



FRIENDS OF THE NORTHUMBERLAND STRAIT

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Sent via E-mail to ec.ministre-minister.ec@canada.ca and melanie.smith@ceaa-acee.gc.ca

Hon. Catherine McKenna
Minister of Environment and Climate Change
Environment and Climate Change Canada
200 Sacré-Coeur Boulevard
Gatineau, QC K1A 0H3

Melanie Smith,
Team Lead for CEAA,
Atlantic Regional Office,
1801 Hollis Street, Suite 200,
Halifax, NS B3J 3N4

Dear Minister McKenna and Ms. Smith:

Re: Request for designation under CEAA 2012 of Northern Pulp Nova Scotia's proposed new effluent treatment facility (ETF)

Friends of the Northumberland Strait (FONS) believes that the Minister of Environment for the Province of Nova Scotia is unable to conduct an unbiased environmental assessment under the *Nova Scotia Environment Act* of Northern Pulp's proposed new effluent treatment facility (ETF). We believe that the proposed project requires a Federal environmental assessment under *the Canadian Environmental Assessment Act, 2012 (CEAA)*. Our organization is adding our voice to the voices of many other organizations, individuals, businesses, and municipal and provincial elected representatives in requesting that the federal Minister of Environment and Climate Change designate Northern Pulp's proposed ETF as a physical activity requiring an environmental assessment pursuant to section 14 of *CEAA 2012*.

We support the reasons for requesting designation presented in separate applications, including the potential impact of the project on federal waters, on fish and fish habitat, on aquatic species under the *Species at Risk Act*, potential changes that impact Prince Edward Island and New Brunswick as well as Nova Scotia, and potential impacts on First Nations communities, including on commercial and food fisheries. We note that the Minister has received more than 5,000 hard copy and electronic requests for *CEAA* designation, including a joint application from organizations representing over 3,000 fishermen from Nova Scotia, New Brunswick, Prince Edward Island, and Pictou Landing First Nation. This strong response demonstrates the broad public concern about the risks Northern Pulp's proposed ETF poses to the Northumberland Strait and our communities.

Friends of the Northumberland Strait believes that the Nova Scotia Government has significant conflicts of interest which compromise its neutrality and prevent the Provincial Environment Minister from conducting an unbiased environmental assessment of Northern Pulp's proposed new ETF. The circumstances giving rise to these conflicts of interest are set out below. Due to

the Province's compromised position, we believe that the environmental assessment of this project should not be left in Provincial hands.

The Province has a direct financial and proprietary interest in the current design and construction of the proposed ETF

The Province does not have an arm's length relationship to the new ETF. The Province is closely linked, or has the appearance of being linked, to the new ETF in several ways which preclude it from conducting a neutral and unbiased assessment of the environmental effects of the project. The Province has acknowledged the significant possibility that it may become the owner/operator of the new ETF and has invested heavily in the current design of the ETF. Within an environmental assessment, the Province will have to assess that very design and may have to pay for any changes to it. The Province therefore has a strong motivation to approve the design without changes, and ignore or minimize the environmental risks posed by the proposed ETF.

1. According to a September 2017 news report by CBC, the Province and Northern Pulp were then in discussion as to who will own and operate the new ETF for the Northern Pulp mill and who will pay for it. According to Brian Taylor of NS Transportation, Infrastructure and Renewal (TIR), "The engineering and design processes should help inform those negotiations."¹
2. In March 2018, TIR Minister Lloyd Hines confirmed that the Province has a number of potential relationships to the new facility, including ownership, partnership and/or shared liability. In response to a question from CBC reporter Michael Gorman about whether the public would be responsible for the full costs of the new facility, Hines responded, " 'In the present, we look at partnering, we look at sharing liability, we look at reasonable partners who want to reach an objective who want to get things done.' Ultimately, it means the government is negotiating with the mill for a scenario where the province wouldn't have to foot the full bill, said Hines. Other outstanding issues to be settled include the design of the facility and determining ownership, said Hines." ²
3. [According to the Nova Scotia Public Accounts for the period April 2017 to March 2018](#),³ \$6,526,148.46 were disbursed in that period to Northern Pulp, including \$6,001,238.13 from Transportation and Infrastructure Renewal (TIR) (Grants and Contributions). Communication from TIR to MLA Karla MacFarlane confirmed that "This funding was related to design work on a possible future effluent treatment facility."⁴ ⁵ An article by Brian Flinn in [allnovascotia.com](#), August 21, 2018 confirms that the payment from the province covers costs relating to design work for the ETF.⁶ FONS believes that this represents a significant Provincial investment in the design of the proposed ETF.

