

Form 7.19

2016

No. 4 5 0 7 6 5

Supreme Court of Nova Scotia

Between:

Sipekne'katik

Appellant

and

Nova Scotia (Minister of Environment)

and

Alton Natural Gas Storage LP

Respondents

**Notice of Appeal**

To:

Margaret Miller, MLA  
Minister of Environment  
PO Box 442  
Halifax, Nova Scotia B3J 2P8

and

Alton Natural Gas Storage LP  
89 Main W  
Stewiacke, Nova Scotia B0N 2J0

**Appellant appeals**

The Appellant appeals under section 138 of the *Environment Act*, SNS 1994-95, c. 1, from the decision of the Honourable Margaret Miller, in her capacity as the Minister of Environment under the *Environment Act* pursuant to Section 137 of the *Environment Act*, dismissing the appeal of the Industrial Approval No. 2008-061384-A03, dated January 20, 2016.

### **Decision being appealed**

The decision was made on April 18, 2016. It was made at Halifax, Nova Scotia. It was communicated to the Appellant on the same date. A copy of the decision and Industrial Approval No. 2008-061384-A03 are attached.

### **Grounds of appeal**

The Appellant is a person aggrieved by a decision of the Minister of Environment pursuant to Section 137 of the *Environment Act* and appeals to the Nova Scotia Supreme Court on questions of law, questions of fact and questions of law and fact raised by the decision of the Minister:

- (1) The Minister erred in law and failed to comply with the duty of the Crown to the Appellant under Section 35(1) of the *Constitution Act*, 1982.
- (2) The Minister erred in law and in fact by concluding that the Province had complied with the Crown's duty to consult with the Appellant and to accommodate its interests in granting industrial approval No. 2008-061384-A03, dated January 20, 2016.
- (3) The Minister erred in law and in fact in dismissing the Appellant's appeal of the Industrial Approval because the Industrial Approval was granted in violation of the legal and constitutional limits on the administrator's discretion, which includes the honour of the Crown and the duty to accommodate, which is a breach of procedural fairness and a denial of natural justice.
- (4) The Minister erred in law and in fact concluding that the Province provided significant opportunities for the Appellant to understand the Alton Natural Gas Storage LP and identify potential adverse impacts to Aboriginal and Treaty rights.
- (5) The Minister erred in law and in fact concluding that the concerns raised by the Appellant regarding the potential adverse impacts to Aboriginal and Treaty rights were carefully considered and accommodated where appropriate, resulting in changes to the Industrial Approval, as well as changes in the design, operations and management of the Alton Natural Gas Storage LP Project.
- (6) The Minister erred in fact in concluding that the Nova Scotia Office of Aboriginal Affairs adequately responded to concerns regarding community engagement.
- (7) The Minister erred in law and in fact in concluding that the requirement for the establishment and operation of a Community Liaison Committee demonstrates an on-going commitment to consult with the Appellant.
- (8) The Minister erred in law and in fact in concluding Nova Scotia Environment adequately responded to all complaints and concerns raised by the Appellant.
- (9) The Minister erred in law and in fact in exercising her discretion to deny the Appellant's appeal of the Industrial Approval decision by concluding Nova Scotia Environment adequately consulted with and accommodated the Appellant.

