



**Environment  
Office of the Minister**

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**NOV 16 2017**

Our File number:  
23000-30-132  
10700-40-52261

[REDACTED]  
c/o Paul Miller  
Paul B. Miller Law Offices Inc.  
20 Foster Avenue  
Fall River, NS B2T 1E7

**Re: [REDACTED] - Notice of Appeal from decision of an Administrator to authorize a quarry - Application for Approval - No. 2016-095664 – Approval for Construction, Operation and Reclamation – Quarry, Goffs, Halifax County, Nova Scotia**

I am writing regarding your Appeal of the Administrator's decision dated June 19, 2017, to authorize the above Application, to Scotian Materials Limited (SML).

After careful review of the grounds for appeal, all the information that was submitted in support of the appeal, and the applicable statutory provisions, your appeal has been dismissed.

Respecting Ground 1, the regulations ensure all applications reviewed by an Administrator follow a process, and submissions include site suitability and sensitivity, proximity to watercourses, residences and institutions, geology and hydrogeology. These details had formed part of the review of the application for the Approval.

Information submitted meets the requirements in the Pit and Quarry Guidelines. The Administrator did consider the proximity to residential homes and the location of environmental receptors in the review of the application.

The Approval has a trigger that requires SML undergo an environmental assessment if the quarry footprint exceeds 3.99 hectares. A pre-existing access road is not considered a new feature for the quarry and is not taken into consideration when the footprint of the quarry is determined. Consequently, NSE determined from the SML quarry application, the size of the quarry as proposed to be 3.99 hectares.

Respecting Ground 2 and concerns related to blasting, the survey plan submitted indicates a separation distance of 911m from the weigh scale, therefore, consent is not required. The pipeline is within 800 m, and a letter of permission was received from Maritimes and Northeast Pipeline.

The Appellants submitted a report from Dr. R. F. Favreau. Dr. Favreau's assessment and supplementary report do not consider the current blast designs for air concussion and ground vibration. The current designs meet the criteria of the Pit and Quarry Guidelines. All blasts are monitored and an exceedance is to be reported to Nova Scotia Environment (NSE) within 48 hours. This allows the Administrator the option to suspend the Approval pending a review of the blast design.

The application for this Approval contains baseline noise sampling for ambient conditions. Noise modelling was conducted and estimated to be within the Pit and Quarry Guidelines.

The Appellants also submitted the Group ATN Consulting Inc. report. It did not consider all the criteria set out in the Pit and Quarry Guidelines. These considerations are critical in determining the impact and the prevention of an adverse effect on the environment, and provides framework for the approval's terms and conditions.

These reports were taken into consideration during the drafting of the Approval, including information provided after the formal consultation period had concluded in December 2015.

Respecting Ground 3, layout of the area for the proposed quarry is consistent with the site plans submitted with the January 2016 application. Preliminary information did indicate the quarry will be operating above the water table and identified the possibility that they will be extracting rock below the water table.

During the review of the submission, dewatering or operating below the water table was identified. NSE worked with the applicant to obtain further information to confirm this condition. The public was notified in November 2016 that operating below the water table is a possibility, and a hydrogeological study will be carried out.

Since 2003, Gateway Materials is currently authorized to excavate below the water table. This demonstrates the department has experience in issuing approvals after considering the quarry location and whether an adverse effect can be mitigated.

Respecting Ground 4, there is reference to two Dr. Favreau reports. These pre-date the blast profile SML submitted in November/December 2016. Concerns regarding this ground are covered above. In addition, the final design plan shows blasting to be directed away from Highway 102.

Relating to potential impacts at the Stanfield International Airport, an agreement between Nav Canada and SML was reached. Further, SML will be required to meet the dust emission requirements in the Pit and Quarry Guidelines.

Respecting Ground 5, in accordance with the Pit and Quarry Guidelines and the Approval, SML had conducted pre-blast surveys as there are structures within 800 metres. In this case, there are two structures and letters have been received.



A well survey was completed, and it was determined that the closest well is approximately 1.2km away. Groundwater flow has been determined to be away from the subdivisions, and modeling has shown that impacts are not probable. Groundwater monitoring is included as terms and conditions of the Approval. Baseline sampling had been conducted.

Respecting Ground 6, the Approval requires surface water runoff from the quarry operation to be restricted to the limits in the Pit and Quarry Guidelines.

With respect to the position that Soldiers and Miller Lakes provide water for the City of Dartmouth, these two lakes form part of the Shubenacadie River Watershed and are not part of the water supply for the city.

Respecting Ground 7, the Pit and Quarry Guideline are applied consistently to all applications and to the quarry approval when given. NSE is not aware that the blasting technique or method causing the alleged flyrock incident and resulting prohibition, is the same blast method to be used at SML quarry. SML will not be permitted to blast unless the blast design conforms to the Pit and Quarry Guidelines.

Respecting Ground 8, the amount of material to be extracted from a quarry is not dictated by NSE and is typically project/contract driven. Actual extraction may be more or less than the original estimates by the applicant.

Respecting Ground 9, quarrying below the water table is not a stand-alone trigger for an environmental assessment under the regulations. The disturbed area will be 3.99 hectares (9.86 acres) on a 248-acre lot, as confirmed on a surveyed drawing. Quarries less than 4 hectares are not subject to the Environmental Assessment Regulations regardless of water-table influence.

In relation to the flyrock incident cited in this appeal, it was the Occupational Health and Safety Division of the Nova Scotia Department of Environment and Labour that had issued a stop blasting order. The stop order was not issued pursuant to the *Environment Act*.

Respecting Ground 10, the current approval was issued to SML more than a year after the Group ATN Consulting Inc. report. The report is an assessment of the 2015 quarry design and assesses feedback and views on the possibility of the Park being home to a quarry, a cement plant and an asphalt plant. The result is an economic impact analysis of the potential impact of a quarry on the growth potential of the Park.

This report predates the current Approval and does not take into consideration public consultation that followed the release of the report. Transport Canada has given consent for the quarry to operate in proximity to the airport and permission for other significant infrastructures was received. In addition, the questionnaire given to business owners suggested that asphalt and cement plants would be a part of the quarry activity. However, these two activities are not captured by the approval issued to SML. Concerns were brought directly to NSE from industries at the Aerotech Business Park during the processing of this application.

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In relation to consideration of planning documents, the Court of Appeal in *Northern Construction Enterprises Inc. v. Halifax (Regional Municipality)*, 2015 NSCA 44 concluded that the Province of Nova Scotia has the right to control the location of quarries and that all quarrying activities fall exclusively within provincial authority. Notwithstanding, the Administrator upon receipt of an application takes into consideration the suitability of the site and whether an adverse effect can be mitigated.

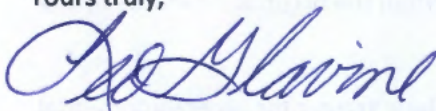
Respecting Ground 11, I find that the Administrator did not fail to consider or properly weigh the risk to health of the quarry operations on area residents. This issue has also been addressed in the preceding grounds.

Respecting Ground 12, regarding the contravention of the Environmental Assessment Regulations, only quarries larger than 4 ha in area for extracting stone are subject to the regulation.

For the reasons outlined above, this appeal is dismissed.

Pursuant to Section 138 of the *Environment Act*, you have thirty (30) days to appeal my decision to the Supreme Court of Nova Scotia.

Yours truly,



Honourable Leo Glavine  
Minister

c: Darlene Willcott, Solicitor, Justice