

Our File No.:
10700-40

November 17, 2006

Citizens Against Strip Mining
1373 Trans Canada Highway
Bras d'Or, Nova Scotia

"The name of an identifiable individual has been severed from this record in keeping with the privacy provisions of the NS Freedom of Information and Privacy Act."

Dear _____ :

I am writing regarding your Notice of Appeal dated September 25, 2006 which was received in this office on October 3, 2006. You have appealed the decision of the Department of Environment and Labour to issue an approval (Approval No. 2006-051995) to Pioneer Coal Limited to construct and operate a surface coal mine and reclamation project, and associated works at Point Aconi, Cape Breton County (the activity) pursuant to Section 137 of the *Environment Act*.

Upon careful review of the Notice of Appeal, the information you submitted in support of the appeal and the applicable statutory provisions, I wish to advise that I am dismissing the appeal.

In dismissing the appeal, I want to provide you with the reasons of my decision. To facilitate this process, I will provide a synopsis of the specific ground of appeal contained at Section 5 of the Notice of Appeal followed by the response to the specific ground. Please note that I have added subsections in bold to provide responses to each of your comments given in the Notice of Appeal.

Ground of Appeal 1 - Appellant Statement 1

We contend based on the approval and its attachments supplied by NSDEL, the following information was not submitted as regulated:

5(d) proof that the applicant either owns the site or has a lease or other written agreement or option with the landowner or occupier to enable the applicant to conduct the activity on the site or has the legal right or ability to conduct the activity without the consent of the landowner or occupier;

Approval holder did not supply this information prior to the Department of Environment and Labour issuing an approval.

Response:

Section 5(1)(d) of the *Approvals Procedure Regulations* states that “unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(d) proof that the applicant either owns the site or has a lease or other written agreement or option with the landowner or occupier to enable the applicant to conduct the activity on the site or has the legal right or ability to conduct the activity without the consent of the landowner or occupier;”

Due to the scale of this project, the multiple land owners involved and concerns expressed by Pioneer Coal about purchasing these properties without any degree of certainty that an approval would be issued, the Administrator informed Pioneer Coal that this information was not required at the time of application. The Administrator advised Pioneer Coal that should an industrial approval be issued, the terms and conditions of the approval would require Pioneer Coal to provide the Department with such proof of ownership, lease agreement or letters of authorization prior to the commencement of work. The Industrial Approval No 2006-051995 addresses this issue in Schedule D, Condition (b) and Schedule E, Condition (a).

Section 6 of the Application for Approval states that “all supporting documentation is to be submitted in accordance with the *Approval Procedure Regulations*. If applicable, the following documents must be submitted with this Application; however, additional information may be requested”

Therefore, in accordance with Section 6 of the Application for Approval, the Administrator made the determination that a “copy of the property deed, lease or letter providing the applicant’s legal right to conduct the activity on the site” was not applicable at the time of application. Pioneer Coal has provided the department with a copy of the recorded property deed for the former Prince Mine property.

Ground of Appeal 2 - Appellant Statements 2.1 to 2.7

5-(g) detailed plans and specifications which, if required by the Minister or an Administrator, are stamped by a professional engineer licensed to practice in Nova Scotia

There were no detailed engineering plans (2.1) submitted showing the location and the depth of cuts (2.2), mining extraction methods for the cuts (2.3) and schedule steps of extraction (2.4), dimensions of the settling ponds (2.5), no engineered siltation and erosion control plans (2.6) All that was there, were copies of sketches on aerial photographs and property maps and NSDNR mapping supplied by government agencies. There was no

qualified wetland specialist report as required by NSDEL (NSDEL Operation Bulletin Respecting Alteration of Wetlands.) There was no detail report submitted by the proponent for mitigation sequence as required by NSDEL Wetland Designation Policy and its Operational Bulletin. See Below **(2.7)**

Response:

Statement 2.1

Section 5(1)(g) of the *Approvals Procedure Regulations* states that “unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(g) detailed plans and specifications which, if required by the Minister or an Administrator, are stamped by a professional engineer licensed to practice in Nova Scotia;”

The plans that accompanied the Industrial Approval Application were completed by an independent consulting firm. Since these plans were not of a design nature, they were not required by the Minister or an Administrator to be stamped by a professional engineer licensed to practice in Nova Scotia. Please note that the Proponent may be required to submit stamped engineering plans as the project moves forward.