- (10) The manner in which the Minister considered the Appellant's appeal of the Industrial Approval did not meet the constitutional obligation of the Crown to act honourably in its dealings with aboriginal peoples.
- (11) The Minister relied on information that was not provided by the Appellant, namely that consultation was initiated October 11, 2007, while the Appellant was not provided an opportunity to respond to this information, which is a breach of procedural fairness and a denial of natural justice.
- (12) The Minister relied on information received by the Nova Scotia Office of Aboriginal Affairs concerning community engagement, which was not included in the Appellant's Notice of Appeal form while the Appellant was not provided with an opportunity to comment or respond, which is a breach of procedural fairness and a denial of natural justice.
- (13) The Minister did not respond to the Appellant's request in its Notice of Appeal and subsequent correspondence for a stay of the Industrial Approval, which is a breach of procedural fairness and a denial of natural justice and to the extent that the Minister's refusal to consider a stay of the Industrial Approval is based on Subsection 137(6) of the *Environment Act* erred in law because that provision is inconsistent with the provisions of the *Constitution of Canada* to the extent that the Appellant's rights under Section 35 of the *Constitution Act* have been affected by the denial of a stay.
- (14) The Minister did not adequately respond to the Appellant's request for an opportunity to respond to any information that the Minister was considering concerning the adequacy of consultation by the Crown with the Appellant concerning the Alton Natural Gas Storage LP Project, which is a breach of procedural fairness and a denial of natural justice.
- (15) The Minister did not provide the Appellant with a copy of the independent third party report that the Minister relied on in making her decision, nor an opportunity to respond to any information included in it, as requested by the Appellant, which is a breach of procedural fairness and a denial of natural justice.
- (16) It appears that the Minister did not consider affidavit evidence filed in support of the Appellant's appeal, which is a breach of procedural fairness and a denial of natural justice.

**Order requested**

The Appellant says that the court should allow the appeal and that the decision appealed from be reversed and the Industrial Approval dated January 20, 2016 be set aside with costs to the Appellant.

**Record**

The record of the proceeding under appeal is held by the Minister of Environment. Counsel for the Minister has indicated that the Minister will produce the record. In any event, the record should include:

- (1) Notice of Appeal form to Minister, with attached submissions, dated February 18, 2016;
- (2) Appellant letter to Minister, dated March 9, 2016;
- (3) Appellant letter to Minister, dated March 30, 2016, enclosing affidavit evidence of Chief Rufus Copage, Jennifer Copage and Erika Perrier;
- (4) Appellant letter to Department of Justice Legal Services Division, dated April 1, 2016
- (5) Appellant letter to Minister, dated April 7, 2016, enclosing affidavit evidence of Andrew Younger;
- (6) Department of Justice Legal Services Division letter to Appellant's Counsel, dated April 15, 2016; and
- (7) Third party review report prepared for Minister prior to issuing decision.

Any question about the content of the record should be considered at the Motion for Directions.

**Stay of proceedings or other interim remedy**

The Appellant will make a motion for a stay of the Industrial Approval No. 2008-061384-A03, under appeal in order to permit the Crown to comply with its duty to the Appellant under Section 35 of the *Constitution Act*, 1982. The Appellant will rely on Section 52 of the *Constitution Act*, 1982 with respect to the limitation is Subsection 138(5) of the *Environment Act* may limit the granting of a stay. Directions for the filing and scheduling of the motion of a stay will be requested at the hearing of the motion for date and directions.

**Filing and delivering documents**

Any documents you file with the court must be filed at the office of the prothonotary 1815 Upper Water Street, Halifax, NS B3J 1S7 (Telephone: (902) 424-8962).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or judge orders it is not required.

**Contact information**

The Appellant designate the following address:

Raymond F. Larkin, Q.C.  
And Balraj Dosanjh  
Pink Larkin  
1463 South Park Street, Suite 201  
Halifax Nova Scotia, B3J 2L1

**Counsel for the Appellant**

Documents delivered to this address are considered received by the Appellant on delivery. Further contact information is available from the prothonotary.

**Motion for date and directions**

At 11:00 [a.m./p.m.] on May 30<sup>th</sup>, 2016, the Appellant will appear before a judge in Chambers at the [Law Courts/Courthouse], 1815 Upper Water Street, Halifax, Nova Scotia to make a motion for an order giving directions for the appeal and setting a date and time for the hearing of it. The judge may make an order or provide directions in your absence if you or your counsel fail to attend, and the court may determine the appeal without further notice to you.

**Signature**

Signed *April 28<sup>th</sup>*, 2016.

