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10 M. Dober
FILE NO. 4194-82/1

JAN 22 2007

DOCUMENT NO. 071028918

Your file Votre référence

Our File Notre référence

MK 7184-1

ES NL 2006-054

January 18, 2007

Ms. Maria Dober
Environmental Stewardship Branch
16th Floor, Queen Square
45 Alderney Drive
Dartmouth, NS B2Y 2N6

Dear Ms. Dober:

**Draft Scope– Newfoundland and Labrador Refinery Corporation
Environmental Assessment Process – Southern Head, NL.**

Transport Canada (TC) has received your letter (Dober to Decker, December 21, 2006) and appreciates your input into the federal environmental assessment, currently underway pursuant to the *Canadian Environmental Assessment Act* (CEAA). TC is the principal Responsible Authority (RA) for this assessment. The Department of Fisheries and Oceans Canada (DFO) is a RA. This letter is intended to address some of the concerns, applicable to TC, noted in your December 21, 2006 letter. Any inquires for DFO should be directed to the appropriate EA contact.

EC stated concerns that the federal environmental assessment is scoped primarily to the marine infrastructure rather than the project in its entirety. The reason for these decisions are that the federal scope focused on the marine infrastructure, as both TC and DFO have Law List triggers for a Comprehensive Study associated with Section 28(c) for the Comprehensive Study List Regulations under CEAA. Section 28 (c) states:

“The proposed construction, decommissioning, or abandonment of a marine terminal designed to handle vessels larger than 25 000 DWT unless the terminal is located on lands that are routinely and have been historically used as a marine terminal or that are designated for such use in a land-use plan that has been the subject of public consultation.”

The definition of Marine Terminal provided by CEAA states:

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- a) *“an area normally used for berthing ships and includes wharves, bulkheads, quays, piers, docks, submerged lands, and areas, structures, and equipment that are: (i) connected with the movement of goods between ships and shore and their associated storage area, including areas, structures and equipment used for the receiving, handling, holding, consolidating, loading, or delivery of waterborne shipments, or (ii) used for the receiving, holding, regrouping, embarkation or landing of waterborne passengers; and*
- b) *any area adjacent to these areas, structures, and equipment referred to in paragraph (a) that is used for their maintenance.*

It does not include:

- c) *production, processing, or manufacturing areas that include docking facilities used exclusively in respect of those areas; or*
- d) *the storage facilities related to the areas referred to in paragraph (c).”*

The proposed refinery is a processing facility, therefore, the marine terminal portion of the project is a separate project as defined under CEAA. TC used this approach because our involvement in this project is primarily related to the marine environment. TC does not have the mandate, resources, or expertise to ensure an effective follow-up program is implemented for the refinery portion of the development proposal.

TC is a committee member for the provincial environmental assessment process, as are DFO and EC and will assist in the preparation of the Environmental Impact Statement (EIS) guidelines. Several provincial departments are also members of this committee and will ensure that a thorough assessment is completed for this project. The provincial EIS will assess the whole project with emphasis on air quality and the terrestrial environment. The proponent has indicated that they will assess aspects of the terrestrial, marine and socio-economic environments in addition to the cumulative effects, potential for climate change and emergency preparedness. TC is satisfied that the provincial assessment will effectively assess the refinery; therefore, the federal assessment will address those components under federal jurisdiction (i.e. marine environment). This will avoid significant duplication between the provincial and federal assessments. The two processes will be harmonized to the extent possible but there will be two separate EA documents prepared because currently there is no MOU signed between the CEA Agency and the Government of Newfoundland and Labrador. Where possible, the two processes will be coordinated to ensure an effective and efficient process for the proponent.

EC also has questioned why a *NWPA*, Section 5(1) authorization is not required for “a dam and intake on the system of ponds” while a *Fisheries Act* authorization is

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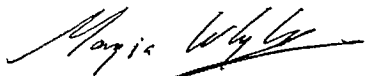
required. As you are aware the *NWPA* and the *Fisheries Act* are two distinct pieces of legislations that are implemented separately by TC and DFO, respectively. In this case TC deemed the watercourses as not navigable. On the other hand DFO was concerned about the watercourses due to fish and/or fish habitat issues for which they have identified that a Fisheries Act Authorization is required. TC administers the NWPA based on a site-specific navigability assessment, irrespective of the decisions made by DFO relative to the *Fisheries Act*.

As stated in your letter, TC does possess pertinent expertise related to the *Canada Shipping Act* and the *Transportation of Dangerous Goods Act* and we can assure you that throughout the EA process this expertise will be availed upon. It should be noted that the proponent has indicated that they will participate in a TERMPOL review for this project. While the TERMPOL review will be separate from the EA both processes will require similar information and will be coordinated to avoid duplication for the proponent.

We ask for EC continued involvement in both the federal and provincial environmental assessments and look forward to your input in the next stages of the EA and TERMPOL review process. Hopefully, this satisfies some of your concerns related to this project. Other concerns indicated within the letter have been addresses in the draft-scoping document.

If you have any questions feel free to contact me at 506-851-7319 or Randy Decker at 709-772-3061, the lead Environmental Officer representing Transport Canada for this project.

Sincerely,



Margie Whyte, MES
Regional Manager, Environmental Affairs - NL

cc. Randy Decker
Charles Maclean, EC
Marvin Barnes, DFO
Vanessa Rodriques, CEA Agency

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