat wastewater effluent from the Mill. This relationship was set out in the *Scott Maritimes Limited Agreement Act*.

In the 1960s, the Province situated and started operations of the Boat Harbour Effluent Treatment Facility (the Facility) when the Mill started operations. In 1995, the Mill took over the Facility operations, by lease with the Province of Nova Scotia, until December 31, 2030.

In June 2014, following a break in the effluent pipeline between Northern Pulp Mill and the Facility, the Pictou Landing First Nation (the Band) established a peaceful blockade preventing pipeline repair. As the pipeline is part of the Facility owned by Nova Scotia, an Agreement in Principle was negotiated which required the Province of Nova Scotia to agree to enact a timeline for closure of the Facility for which the Band agreed to dismantle the blockade.

The *Boat Harbour Act* was subsequently founded in the outcome of negotiations between the Band and provincial officials, which were carried out during late 2014 and early 2015. As a result of these negotiations, the date of January 31, 2020 had been determined as the date of closure of the Boat Harbour Effluent Treatment Facility for the reception and treatment of effluent from the Northern Pulp Mill.



The Province has contractual commitments to provide water to Northern Pulp until March 2021 and to lease the Boat Harbour Effluent Treatment Facility to Northern Pulp until December 30, 2030. In addition, the Province entered into an MOU, Indemnity Agreement and an Acknowledgement Agreement, concerning the commitments and obligations of the parties in respect of the Mill's operations, and the liabilities of the Province in this regard.

The *Boat Harbour Act* has introduced a legislated date of January 31, 2020 after which the Boat Harbour Effluent Treatment Facility may no longer be used to receive and treat effluent from the Mill. The Act also limits claims related to the cessation of use of the Boat Harbour Effluent Treatment Facility.



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KEY ISSUE

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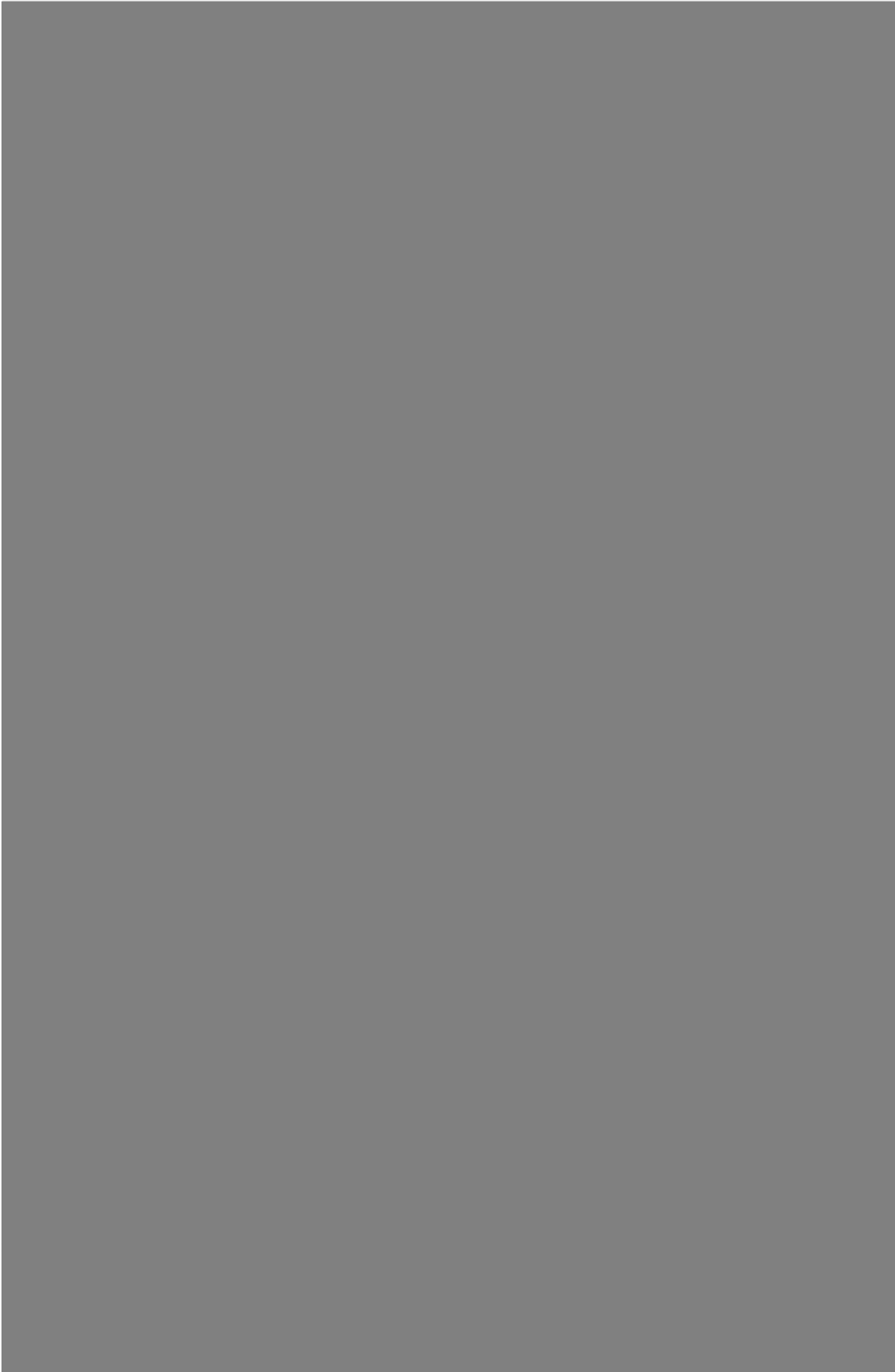
JURISDICTIONAL REVIEW
Not relevant.

ASSESSMENT OF ALTERNATIVES / RISK ASSESSMENT/MITIGATION

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14(1)

PROPOSED ACTION AND TIMING

13(1)

[Redacted]

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FINANCIAL IMPACT

1. Does this submission require either of the following approvals under the *Finance Act*?

Section 77 requires a report from the Minister of Finance and Treasury Board before entering into a net debt obligation (formerly 59C of the *Provincial Finance Act*)

13(1)

[Redacted]

14(1)

Section 78 requires Treasury and Policy Board approval before undertaking an operating obligation.

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[Redacted]

14(1)

2. Is this an In-Year Funding request (is there a current year impact which cannot be absorbed in the existing appropriation)?

13(1)

[Redacted]

14(1)

3. Briefly describe the financial request by completing the following table.

Initiative	Fiscal Year	Fiscal Year	Fiscal Year
[Redacted]			

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4. Is new operating funding required?

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[Redacted]

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Additional operating funding required	Fiscal Year	Fiscal Year	Fiscal Year
[Redacted]			

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5. Is new capital funding required?

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[Redacted]

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Additional capital funding required	Fiscal Year	Fiscal Year	Fiscal Year
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6. Is there third party funding associated with this request?

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7. Will this proposal impact a Revenue stream of the Province?

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8. Are additional FTEs required?

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9. Provide any further comments on the financial impact that have not been covered above

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INFORMATION TECHNOLOGY

Is there a technology component to this request?

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GOVERNMENT-WIDE IMPLICATIONS

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CONSULTATION

Is Aboriginal consultation required?

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Indicate what consultations, if any, that were undertaken with

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If yes to either of the above, has the Department of Intergovernmental Affairs been consulted?

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EFFICIENCY/PRODUCTIVITY
Not applicable.

LEGAL IMPLICATIONS

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POLICY LENSES

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RECOMMENDATION

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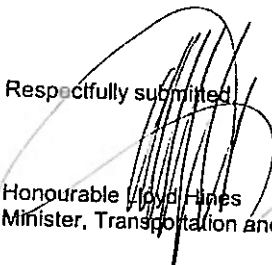
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Halifax, Nova Scotia

Date *May 15, 2018*

Respectfully submitted,


Honourable Lloyd Hines
Minister, Transportation and Infrastructure Renewal

Communications Plan [Template]

Advice to Executive Council

Plan Title: Northern Pulp – Effluent Treatment Facility negotiation mandate
Department: Transportation and Infrastructure Renewal
Accompanying: R&R RFL X MEC
Date: May 11, 2018
Prepared by: Brett Loney

Narrative: Northern Pulp and the Province have been working to find the best available solution for a new effluent treatment facility. We are working to ensure the best environmentally-sustainable solution to ensure inclusive economic growth.

Background/Context:

[Redacted]

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The Province has legal commitments to provide water to Northern Pulp until March 2021 and to lease the Boat Harbour effluent treatment facility to Northern Pulp until December 30, 2030.

[Redacted]

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Stakeholder/Key Audience Analysis:

Stakeholder	Reaction	Analysis
[Redacted]		

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Research: The province commissioned a telephone survey conducted by Corporate Research Associates in summer 2014. A clear majority of Nova Scotians (62%) supported the Mill's continued operation. Residents of Pictou County were slightly less likely to support Northern Pulp's continued operation, with 50% mostly or completely opposing, and were more likely to want the Mill shut down until required changes to the Mill were complete. Support for government funding of the Mill was low overall, and only if funds are invested well. Only a few Nova Scotians supported additional aid being provided while the Mill is in violation of environmental regulations. The range of funding considered reasonable varied with 31% of Nova Scotians identifying less than \$5-million (19% indicated no government funding). Overall, Pictou County residents were more likely to express concerns about the Mill's operation, more likely to agree the Mill should be shut down, more likely to believe no funding should be provided to the Mill, and more aware of the Ministerial Order that was in place at the time of the survey in relation to the Mill's environmental impact and emission violations.

Overall, the issue of replacing Northern Pulp's Effluent Treatment Facility has been controversial and received moderate and ongoing media coverage, particularly in Pictou County.

Strategy:



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Three Key Messages:



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Issues:



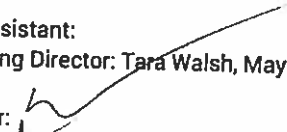
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Roll-out: To Be Determined

Links to Government Priorities, Departments, and/or Agencies: Department of Natural Resources, Nova Scotia Business Inc., Department of Environment

Objectives & Evaluation: We will follow and evaluate media coverage and any social media on these negotiations.

Sent to Executive Assistant:
Approved by Managing Director: Tara Walsh, May 14, 2018
Approved by Deputy:
Approved by Minister: 

SUPREME COURT OF NOVA SCOTIA

Citation: *Pictou Landing First Nation v. Nova Scotia (Aboriginal Affairs)*,
2018 NSSC 306

Date: 20181130

Docket: Hfx No. 474934

Registry: Halifax

Between:

Pictou Landing First Nation

Applicant

v.

Her Majesty the Queen in Right of the Province of Nova Scotia as represented by
the Minister of Aboriginal Affairs

Respondent

Judge: The Honourable Justice D. Timothy Gabriel

Heard: July 25, 2018, in Halifax, Nova Scotia

Counsel: Brian Hebert, for the Applicant
Sean Foreman and Diane Rowe, for the Respondent

By the Court:

Introduction

[1] Northern Pulp Nova Scotia Corporation (“Northern Pulp”) owns and operates a bleached kraft pulp mill and associated facilities located at Abercrombie Point, Pictou County. This latter has been referred to by the parties as “the mill” and I will continue to refer to it as such within the body of these reasons.

[2] Pictou Landing First Nation (“PLFN”) has applied for Judicial Review of a decision of the office of Provincial Minister of Aboriginal Affairs to deny consultation with respect to the issue of whether the Province will or should fund the construction of a new effluent treatment facility at Boat Harbour, Pictou County, Nova Scotia. For the reasons which follow, the application is granted.

Background

[3] The mill presently includes an effluent treatment facility which has been operating since 1967. It is adjacent to Boat Harbour. I will refer to the presently existing facility as “the Boat Harbour treatment facility”.

[4] The *Boat Harbour Act*, 2015 c. 4 (“*BHA*”), provides in part as follows:

3. On and after the earlier of January 31, 2020, and the date on which the Northern Pulp Nova Scotia Corporation ceases to use the facility, the use of the facility for the reception and treatment of effluent from the mill must cease.

[Emphasis added]

[5] Key words contained in s. 3 are referenced in the interpretation provisions set out in s. 2:

In this Act,

(a) "effluent" has the same meaning as in the Pulp and Paper Effluent Regulations (Canada), as amended from time to time;

(b) "Facility" means the Boat Harbour Effluent Treatment Facility, comprising

(i) the effluent treatment system located at 340 and 580 Simpson Lane, Pictou Landing, in the County of Pictou, and consisting of two settling basins, an aerated stabilization basin, the former stabilization lagoon and all appurtenances thereof necessary to permit the receipt and disposal of effluent from the Mill, and

(ii) the pipeline for the transmission of effluent from the Mill to the settling basins, which commences at a standpipe located at 260 Granton Abercrombie Branch Road, Abercrombie Point, in the County of Pictou, leads under the East River and discharges into the settling basins;

(c) "Mill" means the Northern Pulp Mill, a bleached kraft pulp mill located at 260 Granton Abercrombie Branch Road, Abercrombie Point.

[6] As the Province indicates in its brief:

4. Northern Pulp is in the planning stages to formally apply for Environmental Assessment ("EA") approval pursuant to Part IV of the *Environmental Act* for the design, construction and operation of a new Effluent Treatment Facility ("ETF") to replace the existing Boat Harbour Treatment Facility, which must be closed as required by the *Act* ("the pending ETF Application").

5. The Province is currently engaged in active consultation with the PLFN regarding the Pending ETF Application. The Province has confirmed \$70,000.00 in capacity funding to support PLFN's meaningful participation in that process.

[7] The Province continues:

7. The Province has disclosed it is also engaged in confidential discussions directly with Northern Pulp regarding potential crown funding that may be provided to support construction of the new ETF (the "Potential Crown Funding"). No such decision has yet been made.

8. PLFN takes the position that any such Potential Crown Funding to Northern Pulp by the Province is a separate "decision" that triggers an independent duty to consult with PLFN, as this decision "will have the effect of continuing the operation of the Mill beyond January 30, 2020" and therefore further impact the asserted rights and interests asserted by PLFN.

9. The Province disagrees that any decision to provide some form of Potential Crown Funding would be a "decision" or "action" that itself

triggers an independent duty to consult with PLFN. Simply put, Potential Crown Funding to Northern Pulp does not meet the established legal test to trigger consultation, as any such potential decision or action itself does not authorize continued operation of the Mill beyond January 30, 2020 (as claimed by PLFN) and therefore has no additional or potential adverse impact on the rights and interests asserted by PLFN.

[Emphasis in original]

[8] After reminding me that the Boat Harbour Treatment Facility and the circumstances of Boat Harbour have been publicly referred to by provincial spokespersons in the past “as an example of environmental racism” (*Applicant brief, para. 7*), PLFN goes on to point out:

8. The Mill requires a new treatment facility if it is to continue operating. A new treatment facility, if built, will allow the Mill to be operated for many years to come and will mean the continued release of contaminants from the Mill during the pulping process during that period. Those contaminants, some of which are toxic, will find their way to Pictou Landing First Nation and will be breathed in by the men, women and children living there.

9. The Province of Nova Scotia is considering financial assistance to Northern Pulp to assist with the construction of the new treatment facility being proposed by Northern Pulp.

10. The Province is currently consulting with Pictou Landing First Nation on the pending decision of the Province to approve the effluent treatment facility under the *Environmental Act*. The consultation focuses on the physical impacts of the design, construction and operation of the new effluent treatment facility. As such it is not focused on emissions from the ongoing pulping operations at the Mill.

11. The Province has denied Pictou Landing First Nation’s request to expand the present consultation to include the funding decision, suggesting that the decision cannot lead to any adverse impacts and therefore does not trigger the duty to consult.

[9] The record filed in conjunction with this matter is miniscule. It contains merely two documents. The first is a letter from Brian Hebert (counsel for PLFN) dated January 11, 2018, seeking confirmation of the scope of consultation and capacity funding for PLFN. The second consists of a letter from the Nova Scotia Office of Aboriginal Affairs (“OAA”) to Brian Hebert, PLFN counsel, in response to his January 1, 2018 letter, confirming the scope of the consultation regarding the

Northern Pulp ETF and the quantum of capacity funding for consultation (\$70,000.00). This second letter is dated February 26, 2018.

[10] The second letter was written by Beth Lewis, OAA's consultation advisor. Although OAA agreed to provide funding to accommodate consultation upon potential physical impacts to Treaty Rights in relation to the design, construction and operation of the ETF, they would not commit to do so with respect to whether the Province will finance the actual construction of it.

[11] As Ms. Lewis puts it (*Record, tab. 2*):

The current act of consultation is focussed upon potential physical impacts to Aboriginal and Treaty Rights associated with the design, construction, and operation of the proposed ETF. The intent of the ETF is to mitigate or eliminate harm to the environment by the industrial operations of the mill.

A decision by the Province in regards to any or partial funding of the ETF does not create a new impact on Aboriginal or Treaty. The Province may provide information to PFLN [sic] in the event that any decision regarding funding is made, in keeping with the spirit of maintaining transparent communication on the project. (*letter, Beth Lewis, consultation advisor, Nova Scotia of Aboriginal Affairs, February 26, 2018, Record, tab 2*)

[Emphasis added]

[12] An affidavit of Andrea Paul was filed by PLFN in conjunction with this application. Extrinsic evidence not before the original decision maker is not usually permitted on a judicial review application. In this case, the proffered affidavit addresses the allegations of the lack of procedural fairness extended to PLFN, and (by implication) the incompleteness of the record.

[13] Andrea Paul is Chief of the Pictou Landing First Nation. Her affidavit was filed on June 13, 2018. In both her affidavit and *viva voce* testimony, she referred to a number of matters of which she has been advised. Included was her understanding (*Paul affidavit, para. 2*) as follows:

It is my understanding based on various discussions with representative of Northern Pulp and the Province that without provincial funding, the new treatment facility and the new pipeline will not be built.

[14] Moreover, she goes on to indicate that she has been advised by Bruce Chapman, General Manager of Northern Pulp, to the effect that, without the new treatment facility and the new pipeline, the mill cannot operate after January 31, 2020, which is, as we have seen from the *Boat Harbour Act*, the latest date mandated for the closure of the current Boat Harbour treatment facility.

[15] Among other things, Chief Paul refers to an article in the *Journal of Environmental Quality* indicating that certain of the airborne contaminants to which the PLFN community has been exposed since 1967 continue to pose deleterious health risks for its members. If the lifetime of the mill is extended beyond 2020 the adverse environmental effects will continue to be experienced by the community for the duration of the extension. She concludes, in paras. 10 and 11 of her affidavit:

10. I have also reviewed parts of an air dispersion modelling study that was prepared by Stantec Consulting Ltd. for Northern Pulp and filed with the Nova Scotia Department of Environment to satisfy condition 6 II d) and 6 III e) and f) of industrial approval number 2011-076657. I attach a true copy of this study as Exhibit "C" to this my Affidavit. This study is also a source of my belief that the Mill emits a number of pollutants and that the prevailing winds carry these pollutants toward Pictou Landing First Nation. The study was provided to Pictou Landing First Nation by the Nova Scotia Department of Environment.

11. I have examined the record provided by the Respondent in this matter and must say that I am disappointed that the Province took so little information into account when responding to our request for consultation on this issue. This affidavit and the exhibits attached are intended to provide a fuller background to our request and this is my belief that this information is available to the Respondent within its own records.

[16] Chief Paul alleges, among other things, that the Province did not consider the information available to it (of which the exhibits to her affidavit comprise merely examples) in determining whether to consult with PFLN on the issue of whether to not to fund the new ETF. In other words, the Province ought to have consulted these and other materials when determining whether the decision to fund, in and of itself, by extending the lifetime of the mill, might have a potential adverse impact upon PFLN lands and/or treaty rights. This is because (PLFN argues) without government funding, the ETF will not be built, and if the new ETF is not built, the mill will be forced to close. This is in accord with PLFN's best

interest, because of the adverse health effects upon the community of the airborne contaminants which the Mill will continue to churn out, even with a new ETF.

Issues

[17] The following issues are engaged:

1. Was PLFN treated in a procedurally fair manner by OAA?
2. Was the Province's determination that it has no duty to consult with PLFN (as to whether it will fund the ETF) correct?

Analysis

1. Was PLFN treated in a procedurally fair manner by OAA?
 - a. *The affidavit of Andrea Paul dated June 13, 2018*

[18] Reference has previously been made to Chief Paul's affidavit. Fundamentally, the assertions made by PLFN in relation to procedural unfairness are summarized in that affidavit.

[19] First, we find in paras. 6 – 8:

6. The concern that our community has always had has been the quality of the air that we breathe. We have suffered odors from the Boat Harbour Treatment Facility for 50 years. This has caused constant fear about the effect of this on our health, especially our elders' and children's health. For many years we were told by various government officials that even though the sulphur compounds we smelled were very horrible smelling, they did not pose any health risks. However, according to an article by Susan Schiffman and C. M. Williams entitled, "*Science of Odor as a Potential Health Issue*" published in the *Journal of Environmental Quality* 34:129-138 (2005), exposure to foul smelling sulphur compounds can lead to adverse health impacts in communities exposed to them even though the exposure levels are below the level that could cause physical harm. I attach as Exhibit "A" to this my Affidavit a true copy of Schiffman article.

7. With the closure of the Boat Harbour Treatment Facility, one source of these sulphur compounds will be removed - and our community is thankful for that. But as we look toward the future we must also be concerned about the long-term impact of the operation of the Mill on our community, including adverse impacts from the airborne contaminants coming from the Mill itself. We have never had an opportunity to study

and understand these long terms impacts as we have to date been so focused on the closure of the Boat Harbour Treatment Facility.

8. However, the Province is now in the process of determining whether to fund the New Treatment Facility and New Pipeline. If it does, the Mill will be operating for many years to come. In deciding whether to fund the New Treatment Facility and New Pipeline, we believe that the Province must take into account the potential impact of its decision on Pictou Landing First Nation. It is for this reason that we asked for a formal consultation with the Province in respect of this important decision.

[20] As we have also seen, Chief Paul refers, in other portions of her affidavit, to information that she received from the Executive Director of Corporate Initiatives at Nova Scotia Department of Transportation and Infrastructure Removal. She cites this information, and other discussions held with Bruce Chapman, General Manager for Northern Pulp, as the basis for her conclusion that without the new ETF and pipeline the mill will be forced to close after January 30, 2020. This is because, without Provincial funding, the facility will not be built.

[21] As is apparent from para. 6 (cited above) Chief Paul also references an article by Schiffman and Williams published in *The Journal of Environmental Quality* in 2005 “*Science of Odor as a Potential Health Issue*”. She attaches as Exhibit “A” a copy of the Schiffman article. She also makes reference in para. 9 to a research article published by Tony Walker of Dalhousie University at the School for Resource and Environmental Studies entitled “*Pilot Study Investigating Ambient Air Toxic Emissions in Our Canadian Kraft Pulp and Paper Facility in Pictou County, Nova Scotia*” and published in *Environmental Science and Pollution Research* in 2017.

[22] Chief Paul cites both articles as the bases for her belief that the mill emits several thousand tons of pollutants annually, including “toxic volatile organic chemicals” and that they are carried on prevailing winds to other places in Pictou County, including Pictou Landing First Nation. This article is also attached as an exhibit to her affidavit.

[23] Chief Paul cites the fact that this article was based upon data collected by the Nova Scotia Department of Environment at the Granton, Nova Scotia air monitoring site, which is operated by that Department. She draws attention to “parts of an air dispersion modelling study that was prepared by Stantec Consulting for Northern Pulp and filed with the Nova Scotia Department of Environment to satisfy conditions 6(ii)(d) and 6(iii)(f) of the Industrial Approval

2011-076657”. She adds that the study was provided to PLFN by the Nova Scotia Department of the Environment itself. (*Paul affidavit, para. 10*)

[24] In para. 11 she concludes:

11. I have examined the record provided by the Respondent in this matter and must say that I am disappointed that the Province took so little information into account when responding to our request for consultation on this issue. This affidavit and the exhibits attached are intended to provide a fuller background to our request and it is my belief that this information is available to the Respondent within its own records.

[25] The Applicant extrapolates from this that the Band was denied procedural fairness by the failure of the Province to consider all relevant information before making its decision. Information readily available to the Province, some of which was included in Chief Paul’s affidavit, was not considered, the Applicant contends.

[26] As the Applicant puts it:

58. Whatever else procedural fairness entails, fairness requires the Minister to consider all relevant information before making a decision. The affidavit evidence establishes that information within the control of the Province establishes that the Mill does emit toxic and carcinogenic pollutants and that the prevailing winds carry these pollutants to the Pictou Landing First Nation. While these adverse impacts have been occurring for many years, the decision of the Province to fund the new treatment facility will mean that these effects will continue to occur beyond January 30, 2020. As discussed above, the adverse impacts beyond that date will be causally connected to the Province’s decision to fund the new treatment facility and pipeline, if it decided to do so.

59. These are serious consequences and the concerns of Pictou Landing First Nation appear on the affidavit evidence to be justified. The First Nation deserves a fuller review by the Minister before dismissing the request for consultation out of hand.

[Emphasis added]
(Applicant’s brief)

[27] The Applicant refers to the court statement in *Haida Nation (Haida Nation v. British Columbia (Minister of Forests))*, (2004) SCC 73 that “the foundation of the duty to consult is found in the Crown’s honour. The goal of reconciliation,

suggests that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it”. (*Haida Nation*, para. 35)

[28] According to the Applicant, “it follows from this that the Province is required to consider all of the information that bears on the question that is in its possession or available to it”. (*Applicant’s reply brief*, para. 27)

[29] The Applicant further submits that it may be impractical or impossible for a First Nation to access the information available to the government, such as any representations Northern Pulp may have made to the Province by way of an economic case. Therefore, the Applicant argues, the honour of the Crown would suggest that the Crown should consider all extraneous information available to it (some examples of which Chief Paul has provided) before deciding whether a duty to consult as to potential funding exists. (*Applicant’s reply brief*, paras. 29 and 30) By necessary implication, that additional information should form part of the record because it was available to the Province before it made its decision.

[30] With respect, I am unable to accept the Applicant’s contentions in this regard. First, I have serious reservations with respect to many portions of Chief Paul’s affidavit. It is replete with references to conversations that she has had with various named and unnamed individuals, and contains further submissions as to conclusions that she has drawn on the basis of those conversations with respect to the potential adverse effects of the emissions of the mill (and, by extension, the potential for adverse effects as a result of the new mill with the ETF under discussion), and also the impossibility of the new ETF being built without government funding.

[31] We are not dealing here with evidence concerning ancient practices, customs and traditions of Mi’kmaq people before written records existed. There is, therefore, no basis for a departure from the “...evidentiary standards that would be applied, for example, in a private law torts case...” (*R. v. Van der Peet*, [1996] 2 SCR 507 – para.68).

[32] Second, it does not appear to me that the Province is denying the potential physical impacts to Treaty Rights of the mill (even with a new ETF) in any event. What it appears to be saying is that these potential airborne physical impacts are part of the present operation of the mill – funding of a new ETF will not result in any new impact in that respect.

[33] Moreover, the Province has implicitly conceded that an improper design or construction of the “new” ETF could have a potential physical impact (albeit, as a result of the discharge of effluent, rather than airborne pollution). It acknowledges that PLFN has a legitimate interest in the specifications to which the new ETF is to be subject. In fact, it reminds the court repeatedly that these are the very things that it is prepared to consult about, and for which it has put up \$70,000.00 in capacity funding. This will, it argues, enable the PFLN to meaningfully consult with respect to these very concerns.

[34] The Province’s argument, in a nutshell, is to the effect that there are no “new” physical impacts to Treaty Rights which could even potentially arise merely out of the decision as to whether it should fund the project or not.

[35] Finally, there is no indication in the record (specifically, in the letter written at the outset by counsel for PLFN (Tab 1)) to any of the specific material cited by Chief Paul, in her affidavit.

[36] As a result, PLFN’s claim that there was a denial of procedural fairness, or that the record is incomplete, is somewhat inchoate under the circumstances. The Applicant has provided no authority – beyond general references to the honour of the Crown – to support the position that the Crown had a duty in this situation to bring forward any and all information in its possession bearing upon the operation of the mill. The Province’s reply was responsive to the letter from the Applicant’s counsel. It is not clear what the principal basis would be to find a breach of procedural fairness in these circumstances.

[37] As a consequence, I conclude that there is no substance to the Applicant’s assertion of procedural unfairness in relation to this matter.

[38] That being said, although I cannot conclude on the basis of the evidence before me that a new ETF will not be built without Provincial funding, I can conclude, upon the facts:

- a) that the current Boat Harbour Treatment Facility is an integral part of the current operation of the mill as a whole (*BHA*, s. 2(b));
- b) that the current Boat Harbour Treatment Facility must close no later than January 31, 2020 (*BHA*, s. 3);
- c) that the new ETF which will replace the existing facility will be integral to the continued operation of the mill, beyond January 31, 2020

(it must replace those functions discharged by the current Boat Harbour Treatment Facility (described in *BHA*, s. 2(b));

d) each additional potential source of funding that is available for the project makes it incrementally more likely that the new ETF project will come to fruition; and

e) that as a consequence, a Provincial decision to fund the project, even if it is not the only potential source of funding, would make it incrementally more likely that the mill will remain open and be able to continue operations past 2020.