  
\_\_\_\_\_  
Raymond F. Larkin, Q.C.  
as counsel for the Appellant

  
\_\_\_\_\_  
Balraj K. Dosanjh  
As counsel for the Appellant

**Prothonotary's Certificate**

I certify that this notice of appeal was filed with the court on *28 Apr*, 2016.

  
\_\_\_\_\_  
Prothonotary

A.E. ANSELM  
Prothonotary



Environment  
Office of the Minister

PO Box 442, Halifax, Nova Scotia, Canada B3J 2P8 • www.novascotia.ca/nse

Our File number: 23900-30-121

APR 18 2016

Sipekne'katik First Nation  
c/o James Michael, Solicitor  
522 Church Street  
Indian Brook First Nation NS B0N 1W0

**Re: Notice of Appeal Form (February 18, 2016)**

Approval No. 2008-061384-A03 dated January 20th, 2016 to Alton Natural Gas Storage LP (the "Industrial Approval" or IAA03)

I am writing regarding your Notice of Appeal Form dated February 18, 2016 respecting Approval No. 2008-061384-A03, dated January 20th, 2016 to Alton Natural Gas Storage LP.

After careful review of the "grounds for appeal", the information you submitted in support of your appeal, and the applicable statutory provisions, I hereby render my decision pursuant to Section 137 of the Environment Act to dismiss your appeal.

The reasons for my decision to dismiss your appeal are provided as follows, with reference to the grounds documented in the Notice of Appeal:

1. **The Province failed to fulfill its legal obligations of consultation and accommodation before granting the necessary approval for the operation of the Alton Gas Brine Storage Pond Project in Sipekne'katik traditional territory. An accompanying submission ("Form A") was also provided, which contains introductory information, statements of facts (as understood by the Appellant), issue under appeal, 28 statements, a conclusion, and relief sought.**

This review acknowledges the duty to consult on the brine storage component of the project. The Province has consulted directly with Sipekne'katik First Nation since July 31, 2014. Prior to this, the Province consulted with Sipekne'katik First Nation through the Assembly of Nova Scotia Mi'kmaq Chiefs under the Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference, of which Sipekne'katik First Nation was a signatory. Consultation was initiated October 11, 2007.

The Province invited Sipekne'katik First Nation representatives to all consultation meetings and conference calls, despite Sipekne'katik First Nation's refusal to participate in some instances. In addition, the Province offered to hold, and held, meetings with Sipekne'katik Chief and Council and representatives separate from the KMKNO/Assembly, when requested. All information, reports, and documentation was provided to Sipekne'katik by the Province in the same manner and timing as to the Assembly/KMKNO.

.../2

The Province provided significant opportunities for Sipekne'katik First Nation to understand the project and identify potential adverse impacts to Aboriginal and Treaty rights. Furthermore, concerns raised by Sipekne'katik First Nation regarding potential adverse impacts to Aboriginal and Treaty rights were carefully considered and accommodated where appropriate, resulting in changes to the Industrial Approval, as well as changes in the design, operations and management of the project.

It is also noted that the Office of Aboriginal Affairs responded to concerns regarding community engagement on January 20, 2016 and detailed the extent to which the Province had consulted and accommodated Sipekne'katik First Nation. Furthermore, the letter from the Office of Aboriginal Affairs provided to Sipekne'katik First Nation noted the position that the duty set out in recent Supreme Court of Canada decision does not extend to consent-based decision making.

Both the environmental assessment and industrial approvals related to the project have requirements for conflict resolution and the establishment and operation of a community liaison committee (CLC). This includes the development and operation of an Issues Resolution System to track and resolve concerns in a timely manner. In addition, the purpose of the CLC is to share information with the community and provide a forum to identify community concerns that can be subsequently addressed by the Approval Holder or any government department, as appropriate. These requirements, along with responding to any complaints made directly to NSE demonstrate an on-going commitment to consult with Sipekne'katik First Nation, and accommodate where possible, regarding any concerns brought to NSE for consideration.

