

6.0 Introduction to the EIS

*The Proponent, Management Structure, Regulatory Environment
& International Agreements*

EIS Reference: EIS Volume IV, Chapter 6

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WP 1461-Department of Foreign Affairs and International Trade Sustainable Development Division

Thank you for being in touch with Foreign Affairs and International Trade Canada in regards to the White Points Quarry and Marine Terminal Project. You asked us to provide a response with respect to how international agreements such as the NAFTA and Kyoto Protocol could affect the project or its environmental effects.

With regards to the Kyoto Protocol – We note that the Protocol, like other treaties, imposes obligations on States, not individuals. Therefore, the short answer is that there are no implications under the Koyoto Protocol for this project, in the sense that the Protocol has commitments that the project proponents would have to meet.

With respect to the information on climate change and the Protocol provided by the project proponent (Part 6.6.2), this is generally accurate. I would note that the 11th paragraph, third sentence, has a reference to China and India that could be misinterpreted. The sentence states that China and India (not named) have “not signed on” to the Protocol. China and India have ratified the Protocol and so are Parties; they do not have emissions reductions obligations. I would also note that the information may now be dated.

With regards to the North American Free Trade Agreement (NAFTA) – The current text in the EIS is generally fine. We have the following two comments:

- 1. Page 72, 3rd paragraph: The sentence: “Likewise, it is important to note that the tribunal must be guided by NAFTA as a whole rather than being restricted to only the terms of Chapter 11 or, more restrictively to only Article 1110 itself” is not accurate. Please refer to NAFTA Art 1112(1).*
- 2. Page 72, last paragraph: Reference to “Article 12” should be changed to Article 1114 (2).*

With respect to the International Boundary Waters Treaty Act (IBWTA) – We have been advised that, based on the information contained in the EIS, the IBWTA does not apply to this project.

RESPONSE

Bilcon agrees that the reference to China and India could be misinterpreted, where it states that they “have not signed on” to the Protocol. There is a distinction between signed on and being parties to the Protocol. China and India ratified the agreement and are therefore parties to the agreement. Where parties have “ratified the protocol” by instrument of ratification, acceptance, approval, or accession, they are bound by the Protocol’s commitments. The Convention divides countries into three main groups according to differing commitments

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(see attached description of the main groups). China and India are non-annex I members. China signed on May 29, 1998, approved it on August 30, 2002 and entry into force was February 16, 2005; India accepted on August 26, 2002 and entry into force was February 16, 2005.

Bilcon disagrees with Foreign Affairs' comment that on page 72, the 3rd paragraph is not accurate. This reads "Likewise, it is important to note that the tribunal must be guided by NAFTA as a whole rather than being restricted to only the terms of Chapter 11 or, more restrictively to only Article 1110 itself." Foreign Affairs makes a reference back to Article 1112 (1) in support of the comment that the sentence is inaccurate.

Article 1112(1) reads:

Article 1112: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

It is Bilcon's opinion that article 1112(1) supports the statement above that a tribunal is guided by NAFTA as a whole rather than being restricted to the provision of Chapter 11 or Article 1110. We would also note that the third paragraph in question also refers to Article 1131, which states that Chapter 11 must be interpreted in accordance with the applicable rules of international law. It reads:

Article 1131: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

Foreign Affairs' final point was that the reference to Article 12 in the last paragraph of page 72 should be changed to Article 1114(2). We agree. This appears to have been a typographical/ dictation error that originated in our correspondence.

Annex I Parties include the industrialized countries that were members of the OECD (Organisation for Economic Co-operation and Development) in 1992, plus countries with economies in transition (the EIT Parties), including the Russian Federation, the Baltic States, and several Central and Eastern European States.

Annex II Parties consist of the OECD members of Annex I, but not the EIT Parties. They are required to provide financial resources to enable developing countries to undertake emissions reduction activities under the Convention and to help them adapt to adverse effects of climate change. In addition, they have to "take all practicable steps" to promote the development and transfer of environmentally friendly technologies to EIT Parties and developing countries. Funding provided by Annex II Parties is channeled mostly through the Convention's financial mechanism.

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Non-Annex I Parties are mostly developing countries. Certain groups of developing countries are recognized by the Convention as being especially vulnerable to the adverse impacts of climate change, including countries with low-lying coastal areas and those prone to desertification and drought. Others (such as countries that rely heavily on income from fossil fuel production and commerce) feel more vulnerable to the potential economic impacts of climate change response measures. The Convention emphasizes activities that promise to answer the special needs and concerns of these vulnerable countries, such as investment, insurance and technology transfer.

