

APPENDIX F

**CEAA CASE STUDY COMPARISON: AGUATHUNA QUARRY AND
MARINE TERMINAL PROJECT, AGUATHUNA, NEWFOUNDLAND
(CONSOLIDATED STUDY REPORT, JULY, 1999) AND WHITES
POINT QUARRY**

Appendix F

CEAA Case Comparison:

Aguathuna Quarry and Marine Terminal Project, Province of Newfoundland and Labrador
(Comprehensive Study Report 1999)

and

Whites Point Quarry and Marine Terminal Project
(Joint Panel Review 2007)

The Aguathuna Quarry and Marine Terminal Project, supported financially by both the Newfoundland and Canadian federal governments, consisted of:

- the development of a quarry to produce 500,000 tons per year of aggregate for a 20 year period, and
- the establishment of a deep-water marine terminal for accommodating Panama Canal-sized vessels (up to 54,446 DWT) with the specific objective of exporting aggregate on these ocean-going vessels.

This project cleared provincial EA approvals in 10 weeks without an Environmental Impact Statement being required, and cleared the CEAA EA process in 15 months using the comprehensive study report (CSR) EA method.

The Aguathuna Quarry project history is important for three main reasons:

- a) In this case government officials were able to allow the CEAA process to be satisfied without considering the impact of the quarry and without a Review Panel hearing;
- b) it illustrates how the CEAA process can be significantly eliminated and eased for a project proponent supported by government funding (similar to the Belleoram Quarry and Marine Terminal project); and
- c) it illustrates that the approach of the Joint Review Panel in the Whites Point Quarry matter -- being highly sceptical of the utility of mitigation measures, follow-up programs and government regulatory schemes -- is not the approach taken by professional consultants and government regulators in CEAA EA reviews. The potential marine related environmental effects identified in this project, which were similar to those identified in the WPQ project can, as is shown in this case, be made acceptable through the use of mitigation measures, the application of government regulatory regimes, and follow up programs. The approach here contrasts dramatically with that of the White Point Quarry Joint Review Panel.

The Aguathuna project was a joint venture between two Canadian-based companies (Mosher Limestone Limited of Nova Scotia and Mid-Atlantic Mineral Inc. of Quebec). The following statement of need was made:

“Mosher and Mid-Atlantic are in a business partnership producing and selling limestone products to foreign markets....Due to limitations at the Kelly Cove quarry (in Nova Scotia) the partnership decided to evaluate other mineral deposits in various locations that would allow the group to secure their position in an expanded marketplace and have a potential for growth. The development of the Aguathuna site will provide Mosher and Mid-Atlantic with a source of raw material supplies and an export facility to facilitate potential growth in global markets.”¹

This project was supported financially by the provincial (Newfoundland) government through its Economic Diversification and Growth Enterprises (EDGE) program funded by the provincial Department of Industry².

The Newfoundland government cleared the project under its *Environmental Assessment Act* within a 10 week period without requiring an Environmental Impact Statement.

The project was also supported financially by the Government of Canada through the Atlantic Canada Opportunities Agency (ACOA).³

Although at an early point DFO had indicated a *Fisheries Act* approval triggering CEAA would likely be required, DFO later changed its view due to “subsequent project re-design/relocation” as described in an internal email.⁴ DFO’s changed perspective resulted in it not being an RA for any aspect of the project, including the marine terminal. This change in DFO’s position conveniently allowed another federal government agency, ACOA, which was providing the federal financial assistance to the project, becoming the sole RA in respect of how CEAA would be applied to the project.

This DFO reconsideration of its role as an RA for a project supported by federal government funding is similar to how the federal government was able to eliminate the quarry portion of the Belleoram Quarry and Marine Terminal project being considered under CEAA – by DFO

¹ Aguathuna Quarry Development, Environmental Impact Comprehensive Study Report, (“CSR”) Prepared on behalf of Atlantic Canada Opportunities Agency, July 8, 1999, Canada doc 8-001, CP#06655, page 020099

² CSR, pg. 2. The current description of the Government assistance program is as follows: The EDGE program offers a 10 year tax holiday to qualifying companies from provincial corporate income tax and payroll tax, followed by a five year phase-in of these taxes. A 10 year tax holiday from property taxes and/or business tax is also offered by municipalities declaring themselves as EDGE participants. The program also offers the lease of unserviced crown land for a nominal fee and the services of a dedicated government facilitator to new or expanding businesses. To be designated as an EDGE corporation, the applicant must show the potential for a minimum capital investment of \$300,000, or incremental sales of \$500,000 annually. The applicant must have the potential to create and maintain at least 10 permanent jobs in a business consistent with the principle of sustainable development.

