



September 19, 2014

Hon. Mark Furey
Minister of Service Nova Scotia and Municipal Relations
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Hon. Randy Delorey
Minister of the Environment
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Dear Ministers:

I am writing to respectfully request that the Government of Nova Scotia clarify that primary responsibility for regulating mines, quarries and pits rests with the provincial government, and that municipal authority in this area is extremely limited. Failure to do so could cost Nova Scotians jobs, and cost the provincial government millions of dollars per year in potential tax and royalty revenues.

Background

While the mining and quarrying industry is a large and important industry in this province – we employ 5500 people and generate \$420 million per year in economic activity – we also face significant challenges:

- The Ivany Commission said traditional industries like mining and quarrying "will provide the essential foundations for Nova Scotia's rural economy."¹ At the same time, Ivany also highlighted the challenges our industry faces, including the need for government to "provide a modern and responsive legislative framework to support and promote sustainable mineral resource management."
- According to 2013 research commissioned by the Department of Natural Resources, Nova Scotia's mining and quarrying industry lost approximately 800 jobs in the past five years, and its economic output shrank by \$80 million per year.²

¹ <http://onens.ca/>, page 54

² http://novascotia.ca/natr/meb/data/pubs/13ofr03/ofr_me_2013-003.pdf

- According to PricewaterhouseCoopers, we are the highest cost jurisdiction in Canada in terms of tax/royalty payments to the provincial government.³
- According to the Fraser Institute’s global survey of mining executives, Nova Scotia is seen as the least attractive province for mining companies to invest in, and government policies are a major reason.⁴ 2013 was the fifth year in a row that Nova Scotia ranked last in Canada.

Our industry faces tremendous challenges, both because of the global downturn in the industry and because of Nova Scotia-specific policies that are preventing the industry from growing and creating jobs for Nova Scotians. Potential regulation of our industry by municipal governments would be a very harmful new development which would cost Nova Scotians jobs, especially in rural areas, and make it more difficult to attract investment.

Potential Municipal Regulation

As you know, the mining and quarrying industry is stringently regulated by the provincial government, particularly by Nova Scotia Environment from an environmental and operational perspective. Everything from environmental considerations to dust, noise and blasting activities are closely controlled by the province. The province’s regulatory regime helps ensure that Nova Scotians enjoy the full benefits of the materials we take from the ground, and that the industry operates in a safe, sustainable, responsible fashion.

We are concerned that municipal governments could try to use municipal zoning and land-use bylaws to block future mine, quarry and pit proposals and even somehow regulate their ongoing operations in ways that we believe exceed municipal authority. In particular, municipalities could potentially use zoning bylaws to regulate – or simply prohibit – extractive facilities that are fundamental to the business of mining and quarrying, including buildings, crushing and washing equipment, material storage and weigh scales.

The 2002 Supreme Court of Nova Scotia case *Hankinson/Dexter v. The Municipality of the County of Annapolis* concluded, “...the legislature has not delegated authority over pits and quarries to the municipality but have retained jurisdiction to control and authorize such activities under laws of province-wide application.”⁵

We believe this is still the case today – that the province has not delegated authority to municipalities to regulate mines, quarries and pits, and that the very stringent regulatory regime that exists at the provincial level is, and must remain, the regime that regulates

³ www.pwc.com/ca/canminingtax, see exhibit 6, page 21 of the 2013 edition

⁴ <https://www.fraserinstitute.org/research-news/display.aspx?id=20902>

⁵ <http://decisions.courts.nsc.ca/nsc/nssc/en/item/20053/index.do?r=AAAAAQAJSGFua2luc29uAAAAAAE>

our industry. If there is now confusion or ambiguity about whether the provincial government has delegated this authority to municipalities, the provincial government must clarify that it has not done so – that primary responsibility for regulating mines, quarries and pits still rests with the province.

Harm to the Industry

Municipal regulation of mines and quarries would cause tremendous harm to the industry, and the broader public interest, for several reasons:

Lost Jobs and Taxes/Royalties

Allowing new mines and quarries to be blocked, or allowing additional regulatory burdens to be imposed on them, would make it very difficult for the industry to operate and grow. This would cost Nova Scotians jobs, and cost the provincial government millions of dollars per year in potential tax and royalty revenues. It would be yet another reason for Nova Scotia to be seen by the global mining industry as a bad place to invest.

Contrary to Ivany

The Ivany Commission said traditional industries like mining and quarrying "will provide the essential foundations for Nova Scotia's rural economy." Ivany also highlighted the need for government to "provide a modern and responsive legislative framework to support and promote sustainable mineral resource management." Little could be as harmful to the industry – or less "modern and responsive" - than allowing 54 different regulatory regimes to be imposed on the industry as a result of each municipal government creating its own rules and/or bans on mines and quarries.

