

AGREEMENT

concerning

**The Establishment of a Joint Review Panel
for the Whites Point Quarry and Marine Terminal Project**

between

The Minister of the Environment, Canada

and

The Minister of Environment and Labour, Nova Scotia

PREAMBLE

WHEREAS the Minister of Environment and Labour, Nova Scotia, has statutory responsibilities pursuant to the Nova Scotia *Environment Act*; and

WHEREAS the Minister of the Environment, Canada, has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act*; and

WHEREAS Bilcon of Nova Scotia Corporation (Proponent) is proposing to construct and operate a basalt quarry, processing facility and marine terminal located on Digby Neck in Digby County, Nova Scotia, which is subject to an environmental assessment under both the *Canadian Environmental Assessment Act* and the Nova Scotia *Environment Act*; and

WHEREAS the Whites Point Quarry and Marine Terminal project (Project) was referred to a review panel in accordance with section 21 of the *Canadian Environmental Assessment Act*; and

WHEREAS the Minister of Environment and Labour, Nova Scotia, may, pursuant to section 47 of the Nova Scotia *Environment Act*, enter into an agreement with another government agency to conduct a joint review and to adopt, for the purposes of the review, all or part of that government agency's procedures for environmental assessment; and

WHEREAS the Minister of Environment and Labour, Nova Scotia, may, pursuant to section 48 of the Nova Scotia *Environment Act*, enter into an agreement with another government agency to provide for a single hearing process; and

WHEREAS the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, have determined that a joint review of the Project will ensure that the Project is evaluated according to the spirit and requirements of their respective legislation while avoiding unnecessary duplication, delays and confusion that could arise from separate environmental assessments; and

WHEREAS the Minister of the Environment, Canada, has determined that a joint review panel should be established pursuant to paragraph 40(2)(a) of the *Canadian Environmental Assessment Act*;

THEREFORE, the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, hereby establish a joint review panel (Panel) for the assessment of the Project in accordance with the provisions of this Agreement and the Terms of Reference attached hereto as an Appendix.

1. Definitions

For the purpose of this Agreement and of the Appendix attached hereto,

“**Agency**” means the Canadian Environmental Assessment Agency.

“**Environmental Impact Statement**” means the document that presents the results of the environmental assessment conducted by the Proponent.

“**Federal Authority**” refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

“**Environmental Effect**” means, in respect of the Project,

- (a) any change that the Project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residence of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,
- (b) any effect of any change referred to in paragraph (a) on
 - (i) health and socio-economic conditions
 - (ii) physical and cultural heritage
 - (iii) the current use of lands and resources for traditional purposes by aboriginal persons
 - (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or

(c) any change to the Project that may be caused by the environment,

Whether any such change or effect occurs within or outside Canada.

“Follow-up Program” means a program for

- (a) verifying the accuracy of the environmental assessment of the Project, and
- (b) determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the Project.

“Panel” means the joint review panel established by the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, pursuant to this Agreement.

“Mitigation” means, in respect of the Project, the elimination, reduction or control of the adverse environmental effects of the Project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means.

“Parties” mean the signatories to this Agreement.

“Project” means the Whites Point Quarry and Marine Terminal project, located near Digby, Nova Scotia, as described in Part I of the Appendix attached hereto.

“Proponent” means Bilcon of Nova Scotia Corporation.

“Report” means the document produced by the Panel which shall contain the recommendations of the Panel pursuant to the Nova Scotia *Environment Act* and the Panel's rationale, conclusions and recommendations, including any mitigation measures and follow-up program, pursuant to the *Canadian Environmental Assessment Act* with respect to the environmental assessment of the Project.

“Responsible Authority” refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

2. Establishment of the Panel

- 2.1.** A process is hereby established for the creation of a joint review panel, pursuant to sections 40, 41 and 42 of the *Canadian Environmental Assessment Act*, and sections 47 and 48 of the *Nova Scotia Environment Act*.
- 2.2.** Nova Scotia Environment and Labour and the Agency will make arrangements for the coordination of joint announcements respecting the joint review of the Project.

