

CASE STUDY MATERIAL
- BASED ON ELECTRONIC FILES.

PROJECT DESCRIPTION DEVELOPMENT

- Keltic submitted a draft project description (PD) to the NSEL for circulation to the Agency. On May 20-04 the Agency responded to the Proponent that the document was inadequate, and provided a copy of the OPS.
- A further draft was submitted - June 22-04 meeting with the Agency (RL&G and Project Assessment [by phone]), NSEL & Proponent. Discussed intent of PD to identify federal stakeholders and level of Assessment. Proponent advised not to separate the petrochemical and LNG facilities. The Proponent declined opportunity to meet with potential regulators.
- A further draft PD was submitted - meeting held July 22-04. Attendees – Agency (RL&G and Project Assessment [by phone]), NSEL, Proponent and consultants. Discussed level of assessment, including possibility of panel based on track report (& if go to Panel, the cost recovery policy). Discussed potential for NS lead party based on CCME Sub-agreement.
- August 10-04 – Agency (RL&G, HQ) & NSEL teleconference to discuss harmonization. Agreed to coordinate front end of federal process with Class 2 process, as per lead-Party in EA Sub-agreement.
- August 23-04 – meeting held with Proponent to recommend submit PD rather NSEL registration to ensure harmonization options.
- August 24-04 – Agency & NSEL teleconference to discuss in more detail options for coordinating the federal scoping process into Class 2 Terms of Reference process. Agency and NSEL prepared shared scoping/ToR document.

FEDERAL COORDINATION PROCESS

- The Agency (RL&G) initiated FCR process – August 30-04
- September 28-04 – FCR more information requests from EC & DFO forwarded to proponent.
- October 13-04 – DFO confirmed likely to be an RA.
- October 14-04 – Keltic & EC meeting to discuss disposal at sea requirements. EC stated verbally would not be an RA; upon reflection, EC decided to remain an RA until greater certainty that disposal at sea permit not required.
- October 22-04 – EC confirmed likely an RA

DISCUSSIONS ON FEDERAL SCOPE OF PROJECT & HARMONIZATION OPTIONS

IDENTIFY
PARTIES INVOLVED

- September 22nd – Agency & RAs initial meeting to discuss project, FCR determinations, scoping & harmonization (recognizing all FCR determinations not complete), include draft shared scope/ToR document.
 - DFO - more information related to crossing needed, but likely an RA based on marine terminal infill – but won't necessarily scope whole project. HQ contacted and DFO policy still to scope narrowly.
 - TC – scope narrow based on NWPA; but will participate in broader scope with agreement up front between RAs.
 - EC – require more information.
- September 29th – Agency and DFO discussion on scoping narrowly vs. broad.
- September 29th – Project Assessment reported on meeting with BY. Its an RA decision whether they share a scoping document with NS.
- September 30th – Agency discussion with Chris Daly re possibility of a joint panel. Depends on how RAs scope. If RAs scope only to their triggers and those are (e.g.) just related to the terminal, then difficult to have this accommodated by a joint panel that is considering everything because of NS's scope. Joint panel can be beneficial though because have to think how otherwise would handle federal narrow scope and NS broad scope, and timing of the processes and decisions.
- October 1st – Agency meeting.

- Best option – shared federal and provincial scope; worst option – different provincial and federal scopes, and different RA scopes.
 - Screening possibility discussed – more information required from municipality.
 - Different approached to scoping in federal departments – encourage discussion within group of implications of narrow vs. broad and implications of both.
 - Discussion in HQ about whether province and feds can share a scoping document if have different scopes.
- October 4th – EC discussing with HQ if they want to be involved in scoping discussions (to date has been handled independently in regions); TC handles scoping regionally.
- October 8th – NS query whether can go to a panel for sake of harmonization under S.58(d) vs S.28 which must be for effects or public concern.

- October 19-04 – Cheryl Benjamin & Peter Geddes met with Alan Bell to discuss overall progress of EA. Discussed value in waiting to register the project with the NS EA process until the federal process is clarified. Next federal step is to determine scope of project – meeting being held October 25-04.
 - Proponent worried about missing windows for seasonal field studies. Advised a good picture of what scope would be is available in documents for other projects.
- October 19th – Francine Richard – must get to a panel under S.21, 25, or 28 first, then can use S.58 to create an agreement.

