

Our File No.:
10700-40

November 17, 2006

“The name and address of an identifiable individual has been severed from this record in keeping with the privacy provisions of the NS Freedom of Information and Privacy Act.”

Dear _____ :

I am writing regarding your Notice of Appeal dated September 25, 2006 which was received in this office on October 3, 2006. You have appealed the decision of the Department of Environment and Labour to issue an approval (Approval No. 2006-051995) to Pioneer Coal Limited to construct and operate a surface coal mine and reclamation project, and associated works at Point Aconi, Cape Breton County (the activity) pursuant to Section 137 of the *Environment Act*.

Upon careful review of the Notice of Appeal, the information you submitted in support of the appeal and the applicable statutory provisions, I wish to advise that I am dismissing the appeal.

In dismissing the appeal, I want to provide you with the reasons of my decision. In order to organize these reasons contained within this response, I will refer to the specific ground contained at Section 5 of the Notice of Appeal followed by the response to the specific ground.

Ground of Appeal 1 - Appellant Statement 1(a)

The Industrial Approval application specifies the site name as “Surface Coal Mine and Reclamation Project - Prince Mine Site” and further identifies the community as Point Aconi and also includes PID number and Topo Map number and grid reference. The site is identified as “at or near Point Aconi” which is the closest community to the former Prince Mine site. Information provided to NSEL regarding the location and size of the active mine area is consistent and is identified in Tab 16 (Environmental Assessment Registration Document, Sections 2.4 and 2.5, and Figures 2.4 and 2.5) and Tab 17 (Industrial Approval Application Supporting Document) of the Approval document. The site also includes a

description of the activities associated with the former Prince Mine surface infrastructure. NSDNR issued a special lease for the coal Mineral rights; this lease covers 210.7 hectares. The reduction from 288 to 210.7 hectares is directly related to Special Lease issued by NSDNR's Mineral Resources Division. The NSEL Industrial Approval covers 85 hectares of land disturbance in addition to the former Prince Mine site.

Ground of Appeal 1 - Appellant Statement 1(b)

Section 5(1)(g) of the *Approvals Procedure Regulations* states that "unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(g) detailed plans and specifications which, if required by the Minister or an Administrator, are stamped by a professional engineer licensed to practice in Nova Scotia;"

The plans that accompanied the Industrial Approval Application were completed by an independent consulting firm. Since these plans were not of a design nature, they were not required by the Minister or an Administrator to be stamped by a professional engineer licensed to practice in Nova Scotia. Please note that the Proponent may be required to submit stamped engineering plans as the project moves forward.

Ground of Appeal 2 - Appellant Statement 2

The Proponent is not in contravention of Schedule D, Term (b) as Schedule E, Term (a) requires "The Proponent to provide proof of surface rights and/or access rights to the Department, prior to any activity within the prescribed foot print as described in Tab 2 - Schedule A "Site Plan" Figure 1-2". The proponent will not be permitted to commence activity to operate a surface mine until such time as Schedule E, Term (a) is satisfied. Pioneer Coal has provided the department with a copy of the recorded property deed for the former Prince Mine property.

Ground of Appeal 3 - Appellant Statements 3(a) to 3(o)

The Proponent has complied with the terms and conditions of the Environmental Assessment as part of the submission for the Industrial Approval. Outlined below in items 3(a) through 3(o) are the specific schedules and sections of the Industrial Approval that confirm that the conditions of the Environmental Assessment have been met.

Response to Item 3(a)

Pioneer's purchase of the Devco's Prince Mine property would not be an "expansion, extension, modification, or relocation" of the Environmental Assessment Approval as this area is part of the site as shown on the "Site Plan - Figure 1-2". Schedule D, Term (b) and Schedule E, Term (a) require the Proponent to provide proof of purchase of the Prince Mine property before coal extraction activity is allowed to commence.

Response to Item 3(b)

Pioneer Coal is responsible to ensure that the community is informed about the project and to this end has established a Community Liaison Committee (CLC) with those who responded to the ads in the Cape Breton Post (March 4 & 6, 2006) and The Chronicle Herald (March 8 & 11, 2006). The members of the CLC have been meeting with the Proponent to discuss planned site activity. A copy of the Industrial Approval in its entirety is available to the community as a public document in three (3) local libraries. In addition, the Proponent has begun the domestic well surveys in the immediate community. Please note that community consultation is an ongoing process that will continue throughout the life of the Approval.

Response to Item 3(c)

The proponent has discussed operational or Environmental Protection Plans (EPP) with the CLC as noted in the meeting minutes dated May 3, 2006. The EPP was part of the submission with the Industrial Approval Application (see Approval document Tab 17 Appendix B of the Industrial Approval supporting information). A copy of the Industrial Approval in its entirety is available to the community as a public document in three (3) local libraries.

