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**NORTHERN PULP**  
**NOVA SCOTIA CORPORATION**  
A PAPER EXCELLENCE COMPANY

**Submission to**

**Law Amendments Committee**

**By**

**Terri Fraser, Technical Manager  
Northern Pulp Nova Scotia Corporation**

**About**

**Bill No. 89 – Boat Harbour Act**

**April 27, 2015**

Thank you for the opportunity to present to Committee today. I'm Terri Fraser, Technical Manager, Northern Pulp and with me is John Roberts representing McInnes Cooper, our legal counsel.

Northern Pulp Nova Scotia Corporation, a Paper Excellence Company, is located in Pictou County and manufactures Kraft pulp, primarily for export. We supply customers around the world with pulp to manufacture common household products such as tissue. This growing sector, primarily in Asia, has allowed Northern Pulp to secure a strong foothold in what has become a very demanding marketplace.

Northern Pulp has earned a reputation as one of North America's leading manufacturers of northern bleached Kraft pulp. As a result of the province's strong wood fibre we are seen in the marketplace as a 'supplier of choice.'

With nearly 300 dedicated employees working on site, we inject \$231 million annually into the Nova Scotia economy and partner with sawmills and forestry contractors throughout the province. We spend \$16 million annually just to get our product out of the Port of Halifax. In fact, we are the largest single exporter

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through that port. Northern Pulp and predecessor companies have been a cornerstone business in this province for 48 years and we look forward to being a global exporter for a long time to come. Paper Excellence Canada is planning for a long term future in Pictou County. The company has made huge investments at the mill since it was acquired in 2011.

Northern Pulp is regulated environmentally by both the Province of Nova Scotia and the Federal Government of Canada. One major key to environmental responsibility is a wastewater treatment system. The wastewater treatment process that discharges into Boat Harbour is a natural biological process similar to almost half of the Kraft mills across North America.

The Province of Nova Scotia established the wastewater treatment facility in 1967 to attract industry to Pictou County to address high unemployment. The system has been used by the mill since 1967. The system was also used by Canso Chemicals from 1971-1992. The Province operated the facility until the end of 1995 at which time the mill, the only company still using the facility, began operating the facility through a long-term lease with the Province. This lease is in place until the end of 2030. A substantial improvement project was undertaken in 1995 to make the facility far more effective, resulting in improved effluent quality.

Today, the wastewater treatment facility does the job it is designed to do and comfortably meets Federal regulations. The problem with the wastewater treatment system is not its ability to operate efficiently, but rather its location and its legacy.

While the Province leases the facility to Northern Pulp, the mill is responsible for total operating costs, which exceed \$3 million annually. Without a proper wastewater treatment system the mill simply cannot operate.

Northern Pulp and the Province are parties to a number of agreements in respect of the operation of the mill including:

- Memorandum of Understanding dated December 1, 1995
- Lease dated December 31, 1995

- License Agreement dated December 31, 1995
- Indemnity Agreement dated December 31, 1995
- Water Supply Agreement dated June 30, 1995
- Lease Extension Agreement dated October 22, 2002
- Acknowledgement Agreement by the Province dated May 12, 2008

In the Acknowledgement Agreement, the Province confirmed that each of the Agreements and understandings between the Province and the mill's prior owner, Scott Maritimes Limited, are in good standing and will continue in full force for the benefit of Northern Pulp. Northern Pulp has substantially invested in the mill on the understanding that the Province could and would comply with its obligations under these agreements. It is reasonable to anticipate and expect that government will comply with the contracts which it has entered into.

Northern Pulp would like to work cooperatively with the Province but to date, despite repeated efforts by Northern Pulp, the Province has not engaged in any meaningful discussions on a path forward, especially as it relates to Boat Harbour. We believe the timelines as outlined in the Bill are entirely unrealistic. Our serious concerns around the timelines in the Bill include:

1. The very fact a proposed new facility would be commissioned in mid-winter 2020 poses serious concerns as the facility is a natural biological process which is not conducive to cold weather start-up. A dead of winter January start-up is unreasonable, inferring the project must be pushed ahead by six months into the summer of 2019.
2. Regulatory responsibility for the project falls jointly between provincial and federal authorities. The marine portion of the outfall will involve four federal ministries—Environment Canada, Fisheries and Oceans Canada, Transport Canada, and Aboriginal Affairs and Northern Development Canada. **The process, including public hearings, field studies and engineering will likely require 30 months before detailed engineering or construction of the outfall could begin.** KSH Solutions Inc., a consulting firm

with significant experience in dealing with large projects, has provided correspondence in the Appendix that clearly outlines their concerns with the project deadlines and explains the process in greater detail.