Statement 2.2

The depths of the mining cuts will be determined at the time of mining, as the coal seam is placed at an angle, not parallel to the surface. Some mining sequences may be shallower than others. The Proponent must submit mining plans to NSDNR which would provide details on the mining activities.

Statement 2.3

Methods for extraction of the coal were identified within the Environmental Assessment Registration document and the Industrial Approval Application submitted by the proponent. Specifically within the Approval in Tab 16, Environmental Assessment, Section 3.3 - Operation and Maintenance, and Tab 17, Industrial Application, Section 11 - Mine Development and Operation. The Proponent must submit mining plans to NSDNR which would provide details on the mining activities.

Statement 2.4

Although a time frame is not established for the mining of each excavation, a sequence was provided. The Approval is valid for seven years. The Proponent must submit mining plans to NSDNR which would provide details on the mining activities.

Statement 2.5

The construction of settling ponds are not required for this activity. However, if settling ponds are required, the existing former CBDC settling ponds may be utilized. Information on these ponds is not required at present. Information about the ponds as provided by the Proponent can be found in the Industrial Approval in Tab 16, Environmental Assessment,

Section 3.2.3, Surface Water Management, and Tab 17, Industrial Application, Section 4.0 - Surface Water.

Statement 2.6

Within the Approval, Schedule E, Condition (b) addresses erosion and sedimentation. In addition, the Environmental Protection Plan as provided in Appendix B of the Approval, also addresses erosion and sedimentation concerns and contingencies.

Statement 2.7

Wetlands were reviewed within the Environmental Assessment phase as supplement information provided to the Department. The Proponent provided additional information on wetlands which can be found within the Industrial Application section of the Approval in Tab 17, Section 6.0 - Wetlands.

A Preliminary Wetland Compensation Plan is included in the Approval in Appendix E. Within the Industrial Approval, Schedule K, Condition (b) also notes that the Proponent shall ensure alteration to the wetlands shall not take place until all requirements by NSDNR's Wildlife Division and this Department have been satisfied. The proponent shall not commence work on any wetland until written confirmation is received by the proponent from the Department. At such time, design parameters for the potential relocation and/or storage of any said wetlands will be determined.

Once the wetland compensation plan is finalized, the proponent will be responsible to obtain an Approval from the Department. At such time, the NSEL Operation Bulletin Respecting Alteration of Wetlands will be maintained as a minimum.

Ground of Appeal 3 - Appellant Statement 3

5-(h) detailed description of the activity to which the application relates;

No detailed description, just overviews and untested and unquestioned theories.

Response:

Section 5(1)(h) of the *Approvals Procedure Regulations* states that "unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(h) detailed description of the activity to which the application relates;"

The Industrial Approval Application and Environmental Assessment Registration document offer a detailed description of the activity to which the application relates. This information can be found in the Approval in Tab 16, Environmental Assessment, Section 3.0 - Detailed Project Description, and Tab 17, Industrial Application, Section 11.0 - Mine Development and Operation.

Ground of Appeal 4 - Appellant Statements 4.1 to 4.5

(i) details of site suitability and sensitivity, including proximity to watercourses, residences and institutions, geology and hydrogeology:

There was no hydrogeological testing undertaken for this proposal respecting a determination of adverse effect for groundwater **(4.1)** surface water **(4.2)** and wetland impacts **(4.3)**. The proponent made references to material required from other sources. However as based on the attached reports (Appendix A & B), the comments submitted by the proponent are deemed at the very least, inaccurate. However as based on the attached sections of the October 1998 Point Aconi Socio-Economic Scoping Study Report, prepared for Nova Scotia Power Corporation by Griffiths Muecke Associates, (Section 3.3.5 Water Supply Page 13 & 14 and Page 18, Water Supply 1st paragraph)(DOCUMENTS ATTACHED as APPENDIX A) the comments submitted by the proponent are deemed at the very least, inaccurate. Information extracted from other sections of the Griffiths Muecke Report were submitted by the Proponent but these vital sections were left out. It should be noted this report was prepared prior to the construction of the Nova Scotia Power Generating Plant at Point Aconi with its heavy drawdown of water. The ash pile generated by Nova Scotia Power from the burning of petcoke (a toxic substance banned in the USA) sits in, and has destroyed a wetland that is in a water recharge area, (Jaques Whitford MAP ATTACHED AS APPENDIX B) further in endangering water supplies in the area. It should be noted as well that a number of large commercial farming operations including large commercial greenhouse operations, with high water demands as well as a large commercial egg production operation, now operate in the area since the 1998 Griffiths Muecke Report was prepared, as well numerous homes have been built since that 1998 report.**(4.4)**

No CURRENT quantitative information and qualitative information on the water resources (groundwater, surface and wetlands) derived for the sole purposes of this activity was submitted prior to obtaining an approval **(4.1, 4.2, 4.3)**

It is noted that 25 year storm information was provided for site drainage **(4.5)** and the hydrology should have been completed for a 100 year storm along with 72 hour pump testing of the aquifer (s) to be disrupted **(4.1)**. No design plans or specification plans on how to remove and store wetlands(s) **(4.3)**.

Response:

Section 5(1)(i) of the *Approvals Procedure Regulations* states that “unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(i) details of site suitability and sensitivity, including proximity to watercourses, residences and institutions, geology and hydrogeology;”

Identified within the Approval, Schedule I, Condition (e) notes that the proponent shall

provide an annual report to the Department from the effective date of the Approval on the Groundwater monitoring program for the site and domestic wells. The report shall include an interpretation of the results as prepared by a professional engineer or a professional geo-scientist.

Statement 4.1

The proponent has provided a groundwater monitoring program as part of the Application for Industrial Approval. Within the Approval, the addendum to Schedule I - Groundwater contains this. Groundwater information can be found in the Approval in Tab 16, Environmental Assessment, Section 4.4, Groundwater, and Tab 17, Industrial Application, Section 3.0 - Groundwater.

Statement 4.2

The proponent has provided NSEL with a concept plan for surface water management in the Industrial Application Supporting Information Tab 17 of the Industrial Approval, Section 4, Figure 4-1 and EPP Tab B Section 2.2. During the initial phase of the project, all site and surface water will be directed to the underground workings. Specific details of the surface water and mine water collection system will be provided to the Department once site development begins. The implementation of the collection system would be subject to change based upon site development and, thus, specific details were not provided with the Industrial Application.

In addition to surface drainage, Schedule E, Condition (f) of the Industrial Approval states “When the water level in the mine workings reaches an elevation of 300 feet below sea level, the proponent shall notify NSEL in writing and shall submit a contingency plan for acceptance by NSEL. The contingency plan shall be submitted within 90 days of written notice to the Department. The contingency plan shall describe operational procedures for the control and treatment of the site and mine water and such other items as required by the Department.”

Statement 4.3

With respect to Wetlands, please refer to the Response to Statement 2.7 of this letter.

Statement 4.4

For clarity, with respect to appendix A and B attached to the Appeal, the information was reviewed. However, it does not appear that this report was prepared for the proponent (Pioneer Coal Limited) nor was the report or components of the report submitted as part of its application.

Statement 4.5

With respect to 25 year storm data provided, as per Schedule E, Condition (d) of the Industrial Approval, the proponent shall ensure all site water, surface drainage, and excavation pumping is managed as described in Section 4.0 of Tab 17 (Industrial Approval Application Supporting Document). If non compliance of the above is encountered, the facility will be required to mitigate and will be investigated as per departmental policy.