2. Was the Province's determination that it had no duty to consult with PLFN (as to whether it will fund the new ETF) correct?

a. *The scope of the duty*

[39] The Supreme Court of Canada has described the duty to consult in many cases. We may begin with *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010. Therein, Chief Justice Lamer, speaking for the court, said that:

...Aboriginal title encompasses within it a right to choose to what ends a piece of land can be put ... This aspect of aboriginal title suggests that the fiduciary relationship between the Crown and aboriginal peoples may be satisfied by the involvement of aboriginal peoples in decisions taken with respect to their lands. There is always a duty of consultation. Whether the aboriginal group has been consulted is relevant to determining whether the infringement of aboriginal title is justified, in the same way that the Crown's failure to consult an aboriginal group with respect to the terms by which reserve land is leased may breach its fiduciary duty at common law ... The nature and scope of the duty of consultation will vary with the circumstances. In occasional cases, when the breach is less serious or relatively minor, it will be no more than a duty to discuss important decisions that will be taken with respect to lands held pursuant to aboriginal title. Of course, even in these rare cases when the minimum acceptable standard is consultation, this consultation must be in good faith, and with the intention of substantially addressing the concerns of the aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands.

[40] This duty to consult has been expansively discussed by the court in subsequent decisions. Although this is a non-exhaustive list, some of these cases

include *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 (“*Mikisew Cree 2005*”)

[41] In “*Mikisew Cree 2005*”, Justice Binnie, writing for the court, incorporated earlier remarks by Chief Justice Beverly McLachlin in *Haida Nation*:

... The content of the process is dictated by the duty of the Crown to act honourably. Although *Haida Nation* was not a treaty case, McLachlin C.J. pointed out, at paras. 19 and 35:

19. The honour of the Crown also infuses the processes of treaty making and treaty interpretation. In making and applying treaties, the Crown must act with honour and integrity, avoiding even the appearance of "sharp dealing" (Badger, at para. 41). Thus in *Marshall*, supra, at para. 4, the majority of this Court supported its interpretation of a treaty by stating that "nothing less would uphold the honour and integrity of the Crown in its dealings with the Mi'kmaq people to secure their peace and friendship".

...

35. But, when precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.

[Emphasis added]

[42] Justice Binnie went on to point out (at para. 55 of *Mikisew Cree 2005*) that the duty to consult is “triggered at a low threshold, but adverse impact is a matter of degree, as is the extent of the Crown's duty”.

[43] In the recently decided *Mikisew Cree First Nation v. Canada (Governor General in Council)* 2018 SCC 40 (“*Mikisew Cree 2018*”), many of the Justices had opportunity to further elaborate upon the concepts of the “honour of the Crown” and the “duty to consult”. For example, Justice Karakatsansis wrote with respect to the former:

23. The honour of the Crown is always at stake in its dealings with Aboriginal peoples (*R. v. Badger*, [1996] 1 S.C.R. 771, at para. 41; *Manitoba Metis*, at paras. 68-72). As it emerges from the Crown's assertion of sovereignty, it binds the Crown qua sovereign. Indeed, it has been found to apply when the Crown acts either through legislation or executive conduct (see *R. v. Sparrow*, [1990] 1 S.C.R. 1075, at pp. 1110 and 1114; *R. v. Van der Peet*, [1996] 2 S.C.R. 507, at para. 231, per McLachlin J., as she then was, dissenting; *Haida Nation*; *Manitoba Metis*, at para. 69).

24. As this Court stated in *Haida Nation*, the honour of the Crown "is not a mere incantation, but rather a core precept that finds its application in concrete practices" and "gives rise to different duties in different circumstances" (paras. 16 and 18). When engaged, it imposes "a heavy obligation" on the Crown (*Manitoba Metis*, at para. 68). Indeed, because of the close relationship between the honour of the Crown and s. 35, the honour of the Crown has been described as a "constitutional principle" (*Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 S.C.R. 103, at para. 42). That said, this Court has made clear that the duties that flow from the honour of the Crown will vary with the situations in which it is engaged (*Manitoba Metis*, at para. 74). Determining what constitutes honourable dealing, and what specific obligations are imposed by the honour of the Crown, depends heavily on the circumstances (*Haida Nation*, at para. 38; *Taku River*, at para. 25; *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650, at paras. 36-37).

[Emphasis added]

[44] As to the latter, she continued:

25. The duty to consult is one such obligation. In instances where the Crown contemplates executive action that may adversely affect s. 35 rights, the honour of the Crown has been found to give rise to a justiciable duty to consult (see e.g. *Haida Nation*, *Taku River*, *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 S.C.R. 388, and *Little Salmon*). This obligation has also been applied in the context of statutory decision-makers that -- while not part of the executive -- act on behalf of the Crown (*Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, [2017] 1 S.C.R. 1069, at para. 29). These cases demonstrate that, in certain circumstances, Crown conduct may not constitute an "infringement" of established s. 35 rights; however, acting unilaterally in a way that may adversely affect such rights does not reflect well on the honour of the Crown and may thus warrant intervention on judicial review.

26. The duty to consult jurisprudence makes clear that the duty to consult is best understood as a "valuable adjunct" to the honour of the Crown (*Little Salmon*, at para. 44). The duty to consult ensures that the Crown acts honourably by preventing it from acting unilaterally in ways that undermine s. 35 rights. This promotes reconciliation between the Crown and Aboriginal peoples first, by providing procedural protections to s. 35 rights, and second, by encouraging negotiation and just settlements as an alternative to the cost, delay and acrimony of litigating s. 35 infringement claims (*Clyde River*, at para. 1; *Haida Nation*, at paras. 14 and 32; *Mikisew Cree*, at para. 63).

27. The duty to consult has been recognized in a variety of contexts. For example, in *Haida Nation*, this Court recognized a duty to consult when the Crown contemplated the replacement and transfer of tree farm licences that had the potential to affect asserted but unproven Aboriginal rights. In *Mikisew Cree [No. 1]*, the Court recognized that the contemplation of "taking up" lands under Treaty No. 8 could adversely affect the Mikisew's rights under the treaty and thus required consultation. Crown conduct need not have an immediate impact on lands and resources to trigger the duty to consult. This Court has recognized that "high-level management decisions or structural changes to [a] resource's management" may also trigger a consultative duty (*Carrier Sekani*, at para. 47; see also para. 44). However, to date, the duty to consult has only been applied to executive conduct and conduct taken on behalf of the executive.

[Emphasis added]

[45] Next, Justice Abella:

60. But the honour of the Crown is not itself a cause of action. Rather, it speaks to the way in which the Crown's specific obligations must be fulfilled (*Manitoba Metis Federation*, at para. 73). These obligations vary depending on the circumstances. In negotiating and applying treaties, the Crown must act with integrity and honour, and avoid even the appearance of sharp dealing (*Haida Nation*, at para. 19; *Badger*, at para. 41; *R. v. Marshall*, [1999] 3 S.C.R. 456, at para. 4). Where the government enacts regulations that infringe on Aboriginal rights, the honour of the Crown demands that those measures be justified (*Sparrow*, at p. 1109). And when the government contemplates conduct that might adversely affect Aboriginal or treaty rights, the honour of the Crown gives rise to a duty to consult and accommodate.

61. Grounded in the honour of the Crown, the duty to consult arises from the assertion of Crown sovereignty and aims to advance the process of reconciliation (*McCabe*, at p. 90; *Haida Nation*, at paras. 45 and 59). It serves an important role in the "process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution" (*Haida Nation*, at para. 32). Where the duty arises, it requires meaningful consultation between the government and the affected group. This means a meaningful effort by the government to act in a manner that is consistent with the honour of the Crown in that particular context (Dwight G. Newman, *Revisiting the Duty to Consult Aboriginal Peoples* (2014), at pp. 88-89). Consultation obligations can be viewed as falling on a spectrum, which accommodates the different contexts in which more or less consultation is necessary to fulfill its purpose (*Newman*, at p. 89; *Haida Nation*, at para. 43).

62. I see this duty as being more than a "means" to uphold the honour of the Crown. The obligation arises because it would not be honourable to make important decisions that have an adverse impact on Aboriginal and treaty rights without efforts to consult and, if appropriate, accommodate those interests. The Crown must act honourably in defining the rights guaranteed by s. 35 and in reconciling them with other societal rights and interests. This implies a duty to consult (*Haida Nation*, at para. 20). The question is not whether the duty to consult is appropriate in the circumstances, but whether the decision is one to which the duty to consult applies.

[Emphasis added]

[46] As to the duty to consult, Justice Abella continued:

70. ...the Court affirmed that the Crown's obligation to consult and accommodate Indigenous groups arises independently from its obligation to justify infringements of Aboriginal and treaty rights. In the duty to consult context, the controlling question is not whether the limit on rights is justified, but "what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake" (*Haida Nation*, at para. 45). In this sense, the trilogy represents a shift towards mutual reconciliation between Aboriginal and Crown sovereignty, and a further step towards embracing the honour of the Crown as a limit on Crown sovereignty in relation to Indigenous peoples (Mark D. Walters, "*The Morality of Aboriginal Law*" (2006), 31 *Queen's L.J.* 470, at pp. 513-14).

[*Haida Nation, Taku River, and Mikisew*]

[Emphasis added]

[47] Finally, Justice Rowe noted:

157. This Court stated in *Rio Tinto* that any potential for adverse impact as a result of Crown conduct will trigger the duty to consult and accommodate. The Court further stated that the duty may arise with respect to "high-level managerial or policy decisions" (para. 87). The policy decisions at issue in *Rio Tinto* were made by the executive in regards to a particular development project; in that case, the impugned decision concerned the sale of power produced from a hydroelectric dam on the Nechako River. The Court's statement needs to be understood in the context in which it was made; it does not support the proposition that a duty to consult is constitutionally mandated in the law-making process. This is reinforced by the requirement that the impugned decision would result in potential adverse impacts. This Court held that there must be a "causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights" (para. 45 (emphasis added)). Counsel for the Mikisew rely heavily on the reasons given by this Court in *Rio Tinto*. But *Rio Tinto* does not support the conclusion that the duty to consult must apply to the legislative process. In fact, this Court explicitly left open the question of whether "government conduct" attracting the duty to consult includes the legislative process (para. 44).

[Emphasis in original]

[48] Earlier Chief Justice McLaughlin had summarized the criteria which will engage the duty to consult in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43. They consist of:

1. Actual or constructive knowledge by the Crown of a potential Aboriginal claim or right;
2. Contemplated Crown conduct; and that
3. The proposed conduct or decision may have an adverse impact upon Aboriginal claim or right.

[49] With respect to the first element:

40. To trigger the duty to consult, the Crown must have real or constructive knowledge of a claim to the resource or land to which it attaches: *Haida Nation*, at para. 35. The threshold, informed by the need to maintain the honour of the Crown, is not high. Actual knowledge arises when a claim has been filed in court or advanced in the context of negotiations, or when a treaty right may be impacted: *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005]

3 S.C.R. 388, para. 34. Constructive knowledge arises when lands are known or reasonably suspected to have been traditionally occupied by an Aboriginal community or an impact on rights may reasonably be anticipated. While the existence of a potential claim is essential, proof that the claim will succeed is not. What is required is a credible claim. Tenuous claims, for which a strong prima facie case is absent, may attract a mere duty of notice...

41. The claim or right must be one which actually exists and stands to be affected by the proposed government action. This flows from the fact that the purpose of consultation is to protect unproven or established rights from irreversible harm as the settlement negotiations proceed ...

[50] It is difficult to separate the second and third elements, which are centered around the need for potential impact upon Treaty right or claims by the Crown conduct in question. In addressing this point, the Chief Justice continued:

43. This raises the question of what government action engages the duty to consult. It has been held that such action is not confined to government exercise of statutory powers ... This accords with the generous, purposive approach that must be brought to the duty to consult.

44. Further, government action is not confined to decisions or conduct which have an immediate impact on lands and resources. A potential for adverse impact suffices. Thus, the duty to consult extends to "strategic, higher level decisions" that may have an impact on Aboriginal claims and rights ... Examples include the transfer of tree licences which would have permitted the cutting of old-growth forest (*Haida Nation*); the approval of a multi-year forest management plan for a large geographic area (*Klahoose First Nation v. Sunshine Coast Forest District (District Manager)*, 2008 BCSC 1642, [2009] 1 C.N.L.R. 110); the establishment of a review process for a major gas pipeline (*Dene Tha' First Nation v. Canada (Minister of Environment)*, 2006 FC 1354, [2007] 1 C.N.L.R. 1, aff'd 2008 FCA 20, 35 C.E.L.R. (3d) 1); and the conduct of a comprehensive inquiry to determine a province's infrastructure and capacity needs for electricity transmission (An Inquiry into British Columbia's Electricity Transmission Infrastructure & Capacity Needs for the Next 30 Years, Re, 2009 CarswellBC 3637 (B.C.U.C.)).

[Emphasis added]

[51] As to "adverse effect" the court continued:

45. The third element of a duty to consult is the possibility that the Crown conduct may affect the Aboriginal claim or right. The claimant

must show a causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights. Past wrongs, including previous breaches of the duty to consult, do not suffice.

46. Again, a generous, purposive approach to this element is in order, given that the doctrine's purpose, as stated by Newman, is "to recognize that actions affecting unproven Aboriginal title or rights or treaty rights can have irreversible effects that are not in keeping with the honour of the Crown" (p. 30, citing *Haida Nation*, at paras. 27 and 33). Mere speculative impacts, however, will not suffice. As stated in *R. v. Douglas*, 2007 BCCA 265, 278 D.L.R. (4th) 653, at para. 44, there must an "appreciable adverse effect on the First Nations' ability to exercise their aboriginal right". The adverse effect must be on the future exercise of the right itself; an adverse effect on a First Nation's future negotiating position does not suffice.

47. Adverse impacts extend to any effect that may prejudice a pending Aboriginal claim or right. Often the adverse effects are physical in nature. However, as discussed in connection with what constitutes Crown conduct, high-level management decisions or structural changes to the resource's management may also adversely affect Aboriginal claims or rights even if these decisions have no "immediate impact on lands and resources": Woodward, at p. 5-41. This is because such structural changes to the resources management may set the stage for further decisions that will have a direct adverse impact on land and resources. For example, a contract that transfers power over a resource from the Crown to a private party may remove or reduce the Crown's power to ensure that the resource is developed in a way that respects Aboriginal interests in accordance with the honour of the Crown. The Aboriginal people would thus effectively lose or find diminished their constitutional right to have their interests considered in development decisions. This is an adverse impact: see *Haida Nation*, at paras. 72-73.

48. An underlying or continuing breach, while remediable in other ways, is not an adverse impact for the purposes of determining whether a particular government decision gives rise to a duty to consult. The duty to consult is designed to prevent damage to Aboriginal claims and rights while claim negotiations are underway: *Haida Nation*, at para. 33. The duty arises when the Crown has knowledge, real or constructive, of the potential or actual existence of the Aboriginal right or title "and contemplates conduct that might adversely affect it": *Haida Nation*, at para. 35 (emphasis added). This test was confirmed by the Court in *Mikisew Cree* in the context of treaty rights, at paras. 33-34.

[Emphasis added]

[52] I conclude that the duty to consult as described in the authorities (of which such as *Mikisew Cree 2005*, *Mikisew Cree 2018*, *Haida Nation* and *Carrier Sekani* are examples) is a derivative of the honour of the Crown. It confines the duty to consult to adverse effects flowing from the specified Crown action at issue – not to the larger adverse effects of the project of which it is a part. “The subject of the consultation is the impact on the claimed rights of the current decision under consideration” (see *Carrier Sekani*, para. 53 [emphasis in original]).

[53] A “generous, purposive approach” is adopted when the question of causation is considered, but merely speculative impacts will not suffice (*Carrier Sekani*, para. 46). The process is grounded in the Crown’s duty to act honourably. In any decision as to whether to consult or not, the Crown’s honour must infuse the process. It must also be seen to be acting with such honour. Even the appearance of “sharp dealing” must be avoided (*Haida Nation*, para. 19).

[54] I am also mindful of *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, in which the court said that:

It may be impossible to understand the seriousness of the impact of a project on s. 35 rights without considering the larger context... Cumulative effects of an ongoing project, and historical context, may therefore inform the scope of the duty to consult...(Chippewas of the Thames, para. 42)

b. What is the proper standard of review?

[55] The parties both begin with the assertion that an application for judicial review is the appropriate mechanism by which to seek a determination as to whether there has been a breach of the duty to consult. I agree.

[56] Indeed, the summary provided in *Pimicikamuk v. Manitoba*, 2014 MBQB 143, in my respectful view, accurately reflects the current law in this respect:

48. Administrative law remedies have been provided for by the Supreme Court of Canada in respect of alleged failures to comply with the duty of consultation. In other words, where a First Nation or Aboriginal community alleges a failure of the Crown to discharge its duty of consultation, the issue is normally determined pursuant to administrative law principles in the context of a judicial review.

[57] The court in *Pimicikamuk* continues:

49. In *Haida*, the Supreme Court of Canada has directed the courts to review the consultation process on a standard of reasonableness. As it relates to the government's initial assessment of the existence or extent of the duty, the Supreme Court in *Haida* has directed the courts to review that assessment on the correctness standard to the extent that "the issue is one of pure law and can be isolated from issues of fact". See *Haida, supra*, at para. 61-63; *Rio Tinto, supra*, at para. 64; *Hupacasath First Nation v. British Columbia (Minister of Forests)*, 2008 BCSC 1505 at para. 187, 173 A.C.W.S. (3d) 330; *Ahousaht Indian Band v. Canada (Minister of Fisheries and Oceans)*, 2014 FC 197 at para. 34.

[58] The Applicant has argued:

43. Accordingly, in the present case the Applicant acknowledges that the standard of reasonable [sic] applies to the decision itself subject to the application of the higher standard of correctness where errors of law can be isolated. This is consistent with the leading case on judicial review of administrative tribunals in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

(Applicant's brief, para. 43)

[59] With respect, here the court is not being asked to review a completed process of consultation replete with an extensive activity record. If it were, this would ordinarily trigger the application of a more deferential or relaxed standard (one of reasonableness).

[60] Rather, in circumstances such as this, the extant case law frames the applicable standard of review as one of correctness. Either the duty to consult exists or it does not.

[61] This accords with the recent decision of *Mi'kmaq of Prince Edward Island v. Prince Edward Island* [2018] PESC 20, where the court stated:

62. There are three points at which the standard of review is to be considered. They include when a tribunal is determining the existence of a duty to consult, deciding the extent of consultation required (as per the *Haida* spectrum), and assessing the extent of consultation that occurred. While McLachlin C.J. expressed that the existence or extent of the duty to consult or accommodate is a legal question in the sense that it defines a legal duty, she immediately went on to express, in para. 61 of *Haida*, that a contextual assessment of the factual background may lead to deference being shown even with respect to deciding on the two questions of the

existence and extent of the duty to consult. In other words, she allowed for reasonableness to be the standard of review to apply to the determination of those questions, depending upon the circumstances of each case.

63. At the hearing of this matter, in line with the conclusion in *Ahousaht*, all counsel submitted the applicable standard of review was correctness in respect of assessing both the existence and extent of the duty to consult and accommodate, and reasonableness with respect to assessing whether the Province met their duty to consult to the extent required. I will review the decisions upon the basis of these suggested standards of review.

[Emphasis added]

[62] I conclude that the appropriate standard of review to be applied herein is one of correctness.

c. Is the Crown's decision not to consult with respect to the possibility of its funding of the new ETF correct?

[63] The Province does not deny that the first element set forth in *Carrier Sekani* “knowledge of a potential Aboriginal claim or right” exists. Rather it maintains that the central issues concern the second and third elements. These latter, taken together, raise the question of whether the contemplated conduct (which is to say, the potential funding decision) might adversely affect an Aboriginal claim or right so as to trigger a duty to consult.

[64] Among other authorities, the Province refers to *Buffalo River Dene Nation v. Saskatchewan (Minister of Energy and Resources)*, 2015 SKCA 31, wherein it was determined that the posting for sale and eventual grant of mining exploration permits with respect to Treaty lands did not suffice to trigger a duty to consult.

[65] In *River Dene*, the court concluded that the Applicant had not shown a causal link between the granting of the permit and any possible impact upon its rights. The court held that the sale of the permits, on its own, could not lead to adverse impacts. This was because more regulatory requirements had to be met before any actual entry, exploration, mineral extraction or other activity upon or involving the First Nation land could occur. It also meant that the decision was not of the “strategic, higher level” kind referred to in *Haida Nation* and *Carrier Sekani*.

[66] As to the threshold for consultation, Caldwell, J.A. stated in *River Dene*:

91. ... The duty to consult is triggered at a low threshold, but it must remain a meaningful threshold - the applicant has to establish some sort of appreciable or discernible impact flowing from the impugned Crown conduct before a duty to consult in relation to that impact will arise. This is both logical and practical because there has to be something for the Crown and the Aboriginal group to consult about -- the duty to consult is, at core, a practical doctrine. Put another way, it makes little sense for the duty to consult to arise where, as the Chambers judge concluded here, there is nothing to consult about, i.e., nothing to reconcile.

92. What I mean by this is that, here, Buffalo River DN has not established that a foreseeable impact on Treaty 10 lands (and, consequently, on its members' hunting, trapping, and fishing rights) could possibly arise without the occurrence of a subsequent or second-stage approval from the Crown. However, once any form of surface access is contemplated, then actual impact on Treaty 10 land becomes possible. It is at this point in the process that the Permit-Holder is required to provide a plan for its proposed exploration or development of minerals lying under the surface of Treaty 10 lands. It is at this point that the Crown and Buffalo River DN would have something meaningful, in the sense of quantifiable, to consult about, to reconcile. And, indeed, the Crown seems to acknowledge that it would have a duty to consult with Buffalo River DN if this matter were to reach this point in the regulatory process.

[Emphasis added]

[67] The key feature, it seems to me, upon which *River Dene* turned, was the inability of the (then) currently contemplated action, which is to say, the transfer of the permits *simpliciter*, to have any type of impact upon the area in question. In fact, such impact would simply not be possible, without something further. This “something” was the requirement for permission by the permit holder (whoever it might be at the relevant time) to submit a plan, and undergo an approval process (a “next step”) with respect to its proposed exploration or exploitation of the minerals below Treaty lands.

[68] This next step was required whether the current ownership of the permit remained extant, or whether the permit was transferred, as proposed. This status quo remained whether current or new permit owner(s) took that next step – either would have to undergo the regulatory process before there was any possibility of physical impact upon Treaty lands. It was, therefore, not until this “next step” was

taken that consultation was required. Quite literally, there was nothing to consult about when it came to the mere sale of the mining exploration permits in question.

[69] The Respondent argues that the situation in the case at bar is apposite. In essence, the Province (in paraphrase) says “Look, any new ETF which replaces the existing Boat Harbour Treatment Facility triggers a need for an Environmental Assessment approval pursuant to Part IV of the *Environment Act*. We have agreed, therefore, that the pending ETF application including its design and specifications, should be (and is) the subject of active consultation with PLFN. We have provided \$70,000.00 in capacity funding so that PLFN may have meaningful participation in the process”. (see *Respondent brief, para. 4 – 5*)

[70] It is this process (the Province continues) which has the potential to impact upon Treaty Rights *a propos* potential impacts on the environment. However, the question of whether it is the Province or some other entity who actually funds the new ETF (if it is approved) cannot (in and of itself) have any physical impact upon Treaty Rights.

[71] This argument misses the mark, in my respectful view, for a number of reasons. First, we know that the process of consultation does not require the Crown to accede to the views of the Applicant.

[72] Could the Crown proceed (after consultation) with a particular design or construction of the new ETF against the strong opposition of PLFN? It could, conceivably. But if it did so, and then also provided the very funding by which the new ETF was to become a reality, would that too, be compatible with the honour of the Crown?

[73] Where the Crown is required to consult it must do so meaningfully. Would the act of funding a project opposed by PLFN reflect on the “meaningfulness” of the antecedent efforts of the Crown to consult? “Meaningful consultation” requires a:

“... meaningful effort by the government to act in a manner that is consistent with the honour of the Crown in that particular context”.

(*Mikisew Cree 2018*, para. 61 per Abella, J.)

[74] Second, does the potential involvement of the Crown in the funding of the new ETF make it more or less likely that the required *Environmental Act* approval will ultimately be granted? While (as the Respondent points out) it would be a

different “department” of the Crown involved in the approval process, it would essentially boil down to the Crown (wearing one hat) being called upon to determine whether a project which the Crown (wearing another hat) has funded, passes muster. This will do nothing to assuage whatever cynicism has been engendered in the past by the already significant environmental impact which has been visited upon Treaty lands and environs by the mill and its facilities to date.

[75] Further, and as we have seen, the duty to consult, when it arises, flows from the Honour of the Crown. This honour “binds the Crown *qua* Sovereign”. (*Misikew Cree 2018*, per Karakatsansis, J., para. 23) We have seen that even the appearance of sharp dealing is to be avoided. In my view, Treaty people are entitled to treat with the Crown as though it speaks with one voice.

[76] To put it more bluntly, in the event that the Province were to become the lender financing the project, it would have a very tangible interest in Northern Pulp’s success. That company’s success would become directly related not only to the Province’s prospect of recovering its investment, but also as to its prospect of (possibly) making a profit upon it.

[77] Related to this is the practical question of what quantity of “sunk costs” would the Province be required to invest if it funds the project, before the project is submitted for environmental approval. At a minimum, someone must draw up design specifications and plans, and undertake the work ancillary to this before approval is requested. Will the increasing extent of this sunk cost create increasing incentive for all Crown departments to keep the mill operating? While past wrongs do not create a new impact, they may certainly inform the imperative need for transparency and consultation in relation to all aspects of the present process.

[78] As we have seen from *Carrier Sekani*, the potential for adverse impact suffices to trigger a duty to consult (para. 44). It is clear that the duty extends to “strategic, higher level decisions” that may have an impact upon the claim or right (*Rio Tinto*, para. 47). The Province’s interest as lender funding the new ETF will undoubtedly influence “higher level” strategic decision making.

[79] Indeed, if one accepts (as I do) that the longer the mill continues to operate the longer that treaty rights may potentially be impacted by the discharge of effluent from a improperly designed ETF or, even if properly designed, by a subsequent malfunction of same, then one accepts that the best case scenario, from the vantage of PLFN, would be the closure of the mill and the ETF in its entirety. If the Province is to become the lender, not only is it providing the means by which

the ETF will be built, but it will have an interest to insure that the mill will continue to remain in operation into the future so as to at least recover the taxpayers' investment.

[80] In addition, Part IV of the *Environment Act* (and Regulations enacted pursuant thereto) contains standards which must be achieved in order to obtain approval of the project as a whole. If the Province funds, will it fund to the extent necessary to merely achieve minimal (often less expensive) standards, or is it prepared to consult with the PLFN as to whether, in the unique circumstances of what the people in this area have endured, upgraded (more expensive) safeguards should be implemented?

[81] In *Dene Tha' First Nation v. Canada (Minister of Environment)*, 2006 FC 1354, aff'd 2008 FCA 20, (*Dene Tha'*) the federal government began designing a regulatory and environmental review procedure in anticipation of the MacKenzie Gas Pipeline ("MGP") project without consulting the Dene Tha'.

[82] At the Federal Court level, the Court rejected the Crown's argument that there was no duty to consult at that stage, observing that:

100. ...conduct contemplated here is the construction of the MGP. It is not, as the Crown attempted to argue, simply activities following the Cooperation Plan and the creation of the regulatory and environmental review processes. These processes, from the Cooperation Plan onwards, were set up with the intention of facilitating the construction of the MGP. It is a distortion to understand these processes as hermetically cut off from one another. The Cooperation Plan was not merely conceptual in nature. It was not, for example, some glimmer of an idea gestating in the head of a government employee that had to be further refined before it could be exposed to the public. Rather, it was a complex agreement for a specified course of action, a road map, which intended to *do* something. It intended to set up the blue print from which all ensuing regulatory and environmental review processes would flow. It is an essential feature of the construction of MGP.

...

106. The precise moment when the duty to consult was triggered is not always clear. In *Haida*, the Court found that the decision to issue a Tree Farm License (T.F.L) gave rise to a duty to consult. A T.F.L. is a license that does not itself authorize timber harvesting, but requires an additional cutting permit. The Court held that the "T.F.L. decision reflects the strategic planning for utilization of the resource" and that "[d]ecisions

made during strategic planning may have potentially serious impacts on Aboriginal right and title". [Emphasis added. See *Haida* paragraph 76]

107. From the facts, it is clear that the Cooperation Plan, although not written in mandatory language, functioned as a blueprint for the entire project. In particular, it called for the creation of a JRP to conduct environmental assessment. The composition of the JRP was dictated by the JRP Agreement, an agreement contemplated by the Cooperation Plan. The composition of this review panel and the terms of reference adopted by the panel are of particular concern to the Dene Tha'. In particular, the Dene Tha' had unique concerns arising from its unique position. Such concerns included: the question of the enforceability of the JRP's recommendations in Alberta and funding difficulties encountered by the Dene Tha' as result of its not qualifying for the "north of 60 funding programs" (a funding program apparently available only to those First Nations bands north of the 60 degrees parallel). The Dene Tha' also had other issues to discuss including effects on employment, skill levels training and requirements and other matters directly affecting the lives of its people.

108. The Cooperation Plan in my view is a form of "strategic planning". By itself it confers no rights, but it sets up the means by which a whole process will be managed. It is a process in which the rights of the Dene Tha' will be affected.

[Emphasis added]

[83] When *Dene Tha'* reached the Appellate level, the Federal Court of Appeal observed:

9. This case turns entirely on its own facts. Having regard to the evidence on the record, it was open to Justice Phelan to find as a fact that, given the unique importance of the Mackenzie Gas Pipeline, and the particular environmental and regulatory process under which the application for approval of the Mackenzie Gas Pipeline would be considered by the Joint Review Panel and the National Energy Board, the process itself had a potential impact on the rights of the Dene Tha'. It was also open to him to find as a fact that, at some point during the period from 2002 and 2004, it was sufficiently certain that there would be an application for approval of the Mackenzie Gas Pipeline that the obligation to consult was triggered. He was not required, as a matter of law, to conclude that no consultation obligation arose until the formal application for approval was filed. The test framed by the Supreme Court of Canada in the cases cited above does not dictate such a rigid or inflexible approach.