The 48 Parties, classified as **least developed countries** (LDCs) by the United Nations, are given special consideration under the Convention on account of their limited capacity to respond to climate change and adapt to its adverse effects. Parties are urged to take full account of the special situation of LDCs when considering funding and technology-transfer activities.

WP 1498 - Nova Scotia Department of Environment and Labour Environmental Monitoring and Compliance Division Bruce Arthur – Acting District Manager, Scott Lister - Hydrogeologist

1. Chapter 6.1 discusses that a permit (approval) was issued by NSEL for a quarry of less than four hectares in size. However, what is not mentioned is that this approval is no longer valid. Chapter 6.5.5 then discusses the various permits and approvals required for the project. The only approval discussed as required by NSEL is a water extraction approval. However, the proponent will also be required to obtain an Industrial Approval pursuant to 13(f) of the Activities Designation Regulations. This Industrial Approval would also include the bulk solids handling loadout facility pursuant to 16(2) (h) of those regulations. In addition the proponent would be required to obtain an approval for either an on-site sewage disposal system or for a sewage treatment and disposal (outfall) facility.

RESPONSE

Bilcon is aware of the requirement for an Industrial Approval. Preliminary discussions were held with NSDEL in 2006 with respect to an application for an Industrial Approval and it was agreed that the application would follow the Environmental Assessment Process. Bilcon also recognizes the requirement to obtain a permit for either an on-site sewage disposal system or for sewage treatment and disposal (out-fall) facility.

WP 1524 - Transport Canada

2. Proponent is encouraged to complete, in conjunction with Transport Canada Marine Safety Group, a Port Procedures Manual (Manual). Manual should be completed at least six (6) months in advance of the arrival of the first ship.

RESPONSE

Bilcon will complete a Port Procedures Manual at least six (6) months in advance of the arrival of the first ship, in conjunction with the Transport Canada Marine Safety Group.

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3. *In regards to mandatory pilotage at the proposed project site, under the present rules, there will be no mandatory pilotage, however, in order to determine if mandatory pilotage may be necessary the Atlantic Pilotage Authority must conduct a Pilotage Risk Assessment Methodology.*
-

RESPONSE

On the completion of the Environmental Assessment Process, Bilcon will request that the Atlantic Pilotage Authority conducts a Pilotage Risk Assessment Methodology.

- 4) *Vol. I Page 8 – Proponent to clarify Transport Canada’s role in the proposed Project as described above.*
-

RESPONSE

The following paragraph is added to Volume I, Plain Language Summary, under 4.0 - Environmental Assessment Process for Whites Point Quarry and Marine Terminal:

“On March 29, 2004, responsibility for the NWPA Program was transferred from Fisheries and Oceans Canada to Transport Canada, and Transport Canada, as of this date, became a Responsible Authority. Transport Canada is responsible inter-alia for marine safety and pilotage.”

8. *Vol. IV – Table ECM – 2 Page 4 – Environmental Component for Transportation – Marine states that no regulatory requirement exists NWPA applies to “works” in any navigable waterway in Canada and is a regulatory requirement.*
-

RESPONSE

Agreed, the NWPA applies to “works” in any navigable waterway in Canada and is a regulatory requirement in context of the proposed development of the marine terminal (since has been acknowledged in Table 6A – Government of Canada, presented in EIS Volume IV, Chapter 6.5). The statement in Table ECM-2, page 4 refers to the monitoring requirements, for which no explicit regulatory requirement was identified.

11. *Vol. IV – Table CI-1 – Page 2 Commitments Table should indicate exact permits/authorizations required. (i.e. TC-NWPA).*
-

RESPONSE

This was not the intent of Table CI-1. Applicable regulatory approvals and guidelines have been presented in Chapter 6.5.5, Table 6B

12. *Vol. IV – Section 6.4.2 – Page – 36 – List of Key Events should include TC becoming an RA via the NWPA program transfer.*
-

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RESPONSE

Volume IV, Section 6.4.2, Page 36 - The following paragraph is added to Section 6.4.2 – Key Elements, Milestones and Actions:

“On March 29, 2004, responsibility for the NWPA program was transferred from Fisheries and Oceans Canada to Transport Canada and, as of that date, Transport Canada became a Responsible Authority.”