Effective January 1, 2002, companies receiving EDGE status may be eligible for an enhanced tax holiday. The new legislation will enhance EDGE benefits for rural areas by increasing the tax holiday period for businesses that establish or expand outside the North East Avalon area from 10 years to 15 years. The program also includes a new 50% rebate on federal corporate income tax for EDGE designated companies. This rebate along with the existing 100% rebate on provincial corporate income tax will give the program its "double edge". The enhanced EDGE incentives will apply only to newly designated EDGE corporations that make application after January 1, 2002. http://www.fin.gov.nl.ca/fin/tax_programs_incentives/business/edge.html

³ CSR, p. 3

⁴ DFO Email June 9, 1998, Can doc 8-017, CP#06671, pg. 020298

indicating in that case, without provision of details, that the project proponent reconsidered its design plans for the project.

It is curious how, in the Aguathuna project, DFO came to the conclusion it did not have a role as an RA concerned with fish habitat impacts given earlier comments as reflected in a provincial government document prepared in early 1998 "Comments received during the review of the proposed Aguathuna Dolomite/Limestone Quarry and Marine Facility".⁵ Those comments attributed to DFO as summarized in that memo, state that "additional information is required on the project" to adequately address potential impacts on fresh water and marine fish and fish habitat as follows:

1. The proponent should identify, describe and quantify potential impacts for marine fish, fish habitat and fisheries in Aguathuna/Costa Brava area, particularly in the area of the proposed marine docking and shipping facilities. Potential impacts on fresh water fish, fish habitat and fisheries should also be identified, described and quantified where appropriate. This information is required to determine whether the proposed undertaking will result in [HADD].
2. Design and construction details of the proposed marine facility should be provided including, but not limited to, information on the location, size, orientation, materials, method of construction, blasting/dredging requirements etc.
5. An environmental protection plan should be developed to outline appropriate site and activity specific mitigation to address potential impacts on fish and fish habitat as a result of construction, operation and decommissioning of the proposed quarry and marine facility."

The fact that DFO was able to conclude no HADD would be created is also curious given that construction of the marine terminal at Aguathuna required dumping rock fill on the ocean floor 40 meters into a bay which "supports moderate lobster fishery and has some potential for aquaculture".

In the Belleoram project DFO had first indicated it would be an RA for the quarry and be required to do apply CEAA to the quarry, but then later in that process, based on some new but undisclosed information from the proponent's consultants, DFO determined there would be no basis for it to be an RA for the Belleoram quarry.

What is pertinent about these examples of DFO cooperation to eliminate or substantially reduce its role under CEAA for both these projects is that both projects were financially supported by the Federal government through the Atlantic Canada Opportunities Agency, ACOA.

In the Aguthuna case, Federal officials were even more cooperative with easing the proponent's CEAA burden – they determined that another potential CEAA trigger, approval of the marine terminal under *Navigable Waters Protection Act*, was not required. These decisions, made internally within the Federal government, resulted in neither DFO nor Transport Canada

⁵ Canada Doc. No.8-011, CP#06665, pg. 020271-279

becoming Responsible Authorities so that the only RA for the project under CEAA was the ACOA, which was promoting the project.⁶

Subsequently, the CSR EA prepared for ACOA concluded that there would be no significant adverse environmental impacts arising from this project after mitigation. With that finding, and the concurrence of the CEA Agency, the project cleared CEAA without any further process and was allowed to proceed, subject to ACOA ensuring that all mitigation measures described in the CSR report were implemented and that a follow-up program was developed.⁷ Total CEAA processing time was about 15 months.

The treatment of this project overall compared to Whites Point Quarry is relevant, as this projects had key similar elements to WPG, including the specific objective of exporting aggregate on ocean going vessels, with many potentially similar environmental impacts. (Some on-site environmental effects would be avoided in this project compared to WPQ because the site area had been historically used for a 50 year period for quarrying limestone, with the last activity in 1964).⁸ Nevertheless the contrast in support and treatment by governments and the EA process between this project and the Whites Point Quarry application helps to illustrate how the CEAA process can be shaped by government officials to ensure rapid and successful processing of a project, or on the other hand shaped to provide complex, onerous and ultimately frustrating processing of that application.