[Emphasis added]

[84] A consideration of the above factors, and others, makes it seem very implausible that a government decision to fund a new effluent treatment facility less than fourteen months before the statutorily mandated closure of the existing facility and the expiry of the mill's industrial approval, would not carry with it a potential for further adverse effect on PLFN's right to occupy lands already polluted by the Boat Harbour Treatment Facility. The new adverse impacts would include the increased likelihood of a new ETF being built (in the short term) and of the mill remaining open (in the longer term) prompted by (at least the appearance of) the interest of the Province to either recover its investment or profit from it. Provincial involvement in funding would set the stage for further decisions that have (at the very least) the potential to impact the "strategic, higher level decisions" of the Province in precisely the manner contemplated by *Rio Tinto* (para. 47).

[85] Finally, the bifurcation of issues ("design and construction" from the "actual funding" of the ETF) artificially compartmentalizes a process which, in my view, should be treated more holistically.

[86] One (obvious) example, arises from the legitimate concern on the part of PLFN (presumably the Province as well – hence the consultation with respect to the design and construction) about the potential for deleterious effects upon the environs, which could potentially result from an inadequate design of the ETF. Separation of the potential funding issue would result in the loss of an opportunity for the two sides to discuss whether the financing (if it was to be provided by the Province) should or could be tied into a system of penalties and/or rewards for achieving and/or failing to achieve proposed emission or effluent discharge targets. This may (potentially) impact upon the likelihood that these targets would be attained.

[87] Put differently, and unlike the situation in *River Dene*, it seems clear to me that the parties have plenty to consult about with respect to the topic of the potential Provincial funding of the new ETF. Some of the discussion points have been noted herein. Beyond these earlier comments (which serve as examples only), it would not be appropriate for the court to circumscribe or exhaustively attempt to define the parameters or the topics encompassed by the Province's duty to consult in relation to this potential funding. Such discussions cannot be isolated or hermetically sealed off from the overall design and approval process, in any event, for the reasons noted above.

Conclusion:

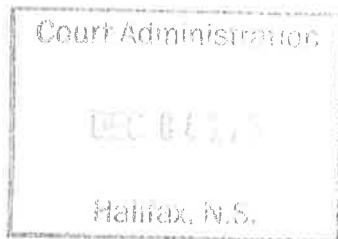
[88] The application is granted. The consultations between the parties must necessarily include *inter alia* whether the Province should fund the construction and design of the ETF and pipeline, and, if so, what form that financing will take.

[89] This application had some novel aspects to it. It is one in relation to which each side sought guidance from the court in good faith. I decline to award costs to either party as a result.

Gabriel, J.

Form 39.08

2018



Hfx. No.

483016

Supreme Court of Nova Scotia

Between:

NORTHERN PULP NOVA SCOTIA CORPORATION

Plaintiff

and

**EDWIN DONALD SHAW, ALLAN FRANCIS MACCARTHY, CHAD
MACCARTHY, DARRYL WAYNE BOWEN, BEN ANDERSON, PAUL SCOTT
MUSICK, BRADLEY ELMER MACDONALD, JANE DOE AND JOHN DOE**

Defendants

**AFFIDAVIT OF TERRI FRASER
SWORN ON NOVEMBER 30, 2018**

I, **Terri Fraser**, of Stellarton, in the County of Pictou, make oath and say as follows:

1. **THAT** I am the Technical Manager of Northern Pulp Nova Scotia Corporation's pulp mill located at Abercrombie Point, Pictou County (the "Mill").
2. **THAT** I am the project lead for the project to design and construct a replacement effluent treatment facility at the Mill and have personal knowledge of the facts deposed to herein except where stated to be based on information and belief.
3. **THAT** a pulp mill has been in operation at the Abercrombie Point location since 1967. From 1967 to 1995 the effluent produced by the Mill was treated at the Boat Harbour Effluent Treatment Facility (the "Boat Harbour ETF") which was owned and operated by Her Majesty the Queen in right of the Province of Nova Scotia (the "Province").
4. **THAT** on December 1, 1995 the Province and Scott Maritimes Limited, a predecessor in title of the current owner of the Mill, Northern Pulp Nova Scotia ("Northern Pulp"), entered into a Memorandum of Understanding ("MOU") to "restate and restructure" their contractual relationship in relation to the Boat Harbour ETF. A copy of the MOU is attached hereto as Exhibit "A" to this my Affidavit.

5. **THAT** one of the components of the restated and restructured contractual relationship was a Lease, which is attached to this my Affidavit as Exhibit "B". Pursuant to the Lease, the Boat Harbour ETF was leased by the Province to Scott Maritimes Limited for a term of ten years.
6. **THAT** by a Lease Extension Agreement made October 22, 2002 between the Province and Scott Maritimes Limited's successor in title and interest, Kimberly-Clark Inc., the Lease Agreement was amended to extend the term for a further period of 25 years after the initial 10 year term. Consequently, the Lease would expire on December 31, 2030. A copy of the Lease Extension Agreement is attached hereto as Exhibit "C" to this my Affidavit.
7. **THAT** Northern Pulp acquired the Mill in 2008 from Neenah Paper Company of Canada, a successor in title and interest of Kimberly-Clark Inc. and Scott Maritime Limited. By an Acknowledgement Agreement dated May 12, 2008, the Province acknowledged, agreed and confirmed that all of the benefits of the MOU and the Lease, as amended by the Lease Extension Agreement, accrued to Northern Pulp. A copy of the Acknowledgement Agreement is attached as Exhibit "D" to this my Affidavit.
8. **THAT** on April 17, 2015 the bill to enact the *Boat Harbour Act* was introduced in the Legislature. The purpose of the Act was to force the closure of the Boat Harbour ETF by January 31, 2020.
9. **THAT** Northern Pulp was not consulted about the consequences of the enactment of the *Boat Harbour Act* nor the closure data specified in the Act before the bill was introduced. Northern Pulp was merely advised that the bill would be introduced on April 16, 2015.
10. **THAT** I was a member of the group of Northern Pulp representatives that appeared before the Law Amendments Committee on April 27, 2015 to present Northern Pulp's perspective on the consequences of the bill and in particular, the short period of time allowed in the bill to identify, design and construct an effluent treatment facility to replace the Boat Harbour ETF.
11. **THAT** no change was made to the closure date as set out in the bill. When the *Boat Harbour Act* received Royal Assent the date for closure remained January 31, 2020.
12. **THAT** at or about the time the bill was proceeding through the legislative process, Northern Pulp was appealing the terms and conditions proposed in the new Industrial Approval issued March 9, 2015. An Industrial Approval is required under the *Environment Act* in order to operate the Mill.
13. **THAT** among the conditions in the Industrial Approval were conditions for a new alternative effluent treatment system. I was informed by representatives of Northern Pulp's consulting engineers (KSH Solutions, Ekono, and Callan Brooks Inc.) and did, and

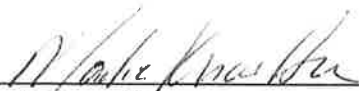
14. **THAT** an appeal from the Industrial Approval was initiated by Northern Pulp on April 9, 2015. After the appeal was initiated there were many discussions with representatives of Nova Scotia Environment (“NSE”).
15. **THAT** the conditions of particular concern to Northern Pulp were deleted in accordance with the decision of the Minister of Environment dated February 8, 2016. Northern Pulp thereupon withdrew its appeal on March 15, 2016.
16. **THAT** in the late spring of 2016 Northern Pulp suggested to the Province that they work together to explore how best to replace the Boat Harbour ETF. The Province agreed and its officials were involved in the preparation of a request for proposal (“RFP”) for the delivery of engineering studies, evaluation of the submissions and the selection of the successful proponent. The RFP was issued on September 30, 2016.
17. **THAT** on December 28, 2016 the Province and Northern Pulp entered into an agreement to share the cost of preliminary engineering studies for a replacement ETF.
18. **THAT** the studies were to be done in two phases. The first phase involved the consideration of all aspects of effluent generation at the Mill, the review of the technologies available to treat the effluent, and the identification of the optimum technical approach to the treatment of the effluent. The second phase involved the development of cost estimates for the cost to construct a new ETF.
19. **THAT** KSH Solutions was retained to perform the engineering studies. It recommended that a new ETF use Activated Sludge Treatment (“AST”). In comparison to Aerated Stabilization Basin (“ASB”) technology used at the Boat Harbour ETF, AST has high-rate removal efficiencies and good process flexibility.
20. **THAT** under Phase 2, KSH Solutions produced a cost estimate for the effluent treatment facility itself that was considered to be accurate to within +/- 10 percent. The estimate for the pipeline that was to extend from the new ETF to a diffuser did not have the same degree of accuracy. The cost estimate for the pipeline and diffuser was considered to be accurate within +/- 20 or 30 percent.
21. **THAT** the estimates were received from KSH Solutions in the fall of 2017.
22. **THAT** Northern Pulp and the Province began discussing how the cost of the new ETF should be shared in September 2017. Those discussions continue today.
23. **THAT** at or about the same time, namely in the fall of 2017, Northern Pulp and the Province worked together to identify a consultant to prepare environmental assessment studies. Dillon Consulting Ltd. was retained and it began its work on October 2, 2017.

24. **THAT** by August 2017, Stantec Engineering, as a subcontractor to KSH Solutions, had completed a receiving water study for the Pictou Roads location. Pictou Roads is an area of the Northumberland Strait just outside the limits of Pictou Harbour.
25. **THAT** at public consultation meetings held in December 2017, Pictou Roads was identified as the proposed diffuser location. The proposed location at Pictou Roads of the diffuser is shown on the attached chart (Exhibit "E").
26. **THAT** Northern Pulp and the Province entered into a second Contribution Agreement on December 13, 2017. The purpose of this agreement was to allow detailed engineering work to be done, the environmental studies to continue, and allow major equipment to be purchased.
27. **THAT** Northern Pulp signed a contract with the equipment vendor, Veolia Water Technologies in March, 2018. The vendor had to be selected in order to permit detailed engineering design work to proceed.
28. **THAT** usually detailed engineering design work is completed before many of the environmental assessment studies are undertaken. However, because time until the date of closure stipulated by the *Boat Harbour Act* was very short, it was determined by Northern Pulp and the Province that the environmental assessment studies and detailed design work must proceed in parallel.
29. **THAT** in the early spring of 2018, after ice break-up, marine investigations were undertaken by Northern Pulp's subcontractor, CSR GeoSurveys Limited ("CSR"). In May those investigations revealed that there were areas of ice scour on the bottom of the Pictou Roads area of the Northumberland Strait, in the area that was originally thought suitable for the diffuser.
30. **THAT** the presence of evidence of ice scour at 11 metre depths suggested that ice could damage the diffuser. The pipeline designer recommended looking for an alternative location for the diffuser in deeper water.
31. **THAT** the diffuser is a device affixed to the end of the treated effluent pipeline that would diffuse the outflow from the pipeline in the most beneficial way.
32. **THAT** the receiving water study available in August 2017 was preliminary because it was necessary to conduct further, in-water studies before it could be finalized. The in-water studies would involve the use of sonar equipment to obtain a profile of the bottom and sub-bottom of the Strait, video of the proposed route of the pipeline for the purpose of habitat assessment and geotechnical investigations to evaluate the state of the bottom needed for the detailed design of the marine portion of the pipeline.
33. **THAT** following receipt of the recommendation from the pipeline designer, Northern Pulp directed CSR to survey alternative pipeline routes to deeper water. Three extensions of the route in the Pictou Roads location were examined.

34. **THAT** the length of the extensions were so long (several kilometres) that it became apparent that a pipeline overland route from the Mill to Caribou and from there into the Caribou Channel might be viable. This route was considered to be beneficial because it would
- (a) avoid known lobster fishing grounds;
 - (b) allow for access to deeper water to mitigate the potential for ice damage to the diffuser; and
 - (c) reduce the length of the pipeline to be installed in a marine environment – four kilometres as opposed to fourteen or fifteen for the extended Pictou Road route.
35. **THAT** receiving water studies were performed by Stantec for two locations off Caribou in the Caribou Channel. Those two locations were less than 500 metres apart. At one location the water depth was 20 metres and at the other 25 metres. It was determined that the 20 metre depth location exhibited better flow dynamics. The proposed location of the diffuser in the Caribou Channel is marked on the attached chart (Exhibit “F”).
36. **THAT** at the end of September 2018, it was determined that the Caribou Channel was the preferred location for the diffuser.
37. **THAT** a number of meetings were held between December 2017 and the fall of 2018 with representatives of the Pictou Landing First Nation (“PLFN”) and local fishers. The representatives advised that they “fished all over” but did not provide any specific locations for their respective fisheries.
38. **THAT** at these meetings the fishers stated that they had formed a “Fishers Working Group” which included PLFN, local fishers and fishers from Prince Edward Island. A concern was expressed that the treated effluent may contaminate lobsters and that even one contaminated lobster would harm the Canadian lobster “brand”.
39. **THAT** at a meeting with the fishers on October 22, 2018, I was asked by the Fishers Working Group when the in-water work (called hereafter “survey work”) would begin. I advised them that it would likely begin the following day, October 23, 2018.
40. **THAT** the survey work that was to have commenced on October 23, 2018 is necessary to finalize the pipeline routing and confirm the diffuser location, complete the receiving water study for the Caribou Channel location and allow for the continuation of the marine pipeline engineering. It is also important to provide information for Northern Pulp’s environment assessment submission and to enable Fisheries and Oceans Canada (“DFO”) to evaluate the effects, if any, of the construction of the marine section of the pipeline.
41. **THAT** I am informed by Colin Toole of CSR, the contractor engaged by Northern Pulp, and do verily believe that as a result of the actions of the owners or operators of fishing boats, CSR have been prevented from conducting the survey work.

- 42. **THAT** because the time available to design, construct and commission a new ETF is so short, it is absolutely essential that the survey work is done as soon as possible. Construction of a new ETF cannot begin until an environmental assessment approval has been received from the Nova Scotia Minister of Environment and DFO provides its view on the impact of pipeline construction on fish habitat.
- 43. **THAT** the survey results, in particular the video of the route, must be submitted to DFO as part of a request for review. Once the request for review is received, they determine if the construction of the pipeline may cause a significant adverse effect on fish habitat. If DFO determines that construction of the pipeline may cause a significant adverse effect on fish habitat, they would require Northern Pulp to follow a different and more time consuming process to consider avoidance, and offsetting measures.
- 44. **THAT** any delay in the provision of the survey data would cause the submission of a request for review to DFO to be delayed, it would also cause a delay in the detailed engineering work. These delays have severely impaired Northern Pulp's ability to have a new ETF facility constructed and commissioned in the most expeditious way possible.
- 45. **THAT** I believe that sufficient survey work can be done in December and January, weather conditions permitting, to enable environmental assessment submissions to be prepared and to allow detailed engineering to proceed.

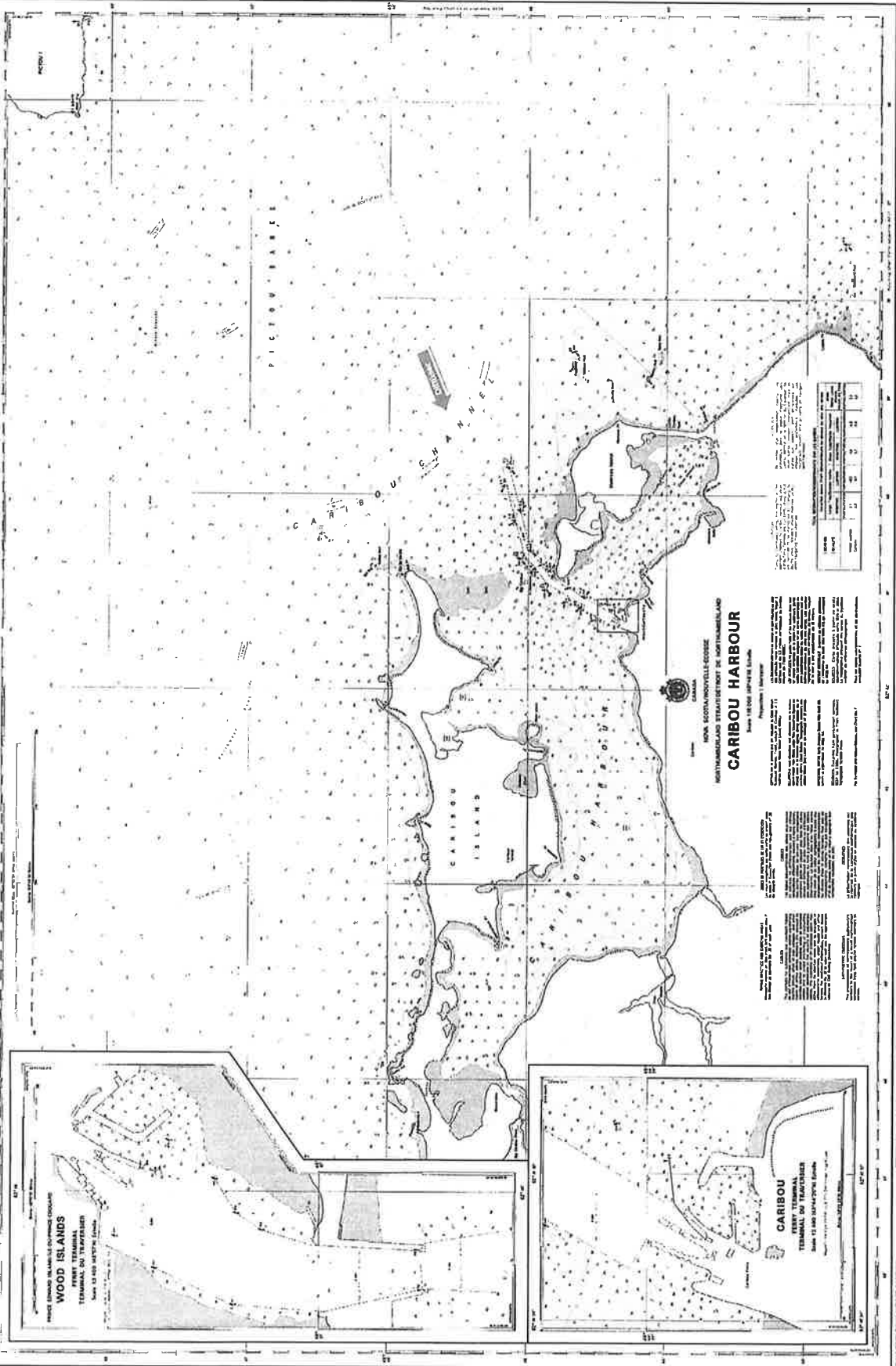
SWORN TO before me at New Glasgow,)
 Nova Scotia, this 30th day of)
 November, 2018.)


 _____)
 A Notary Public or Barrister of the Supreme)
 Court of Nova Scotia)



TERRI FRASER

MARLIE KNOWLTON
 A Commissioner of the
 Supreme Court of Nova Scotia



Northern Pulp mill formally registers controversial effluent treatment project

By Keith Doucette The Canadian Press



The Northern Pulp Nova Scotia Corporation mill is seen in Abercrombie, N.S. on Wednesday, Oct. 11, 2017.

THE CANADIAN PRESS/Andrew Vaughan

Northern Pulp has formally registered its project to replace the effluent treatment facility in Boat Harbour with Nova Scotia's Environment Department.

More than 1,700 pages of environmental assessment documents submitted by the mill were published Thursday on the department's website.

The mill says its proposal will have no significant environmental impact.



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The formal move kicked off the 30-day public comment period for the controversial project that includes a new, 15.5-kilometre-long pipeline that will carry millions of litres of treated wastewater to the Northumberland Strait.

Northern Pulp called the registration a “significant milestone” for a project it says is “vital to the continued operation of Northern Pulp, anchor to Nova Scotia’s forest industry.”

“We all have the same goal which is to see Boat Harbour returned to its natural state,” said Bruce Chapman the mill’s general manager.

“We simply need more time to carry out due diligence in each phase from environmental assessment, to construction and commissioning of this new facility.”

However, Premier Stephen McNeil has said he has no intention of changing a legislated deadline to close Boat Harbour by Jan. 31, 2020.

McNeil has also said that he would debate changes to the deadline in the legislature if they evolve out of a community consensus in Pictou County and are brought forward by the area’s Opposition members.

Boat Harbour's current heavily polluted treatment lagoon is on the edge of the Pictou Landing First Nation.

Despite the province's stated position on the deadline, the company has set out a construction schedule it estimates will take 21 months from the time it gets the required permits and approvals that would allow construction to begin this spring.

It says the effluent treatment facility, pipeline and marine outfall for the effluent would all be fully operational during the "fourth quarter of 2020."

The plan calls for a biological activated sludge treatment facility to be purchased from Paris-based Veolia Water Technologies, to be located on company property not far from the existing plant.

The documents say the effluent pipeline would be constructed within the right of way and "predominately within the existing road shoulder" of Highway 106 for about 11.4 kilometres, then enter waters near the Northumberland Ferries terminal.

The pipe would continue for about 4.1 kilometres through Caribou Harbour to the Northumberland Strait, where the effluent would be discharged through an engineered diffuser.

At a diameter of 900 millimetres, the high density polyethylene pipe will be buried for the majority of the route. It will be above ground to cross the spillway of the Pictou Causeway, where it will be suspended and attached to the exterior of the bridge.

It will be buried adjacent to the navigation channel for the Northumberland Ferries and be weighted down using concrete collars. The company says it's anticipated the marine portion of pipe will be placed in a three-metre deep open-cut trench which will be backfilled with existing material.

The end of the effluent pipe consists of an outfall with a three-port diffuser at a depth of 20 metres. The diffuser pipe will be approximately 50 metres long, with three outlets spaced 25 metres apart.

READ MORE: Permanent injunction stops Nova Scotia fishermen's blockade of Northern Pulp

The outfall will be capable of discharging up to 85 million litres of effluent per day.

The company says the treated effluent it plans to pump into the Strait will meet federal regulations for emissions, but opponents including local fishermen contend there's a lack of scientific evidence regarding how the waste will affect the long-term health of the lucrative lobster and crab fisheries.

Water quality for the diffuser will reach ambient conditions within less than two metres from the diffuser, the documents say, "in terms of total nitrogen, total phosphorus, TSS, DO, pH, and salinity." They say water colour will return to ambient conditions within five metres of the diffuser.

"Thus, significant residual effects to water quality or sediment quality as a result of treated effluent discharge are not likely."

The company also says modelling results have indicated that there are few traces of “relatively high diluted effluent” after 30 days.

“Based on the results of this assessment, with planned mitigation and using best practices to avoid or minimize adverse effects, the wastewater treatment facility’s effect on the environment during all phases is rated as not significant,” the company said in its news release.

The public has until March 9 to submit comments by mail or via an online forum. Environment Minister Margaret Miller is to decide whether the project can be granted conditional environmental assessment approval by March 29.

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Northern Pulp Seeks Extension

Community Featured

February 6, 2019 Chris Muise

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The clock is ticking for the Boat Harbour wastewater treatment facility in Pictou Landing. The Boat Harbour Act passed in 2015 stipulates that the facility must be closed by the end of January next year.

Northern Pulp, however, is seeking an extension.

The company, alongside the Paper Excellence Group, held a press conference in Halifax on Jan. 31 — exactly one year before the deadline stipulated in the Boat Harbour Act — announcing it is seeking a change in the legislation to allow for the time needed to open a new, state-of-the-art wastewater treatment facility.

“We all have the same goal, and that is to see Boat Harbour returned to its natural state,” says Kathy Cloutier, director of Corporate Communications for Paper Excellence. “We simply need a bit more time to assure the time and due diligence to carry out each phase.”

Before this announcement, Cloutier — alongside Paper Excellence CEO Vice President, Operations East Jean Francois Guillot and Northern Pulp Nova Scotia Corporation General Manager Bruce Chapman — detailed the company’s stated efforts since the passing of the Boat Harbour Act, as well as the pitfalls they faced, which they say included unachievable goals and resistance by the fishing community.

Also discussed were the scientific merits of the proposed \$130-million treatment facility, which would use an Activated Sludge Treatment (AST) system, which mills across Canada use today. Paper Excellence says that with this system, no untreated waste water would leave the Northern Pulp site.

The question on reporters’ minds was, of course, ‘how much time are we talking about?’

“What we’re looking at today...we’re talking about a year, in the whereabouts of a year,” says Guillot. Cloutier explained that this year would be to allow for the environmental assessment, construction commissioning, and in general just assuring that they’ve dotted their i’s and crossed their t’s.

While Northern Pulp and Paper Excellence seemed confident that the extension would be approved and that they will, as Cloutier said, “be the company that works with Pictou Landing First Nation” and “changes this legacy...that we have acquired,” Pictou Landing First Nation member Durney Nicholas has heard it all before.

“They lied to us the first day, and probably are still lying,” says Nicholas, who attended the press conference.

“They’ve promised a lot of stuff, and none of them, didn’t work.”

Cloutier says that Northern Pulp and Paper Excellence are committed to working with Pictou Landing First Nation to find a compromise that works for them as rights-holders, as well as the paper mill’s stakeholders.

“We respect everyone’s opinions,” says Cloutier. “I do believe that, with continued and ongoing conversations, we will reach a goal that everyone is comfortable with.”

When asked what Northern Pulp would do if the bid for an extension fails and the January 2020 deadline is maintained, Cloutier said the company would respect the law.

“We will not operate illegally,” Cloutier says, while not clarifying for questioning reporters if that would mean the loss of jobs or the closure of the paper mill. “We would not contravene that act if there’s no extension.”

Jeff Bishop, executive director of Forest Nova Scotia, says he appreciates that the community has been waiting 50 years for a resolution.

“I understand completely where the Pictou Landing First Nation is coming from,” says Bishop. “They have been, over the years, told different things by different governments and different owners of this mill. So it’s not surprising to hear, when there is a solid date in place with the Boat Harbour Act, that they would like to stick to that.”

Even so, Bishop says that the forestry sector of Nova Scotia is deeply interconnected, with saw mills selling excess wood to paper mills, and the 25,000-30,000 tree lot owners selling wood to the market to make ends meet. He says that the loss of the Northern Pulp facility over failure to secure an extension would send ripples across the province.

“The successful continued operation of Northern Pulp is a large piece... of the economy of this province,” says Bishop.

“Not to disregard for a second the impact that that community has felt by the operation of the facility right next door – their literal own back yard – these decisions that are to come in the coming weeks and months impact the entire economy of this province, and well-being of a number of communities. Including theirs.”

Whether or not the extension is accepted, Nicholas just wants this whole affair to be over.

“Get it done as soon as possible now, I guess,” he says. “It’s taken a long time. I remember when it started, I was only a young fella, myself. Hopefully someday, I see clear water again over there.”

Kathy Cloutier, director of Corporate Communications for Paper Excellence, speaks during the Northern Pulp press conference. (Muisse photo)

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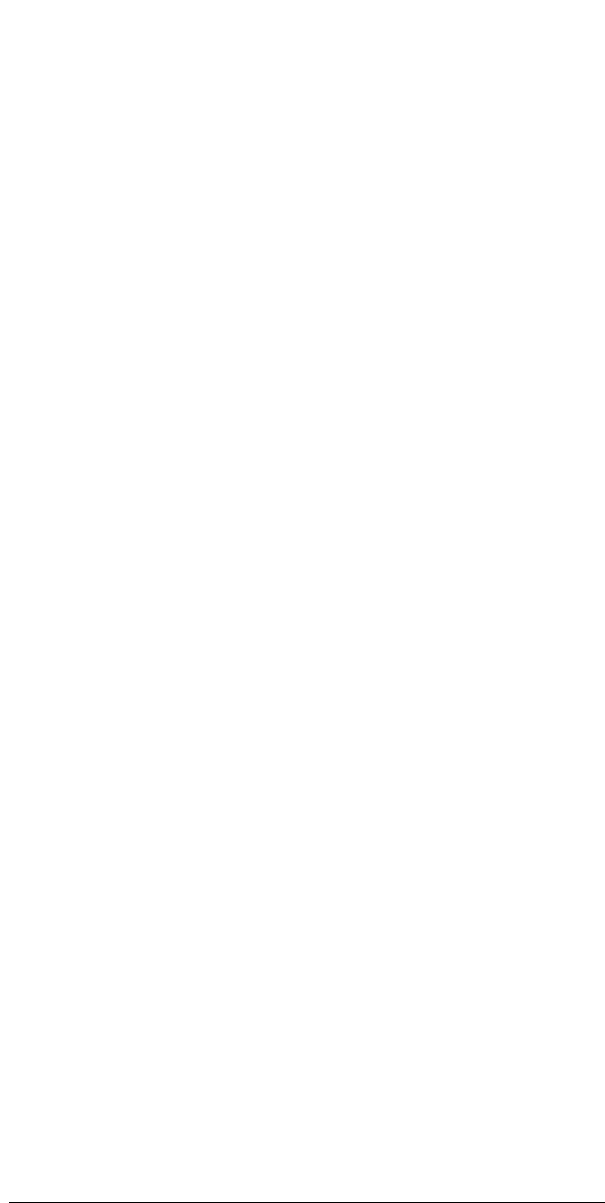
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June 8, 2017



Dear 

Re: You are entitled to part of the information you requested – 2017-03648-BUS

The Department of Business received your application for access to information under the *Freedom of Information and Protection of Privacy Act* on March 29, 2017.

In your application, you requested a copy of the following records:

Current status (repayment, interest rates, forgiveness requests) on loans by JobsFund / NSBI to Northern Pulp totalling \$107 million from 2009 to 2013: (1) 2009, \$15 million (2) 2010, \$75 million (3) more than \$20 million [\$3.6 million + \$5.2 million + \$12 million of which \$2.5 million forgivable.