3. Constitution of the Panel

- 3.1. The Panel shall consist of three members, one of whom shall be the chairperson.
- 3.2. Each of the Parties will provide a list of three nominees, and at least one nominee selected by each of the Parties will be appointed to the Panel. The Parties will agree on the nomination of one of the three final nominees to be chairperson. The Minister of the Environment, Canada, will appoint the members of the Panel, including the chairperson.
- 3.3. The Panel members shall be unbiased and free from any conflict of interest relative to the Project and are to have knowledge or experience relevant to the anticipated environmental effects of the Project.

4. Conduct of the Review by the Panel

- 4.1. The Panel shall conduct its review in a manner that discharges the requirements set out in the *Canadian Environmental Assessment Act*, Part IV of the Nova Scotia *Environment Act* and the Terms of Reference attached hereto as an Appendix.
- 4.2. All Panel hearings shall be public and shall provide for public participation.
- 4.3. The Panel shall have all the powers and duties of a panel set out in section 35 of the *Canadian Environmental Assessment Act*.

5. Secretariat and Administrative Matters

- 5.1. Administrative, technical, and procedural support for the Panel shall be provided by a Secretariat, and the establishment of the Secretariat shall be the responsibility of Nova Scotia Environment and Labour and the Agency.
- 5.2. The Secretariat shall report to the Panel and shall be structured so as to allow the Panel to conduct its review in an efficient and cost-effective manner.
- 5.3. Following the appointment of the Panel, the Parties shall finalize a budget, agreeable to both Parties, for the review.
- 5.4. Costs associated with the review will be apportioned between the Parties in accordance with a cost-sharing agreement to be finalized following the appointment of the Panel.

6. Record of Review and Report

- 6.1.** A public registry consisting of all submissions, correspondence, hearing transcripts, exhibits and other information received by the Panel and all public information relating to the review of the Project shall be maintained by the Secretariat during the course of the review in a manner that provides for convenient public access, and for the purposes of compliance with section 55 of the *Canadian Environmental Assessment Act* and the practices of Nova Scotia Environment and Labour.
- 6.2.** On completion of the review of the Project, the Panel shall prepare a Report for submission to the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada.
- 6.3.** The Report shall include recommendations on all factors set out in section 16 of the *Canadian Environmental Assessment Act* and, pursuant to Part IV of the *Nova Scotia Environment Act*, recommend either the approval, including mitigation measures, or rejection of the Project.
- 6.4.** Once completed, the Panel will submit the Report, in both official languages, to the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, and will make it public.
- 6.5.** Once the Report is submitted to the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, the responsibility for the maintenance of the public registry, pursuant to the *Canadian Environmental Assessment Act*, will be transferred to the Responsible Authority.
- 6.6.** The Responsible Authority shall take into consideration the Report submitted by the Panel and, with the approval of the Governor in Council, respond to the Report. Then, the Responsible Authority shall take one of the courses of action provided for in subsection 37(1) of the *Canadian Environmental Assessment Act* that is in conformity with the approval of the Governor in Council.
- 6.7.** The Minister of Environment and Labour, Nova Scotia, shall consider the recommendation of the Panel, and either approve with conditions, or reject the Project.

7. Other Government Departments

- 7.1.** At the request of the Panel, federal and provincial authorities having specialist knowledge with respect to the Project shall provide available information and knowledge in a manner acceptable to the Panel.

Subject to clause 7.1 of this Agreement and subsection 12(3) of the *Canadian Environmental Assessment Act*, nothing in this Agreement shall restrict participation by way of submission to the Panel by other federal or provincial government departments or bodies.

8. Participant Funding

8.1. Participant funding for the review will be administered by the Agency pursuant to the federal Participant Funding Program.

9. Amending this Agreement

9.1. The Parties may amend this Agreement by written memorandum executed by both the Minister of the Environment, Canada, and the Minister of Environment and Labour, Nova Scotia. Subject to section 27 of the *Canadian Environmental Assessment Act*, this Agreement may only be terminated by mutual agreement of the Parties.

In Witness whereof the Parties hereto have put their signatures this 3rd day of November 2004.

Original signed by Stéphane Dion
Minister of the Environment
Canada

Original signed by Kerry Morash
Minister of Environment and Labour,
Nova Scotia

Terms of Reference for the Joint Review Panel

Part I - Project Description

Bilcon of Nova Scotia Corporation is proposing to construct and operate a basalt quarry, processing facility and marine terminal located on Digby Neck in Digby County, Nova Scotia.