2. **Further, Sipekne'katik is generally in support of the scientific and technical concerns and questions raised by the other Appellants including the Ecology Action Centre.**

No additional information was provided to support this ground. All assessment and decisions relating to the Ecology Action Centre and "other Appellants" are provided in their respective response letters.

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

Sincerely,



Margaret Miller, MLA  
Minister

JAN 20 2016

Our File Number: 92100-30-TRU-2008-061384-A03

WSP Canada Inc.  
c/o Ms. Marina Ritchie  
1 Spectacle Lake Drive  
Dartmouth, NS  
B3B 1X7

Dear Ms. Ritchie:

**RE: Approval to Operate - Brine Storage Pond  
Approval No. 2008-061384-A03  
PID # 20076386**

---

Enclosed please find Approval # 2008-061384-A03 issued to Alton Natural Gas Storage LP. to operate the Brine Storage Pond and associated works at Fort Ellis, Colchester County, Nova Scotia. Please ensure the original approval is forwarded to the approval holder.

Strict adherence to the attached terms and conditions is imperative in order to validate this approval.

Despite the issuance of this Approval, the Approval Holder is still responsible for obtaining any other authorization which may be required to carry out the activity, including those which may be necessary under provincial, federal or municipal law.

Should you have any questions, please contact David Blair, Northern Region, Truro Office at (902) 893-5880.

Yours truly,

  
Brad Skinner  
District Manager

cc Tim Church, Alton Gas

Eimas #: 2008-061384-A03



## APPROVAL

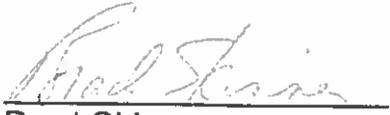
Province of Nova Scotia  
*Environment Act, S.N.S. 1994-95, c.1*

APPROVAL HOLDER: Alton Natural Gas Storage LP.  
SITE PID: 20076386  
APPROVAL NO: 2008-061384-A03  
EXPIRY DATE: January 20, 2026

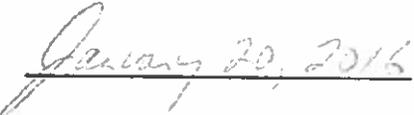
Pursuant to Part V of the *Environment Act, S.N.S. 1994-95, c.1* as amended from time to time, approval is granted to the Approval Holder subject to the Terms and Conditions attached to and forming part of this Approval, for the following activity:

Operation of a Brine Storage Pond, and associated works, at or near Fort Ellis, Colchester County in the Province of Nova Scotia.

Administrator

  
Brad Skinner

Effective Date

  
January 20, 2016

## TERMS AND CONDITIONS OF APPROVAL

### Nova Scotia Environment

**Approval Holder:** Alton Natural Gas Storage LP.  
**Project:** Brine Storage Pond Operation  
**Site:** Fort Ellis, Colchester County  
PID # 20076386

**Approval No:** 2008-061384-A03

**File No:** 92100-30-TRU-2008-061384-A03

**Map Series:** 11E/03

**Grid Reference:** E469700 N5001050

#### Reference Documents:

- Application dated September 26, 2014 and attachments.
- Environmental Management Plan - Operation of Brine Storage Pond and Associated Facilities, Alton Natural Gas Storage LP., dated October 6, 2014, as prepared by WSP Canada Inc.
- Alton Natural Gas Storage Estuarial Environmental Monitoring & Toxicity Testing, dated December 9, 2015.
- Letter dated August 1, 2014 from Mark McLean of Fisheries and Oceans Canada to David Birkett of Alton Natural Gas Storage LP. regarding their review of the Estuary Monitoring Plan.
- Alton Natural Gas Storage River Site Monitoring Plan During Cavern Development, dated December 10, 2015.
- Exposure Pathway Assessment Framework for Aquatic and Non-aquatic Species in Relation to the Alton Gas Natural Gas Storage Cavern Development at the River Site, dated December 9, 2015.
- Environmental Assessment Approval - Alton Natural Gas Storage Project, as dated December 18, 2007.
- Email correspondence from Bob Rutherford to Brad Skinner regarding standard water analysis and total metals sampling parameters and attachments dated December 8, 2015.
- Email correspondence from Tim Church to Michael Cox and Jennifer Copage regarding a contingency plan for a brine pond breach and attachment dated December 11, 2015.