Ground of Appeal 5 - Appellant Statement 5

(j) copies of existing approvals that have been issued to the applicant relating to the activity under this Act or a predecessor to this Act

NO copy of Wetland Approval. No wetland approval

Response:

Section 5(1)(j) of the *Approvals Procedure Regulations* states that “unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(j) copies of existing approvals that have been issued to the applicant relating to the activity under this Act or a predecessor to this Act;”

A Preliminary Wetland Compensation Plan can be found in Appendix E, Tab 17 of the Industrial Approval. Once it is finalized, the Proponent will be required to obtain an Approval from the Department prior to any alteration of said wetlands. Additional information is contained in the Response to Statement 2.7 of this letter.

Ground of Appeal 6 - Appellant Statement 6

5-r) a description of any adverse effect, including surface disturbance, that may or will result from the activity and how it will be controlled

Not completed by the proponent : No Qualitative and Quantitative baseline data specific to the approved activity was submitted by the proponent.

Response:

Section 5(1)(r) of the *Approvals Procedure Regulations* notes that “unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(r) a description of any adverse effect, including surface disturbance, that may or will result from the activity and how it will be controlled;”

An Environment Protection Plan has been established for the operation as provided within Appendix B, Tab 17 of the Industrial Approval. In addition to the information provided in the Environmental Assessment Registration document and the Industrial Approval Application, Schedule E, Condition (g) of the Approval notes that coal extraction activities shall not commence until the baseline data for surface water, groundwater, blasting and wetlands have been submitted, in writing, to the Department and deemed to be satisfactory to the Department.

Ground of Appeal 7 - Appellant Statement 7

5-(t) a preliminary abandonment or rehabilitation plan, and, if required, a final abandonment or rehabilitation plan

No engineered plans submitted for the approved activity let alone for rehabilitation . Only theories submitted and sketchings on government maps

Response:

Section 5(1) of the *Approvals Procedure Regulations* states that “unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(t) a preliminary abandonment or rehabilitation plan, and, if required, a final abandonment or rehabilitation plan;”

The operation will be developed utilizing progressive rehabilitation. The proponent has provided information on reclamation of the site in Section 12.0 and Figure 12.1 of Tab 17 of the Industrial Approval. Schedule L of the Industrial Approval addresses rehabilitation and Schedule L, Condition (d) requires the Proponent to obtain an Approval from the Department for final rehabilitation. At such time, the approved final rehabilitation plan will have to meet an acceptable standard current to the date of rehabilitation. Preliminary reclamation plans must also be submitted to NSDNR as part of the mining plan.

Ground of Appeal 8 - Appellant Statements 8.1 to 8.6

How could the application be adequately reviewed as per section 8 of the *Approvals Procedure Regulations* when information specific to the project to meet section 5 and 8 was not submitted.

Purpose and Scope of review

8 (1) The review of an application shall determine whether the impact on the environment of the activity conforms with regulations made pursuant to the Act, or with policies, standards or guidelines prescribed or adopted by the Minister.

(2) A review may include but is not limited to, the following matters:

(a) proposed methods of reducing the generation, use and release of substances;

(b) available alternative technologies;

(c) design plans and specifications for the activity; **(8.1)**

(d) site suitability, including soils, air and water quality, groundwater conditions, site drainage, water supply quantity and wastewater disposal alternatives; **(8.2)**

(e) the proposed monitoring programs to measure emissions and their effect on the environment; **(8.3)**

(f) proposed methods of management of the storage, treatment and disposal of substances; **(8.4)**

(g) proposed plans to complete the rehabilitation required in connection with the activity and available information about the success or failure of similar plans elsewhere; **(8.5)**

(h) the past performance of the applicant to provide for environmental protection with respect to the activity. **(8.6)**

Response:

Statement 8.1

As indicated in the Response to Statement 3 of this letter, all plans provided by the Proponent can be found in the Approval in Tab 16 - Environmental Assessment within the List of Figures Section and Tab 17 - Industrial Application within the List of Figures. Various specifications are provided throughout the body of each attachment.

Statement 8.2

Notwithstanding the initial work done during the Environmental Assessment process, the Industrial Approval process required input from other government departments in the review of proposed plans, design, operational, and other components such as the wetland portion of the application. This technical review of the application resulted in additional terms and conditions the company must adhere to in order to operate effectively and efficiently in the community.

