

BRIEFING NOTE FOR THE MINISTER

**ENVIRONMENTAL ASSESSMENT OF PROPOSED BEAR HEAD LIQUID
NATURAL GAS TERMINAL**

(Information Only)

SUMMARY

- On October 31, 2003, Access Northeast Energy Inc. (ANEI) submitted a project description for a proposal to construct and operate a liquefied natural gas (LNG) terminal consisting of marine and land-based infrastructure in the Point Tupper / Bear Head Industrial Park in Richmond County, Nova Scotia.
- DFO is the sole Responsible Authority for an environmental assessment (EA) of the proposal under the *Canadian Environmental Assessment Act (CEAA)* and has determined, based on legislative triggers that a screening level EA of the marine infrastructure portion of the project is required. DFO does not have a trigger under CEAA to conduct an EA of the land-based facilities.
- The Canadian Environmental Assessment Agency (Agency) had indicated to ANEI months earlier that it would be required to conduct a comprehensive study of the land-based facilities and is pressuring DFO to broaden its Scope of Project under CEAA to include a comprehensive study of the land-based facilities.
- DFO's Scope of Project for the Bear Head LNG proposal is consistent with its regulatory authority-based scoping approach to other project proposals including the Irving Oil Ltd. LNG and multi-purpose pier proposal in St. John, New Brunswick.

Background

- On October 31, 2003, ANEI submitted a project description for a proposal to construct and operate an LNG terminal consisting of land-based storage tanks and

regasification (vaporisation) infrastructure and a marine component with ship offloading infrastructure and jetty. The Bear Head Industrial Park site is provincial Crown Land, zoned Port Industrial which allows fuel bunkering, marine terminals and other heavy industrial or port activities as required.

- Both the land and marine portions of the proposal are described in the CEAA *Comprehensive Study List Regulations* as follows:
 - Subsection (Ss.) 13(d) a facility for the liquefaction, storage or regasification of liquefied natural gas, with a liquefied natural gas processing capacity of more than 3 000 t/d (tonnes/day) or a liquefied natural gas storage capacity of more than 50 000 t.
 - Ss.28(c) a marine terminal designed to handle vessels larger than 25 000 DWT (Dead Weight Tonnes) 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.
- In November 2003, DFO reviewed the project description under the *Federal Coordination Regulations* process of CEAA and determined that the marine terminal will require regulatory approval pursuant to the *Navigable Waters Protection Act* (NWPA) Subsection (Ss.) 5(1), and possible authorization pursuant to the *Fisheries Act* Ss. 35(2), both of which are triggers for an EA under CEAA. The level of EA required is a screening as per CEAA Ss. 28 (c).
- DFO has no requirement to issue permits or approvals, and no other triggers to conduct an EA of the land-based components of the project. For this reason, DFO has limited the Scope of Project for its EA of the Bear Head LNG proposal to its legislative authority as it pertains to the marine infrastructure.
- The Province of Nova Scotia will be conducting a Class 1 Environmental Assessment of the gas storage infrastructure pursuant to the Nova Scotia *Environment Act* and *Environmental Assessment* Regulations. DFO and the Province are developing an agreement to harmonize the federal and provincial EA's.

Analysis / DFO Comment

- In recent months senior officials of DFO and the Agency have been discussing a broad scoping approach, proposed by the Agency. Although DFO is considering this approach, on a pilot basis, it has not yet been adopted pending further analysis and discussion with other government departments. The Agency however, is of the

impression that DFO has accepted the broad scoping pilot and has been presenting this to proponents, as is the case with ANEI.

- Prior to ANEI's submission of the project description on October 31, 2003, the Agency created an expectation with ANEI that land-based infrastructure would require a Comprehensive Study and recommended that the company wait to submit its project description until after Bill C-9 came into effect (October 30, 2003). ANEI has conducted some work to meet the comprehensive study requirements in response to this expectation.
- The Agency wants DFO to extend its Scope of Project to include a comprehensive study of the land-based infrastructure, where the department does not have legislative authority. Reasons given by the Agency include: achieving a complete EA of the entire proposal, consistency with the Agency's earlier advice to ANEI, harmonization with the provincial EA process and applying the same EA requirements for this proposal and the Irving Oil Ltd. LNG and multi-purpose pier proposal in St. John, New Brunswick. In Irving's proposal, a comprehensive study is required for the land-based infrastructure due to the requirement for DFO to issue a Fisheries Act Ss. 35(2) authorization for a stream diversion associated with the plant construction.
- On December 12, 2003, DFO advised ANEI that based on required regulatory approvals DFO would require a screening level EA of the marine infrastructure only. ANEI has not reacted negatively to this information, given that they had delayed their project submission until Bill C-9 came into effect and done some work towards a comprehensive study of the land-based infrastructure. The benefit to the company of DFO's scoping decision is that the EA process will be reduced from 9 months or more to approximately 60 days.
- Development of an agreement to harmonize the EA with the province is continuing on the basis of DFO conducting a screening of the marine infrastructure.
- It is possible that Irving Oil Ltd will complain that ANEI has a competitive advantage due to the shorter, less onerous EA requirements for its proposal.

Recommendation / Next Steps

- DFO must reaffirm with the Agency that it has not adopted the broad scoping pilot and continue discussion to better coordinate involvement, timing and communication in project reviews.

- In the event that Irving Oil Ltd. complains about its EA requirements relative to those of ANEI, DFO will be able to demonstrate that its approach to both is consistent and based on the department's regulatory requirements.

Larry Murray

B. Hood (991-0328) / R. Nadeau / R. Wex / S. Kirby / cjr



MECTS - SSCMHG:

To: / Geoff Regan Date :
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Subject: / ENVIRONMENTAL ASSESSMENT OF PROPOSED BEAR HEAD LIQUID
Objet : NATURAL GAS TERMINAL

From / De : Larry Murray

Via : Susan Kirby

<input type="checkbox"/>	For Signature / Pour Signature	<input checked="" type="checkbox"/>	Information
<input type="checkbox"/>	For Comments / Pour commentaires	<input type="checkbox"/>	Material for the Minister / Documents à l'intention du ministre

Remarks: / Prepared in consultation with Maritimes Region
Remarques :

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- Ms./M^{me}

Drafting Officer / Rédacteur : *B. Hood (991-0328) / R. Nadeau / R. Wex / S. Kirby / cjr*