In this case the provincial and federal governments clearly agreed with the proponent that quarry development and export of these aggregate materials was consistent with their economic development policies. They implicitly agreed with the purpose of the project as stated in the CSR:

“The purpose of this project is to facilitate the procurement of an expanded (global) market share, with a view to enhancing the long term viability of the company proper, and the economy of the Port au Port region through the creation of sustainable employment.”⁹

The two levels of government also implicitly accepted that from an EA perspective “need” for the project was sufficiently established based on the proponents’ conclusion that there were limitation at the proponents present quarry operations and because the proponents had decided it was appropriate to develop other locations “to secure their position in an expanded marketplace and have a potential for growth”. It was also acceptable to governments in this case that the development of the site would provide “a source of raw material supplies and an export facility to facilitate growth in global markets.”¹⁰

In addition to both the Aguathuna and WPQ sharing similar objectives -- development by private companies of large quarries for exporting aggregate by ocean vessels for use in other countries --

⁶ Because the marine terminal was designed to handle vessels of more than 25,000 DWT, a CEAA Comprehensive Study Report (CSR) EA was required.

⁷ October 21, 1999 memo to Minister, CP#06669, Can doc. 8-015, pg. 020292

⁸ CSR, pg. 2.

⁹ Ibid.

¹⁰ Ibid, pg 3.

both projects were proposed in areas proximate to small existing communities, and both raised similar environmental concerns, e.g., noise and dust from blasting, impacts on fishing, etc.

The Aguathuna project was located "...in western Newfoundland on the Port-au-Port Peninsula on the shore of the East Bay and Costa Bay and is in proximity to the communities of Boswarlos to the west and Bell Man's Cove to the east."

"Several small communities are located within 8 kilometres of the project site... There are an estimated 530 people within the Township of Port-au-Port West and 100 people more specifically within the community of Aguathuna, which also includes Bellman's Cove. The town of Boswarlos edges the western side of the quarry development and extends approximately 3.5 kilometres west along Coast Bay. There are approximately 100 residences in this community....The closest residence to the quarry site is approximately 800 m".¹¹

Comparing the environmental assessment process applied in Aguathuna, on the one hand, to that applied in White's Point Quarry, provides another example as to the opportunity and extent to which environmental assessment can be manipulated, i.e., minimized or maximized, depending on whether the project is favoured or opposed by elected provincial and federal government officials or their agencies.

The WPQ application was of great political concern to both provincial and federal elected officials and cabinet ministers, and both governments agreed to use their environmental assessment laws in a manner that imposed a lengthy (five years) complex (joint review panel) process that allowed the concerned public to amplify and bolster the demands for the project to not be allowed in their neighbourhood.

On the other hand, in the case of the Aguathuna Quarry, which was financially supported by the provincial and federal governments and where there was little local concerns, the EA process was minimized and quickly dispatched.

In contrast to WPQ, there was essentially no concern in this project about the fact that construction of the marine terminal required dumping rock fill on the ocean floor 40 meters into a bay which "supports moderate lobster fishery and has some potential for aquaculture".

On this issue, the Comprehensive Study Report comments as follows:

"...Within the Port au Port Bay area, lobster constitute a commercially important fishery, although several other species are also commercially viable. Most significantly, herring spawning grounds exist within the bay area. During the spring there is a herring fishery and the young from these breeding grounds migrate along the entire western coast of Newfoundland. On a much smaller scale, the ground fishery (primarily cod and flounder) and the harvesting of scallop and snow crab also takes place with the Port au Port Bay area."¹²

¹¹ See note 2, page 12.

¹² CSR Report, pg 21.

Again, despite these findings, DFO and Transport Canada had no substantive concern about the effect of shipping on fisheries or the potential for shipping to cause significant environmental issues. The rationale advanced for these conclusions is found in the following terms in the CSR, and accepted by the relevant government agencies in this case, in contrast to the worrisome comments of the JRP in the Whites Point Quarry case:

8.4.3 Shipping

A complete loss of a ship transporting dolomite in the shipping route described in this study would result in the loss of the cargo of dolomite onto the substrate and the ships fuel into the water column. This would result in smothering of habitat and effects on water quality, benthic sediment and benthic communities along the shipping route in Port au Port Bay.

To realistically evaluate the significance of the loss of a ship, along with its cargo and fuel, it is important to consider such an occurrence within the context of probability. In this regard, there are a large number of factors which come into play which collectively greatly reduce the likelihood that such an event would in fact take place. These include up-to-date on board navigational aids equipment, expert captains, ship safety requirements, ballast stability controls, established aids-to-navigation in Port au Port Bay, seasonal operations (e.g. non operation during prevailing northerlies) suitable shipping channels and appropriate docking operational protocols. Because of these factors it has been qualitatively concluded that the likelihood of an accident sufficient to result in the loss of a ship is extremely low.

