

Memo

To: Bill Clayton jr., Mark Lowe, John Wall,

Sept. 3rd 2003

From: Paul Buxton

Re: Panel Review Process

David Kern and I met with Steve Chapman (Canadian Environmental Assessment Agency, Ottawa), Mark McLean and Cheryl Benjamin (Nova Scotia Department of Environment and Labour) on Friday Aug. 29th in Halifax to discuss the Panel Review Process. The manager of Environmental Assessment for the Province was unavailable for the meeting.

As far as timing of the process is concerned Steve Chapman advised that the following dates were scheduled:

Review by the public of the Memorandum of Understanding between the Federal and Provincial Governments:

Ends Sept. 18th 2003.

Draft Environmental Impact Statement (EIS) guidelines produced by CEAA/NSDOEL.

Target Date Oct. 7th 2003

Public comment on EIS guidelines - 45 days.

Sign off on EIS guidelines.

Target Date Nov. 30th 2003.

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Appointment of Panel

Target Date Dec. 7th 2003.

Cheryl Benjamin noted that the estimated time for the entire process was 310 days.

Note that the appointment of the panel is the point at which GQP starts to pay for the cost of the process. A budget will be developed by the Fed/Prov. partnership and an agreement drafted between the Fed/Prov. partnership and GQP with respect to cost recovery.

Chapman will be the senior bureaucrat "managing" the process.

Chapman requested a copy of a plan of the Whites Cove site.

We asked the following questions and received these answers:

1. Where is the Notice that the Comprehensive Study Review process has terminated and where is the official Notice to the proponent that there is to be a Panel Review process. We noted that the only information received by the proponent has been through the press.

Chapman noted that perhaps a letter to the proponent should have been prepared and indicated that he would prepare such a letter.

We noted that in our view six months had been wasted during the CSR process when a panel review could have been called for on Jan. 6th at the meeting held in Halifax when all the players were around the table.

Chapman noted that the CSR process could have been terminated at any time and a panel review process commenced.

We noted that we had already been advised by CEAA that we were "lucky" that we had only gone six months into the CSR before a panel review was put in place and that a complete CSR could have been undertaken and then a panel review commenced.

2. We asked why the press had a copy of the letter (requesting? recommending? a panel review) from Mr. Thibault (Minister of Fisheries and Oceans) to Mr. Anderson (Minister of the Environment) and why a copy of this letter was available at a debate on Digby Neck during the recent election campaign.

We asked for a copy of that letter.

Steve Chapman advise that Minister to Minister correspondence was classified as a Cabinet Document and could not and would not be released.

3. We further asked how the press and others had a copy and Chapman advised that he could not explain how they had obtained a copy.

4. We asked why ie: on what grounds Mr. Thibeault had asked for a panel review and under which section of the Canadian Environmental Assessment Act.

Chapman advised that Mr. Thibeault had requested a panel review on the grounds that the project had raised environmental concerns and specifically the affect on fish habitat.

5. We asked why the project in Tiverton (the proposed new breakwater) had apparently been approved without any environmental assessment when it would destroy perhaps three acres of fish habitat as compared with Whites Cove which would destroy less than one tenth of an acre of fish habitat.

Chapman had no explanation for this but did note that once a panel review was under way there was no process to go back to a Comprehensive Study Review or any other process. In other words, regardless of any evidence, we are stuck with a panel review.

6. We asked about the status of the scoping document which was being prepared under the CSR and whether that document was still valid.

Chapman advised that the scoping document under the CSR process had no relevance since we were now under a panel review.

7. We pointed out that while we were under a different process the project description has not changed nor are there new environmental issues and hence why was it not

possible to use the scoping document, worked on for five months by the Department of Fisheries and Oceans, as a basis for the panel review EIS guidelines.

Chapman reiterated that since the process has changed the original scoping document was no longer valid.

We noted that we were satisfied that we had completed an Environmental Impact Statement at this time and reviewed the process undertaken.