Clarified Mar 30, 2017 that this is to include records containing the following information:

- whether the loans are being repaid and/or are they in good standing*
- interest rates for each loan*
- have any forgivable amounts been forgiven, and if so when*
- timelines for repayment*
- for any loans that have been renegotiated, the renegotiated amounts and/or timelines*

You are entitled to part of the information requested. However, we have removed some of the information from this record according to subsection 5(2) of the *Act*. The severed information is exempt from disclosure under the *Act* for the following reasons:

- Section 12: information which could harm intergovernmental relations or information received in confidence from another government.
- Section 17: information the release of which would have a detrimental financial or economic impact on NS.

.... /2

June 8, 2017

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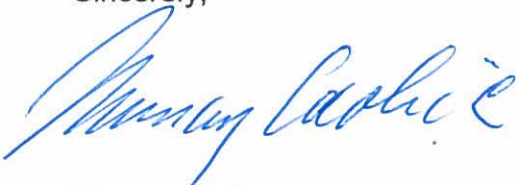
The remainder of the information is enclosed.

You have the right to ask for a review of this decision by the Information Access and Privacy Commissioner (formerly the Review Officer). You have 60 days from the date of this letter to exercise this right. If you wish to ask for a review, you may do so on Form 7, a copy of which is attached. Send the completed form to the Information Access and Privacy Commissioner, P.O. Box 181, Halifax, Nova Scotia B3J 2M4.

Please be advised that a de-identified copy of this disclosure letter and the attached response to your FOIPOP application will be made public after 14 days. The package will be posted online at: <https://foipop.novascotia.ca>. The letter will not include your name, address or any other personal information that you have supplied in the course of making your application under FOIPOP.

Please contact James McLean at 902-424-3773 or by e-mail at james.mclean@novascotia.ca, if you need further assistance in regards to this application.

Sincerely,



Murray Coolican
Deputy Minister

Attachment

FOIPOP 2017-03648-BUS – Loans to Northern Pulp and Affiliates

12(1)(a)

17(1)

File #	Recipient	Authorized	Status	Interest Rate	Term	Amount Forgiven
300246	Northern Pulp NS	\$15,000,000	in good standing (amended 2013)	NS 10-year borrowing rate plus [REDACTED] (amended to NS 10-year rate plus [REDACTED])	10 years commencing July 1, 2009 (amended to 10 years commencing January 1, 2013)	n/a (fully repayable loan)
300273	Northern Timber NS	\$75,000,000	in good standing	NS 30-year borrowing rate plus [REDACTED]	30 years commencing March 12, 2010	n/a (fully repayable loan)
300338	Northern Pulp NS	\$14,700,000	in good standing	NS 10-year cost of funds plus [REDACTED]	10 years commencing January 1, 2013	n/a (fully repayable loan)
300337	Northern Pulp NS	\$2,500,000	in good standing	No interest (forgivable with conditions)	10 years commencing January 1, 2013	\$0
300336	Northern Pulp NS	\$3,600,000	paid in full as scheduled on August 1, 2016	NS cost of funds plus [REDACTED]	4 years commencing October 1, 2013	n/a (fully repayable loan)
300335	Northern Pulp NS	\$900,000	incentive earned June 25, 2015	No interest (incentive earnable when conditions met)	n/a	\$900,000 incentive earned

THIS MEMORANDUM OF UNDERSTANDING made this 1st day of
December, 1995

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF NOVA SCOTIA**, as represented by the Minister
of Supply and Services (hereinafter referred to as "Nova Scotia")

- and -

SCOTT MARITIMES LIMITED, a body corporate under the
laws of Nova Scotia (hereinafter referred to as "Scott")

RECITES/WHEREAS:

1. As an inducement to encourage the development of the pulp industry in Pictou County, Nova Scotia and to encourage the introduction and expansion of other industries therein, Nova Scotia agreed to develop and operate an effluent treatment facility at Boat Harbour, Pictou County, Nova Scotia;
2. Scott Paper Company, through a subsidiary, Scott Maritimes Pulp Limited (now Scott), constructed a kraft pulp mill at Abercrombie Point, Nova Scotia, (the "Mill") which went into production on or about the 1st day of September, 1967;
3. Nova Scotia and Scott entered into an Agreement dated the 30th day of September, 1970 (the "1970 Agreement") which sets out the terms and conditions and respective obligations of the parties with respect to the operation and use of the Boat Harbour Effluent Treatment Facility and the supply of water to the Mill;
4. Pursuant to the 1970 Agreement, Nova Scotia is obliged to operate the Boat Harbour Effluent Treatment facility and supply water to the Mill for which Scott pays a set fee;

5. The 1970 Agreement is for a term of twenty-five (25) years commencing October 1, 1970, and is renewable at the instance of either party, subject to negotiation or arbitration of certain terms;
6. Scott gave notice of renewal of the 1970 Agreement to Nova Scotia on the 24th day of February, 1995 and such renewal was acknowledged by Nova Scotia by letter dated March 30, 1995;
7. Pursuant to Section 37(2) of the *Fisheries Act* (Canada) the Minister of Fisheries and Oceans has required Nova Scotia to submit a plan for the future operation of the Boat Harbour Effluent Treatment Facility and Nova Scotia desires to submit a plan which will result in the immediate closure of part of the Facility and a definitive termination date for the remainder of the Reconfigured Facility;
8. Given existing and planned improvements to the Facility, that part of the Facility known as the Stabilization Basin is no longer required for the operation of the Facility after the upgrades are satisfactorily completed; it will at a designated date following the leasing of the Reconfigured Facility no longer form part of the effluent treatment system and it will remain in the possession and control of Nova Scotia who shall have responsibility for its Remediation;
9. Nova Scotia and Scott have agreed to restate and restructure their contractual relationship as it regards the Facility so that, after the Reconfigured Facility is no longer required for effluent treatment Nova Scotia will be in a position to close the entire Facility and the parties have further agreed that Nova Scotia shall have no operational responsibility for the Reconfigured Facility (except those incidental to its position as Landlord of the Reconfigured Facility) after December 31, 1995, and Scott shall have no obligation or liability for the Remediation of all or any part of the Facility which obligation and liability shall be assumed by Nova Scotia;
10. Nova Scotia has agreed to indemnify and hold the Indemnified Parties, as defined in Schedule 4 hereof, harmless for claims which may be made against them as a result the existence of or past operation of the Facility and all other claims which may be made against

the Indemnified Parties following Scott leasing the Reconfigured Facility, except for claims arising directly out of Scott's operation of the Reconfigured Facility after the date of transfer (as more particularly set out herein);

11. The parties have agreed to the renewal of the Water Supply portion of the 1970 Agreement on the terms set out herein.

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING WITNESSES:

ARTICLE 1 - DEFINITIONS

1.01 In this Memorandum of Understanding, including the Recitals, the following terms have the following meanings unless the context otherwise requires:

- a. "ASB" means the aerated stabilization basin forming part of the Facility as shown on the Plan attached hereto as Schedule "1";
- b. "1970 Agreement" means an Agreement dated the 30th day of September, 1970, between Nova Scotia and the Company pursuant to which Nova Scotia constructed and is presently operating the Facility;
- c. "Environmental Laws" means all applicable laws, statutes, ordinances, rules, by-laws, guidelines, treaties, and Regulations, and all applicable directives, rules, standards, requirements, policies, orders, judgments, injunctions, or decrees which have the force of law or which are capable of having the force of law, with respect to environmental or health matters including, without limitation, the following: the *Fisheries Act* (Canada), the *Canadian Environmental Protection Act*, the *Canadian Environmental Assessment Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Navigable Waters Protection Act* (Canada), the *Environmental Act* (Nova Scotia), the *Occupational Health and Safety Act* (Nova Scotia), the *Indian Act* (Canada), and any Regulations or guidelines made pursuant to the foregoing;

- d. "Facility" means the effluent treatment system which consists of a pipeline for the transmission of effluent from the Mill commencing at a standpipe located on Scott's property at Abercrombie Point, Pictou County, Nova Scotia, and leading under the East River and discharging into settling ponds at Boat Harbour, the Settling Ponds, ASB and the Stabilization Basin and all other appurtenances affixed or appended thereto, more particularly depicted on the Plan attached hereto as Schedule 1 and all related lands and facilities necessary to permit the receipt and lawful disposal of effluent from the Mill commencing at the said stand pipe;
- e. "Mill" means Scott's mill as that term is defined in subsection (c) of Section 2 of Chapter 15 of the Statutes of Nova Scotia, 1965.
- f. "Point C" means the effluent outfall of the Reconfigured Facility as shown on the Plan attached as Schedule 1;
- g. "Reconfigured Facility" means the Effluent Treatment System which consists of a pipeline for the transmission of effluent from the Mill commencing at a standpipe located on Scott's property at Abercrombie Point, Pictou County, Nova Scotia, and leading under the East River and discharging into Settling Ponds at Boat Harbour, the Settling Ponds, and ASB and discharging into Boat Harbour at Point C (which Point C shall become the "Effluent Outfall" of the Reconfigured Facility after the upgrades contemplated herein are satisfactorily completed and the Reconfigured Facility can be operated in compliance with Environmental Laws at Point C) and all other appurtenances affixed or appended thereto, more particularly depicted on the Plan attached hereto as Schedule 2 and all lands and facilities necessary to permit the receipt and lawful disposal of effluent from the Mill, commencing at the said standpipe;
- h. "Remediation" means all studies and work required or recommended to fully rectify and remedy any adverse environmental condition at the Facility or any part thereof;

- i. "This Memorandum" means this Memorandum of Understanding including the Recitals and the following Schedules:

Schedule 1 - Plan of Facility

Schedule 2 - Plan of Reconfigured Facility

Schedule 3 - Work Plan

Schedule 4 - Draft Water Supply Agreement

Schedule 5 - Indemnity Wording

- j. "Settling Ponds" means that area depicted as "Settling Ponds" consisting of the settling pond and the emergency spill pond on the Plan of Facility attached as Schedule 1;

- k. "Stabilization Basin" means that area depicted as "Stabilization Basin" on the Plan of Facility attached as Schedule 1;

- l. "Work Plan" means the list of work to be done at the Facility by Nova Scotia annexed hereto as Schedule 3.

1.02 Headings

The headings of the Sections and Articles to this Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of any provision of this Agreement.

1.03 Number and Gender

Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter and vice versa.

ARTICLE 2 - PURPOSE

2.01 Nova Scotia and Scott have negotiated in good faith and have agreed on the significant, major and substantive components of their contractual relationship which are to be translated into a series of documents including the following:

- (1) Water Supply Agreement;
- (2) Lease Agreement between Nova Scotia and Scott (the "Lease");
- (3) Indemnity Agreement;
- (4) Such other agreements, deeds or assurances as may be required to ensure the lawful operation of the Facility or Reconfigured Facility, as the case may be;

all of which documents are collectively referred to in this Memorandum of Understanding as the "Legal Documentation".

2.02 Nova Scotia and Scott acknowledge that the Legal Documentation will require finalization between the lawyers of the respective parties as to form and content but that the significant, major and substantive components have been agreed to between Scott and Nova Scotia.

2.03 This Memorandum of Understanding is entered into by the parties to confirm their respective positions, undertakings and agreements which have been reached as of the date hereof.

2.04 The parties agree that the Legal Documentation shall be so drafted to reflect and contain the significant, major and substantive components as have been agreed to by the parties.

2.05 The parties agree to instruct their respective counsel and to give such direction as is necessary to proceed as diligently and expeditiously as possible and in good faith to complete the Legal Documentation.

ARTICLE 3 - WATER SUPPLY AGREEMENT

3.01 The following constitutes the significant, major and substantive components of the agreement between the parties with respect to water supply:

(a) The water supply portions of the 1970 Agreement shall be renewed on a cost recovery basis for a term of 25 years;

(b) The rate for water shall be \$18.53 per million imperial gallons for the period from October 1, 1995 until April 1, 1996;

(c) Subject to the water fee credit program (set out herein), the fee for water supplied to the Mill for a five-year term commencing on April 1, 1996 shall consist of an annual base charge of \$157,124 payable in equal quarterly instalments and a commodity charge of \$64.84 per million imperial gallons;

(d) The annual base charge and commodity charge will be subject to renegotiation at the end of the four-year period commencing April 1, 1996 and every five years thereafter for the duration of the 25-year term and the charges shall reflect the reasonable cost of supplying the water taking into consideration the following components:

1. wages and salaries;
2. power;
3. general supplies;
4. fuel;
5. equipment repairs;
6. building maintenance;
7. rentals;
8. short term borrowings;
9. debt servicing costs.

all in relation to the operation of the Middle River Facility.

(e) All other provisions of the 1970 Agreement relating to the Supply of Fresh Water to the Mill shall apply including, without limitation, paragraphs 1(a), 1(d), 2(c), 3 and 7;

(f) For a ten year term, Scott shall be entitled to an annual environmental improvement credit of up to 25% of the commodity charge payable under the Water Supply Agreement to an annual maximum of \$100,000 provided the credited amounts are used for:

- (i) in-plant improvements wholly or partly designed to improve emissions, including effluent or air quality, decrease water consumption on a per ton basis or otherwise be directed at non-regulatory environmental enhancement to approach progressive systems closure;
- (ii) the planning, approval and construction of new secondary treatment to replace the Boat Harbour System; or
- (iii) emission-related research.

The following criteria shall apply to the credits available under paragraph (f)(i):

- a maximum of 10% of the credit may be used for project administration;
- a maximum of 25% of the credit may be applied to project design;
- actual project undertaking measures must be at least 65% of the credit;
- all projects are subject to the prior approval of the Nova Scotia Department of Environment, which approval shall not be unreasonably withheld. Unless otherwise notified by the Department of Environment, approval shall be deemed to be given sixty (60) days after the request is made.

(g) The Water Supply Agreement shall be substantially in the form annexed hereto as Schedule 4 subject to such reasonable amendments or additions as may be agreed upon between the parties acting in good faith.

ARTICLE 4 - EFFLUENT TREATMENT AGREEMENT

4.01 The following constitutes the significant, major and substantive components of the agreement between the parties with respect to effluent treatment.

(a) The parties agree to the renewal of the 1970 Agreement as it relates to effluent treatment, on current terms for the period from September 30, 1995 until December 31, 1995.

(b) Nova Scotia agrees to lease the Reconfigured Facility to Scott as it exists on December 31, 1995 (subject to upgrades contemplated herein) for a term of ten years commencing on January 1, 1996 for a rent of One Dollar (\$1.00).

(c) (i) Scott shall have no liability, responsibility or obligation whatsoever arising out of, or in any way related to the operation of the Facility up to December 31, 1995 and Nova Scotia expressly agrees to assume all liabilities, responsibilities and obligations whether known or unknown relating to or in any way arising out of the use of the Facility up to December 31, 1995, and for greater certainty, Nova Scotia agrees to provide an indemnity substantially in the form annexed hereto as Schedule 5 in favour of Scott and the Indemnified Parties (as defined therein).

(ii) Scott shall assume responsibility for the Operation of the Facility after December 31, 1995, and subject to the obligation to undertake the clean up program referred to in Article 4.01(f) Scott shall have no liability, responsibility or obligation whatsoever for Remediation of the Facility.

(d) Nova Scotia agrees to undertake a clean-up program with respect to the Facility prior to the commencement of the Lease with Scott, which clean-up program shall include the work listed on the Work Plan. If a pipeline and diffuser is required by any level of government during the term of the Lease it shall be installed at the sole expense of Nova Scotia.

(e) Nova Scotia agrees to pay the cost of installation of the necessary equipment to establish Point C as the lawful effluent outfall and the cost of upgrading the aeration capacity of the Facility up to a maximum cost of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00) so that the facility has reliable, installed aeration capacity of up to 1,600 hp. It is agreed that Scott or its agents will engineer, manage and complete the conversion of the effluent outfall and upgrading of the aeration capacity of the Facility. It is further agreed that Scott shall be entitled to payment from Nova Scotia of costs incurred by it in converting the outfall and upgrading the aeration capacity of the Facility upon presentation of invoices for work or material to Nova Scotia, within thirty (30) days of presentation of invoices. For the purposes of this subarticle, "upgrading the aeration capacity of the Facility" includes, without limitation, engineering studies, opinions on compliance, the purchase and installation of new aerators, the upgrading of electrical equipment, and the purchase of such other equipment or the performance of such other work as may be required, in Scott's discretion.

(f) Scott shall be required to undertake a clean-up program with respect to the Facility at the termination of the Lease, which clean-up program shall consist of the removal of sludge from the Settling Ponds and the ASB and restoration of the Reconfigured Facility to the state it was in at the commencement of the Lease, reasonable wear and tear excepted. For greater certainty, it is agreed that Scott shall have no obligation or responsibility to restore the Stabilization Basin, which restoration will be undertaken by Nova Scotia in its sole discretion;

(g) It is mutually agreed that Nova Scotia shall have no ongoing responsibility for the operation of the Reconfigured Facility following December 31, 1995 (except for those responsibilities that arise as landlord) but Nova Scotia shall remain responsible for Remediation of the Reconfigured Facility at the expiration of the term of the Lease and Nova Scotia shall remain in possession of and responsible for the Stabilization Basin and Nova Scotia agrees not

to render the Stabilization Basin a tidal estuary and waters frequented by fish until the Stabilization Basin has been remediated by it in accordance with applicable Environmental Laws;

(h) As soon as is practical, Nova Scotia agrees to reduce the water level in the Stabilization Basin to eliminate any alleged trespass of the waters therein beyond the ordinary high water mark of the former Boat Harbour. Such reduction shall be done in accordance with applicable Environmental Laws;

(i) Nova Scotia agrees that the Lease shall include all fixtures and equipment currently at the Facility and Nova Scotia agrees to grant to Scott an irrevocable option to purchase fixtures and equipment used at the Facility for its depreciated value at the end of the term of the Lease.

(j) Nova Scotia agrees to grant to Scott an option to purchase the pipeline commencing at a standpipe located on Scott's property at Abercrombie Point, Pictou County, Nova Scotia and leading under the East River to the point where the shores of Pictou Landing meet the East River or such other portion of the pipeline and appurtenant lands as may be agreed, for a purchase price of One Dollar (\$1.00), which option may be exercised at any time prior to December 31, 2006.

(k) Nova Scotia agrees to obtain all required permits, consents, approvals and letters of authorization for the continued operation of the Reconfigured Facility as of the date of transfer, and Nova Scotia will assign all such permits, consents, approvals and letters of authorization and obtain such consents to assignments as may be required. Nova Scotia agrees to impose operating limits on the Facility which reflect and do not exceed or apply more stringently than the standards set out in the Pulp and Paper Effluent Regulations (Canada) and further agrees to obtain all required federal government approvals, if any, to permit the continued operation of the Reconfigured Facility as contemplated in this Agreement

(l) Nova Scotia agrees to use its best efforts to assist Scott obtain all necessary permits, consents and approvals to permit the construction and operation of a replacement effluent treatment facility to replace the Facility at the expiration of the term of the Lease.

(m) In the event that easements are required for the operation of a replacement effluent treatment facility, Nova Scotia agrees:

- (i) to grant such easements as may be reasonably required over lands of Her Majesty, the Queen in right of the Province of Nova Scotia at fair market value as determined by an accredited appraiser;
- (ii) to use its best efforts to assist Scott to obtain any such easements required over private lands;

(n) Nova Scotia agrees that Scott shall be entitled to use the Landfill owned by Nova Scotia adjacent to the Reconfigured Facility during the term of the Lease for ordinary maintenance of the Facility and that the Landfill has sufficient capacity for such use by Scott;

(o) Nova Scotia agrees that the Lease shall not include the Landfill (notwithstanding Scott's right of use set out above) nor shall it include any former landfill or dump sites, which sites shall remain in the possession and control of Nova Scotia;

(p) This Memorandum of Understanding and the indemnities contemplated herein shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

(q) Neither party shall be held responsible for any losses resulting if the fulfillment of any terms hereunder shall be delayed or prevented by civil disorders, wars, acts of enemies, acts of God, or by any other cause which could not be reasonably foreseen and prevented and which are not within control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent or eliminate.

(r) The parties hereto shall do such further acts, execute and deliver such further documents and give such further assurances as may be necessary or desirable to give full effect to this Memorandum and the indemnities contemplated herein and to ensure the continued lawful operation of the Facility or Reconfigured Facility as the case may be. Furthermore,

should the federal Pulp and Paper Effluent Regulations change during the term of the Lease either through enactment of revisions or by judicial interpretation, Nova Scotia agrees to execute and deliver such further documents, including without limitation, deeds with repurchase options, as may be reasonably required for the lawful operation of the Reconfigured Facility during the term of the Lease or should Scott become lawfully permitted to operate the Reconfigured Facility without being a tenant thereof Nova Scotia agrees to accept a surrender of lease, at Scott's option.

IN WITNESS WHEREOF the parties hereto have set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

Sharon P. Burrows

[Signature]

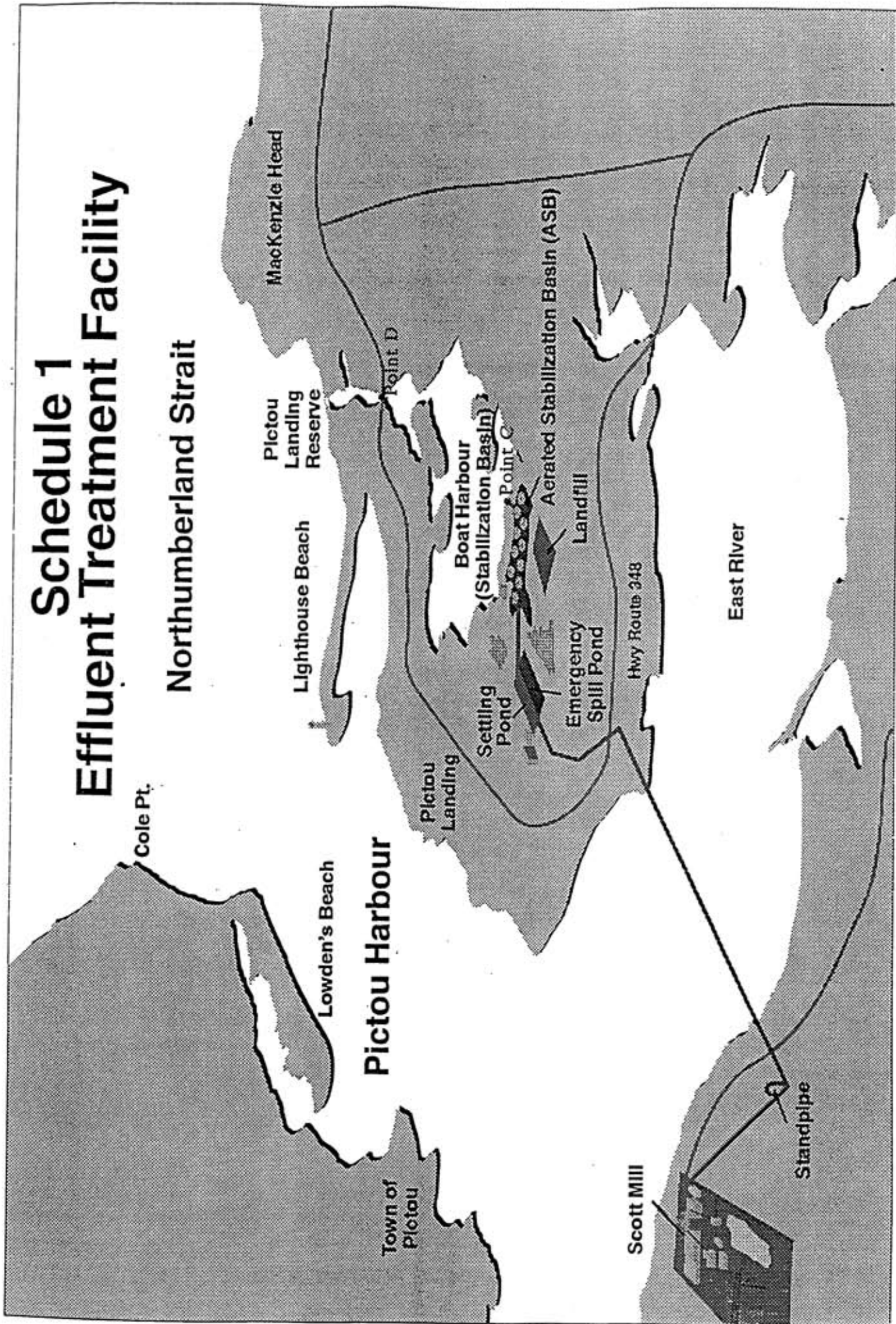
HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF NOVA SCOTIA,
AS REPRESENTED BY THE MINISTER
OF SUPPLY AND SERVICES

Gerald J. Malley (Seal)

SCOTT MARITIMES LIMITED

Per: L. A. Byrnes (Seal)

Schedule 1 Effluent Treatment Facility



Schedule 2

The Leased Premises consist of the pipeline for the transmission of effluent commencing at a Standpipe located on Scott's property at Abercrombie Point, Pictou County, and leading under the East River and discharging into settling ponds at Boat Harbour together with the shaded area on the attached plan together with a right-of-way over the existing roadway to the Sludge Disposal Cell.

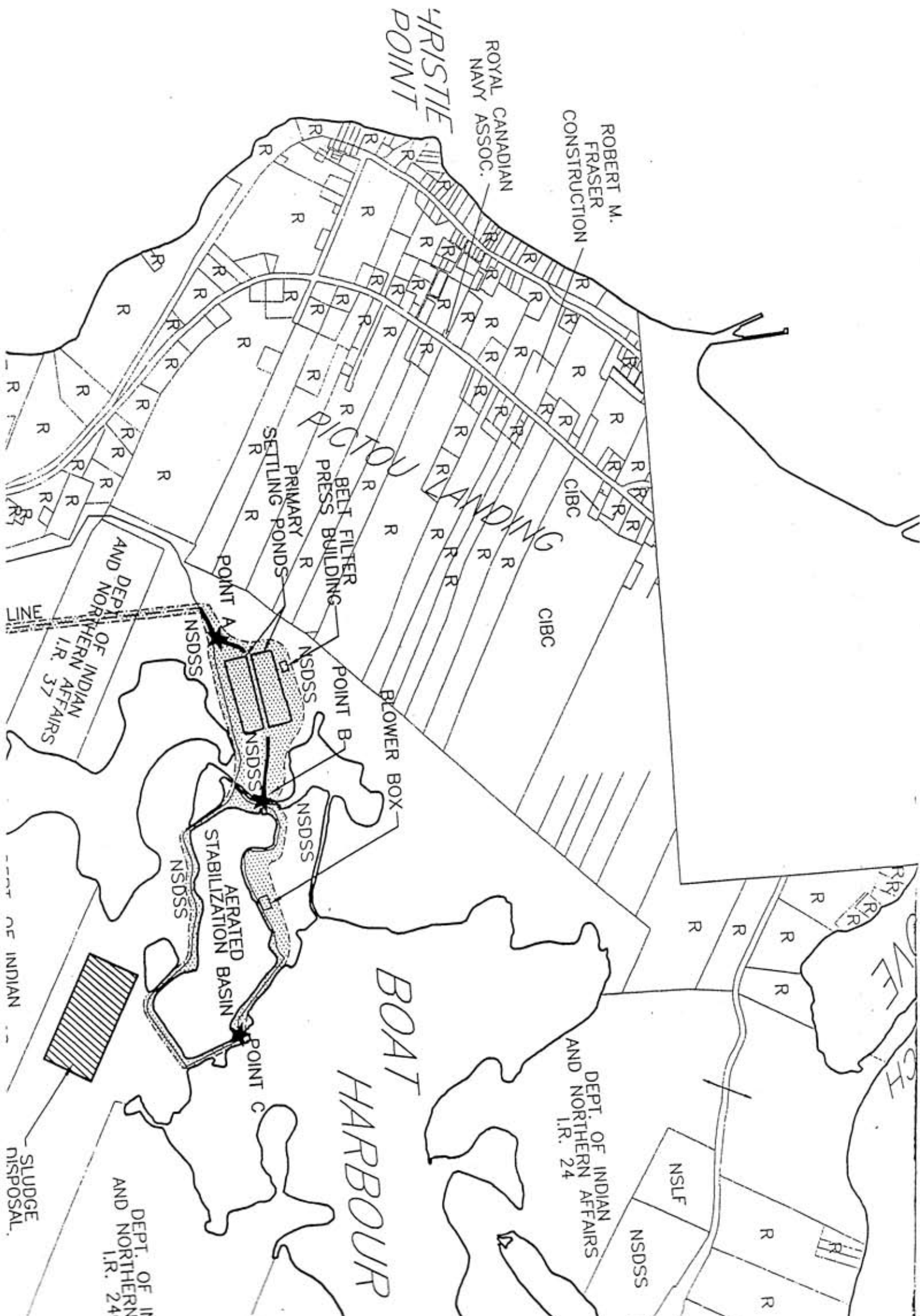
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SCHEDULE 3 - WORK PLAN

Below are the required improvements to the Boat Harbour Effluent Treatment Facility to be undertaken by Nova Scotia:

- Removal of sludge from the Settling Ponds by December 31, 1995;
- Installation of proper inlet and outlet devices for Settling Ponds by December 31, 1995;
- Removal of sludge from ASB by September 1, 1996; *
- Completion of Cycle I of the environmental effects monitoring program required under the Pulp and Paper Effluent Regulations (Canada) in accordance with the Regulations. Scott will be responsible for the continuing environmental effects monitoring program.