¹ <http://www.cbc.ca/news/canada/nova-scotia/northern-pulp-proposal-boat-harbour-waste-water-facility-1.4270995>

² <https://www.cbc.ca/news/canada/nova-scotia/boat-harbour-northern-pulp-mill-pictou-county-effluent-1.4599028>

³ https://www.novascotia.ca/finance/site-finance/media/finance/PublicAccounts2018/2018_Vol3.pdf , p330

⁴ Private communication with Pictou West MLA Karla MacFarlane

⁵ <http://thechronicleherald.ca/novascotia/1592134-nova-scotia-pays-millions-for-northern-pulp's-treatment-facility-design>

⁶ [allnovascotia.com](#), August 21, 2018 (behind paywall)

The Province may face direct and significant financial consequences and litigation if it does not quickly approve the environmental assessment

1. In [1995, an Indemnity Agreement](#)⁷ was signed by the Province of Nova Scotia in favour of Scott Maritimes. We understand that this Indemnity has been transferred to Northern Pulp as a successor owner of the pulp mill at Abercrombie Point. In general terms, it obligates the Province to indemnify the mill owner against any losses, expenses or costs arising from any legal claim put forward by anyone in relation to the existing effluent treatment facility (the Boat Harbour Treatment Facility), including costs arising from compliance with government directives and orders and even violations of environmental laws.
2. We believe that the Indemnity Agreement, combined with the 2002 Lease Extension Agreement giving the Mill the right to use the Boat Harbour Effluent Treatment Facility until 31 December 2030, holds the Province responsible for the cost of a new ETF required by the closure of Boat Harbour Treatment Facility by January 30, 2020 under s. 3 of the *Boat Harbour Act*. The agreement may also make the Province responsible for any lost profits that Northern Pulp could incur from not being able to continue to use Boat Harbour until the end of the lease period. The Indemnity Agreement, Lease Agreement and related documents⁸ impose on the Province a direct financial interest in decisions relating to the new ETF, both the cost of a new ETF and a potential claim for lost profits if the new ETF is not in operation in time to meet the deadline for closing Boat Harbour. In 2015, the estimated cost for building the new treatment facility was \$100 million.⁹ Estimates of lost profits could be significant.¹⁰ FONS believes that the Province's potential financial liability, and the urgent need to have a new effluent treatment process operational before January 2020, create powerful incentives for the Province to approve the presently proposed ETF. These pressures create barriers to the Province taking the time necessary to fully assess the proposal and determine whether to require and fund a more costly, more environmentally protective design, or to reject the proposed project.
3. The 1995 Memorandum of Understanding, to which it appears that Northern Pulp and the Province are now parties, requires the Province to, among other things, at clause 4.01(1) "...use its best efforts to assist Scott [now Northern Pulp] obtain [sic] all necessary permits, consents and approvals to permit the construction and operation of

⁷ https://docs.wixstatic.com/ugd/b61814_0a1a269b9eb943aca6bfebf5308f5f47.pdf , Tab 1

⁸ The Agreements referred to are listed on page 2 of the April 9, 2015 letter of Appeal from Northern Pulp to Environment Minister Randy Delorey, <http://northernpulp.ca/assets/Uploads/NorthernPulpAppealLetter.pdf> Tab 2. They include 1) Memorandum of Understanding dated December 1, 1995 ("MOU"), Tab 3, 2) Lease dated December 31, 1995 ("Lease") Tab 4, 3) License Agreement dated December 31, 1995; Tab 5, 4) Indemnity Agreement dated December 31, 1995 ("Indemnity Agreement") Tab 1, 5) Water Supply Agreement dated June 30, 1995 ("Water Supply Agreement") 6) Lease Extension Agreement dated October 22, 2002; and 7) Acknowledgement Agreement by the Province dated May 12, 2008 ("Acknowledgement Agreement"). (Collectively, the "Agreements."). We are not privy to the contractual arrangements between Northern Pulp and the Province, but to the best of our knowledge, these agreements are still in force and we assume this to be so in this submission.

⁹ April 9, 2015 Northern Pulp letter of appeal to Minister Randy Delorey, p 8, II, A, <http://northernpulp.ca/assets/Uploads/NorthernPulpAppealLetter.pdf> , Tab 2

¹⁰ Private conversations with elected representatives

a replacement treatment facility to replace the [Boat Harbour] Facility at the expiration of the term of the Lease.” We believe that the obligations imposed by this clause are completely at odds with the Minister’s obligation to conduct an unbiased and neutral environmental assessment. A refusal to accept the ETF as proposed could result in contractual liability for the Nova Scotia Government.