14. *Vol. IV – Table 6A – Page 48 – TC is the sole responsible federal department for NWPA (DFO no longer has any involvement).*
-

RESPONSE

It is noted that Fisheries and Oceans Canada no longer has any involvement with NWPA and DFO should be removed under the Agency column.

15. *Vol. IV – Table 6B – Page 51 – TC is the sole responsible federal department for NWPA (DFO, CCG no longer has any involvement)*
-

RESPONSE

It is noted that neither DFO nor CCG have any involvement with NWPA and that TC is the sole responsible department with respect to permitting for construction within navigable waters.

16. *Vol. IV – Table 6B – Page 51 – Explosives Transportation Permit is not a CEAA EA trigger therefore remove TC reference as an RA for this.*
-

RESPONSE

Agreed. In accordance with the CEAA Law List Regulation, the Explosives Transportation Permit required by the Transport of Dangerous Good Regulation does not function as a CEAA trigger. In Table 6B, the use of the abbreviation “RA” is misleading. It has been amended to read simply “Agency”.

20. *Vol. VI – Section 9.2.13.4 – Page – 133 – Which existing TC regulatory requirements are being referred to in this section?*
-

RESPONSE

The existing TC regulatory requirements Bilcon referred to in this section can be found in the *Canada Shipping Act – Eastern Canada Vessel Traffic Services Zone Regulations*.

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23. *Vol. VII – Table ECM – 2 – Page 4 – Component for Transportation – Marine states that no regulatory requirement exists. NWPA applies to “works” in any navigable waterway in Canada and is a regulatory requirement.*
-

RESPONSE

Comment noted.

WP 1541 - Fisheries and Oceans Canada

The Department of Fisheries and Oceans (DFO), has determined under the Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements of the Canadian Environmental Assessment Act that we are a Responsible Authority (RA) under the Canadian Environmental Assessment Act (CEAA) for the environmental assessment of this project. In addition to being an RA, DFO is also in possession of expert information on the environmental assessment for this project.

Volume IV – Chapter 1

Page i – DFO should be Fisheries and Oceans Canada, not Department of Fisheries and Oceans

RESPONSE

Comment noted.

Volume IV – Chapter 6

Table 6A – Page 47 ...DFO should be included as one of the Agencies in addition to Environment Canada.

RESPONSE

Comment noted. Fisheries and Oceans Canada has been added to Table 6 on Page 47 as one of the agencies in addition to Environment Canada

Page 48 – Navigable Waters Protection Act is administered by Transport Canada only

RESPONSE

Comment noted.

Table 6A – Relevant Legislation – This section does not mention the Fisheries Act. Also that Environment Canada is responsible for Pollution Prevention Provisions of Fisheries Act.

RESPONSE

Comment noted.

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Page 51 – The item in Table 6B “The Release from EA Environment Act EC and Regulations” is not clear. Also the Review Panel is not a responsible authority under CEAA.

RESPONSE

Comment noted.

Page 51 – Table 6B – The column, “When Required” repeats the information in the first column and does not indicate when these regulatory permits or approvals are required.

RESPONSE

Comment noted. Please refer to revised Table 6B below:

TABLE 6B (Revised): Regulatory Approvals

#	Regulation/Act	Agency	Activity	Approval	When required
	<i>Name and section number of the applicable Regulation and the Legislative authority (Act)</i>	<i>Title of Regulatory Agency</i>	<i>Description of the activity that requires the permit or approval</i>	<i>Name of the approval</i>	<i>Timing</i>
<u>Municipality of the District of Digby</u>					
1	Digby By-law chapter 21 Building Permits; Building Code Act, C 46 RSNS, 1989 Sec 4.1	Municipality of the District of Digby By-law	Approval under the National Building Code of Canada and other codes adopted by NS	Building Permit	Design & construction
<u>Province of Nova Scotia</u>					
2	NS Public highways Act Sec 22.1	NS Department of Transportation and Public Works	Permit for access road linking to NS public highway.	Ministers consent for building access to property	Access road design stage prior to construction
3	NS Public highways Act Sec 47.1	NS Department of Transportation and Public Works	Permit for access road construction linking to NS public highway	Breaking soil of Highways	Access road design stage prior to construction
4a	NS Environment Act,	NS Environment	Environmental assessment of	Environmental	In progress at