* As the removal of sludge from the ASB will occur while the Reconfigured Facility is subject to the Lease to Scott it is agreed:

1. Nova Scotia will take all measures necessary to complete the removal of sludge in a manner which does not interfere with the lawful operation of the Reconfigured Facility by Scott and shall fully consult with Scott before undertaking any such work;
2. Nova Scotia will indemnify and hold harmless the Indemnified Parties against all claims, demands, charges, penalties or fines which may be made against the Indemnified Parties arising directly or indirectly out of the removal of sludge from the ASB by Nova Scotia.

Schedule 4

THIS WATER SUPPLY AGREEMENT made in duplicate this 30th day of June, 1995,

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Environment as approved by Order in Council 95- dated the ____ day of _____, 1995.

(hereinafter referred to as "Nova Scotia")

- and -

SCOTT MARITIMES LIMITED, a body corporate

(hereinafter referred to as "Scott")

WITNESSES:

WHEREAS Scott operates a Mill at Abercrombie, in the County of Pictou, Province of Nova Scotia, for the purpose of manufacturing bleach kraft pulp.

AND WHEREAS by an Agreement dated the 30th day of September, 1970, (the "1970 Agreement") the parties contracted, inter alia, for the supply of water to the Mill;

AND WHEREAS pursuant to the 1970 Agreement the Province covenanted and agreed to supply water to the Mill as follows:

"On March 31, 1967, and on each day thereafter a minimum of 25 million Imperial Gallons per day."

AND WHEREAS the 1970 Agreement may be renewed at the instance of either party upon giving notice;

AND WHEREAS on the 24th day of February, 1995, Scott gave notice to the Province of its intent to renew the Agreement;

AND WHEREAS the parties hereto have agreed to the following terms to replace the 1970 Agreement:

NOW THEREFORE IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable consideration the parties agree as follows:

ARTICLE I - DEFINITIONS

1.01 Definitions

In this Agreement, including the Recitals, the following terms have the following meanings unless the context otherwise requires:

- (a) "Agreement" means this Agreement including the recitals and the following Schedules:
 - (i)
- (b) "Fresh Water" means water suitable for the manufacture of bleach kraft pulp;
- (c) "Water Supply System" means a reservoir for the storage of water at the mouth of the Middle River and including a dam, dam gates, fish ladders, a pump house and a water pumping system, and a pipeline for the transmission of water, and such additional or alternative facilities, including West River Reservoir, as are necessary to enable the Province to supply fresh water to the Mill as herein provided.

ARTICLE II - COVENANTS OF THE PROVINCE

2.01 The Province covenants and agrees that:

- (a) It will at its cost, own, operate and maintain the Water Supply System and continue to supply up to 25 million Imperial Gallons of Fresh Water per day to the Mill, provided however that the Province shall not be responsible for the removal of sodium chloride, colour or turbidity to the extent that such or due to conditions existing in or about the Middle River as of the date hereof;
- (b) It will be liable for any interruption or cessation of services to be provided by it hereunder caused by any negligent act or omission of the Province, its servants, agents, contractors or employees, but the Province will not be liable for any interruption or for the cessation of the services due to a cause beyond the control of the Province which the Province shall have exercised due diligence to prevent, eliminate or terminate to the extent that it could reasonably do so;

ARTICLE III - COVENANTS OF THE COMPANY

3.01 The Company covenants and agrees that:

- (a) Until April 1, 1996, it will pay to the Province for Fresh Water Eighteen Dollars and Fifty-Three Cents (\$18.53) per million Imperial Gallon or One Hundred Thousand Dollars (\$100,000) per year, whichever is greater;
- (b) For the term commencing April 1, 1996, and running for four (4) years, it will pay to the Province for Fresh Water a commodity charge of \$65.84 per million Imperial Gallons plus an annual base rate of \$157,124 and
- (c) It will measure the quantities of Fresh Water consumed and will pay the Province at the aforesaid rate for the quantities of Fresh Water consumed. The Province reserves the right to verify such measurements using its own equipment.

3.02 Payments under clauses (a) and (b) of Section 3.01 shall be made quarterly not in advance from the effective date of this Agreement and any necessary adjusting payment will be made once yearly commencing one (1) year after the effective date of this Agreement.

3.03 For the purposes of this Article, years shall be deemed to commence on the 1st day of April of every year.

ARTICLE IV - WATER FEE CREDIT PROGRAM

4.01 For a ten year term, Scott shall be entitled to an annual environmental improvement credit of up to 25% of the commodity charge payable hereunder to an annual maximum of \$100,000 provided the credited amounts are used for:

- (a) in-plant improvements wholly or partly designed to improve emissions including effluent or air quality, decrease water consumption on a per ton basis or otherwise be directed at non-regulatory environmental enhancement to approach progressive systems closure;
- (b) the planning, approval and construction of new secondary treatment to replace the Boat Harbour System; or
- (c) emission-related research.

The following criteria shall apply to the credits availed under paragraph 4.0(a):

- a maximum of 10% of the credit may be used for project administration;
- a maximum of 25% of the credit may be applied to project design;
- actual project undertaking measures must be at least 65% of the credit;

- the annual maximum of \$100,000 per year shall be non-cumulative.

ARTICLE V - TERM OF AGREEMENT

5.01 This Agreement shall be in force for a term commencing on the date hereof and expiring on the 31st day of March, 2021, except that the amount paid for Fresh Water shall be subject to adjustment and the parties shall negotiate the price to be paid on a cost recovery basis for Fresh Water for every five (5) year term and if they are unable to reach agreement, the dispute or difference shall be referred to a Board of Arbitration constituted and appointed in accordance with Agreement.

5.02 If the parties are unable to agree on the price to be paid for Fresh Water hereunder, either party may notify the other in writing of its desire to refer such dispute or difference to a Board of Arbitration and it shall in such notice name its representative to the Board within ten (10) days of the receipt of such notice, the other party shall notify the first party in writing of the name of its representative to the Board. The two representatives shall appoint a third arbitrator and he shall be appointed chairman of the Board. The Arbitrator shall proceed expeditiously to adjudicate the dispute. The *Arbitration Act* shall apply to this arbitration clause and in particular to the appointment of a second member and third member of the Board of Arbitration if the party required to appoint a representative of the Board fails to do so as herein provided; and if the two representatives of the parties named to the Board fail to meet and appoint a third member to be chairman as herein provided.

ARTICLE VI - MISCELLANEOUS

6.01 Notices

All notices given pursuant to this Agreement shall be in writing and given by mail, fax or personal delivery to the parties as follows:

Name of Party	Scott Maritimes Limited
Address	P.O. Box 549D New Glasgow, NS B2H 5E8
Fax No.	902-752-5404
Attention:	Mr. Gerry Byrne, President

with a copy to:

	McInnes Cooper & Robertson 1601 Lower Water Street P.O. Box 730 Halifax, NS B3J 2V1
Fax No.:	902-425-6350
Attention:	Bernard F. Miller

Name of Party: Minister of Environment
Address: 5th Floor, 5151 Terminal Road
P.O. Box 2107
Halifax, NS B3J 3B7
Fax No.: 902-424-0644
Attention: Deputy Minister, Wayne J. Grady

or to such other address, fax number or officer of a party as that party may notify the other party from time to time.

6.02 Effective Time of Notice

Notices shall be deemed given upon the earlier of the following:

- (1) If mailed, on the fifth Business Day following deposit in the mails;
- (2) If given by fax, on transmission;
- (3) On receipt.

6.03 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Nova Scotia and the laws of Canada applicable therein.

6.04 Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.05 Amendments

This Agreement represents the entire agreement between the parties and may be amended only in writing signed by all parties affected thereby.

SCHEDULE 5

Indemnity by Nova Scotia in Favour of Indemnified Parties

Notwithstanding any other provision in any Agreement between the parties, Nova Scotia shall indemnify and hold Scott Maritimes Limited and Scott Paper Company and their respective officers, directors, shareholders, employees, agents, consultants, advisors and their respective heirs, successors (including successors in title), assigns and legal representatives, shareholders, and their respective officers, directors, shareholders, employees, agents, consultants and advisors (hereinafter referred to as the "Indemnified Parties") harmless from and against any and all:

- (a) liabilities, losses, claims, demands, actions, causes of action, damages, (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions) including amounts paid to settle actions, whether before or after litigation or other proceedings or activities of any nature, or to satisfy judgments, orders or directives including, without limitation, any judgment, order or directive imposing joint and several liability on the Indemnified Parties and any costs (including the cost of diverting or altering components of the Facility in response to Claims), liability or damages:
 - (i) arising out of the designation of the Facility or Reconfigured Facility as a contaminated site within the meaning of any Environmental Laws;
 - (ii) arising out of or in any way related to the existence or operation of the Facility by Nova Scotia up to the effective date of this Agreement;
 - (iii) arising out of any claim based in nuisance, including any claim for a permanent or temporary injunction; or
 - (iv) any claim arising out of the construction or location of the Facility or Reconfigured Facility, including claims based in trespass whether such claims relate to activities occurring before or after the effective date of this Agreement (hereinafter collectively referred to as "Claims").
- (b) legal fees on a solicitor and client basis, consultants fees and all other out-of-pocket expenses arising because of Claims (hereinafter referred to as "Expenses")

incurred or suffered by the Indemnified Parties, whether such Claims and/or Expenses arise under statute or not, which may at any time or from time to time be paid, incurred, claimed or asserted against any of the Indemnified Parties for, with respect to, or as a direct or indirect result of the construction, location or existence of the Facility or Reconfigured Facility or the past operation of the Facility by Nova Scotia including, **without limitation:**

- A. Claims made and/or Expenses arising due to the presence on or under, or the discharge, escape, seepage, leakage, spillage, emission, exhaust, or release

from the Facility into the environment or into or upon land, the atmosphere, or any water course, body of water or wetlands, of any substance, pollutant, waste, contaminant, harmful or hazardous material, fumes, steam, or odour due to or in any way related to the Facility and, without limiting the generality of the foregoing, Nova Scotia undertakes that this Indemnity shall apply to the costs of defending and/or counter-claiming or claiming over and against third parties in such manner as the Indemnified Parties in their sole discretion may determine in respect of any action, proceeding or matter raised in connection with the Facility.

- B. The breach of any Environmental Laws by Nova Scotia;
- C. The trespass of the Facility or any part thereof on adjacent lands or any tort or other common law claim relating to or arising out of the past, present or future use of the Facility, or arising out of the design, construction, location or configuration of the Facility, including any claim for injunction raised in any such claim;
- D. Subrogation claims made by Her Majesty the Queen in Right of Canada (Canada) pursuant to a Settlement Agreement dated July 20, 1993, between Canada and The Pictou Landing Indian Band.

The Indemnified Parties shall be held harmless as contemplated herein notwithstanding the provisions of any Ministerial Order or other directive issued or made pursuant to present or future Environmental Laws.

Without restricting the generality of the foregoing, this undertaking and indemnity shall extend to all Claims made by any person or government made on their own behalf, on the public's behalf (for example in public nuisance) or on behalf of any other party (including, without limitation, claims arising by statute or by subrogation). The undertaking and indemnification set out herein shall remain in full force and effect perpetually following the transfer of responsibility for operation of the Facility from Nova Scotia to Scott Maritimes Limited.

The foregoing indemnity is intended to provide the broadest possible indemnity to the Indemnified Parties and it is hereby mutually agreed that it is not to be interpreted *contra proferentum* or restrictively but is to be given a broad and liberal interpretation in favour of the Indemnified Parties.

DATED: November , 1995

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Supply and Services (hereinafter referred to as "Nova Scotia")

- and -

SCOTT MARITIMES LIMITED, a body corporate under the laws of Nova Scotia (hereinafter referred to as "Scott")

MEMORANDUM OF UNDERSTANDING

Bernard F. Miller
McInnes Cooper & Robertson
Summit Place
1601 Lower Water Street
P.O. Box 730
Halifax, Nova Scotia
B3J 2V1

BFM (515698.13)

M-2704/9798

ACKNOWLEDGEMENT AGREEMENT dated May 12, 2008

To: Northern Pulp NS LP, its affiliates and Northern Pulp Nova Scotia Corporation

In connection with the proposed sale of the Pictou Pulp Mill and related assets (the "Asset Sale") by Neenah Paper Company of Canada (collectively with its affiliates, "NPCC") to its wholly-owned subsidiary, Northern Pulp Nova Scotia Corporation ("NPNS"), and the subsequent sale of the shares of NPNS (the "Share Sale", and together with the Asset Sale, the "Acquisition") to Northern Pulp NS LP (collectively with its affiliates and NPNS, the "Purchaser"), Her Majesty The Queen in the Right of the Province of Nova Scotia (the "Province") hereby acknowledges, agrees and confirms that:

- (a) each of the successors and assigns of Scott Maritimes Limited ("Scott"), including Kimberly-Clark Inc. and NPCC, has had, and upon the closing of the Acquisition Purchaser will continue to have, the full benefit of and all of the rights of Scott under each of the agreements and understandings entered into between the Province and Scott in connection with the transfer of operations of the Effluent Treatment System associated with the Pictou Pulp Mill from the Province to Scott in December, 1995; and
- (b) each of such agreements and understandings (including any amendments or extensions prior to the date hereof) is in good standing and, from and after the closing of the Acquisition, shall continue in full force and effect for the benefit of Purchaser notwithstanding that various circumstances anticipated by the Province and Scott at the time of execution have changed (particularly with respect to closure of the Effluent Treatment System, which has not transpired).

Without limiting the generality of the foregoing, the Province acknowledges, agrees and confirms that, from and after the closing of the Acquisition, the Memorandum of Understanding between the Province and Scott dated December 1, 1995 and the Indemnity Agreement between the Province and Scott dated December 31, 1995 shall continue to apply with respect to the ongoing operation of the Effluent Treatment System, Purchaser's use of the Lands subject to the Lease between the Province and Scott dated December 31, 1995 (extended under Lease Extension Agreement dated October 22, 2002) and Purchaser's use of Boat Harbour (pursuant to the Licence Agreement between Province and Scott dated December 31, 1995 and the letter of extension dated November 30, 2006 from the Deputy Minister of Transportation and Public Works).

The Province further acknowledges, agrees and confirms that, from and after the closing of the Acquisition, the terms identified on Schedule A hereto shall operate for the full benefit of Purchaser and its successors and assigns.



Her Majesty The Queen in the Right of the
Province of Nova Scotia, as represented by
the Deputy-Minister of Transportation and
Infrastructure

Schedule 'A


ACKNOWLEDGED TERMS

Memorandum of Understanding, December 1, 1995

Section 10

Nova Scotia has agreed to indemnify and hold the Indemnified parties, as defined in Schedule 4 thereof, harmless for claims which may be made against them as a result the existence of or past operation of the Facility and all other claims which may be made against the Indemnified Parties following Scott leasing the Reconfigured Facility, except for claims arising directly out of Scott's operation of the Reconfigured Facility after the date of transfer (as more particularly set out herein).

Article 4.01



(c)(i) Scott shall have no liability, responsibility or obligation whatsoever arising out of, or in any way related to the operation of the Facility up to December 31, 1995 and Nova Scotia expressly agrees to assume all liabilities, responsibilities and obligations whether known or unknown relating to or in any way arising out of the use of the Facility up to December 31, 1995, and for greater certainty, Nova Scotia agrees to provide an indemnity substantially in the form annexed hereto as Schedule 5 in favour of Scott and the Indemnified Parties (as defined therein).

(c)(ii) Scott shall assume responsibility for the Operation of the Facility after December 31, 1995, and subject to the obligation to undertake the clean up program referred to in Article 4.01(f) Scott shall have no liability, responsibility or obligation whatsoever for Remediation of the Facility.

(e) Nova Scotia agrees to pay the cost of installation of the necessary equipment to establish Point C as the lawful effluent outfall and the cost of upgrading the aeration capacity of the Facility up to a maximum cost of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00) so that the facility has reliable, installed aeration capacity of up to 1,600 hp. It is agreed that Scott or its agents will engineer, manage and complete the conversion of the effluent outfall and upgrading of the aeration capacity of the Facility. It is further agreed that Scott shall be entitled to payment from Nova Scotia of costs incurred by it in converting the outfall and upgrading on capacity of the Facility upon presentation of invoices for work or material Nova Scotia, within (30) days of presentation of invoices. For the purposes of this subarticle, "upgrading the aeration capacity of the Facility" includes, without limitation, engineering studies, opinions on compliance, the purchase and installation of new aerators, the upgrading of electrical equipment, and the purchase of such other equipment or the performance of such other work as may be required, in Scott's discretion.

(f) Scott shall be required to undertake a clean-up program with respect to the Facility at the termination of the Lease, which clean-up program shall consist of the removal of sludge from the Settling Ponds and the ASB and restoration of the Reconfigured Facility to the state it was in at the commencement of the Lease, reasonable wear and tear excepted. For greater certainty, it is agreed that Scott shall have no obligation or responsibility to restore the Stabilization Basin, which restoration will be undertaken by Nova Scotia in its sole discretion.

(g) It is mutually agreed that Nova Scotia shall have no ongoing responsibility for the operation of the Reconfigured Facility following December 31, 1995 (except for those responsibilities that arise as landlord) but Nova Scotia shall remain responsible for Remediation of the Reconfigured Facility at the expiration of the term of the Lease and Nova Scotia shall remain in possession of and responsible for the Stabilization Basin and Nova Scotia agrees not to render the Stabilization Basin a tidal estuary and waters frequented by fish until the Stabilization Basin has been remediated by it in accordance with applicable Environmental Laws.

(h) As soon as it is practical, Nova Scotia agrees to reduce the water level in the Stabilization Basin to eliminate any alleged trespass of the waters therein beyond the ordinary high water mark of the former Boat Harbour. Such reduction shall be done in accordance with applicable Environmental Laws.

(k) Nova Scotia agrees to obtain all required permits, consents, approvals and letters of authorization for the continued operation of the Reconfigured Facility as of the date of transfer, and Nova Scotia will assign all such permits, consents, approvals and letters of authorization and obtain such consents to assignments as may be required. Nova Scotia agrees to impose operating limits on the Facility which reflect and do not exceed or apply more stringently than the standards set out in the Pulp and Paper Effluent Regulations (Canada) and further agrees to obtain all required federal government approvals, if any, to permit the continued operation of the Reconfigured Facility as contemplated in this Agreement.

(n) Nova Scotia agrees that Scott shall be entitled to use the Landfill owned by Nova Scotia adjacent to the Reconfigured Facility during the term of the Lease for ordinary maintenance of the Facility and that the Landfill has sufficient capacity for such use by Scott.

(o) Nova Scotia agrees that the Lease shall not include the Landfill (notwithstanding Scott's right of use set out above) nor shall it include any former landfill or dump sites, which sites shall remain in the possession and control of Nova Scotia.

(p) This Memorandum of Understanding and the indemnities contemplated herein shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Indemnity Agreement, December 31, 1995

Indemnity by Nova Scotia in Favour of Indemnified Parties

1.01 Notwithstanding any other provision in any Agreement between parties, Nova Scotia shall indemnify and hold Scott Maritimes Limited and Scott Paper Company and their respective officers, directors, shareholders, employees, agents, consultants, advisors and their respective heirs, successors (including successors in title), assigns and legal representatives, shareholders, and their respective officers, directors, shareholders, employees, agents, consultants and advisors (hereinafter referred to as the "Indemnified Parties") harmless from and against any and all:

(a) liabilities, losses, claims, demands, actions, causes of action, damages, (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions) including amounts paid to settle actions, whether before or after litigation or other proceedings or activities of any nature, or to satisfy judgments, orders or directives including, without limitation, any judgment, order or directive imposing joint and several liability on the

Indemnified Parties and any costs (including the cost of diverting or altering components of the Facility in response to Claims), liability or damages:

- (i) arising out of the designation of the Facility or Reconfigured Facility as a contaminated site within the meaning of any Environmental Laws;
- (ii) arising out of or in any way related to the existence or operation of the Facility by Nova Scotia up to the effective date of this Agreement;
- (iii) arising out of any claim based in nuisance, including any claim for a permanent or temporary injunction; or
- (iv) any claim arising out of the construction or location of the Facility or Reconfigured Facility, including claims based in trespass whether such claims relate to activities occurring before or after the effective date of this Agreement (hereinafter collectively referred to as "Claims").

(b) legal fees on a solicitor and client basis, consultants fees and all other out-of-pocket expenses arising because of Claims (hereinafter referred to as "Expenses")

incurred or suffered by the Indemnified Parties, whether such Claims and/or Expenses arise under statute or not, which may at any time or from time to time be paid, incurred, claimed or asserted against any of the Indemnified Parties for, with respect to, or as a direct or indirect result of the construction, location or existence of the Facility or Reconfigured Facility or the past operation of the Facility by Nova Scotia including, without limitation:

- (A) Claims made and/or Expenses arising due to the presence on or under, or the discharge, escape, seepage, leakage, spillage, emission, exhaust, or release from the Facility into the environment or into or upon land, the atmosphere, or any water course, body of water or wetlands, of any substance, pollutant, waste, contaminant, harmful or hazardous material, fumes, steam, or odour due to or in any way related to the Facility and, without limiting the generality of the foregoing, Nova Scotia undertakes that this Indemnity shall apply to the costs of defending and/or counter-claiming or claiming over and against third parties in such manner as the Indemnified Parties in their sole discretion may determine in respect of any action, proceeding or matter raised in connection with the Facility;
- (B) The breach of any Environmental Laws by Nova Scotia;
- (C) The trespass of the Facility or any part thereof on adjacent lands or any tort or other common law claim relating to or arising out of the past, present or future use of the Facility, or arising out of the design, construction, location or configuration of the Facility, including any claim for injunction raised in any such claim; and

- (D) Subrogation claims made by Her Majesty the Queen in Right of Canada (Canada) pursuant to a Settlement Agreement dated July 20, 1993, between Canada and The Pictou Landing Indian Band.

1.02 The Indemnified Parties shall be held harmless as contemplated herein notwithstanding the provisions of any Ministerial Order or other directive issued or made pursuant to present or future Environmental Laws.

1.03 Without restricting the generality of the foregoing, this undertaking and indemnity shall extend to all Claims made by any person or government made on their own behalf, on the public's behalf (for example in public nuisance) or on behalf of any other party (including, without limitation, claims arising by statute or by subrogation). The undertaking and indemnification set out herein shall remain in full force and effect perpetually following the transfer of responsibility for operation of the Facility from Nova Scotia to Scott Maritimes Limited.

1.04 The foregoing indemnity is intended to provide the broadest possible indemnity to the Indemnified Parties and it is hereby mutually agreed that it is not to be interpreted *contra proferentum* or restrictively but is to be given a broad and liberal interpretation in favour of the Indemnified Parties and is to be construed in a manner consistent with the Memorandum of Understanding.

1.05 Nova Scotia shall not be held responsible hereunder if the fulfilment of any terms hereunder shall be delayed or prevented by civil disorders, wars, acts of enemies, acts of God, or by any other cause not within control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent or eliminate.

THIS INDEMNITY AGREEMENT made the 31st day of December, 1995,

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Supply and Services

(hereinafter referred to as "Nova Scotia")

- and -

SCOTT MARITIMES LIMITED, a body corporate, under the laws of the Province of Nova Scotia

WHEREAS pursuant to an agreement (the "Memorandum of Understanding") Nova Scotia has agreed to indemnify the Indemnified Parties, as defined herein, against certain Claims and/or Expenses, as defined herein.

IN CONSIDERATION of the sum of One Dollar (\$1.00) and other good and valuable consideration, the parties hereby agree as follows:

Indemnity by Nova Scotia in Favour of Indemnified Parties

1.01 Notwithstanding any other provision in any Agreement between the parties, Nova Scotia shall indemnify and hold Scott Maritimes Limited and Scott Paper Company and their respective officers, directors, shareholders, employees, agents, consultants, advisors and their respective heirs, successors (including successors in title), assigns and legal representatives, shareholders, and their respective officers, directors, shareholders, employees, agents, consultants and advisors (hereinafter referred to as the "Indemnified Parties") harmless from and against any and all:

- (a) liabilities, losses, claims, demands, actions, causes of action, damages, (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions) including amounts paid to settle actions, whether before or after litigation or other proceedings or activities of any nature, or to satisfy judgments, orders or directives including, without limitation, any judgment, order or directive imposing joint and several liability on the Indemnified Parties and any costs (including the cost of diverting or altering components of the Facility in response to Claims), liability or damages:
 - (i) arising out of the designation of the Facility or Reconfigured Facility as a contaminated site within the meaning of any Environmental Laws;
 - (ii) arising out of or in any way related to the existence or operation of the Facility by Nova Scotia up to the effective date of this Agreement;

- (iii) arising out of any claim based in nuisance, including any claim for a permanent or temporary injunction; or
 - (iv) any claim arising out of the construction or location of the Facility or Reconfigured Facility, including claims based in trespass whether such claims relate to activities occurring before or after the effective date of this Agreement (hereinafter collectively referred to as "Claims").
- (b) legal fees on a solicitor and client basis, consultants fees and all other out-of-pocket expenses arising because of Claims (hereinafter referred to as "Expenses")

incurred or suffered by the Indemnified Parties, whether such Claims and/or Expenses arise under statute or not, which may at any time or from time to time be paid, incurred, claimed or asserted against any of the Indemnified Parties for, with respect to, or as a direct or indirect result of the construction, location or existence of the Facility or Reconfigured Facility or the past operation of the Facility by Nova Scotia including, **without limitation:**

- A. Claims made and/or Expenses arising due to the presence on or under, or the discharge, escape, seepage, leakage, spillage, emission, exhaust, or release from the Facility into the environment or into or upon land, the atmosphere, or any water course, body of water or wetlands, of any substance, pollutant, waste, contaminant, harmful or hazardous material, fumes, steam, or odour due to or in any way related to the Facility and, without limiting the generality of the foregoing, Nova Scotia undertakes that this Indemnity shall apply to the costs of defending and/or counter-claiming or claiming over and against third parties in such manner as the Indemnified Parties in their sole discretion may determine in respect of any action, proceeding or matter raised in connection with the Facility.
- B. The breach of any Environmental Laws by Nova Scotia;
- C. The trespass of the Facility or any part thereof on adjacent lands or any tort or other common law claim relating to or arising out of the past, present or future use of the Facility, or arising out of the design, construction, location or configuration of the Facility, including any claim for injunction raised in any such claim;
- D. Subrogation claims made by Her Majesty the Queen in Right of Canada (Canada) pursuant to a Settlement Agreement dated July 20, 1993, between Canada and The Pictou Landing Indian Band.

1.02 The Indemnified Parties shall be held harmless as contemplated herein notwithstanding the provisions of any Ministerial Order or other directive issued or made pursuant to present or future Environmental Laws.

1.03 Without restricting the generality of the foregoing, this undertaking and indemnity shall extend to all Claims made by any person or government made on their own behalf, on the public's behalf (for example in public nuisance) or on behalf of any other party (including, without limitation, claims arising by statute or by subrogation). The undertaking and indemnification set out herein shall remain in full force and effect perpetually following the transfer of responsibility for operation of the Facility from Nova Scotia to Scott Maritimes Limited.

1.04 The foregoing indemnity is intended to provide the broadest possible indemnity to the Indemnified Parties and it is hereby mutually agreed that it is not to be interpreted *contra proferentum* or restrictively but is to be given a broad and liberal interpretation in favour of the Indemnified Parties and is to be construed in a manner consistent with the Memorandum of Understanding.

1.05 Nova Scotia shall not be held responsible hereunder if the fulfilment of any terms hereunder shall be delayed or prevented by civil disorders, wars, acts of enemies, acts of God, or by any other cause not within control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent or eliminate.

WITNESS WHEREOF Her Majesty the Queen in Right of the Province of Nova Scotia executed this Agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
in the presence of:)

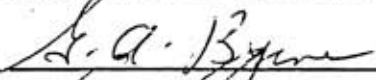


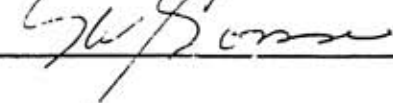
Don Bean

HER MAJESTY THE QUEEN in right of
the Province of Nova Scotia, as
represented by the Minister of
Supply and Services

Per: 

SCOTT MARITIMES LIMITED

Per: 

Per: 

DATED: December 31, 1995

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
NOVA SCOTIA**, as represented by the Minister of Supply and Services

- and -

SCOTT MARITIMES LIMITED, a body corporate, under the laws of
the Province of Nova Scotia

INDEMNITY AGREEMENT

McInnes Cooper & Robertson
Summit Place
1601 Lower Water Street
P.O. Box 730
Halifax, NS B3J 2V1

BFM/dlb (570461.03)

BM-468/9798

THIS LEASE made the 31st day of December, 1995,

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Supply and Services

(hereinafter referred to as "Landlord")

- and -

SCOTT MARITIMES LIMITED, a body corporate under the laws of Nova Scotia (hereinafter referred to as "Scott")

(hereinafter referred to as (the "Tenant"),

WHEREAS pursuant to an agreement (the "Memorandum of Understanding") the Landlord has agreed to lease to the Tenant certain lands more particularly described in Schedule 2 hereto (the "Lands"), together with fixtures presently standing thereon, for a term of ten (10) years.