4. On April 9, 2015, Northern Pulp appealed new Industrial Approval conditions established by NS Department of Environment. In a letter to the Minister of Environment (attached Tab 2), Northern Pulp discussed its views of its agreements with the Province, in part as follows:
*"Government cannot arbitrarily revoke Northern Pulp's contractual rights under the Agreements with the Province by way of an administrative approval process. Any re-negotiation of Northern Pulp's rights or the Province's obligations under the Agreements must necessarily be the result of written amendments to the Agreements. ... Absent any such cooperation between the Province and Northern Pulp, certain provisions of the [Industrial] Approval cannot reasonably stand given their clear breach of Northern Pulp's rights and the Province's obligations under the Agreements. Any provision in the Approval that is inconsistent with the Agreements must be removed or revised so that the Approval is consistent with the Agreements..."*¹¹

Northern Pulp's words speak for themselves, but appear to indicate that Northern Pulp considers the contractual relationships with the Province to supercede any statutory discretion on the part of the Province to regulate Northern Pulp's operations on points covered by those agreements.

The Province has been unwilling to communicate with the local community that would be affected by the proposed ETF

1. The Province has been co-operating with Northern Pulp on the proposed new ETF project, and providing significant funding to Northern Pulp for project design, but has been unwilling to speak with or provide information to fishermen’s groups or citizens’ groups concerned about the project’s potential risks. The Minister of Environment has received requests for meetings about the project from fishermen’s organizations, tourism organizations, and community representatives, including our group. Neither the Minister of Environment originally responsible for this file, nor the new Minister, has agreed to a meeting with any of these groups.
2. On June 26, 2018, a working group representing more than 3,000 fishermen from three provinces and Pictou Landing First Nation sent then Environment Minister Iain Rankin a detailed request for information relating to correspondence, discussions, and meetings between provincial officials and Northern Pulp on the subject of the proposed new ETF. When no information was received, the request was sent again on July 27, 2018 to the new Minister of Environment, Margaret Miller. A response from Minister Miller dated August 22, 2018 provided a small amount of information in

¹¹ p 4, April 9, 2015 Northern Pulp letter of appeal (attached) The Agreements referred to are listed on page 3 of the letter, and are included in footnote 8 on page 3 above, and attached where available as Tabs 2-5.

relation to several of the questions. In response to the majority of the questions which related specifically to the proposed new ETF, the Minister provided no information. Instead, after a delay of two months, the Minister wrote, “Any member of the public can apply to receive this information through the process which is required by the Freedom of Information and Protection of Privacy (FOIPOP) Act.”¹²

The former lawyer and lobbyist for Northern Pulp is now a senior civil servant in the Provincial Government

Mr. Bernie Miller was a registered lobbyist for Northern Pulp from 2009 to 2014. He moved from this role to a position in the Premier’s office in 2014, when he was appointed Deputy Minister, Office of Planning and Priorities and Senior Executive Advisor, Executive Council Office, for the Province, reporting directly to the Premier. In addition to his position as registered lobbyist for Northern Pulp, Mr. Miller served as the pulp mill’s lawyer on environmental compliance for many years prior to moving to the Premier’s office. Mr. Miller was present at the signing of the 1995 Indemnity Agreement on behalf of Scott Maritimes. When Mr. Miller took the position in the Premier’s office in 2014, questions were raised as to whether he would be in a conflict of interest. Conflict of Interest Commissioner Merlin Nunn found that his position would be a conflict.¹³ Premier McNeil has stated that Mr. Miller would have nothing to do with the Northern Pulp file.

Mr. Miller currently holds the position of Deputy Minister of the Office of Strategy Management (2017 to present), and reports directly to the Premier. He also holds the position of Deputy Minister for the Department of Business, reporting to Minister Geoff MacLellan. According to Bloomberg, Northern Pulp Nova Scotia Corporation and Northern Timber Nova Scotia Corporation are both subsidiaries of Northern Resources Nova Scotia Corporation.¹⁴ According to information obtained through the Nova Scotia Registry of Joint Stock Companies in September 2018, five registered companies, Northern Pulp Nova Scotia Corporation, Northern Timber Nova Scotia Corporation, Northern Resources Nova Scotia Corporation, Northern Pulp NS GP ULC and 3243722 Nova Scotia Limited have the same two registered directors, John Hamm (previously Premier of Nova Scotia) and Choong Wei Tan, and the same General Manager, Bruce Chapman. Northern Resources Nova Scotia Corporation lists one additional director, Terri Fraser.¹⁵ Northern Pulp is a key player in the Westfor Management Group which has been given management of 1.25 million acres of Nova Scotia’s forests by the provincial government, with a 10-year additional lease pending.¹⁶