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#	Regulation/Act	Agency	Activity	Approval	When required
	<i>Name and section number of the applicable Regulation and the Legislative authority (Act)</i>	<i>Title of Regulatory Agency</i>	<i>Description of the activity that requires the permit or approval</i>	<i>Name of the approval</i>	<i>Timing</i>
	Part V Approvals , Sec 50 (1) & (2)	and Labour	the project	assessment approval *Note* in this particular case the EA is by Joint Federal / Provincial review Panel ,EIS sec 6.4	concept development stage.
5	NS Environment Act RSNS 1994-95, Chapter 1, Activities Designation Regulations sec 5.1	NS Environment and Labour	Watercourse alteration activity if required	Water Approval: Watercourse Alteration	At time of proposed activity
6	Environment Act, RSNS, 1994-95, Chapter 1, Activities Designation Regulations and Approvals Procedure Regulations	NS Environment and Labour	To use a watercourse or water resource by: 1. withdrawing or diverting more than 23,000 litres per day; 2. constructing or maintaining a dam; 3. storing more than 25,000 cubic meters of water.	Water Approval: Water Allocation	At time of proposed activity
7	NS Environment Act On-Site Sewage Disposal Systems Regulations sec 4 & subsequent	NS Environment and Labour	On-Site Sewage Disposal	Sewage Disposal (On-Site) Permit	Prior to construction
8	NS Environment Act Office of the Fire Marshal, Fire Safety Act, RSNS , 2002, Chapter 6, and Fire Safety Regulations, (Part 2, General Fire Safety Provisions) and Fire Safety Provisions.	NS Environment and Labour	Construction or alteration of the building or facility	Building Plans Approval	Prior to construction
9	NS Environment Act, Crane Operators and Power Engineers Act, Chapter 23 of the Acts of 2000 , sec 11	NS Environment and Labour	Mechanical Equipment Safety	Various for pressure vessels, elevators, mechanical equipment etc	Prior to operation
10	Nova Scotia Occupational Health and Safety Act, General Blasting	NS Environment and Labour	Quarry Blasting operations	Blaster's Certification	Prior to operation

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#	Regulation/Act	Agency	Activity	Approval	When required
	<i>Name and section number of the applicable Regulation and the Legislative authority (Act)</i>	<i>Title of Regulatory Agency</i>	<i>Description of the activity that requires the permit or approval</i>	<i>Name of the approval</i>	<i>Timing</i>
	Regulations sec 19				
11	NS Environment Act and Regulations s 50(2), Activities Designation part 2 sec 13f	NS Environment and Labour	Overriding approval authorization required for the Quarry, related facilities and Marine Terminal operations. This is a key approval defining operational parameters such as operating hours, traffic restrictions, blasting procedures, dust, noise, and vibration restrictions, effluent discharge limits, compensation for project related environmental injury or inconvenience; site reclamation program and bonding, project surety requirements etc	Industrial Plant / Facilities Approval	Prior to operation
12	NS Environment Act sec 57 and Regulations Sec 13 to 19 , Pit and Quarry guidelines	NS Environment and Labour	Assessed and held by NSDEL as security for the performance of agreed site reclamation as a condition of approval	Reclamation Bond	Prior to operation
13	NS Environment Act and Regulations, Chapter 1, Petroleum Management Regulations sec 6.1 & subsequent	NS Environment and Labour	Petroleum Storage Tank	Petroleum Storage Tank Installer Certificate	Prior to operation
14	Crown Lands Act, RSNS 1989, Chapter 114, Section 16(1)(a)	NS Natural Resources	Assigns ownership of submerged land in coastal waters to permit the construction of large wharves, causeways, infill or breakwaters	Crown Lands Deed or Grant: Water Lot Grant	In advance of construction
15	Crown Lands Act, RSNS 1989, Chapter 114, Sections 5, 38 and 39.	NS Natural Resources	To place a permanent or semi-permanent mooring on submerged Crown land	Mooring Permit - Submerged Crown Land	Prior to construction
16	NS Environment Act and Regulations Section 66	NS Environment and Labour	Alteration to a wetland	Wetland Alteration Approval	Prior to construction