It is not reasonable for municipalities to simply block an industrial activity that is stringently regulated at the provincial level, or to impose duplicative regulation that makes operating in Nova Scotia unnecessarily confusing and difficult. It is vital that our industry have one regulator and one regulatory regime, not 54 different ones.

It is also worth noting that the government has committed to supporting the industry by extending to it the fuel tax rebate that other resource industries get.⁶ This is a tremendously important first step post-Ivany to help the industry grow and create jobs, and a vital signal to the global mining industry that Nova Scotia wants the jobs and investment that our industry can bring. However, allowing municipalities to start regulating our industry would undercut the positive effects of the government's fuel tax rebate commitment. It would be oddly inconsistent with Ivany's and the provincial government's comments about the importance of our industry.

⁶ <http://thechronicleherald.ca/novascotia/1208432-motive-fuel-tax-rebate-will-save-mining-firms-26-million-a-year>

Increased Cost to Taxpayers

Most quarries are established to provide aggregate for road and highway construction, in addition to the building of other infrastructure. Blocking quarries or creating new, burdensome regulation of them at the municipal level would make many quarries, and the construction projects they support, uneconomical. Much of the additional cost would be borne by the provincial and municipal governments – taxpayers, in other words - as aggregate would have to be transported from quarries further away from construction projects, making the building of public roads and highways much more expensive.

More and longer truck hauls would also increase the wear and tear on roads and equipment, which would also result in higher costs for governments and taxpayers.

Harm to the Environment

The significant additional trucking discussed above would also harm the environment by increasing fuel consumption and generating more emissions.

Unique Impact on Mining/Quarrying

Municipal regulation would impact our industry differently than it would most others because we can only mine our resource where nature has placed it unlike, for example, wind farms, forestry and agricultural operations, which have at least some flexibility in terms of where they can locate. We cannot mine based simply on where a municipality has decided development is allowed to occur. We have to mine mineral deposits where they are.

Even aggregate, while more common than minerals such as gold, is difficult to source in both the quality and quantity that Nova Scotia needs, and the potential supply is shrinking every year due to various factors, such as competing land uses (i.e. new home construction, other industries) and land being removed from economic usage by governments.

Aggregate has to be of high quality – clean, hard, durable, resistant to absorbing harmful chemicals, etc. - to make infrastructure safe, long lasting and cost effective. Indeed, one of the facilities required at a quarry is a laboratory for testing the quality of the aggregate. Nature only put good quality aggregate in certain places, so we have limited choice in where we can quarry it.

In terms of quantity, we need 10-15 million tonnes of new aggregate each year just to keep Nova Scotia running - approximately three million tonnes per year in the Halifax-Dartmouth area alone. For example, building one kilometre of two-lane highway requires about 18,000 tonnes of aggregate; building a typical single family home requires about 160 tonnes of gravel; and building a school or hospital requires about 15,000 tonnes of aggregate. Nova Scotians want this infrastructure and the province needs the economic



benefits of construction. We must therefore facilitate the aggregate quarrying that makes construction possible.

Municipal zoning is largely based on where a municipality wants to see development occur. It does not, and cannot, take into account unknowns about an area's geology, a consideration that sets our industry apart from most others.

The Solution

To prevent the harms discussed above, the government needs to clarify that primary responsibility for regulating mines, quarries and pits rests with the provincial government. An amendment to the *Environment Act*, or a combination of amendments to the *Environment Act*, *Halifax Charter* and *Municipal Government Act* are required to ensure that the industry can grow and create jobs for Nova Scotians, and provide the materials that are necessary to support our modern society.

Conclusion

We have great respect for the right of municipalities to make zoning decisions and establish land-use plans, and the industry makes every effort to work within the limitations placed on land-use by municipal governments. We also believe very strongly in the concept of a "social license to operate" – that the acceptance and approval of the local community and stakeholders is vital to the success of a mining/quarrying operation. Indeed, the term "social license" originated in the mining industry in the 1990s. We are therefore reluctant to ask the provincial government to take the steps discussed above.

However, it is essential that the province's authority over the industry be preserved, and that the regulatory regime is kept as clear and straightforward as possible. The provincial regime is stringent and comprehensive and additional regulation, or prohibitions, by municipalities would be unworkable and cause significant harm to the industry and the province.

I look forward to discussing this issue with you and your cabinet colleagues in the near future.

Thank you for your kind consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "Sean Kirby".

Sean Kirby, Executive Director
Mining Association of Nova Scotia



Cc: Hon. Geoff MacLellan, Minister of Transportation and Infrastructure Renewal
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Hon. Zach Churchill, Minister of Natural Resources (min_dnr@gov.ns.ca)