

Sadaka, Jennifer -JLT

From: Cheryl L Benjamin [BENJAMCL@gov.ns.ca]
Sent: April 23, 2003 1:28 PM
To: McDonald,Derek [CEAA]; Chapman,Steve [CEAA]; Myrac@dfo-mpo.gc.ca; Zamorap@dfo-mpo.gc.ca
Cc: Chris A Daly; Mark G McLean
Subject: draft MOU

Attachments: WordPerfect 6.1



MOU - draft -
2003-04-23.wpd (...)

See attached file for discussion purposes only.

Thanks
Cheryl

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**MEMORANDUM OF UNDERSTANDING
ON ENVIRONMENTAL ASSESSMENT PROCESS
FOR THE WHITES POINT QUARRY PROJECT**

BETWEEN:

**CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY
(CEA AGENCY)**

AND

**FISHERIES AND OCEANS CANADA
(DFO)**

AND

**NOVA SCOTIA DEPARTMENT OF ENVIRONMENT & LABOUR
(NSDEL)**

WHEREAS Global Quarry Products (the Proponent) proposes to develop a basalt quarry with a marine loading terminal located near Whites Point on Digby Neck, Digby County, Nova Scotia. The Whites Point Quarry and Marine Terminal (the Project) includes approximately 120 ha of basalt quarry and associated infrastructure (rock crushers, screens, closed circuit wash facilities, conveyors, load out tunnel, support structures and environmental control structures) and Marine Terminal Facilities (conveyor, ship loader, berthing dolphins and mooring buoys); and

WHEREAS the Project is subject to an environmental assessment pursuant to clause 5(1)(d) of the *Canadian Environmental Assessment Act* (CEAA) as DFO will be required to issue authorizations under the *Fisheries Act* and the *Navigable Waters Protection Act*, which include Law List Regulation triggers under clause 5(1)(d) of the CEAA; and

WHEREAS the Project involves the construction of a marine terminal designed to handle vessels larger than 25000 Deadweight Tonnage (DWT) as described in the federal *Comprehensive Study List Regulations* and therefore is subject to a Comprehensive Study and the CEAA; and

WHEREAS the Proponent has filed documentation with the CEA Agency and DFO to initiate the environmental assessment process (EA process) under CEAA, which information was filed on the 24th day of March, 2003; and

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WHEREAS DFO is a Responsible Authority in relation to the environmental assessment under the CEEA; and

WHEREAS the Project includes a quarry in excess of 4 ha in area primarily engaged in the extraction of ordinary, construction or building stone which is required to register as Class 1 Undertaking pursuant to the *Nova Scotia Environment Act (NSEA)* and Environmental Assessment Regulations; and

WHEREAS an undertaking as defined by the Nova Scotia Environmental Assessment Regulations is also subject to the environmental assessment requirements of Her Majesty in right of Canada, the Minister of Environment and Labour may enter into an agreement with the other government in order to adopt, for the purposes of the review, all or part of the procedures for environmental assessment or other review; and

WHEREAS the Parties share an interest in taking actions that promote sustainable development; and

WHEREAS the Parties wish to avoid unnecessary duplication and promote environmental assessment efficiency; and

WHEREAS the Parties wish to ensure that the public is aware of the EA process and the opportunities for public input; and

WHEREAS the Parties recognize that further discussions will be required should DFO or the federal Minister of the Environment decide, at the commencement or at any time during the course of the EA process, that the Project should be assessed by a review panel or mediator, or where the NSDEL determines that a further assessment of the environmental effects of the Project is required.

THEREFORE the Parties agree, should the assessment of the Project pursuant to the CEEA proceed by way of a comprehensive study and the Proponent be delegated the comprehensive study and the preparation of a report, they will coordinate their respective processes and responsibilities regarding the assessment of the environmental effects of the Project as described below:

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1. For the purposes of this Memorandum of Understanding (MOU),

“Comprehensive Study” has the same meaning as set out in Section 2 of the CEAA;

“Comprehensive Study Report” (CSR) means the report to be prepared in accordance with paragraph 21(a) of the CEAA and also includes, for the purpose of the NSEA, a consideration of any additional matters identified in accordance with Section 8 of this MOU;

“Expert Federal Authority” means any federal departments or agencies which possesses specialist or expert information or knowledge that is relevant to the environmental assessment of the Project;

“Lead Party” means the Party described in the Canadian Council of Ministers of the Environment’s Sub-Agreement to Environmental Assessment responsible for the administration of the EA process;

“Parties” means the signatories to this MOU;

“Responsible Authority” has the same meaning as set out in Section 2 of the CEAA.