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#	Regulation/Act	Agency	Activity	Approval	When required
	<i>Name and section number of the applicable Regulation and the Legislative authority (Act)</i>	<i>Title of Regulatory Agency</i>	<i>Description of the activity that requires the permit or approval</i>	<i>Name of the approval</i>	<i>Timing</i>
<u>Government of Canada</u>					
4b	Canadian Environmental Assessment Act. (CEAA) para 21(b)	Environment Canada; Transport Canada; Nova Scotia Department of Environment and Labour	Environmental assessment of the project	Environmental assessment approval *Note* in this particular case the EA is by Joint Federal / Provincial review Panel, EIS sec 6.4	In progress at concept development stage.
17	Navigable Waters Protection Act , Sec 5.1	Fisheries & Oceans Canada / Coast Guard	Construction of works in navigable waters	The work and the site and plans require approved by the Minister.	Prior to the commencement of Marine works
18	Fisheries Act (R.S., 1985, c. F-14) Sec 35.1	Fisheries & Oceans Canada	Works or undertakings affecting fish habitat	Authorization for Works or Undertakings Affecting Fish Habitat	Prior to the commencement of Marine works
19	<i>Species at Risk Act</i> <i>2002, c. 29, sec 73.1</i>	<i>Parks Canada, Fisheries & Oceans Canada</i>	<i>An activity affecting a listed wildlife species, any part of its critical habitat or the residences of its individuals.</i>	<i>A permit - authorizing the person to engage in an activity affecting a listed wildlife species</i>	<i>Prior to the activity</i>

Table 6B – Page 51 – Remove DFO and replace with Transport Canada in section on “Permit for Construction with Navigable Waters”

RESPONSE

Comment noted.

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WP 1542 - Health Canada

Regulatory Environment

Section 6.5 Regulatory Environment – Canada Health Act – The use of the Canada Health Act in this context is incorrect. The Canada Health Act is an “Act relating to cash contributions by Canada and relating to criteria and conditions in respect of insured health services and extended health care services” (Canada Health Act, 1984). The correct Act that gives the Minister of Health the power to ensure the protection of human health in Canada and to conduct research in areas related to human health protection and promotion is the Department of Health Act (1996) (Section 4).

In addition, Health Canada and Environment Canada are jointly responsible for administering the Canadian Environmental Protection Act (1999), including the assessment and management of risks associated with existing and new substances. Under CEPA (1999), the Minister of Health is also responsible for conducting research on the role of substances in illness and other health problems.

Under CEAA, Health Canada’s legislated role is typically as a Federal Authority to provide expert information and knowledge on health issues when requested by other federal departments carrying out environmental assessments under CEAA. Health Canada is also a Responsible Authority for projects it proposes or funds, such as nursing stations and treatment centres for First Nations people. In the case of this project, Health Canada is a Federal Authority and can provide expert advice on any of the following areas (if asked):

- *Drinking water and sewage management;*
- *Air, water, food and soil quality guidelines/standards;*
- *Impacts of noise on human health;*
- *Community health (First Nations);*
- *Radiation protection (ionizing and non-ionizing);*
- *Environmental and occupational toxicology;*
- *Health promotion in the workplace;*
- *Epidemiology; and*
- *Health risk assessment and risk management. “*

RESPONSE

Please refer to correspondence, File: OF6-3-65-1, from Allison Denning, Regional Environmental Assessment Coordinator, Health Canada – Atlantic Region to Debra Myles, Panel Manager, Whites Point Quarry and Marine Terminal Project - Joint Review Panel dated August 4, 2006. On page 13 of that letter, Ms. Denning points out and clarifies an

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inaccurate statement relative to the role and responsibilities of Department of Health Act as follows:

“ Section 6.5 Regulatory Environment – Canada Health Act – The use of the Canada Health Act in this context is incorrect. The Canada Health Act is an “*Act relating to cash contributions by Canada and relating to criteria and conditions in respect of insured health services and extended health care services*” (Canada Health Act, 1984). The correct Act that gives the Minister of Health the power to ensure the protection of human health in Canada and to conduct research in areas related to human health protection and promotion is the *Department of Health Act (1996)* (Section 4).

WP 1625 – Partnership for Sustainable Development EIS Guidelines – Section 6.0 – Introduction to the EIS Deficiency Statement 18

EIS Guidelines

6.1 – The Proponent – “Provide summary information on the nature of the management structures and organizational accountability for designing, constructing, operating and modifying the Project; implementing environmental mitigation measures and environmental monitoring; and managing potential adverse environmental effects.”