We noted our concerns over formatting the methodology and requested that if CEAA or NSDOEL had a desired methodology that we be advised.

Mark McLean advised that there was no standard format.

Chapman requested a table of contents of our EIS.

We raised the issue of what documents would be made public ie would the consultants' reports be made public.

It was the consensus (Fed/Prov) that they would be made public.

We raised the concern that the consultants reports would be made public prior to being presented to the panel and noted that what we thought were confidential reports had already been released before the proponent had approved them (archeological report).

There was no comment from either the Federal or Provincial partners other than that the Province would look into the release of the archeological study.

8. We expressed considerable concern that the EIS guidelines would be vague and permit DFO or others to introduce new topics during presentations to the panel.

Chapman referred us to several EIS guidelines prepared for other projects.

We responded that we had in fact reviewed these guidelines and had found them non-specific and vague.

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McLean noted that we could respond to the draft guidelines and request further clarification.

9. We asked why this project was being treated differently than other similar projects and gave examples of DFO inspections at Whites Cove while the Tiverton project was ignored.

Chapman could give no explanation for these different approaches.

10. We asked why Ministers were making public statements with respect to the Whites Cove project without having seen any of the studies carried out.

Chapman knew of no such statements.

We noted Thibault's statement to the press that the project would create serious navigational problems when neither the Federal Dept. of Transport nor Navigable Waters (Coast Guard) had raised this issue with us.

Chapman had no explanation for this.

11. We asked why the proponent had been ignored so far in the "process" when the Canadian Environmental Act and guidelines surrounding the Act clearly state that the proponent is an important part of the process.

Chapman had no explanation for this.

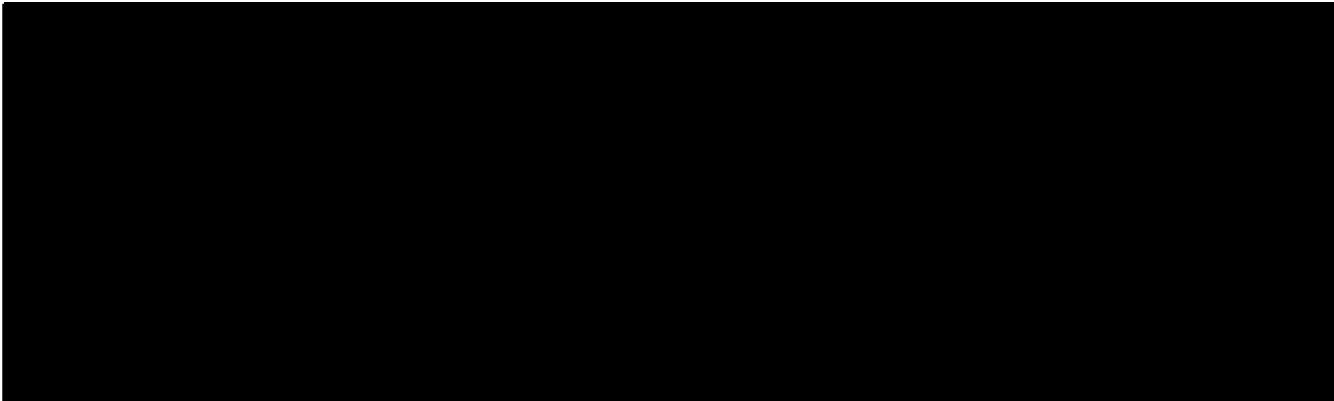
12. We asked why the panel review process is being handled out of Ottawa and weren't there any people in CEAA's Halifax office capable of handling the process.

Chapman had no comment on this.

Chapman did advise that there were three projects in Canada at this time undergoing a panel review process - two oil sands projects in Alberta and the Whites Cove project.

We drew attention to the fact that the Alberta projects were multi-billion dollar projects whereas Whites Cove was a relatively minor project.

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We were again assured that the guidelines would be specific and that guidelines would not change in mid-stream.