## 1. Definitions

- a) "Act" means the *Environment Act* S.N.S. 1994-1995, c.1 and includes all regulations made pursuant to the Act.
- b) "Administrator" means a person appointed by the Minister for the purpose of this Act, and includes an acting administrator.
- c) "Approval" means an approval issued pursuant to this Act with respect to an activity.
- d) "Associated Works" means all piping, valves, instrumentation, controls and mixing channel required for the operation of the Facility.
- e) "Department" means the Northern Region, Truro Office, of Nova Scotia Environment located at the following address:
  - Nova Scotia Environment
  - Environmental Health and Food Safety Division
  - Northern Region, Truro Office
  - 36 Inglis Place, 2<sup>nd</sup> Floor
  - Truro, Nova Scotia B2N 4B4

Phone: (902) 893-5880  
Fax: (902) 893-0282
- f) "Facility" means the Brine Storage Pond and associated works.
- g) "Minister" means the Minister of Nova Scotia Environment.

## 2. Scope of Approval

- a) This Approval (the "Approval") relates to the Approval Holder and their application and supporting documentation, as listed in the reference documents above, to Operate the Facility, situated at or near Fort Ellis, Colchester County (the "Site").
- b) The Facility shall be operated as outlined in the application for industrial approval dated September 26, 2014 and supporting documentation under Reference Documents cited above.
- c) The Site shall not exceed the area as outlined in the application and supporting documentation.

### 3. General Terms and Conditions

- a) The Approval Holder shall operate the Facility in accordance with provisions of the:
  - i) *Environment Act* S.N.S. 1994-1995, c.1, as amended from time to time;
  - ii) Regulations, as amended from time to time, pursuant to the above Act;
- b) No authority is granted by this Approval to enable the Approval Holder to construct or operate the Facility on lands which are not in the control or ownership of the Approval Holder. It is the responsibility of the Approval Holder to ensure that such a contravention does not occur.
- c) If there is a discrepancy between the reference documents and the terms and conditions of this Approval, the terms and conditions of this Approval shall apply.
- d) The Minister or Administrator may modify, amend or add conditions to this Approval at any time pursuant to Section 58 of the Act.
- e) This Approval is not transferable without the consent of the Minister or Administrator.
- f)
  - (i) If the Minister or Administrator determines that there has been non-compliance with any or all of the terms and conditions contained in this Approval, the Minister or Administrator may cancel or suspend the Approval pursuant to subsections 58(A)(1) and 58(A)(2) of the Act, until such time as the Minister or Administrator is satisfied that all terms and conditions have been met.
  - (ii) Despite a cancellation or suspension of this Approval, the Approval Holder remains subject to the penalty provisions of the Act and regulations.
- g) The Approval Holder shall notify the Department prior to any proposed extensions or modifications of the Facility, including the active area, process changes or waste disposal practices which are not granted under this Approval. An amendment to this Approval will be required before implementing any change. Extensions or modifications to the Facility may be subject to the Environmental Assessment Regulations.