EIS

6.1.1 – Management Structure – The EIS provides only one name for management and accountability for all aspects of the design, construction, operation, modification, mitigation, and management of adverse effects. At a minimal level, to meet the requirements of section 6.1 of the EIS Guidelines the EIS should provide an organizational structure for the management of this Project, which includes identification of middle management positions for the above noted areas.

RESPONSE

The sole responsibility for management and accountability of all aspects of the design, construction, operation, modification, mitigation, and management of adverse effects lies with the Operations Manager, as set out in the EIS. The Operations Manager will delegate, at his discretion, elements of work to consultants or future staff, but will retain sole responsibility.

Deficiency Statement 19

EIS Guidelines

6.1 – The Proponent – “Provide a record of the environmental performance...:”

EIS

6.1.2 – Environmental Performance and Capability – The EIS does not include a record of environmental performance. A few statements that broadly cover activities that the Company

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has engaged in, such as promoting research, do not constitute a record of environmental performance. A record of environmental performance should include:

- A history and description of Environmental Management System(s) used by the Proponent;*
- Past evidence and future commitments of specific, measurable environmental improvements;*
- Past evidence and future commitments of public outreach, including identification and response to community concerns, and performance reporting; and*
- A record of sustained compliance with environmental requirements, certification of current compliance, and commitment to maintain compliance.*

RESPONSE

Bilcon rests on the statement that it has an excellent record of environmental management and environmental compliance, and an excellent record of identifying and responding to community concerns. All of these are a matter of public record in the various locations where Bilcon's parent company has operations.

Deficiency Statement 20

EIS Guidelines

6.1 – The Proponent - ‘Indicate the environmental record of key sub-contractors (e.g. shipping contractors).’

6.1 - The Proponent - The EIS fails to provide environmental record of contractors. In the event that contractors have not yet been selected, the EIS should identify the minimum standards for environmental performance, marine safety etc that will be required. In the case of foreign registered vessels, these standards should meet or exceed Canadian standards.

The voyage in question is an international movement (as opposed to a cabotage movement). This means that there is no theoretical restriction on the registration of the vessel, or indeed on the nationalities of the officers and crew. The EIS speaks of ensuring that the ships are operated by responsible owners. This is, however, quite general, and more specificity should be provided as to how this is to be accomplished, and how the quality of ownership is to be assessed, (including for example whether any restrictions are expected to be placed on where the ship operating company is incorporated, where its 'mind and management is located, where its ships are classified, insured, etc.).

To meet the requirements of section 6.1 of the EIS Guidelines, the Proponent could provide environmental records for key subcontractors the Proponent and related companies. This approach would demonstrate an effort on the part of the Proponent to meet the requirements of the EIS Guidelines rather than dismissing the requirement.

RESPONSE

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As noted in the EIS, Bilcon has not appointed contractors or sub-contractors and hence cannot provide the environmental record of these groups. Bilcon will appoint experienced, competent contractors and subcontractors to carry out the various elements of the work.

Deficiency Statement 21

EIS Guidelines

6.1 – The Proponent – Provide a record of the environmental performance and capability of the Proponent...”

EIS

6.1.2 – Environmental Performance and Capability – The EIS states, “The companies have had no incidents leading to major violations of New Jersey Regulations with respect to the Environment or Safety.”⁵² The use of the term major is subjective in nature and does not provide an objective representation of environmental performance. To meet the requirements of section 6.1 of the EIS Guidelines all violations should be included in the EIS.

EIS

6.1.2 – Environmental Performance and Capability – The EIS states, “The Clayton Companies are continually evaluating new technologies with respect to dust collection, concrete recycling, solar power, etc., and operate recycling operations.”⁵³ The EIS does not contain any detail or even a description of the new technologies referenced. There is no objective demonstration of environmental performance as required by the EIS Guidelines.

RESPONSE

Please refer to Bilcon’s response to Statement #19.

Deficiency Statement 22

EIS Guidelines

6.5 – Regulatory Environment – ‘Describe the existing regulatory environment (federal, provincial, municipal) including all permitting, licensing and regulatory requirements...that apply to all phases of the Project and associated infrastructure.’