2. The purpose of this MOU is to coordinate the responsibilities of the Parties regarding the assessment of the environmental effects of the Project. The Parties intend to coordinate the EA process to include a consideration of factors identified in accordance with Sections 6 to 8 of this MOU.

3. DFO will act as the lead Party for the administration of the EA process.

4. The Parties agree to use the EA process under CEAA in a manner that enables Parties to meet their legal environmental assessment requirements.

5. The Parties will work together to establish reasonable and appropriate timetables and schedules.

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6. The Parties will hold further discussions on ways to ensure the public and aboriginal persons are aware of the EA process and have opportunities to provide input.
7. The Parties intend to consult amongst themselves and coordinate any public announcements with respect to the assessment of the environmental effects of this Project, including any announcements that further environmental assessment is required.
8. The Parties, after considering comments from the public on this MOU and the scope of assessment, will finalize the terms and conditions outlined in this agreement and will decide on the scope of the assessment.
9. For the purpose of complying with the requirements of the CEAA, the assessment will include a consideration of the factors listed in Subsections 16(1) and 16(2) of the CEAA, and of any other matters relevant to the environmental assessment of this Project that the federal Minister of Environment, in consultation with DFO, may require to be considered.
10. For the purpose of coordinating the responsibilities of all the Parties regarding the assessment of the environmental effects of the Project, the assessment will also include a consideration of any additional matters relevant to the assessment of the environmental effects of the Project for the purposes of complying with the NSEA.
11. The final scope of the environmental assessment will be forwarded by DFO to the Proponent.
12. DFO intends, pursuant to Subsection 17(1) of the CEAA, to delegate the comprehensive study and the preparation of the report referred to in paragraph 21(a) of the CEAA to the Proponent. The Parties also intend to request the Proponent to consider any additional matters identified with Section 8 of this MOU, and to report in the CSR on the said consideration.
13. A draft CSR will be submitted by the Proponent to the Parties and Expert Federal Authorities for review and comment. The Parties agree to undertake additional consultation on the draft CSR as needed.
14. DFO will coordinate their written comments and those of the Expert Federal Authorities and the CEA Agency and will arrange for the provision of those comments to the Proponent. The

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NSDEL will coordinate provincial comments and will provide them to DFO for forwarding to the Proponent.

15. The Proponent will submit a revised CSR, as appropriate. The Parties, in consultation with the Expert Federal Authorities, will review the CSR to ensure its completeness in consideration of their respective legislative requirements. The NSDEL will coordinate provincial comments of the review of the revised CSR. The Parties agree to undertake additional consultation on the revised CSR as needed.

16. Once the Parties are satisfied that the CSR is complete, the CSR shall be forwarded to the federal Minister of the Environment and the CEA Agency. The CEA Agency will invite public comment on the conclusions, recommendations and any other aspect of the CSR, in accordance with Section 22 of the CEAA.

17. Following consideration of the CSR, and any other appropriate information, the federal Minister of Environment and the Nova Scotia Minister of Environment and Labour agree to make their decisions pursuant to Section 23 of CEAA and Section 13 of the Nova Scotia *Environmental Assessment Regulations*, respectively. The Minister of Environment and the Nova Scotia Minister of Environment and Labour shall retain their respective decision-making authority.

18. DFO will maintain a public registry as required under the CEAA. The NSDEL will provide project information on its Environmental Assessment Branch website (<http://www.gov.ns.ca/enla/ess/ea>).

19. DFO in consultation with the other Parties will arrange for the Proponent to establish local repositories where the public may access documentation in relation to the review.

20. The provisions of this MOU shall not restrict the decision-making authority or fetter the discretion of statutory decision-makers.

21. The Parties may amend this MOU upon the agreement of all Parties. A Party, without the consent of the other Parties, upon thirty (30) days notice may withdraw from this MOU and complete an independent EA process.

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22. This MOU is not intended to be a legally binding instrument or give rise to any legal rights not otherwise held by the Parties.

23. This MOU may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same original agreement.

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IN WITNESS WHEREOF the Parties have signed this MOU on the dates indicated below.

_____	_____	_____
Paul Bernier	Date	Witness
Vice President, Program Delivery		
Canadian Environmental Assessment Agency		

_____	_____	_____
Neil A. Bellefontaine	Date	Witness
Regional Director-General		
Department of Fisheries and Oceans		

_____	_____	_____
Ronald L'Esperance	Date	Witness
Deputy Minister, Nova Scotia		
Department of Environment and Labour		