- h) Pursuant to Section 60 of the *Act*, the Approval Holder shall submit to the Administrator any new and relevant information respecting any adverse effect that actually results, or may potentially result, from any activity to which the Approval relates and that comes to the attention of the Approval Holder after the issuance of the Approval.
- i) The Approval Holder shall immediately notify the Department of any incidents of non-compliance with this Approval.
- j) The Approval Holder shall bear all expenses incurred in carrying out the environmental monitoring required under the terms and conditions of this Approval.
- k) Unless specified otherwise in this Approval, all samples required to be collected by this Approval shall be collected, preserved and analysed, by qualified personnel, in accordance with recognized industry standards and procedures.
- l) Unless written approval is received otherwise from the Administrator, all samples required by this Approval shall be analysed by a laboratory that meets the requirements of the Department's "Policy on Acceptable Certification of Laboratories" as amended from time to time.
- m) The Approval Holder shall submit any monitoring results or reports required by this Approval to the Department. Unless specified otherwise in this Approval, all monitoring results shall be submitted within 30 days following the month of monitoring.
- n) The Approval Holder shall ensure that this Approval, or a copy, is kept on Site at all times and that personnel directly involved in the Facility operation are made fully aware of the terms and conditions which pertain to this Approval.
- o) Signage including emergency telephone numbers and contacts are to be posted at the entrance to the Facility.

#### **4. Facility Operation**

- a) The Approval Holder shall comply with all Terms and Conditions of the Environmental Assessment Approval issued on December 18, 2007, in accordance with the *Environmental Assessment Regulations*, pursuant to Part IV of the *Environment Act* for the Brine Storage Facility and associated works.

- b) The site shall be developed and maintained to prevent siltation of the surface water which is discharged from the property boundaries into the nearest watercourse or beyond the property boundary. Erosion and sedimentation controls are to be in place as required to ensure Site runoff does not exceed the discharge limits contained herein.
- c) No authority is granted by this Approval to enable the Approval Holder to discharge surface water beyond the property boundary and onto adjoining lands without the authorization of the affected landowner(s). The Approval Holder shall ensure that the following discharge limits are met for any water which is discharged from the Site to a watercourse or wetland:

**Clear Flows (Normal Background Conditions):**

- i) Maximum increase of 25 mg/l from background suspended solids levels for any short term exposure (24 hours or less)
- ii) Maximum average increase of 5 mg/l from background suspended solids levels for longer term exposure (inputs lasting between 24 hours and 30 days)

**High Flow (Spring Freshets and Storm Events)**

- i) Maximum increase of 25 mg/l from background suspended solids levels at any time when background levels are between 25 mg/l and 250 mg/l
- ii) Shall not increase more than 10% over background suspended solids levels when background is > 250 mg/l

**pH**

- i) Range from minimum of 5 to maximum of 9 in a grab sample
- ii) Range from minimum of 6 to maximum of 9 as a Monthly Arithmetic Mean

**Total Petroleum Hydrocarbon**

- i)  $\leq 15$  mg/l
- d) The level of the brine in the brine storage pond and the flow of brine from the storage pond to the mixing channel shall be monitored continuously when brine is stored in, or released from, the storage pond.

- e) Water salinity and temperature monitoring shall be conducted using Conductivity, Depth, and Temperature (CDT's) arrays placed as specified in the document titled, "Alton Natural Gas Storage River Site Monitoring Plan During Cavern Development" (Monitoring Plan) dated December 10, 2015 as amended.
- f) Data from the CDT's shall be recorded and down loaded in accordance with the Monitoring Plan.
- g) Salinity levels at the outlets of the mixing channel shall be maintained as specified in the Monitoring Plan. The Approval Holder shall immediately reduce the volume of brine water being discharged to the mixing channel as described in the Monitoring Plan if the salinity levels measured at the outlets of the mixing channel exceed the levels specified in the Monitoring Plan.
- h) The Approval Holder shall follow the requirements in the Monitoring Plan with regard to ceasing brining activities during the period of time that Striped Bass are spawning in the Shubenacadie River.
- i) The requirements specified in the Monitoring Plan may be reviewed and modified as information becomes available and monitoring trends identified. Any requests for changes to the monitoring plan must be made to the Administrator and, if deemed acceptable by the Department following appropriate consultation, shall be approved in writing by the Administrator.
- j) The Approval Holder shall maintain an issue/complaint monitoring program as outlined in the Environmental Management Plan submitted with the application for approval.
- k) The Approval Holder shall maintain Emergency Response and Contingency Plans as outlined in the Environmental Management Plan submitted with the application for approval.