EIS

The EIS fails to account for the application of the NSDEL Pit and Quarry Guidelines to the formerly approved 3.9 ha quarry. The Pit and Quarry Guidelines require adequate environmental protection and appropriate rehabilitation to be carried out even where an approval has expired. Furthermore, the NSDEL is required to monitor activity at the site and ensure that Guideline requirements are met.

RESPONSE

The 3.9 hectare quarry site has been monitored on a continuous basis, and funds for rehabilitation of this site are currently on hand with the NSDEL.

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Deficiency Statement 23

EIS Guidelines

6.5 – *Regulatory Environment* – “List each regulatory approval required in a table with the following details: activity requiring approval and when it is required; regulatory agency; name of approval or permit; and associated legislation.

EIS

6.5 – *Regulatory Environment - Table 6B Regulatory Approvals and Guidelines* – The Table does not provide the information required by section 6.5 of the EIS Guidelines. The Table is inconsistent in its detail.

At a minimum the EIS Table should provide the detail demonstrated in the following example to meet the requirements of the EIS Guidelines:

Regulation/Act	RA	Activity	Approval	When required
Name and section number of the applicable Regulation and the Legislative authority (Act)	Title of Regulatory Agency	Description of the activity that requires the permit or approval	Name of the approval	Timing
Environment Act, s.50(2) Activities Designation Regulations, s. 13(f)	NSDEL	Development and operation of quarry	Industrial approval	Prior to quarry activity

Table 6B in the EIS does not include a column for the approval name. The name of the approval is inconsistently provided under the column “Regulation/Act” or “Activity”. The Table inconsistently provides the names and section numbers of the applicable regulation. Several required approvals are not included in the Table. For example, the provincial industrial approval (described in the sample table above) and water approvals for alteration of wetlands and watercourses are not included. To meet the requirements of section 6.5 of the EIS Guidelines the Table must be consistently presented with all the required information and every regulatory approval required for the Project.

RESPONSE

Please refer to revised Table 6B in this document.

Deficiency Statement 24

EIS Guidelines

6.5 – *Regulatory Environment* – “Describe the existing regulatory environment (federal, provincial, and municipal) including all permitting, licensing and regulatory requirements...that apply to all phases of the Project and associated infrastructure.”

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6.5.2 – Municipality of Digby – *The EIS states that, “The Municipality of Digby advises that bylaws dealing with Building and Noise are enforced.” This is the only reference in the EIS to bylaws addressing noise. The EIS fails to meet the requirements of section 6.5 of the EIS Guidelines because it does not describe the regulatory requirements for noise abatement and control.*

RESPONSE

The EIS states that “The Municipality of Digby advises that By-Laws dealing with Building and Noise will be enforced”. The By-Law referred to is the Orderly and Peaceful Conduct By-Law cited as the Orderly Conduct By-Law or Noise By-Law. Paragraph 5 sets out the standards as follows: “No person shall generate, or cause or permit to be generated, a noise or sound that is measurable in A-weighted sound pressure level at a point of reception. A) In excess of 55 dBA, before 0700 or after 2200; B) In excess of 65 dBA, at all other times.” Further information on this By-Law can be found at the Municipality of the District of Digby’s website www.municipalities.com.

Deficiency Statement 25

EIS Guidelines

6.5 – *Regulatory Environment* – “Describe the existing regulatory environment (federal, provincial, and municipal) including all permitting, licensing and regulatory requirements...that apply to all phases of the Project and associated infrastructure.”

EIS

6.5 – *Regulatory Environment* – *Sections 6.5.3, 6.5.4, 6.5.6, read like Environmental Law 101, but they provide very little relevant information on how the described statutes and regulations apply to the proposed Project. To meet the requirements of section 6.5 of the EIS Guidelines the information provided in the EIS on federal and provincial legislation must be linked directly to the Project and associated infrastructure. The reader should not be required to guess how these regulatory requirements apply. For example, the EIS includes several paragraphs describing the Guideline for the Release of Ammonia Dissolved in Water Found in Wastewater effluents. The information is entirely generalized. This information is useless unless the EIS answers the following question; Will the Proponent be required to take some form of action as a result of this Guideline? Why or why not? This level of detail is critical to an examination of the environmental management of the proposed Project and yet it is not included in the EIS. The same statement can be made for many of the references in these sections of the EIS.*

RESPONSE

The EIS specifically states that Bilcon is required to comply with all federal and provincial legislation pertinent to the operation of the quarry and marine terminal.