Response to Item 3(d)

The proponent has provided a groundwater monitoring program as part of the Application for Industrial Approval (see the addendum to Schedule I Groundwater). Please note the groundwater monitoring program was reviewed by an independent third party. In respect to the rise of mine water, the proponent shall monitor the rise and shall implement a contingency plan when the water level reaches an elevation of 300 feet below sea level as required in the Industrial Approval Schedule E, Terms (e) and (f). Condition 3.1(b) of the Environmental Assessment Approval will also be enforced by the referenced Industrial Approval conditions.

Response to Item 3(e)

The proponent has provided a surface water management plan which can be found in the Industrial Approval Application Supporting Document (Section 4, Figure 4-1 of Tab 17 of the Industrial Approval) and in Section 2.2 of the Environmental Protection Plan (Tab B of the Industrial Approval). During the initial phase of the project, all site and surface water will be directed to the underground workings. Specific details of the collection system will be provided to the department once site development begins. The implementation of the collection system would be subject to change based upon site development and, thus, specific design details were not provided with the Industrial Application.

Response to Item 3(f)

Information regarding the management and treatment of water once the mine workings reach capacity can be found in the Industrial Approval Application Supporting Document (Section 4, Figure 4-1 of Tab 17 of the Industrial Approval), the addendum to Schedule I (Tab 10 of the Industrial Approval) and in Section 2.2 of the Environmental Protection Plan (Tab B of the Industrial Approval). In addition, Industrial Approval Schedule E, Term (f)

specifies “When the water level in the mine workings reach an elevation of 300 feet below sea level, the proponent shall notify NSEL in writing and submit a contingency plan for acceptance by NSEL. The contingency plan shall be submitted within 90 days of written notice to the Department. The contingency plan shall describe operational procedures for the control and treatment of the site and mine water and such other items as required by the Department.” This clause will ensure that the proponent satisfies this requirement under Environmental Assessment Approval Condition 4.1(a).

Response to Item 3(g)

Information regarding the management and treatment of water after mining operations are complete can be found in Section 12 of Tab 17 of the Industrial Approval. The issue of long term operation of the water collection and treatment system is addressed as part of the reclamation plan for the site.

Response to Item 3(h)

The Proponent will monitor and collect water as it is encountered in the active mine area. The collected water will be treated to meet applicable regulatory discharge requirements prior to release into the environment. This information can be found in Section 4 of Tab 17 of the Industrial Approval.

Response to Item 3(i)

The Proponent has provided a plan for ongoing monitoring of Acid Rock Drainage (ARD) which can be found Section 4 of Tab 17 (Industrial Approval Application Supporting Document) and Section 4.4 of Appendix B (Environmental Protection Plan) of the Industrial Approval.

Response to Item 3(j)

Term 6.1 of the Environmental Assessment Approval requires the proponent to seek CLC input in the development of the wetland compensation plan. The Proponent has discussed the wetland compensation plan with the CLC as noted in the May 3, 2006 CLC Minutes. The CLC will continue to be involved in the future development of this plan as the project proceeds. Prior to any alteration to the wetlands, the Proponent will be required to obtain a wetland alteration Approval from NSEL. Please note that details of the Preliminary Wetland Compensation Plan can be found in Appendix E of Tab 17 (Industrial Approval Application Supporting Document) which is publically available.

Response to Item 3(k)

The Proponent has provided details for dust management as described in Section 7.0 of Tab 17 and Section 2.4 of Appendix B (Environmental Protection Plan) to Tab 17 of the Industrial Approval.

Response to Item 3(l)

In addition to the documentation provided in the Environmental Assessment Registration document (Figure 3.3 of Tab 16 of the Industrial Approval), the Proponent has provided details of the stockpiles in Section 11, Section 12.2 and Figure 11.1 of Tab 17 (Industrial

Approval Application Supporting Document).

Response to Item 3(m)

The former Devco buildings will be utilized as necessary, and any unnecessary buildings will be removed as required (Section 12.1 of Tab 17). Fencing and signage is a requirement of the Industrial Approval Schedule E, Term (i).

Response to Item 3(n)

Term 11.1 of the Environmental Assessment Approval requires the Proponent to provide for review and approval a complete mine reclamation plan which shall be developed in consultation with the CLC. The Proponent has discussed reclamation plans with the CLC as noted in the May 3, 2006 CLC Meeting Minutes. In accordance with Schedule L, Term (e) of the Industrial Approval, the proponent is required to obtain a reclamation approval once coal extraction has been completed. This Approval will incorporate the most up to date standards for reclamation of mine sites.

Response to Item 3(o)

The Proponent has provided details on the removal of existing and future on-site buildings and infrastructure in Section 12.1 of Tab 17 (Industrial Approval Application Supporting Document), Section 3.3 of Appendix B (EPP) and Appendix I (Reclamation Cost Estimate).