In the unlikely event that a complete loss of cargo and fuel did occur, the shoreline and inter tidal habitat would also be affected by the fuel spill. Sandy beaches, areas of marine plant concentrations, salt marshes and ichthyoplankton, are the most vulnerable. All would suffer temporary reductions in habitat quality and/or population densities. Whether these latter alterations would be in excess of population variations occasionally caused by natural means is uncertain. *The potential environmental impacts associated with a loss of a ship are considered to be nonsignificant because of the low level of resources at risk, the temporary nature of related impacts and the very low level of probability associated with such an accident occurring.*¹³

Also in the Aguathuna project, the public raised concerns about noise from drilling and blasting, dust, impacts from blasting on neighbouring residences, and at an early point the CEA Agency and Environment Canada questioned the sufficiency of information as to terrestrial resources, migratory birds, managing impacts on water quality, rare or endangered species.

But, as an important contrast to the Whites Point Quarry JRP matter, both the CEA Agency and Environment Canada accepted that as long as issues were sufficiently identified in the CSR and the proponent had made commitments to subsequently deal with these through mitigation

¹³ CSR, Canada Doc 8-001,CP#06655, pg. 020142, emphasis added

measures and monitoring, it would be acceptable to release the project from the CEAA process based on the use of such measures and follow up programs.

A range of mitigation and monitoring measures were proposed and described at pages 94-96 of the CSR. These included but were not limited to the following:

- “the development of Environmental Protection Plans for the construction, operation and decommissioning of the project.

In these plans, mitigation generally discussed in the CSR will be detailed for all potentially impacting project components and activities.

- An EPP for the construction phase must be submitted for approval to ACOA, expert departments (DFO and Environment Canada) and the Province prior to construction start up. Appendix B provides outlines of a Management Plan, EPP and Health and Safety Plan
 - Similarly, an operation phase EPP will be submitted for approval prior to operational start up
- follow up programs including the following:

14.2 Follow Up¹⁴

Aguathuna Quarries Ltd. has committed to meeting or exceeding all legislative and regulatory requirements for the project. Included as part-and-parcel of these requirements are the Follow Up provisions of CEAA, as described by s. 38 of CEAA. *In particular, the CEAA requires that Environmental Assessment predictions be verified and that required mitigation is in fact put in place. As such, ACOA, as the RA, is committed to ensuring that a detailed follow-up program is prepared and acted upon. In this regard, ACOA will consult with expert departments concerning the development and implementation of the program. Part and Parcel of that program will be a clear outline of accountability within the proponent company related to corrective measures, should they be required.*

For the Aguathuna Quarry Development, effects have been predicted to be insignificant with mitigation. It is acknowledged, however, that in order for the project to be successfully carried out with minimal harm to the existing environment, mitigation will be required. In this regard, the follow up program will include (but not be limited to) those components presented below:

- Monitoring suspended solids in freshwater and coastal zone environs during the construction phase; ensure compliance with s. 36 of the *Fisheries Act*, CCME Water Quality Guidelines (1987) and CCME Interim Marine and Estuarine Water Quality Guidelines for General Variables (1996). Sampling will occur for all potentially affected watercourses prior to project start-up to

¹⁴ Ibid, pg 020194-95

determine baseline levels. Thereafter, sampling will occur twice weekly at baseline collection points. During the periods of visible suspended solids, samples will be collected and tested daily. Discharge from the settling pond to be sampled daily;