3. Under the terms of the new Industrial Approval (IA) for the mill, a Receiving Water Study must be completed after a new outfall location has been chosen. After that study is completed, Nova Scotia Environment will then develop new discharge limits based on the Receiving Water Study for inclusion in the IA. The Environmental Assessment process, as well as the design of the treatment facility, cannot proceed until these steps are completed and the project can demonstrate that the system is designed to meet these, yet to be determined, discharge limits.

Starting almost immediately, major capital improvements will have to be undertaken within the mill to prepare for this new facility and to meet the new, aggressive IA requirements. This brings with it huge investment with no clear path forward. As an example, the conditions of the new IA require the mill to build an Oxygen Delignification System to improve wastewater quality. Such a system requires a very large capital investment, but it is difficult to make such an investment when there is no operational certainty that the timeline for the replacement of the wastewater treatment facility set out in the Bill can be met, such that the mill can continue operating after January 31, 2020. I refer you to the conclusion in KSH's correspondence. I quote, "In our experience from other projects and given the current climate, there is a 50 – 50 chance of successful completion in order to meet the deadlines presented in this report."

Section 4 of the Act is an attempt by the Province to preclude Northern Pulp from suing the Province for breach of its contractual obligations as a result of the Act. Without Section 4, Northern Pulp would be entitled to claim, on the date the Boat Harbour Act passes in the legislature and comes into force, that the Province has repudiated or anticipatorily repudiated the Lease. In Section 4(2), the Province seeks to deem that no such repudiation or anticipatory repudiation has taken place, despite the clear fact that the Act does just that. Section 4 (1) is intended to

be a broad immunity or “non-suit” clause precluding any action by Northern Pulp against the Province based on Northern Pulp ceasing as a result of the Act to use the wastewater treatment facility for the reception and treatment of wastewater from the mill.

Courts have recognized that “in Canada we anticipate and expect that government will stand behind and comply with the contracts which it has entered into.” They have acknowledged that “it should not be a common or simple matter for the Crown to breach its agreements with impunity” and that “while on rare occasions the Crown may feel compelled by considerations of public policy to break a contractual undertaking, the Crown should generally be required to negotiate with the other party for a variation or a release, or to pay damages for its breach of contract; that is, the public purse should bear the cost of the change of public policy.”

The government has not done that in this case. They have done the opposite. They have ignored repeated requests by Northern Pulp to work cooperatively to find a solution.

Section 4 of this Bill sends a very chilling message to any investor that is contemplating investing in this Province. Section 4 should be deleted and government should work with Northern Pulp to reach a solution that respects the rights of all parties.

In closing, Northern Pulp is committed to working cooperatively with the Province and Pictou Landing First Nation on a meaningful path forward for this well-intentioned, but deeply flawed Bill. Fixing Boat Harbour is a good thing but in doing so the Province must also respect its contractual obligations and afford Northern Pulp and the Forest Products sector the opportunity to stay in business.

I firmly believe that if all interested parties are willing to work together in a spirit of mutual cooperation and openness that proper science-based solutions can be implemented to achieve our common goals.

Thank you for the opportunity to present to you today.

Appendix: KSH Solutions Inc. dated April 23, 2015

April 23, 2015

Mrs. Terri Fraser, P. Eng  
Technical Manager  
Northern Pulp Nova Scotia Corporation  
P.O. Box 649, Station Main,  
New Glasgow, Nova Scotia  
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**Subject: Proposed Provincial Legislation to Close the Effluent Treatment Centre in  
January, 2020  
KSH Project: 11 1024C**

Dear Mrs. Fraser,

The Nova Scotia Legislature is planning to table legislation forcing the closure of the mill's effluent treatment system, with a permanent closing date of January 31<sup>st</sup>, 2020. The following is KSH's opinion of what would be required in order for the mill to adapt to this legislation and still meet all provincial and federal effluent discharge regulations in the timeframe suggested by the legislation, keeping in mind that the effluent treatment plant is the property of the Nova Scotia Government.

The single most important issue that needs clarification in this situation is one of jurisdictional responsibility in the design and implementation of a new effluent treatment system. There are two distinct projects within any project that would be aimed at replacing the existing treatment system: the treatment facility itself and the new outfall, which would be required to discharge the treated effluent away from Boat Harbour.

