



2003-005-00419

To: / À : Robert Thibault

Date :

Subject: / **Objet :** **REFERRAL OF PROPOSED WHITES POINT QUARRY AND SHIPPING TERMINAL TO THE MINISTER OF THE ENVIRONMENT FOR A PANEL REVIEW**

From / De : Susan Kirby

Sue Kirby

JUN 20 2003

Via : Larry Murray

For Signature / Pour Signature

Information

For Comments / Pour commentaires

Material for the Minister / Documents à l'intention du ministre

Remarks: / **Prepared in consultation with staff in Maritimes Region**
Remarques :

DISTRIBUTION

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[Signature]

Drafting Officer / Rédacteur : Bruce Hood (991-0328) / Richard Nadeau / Richard Wex / cjr



2003-005-00419

MEMORANDUM FOR THE MINISTER

JUN 25 2003

**REFERRAL OF PROPOSED WHITES POINT QUARRY AND SHIPPING
TERMINAL TO THE MINISTER OF THE ENVIRONMENT FOR A PANEL
REVIEW**

(For Decision)

SUMMARY

- Global Quarry Products / Nova Stone Exporters (proponent) has proposed to construct a deepwater marine shipping terminal and 155 ha. quarry at Whites Point, Digby County, Nova Scotia.
- The Department of Fisheries and Oceans (DFO), sole Responsible Authority (RA) for the Environmental Assessment (EA) of the project, has determined that the shipping terminal will require *Navigable Waters Protection Act (NWPA)* approval and a Comprehensive Study (CS) level EA pursuant to the *Canadian Environmental Assessment Act (CEAA)*. DFO is presently determining if the quarry will require *Fisheries Act* authorizations and a *CEAA* assessment.
- DFO believes that the project as proposed, is likely to cause environmental effects over a large area of this rich and diverse marine and terrestrial environment as well as on fisheries and tourism, the two largest economic sectors.
- The Province of Nova Scotia has expressed interest to DFO in participating in a joint EA of the project. The province is responsible for both the quarry and terminal in its EA and has expressed concern that harmonization of the EA processes may be hindered if DFO does not have a trigger to include the quarry.
- It is recommended that you refer the proposed project to the Minister of the Environment for referral to a Panel Review in accordance with *CEAA* 21(b).

Background

- On March 24, 2003, DFO received the proponent's project description for the proposal, consisting of a 155 ha. quarry and deepwater marine shipping terminal.



- DFO determined that the marine terminal would require an approval under the *NWPA* Ss. 5(1), and a CS level EA pursuant to the *CEAA – Comprehensive Study List* Ss. 28(c) - marine terminal designed to handle vessels larger than 25,000 dead weight tons. DFO will be the sole RA for the CS.
- On March 31, 2003, DFO met with the Canadian Environmental Assessment Agency (Agency), Nova Scotia Department of Environment and Labour (NSDEL) and other Federal Authorities. It was agreed that a joint federal-provincial EA process will occur and an agreement will be signed between all parties involved in the EA. NSDEL is drafting the agreement.
- On May 29, 2003, DFO advised the proponent that blasting in a test quarry would require *Fisheries Act* S. 32 authorization - to kill fish by means other than fishing. The proponent has not yet responded as to whether it will apply for this authorization or propose mitigation in order to avoid the need for an authorization. DFO is conducting on-going discussions and field work of the overall 155 ha. quarry site to determine if approvals are required under the *Fisheries Act* Ss. 35(2) or S. 32. Authorizations under either of these sections of the *Fisheries Act* will necessitate a *CEAA* review of the quarry.
- This proposal has generated extensive public and media attention related to its potential environmental and social impacts. Concerns include impacts on lobster, herring and endangered Bay of Fundy stock of Atlantic salmon, fisheries, marine mammals including the endangered right whale, release of ballast water and introduction of exotic species, loss of tourism and disruption of the local community.

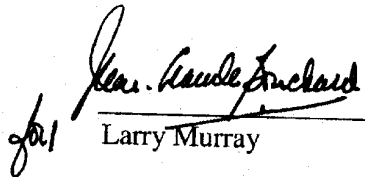
Analysis / DFO Comment

- DFO believes that the project as proposed is likely to cause environmental effects over a large area of both the land and marine environments and on fisheries and tourism. Moreover, the project will potentially effect a number of valued ecosystem components, responsibility for which does not fall within DFO's jurisdiction.
- The Province has expressed interest to DFO in participating in a joint Panel Review of the project. DFO has been working with the province and the Agency to facilitate this process.
- The province is responsible for both the quarry and marine terminal in its assessment process and has expressed concern regarding the extent to which a joint EA could be harmonized as DFO may not have a legislative trigger to include the quarry. The proposed project has been very controversial and the Province is therefore anxious to have federal involvement with assessment of both the terminal and quarry.

- It is likely, due to public opposition of the proposal that there will be a court challenge if the scope of project for the *CEAA* assessment does not include both the quarry and terminal.
- For the reason of environmental effects, and in the interest of harmonizing the federal and provincial EA processes, DFO is of the opinion that assessment by a review panel is the most appropriate level of assessment. DFO's role in a Panel Review would be to provide expert testimony to the panel.
- DFO will continue working with the proponent to ensure protection of fish habitat.

Recommendations / Next Steps

- It is recommended that you refer the proposed project to the Minister of the Environment for referral to a Panel Review in accordance with *CEAA* 21(b). The process will be harmonized to the extent possible with the provincial process.
- A letter referring the project to the Minister of the Environment is attached for your signature (Attachment 1).


Larry Murray

Attachment (1)

Bruce Hood / Richard Nadeau / Richard Wex / Susan Kirby / cjr