For the site suitability of the activity, soil, air quality, water quality, groundwater conditions, site drainage, water supply quantity, and wastewater disposal alternatives were reviewed.

Soil Quality: An Environmental Protection Plan has been provided in Appendix B, Tab 17 of the Industrial Approval. This includes response plans for acid rock drainage and contaminated material. Within the Approval, Schedule M, Condition (c) specifies that the Proponent shall provide an annual report from the effective date of the Approval to the Department describing the status of the activity which has occurred as result of the contaminated soil management plan.

Air Quality: An Environmental Protection Plan has been provided in Appendix B, Tab 17 of the Industrial Approval. This includes response plans for air quality and dust. Within the Approval, Schedule F - Particulate Emissions (Dust) identifies the monitoring programs the proponent must follow.

Water Quality and Groundwater Conditions: Within the Approval, Schedule I addresses groundwater quality. This Schedule also includes an addendum titled "Groundwater" which

deals with groundwater quality and continuous monitoring program.

Wastewater disposal alternatives: At present the wastewater from the facility is disposed in a “blue boy” or “Johnny on the Spot” style water closet, However, existing infrastructure is available on the former CBDC property to handle wastewater. If the proponent requires such existing infrastructure, at that time, approval requirements will be explored. If the proponent decides to explore the option of installing a holding tank or an on-site sewage disposal system, this would be covered under a separate approval.

Site drainage: This has been covered in the Response to Statements 4 and 4.2 of this letter.

Water Supply Quantities: The proponent doesn’t plan to operate a wash plant. Water demands placed on the facility would be that for domestic use and water sprays. There are existing wells on the former CBDC site, however, the facility may also choose to approach the municipality for connection to municipal services. Water may also be collected from surface drainage to operate the water sprays. If the proponent withdraws greater than 23,000 litres per day of groundwater, an additional approval will be required.

Statement 8.3

Monitoring programs are identified within the Industrial Approval Schedule F - Particulate Emissions (Dust), Schedule G - Sound Levels, Schedule H - Blasting and Schedule I - Groundwater. Addition information on monitoring programs is contained in Section 3.0 of Appendix B, Tab 17 of the Approval.

Statement 8.4

The management of wetland materials and other substances is identified in Approval - Tab 16, Environmental Assessment, Section 3.3, Operation and Maintenance and Appendix B - Tab 17, Environmental Protection Plan.

Please note that while “Including the storage of a wetland(s)” is not the wording in Section 8(1)(f) of the *Approvals Procedure Regulations*, this issue is addressed in the Response to Statement 2.7 of this letter.

Statement 8.5

As noted in the Response to Statement 7, the proponent will be developing the site using progressive rehabilitation and final rehabilitation plans are not required at this time.

Statement 8.6

Departmental staff considered the past performance of the proponent in respect to environmental protection for projects throughout the province in the review of this project.

Ground of Appeal 9 - Appellant Statement 9

It appears that approval review process and its culminated issuance of the approval has generated an outcome opposite to the legislation and the intent of the legislation and in particular as it relates to the goals of the *Environment Act*.

2 a) maintaining environmental protection as essential to the integrity of ecosystems, human health and the socio-economic well being of society;

(b) maintaining the principals of sustainable development

FOR ADDITIONAL INFORMATION SEE APPENDIX C

Response:

NSEL is committed to protecting and promoting the prudent use of the environment. We have in place fair and effective processes and a regulatory regime which ensures that industrial activities are conducted in a manner which minimizes their impact on the environment.

For clarification, this appeal is directly related to Pioneer Coal Limited's Approval to Construct and Operate a Surface Coal Mine and Reclamation Project, not construction of the Point Aconi Power Plant. The information within the CD-ROM will not be considered for review in this appeal.

Please be advised that pursuant to Section 138 of the *Environment Act*, you have 30 days to appeal my decision to the Supreme Court of Nova Scotia.

Sincerely,

Mark Parent
Minister