**5. Particulate Emissions (Dust)**

- a) Particulate emissions shall not exceed the following limits at or beyond the Site property boundaries:  
Annual Geometric Mean 70  $\mu\text{g}/\text{m}^3$   
Daily Average (24 hr.) 120  $\mu\text{g}/\text{m}^3$

- b) Monitoring of particulate emissions shall be conducted at the request of the Department. The location of the monitoring station(s) for particulate will be established by a qualified person retained by the Approval Holder and submitted to the Department for approval, this may include point(s) beyond the property boundary of the Site.
- c) When requested, suspended particulate matter and PM<sub>10</sub> shall be measured by the EPA standard; EPA/625/R-96/010a, or equivalent acceptable to the Department.
- d) The use of used oil as a dust suppressant is strictly prohibited. The generation of dust from the Site shall be suppressed as required.

**6. Sound Levels**

- a) Sound levels measured at the Site property boundaries shall not exceed the following equivalent sound levels (Leq):
  - Leq 65 dBA 0700-1900 hours (Days)
  - 60 dBA 1900-2300 hours (Evenings)
  - 55 dBA 2300-0700 hours (Nights)
- b) Monitoring of sound levels shall be conducted at the request of the Department. The location of the monitoring station(s) for sound will be established by a qualified person retained by the Approval Holder and submitted to the Department for approval, this may include point(s) beyond the property boundary of the Site.

**7. Groundwater**

- a) The Approval Holder shall replace at their expense any water supply which has been lost or damaged as a result of extracting aggregate.
- b) A groundwater monitoring well shall be maintained immediately down-gradient of the brine storage pond. Baseline groundwater conditions shall be established before Facility operation commences and results submitted to NSE before the Facility operation commences. Groundwater shall be monitored quarterly for pH, conductivity, chloride concentration, and salinity.

**8. Spills or Releases**

- a) All spills or releases shall be reported in accordance with the *Act* (Part VI), the Environmental Emergency Regulations and the Contaminated Sites Regulations.
- b) Spills or releases shall be cleaned up immediately in accordance with the *Act and regulations*.
- c) A spill response and reporting plan shall be maintained by the Approval Holder as outlined in the Environmental Management Plan submitted with the application for approval. Reports from this program are to be included in the quarterly reports required in Section 10 of this approval.

**9. Rehabilitation**

- a) The Approval Holder shall provide a rehabilitation plan acceptable to the Department at least 60 days before abandoning the site.

**10. Site Specific Conditions**

- a) The Facility shall be constructed, maintained and operated as indicated in the plans prepared by WSP Canada Inc., dated November 22, 2013 and as stamped by R.W. Stephenson, P. Eng. on January 18, 2014.
- b) The Approval Holder shall sample the cavern brine water for Naturally Occurring Radioactive Materials, general chemistry, dissolved metals, hydrocarbons as specified in the Monitoring Plan and submit the results to the Department within 30 days of receiving the results unless an alternate time line is approved in writing by the Department.
- c) When solution mining is occurring, the Approval Holder shall prepare and submit to the Department monthly reports within the first four months and then quarterly reports thereafter unless otherwise directed by the Department, within 30 days following the reporting period, which includes;
  - i) Maximum and minimum brine levels in the Brine Storage Pond, and
  - ii) Maximum levels recorded for each CDT monitor in the mixing channel, and all recorded levels which indicate an exceedance of the salinity limits established in the Monitoring Plan, with explanations and follow up actions for any exceedance, and
  - iii) Any complaints received during the reporting period and follow up actions taken, and
  - iv) Any reportable spills and the actions taken to address the release, and

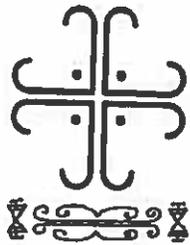
- v) Groundwater monitoring results.