Ground of Appeal 4 - Appellant Statement 4

The Proponent is not in contravention of Industrial Approval Schedule E, Term (a) which states that "The Proponent is to provide proof of surface rights and/or access rights to the Department, prior to any activity within the prescribed foot print as described in Tab 2 - Schedule A "Site Plan" Figure 1-2". The proponent will not be permitted to commence activity to operate a surface mine until such time as Schedule E Term (a) is satisfied. Pioneer Coal has provided the department with a copy of the recorded property deed for the former Prince Mine property.

Ground of Appeal 5 - Appellant Statement 5

The Proponent has a sign on site posted on or around October 18, 2006 which posts hours of operation, emergency telephone numbers and contacts.

Ground of Appeal 6 - Appellant Statement 6

The Environmental Assessment process is a regulatory tool through which the environmental effects of a proposed undertaking are predicted and evaluated, and a subsequent decision is made on the acceptability of the undertaking. A Class I Environmental Assessment was undertaken for the Pioneer Coal site and the review process took into account the nature and sensitivity of the area as well as the location of the proposed undertakings. Subsequently, the department issued an Environmental Assessment Approval with Conditions that must be met for the project to proceed. Given that the Proponent has proceeded through a Class 1 Environmental Assessment through which the potential environmental impacts and mitigation were identified, the Industrial

Approval requires the proponent to implement environmental protection and mitigation measures.

Ground of Appeal 7 - Appellant Statement 7

The department's "Cumulative Effects Assessment of Surface Coal Mining in Cape Breton Regional Municipality", September 2005, concluded that "surface coal mining will create a number of adverse effects on valued environmental and socio-economic components, and that these effects will potentially interact with other past, present and future projects and activities to create cumulative effects on those components. However, on a project by project basis, these effects may not be significant, or could potentially be mitigated to insignificant levels." The study also concluded that "mitigative measures and best management practices are available to potentially reduce cumulative impacts from surface coal development to non-significant levels for valued environmental and socio-economic components assessed." The study recommends that NSEL should require environmental assessments of CBRM surface coal mines to include an evaluation of potential cumulative environmental effects. In the case of the Pioneer Coal project, a Class I Environmental Assessment was undertaken which took into account the cumulative environmental effects of the proposed activities. Based on the Environmental Assessment review, NSEL issued an Environmental Assessment Approval with conditions supporting that the project proceed. The proponent is required to complete baseline monitoring and monitor potential impacts associated with its operation. Also monitoring after completion of the mining activity will ensure that Pioneer Coal continues to respond to its responsibilities.

Ground of Appeal 8 - Appellant Statement 8

Environmental Assessment is a decision-making tool used to promote sustainable development by evaluating the potential environmental effects, both positive and negative, of major developments before they proceed. The Environmental Assessment Registration document in combination with the Cumulative Effects Assessment of Surface Coal Mining in Cape Breton Regional Municipality provided the information necessary to consider the positive and negative environmental effects associated with this project. Based on the Environmental Assessment review, NSEL issued an Environmental Assessment Approval with conditions supporting that the project proceed. In respect to the economic analysis or business case for proceeding with this project, these issues do not fall within the mandate of the department and are business decisions that the proponent must make. However, prior to any mining activity proceeding on the site, the proponent must post a bond for approximately \$5 million with NSDNR to cover issues related to restoration and final reclamation. This would ensure future generations do not pay the cost of restoration of the site. In relation to the burning of high sulphur coal, the *Air Quality Regulations* prescribes provincial sulphur dioxide emissions caps and requires reporting of sulphur content and corresponding sulphur dioxide emissions from each facility. The Provincial Energy Strategy also sets targets for the reduction of sulphur dioxide emissions by 2010.

Ground of Appeal 9 - Appellant Statement 9

The mission of NSEL is to protect and promote the safety of people and property and to promote a healthy environment by providing a regulatory regime which is effective, sustainable, and supportive of Nova Scotia's economic viability and competitiveness. To this end, an Environmental Protection Plan (Appendix B of Tab 17 of the Industrial Approval) was developed by an independent consulting firm for the Pioneer Coal site. The EPP states that "the environmental assessment process has demonstrated that all significant negative effects of the undertaking can be mitigated if the project is well designed and implemented. It is the objective of the EPP to present a detailed plan for the development, operation and final reclamation of the surface coal mine such that there are no significant adverse environmental or socio-economic effects". Therefore, the issuance of the Industrial Approval does not contravene the *Environment Act*, and Regulations or any NSEL policies.

Ground of Appeal 10 - Appellant Statement 10

NSEL staff are following standard operating procedures regarding inspections of new approvals and are currently monitoring the site with a minimum of two site visits per week (more are scheduled as conditions require). In addition, NSEL has hydrogeologists, engineers and other qualified individuals on staff to monitor the site as the project moves forward. In regard to the event that took place at the site on September 30, 2006 between regional police and the Proponent, this activity does not fall within the regulatory mandate of the department.

Please be advised that pursuant to Section 138 of the *Environment Act*, you have 30 days to appeal my decision to the Supreme Court of Nova Scotia.

Sincerely,

Mark Parent
Minister