- October 25th - appeared to be agreement to scope project to regulatory triggers; review of minutes revealed different understandings.
- October 29th – TC wants to include items outside of NWPA such as Tempol (part of TC's mandate but not strictly related to NWPA).
- November 2nd. Agency, DFO & consultants to discuss HADD authorization: 1) if get through EA and don't issue HADD; and 2) if get through EA, can't break ground until HADD authorization in place – must account for this in timelines.
- November 3rd – NS preference is for feds to adopt NS Class 2 process.
- November 3rd – EC queried why this project not a candidate under DFO's pilot project for broad scoping.
- November 4th – EC feels this project a defensible candidate for panel.
- November 5th – TC supports scoping project similar to NS so can have a study and 1 report.
- November 5th – Bill Coulter & Gerry Aubrey – the joint panel in the draft bilateral is based on all CEAA requirements being met – i.e. feds must get to a panel first under S.21, 25, or 28.
- November 5th – NWPA process explained to proponent, including navigability inquiry.
- November 5th – proponent and Agency meet to discuss water supply (contradictory statements in PD). Proponent to supply clarifying letter.
- November 5th – Agency discussed S.25 referral with DFO region. Whites Pt. was on public concern – will check on criteria. Difficult for Keltic at this point on significant effects because if effects were significant would look at redesigning project. Discussion with DFO HQ on public concern – discussed petition to municipality.
- November 8th – Agency discussion on RL&G weekly call.
 - S.25 the "or" should be regarded as an "and".
 - Need to examine any public concern being considered under S. 25 – i.e. is it a federal interest?
 - If feds are going to a panel, no reason the review process can't look like NS's (as per their preference). This is done in Quebec.
 - There shouldn't be any shared document until in a joint process – i.e. a shared scope/ToR document would not be appropriate since looking for different types of feedback (federal process looks for feedback on comp study vs. panel).

- November 10th – discussed possibility of referral by RAs under S.25. TC & DFO agreed to review S.25 material to be prepared by EC. TC & EC agreed to concurrently develop scopes of project statements, as previously done by DFO.
- November 12th. S.25 possibility discussed with NS. NS not surprised. Cautioned about using areas of NS interest for federal referral.
- November 25th. DFO HQ concerned about EC carrying through with S.25 referral given tenuous nature of trigger.
- 1st week December – Agency discussion with EC on S.25 referral. Discussed letter drafted by EC.

- December 3rd – EC agreed to develop material to demonstrate commitment to other DFO & TC to remain involved throughout life of project even if turns out they aren't an RA. EC, DFO, & TC agreed to concurrently develop material for S.21 path, in case S.25 does not come to fruition (DFO, and possibly TC, will draft letter to proponent requesting more info re triggers to facilitate this).
- December 6th – TC wants to scope in Tempol process which is outside the NWP permit.
- December 7th – Agency and Proponent meeting. Concerns with length of time since submitted PD. What happens if register with NS? Bill Coulter would like something to take to RAs to show Keltic's position and deadlines.
- December 9th – will TC be requesting more information from Proponent re NWP triggers? They will talk about it.
- December 9th – HQ looking for previous "reassurance tools"; S.21 on back burner until get response from DM on memo presenting options for Keltic review. EC agreed everyone had agreed to take S.21 beyond determining scope of project to building S.21 document.
- December 13th – Agency meeting. Have there been clear issues to warrant S.25? Are we able to say S.21 not able to handle this? Only 14 referrals on S.25 since 1995.
- December 13th – Agency and proponent.
 - Addition of Ritchie Mann as lobbyist to project.
 - Proponent feels need to do something dramatic. Has been talking with lawyer and believe can register with NS and have all federal requirements met by provincial process. Agency explained issue is getting all RAs to agree to this.
 - Proponent concerned with timelines, and also not convinced panel is best approach.
 - Proponent to have lawyer put something together on option they see for harmonized process – won't register until get material to us and have another meeting.
- December 21st. RAs & Agency discussed whether S.25 is appropriate in this case. Agreed to wait for ADM meeting on 23rd on Kitimat.