**11. Mi'kmaq Engagement**

- a) The Approval Holder shall develop in co-operation with the Mi'kmaq of Nova Scotia, a plan for Mi'kmaq involvement in the ongoing science, monitoring and review of the project. This plan shall be developed to the satisfaction of the Department and submitted for review by no later than April 30, 2016.

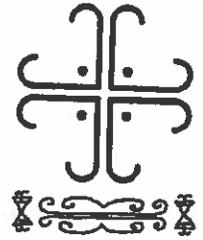
**12. Public Consultation**

- a) The Approval Holder shall form a Community Liaison Committee (CLC) for the operation of the brine storage pond, in consultation with NSE and with municipal and community representatives. The NSE Guidelines for the formation of a Community Liaison Committee shall be used for the guidance of the Approval Holder and community. The CLC shall be formed within 90 days of the Facility operations commencement and the makeup of the CLC submitted to NSE at that time.



April 1, 2016

**James A. Michael**  
Barrister & Solicitor



VIA Email ([darlene.willcott@novascotia.ca](mailto:darlene.willcott@novascotia.ca))

Darlene Willcott  
Solicitor, Legal Services Division  
Nova Scotia Department of Justice  
1690 Hollis Street, 7<sup>th</sup> Floor  
Halifax, Nova Scotia B3J 3J9

Dear Ms. Willcott:

**Alton Gas Project – Appeal to the Minister of Environment**

Thank you for our phone discussion on March 30<sup>th</sup> in which we discussed my March 9<sup>th</sup> letter to the Minister. I noted your comment about how the Minister only has 60 days to decide the issue, as well as your offer to ensure that the Minister has the 3 affidavits that the Band filed on the 30<sup>th</sup> to be a part of the record as the Minister considers this important issue regarding the potential impacts on the Aboriginal and Treaty rights of Sipekne'katik. With the Band having 30 days to file an appeal, I can appreciate that time may be at a premium. I also wish to thank you for your email of March 31<sup>st</sup> where you provide additional comments.

Additionally, thank you for advising me that the Minister is having an independent third party digest all of the materials before her from the six appeals of the industrial approval to Alton Gas and that the third party will make a recommendation to the Minister.

As you know, I had requested the opportunity for Sipekne'katik to respond to any information that she will be considering concerning the adequacy of consultation by the Crown with Sipekne'katik concerning the Alton project.

Although you indicated that the timeline required for the Minister's decision in these appeals is so short that it will not be possible to provide the opportunity that I have requested on behalf of Sipekne'katik, I wish to repeat that request nevertheless. It does seem to me that it would be practical to provide Sipekne'katik an opportunity to respond to any information that will be considered by the Minister concerning the adequacy of consultation. The fact that there will be a report and recommendation means that it would be practical to share that report and recommendation and give us an opportunity to respond.

P.O. Box 63 Shubenacadie NS B0N 2H0 515 Church Street Indian Brook NS B0N 1W0  
p. (902) 236-6277 email: [jmichael@sipeknekatik.ca](mailto:jmichael@sipeknekatik.ca)



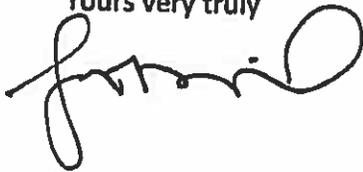
We certainly recognize the tight timeline and, if provided with this opportunity, we would respond within very short order, even within a few days if that is what is required.

I hope that the Minister will reconsider our request. Obviously, this is a matter of procedural fairness but it is also a matter of the honour of the Crown in its dealings with Sipekne'katik. We are dealing here with the direct effect of the Minister's decision on Sipekne'katik's treaty and aboriginal rights. We should have a full opportunity to respond to any input that the Minister has received which suggests that the consultation has been adequate in this case.

I would also respectfully request that you forward a copy of my letter to the Minister.

Thank you for your attention to this.

Yours very truly

A handwritten signature in black ink, appearing to be "J. Smith" or similar, written in a cursive style.