IN CONSIDERATION of the rents hereby reserved and the covenants contained on the part of the Tenant, the Landlord grants this lease to the Tenant and the parties hereby agree as follows:

1. **Definitions and Interpretation**

(a) **Definitions.** The following expressions, where used in this lease mean:

- (i) "Memorandum of Understanding" means the agreement dated the 1st day of December, 1995, between the Landlord and the Tenant;
- (ii) "Lands" means the Lands in the County of Pictou in the Province of Nova Scotia more particularly depicted as outlined in red on the Plan annexed hereto as Schedule 2;
- (iii) "Reconfigured Facility" or "Facility" means the Effluent Treatment System which consists of a pipeline for the transmission of effluent from the Mill commencing at a standpipe located on Scott's property at Abercrombie Point, Pictou County, Nova Scotia, and leading under the East River and discharging into Settling Ponds at Boat Harbour, the Settling Ponds, and ASB and discharging into Boat Harbour at Point C (which Point C shall

become the "Effluent Outfall" of the Reconfigured Facility after the upgrades contemplated herein are satisfactorily completed and the Reconfigured Facility can be operated in compliance with Environmental Laws at Point C) and all other appurtenances affixed or appended thereto, more particularly depicted on the Plan attached hereto as Schedule 2 and all lands and facilities necessary to permit the receipt and lawful disposal of effluent from the Mill, commencing at the said standpipe;

- (iv) "Indemnified Parties" has the meaning ascribed to it in the Indemnity Agreement bearing even date herewith;
 - (v) "Environmental Laws" means all applicable laws, statutes, ordinances, rules, by-laws, guidelines, treaties, and Regulations, and all applicable directives, rules, standards, requirements, policies, orders, judgments, injunctions, or decrees which have the force of law or which are capable of having the force of law, with respect to environmental or health matters including, without limitation, the following: the *Fisheries Act* (Canada), the *Canadian Environmental Protection Act*, the *Canadian Environmental Assessment Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Navigable Waters Protection Act* (Canada), the *Environmental Act* (Nova Scotia), the *Occupational Health and Safety Act* (Nova Scotia), the *Indian Act* (Canada), and any Regulations or guidelines made pursuant to the foregoing;
 - (vi) "Term" means the term of this lease as set out in paragraph 3;
- (b) Interpretation. The captions and headings in this lease are for convenience of reference only, and do not affect the scope, intent, or interpretation of any provision. This lease is governed by the laws of the Province of Nova Scotia. This lease shall be construed in accordance with and subject to the Memorandum of Understanding and does not supersede the said Memorandum of Understanding and it is confirmed that the entry into this Lease does not result in a novation of the Memorandum of Understanding.

2. **Grant**

The Landlord leases to the Tenant the Lands together with the Existing Buildings and all fixtures and improvements forming part of the Facility thereon, for the Term.

3. **Term**

Term. To hold the Lands, the Facility, and all buildings, fixtures and improvements from time to time upon or appurtenant thereto for the term of ten (10) years commencing on the 31st day of December, 1995.

4. **Rent**

The Tenant shall pay to the Landlord at the commencement term of the rent of One Dollar (\$1.00) as full rental for the term, the receipt and sufficiency of which is hereby acknowledged by the Landlord.

5. **General Covenants of Landlord and Tenant**

(a) General covenant of the Tenant. The Tenant covenants with the Landlord:

- (i) to pay rent; and
- (ii) to observe and perform all the covenants, and provisos of this lease on the part of the Tenant to be observed and performed.

(b) General covenant of the Landlord. The Landlord covenants with the Tenant:

- (i) for quiet enjoyment;
- (ii) to observe and perform all the covenants, and provisos of this lease on the part of the Landlord to be observed and performed; and
- (iii) to indemnify the Indemnified Parties as set out in the Indemnity Agreement bearing even date herewith.

6. **Ownership of Facility and Fixtures**

(a) Tenant's ownership of Facility and Fixtures installed during Term. The Landlord and the Tenant agree that any buildings and all fixed improvements which the Tenant may construct upon the Lands from time to time are and are intended to remain the absolute property of the Tenant upon the expiration of this lease, and are deemed as between the Landlord and the Tenant during this lease, to be the separate property of the Tenant and not the Landlord but subject to and governed by all the provisions of this lease applicable thereto. The Landlord and the Tenant further agree that during the term of the Lease the Tenant shall be considered the Owner of the Facility for all purposes.

- (b) Removal of Tenant's Fixtures. The Tenant may at or immediately before the expiration of the term of this lease, remove its fixtures, chattels and other property and the Tenant may from time to time remove such fixtures in the ordinary course of its business or in the event of any reconstruction, changes and alterations to the Lands.

7. (a) **Real Estate Taxes**

Real estate taxes. The Landlord shall be responsible for all real estate taxes which may at any time during the Term be imposed, assessed or levied in respect of the Landlord's reversionary interest in the premises. The Tenant shall be responsible for all real estate taxes and occupancy taxes which may at any time during the Term be imposed, assessed or levied in respect of the Tenant's leasehold interest in the premises or its occupation of the premises.

- (b) Utility charges. The Tenant shall pay or cause to be paid when due all charges for electricity, light, heat, power, telephone and other utilities and services used in or supplied to the Lands throughout the Term of this lease.

8. **Maintenance of Facility**

The Tenant shall throughout the Term at its own expense keep in good and tenantlike repair, the Facility and all structures, improvements and fixtures at any time erected upon the Lands and subject to its right to make alterations and remove fixtures, the Tenant shall, at the end of the term, give up possession of the Facility in a state similar to its state of repair at the commencement of the lease, reasonable wear and tear excepted.

9. **Changes and Alterations in Facility**

The Tenant has the right from time to time during the Term to make changes, alterations, additions, extensions or rebuildings, structural or otherwise (collectively called "Improvements") in and to the Facility as the Tenant thinks necessary, provided, however, that the Tenant shall, if requested to do so by the Landlord, restore the premises to the condition they were in at the commencement of the Lease, reasonable wear and tear excepted.

10. **Construction Liens**

The Tenant shall not permit any lien under the *Mechanics' Lien Act* or any like statute to be filed or registered against the Lands, the Facility or any fixtures or Improvements on the Lands, by reason of work, labour, services or material supplied or claimed to have been supplied to the Tenant or anyone holding any interest in any part thereof

through or under the Tenant. If any lien is at any time filed or registered the Tenant shall procure registration of its discharge within twenty days after the lien has come to its notice or knowledge; provided that if the Tenant desires to contest in good faith the amount or validity of any lien and has not notified the Landlord, and if the Tenant has deposited with the Landlord or with the trustee, or paid into court to the credit of any lien action, the amount of lien claimed plus a reasonable amount for costs, then the Tenant may defer payment of the lien claim for a period of time sufficient to enable the Tenant to contest the claim with due diligence, provided always that neither the Lands nor the Facility or any part thereof, nor the Tenant's leasehold interest therein thereby becomes liable to forfeiture or sale.

11. **Assignment and Other Dealings by Landlord**

Right of Landlord to deal with reversion. Nothing contained in this lease prohibits or restricts the Landlord or implies any prohibition or restriction from transferring or otherwise dealing with its reversionary interest in the Lands but subject always to this lease and the rights of the Tenant hereunder. The Landlord covenants not to assign its rights under the Lease without the prior written consent of the Tenant.

12. **Indemnity**

The Landlord hereby restates its indemnity obligations as set out in Schedule 5 of the Memorandum of Understanding and the Indemnity Agreement bearing even date herewith.

13. **Notices**

Any notice, election, demand or exercise of option to which a party to this lease is entitled or required to give is deemed to have been duly given to any other party if in writing and delivered personally.

14. **Compliance with Laws Generally**

In addition to complying with the requirements of the lease, the Tenant shall ensure, in its use and occupation of the Lands and Facility and other fixtures and Improvements on the Lands, and in the conduct of its business thereon, and in the maintenance and repair thereof, and as to all other matters or things pertaining to the Lands, compliance with all laws, by-laws, statutes, orders and regulations of all governmental authorities having jurisdiction and the Landlord shall provide all reasonable assistance to the Tenant to comply therewith.

15. **Binding Effect**

This lease and the covenants and agreements herein contained extend to and enure to the benefit of and are binding upon the Landlord, the Tenant, and their respective heirs, executors, successors and assigns, according to the purport and intent of their respective covenants and agreements.

16. **Force Majeure**

Neither party shall be held responsible for any losses resulting if the fulfilment of any terms hereunder shall be delayed or prevented by civil disorders, wars, acts of enemies, acts of God, or by any other cause not within control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent or eliminate.

WITNESS the parties have properly executed this Lease as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
in the presence of:)

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF NOVA SCOTIA
as represented by the Minister
of Supply and Services

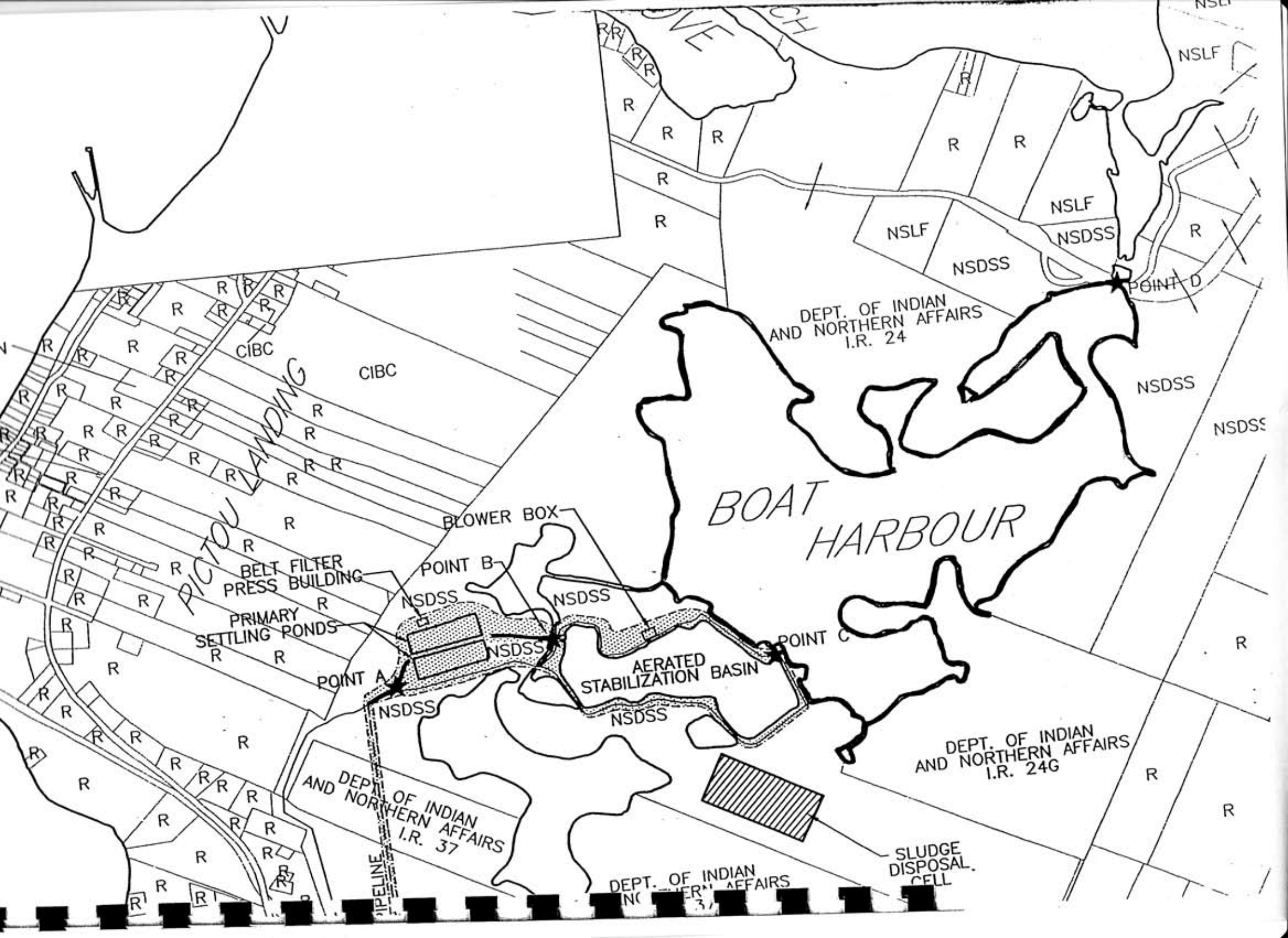
Per: *Gerald Walker*

Don Swan

SCOTT MARITIMES LIMITED
Per: *S.A. Byrne*

Schedule 2

The Leased Premises consist of the pipeline for the transmission of effluent commencing at a Standpipe located on Scott's property at Abercrombie Point, Pictou County and leading under the East River and discharging into settling ponds at Boat Harbour together with the shaded area on the attached plan together with a right-of-way over the existing roadway to the Sludge Disposal Cell.



DATED: December 31, 1995

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Supply and Services

(hereinafter referred to as "Landlord")

- and -

SCOTT MARITIMES LIMITED, a body corporate under the laws of Nova Scotia (hereinafter referred to as "Scott")

(hereinafter referred to as (the "Tenant"),

LEASE

McInnes Cooper & Robertson
Summit Place
1601 Lower Water Street
P.O. Box 730
Halifax, NS B3J 2V1

BFM/dlb (550800.04)

M-2704/9798

THIS LICENSE AGREEMENT made this 31st day of December, 1995.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Supply and Services;

(hereinafter referred to as "Licensor")

- and -

SCOTT MARITIMES LIMITED, a body corporate under the laws of the Province of Nova Scotia;

(hereinafter referred to as "Licensee")

WHEREAS the Licensor owns a tract of land covered with water, at Boat Harbour, in the County of Pictou, Province of Nova Scotia, as depicted on the Plan annexed hereto as Schedule 2;

AND WHEREAS the Licensee will operate the Boat Harbour Effluent Treatment Facility (the "Facility") on lands owned by it by lease, which are shaded on the Plan annexed hereto as Schedule 2 hereof;

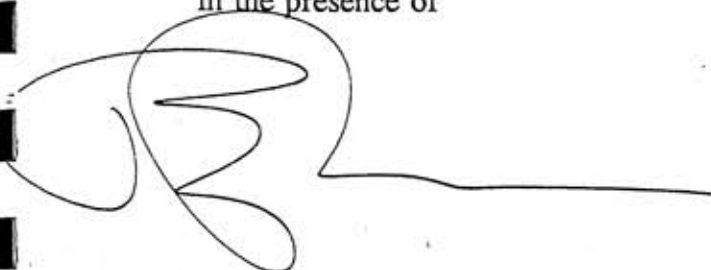
AND WHEREAS the Licensor has agreed to grant the Licensee a right to use the lands of the Licensor to permit the Licensee to operate the Facility so that the effluent outfall of the Facility is Point D, as depicted on Schedule 2;

NOW THEREFORE IN CONSIDERATION of the mutual covenants contained in this License, the parties agree as follows:

1. The Licensor hereby grants to the Licensee authorization to use and enter upon the lands of the Licensor as shown outlined in red on the Plan attached hereto as Schedule 2 for the sole purpose of transmitting effluent from the Facility to Point D;
2. The License granted herein may be terminated by the Licensor by giving written notice upon any of the following events:
 - (a) the Licensee ceasing to operate the Facility at the premises described in Schedule "B" hereof;

- (b) the Licensee completing upgrades to the Facility which permit the effluent outfall to be changed to Point C, as depicted on Schedule "A" and the Licensee confirming in writing that the License is terminated;
 - (c) the mutual agreement of the parties, evidenced in writing;
3. Unless sooner terminated in accordance with paragraph 2, this License will terminate ten (10) years from the date hereof;

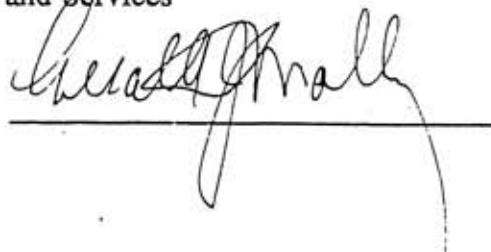
SIGNED, SEALED AND DELIVERED)
in the presence of)



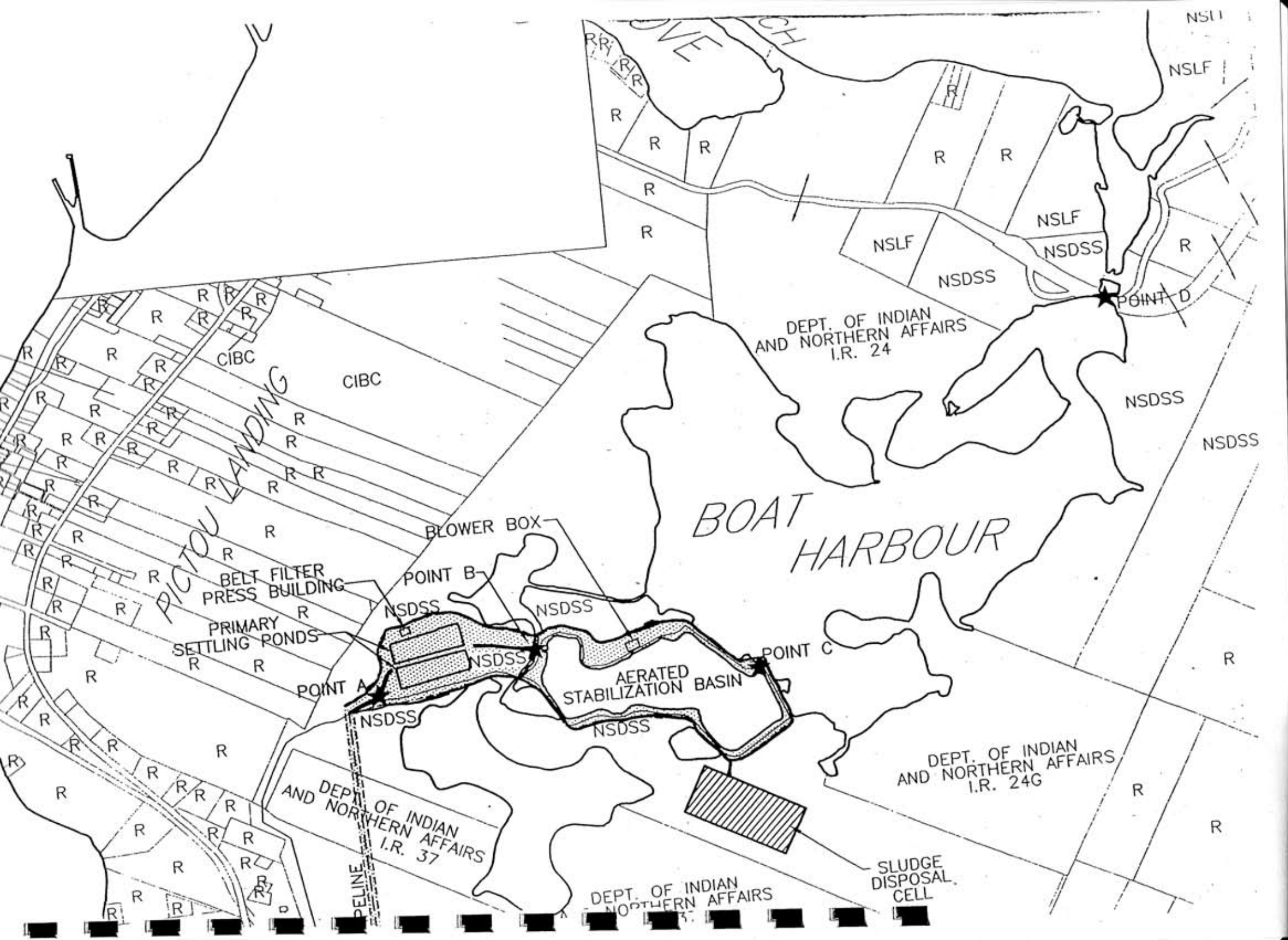
A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal tail, positioned to the left of a vertical line of closing parentheses.

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF NOVA SCOTIA**
as represented by the Minister of
Supply and Services

Per: _____



A handwritten signature in black ink, appearing to read 'Gerald Malley', written over a horizontal line. The signature is cursive and somewhat stylized.



DATED: December , 1995

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Supply and Services;

(hereinafter referred to as "Licensor")

- and -

SCOTT MARITIMES LIMITED, a body corporate under the laws of the Province of Nova Scotia;

(hereinafter referred to as "Licensee")

LICENSE AGREEMENT

Bernard F. Miller
McInnes Cooper & Robertson
Summit Place
1601 Lower Water Street
P.O. Box 730
Halifax, NS B3J 2V1

BFM/dlb (571503)

BM-468/9798

000564

THIS LEASE EXTENSION AGREEMENT made this 22 day of ^{October} August, 2002.

PICTOU COUNTY REGISTRY OF DEEDS	1955	1458	5164-5166
	Document #	Book	Pages
I certify that this document was registered as shown here.	MAY 16 2003		10:42am
C. Darlene Dixon Registrar	MM	DD	Time

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as represented by the Minister of Transportation and Public Works

(the "Landlord")

- and -

KIMBERLY-CLARK INC., a body corporate carrying on business in Nova Scotia under the name and style Kimberly Clark Nova Scotia

(the "Tenant")

WHEREAS pursuant to a lease made the 31st day of December, 1995 (the "Lease") the Landlord leased to Scott Maritimes Limited certain lands and premises known as the Boat Harbour Effluent Treatment Facility (defined therein as the Facility), for a term of ten (10) years commencing on the 31st day of December, 1995 (the "Initial Term");

AND WHEREAS the Tenant is the lawful successor to Scott Maritimes Limited;

AND WHEREAS a Notice of Lease and License made the 6th day of May, 1996 was registered at the Registry of Deeds office at Pictou, in the County of Pictou (the "Registry") on the 6th day of May, 1996 in Book 1203 at pages 483 to 487 as Document 2281 to give notice of, *inter alia*, the Lease (The Notice incorrectly identified the tenant, Kimberly-Clark Inc. as Kimberly Clark Nova Scotia Inc.);

AND WHEREAS the parties have agreed to amend the lease to extend the term for a further twenty five (25) years after the Initial Term;

AND WHEREAS the Tenant proposes to install a pipeline to form part of the Facility and the parties have agreed to provide for the grant of an easement in connection therewith.

NOW THEREFORE in consideration of the Premises and the sum of one dollar (\$1.00) now paid by the Tenant to the Landlord (the receipt and sufficiency of which is hereby acknowledged), the parties hereby agree as follows:

1. **Extension of Term of Lease**

1.01 Article 3 of the Lease is hereby deleted and replaced with the following:

"Term: to hold the Lands, the Facility, and all buildings, fixtures and improvements from time to time upon or appurtenant thereto for a term of thirty five (35) years commencing on the 31st day of December, 1995."

2. Agreement to Grant Easement for Pipeline through Boat Harbour

2.01 The Landlord agrees to grant to the Tenant an easement for the remaining term of the Lease to enable the Tenant to install and operate a pipeline for the transmission of effluent from that point designated as point C on the plan attached to the Lease to a point in the vicinity of point D as designated on the said plan. The final location of the easement will be determined when the Tenant completes its detailed engineering design of the pipeline and the Landlord hereby agrees to provide a formal easement suitable for registration at the Registry when the location of the pipeline is finally determined after the detailed engineering plans are developed.

3. General Matters

3.01 **Governing law:** This Agreement shall be governed by and construed in accordance with the laws of Nova Scotia and the laws of Canada applicable therein.

3.02 **Assignment:** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

3.03 **Further Assurances:** The parties hereto shall do such further acts, execute and deliver such further documents and give such further assurances as may be necessary or desirable to give full effect to this Agreement and the Lease.

3.04 **Confirmation of Recitals:** The Parties hereto confirm the truth and accuracy of the recitals set out herein.

IN WITNESS WHEREOF the Parties hereto have set their hands and affixed their seals on the day and year first written above.

SIGNED SEALED AND DELIVERED
in the presence of:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA
as represented by the Minister of Transportation and Public Works

Marie F. [Signature]
Witness
[Signature]
Witness

Per: [Signature]

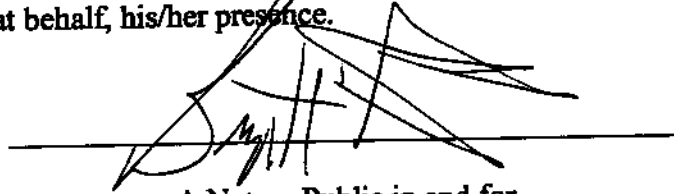
[Signature]
Witness
[Signature]
Witness

KIMBERLY-CLARK INC.
Per: [Signature]
Per: [Signature]

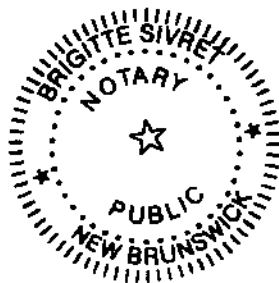
000566

PROVINCE OF NEW BRUNSWICK

ON THIS 17 day of April, 2003, before me the subscriber personally came and appeared, BERNARD F. MILLER, a subscribing witness to the foregoing Indenture, who having been by me duly sworn, made oath and said that **KIMBERLY-CLARK INC.**, one of the parties thereto, caused the same in to be executed in its name and on its behalf by its proper officer(s) duly authorized in that behalf, his/her presence.



A Notary Public in and for
the Province of New Brunswick





NORTHERN PULP
NOVA SCOTIA CORPORATION
A PAPER EXCELLENCE COMPANY

April 9, 2015

The Honourable Randy Delorey
Minister of Environment
Nova Scotia Environment
PO Box 442
Halifax, NS B3J 2P8

Dear Minister Delorey:

**Re: Industrial Approval No. 2011-076657-A01
Appeal pursuant to Section 137 of the *Environment Act***

Northern Pulp Nova Scotia Corporation ("Northern Pulp") appeals Industrial Approval No. 2011-076657-A01 (the "Approval") issued by Jay Brenton of the Nova Scotia Department of Environment (the "Department") on March 9, 2015 for the operation of Northern Pulp's mill in Abercrombie Point, Nova Scotia (the "Mill").

Northern Pulp makes this appeal (the "Appeal") to you, the Minister of Environment, pursuant to section 137 of the *Environment Act*, SNS 1994-1995, c 1 (the "Act"). In the sections below, Northern Pulp states its reasons for this Appeal, outlines its specific objections to various provisions in the Approval and sets out its requested relief.

While Northern Pulp considers it necessary to proceed with this Appeal to protect the long term economic viability of the Mill, Northern Pulp remains open to working with the Department and the Province to achieve a long term solution with respect to the Mill.

SUMMARY OF APPEAL

In summary, Northern Pulp requests that certain provisions (identified below) of the Approval be removed or revised on the grounds that these provisions:

- (i) are in breach of the Province's contractual obligations to Northern Pulp under various agreements (which agreements the Department refused to consider in issuing the Approval) and impose conditions that in essence seek to achieve indirectly what the Province is not permitted to do directly, namely, require Northern Pulp to cease using its current effluent treatment facility ("Effluent Treatment Facility");
- (ii) impose conditions that are impossible to meet and/or are prohibitory rather than regulatory in nature;
- (iii) impose conditions that are too vague or uncertain;

(iv) are unrealistic and otherwise unreasonable; and/or

(v) are inconsistent with the protection granted to Northern Pulp by the *Freedom of Information and Protection of Privacy Act* ("FOIPOP").

Northern Pulp respectfully requests that you exercise your powers under Section 137(4) of the Act to allow Northern Pulp's Appeal and remove or revise the provisions of the Approval as further outlined in this letter. Doing so would ensure that the Approval contains conditions that: (i) do not breach the Province's obligations under the various agreements between the Province and Northern Pulp and do not effectively require Northern Pulp to change the location of its current Effluent Treatment Facility; (ii) are not impossible to achieve and are regulatory rather than prohibitory in nature; (iii) are not vague or uncertain, (iv) are realistic and otherwise reasonable; and (v) are not inconsistent with the protection granted under FOIPOP.

GROUND OF APPEAL

I. Department's Refusal to Consider Province's Contractual Obligations - Section 8(2)(c) of the Act

As you are aware, Northern Pulp and the Province are parties to a number of agreements in respect of the operation of the Mill, including:

- 1) Memorandum of Understanding dated December 1, 1995 ("MOU");
- 2) Lease dated December 31, 1995 ("Lease");
- 3) License Agreement dated December 31, 1995;
- 4) Indemnity Agreement dated December 31, 1995 ("Indemnity Agreement");
- 5) Water Supply Agreement dated June 30, 1995 ("Water Supply Agreement");
- 6) Lease Extension Agreement dated October 22, 2002; and
- 7) Acknowledgement Agreement by the Province dated May 12, 2008 ("Acknowledgement Agreement").

(collectively, the "Agreements").

Northern Pulp wrote to you on December 18, 2014 in order to ensure that the Department reviewed the Approval in light of the Province's contractual obligations to Northern Pulp under the Agreements prior to issuing the final Approval. In addition, Northern Pulp requested a joint meeting with the Department of Environment and Department of Internal Services to discuss how a long term solution can be achieved in compliance with the terms of the Agreements and the Approval.

In a letter dated January 8, 2015, you responded: "While my department is aware of the existence of agreements between the Province and your company, the Province has maintained independence between the regulation of environmental issues and management of the various agreements with the mill." You encouraged Northern Pulp to meet with Internal Services to discuss the Agreements and any implications that may arise from the issuance of the Approval

by your Department, thereby refusing Northern Pulp's request to meet jointly with Northern Pulp and Internal Services.

Your express refusal to consider the Province's various contractual obligations in issuing the Approval and your refusal to meet jointly with Northern Pulp and Internal Services as requested by Northern Pulp is not in compliance with the mandatory requirement of Section 8(2)(c) of the Act which provides:

8 (2) The Minister, for the purposes of the administration and enforcement of this Act, and after engaging in such public review as the Minister considers appropriate, shall

[...]

(c) consult with and co-ordinate activities with other departments, Government agencies, municipalities, governments and other persons; [emphasis added]

Any provision in the Approval which is inconsistent with the provisions of the Agreements is necessarily the result of the Department's refusal to consider those Agreements when it issued the Approval. Northern Pulp submits that those provisions of the Approval are unreasonable due to the failure of the Department to comply with the process of consultation and co-ordination required by its own governing statute in issuing the Approval.