¹² Letter from Minister of Environment Margaret Miller, August 22, 2018, Tab 7

¹³ <https://www.cbc.ca/news/canada/nova-scotia/connections-revealed-between-high-ranking-bureaucrat-and-northern-pulp-1.2747606>,

¹⁴ <https://www.bloomberg.com/research//stocks/private/snapshot.asp?privcapId=129343391>

Northern Resources Nova Scotia Corporation, through its subsidiaries, Northern Pulp and Northern Timber operates paper and pulp mills. The company is based in Canada. As of May 12, 2011, Northern Resources Nova Scotia Corporation operates as a subsidiary of Paper Excellence Canada Holdings Corp.

<https://www.bloomberg.com/research//stocks/private/snapshot.asp?privcapId=129343391>

¹⁵ Tab 8

¹⁶ <http://www.digbycourier.ca/news/local/westfor-presents-at-digby-municipal-council-on-business-its-methods-36584/>

In his present positions, Mr. Miller is a key member of the provincial government team for issues with a broad provincial reach. It has never been clarified whether Mr. Miller is involved with any files relating to Northern Pulp's parent company, Northern Resources Nova Scotia Corporation, its sister company Northern Timber Nova Scotia Corporation, the Westfor Management Group in which Northern Pulp is a key player or any other related company. We believe it would be difficult to draw clear lines of distinction between decisions which impact Northern Pulp, Northern Resources, Northern Timber and Westfor. The Department of Business, of which Mr. Miller is Deputy Minister, is described on the government website as "a new, lean central agency focused on creating the right conditions for the private sector to grow the economy and create jobs." We believe that in Mr. Miller's positions as Deputy Minister for Strategy Management and Deputy Minister for Business, it would be difficult to avoid involvement with decisions that impact Northern Pulp or its related companies, Northern Resources, Northern Timber or with Westfor Management Group.

The former Environment Minister, a cabinet colleague of the current Environment Minister, made repeated public statements minimizing the environmental impacts of the proposed ETF

Iain Rankin, who served as Environment Minister until July 2018, responded to constituents' concerns about Northern Pulp's proposed new ETF discharging 70-90 million litres of treated effluent daily into prime fishing grounds of the Northumberland Strait with the statement, "I am sure you are aware that effluent from the pulp mill has been treated by the Boat Harbour effluent treatment facility and then discharged into the Northumberland Strait for the last 50 years."¹⁷

Minister Rankin made the same point in responding to PEI Premier Wade McLaughlan, who also raised concerns about the project. This talking point was also used by Northern Pulp's spokespeople.¹⁸ The statement is misleading as it ignores the current effect of the Boat Harbour Basin in mitigating the impacts on the Strait itself (although to the great environmental detriment of Boat Harbour itself and to the Pictou Landing First Nation.)

Friends of the Northumberland Strait [wrote to Minister Rankin](#)¹⁹ providing [detailed information](#)²⁰ to illustrate that the statement was misleading, and asking the Minister to discontinue using the phrase. FONS requested a meeting with the Minister to discuss this matter, as well as the group's concerns about Northern Pulp's proposed new effluent treatment plans.

FONS was never provided an opportunity to meet with the Minister or to engage in any discussion about the statement or related issues. After receiving the letter and background information from FONS, the Minister continued to use the same statement, "I am sure you are aware that effluent from the pulp mill has been treated by the Boat Harbour effluent treatment facility and then discharged into the Northumberland Strait for the last 50 years" in responding to constituents' concerns.²¹ In addition to the explanation provided by FONS, the Minister should also have been aware that [material published by the Boat Harbour Remediation Project](#) showed

¹⁷ https://docs.wixstatic.com/ugd/b61814_cb1fe197fadd438d9ba75c3c98b0df78.pdf, Tab 9

¹⁸ "Kathy Cloutier, spokeswoman for Paper Excellence Canada, which owns Northern Pulp, said in an email statement that effluent has been flowing into the strait for 50 years, and the proposed drainage site is not far from the current one." <https://nationalpost.com/pmn/news-pmn/canada-news-pmn/fisheries-groups-opposing-nova-scotia-mills-proposed-effluent-treatment-plant> Similar statements also appear in a number of sponsored content advertisements placed in the Chronicle Herald by Northern Pulp.