- Monitoring suspended solids in freshwater and coastal zone environs during the operational phase (bi-weekly except during heavy precipitation events –daily);
- Pre-established criteria for water quality monitoring, including the frequency and location of sampling and contingency plans in case criteria are exceeded, will be outlined in the EPP;
- Monitoring zone-of-influence air quality during the operational phase, and implementation of dust controls as necessary, (i.e. in excess of 80 ug/m³);
- A dive survey of existing habitat has been carried out, and is provided in Appendix D. Following infill emplacement, a second underwater survey will be conducted either by SCUBA or ROV, to determine habitat characteristics within 50 metres of the footprint of the dock. Periodic surveys will be carried out to monitor effects of ship loading on bottom marine habitat (e.g. every three years);
- Periodic site inspections by ACOA and/or its representatives to verify mitigation efficacy;
- Conducting pre-blast baseline surveys on all potentially affected poured concrete structures, and post-blast surveys on same;
- Follow-up inspections to ensure mitigation predictions;
- Air quality monitoring surveys will occur throughout the construction and operational phases of the Quarry Development. Dust and noise sampling will take place in the immediate working vicinity and at intervals up to 1 km away from the dust and noise generating activities. Monitoring will occur on a regular basis (i.e. bi-weekly during the first year, and as dictated by weather and intensity of activities after that period);
- Predictions regarding rare and endangered species on and surrounding the project site, will be confirmed as part-and-parcel of the EPP. Prior to the initiation of construction and quarrying phases, a qualified botanist will survey the site to confirm there are no rare or endangered plant species present. Further, an inventory of migratory and nesting birds on the site, and a supplemental survey of Goose Pond for freshwater fish species will be conducted prior to the construction phase.
- A Health and Safety Plan must be developed to ensure worker safety. It will include standard operating practices for the handling of site machinery, safety

requirements and instructions for medical emergencies. Employees will also be required to take appropriate safety training courses.

- CEAA requires that follow up monitoring be conducted for potential negative effects on the environment. By extension, this includes any negative socio-economic effects associated with them. No adverse socio-economic effects have been identified for the project.
- Weekly environmental reporting will be conducted in order to confirm EPP provisions, report accidents and/or malfunctions and verify mitigation efficacy. Reports will be retained by the proponent, and copied to ACOA, DFO, Environment Canada and provincial DOE;
- Other follow-up provisions may be applied as the development progresses through its phases.

Environment Canada noted that the proponent, ACOA “is committed to ensuring an Environmental Management Plan, outlined in Appendix B of this CSR, is prepared and revised on a continuous improvement basis”.

Environment Canada stated: “the department is satisfied that the revised CSR provides an adequate basis for public comment and assessment decision-making, given the recognized need for refinement of a mitigation and monitoring strategy for environmental management planning.”

This quote importantly reveals how for this project federal officials were prepared to acknowledge mitigation and monitoring as important environmental management strategies, and that loose ends and unresolved issues do not necessarily have to be addressed in an EA but can be left to be dealt with in a subsequent environmental management plan.¹⁵ This approach is a dramatic contrast to how the WPQ JRP came to analyze how issues could be resolved in that case.

The CEA Agency also undertook an extensive review of the CSR for the project and it prepared a chart analyzing issues, consisting of 39 questions, rating and comments, plus supplementary questions as to environmental effects.¹⁶

This allowed the Agency to confirm that mitigation measures and commitments to implement these were sufficient to lead to EA acceptability:

“The information on mitigation measures [contained in the CSR] is important since the conclusion on the significance of effects is based on the implementation of these measures. Furthermore, the Minister of the Environment will base his final decision on the information found in the CSR after taking into account the

¹⁵ June 24/99 Environment Canada letter, Canada Doc. 8-041, CP#06695, pg. 020356

¹⁶ Agency Review of the Comprehensive Study Report and Related Documents, apparently dated July 1, 1999, Canada document 8-002, CP#06656, page 020215-227]

implementation of the appropriate mitigation measures. As well, the Minister will require that the RA ensures that the mitigation measures described in the CSR are implemented.”¹⁷

Conclusion

On October 21, 1999, a memo from President of the Canadian Environmental Assessment Agency to the Environment Minister, David Anderson, recommended that the project could proceed as

“the project, as described with mitigation, is not likely to cause significant, adverse, environmental effects”

on the understanding that the RA, the ACOA,

- (a) ensure that all mitigation measures described in the CSR are implemented;
- (b) ensure that a follow-up program is developed that can determine the effectiveness of measures taken to mitigate any adverse environmental effects of the project and can verify the accuracy of the environmental assessment.

The CEA Agency determined it “will follow up with the Responsible Authority to ensure that the mitigation measure as described are undertaken and that the prediction of environmental effects was accurate”.

In other words, the CEA Agency and the federal Environment Minister agreed that with appropriate mitigation conditions and subsequent oversight by the CEA Agency, this project was satisfactory to proceed, and that the Atlantic Canada Opportunities Agency could make the final decision on proceeding with the project.

In this case government officials were able to allow the CEAA process to be satisfied without considering the impact of the quarry and without a Review Panel hearing.¹⁸

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¹⁷ Canada doc. 8-008, CP06662, pg. 020263

¹⁸ Canada doc. 8-015, CP#06669. pg. 020292-293