Jurisdictional responsibility for the implementation of the new wastewater treatment system would fall to provincial authorities. The mill would have to demonstrate that the new treatment system would meet new, yet to be determined effluent discharge limits imposed on it by the Industrial Approval (IA) document prior to commencing construction of the system. Specifically, Section 7b) of the IA indicates that if a new treatment system is required, then the conditions set forth in Table 6A of the appendix shall come into force. The problem is that there are many unknown values in that table since both the location of the treatment plant (and more importantly, where the effluent will discharge) and the discharge limits are to be based on receiving water studies. **Therefore, time must be allocated at the outset of this project to determine where the proposed effluent system will discharge and then carry out a receiving water study at that unknown location. The iterative nature of this process will require time (months) to answer prior to any other steps taking place.**

Federal approval, from Environment Canada, would also be required, as the mill is also subject to the Federal Pulp and Paper Effluent Regulations, but this is not seen as a hindrance to approving the project, as the effluent limits included in the IA are more stringent than the Federal regulations.

Jurisdictional responsibility for the construction of a new outfall falls to both provincial and federal authorities. As is the case for the effluent treatment plant, approval for the land portion of the outfall is under the authority of Nova Scotia Environment. It is unclear at this point what other authorities or jurisdictions would be involved since the pipeline routing has yet to be selected.

In the case of the marine portion of the outfall, this portion of the project would be subject to approval by the Canadian Environmental Assessment Agency (CEAA)<sup>1</sup>. Reporting to the Federal Minister of the Environment, this agency oversees the approval of all projects that, among other things, have the possibility to impact Canadian waterways as well as federally regulated resources such as fisheries and marine navigation. The process is well defined, with several in-depth studies required on the possible impact of such a discharge on the various uses of waterways in different conditions and public hearings throughout the process to ensure stakeholder participation and input in the final assessment of the project.

Several federal ministries will be involved throughout the assessment and approval process of the marine portion of the outfall:

- Environment Canada: general oversight and assessment of potential impact on fish and wildlife at the point of discharge;
- Fisheries and Oceans Canada: impact of the construction of the outfall, and of the actual point of discharge, on potential fishery and fish hatching sites, fish and crustacean migration and other similar issues;
- Transport Canada: potential impact of the outfall on the navigability of the waterways, both on a commercial and a leisure point of view; and
- Aboriginal Affairs and Northern Development Canada: potential impact of the project on the Pictou Landing First Nation community.

This process, including public hearings, field studies and accounting for the number of project proponents already identified, would take a minimum of 18 months to complete, but is likely going to take approximately 30 months, considering the relative position of all proponents in this project and the efforts that would be required to find both a scientific understanding of the impact of this new outfall and a consensus between all parties involved that would allow the project to be approved.

Assuming that the Legislative Assembly passes this bill within the next 2 months (prior to the summer recess), this would give the project 54 months (or 4½ years) to complete all required studies, obtain the required approvals for the construction of both the outfall and the treatment system, as well build, commission and start-up the process. Past experience has shown that the start-up of an activated

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<sup>1</sup> <http://ceaa-acee.gc.ca/default.asp?lang=en&n=D75FB358-1>



sludge wastewater treatment system at a facility that has no experience operating such a system would take approximately 4 to 6 months. When taking into consideration the fact that a start-up in the dead of winter is not a possibility, this would effectively reduce the implementation schedule for the project by a corresponding amount, placing the start-up date of the new treatment system sometime in June 2019.

Given that approval for the outfall will be complex and, to a certain extent, controversial, a time frame of 18 months for the completion of the project, based on a 30-month federal approval period, leaves very little room for contingencies to allow for the proper start-up of the new wastewater treatment plant, while maintaining full compliance with the terms and conditions of the IA.

Should the Nova Scotia Legislature insist on forcing the closure of the existing effluent treatment center ahead of the scheduled end-of-lease date of December 30<sup>th</sup>, 2030, it is KSH's opinion that the timelines must reflect a 30-month outfall environmental assessment process to ensure that the environmental impact assessment for the construction of the outfall is carried out thoroughly and addresses the concerns of all parties concerned and that the design of the wastewater treatment system is done efficiently, minimizing the environmental footprint associated with its operations, is well integrated to mill operations and that effluent regulations are met at all times.

In our experience from other projects and given the current climate, there is a 50-50 chance of successful completion in order to meet the deadlines presented in this report.

Please let me know if you have any questions.

Sincerely,

KSH Solutions Inc.



Guy Martin  
Principal Consultant, Process and Environment