In the Acknowledgement Agreement, the Province acknowledged, agreed and confirmed that each of the Agreements and understandings between the Province and the Mill's prior owner Scott Maritimes Limited ("Scott") are in good standing and will continue in full force and effect for the benefit of Northern Pulp.

Northern Pulp's current owners acquired the shares of Northern Pulp and have continued to invest substantial amounts in the Mill on the understanding that the Province could and would comply with its obligations under the Agreements. It is not unreasonable to anticipate and expect that government will comply with the contracts which it has entered into. It is unreasonable for the Department to issue the Approval with a stated disregard for those contractual obligations. Northern Pulp does not waive any of its rights under any of the Agreements.

Northern Pulp submits that, taken together, the objectionable conditions included by the Department in the Approval that are in breach of the Province's obligations under the Agreements are an attempt by the Department to indirectly achieve the Province's stated goal of closing the Effluent Treatment Facility (see, e.g., Agreement in Principle between the Province and Pictou Landing First Nation dated June 16, 2014). These provisions would force Northern Pulp to apply for an approval for and build an alternative effluent treatment system that meets conditions that would be applicable to a substantially new Mill. This is a goal which cannot be achieved directly under the Agreements which the Province has entered into with the Mill's owners or under the Department's own regulatory jurisdiction. Government cannot do indirectly what it cannot do directly and it is unreasonable for the Department to seek to do so by imposing conditions as part of a regulatory approval process aimed at achieving that indirect goal.

These provisions of the Approval, in addition to being in breach of the Province's obligations under the Agreements, impose conditions which are unreasonable for a mill that was built in the 1960s to meet without requiring that a substantially new Mill be built. While Northern Pulp has

invested in upgrades at the Mill, such equipment modifications will not achieve the requirements of the Approval. The Approval therefore essentially prohibits Northern Pulp from operating the current Mill, and requires Northern Pulp to construct a substantially new Mill, in breach of the Agreements. The cumulative cost and uncertainty associated with the approval and construction of a new effluent treatment system jeopardize the long term economic viability of the Mill and is inconsistent with the Agreements.

Government cannot arbitrarily revoke Northern Pulp's contractual rights under the Agreements with the Province by way of an administrative approval process. Any re-negotiation of Northern Pulp's rights or the Province's obligations under the Agreements must necessarily be the result of written amendment to the Agreements. Northern Pulp approached the Department and the Province indicating that it was prepared to cooperatively work with the Province, as stated in Northern Pulp's December 18, 2014 letter to you:

"We look forward to working with your department and Internal Services. We hereby request a meeting the first week of January with Internal Services and Nova Scotia Environment to discuss how a long term solution can be achieved in compliance with the terms of the above agreements and the Industrial Approval."

Absent any such cooperation between the Province and Northern Pulp, certain provisions of the Approval cannot reasonably stand given their clear breach of Northern Pulp's rights and the Province's obligations under the Agreements. Any provision in the Approval that is inconsistent with the Agreements must be removed or revised so that the Approval is consistent with the Agreements, including:

A. Definition of Effluent Treatment System – Clause 1(t)

The defined term "Effluent Treatment System" in Clause 1(t) of the Approval now includes the "former stabilization lagoon (known as Boat Harbour)". The defined term "Effluent Treatment System" is included as part of the definition of "Facility" and both terms are referred to throughout the Approval. Northern Pulp has never leased and has never been in control of Boat Harbour. The Mill discharges effluent into Boat Harbour at Point C in compliance with its obligations under applicable approvals and regulations, and has received a broad indemnification from the Province for claims and expenses related to Boat Harbour.

Under Section 4.01(g) of the MOU, the Province remained in possession of and responsible for the stabilization basin. The Lease definition of "Reconfigured Facility" or "Facility" makes it clear that the stabilization basin is not included as part of the Facility. Any terms in the Approval which impose responsibility on Northern Pulp for the stabilization basin known as Boat Harbour ("Boat Harbour") by virtue of:

- including the "former stabilization lagoon (known as Boat Harbour)" into the definition of Effluent Treatment System, including Clauses 5(h) and (i), 6 (h) and (i), 7(j) and (n), 12(au) and 16(b); or
- indirectly including the "former stabilization lagoon (known as Boat Harbour)" into the definition of the Facility, including Clauses 2(c), 3(a), 12(ac) and (am), 24(a) and 25(a),

are inconsistent with the terms of the Lease and Indemnity Agreement.

Northern Pulp therefore requests that the reference to the "former stabilization lagoon (known as Boat Harbour)" be removed from Clause 1(t) of the Approval.

B. Responsibility for Restoration of Stabilization Basin - Clause 7(n)

Clause 7(n) of the Approval requiring Northern Pulp to develop a plan for the long term environmental management and/or rehabilitation of Boat Harbour is expressly contrary to the Agreements. Under Sections 4.01(g) and 4.01(c)(ii) of the MOU, that responsibility falls upon the Province. Further, Section 4.01(f) of the MOU provides that Northern Pulp shall have no obligation or responsibility to restore the stabilization basin, which restoration will be undertaken by the Province. Northern Pulp is entitled to indemnification for any such costs under the broad provisions of the Indemnity Agreement.

Northern Pulp therefore requests that Clause 7(n) be removed from the Approval.

C. Spill Containment Plans – Clauses 14(m) and 14(n)

Clauses 14(m) and 14(n) require Northern Pulp to submit plans to the Department with respect to spill containment. However, Northern Pulp under the Lease is entitled to the use of the Effluent Treatment Facility until 2030 and presently uses that facility for spill containment, which use has been wholly adequate to date.

Requiring Northern Pulp to undertake a new spill containment system when Northern Pulp already has an adequate containment system available to it, which it is contractually entitled to use, provides no additional benefit to the environment and is in breach of the Province's obligations under the Agreements. As Northern Pulp's current system is adequate to protect the public and environment, Clauses 14(m) and 14(n) are inappropriate. Requiring Northern Pulp to undertake a new spill containment system would also be in breach of Northern Pulp's contractual rights under the Agreements. Northern Pulp requests that these Clauses be removed entirely.

D. Water Supply Agreement – Clauses 5(d) and 5(e)

Clause 5(d) of the Approval limits daily water consumption to a rate of 63,000 cubic meters per day by January 30, 2020. For comparison purposes, this represents an intensity of 72.2 m³/Adt. Clause 5(e) of the Approval also requires Northern Pulp to achieve certain water reduction milestones in the meantime. Clause 2.01 of the Water Supply Agreement says that the Province is obliged to continue to supply up to 25 million imperial gallons (or 113,652 m³) of fresh water per day to the Mill until 2021.

The intention of the parties in agreeing to the Water Supply Agreement is clearly contravened by the reductions required by Clauses 5(d) and 5(e) of the Approval. Northern Pulp remains willing to work cooperatively with the Department, as part of an overall negotiation with the Province with respect to the Agreements, to achieve water reductions that benefit the environment but are also practical and realistic. In the absence of such discussions, however, Northern Pulp requests that Clauses 5(d) and 5(e) be removed as they are clearly in breach of the Province's obligations under the Water Supply Agreement and are therefore unreasonable.

E. Surface Run-Off Diversion - Clause 6(c)

The AMEC Report¹ at p. 26 estimates that surface run-off accounts for 2.0 m³/ADt of effluent (rain water entering process sewers). See enclosed KSH Memo², at p. 6-8, where KSH has provided more extensive calculations that indicate a similar volume. As a very small fraction of the total flow (less than 1.5% of the total effluent flow for the highest month of the year, April), requiring Northern Pulp to divert surface run-off water into the Pictou Harbour is unreasonable.

Northern Pulp's current practice with respect to the surface run-off stream is to treat it with the Mill effluent, which system (as discussed above in Section I.C.) Northern Pulp is entitled to use until 2030. Clause 6(c) is improper as Northern Pulp's current system is adequate in protecting the public and environment and requiring Northern Pulp to undertake a new surface run-off water diversion program would be in breach of Northern Pulp's contractual rights under the Agreements.

Therefore, Northern Pulp requests that Clause 6(c) be removed.

F. Point D Monitoring – Clause 7(o)

Clause 7(o) requires monitoring at Point D for the parameters in Table 6 of Appendix A. As Northern Pulp's obligations cease at Point C under the Agreements, Northern Pulp cannot properly be responsible for monitoring at Point D, a location in the control of the Province. Northern Pulp therefore requests that Clause 7(o) be removed entirely.

G. Limits in Excess of Pulp & Paper Effluent Regulations – Clauses 6(e), 6(f), 8(d) and 8(f)

Section 4.01(k) of the MOU provides that the Province will impose operating limits on Northern Pulp that reflect and do not exceed or apply more stringently than the standards set out in the *Pulp and Paper Effluent Regulations* (Canada) ("PPER").

As the PPER does not contain limits on COD and TRS, the Approval under Clause 6(e), with respect to COD, and Clause 8(d), with respect to TRS, imposes more stringent operating limits on the Mill than are reflected in the PPER.

Further, to the extent that limits on COD have a limiting effect on BOD, the required reductions in COD under Clause 6(e) of the Approval result in more stringent conditions being imposed on the Mill, notwithstanding that Table 6 of the Approval indicates that limits for BOD are at the rate set by the PPER.

BOD₅ (Biochemical Oxygen Demand) is the amount of oxygen required to biologically oxidize the soluble components in an effluent sample incubated for a 5-day period. It is a measure of easily biodegradable organics that can be utilized as food by naturally occurring organisms. BOD₅ is an indirect measure of how the easily biodegradable organics in the effluent will consume dissolved oxygen in the receiving waters as natural microorganisms consume these

¹ The Department indicated to Northern Pulp that AMEC was consulted during the development of the Approval. The April, 2010 AMEC Report entitled "Boat Harbour Return to Tidal Re-Evaluation Final Report" ("AMEC Report") is the latest report that was made available to Northern Pulp.

² Memo from KSH Solutions Inc. ("KSH") dated March 31, 2015 entitled "Technical Assistance with Appeal of Final Industrial Approval" ("KSH Memo").

organics, thus potentially affecting flora and fauna due to reduced dissolved oxygen concentrations. COD (Chemical Oxygen Demand) is the amount of oxygen required to chemically oxidize the soluble components in an effluent sample. COD is a measure of all organics (lower molecular weight biodegradable and higher molecular weight non-biodegradable) as well as oxidizable inorganics.

COD will always be the greater of the two, as BOD₅ is a percentage of COD. It is generally accepted that COD and BOD share an empirically demonstrated relationship. Fairly regular relationships exist between COD and BOD₅ for any given industrial or municipal wastewater stream. Once the average COD:BOD₅ ratio for a particular wastewater stream is established, a relatively simple and quick 1-hour COD test can be used to predict BOD₅ with relative reliability. This is why COD tests are often done, but rarely reported. Kraft mill lignin and cellulose contain both low and high molecular weight organics. Therefore, any measures undertaken to reduce COD at the Mill will undoubtedly reduce BOD₅ as well, in breach of the MOU. See enclosed Klopping report at p. 3-4.³

As a result of the inconsistency of these provisions with the MOU, Northern Pulp submits that Clauses 6(e) and 8(d) are unreasonable and therefore requests that these provisions, as well as the related provisions at Clauses 6(f) and 8(f), be removed.

H. Precluding Use of Boat Harbour Effluent Treatment Facility – Clauses 5(h), 5(i) and 5(j) and Clauses 6(h), 6(i) and 6(j) and Table 6A

Under the Lease, as extended, Northern Pulp has the right to exclusive possession and occupation of the Effluent Treatment Facility until 2030. The provisions of the Approval that effectively preclude Northern Pulp from using the Effluent Treatment Facility for the Mill's operations are inconsistent with the provisions of the Lease, including Clauses 5(b) and Clause 14 of the Lease.

The effect of Clauses 5(h), 5(i) and 5(j) and Clauses 6(h), 6(i) and 6(j) of the Approval is to require Northern Pulp to apply for an amendment to the Approval if Northern Pulp's modeling of water use reduction projects shows that the final wastewater effluent quality will not meet the requirements of Table 6 of the Approval, without modification or addition to the Effluent Treatment System as configured as of the date of the Approval. The application for an amendment must include a plan for alternative effluent management and/or treatment designed to meet the requirements of Table 6A of the Approval.

These provisions make it clear that the Department intends to require Northern Pulp to discharge its effluent at a treatment facility at a location which has yet to be determined if it is unable to comply with the conditions imposed. By specifically not contemplating or providing a means for compliance to be achieved through modifications or additions to the current Effluent Treatment System, the Province is in breach of the Agreements with Northern Pulp that entitle Northern Pulp to use the Effluent Treatment Facility until 2030. The estimated capital cost of constructing a new effluent treatment plant is in excess of \$100 million.

Northern Pulp therefore requests that any Clause in the Approval which contemplates that Northern Pulp cease using the Effluent Treatment Facility prior to 2030, including Clauses 5(h), 5(i), 5(j), 6(h), 6(i) and 6(j) and Table 6A, be removed.

³ Report from Paul H. Klopping dated April 8, 2015 ("Klopping Report"). Paul Klopping has been auditing the Mill since 2005.

I. Rehabilitation Plans – Clause 24

Clause 24(a) of the Approval provides that Northern Pulp must submit a detailed closure plan to the Department one year prior to the decommissioning or closure of the Facility or any part thereof. To the extent that the definition of Facility in the Approval incorporates by reference to Effluent Treatment System the “former stabilization lagoon (known as Boat Harbour)”, Northern Pulp refers to Sections I.A., I.B. and I.H. above and submits that any requirement under Clause 24 for Northern Pulp to cease using its current Effluent Treatment Facility, or submit any plan or undertake any costs or rehabilitation with respect to Boat Harbour is in breach of the Lease and the Indemnity Agreement. Northern Pulp is entitled to indemnification from the Province in respect of any cessation by Northern Pulp of the Effluent Treatment Facility and any costs for any rehabilitation of Boat Harbour imposed by the Province on Northern Pulp, under the Approval or otherwise.

Northern Pulp requests that Clause 24 be revised to acknowledge that any cessation of Northern Pulp’s use of the Effluent Treatment Facility and any rehabilitation of Boat Harbour are the Province’s responsibility and the plans and costs thereof will be assumed by the Province.

II. Prohibitory and/or Impossible Provisions

A. Capital Investment Required to Comply with Approval is Prohibitory - Clauses 5(i), 6(c), 6(g), 6(i), 14(m) and 14(n)

In addition to being in breach of the Agreements as discussed throughout Section I above, Northern Pulp’s compliance with the Approval will require Northern Pulp to undertake significant capital expenditures estimated to be in excess of \$90 million, to divert surface run-off water to the Pictou Harbour, to implement a new spill containment system, and to reduce COD. See enclosed EKONO Memo, p. 2.⁴

The estimated \$90 million in capital expenditures referred to above does not include the capital expenditures to construct a new effluent treatment plant in order to comply with Clauses 5(i) and 6(i) of the Approval, estimated to be in excess of \$100 million. This requirement is also in breach of Northern Pulp’s rights under the Lease, as discussed in Section I. H. above

The cumulative effect of the capital cost associated with Clauses 5(i), 6(c), 6(g), 6(i), 14(m) and 14(n) of the Approval is effectively the prohibition of Northern Pulp’s operation by the Department, instead of the Department’s regulation of it.

With respect to COD, Clause 6(g) requires Northern Pulp to develop a plan for additional reductions to achieve a maximum effluent COD of 11,890 kg/day at Point C. This equates to a 77% reduction from the Mill’s present operation.⁵ Such a provision is not regulatory in nature. It is prohibitory. That is, the Approval through Clause 6(g) has the effect of prohibiting Northern Pulp’s activities, rather than regulating them. As discussed further in Section II.B. below, the

⁴ Memo from Heikki Mannisto and Eva Mannisto dated April 6, 2015 entitled “Possibility to meet COD limit of 11,890 kg/day” (“EKONO Memo”).

⁵ The average annual COD at Point C for the period of January 1, 2010 to December 31, 2014 is 58.8 kg/Adt. At 873 Adt/day, that equates to 51,350 kg/day at the end of the Approval if the Mill is running at current levels. 11,890 kg/day represents an intensity of 13.6 kg/Adt at Point C.

COD reduction may not even be possible and any capital investments in an attempt to achieve this requirement would be prohibitory.

With respect to surface run-off diversion under Clause 6(c), the new segregated system would require a new sewer network, retention ponds, oil and sediment traps, sample collection, alarms and a mechanism to divert this stream back to the main Mill effluent stream if contamination was detected. This new non-contact outfall will require permits from the Department as well as Environment Canada and the Department of Fisheries and Oceans. Northern Pulp has no guarantee that the Mill will receive these required approvals from these departments.

A new spill containment system under Clause 6(g) is also unreasonable in that it imposes significant cost on Northern Pulp without additional environmental or public benefit and is in breach of the Agreements.

The high capital cost of complying with any or all of Clauses 6(c), 6(g), 14(m) and 14(n) are completely disproportionate to the benefit, if any, to the public and the environment of these measures. The surface run-off diversion requirement is disproportionate given the small fraction of the flow that surface run-off represents and the fact that it is presently treated with the Mill effluent. The spill containment requirement is not only disproportionate but unnecessary because Northern Pulp already has an adequate spill containment system available to it. The Department is aware through the AMEC Report that process technologies for reducing COD to the requirement of Clause 6(g), assuming those reductions are achievable, would be prohibitory. The timelines contained in the Approval for achieving these Clauses are too short for such major construction projects to be completed. Therefore, the conditions in the Approval are impossible for Northern Pulp to meet and are prohibitory.

Through the cumulative effect of these Clauses, and the capital cost associated therewith, the Department is prohibiting the Mill from operating. Instead of regulating the existing Mill, the Department is requiring that Northern Pulp build a substantially new Mill. Provisions of regulatory approvals that prohibit rather than regulate operations are unreasonable and ultra vires. Therefore, Northern Pulp requests that Clauses 5(i), 6(c), 6(g), 6(i), 14(m) and 14(n) be removed from the Approval.

B. COD Reduction is Prohibitory and Impossible to Meet – Clause 6(g)

As noted in Section II.A. above, the proposed COD reduction of 77% under Clause 6(g) of the Approval is prohibitory not only because of the capital investments in order to attempt to achieve this requirement but also because the proposed COD reduction is unrealistic and is essentially impossible for Northern Pulp to meet.

The AMEC Report provided an assessment of the status and operation of the existing treatment facility for the Mill as well as preliminary engineering for several effluent treatment alternatives. The assessment was conducted at the time that the regulatory discharge for the Mill was located at Point D. The AMEC Report concluded that the Mill's Aerated Stabilization Basin ("ASB") was operating well. Since the regulatory discharge point was moved to Point C on July 1st, 2010, there have been no incidences of daily or monthly BOD₅ or TSS being over the limits in the PPER. In fact, all tests have shown that the Mill is well below the regulated limits.

Even though the AMEC Report was based on outdated information and therefore could not recognize the current operational attainments of the Mill, the AMEC Report itself demonstrates that it is simply not possible for the Mill to achieve this COD reduction. As such, the

requirement that the Mill achieve the reduction required by Clause 6(g) amounts to a prohibition of the Mill's operations, rather than the regulation of it, and therefore is unreasonable.

Appendix 2 of the AMEC Report contains the preliminary engineering for the effluent treatment alternatives with mass balances (annual averages and not daily limits). The most stringent case in the AMEC Report, Case 3, completely abandons the Mill's effluent treatment facility and replaces it with a new Activated Sludge Treatment ("AST") system and includes "Significant Improvements & Water Use Reduction", as outlined in section 4.2.3 of the AMEC Report. Drawing #158229-100-6-923 is the mass balance for the New Treatment Plant – Case 3. This Case assumes a 50% reduction in liquor losses will be achieved (20,400 kg/day to 11,400 kg/day). It also assumes marginal increase in production with a design capacity of 908 Adt/day. Incineration of Waste Activated Sludge would occur in the Recovery Boiler, which at present is not permitted in Northern Pulp's Approval. The predicted effluent flow is 65,151 m³/d as an annual average; the new daily limit of 67,500 m³/d required in the Approval is even more stringent than the AMEC mass balance and does not consider seasonal variations.

The predicted COD for Case 3 is 70,900 kg/day. The typical COD removal for a new AST system would be in the neighbourhood of 50 – 60%. Even at the higher end of that removal efficiency (60%), the final COD discharge would be 28,360 kg/day (70,900 kg/day x 0.4). In summary, Case 3 demonstrates that even with significant in-Mill improvements and a brand new AST treatment system, the Mill would still exceed, by more than double, the COD daily limit of 11,890 kg/day at Point C as set out in the Approval at Clause 6(g). AMEC recognizes that other process technologies that were not included in Case 3 would be economically prohibitive to the Mill. The Klopping Report, EKONO Memo and McCubbin Report⁶ all agree that the requirement contained in Clause 6(g) is unrealistic and that the associated costs would be significant.

Therefore, the requirement contained in Clause 6(g) of the Approval, as a daily limit representing a 77% reduction from the Mill's current annual average for the Mill's current operations, is impossible for Northern Pulp to meet. The Department included the requirement of Clause 6(g) in the Approval knowing that the AMEC Report says that the Mill cannot achieve that requirement even if the Mill adopted the strictures of Case 3 including installing a completely new treatment system. The requirement of Clause 6(g) is completely untenable, even according to the Report on which the Approval is based. The Department therefore must be considered to have included this provision in order to prohibit the Mill's operations.

The Approval contains conditions that treat the Mill as if it is a new mill and as such the Department has imposed regulatory standards on the Mill that are prohibitory to the existing Mill operating. Provisions of regulatory approvals that prohibit instead of regulate and that are impossible to meet are unreasonable and ultra vires. Therefore, Northern Pulp requests that Clause 6(g) be removed from the Approval.

C. Modeling Deadlines are Impossible to Meet - Clauses 5(h) and 6(h)

Clauses 5(h) and 6(h) of the Approval require Northern Pulp to submit to the Department modeling for all reduction stages along with a list of planned projects required under Clauses 5(e) and 6(e) no later than October 30, 2015.

Northern Pulp's consultants have indicated that it is impossible to complete in-Mill engineering studies and then adequately complete effluent quality modeling to predict Mill wastewater

⁶ Report from Neil McCubbin dated April 6, 2015 ("McCubbin Report").

changes for submission to the Department by October 30, 2015. It is not reasonable to require such a deadline considering the impossibility of meeting that deadline as well as the fact that the modeling is for reductions that are not required until 2017.

In Northern Pulp's submission, October 30, 2016 is more reasonably attainable and appropriate. Therefore, Northern Pulp requests that Clauses 5(h) and 6(h) each be revised to change the deadline for this study from October 30, 2015 to October 30, 2016.

D. Regulatory Compliance without Modification or Addition - Clauses 5(i), 6(i) and 6(j)

Northern Pulp is also precluded through Clauses 5(i) and 6(i) from achieving the requirements of the Approval through modification or addition to the effluent treatment system as configured as of the date of the Approval, and through Clause 6(j) from reduction and prevention of liquor losses entering the effluent system. In addition to being contrary to the Agreements as discussed in Section I.H. above, requirements that a proponent achieve regulatory compliance without making improvements to the existing system are prohibitory on their face, and do not serve the public or benefit the receiving environment. Northern Pulp again requests that Clauses 5(i), 6(i) and 6(j) be removed.

III. Vague and Uncertain Provisions

A. New Treatment Facility - Clauses 5(h), 5(i) and 5(j) and Clauses 6(h), 6(i) and 6(j) and Table 6A

In addition to the objection noted in Section I.H. above, the majority of parameters and discharge limits in Table 6A in the event that Northern Pulp is required to discharge its effluent at a treatment facility at a different location have yet to be determined. Those limits are specifically contemplated as being determined based on an unknown location of a new treatment facility and on results of a receiving water study yet to be completed. That receiving water study must meet the satisfaction of the Department, yet the Approval does not indicate any criteria upon which such water study will be considered satisfactory. Northern Pulp considers the requirement to apply for and obtain approval of an as-yet-undefined discharge location to be unreasonable.

At present, there is an absence of standards and guidelines in Clauses 5(h), 5(i), and 5(j) and Clauses 6(h), 6(i) and 6(j) and Table 6A. These provisions are too vague and uncertain to be considered reasonable. The conditions contain no limitation on the Department's discretion and as a result Northern Pulp has no fair notice of the conditions it must meet. Therefore, Northern Pulp requests that these provisions be removed.

B. COD Reductions - Clause 6(e)

The provisions in Clause 6(e) requiring reductions in COD do not specify or provide a means for calculating the base point for measuring such reductions. These provisions are therefore too vague to be reasonable and therefore must be removed.

IV. Unrealistic and Otherwise Unreasonable Provisions

It is clear that many provisions of the Approval are based on the AMEC Report. However, as noted in Section II.B. above, the AMEC Report is outdated and does not represent the Mill's

current operations and its operational achievements since the date of the AMEC Report. As such, certain provisions imposed by the Department in reliance of this Report are unreasonable.

The AMEC Report ranks Northern Pulp in the 95th – 100 percentile on water usage in Canada. In 2007, the year that Northern Pulp was benchmarked in this 2010 study, the Mill's regulated effluent discharge point was Point D exiting the Boat Harbour basin. In July 2010, the regulated effluent discharge point was moved back to Point C exiting the ASB. Point D is not representative of the Mill effluent flow when compared to other mills because it is downstream of the treatment plant. Effluent flow at Point D is historically 25% higher than at Point C due to surface run-off from the large Boat Harbour basin. Surface run-off was not taken into account in the AMEC Report, and therefore comparisons are not valid. Comparison of Point C data at the end of the treatment process is appropriate for benchmarking purposes. Table I shows the decrease in effluent flow from 2010 forward:

Table I: Effluent Flow Intensity (m3/Adt) – Annual Averages

Regulated Outfall Location	2007	2008	2009	2010	2011	2012	2013	2014
Point D	112	133	129					
Point C				94	89	87	86	88

As the Approval is clearly based on a lack of appreciation for the Mill's current operations, including an outdated report from AMEC which contains conclusions that are no longer correct, the Department has no basis for many provisions contained in the Approval. It is unreasonable for the Department to impose regulatory standards based on a report that relies on almost 10-year-old data and disregards the achievements of the Mill since that time.

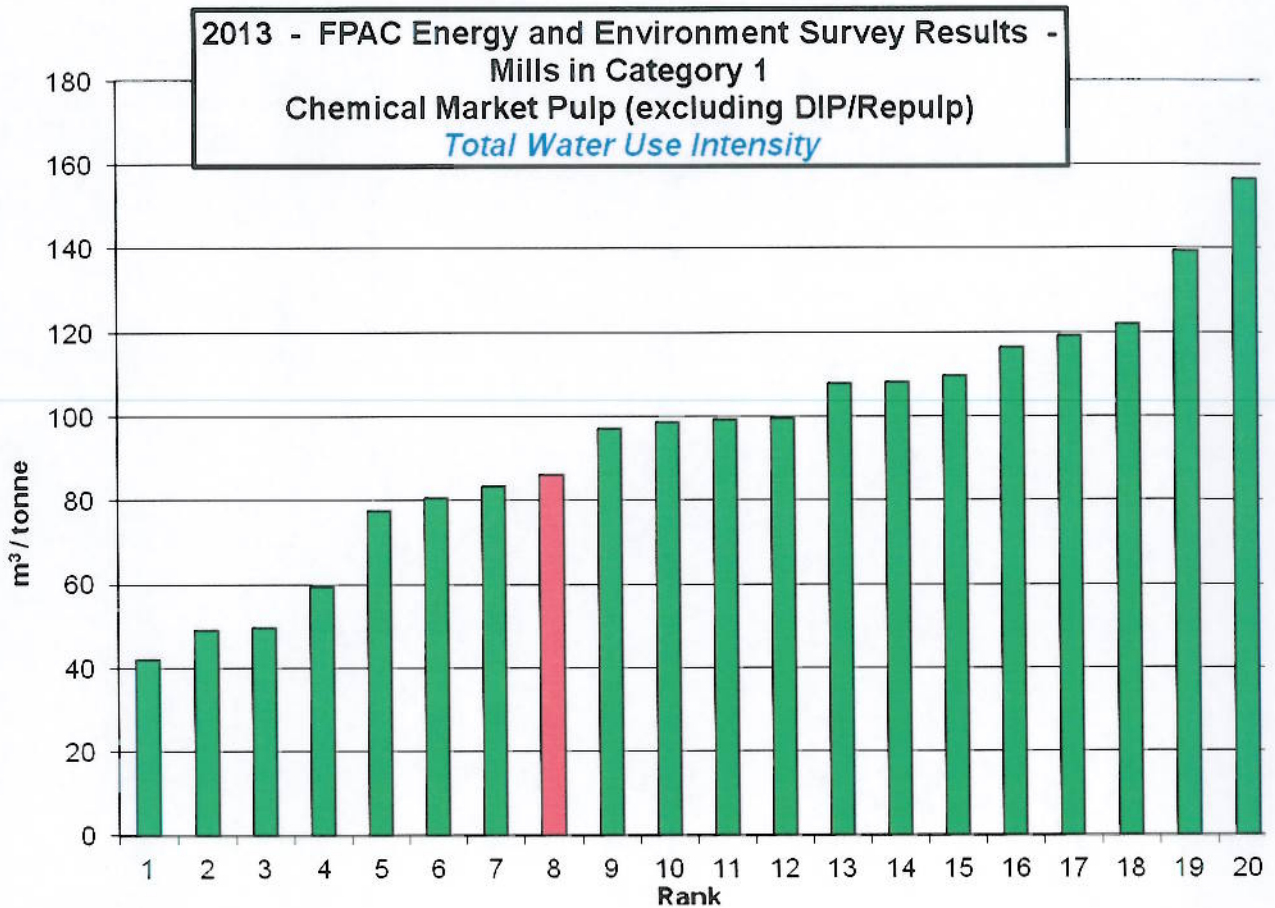
Other provisions in the Approval are unreasonable as they provide little or no additional environmental benefit but impose very significant costs on Northern Pulp and therefore are improper. As well, statements made by the Department in issuing the Approval make it clear that some provisions of the Approval are based on a misunderstanding of or lack of appreciation for the Mill's operations, which make those provisions unrealistic. Some provisions in the Approval are unreasonable as they fail to recognize industry norms or factors outside of Northern Pulp's control. Others are simply inaccurate. Those provisions must therefore be removed or revised as set out in the Sections below.