¹⁹ https://docs.wixstatic.com/ugd/b61814_4df46ccd4a6f406784b3997464d59a5a.pdf, Tab 10

²⁰ https://docs.wixstatic.com/ugd/b61814_ab61cca668f1432f890d2d0a7715a554.pdf, Tab 11

²¹ Tab #12

that hazardous contaminants found in Boat Harbour including cadmium, dioxins, furans, mercury, polycyclic aromatic hydrocarbons (PAHs), petroleum hydrocarbons and zinc have not been released into the Northumberland Strait. The Boat Harbour Remediation Project public information states:

*“Studies conducted in 2017 show that the contaminated sediments are, for the most part, confined to the active Boat Harbour Effluent Treatment Facility and within its shoreline. Lower concentrations of contaminated sludge have been found in the area outside the dam structure, in the estuary. The underlying marine sediment in the estuary is not contaminated. No contaminated sludge has been found beyond the estuary or out into the Northumberland Strait.”*²²

We believe that for the Minister to state that “effluent from the pulp mill has been treated by the Boat Harbour effluent treatment facility and then discharged into the Northumberland Strait for the past 50 years” without clarifying that at present, after leaving the Boat Harbour ETF, treated effluent remains for a 28-day period in the 300 acre Boat Harbour Lagoon, which serves to provide additional treatment, also known as polishing, including removing many hazardous heavy metals and reducing TSS, is misleading and appears to underestimate the potential negative impacts of the proposed new ETF. We believe that the fact that the Minister responsible for undertaking an environmental assessment of the new ETF would make such statements prior to receiving and evaluating information from members of the public, including key stakeholders and independent experts, raises concerns about bias and prejudgment of the issue. The fact that Minister Rankin continued to make the statement after being provided with detailed information pointing out ways in which his statement was misleading, and was unwilling to discuss this information with FONS, makes our concerns about bias and prejudgment even stronger. We believe this is a compelling sign that cabinet is predisposed to approve the anticipated Environmental Assessment without properly assessing and weighing the environmental risks of the project.

Conclusion

In a recent Opinion piece in the Chronicle Herald, Ronnie Heighton, President of the Northumberland Fishermen’s Association wrote:

*“The Federal government recognizes that there are times when a project ordinarily handled by a province should receive a federal environmental assessment. We believe that Northern Pulp’s proposal to pipe treated effluent into the prime fishing grounds of the Northumberland Strait is one of these times.”*²³

FONS agrees with Mr. Heighton. We feel that the Nova Scotia government has a serious conflict of interest in this situation, and is unable to conduct an environmental assessment of Northern Pulp’s proposed new ETF that will be, or will be seen to be, fair and unbiased.

The stakes of this project are high. The Northumberland Strait is a valuable and delicate ecosystem. Thousands of fishing families in three provinces and First Nations communities depend on the Strait for their livelihoods. The Strait is the backbone of the economy of many rural

²² https://docs.wixstatic.com/ugd/b61814_de2677b8310b45e7a11c2aa77a57c89d.pdf, Tab 13

²³ Opinion: Feds must stick their oar in to protect Northumberland Strait, Chronicle Herald, July 25, 2018.

communities, and a key component of the economies of three Atlantic provinces. The proposed ETF would discharge into Federal waters.

Friends of the Northumberland Strait calls on the federal Minister of Environment and Climate Change to designate Northern Pulp's proposed ETF as a physical activity requiring an environmental assessment pursuant to section 14 of *CEAA 2012*.

Thank you for your attention to these concerns. Please contact us if you would like any additional information. We look forward to hearing your decision on this matter.



Jill Graham-Scanlan

President,
Friends of the Northumberland Strait

c: Sean Fraser, MP, Central Nova by email, Sean.Fraser@parl.gc.ca

Enclosures

- Tab 1 - 1995 Indemnity Agreement (p 2, footnote 7)
- Tab 2 - Northern Pulp Appeal Letter to Minister Delorey, April 9 2015, Footnote 8, p 2
- Tab 3 - Memorandum of Understanding dated December 1, 1995 ("MOU")
- Tab 4 - Lease dated December 31, 1995 ("Lease")
- Tab 5 - License Agreement dated December 31, 1995
- Tab 6 - NSGFPB et al letter to Minister Rankin June 4, 2018
- Tab 7 - Minister Miller's reply to Heighton et al August 22, 2018
- Tab 8 - Northern Pulp Related Companies: Information compiled from Nova Scotia Registry of Joint Stock Companies, September 2018 – footnote 15
- Tab 9 - Iain Rankin Letter to citizen, January 16, 2018
- Tab 10 - FONS letter to Minister Rankin, March 2, 2018
- Tab 11 - FONS backgrounder, 50 Years of Pulp Effluent
- Tab 12 - Iain Rankin letter to citizen, March 29, 2018
- Tab 13 - Boat Harbour Remediation Project handout - Spring, 2018