Quarrying is expected to take place on 120 hectares of land, with production expected to be 2 million tonnes of aggregate per year. Approximately 4 hectares of new quarry would be opened each year. The land-based quarry operations are expected to be year-round, with aggregate stockpiled for ship loading once per week. Drilling and blasting of basalt rock, loading, hauling, crushing, screening, washing and stockpiling would be done on-site.

Land-based permanent structures would include rock crushers, screens, closed circuit wash facilities, conveyers, load out tunnel, support structures and environmental control structures. Associated construction processes would include the erection of on-land aggregate processing equipment, conveyers and wash-water pumping systems.

Marine facilities would include a conveyor, ship loader, berthing dolphins and mooring buoys. Construction processes for the marine terminal infrastructure would include the anchoring of pile support structures to the basalt rock extending offshore, as well as the construction of concrete caps as dolphins. Approximately 40,000 tonnes of aggregate would be produced for loading each week.

Part II – Components of the Review

1. The Agency and Nova Scotia Environment and Labour shall prepare draft guidelines regarding the scope of the Environmental Impact Statement. The public and stakeholders shall be provided with forty-five (45) days to review the draft guidelines and provide comments to the Agency and Nova Scotia Environment and Labour. Comments received from the public and stakeholders will be provided to the Panel upon its appointment.
2. The Panel will hold scoping meetings in locations determined by the Panel within the area likely to be affected by the Project, or in any area reasonably close to where the Project is proposed to be carried out where appropriate.

3. After taking into account the comments received from the public and stakeholders, the Panel shall issue the Environmental Impact Statement guidelines.
4. The Panel shall require the Proponent to prepare the Environmental Impact Statement in accordance with the guidelines issued by the Panel. The Environmental Impact Statement shall be submitted to the Panel.
5. The Panel shall require the Proponent to distribute the Environmental Impact Statement for examination and comment by the public and stakeholders to determine whether additional information should be provided before convening public hearings. This information shall be made available for public examination and comment for a period of not less than sixty (60) days. Comments made by the public or stakeholders pursuant to this clause shall be filed in writing with the Panel.
6. Written comments received pursuant to clause 5 shall be immediately provided to the Proponent by the Panel. The Proponent shall, as appropriate, provide to the Panel its response to the written comments not later than fifteen (15) days following completion of the period for public examination and comment.
7. Should the Panel identify deficiencies after reviewing the Environmental Impact Statement, and in consideration of any comments received from the public, stakeholders or the Proponent pursuant to clauses 5 and 6, the Panel may require additional information from the Proponent. Any request for additional information shall be issued within fifteen (15) days following the expiration of the period for public examination and comment described in clause 5 or fifteen (15) days following receipt of written comments from the Proponent as described in clause 6, whichever occurs later. The Panel will determine the need, timing and location of any public meetings in connection with clauses 5, 6 and 7.
8. The Panel shall schedule and announce the start of public hearings once the Panel is satisfied that sufficient information has been provided. A minimum of thirty (30) days public notice will be provided prior to the start of the hearings.
9. The Panel will hold public hearings in locations determined by the Panel within the area likely to be affected by the Project, or in any area reasonably close to where the Project is proposed to be carried out where appropriate.
10. The Panel shall deliver its Report to the Parties within ninety days (90) following the close of the public hearings.
11. For procedural matters not specifically addressed herein, the Panel shall be guided by the *Procedures for an Assessment by a Review Panel*, a Ministerial Guideline issued pursuant to paragraph 58(1)(a) of the *Canadian Environmental Assessment Act*.

Part III – Scope of the Environmental Assessment and Factors to be considered in the Review

The Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, have determined that the Panel shall include in its review of the Project, consideration of the following factors:

- a) purpose of the Project;
- b) need for the Project;
- c) alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means;
- d) alternatives to the Project;
- e) the location of the proposed undertaking and the nature and sensitivity of the surrounding area;
- f) planned or existing land use in the area of the undertaking;
- g) other undertakings in the area;
- h) the environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
- i) the socio-economic effects of the Project;
- j) the temporal and spatial boundaries of the study area(s);
- k) comments from the public that are received during the review;
- l) steps taken by the Proponent to address environmental concerns expressed by the public;
- m) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project;
- n) follow-up and monitoring programs including the need for such programs;
- o) the capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future; and
- p) residual adverse effects and their significance.