A. Water Reduction Requirement – Clauses 5(d) and 5(e)

As stated by all effluent experts (Ken Frei and Guy Martin of KSH, Paul Klopping, Neil McCubbin, and Heikki Mannisto and Eva Mannisto of EKONO), the daily limits for water intake and effluent contained in the Approval are highly unusual. Few jurisdictions place flow limits in general on intake and effluent; exceptions are generally where the mill makes up a large percentage of the waters (usually rivers) that it is drawing its water supply from or is discharging effluent into. Mills that ultimately discharge into marine environments do not typically have these restrictions: see KSH Memo, p. 4. The AMEC Report at p. 30 refers to the 2007 EKONO study which also recognizes that such limits will only be placed on mills in certain circumstances, which Northern Pulp notes are not applicable to the Mill.

The requirements related to water reductions in the Approval appear to be based on a mischaracterization of the Mill's water usage. A Departmental document accompanying the

release of the January 30, 2015 version of the Approval stated that “The Mill is a large consumer of water, especially compared to other mills.” In fact, Northern Pulp’s water usage is average by comparison to other Canadian mills. Enclosed is a copy of the Forest Products Association of Canada survey entitled “FPAC 2013 Energy and Environment Benchmarking Report – Pulp and Paper Sector” dated March 10th, 2015 (“FPAC Report”). The following graph is an excerpt from the FPAC Report. With 20 out of a possible 30 mills reporting, Northern Pulp ranks the 8th best in the survey for water use intensity:



Reductions of water flow of the magnitude contained in the Approval could have negative effects on the biological treatment process and ultimately the receiving water, increasing odour for residents who live in the vicinity of the effluent treatment centre.

As noted in Section I.D above, Clauses 5(d) and 5(e) should be removed from the Approval for being in breach of the Water Supply Agreement. Clauses 5(d) and 5(e) are also unreasonable as they ignore industry norms and are based on a mischaracterization of the Mill’s water usage, as a result of the Department’s reliance on an outdated report. Therefore, Northern Pulp repeats its requests that these Clauses be removed.

B. TRS Reduction Requirement – Clauses 8(d), 8(e) and 8(f)

The new requirement under Clause 8(d) for water-phase TRS measurements in the effluent are best described by the KSH Memo at p. 14-16. In summary, Clause 8(d) is modeled after

Ontario's new 2014 Air Pollution – Local Air Quality Regulation (which imposes certain air standards, including TRS) and the Ontario Technical Standards to Manage Air Pollution. To Northern Pulp's knowledge, Ontario is the only other province that is introducing this standard. Mills may comply with the Regulation by electing to register under the optional Technical Standard which has phased-in limits for TRS in water entering the wastewater treatment system. The Ontario Ministry of the Environment researched the relationship between TRS effluent loading and TRS in ambient air originally reported by the US EPA. Because the understanding of the relationships of TRS effluent loading and TRS in ambient air are still in their infancy and the influence of other parameters (including pH, temperature and the various types of odorous compounds present) are not well known, the Ontario government introduced this as an optional standard that mills could choose to apply for. Mills that choose to apply will, over time, provide data that will lead to improved understanding of the relationships between effluent concentrations and air quality. The optional nature of the standard gives Ontario the ability to modify the standard as is deemed necessary as information and data become available. By imposing Clause 8(d) in the Approval, the Department has applied the optional Ontario standards as a hard and fast requirement that must be abided by without regard for the outcome of the Ontario mill experiences. If the limits are deemed to be unrealistic, Ontario has allowed room for possible changes; the Department has not.

It is of particular note that Northern Pulp is regulated to fixed TRS limits, including 3-fold reductions in coming years, when the Mill does not have any baseline data. The limits in Clause 8(d) have been set by the Department before any data has been gathered and before it is known if there is even an environmental reason to impose such limits. Ontario has recognized that there is not enough known yet about the relationship between TRS effluent loading and TRS in ambient air to justify the regulation. What is an optional consideration in Ontario because the precise relationship between TRS effluent loading and TRS in ambient air has not yet been demonstrated, the Department has made a mandatory requirement of the Approval. It is unreasonable for the Department to impose a limit before knowing if there is a relationship necessitating that limit.

Northern Pulp has contacted a mill in Ontario and all of the major laboratories in Canada. It appears that no Canadian laboratories (after conferring with their satellite offices) are capable of performing the test required by Clause 8(d), NCASI Method RSC – 02.02. At this point, the closest capable lab that Northern Pulp has found is located in Simi Valley, California. This demonstrates that the Department is imposing a requirement on the Mill is entirely inconsistent with other Canadian jurisdictions.

As noted in Section I.G above, Clauses 8(d) and 8(f) should be removed from the Approval as they are in breach of the MOU. Clauses 8(d) and 8(f) should also be removed as there is no known scientific basis for the limit, which regulators elsewhere have recognized. Northern Pulp does not object to performing testing of TRS in accordance with Table 6 for the benefit of residents, as such monitoring is contemplated in Clause 8(e). However, the imposition of the regulatory requirement to achieve the TRS limits imposed in Clauses 8(e) to 8(f) is unreasonable.

Northern Pulp requests that Clauses 8(d) and 8(f) be removed entirely and that Clause 8(e) be revised to impose only a requirement that Northern Pulp test TRS in accordance with Table 6.

C. Effluent Flow Reduction Requirements – Clauses 5 and 6(a)

The reductions in Clauses 5 and 6 of the Approval are inconsistent. As water use and effluent flow are directly related in terms of the Mill's mass balance, the water use restrictions outlined in Clause 5 of the Approval effectively restrict the effluent limit contained in Clause 6(a) of the Approval to less than 67,500 m³/day or 77.3 m³/Adt. The effect of the water use restrictions in Clause 5 is to impose a greater effluent flow reduction requirement than the Department requires in Clause 6(a).

The AMEC Report (p. 25-26) indicates that consumptive water use (water taken but not returned as effluent) with the power boiler scrubber in operation is estimated at approximately 2 m³/Adt. In essence, from a mass balance perspective, Clause 5(d) is more stringent and practically translates to an effluent limit of 70.1 m³/Adt (72.2 – 2) or 61,200 m³/day. This represents a further reduction of 6,300 m³/day or an additional 9%. The McCubbin Report indicates that the net water consumption of 2 m³/Adt is very conservative and could be as high as 5 m³/Adt, which could lead to even further reduction requirements. KSH indicates that 8% of incoming water supply to the mill would be lost to evaporation. All three consultants (AMEC, Neil McCubbin and KSH) support this reduction of an additional 9-10%.

In addition to the arguments set out in Section IV.A above, the water use restrictions in Clause 5 are unreasonable because they impose conditions that are more onerous than the effluent control limits in Clause 6(a) of the Approval. Therefore, Northern Pulp requests that the water use restrictions in Clause 5 be removed.

D. COD Limits – Clauses 6(d) to 6(j)

The COD limits in Clauses 6(d) to 6(j) of the Approval are based on the outdated AMEC Report and are unreasonable.

Table II below summarizes the Mill COD data at several locations in the treatment plant.

Table II: Effluent COD Intensity (kg/Adt)

<u>Location</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Point A	154.6	124.7	103.5	123.4	99.6	92.2	82.5	87.8
Point C	71.7	82.3	76.7	70.1	63.1	56.0	53.6	51.4
Point D	74.0	78.6	71.3	65.1	62.8	56.0	55.2	50.8

The improvements in COD intensity beginning in 2011 reflected in Table II are in part the result of the Green Transformation Projects carried out by the Mill that year. Continuous improvement initiatives at the Mill have continued to provide COD reduction through to 2014.

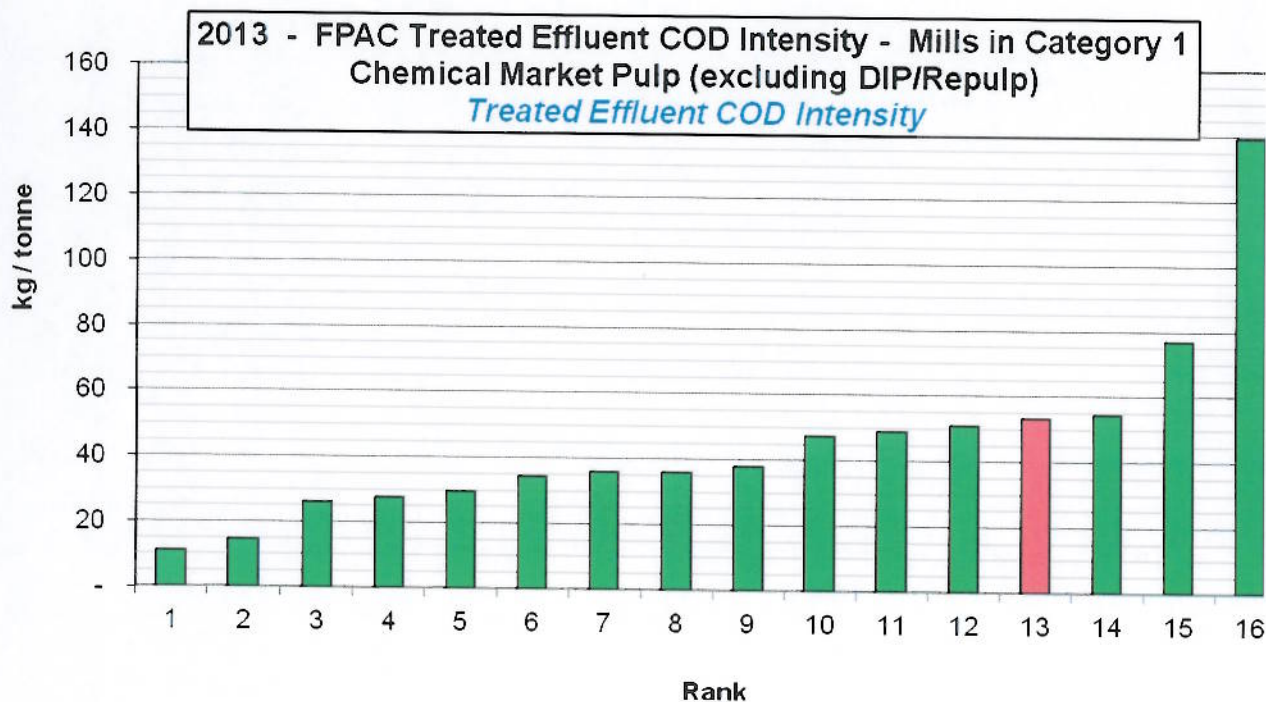
Since the AMEC Report was written, many of the proposed projects for effluent quality improvements identified in the Report have been completed, including: improvements to brown stock washing including two new washer drums and closing of the screen room with true counter-current washing, recycle of PM rejects, Stage 1 DNCG system, sludge removal plan, PB scrubber and a new emergency spill tank. A COD reduction of 30% has been achieved from the 2007 benchmark conducted in the AMEC Report.

Although not clearly stated, Northern Pulp has assumed that the COD reductions in Clause 6(e) of the Approval are based on the five year annual average COD at Point A that was reported pursuant to Clause 6(d).

Northern Pulp's average COD intensity at Point A for 2010 through 2014, as requested in Clause 6(d), is 97.1 kg/Adt. At 873 Adt/day⁷, the daily discharge would be 84,800 kg/day. The 50% reduction in COD required by Clause 6(e) would mean a daily discharge of 42,400 kg/day at Point A.

There is very little published data for COD in North America, and virtually nothing from the United States. Data that is published, and all third party data presented in this Appeal, refer to "after treatment" and would be comparable to Point C in the above Table II, not point A (the inlet to treatment).

The Department has recently made statements in media interviews that Northern Pulp has four times greater COD than mills of similar size. This is clearly wrong. The following graph is an excerpt from the FPAC Report. With 16 out of a possible 30 mills in Canada reporting, this graph shows that Northern Pulp clearly does not have four times greater COD than mills of similar size, nor does it have the highest COD discharge.



The AMEC Report indicates (on p. 29) that benchmarking of effluent was done using the widely accepted EKONO study of September, 2007, which is based on 2005 data. The enclosed EKONO Memo compares COD and BOD data from Northern Pulp to the results found in the EKONO database. The EKONO benchmarking and analysis of the new COD limits concludes

⁷ 310,000 Adt/year at 355 days is 873 Adt/day at the end of the Approval, assuming that the Mill is able to increase production to this limit by that time.

that the two lowest COD discharge mills are hardwood mills with oxygen delignification, modified cooking, condensate stripping, etc. and the lowest COD discharge in a Canadian bleached softwood kraft pulp mill in the database is 28-30 kg/Adt. The EKONO Memo also concludes that more than 40% of the North American bleached market kraft pulp in 2013 was produced by mills with BOD discharges higher than those at Northern Pulp's Mill. This proves once again that the Department is not working with current data and does not understand the influences of mill process equipment and wood species on COD.

It is clear that the Department was relying on outdated studies and analysis in setting the COD limits in Clause 6. This is based on outdated data and is unreasonable. Therefore, Northern Pulp requests that Clauses 6(d) to 6(j) be removed.

E. Production Limit – Clause 4(a)

Clause 4(a) of the Approval limits the maximum production rate of the Mill to 310,000 Adt/yr. Not only does this Clause prohibit the Mill's future expansion, it also offers no additional environmental benefit. The production capacity of the Mill is and should properly be limited by the existing equipment of the Mill and the other requirements of the Approval. So long as Northern Pulp is in compliance with the other requirements of the Approval, whatever the Mill's production limit happens to be when it complies with those requirements has no environmental relevance.

There is no additional environmental basis or additional public benefit for including in the Approval a provision that arbitrarily limits the production of the Mill. Northern Pulp therefore requests that Clause 4(a) be removed entirely.

F. Phenanthrene Testing – Clause 12(ag)

Clause 12(ag) requires semi-annual testing of Phenanthrene at Surface Water station SW12-3. The trend analysis requested is not warranted because the measurement was at or near the detection limit. See enclosed Dillon Consulting Memo⁸. The requirement of Clause 12(ag) therefore has no justification. It only adds cost to Northern Pulp with no corresponding additional benefit to the environment. The requirement in Clause 12(ag) is therefore unreasonable and Northern Pulp requests that it be removed.

G. Daily Limits for Water and Effluent Usage – Clauses 5(d), 5(e), 6(a) and 6(b)

The reference to water and effluent usage in the Approval in terms of daily limits is contrary to the way that effluent data is compared and benchmarked in the industry. See the AMEC Report and the enclosed EKONO Memo, FPAC Report, KSH Memo, McCubbin Report, and Klopping Report. As stated in the KSH Memo at p. 5, "Effluent flow restrictions are usually stated on an average basis, usually monthly or annually since there is no measurable risk to the environmental [sic] by one day of effluent flow above a certain amount."

The imposition of daily limits for water usage that do not consider seasonality are of particular concern to the Mill. Based on data from the last three years, the Mill's water intake has peaked at 87,000-91,000 m³/day (23-24 million gallons/day), even though the Mill's annual average water usage is 75,000 m³/day (20 million gallons/day). These peak days do not occur during the highest surface run-off months. Rather, they historically occur during the hottest days

⁸ Letter from Dillon Consulting Limited dated February 11, 2015 ("Dillon Consulting Memo").

during the summer when the incoming Middle River water is at its warmest and cooling systems are most heavily loaded. Cooling towers will be an essential component of water reduction that will recycle "once-through" cooling water for re-use. Cooling towers are driven by temperature differential (water to ambient air) and relative humidity and are a very effective means of cooling. However, heat transfer during hot, humid spells can be challenging. The cooling towers offer significant water reduction on an annual basis, but daily reductions will be highly influenced by weather. It is therefore clear that the Mill will not be able to operate and comply with the daily water usage requirements of the Approval on certain days of the year. Therefore, daily limits on water usage are unreasonable as they effectively preclude the Mill from operating on a consistent basis.

There is no environmental reason to impose a daily limit in Northern Pulp's circumstances. Northern Pulp therefore requests that all water and effluent usage restrictions in the Approval, including Clauses 5(d), 5(e), 6(a) and 6(b), be revised to be based on yearly averages, not daily limits.

H. PM_{2.5} Contributors – Clauses 9(a) to 9(e)

Clauses 9(a) to 9(e) of the Approval transform the voluntary objectives of the Canadian Ambient Air Quality Standards ("CAAQS") into mandatory compliance requirements without any consideration given to other local sources of PM_{2.5}, especially other local heavy industry, wood-burning stoves and other non-commercial sources, or the not insignificant contribution of interprovincial and international transport of PM_{2.5} from other sources.

It is unreasonable to require the Mill's mandatory compliance with the limits in the CAAQS without taking into account other industrial facilities, residential sources and transportation that are also contributors to PM_{2.5} in the area. See KSH Memo, p. 16-18. As the Mill's compliance with Clauses 9(a) to 9(e) is outside of the Mill's own control, such mandatory compliance requirements are unreasonable.

Northern Pulp is confident that the Mill will meet these limits as a contributor; however, imposing mandatory compliance on the Mill without taking into account other contributors is unreasonable. Northern Pulp therefore requests that Clauses 9(a) to 9(e) be revised to acknowledge that Northern Pulp is only required to demonstrate that its relative contribution to the local air quality meets the limits of the CAAQS.

I. Particulate Limit – Clause 9(h)

Clause 9(h) imposes a regulatory limit on the Recovery Boiler for particulate of 77 mg/Rm³ @ 11% O₂. We understand, based on discussions with the Department, that this limit is based on the performance expected by the manufacturer of the new electrostatic precipitator ("ESP"). This limit does not properly take into consideration the variables that can affect actual boiler performance on a day-to-day basis, particularly in the case of a new ESP attached to an existing boiler. Contrary to North American regulatory convention, the approach taken by the Department in setting the particulate limit for the Recovery Boiler treats the installation of the new ESP as if it were a significant modification to an existing boiler and, as such, treats it as a new boiler and sets emission limits that are in line with such units: KSH Memo, p. 21-22. This is inconsistent with the approach taken in most North American jurisdictions. For example, under the U.S. Air Quality Regulations, the addition and/or replacement of pollution control equipment, such as a new ESP, is not, in itself, considered to be a modification to an existing boiler, and would not result in treating such existing boiler as if it were a new boiler for the purposes of

setting a particulate limit. As the particulate limit imposed by Clause 9(h) fails to recognize that the ESP is being connected to Northern Pulp's existing boiler system and the variables that can affect the performance of that boiler system on a day-to-day basis, Clause 9(h) is unreasonable.

The limit imposed on Quebec's existing recovery boilers of 153.5 mg/Rm³ @ 11% O₂ represents a more reasonable and appropriate limit, as it represents state-of-the-art performance for a boiler and direct contact evaporator system of the same vintage as Northern Pulp's boiler. See KSH Memo at p. 18-22. Northern Pulp therefore requests that Clause 9(h) be revised accordingly.

J. Middle River Study – Clause 5(f)

Clause 5(f) makes Northern Pulp responsible for conducting a maximum sustainable yield study of the Middle River watershed. In the 47 years of the Mill's operation, neither the Department nor any other stakeholder has ever raised a concern about water usage impacts on the Middle River watershed. The Michelin, Granton facility also draws its fresh water supply from the Middle River and discharges its effluent back into Middle River upstream of the Mill's water supply. As well, the river is dammed to prevent salt water intrusion and the spillway dam is controlled by the Province. See KSH Memo at p. 2. No low-level warnings have ever been communicated to the Mill.

In addition, the December 15, 2015 deadline does not allow for a full year study to cover all seasons which would be normal for this type of assessment, implying that existing data must be used. The responsibility of Northern Pulp to conduct this maximum yield study of the watershed (which is usually directed towards new applicants for a water removal permit) is unreasonable, especially considering the Mill does not have access to or control of pertinent data that would be required to properly complete this study.

Northern Pulp therefore requests that Clause 5(f) be removed.

K. Waste Dangerous Goods – Clause 4(i)

Northern Pulp requests that Clause 4(i) be revised to replace the words "all wastes generated" with "all waste dangerous goods generated" in order to clarify this Clause and ensure its consistency with the preceding Clause 4(h), which deals only with waste dangerous goods.

L. TRS Reporting – Clause 7(m)(i)

The monthly reporting requirement for TRS in Clause 7(m)(i) is internally inconsistent with the reporting requirement for TRS in Table 6 of Appendix A. Clause 7(m)(i) should therefore be amended to include an exception for TRS reporting of every three months.

M. Cardlock Facility Wells – Clauses 12(a) and 12(g)

The Approval at Clause 12(a) requires Northern Pulp to maintain the Cardlock Facility Wells. The Cardlock Facility Wells are owned and operated by Parkland Fuels. Northern Pulp has permission from Parkland Fuels to sample the Wells, but the maintenance of the Wells is not under the control of Northern Pulp. Further, Clause 12(g) requires Northern Pulp to maintain records, including borehole logs, construction details and maintenance records, in respect of the Cardlock Facility Wells. This information is the property of Parkland Fuels and Parkland Fuels has no obligation to provide it to Northern Pulp.

Clauses 12(a) and 12(g) are unreasonable to the extent that these Clauses impose an obligation on Northern Pulp to maintain Wells which are not under Northern Pulp's ownership or control and require Northern Pulp to maintain with respect to those Wells records of information to which Northern Pulp is not entitled. Northern Pulp therefore requests that Clauses 12(a) and 12(g) be revised accordingly.

N. Surface Water Stations – Clause 12(ad)

Several of the Surface Water stations listed do not exist, while other new stations are not listed in Clause 12(ad). See enclosed Dillon Consulting Memo. Northern Pulp requests that this Clause be revised accordingly.

O. Stantec Report – Clause 12(au)

Clause 12(au) is inaccurate as it refers to the Stantec "Hydrogeological and Hydrological Evaluation of the Boat Harbour Treatment Facility Report" as being dated April 30, 2012. Rather, the Report is dated September 28, 2011. Northern Pulp requests that this Clause be revised accordingly.

V. Inconsistency with FOIPOP – Clause 22

The requirements in Clause 22 of the Approval that Northern Pulp provide information to the Pictou Landing First Nation ("PLFN"), including a copy of all reporting information and reports that are required to be submitted under the Approval, is inconsistent with the protection granted to Northern Pulp under FOIPOP. The public accessibility to information under the control of the Department under section 10 of the *Environment Act* is subject to the important restrictions of FOIPOP: section 10(2) of the Act.

Specifically, section 21 of FOIPOP provides that a head of a public body (such as the Minister and Administrator of the Department of Environment) must refuse to disclose information:

- (a) That would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
- (b) That is supplied, implicitly or explicitly, in confidence; and
- (c) The disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
[...]
 - (iii) result in undue financial loss or gain to any person or organization, or

Much of the information required to be provided by Northern Pulp to the Department constitutes commercial, financial and technical information. That information is supplied to the Department in confidence. The disclosure of this information could reasonably be expected to harm both

Northern Pulp's competitive position as well as its negotiating position with respect to an action that has been brought by PLFN against Northern Pulp. The competitive position of Northern Pulp would be harmed because its competitors in a global market and others having interests adverse to Northern Pulp would become fully aware of the Northern Pulp's commercially sensitive information.

Requiring Northern Pulp to comply with Clause 22 of the Approval is contrary to Section 10 of the *Environment Act* and Section 21 of FOIPOP. The Department through the Approval is circumventing the due process provided for under FOIPOP and the procedural fairness afforded to Northern Pulp with respect to the release of Northern Pulp's confidential and commercially sensitive information to third parties. The Department cannot by administrative fiat overcome a legislative requirement. Clause 22 of the Approval therefore is an unreasonable and ultra vires condition imposed by the Department. Accordingly, Northern Pulp requests that Clause 22 of the Approval be removed entirely.

Northern Pulp hereby confirms that any documents submitted by Northern Pulp to the Department at any time, including but not limited to this Appeal and its enclosures, are being submitted with the expectation that the Department will observe the protections afforded to Northern Pulp by FOIPOP in respect of such documents.

CONCLUSION

In light of the above, Northern Pulp respectfully requests that you exercise your powers under Section 137(4) of the Act to allow Northern Pulp's Appeal and remove or revise the provisions of the Approval as outlined in this letter.

Yours truly,



Terri Fraser, Technical Manager
Northern Pulp Nova Scotia Corporation

Encl.⁹

1. KSH Memo, Ken Frei and Guy Martin Resumes
2. McCubbin Report, Neil McCubbin Resume
3. EKONO Memo, Heikki Mannisto and Eva Mannisto Resumes
4. Klopping Report, Paul Klopping Resume
5. Dillon Consulting Memo
6. FPAC Report

cc: Bruce Chapman, Northern Pulp (via email)
cc: Dave Davis, Northern Pulp (via email)

⁹ The enclosures refer to Approval No. 2011-076657-R03 but remain valid with respect to the Appeal.



**Environment
Office of the Minister**

PO Box 442, Halifax, Nova Scotia, Canada B3J 2P8 • www.novascotia.ca/nse

Our File number:

23000-30-105
10700-40

Ms. Terri Fraser, Technical Manager
Northern Pulp Nova Scotia Corporation
PO Box 549
New Glasgow NS B2H 5E8

Dear Ms. Fraser:

Re: Notice of Appeal Form Dated April 9, 2015 and additional information filed June 12, 2015 – Industrial Approval for a Pulp Mill Operated by Northern Pulp Nova Scotia Corporation Approval No. 2011-076657-A01

I am writing regarding your Notice of Appeal Form dated April 9, 2015 respecting the decision of an Administrator to issue Approval No. 2011-076657-A01 for the operation of a bleached kraft pulp mill at 260 Granton Abercrombie Road, Abercrombie Point, Nova Scotia.

After careful review of the "grounds for appeal", the information you submitted in support of your appeal, other information held by the department, and the applicable statutory provisions, I hereby render my decision pursuant to Section 137 of the *Environment Act* and order that the following be implemented pursuant to Section 137(5) of the Act:

- Term and condition 6(g) is open to interpretation and its due date approaches the expiration date of this approval, so this term and condition shall be removed effective immediately.
- Term and conditions 5(j), 6(i), and 6(j) reference a new effluent treatment facility that would be regulated by a separate approval, so these terms and conditions shall be removed effective immediately.

- Term and condition 6(e) required additional clarity pertaining to COD concentration baseline and shall now read as follows:
 - o “The Approval Holder shall undertake a study to identify all sources of COD contributing to the effluent treatment system and develop a plan, together with an implementation schedule, to achieve the following reductions, from baseline COD concentrations that shall be derived, to the satisfaction of the department, from information gathered under Condition 6(d), in COD concentrations at Point A:
 - i) a 10% reduction by January 30, 2017;
 - ii) a total of 20% reduction by January 30, 2018;
 - iii) a total of 50% reduction by January 30, 2020.”

- Term and condition 8(d) is open to interpretation, which makes it difficult to ensure compliance, thus this term and condition shall be revised to ensure clarity between Northern Pulp Nova Scotia Corporation and the Department of Environment.

- Term and condition 8(f) has language more restrictive than intended and shall now read as follows:
 - o “If the Approval Holder is unable to achieve the objectives established in Condition 8(d) of this Approval, the Approval Holder shall submit a plan which meets the satisfaction of the Department, by October 30th, 2016, detailing a program to meet the objectives. This plan shall include a proposed schedule for implementation of the program.”

- Term and condition 12 (ag) shall be removed effective immediately. After review of the record, I conclude that ongoing testing of phenanthrene is no longer required because the measurement was at or near detection limits.

- Term and condition 12 (ad) referenced incorrect surface water monitoring locations and therefore locations SW1, SW3, SW7, and SW8 are to be removed and replaced with locations SW12-1, SW12-2, and SW12-3. This term and condition 12(ad) shall now read as follows:
 - o “The Approval Holder shall ensure the following surface water stations are analyzed for parameters listed in Table 7 and 8, in Appendix A, as well as total suspended solids (TSS), biological oxygen demand (BOD), chemical oxygen demand (COD): SW4, SW5, SW6, SW9, SW11, SW12, SW12-1, SW12-2, SW12-3 and SW13. Once annually, during the low flow period, all surface water samples shall be analyzed for mercury.”

- Term and condition 22(b) is unnecessary, as the communication plan defined under Condition 22(a) provides the means for the necessary sharing of information between parties, so term and condition 22(b) shall be removed effective immediately.
- Term and condition 5 pertaining to water use reduction shall be reassessed by the Department of Environment. The information contained in the record reviewed for this appeal provides multiple and varying opinions as to the technical feasibility of the targets identified. The assessment and revisions, if any, shall establish technically feasible targets that meet desired environmental outcomes. This review must also consider changes to other terms and conditions that may be impacted by changes to water usage criteria, for example, it is necessary to ensure consistency between water usage and effluent outflow.

Terms and conditions requiring further review shall be reviewed and revised as necessary by the Department of Environment and submitted to the Minister for approval prior to inclusion in the Industrial Approval.

Pursuant to Section 138 of the *Environment Act*, you have thirty (30) days to appeal my decision to the Supreme Court.

Sincerely,

Randy Delorey, MLA
Minister of Environment