

DOC/2019/02302-03

June 18, 2019



Dear :

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [Our File #: MAE/120/2019]

On June 5, 2019, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

April 2019 decision notes titled NARL Sulphur Dioxide Emission Limits and Management of Greenhouse Gas Act (MGGA) Performance Credits- potential revenue to Newfoundland and Labrador Hydro.

I am pleased to inform you that a decision has been made by the Deputy Minister for the Department of Municipal Affairs and Environment to provide access to some of the requested information.

However, certain text contained within the records has been refused in accordance with the following exceptions to disclosure, as specified in the *Access to Information and Protection of Privacy Act, 2015 (the Act)*:

"Section 29(1)(a): The head of a public body may refuse to disclose to an applicant information that would reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister."

As required by 8(2) of the *Act*, we have severed information that is unable to be disclosed and have provided you with as much information as possible. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner

2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8
Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act* (a copy of this section of the Act has been enclosed for your reference).

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact me by telephone at 709-729-7183 or by e-mail at ryancollins@gov.nl.ca.

Sincerely,



RYAN COLLINS
ATIPP Coordinator
Municipal Affairs and Environment

Enclosures

Access or correction complaint

- 42.** (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.
- (2) A complaint under subsection (1) shall be filed in writing not later than 15 business days
- (a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or
 - (b) after the date the head of the public body is considered to have refused the request under subsection 16(2).
- (3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.
- (4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.
- (5) The commissioner may allow a longer time period for the filing of a complaint under this section.
- (6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.
- (7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.
- (8) A complaint shall not be filed under this section with respect to
- (a) a request that is disregarded under section 21;
 - (b) a decision respecting an extension of time under section 23;
 - (c) a variation of a procedure under section 24; or
 - (d) an estimate of costs or a decision not to waive a cost under section 26.
- (9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

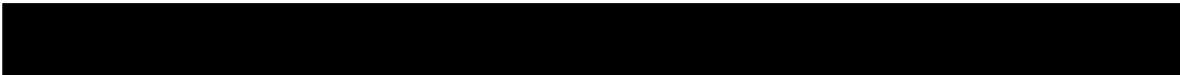
(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

Decision/Direction Note
Department of Municipal Affairs and Environment

Title: NARL Sulphur Dioxide Emission Limits

Decision/Direction Required:

- Whether to accept the sulphur dioxide (SO₂) emission limits that have been proposed by North Atlantic Refining Limited (NARL) for their petroleum refinery at Come By Chance.

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s.29(1)(a)

Background and Current Status:

- NARL operates their refinery under a Certificate of Approval (CofA) and Compliance Agreement (CA) issued by MAE. Both documents had an original expiry date of December 31, 2016, but have been extended to March 31, 2019.
- NARL operates continuous ambient air monitoring stations in the municipalities of Arnold's Cove, Come By Chance and Sunnyside, as well as at their fence line.
- NARL has long been non-compliant with provincial ambient air standards for SO₂. Since 2005, this non-compliance has been dealt with through a series of CAs between MAE and NARL that has seen NARL's emissions reduced in a step-wise manner over time.
- While significant SO₂ emission reductions have occurred through this approach, ambient SO₂ levels continue to frequently exceed regulatory limits near the refinery fence line. Notwithstanding this, continuous ambient air monitoring has shown that SO₂ levels have been well below regulatory limits within the nearby communities for many years.
- In 2011, MAE officials learned of a calculation error by NARL that had resulted in the under-reporting of their emissions by approximately 5,000 to 10,000 tonnes per year from 2001 to 2010. Actual annual emissions and limits are summarized in the attached Appendix A.
- In 2013, MAE and NARL entered into a CA that placed an annual limit of 17,000 tonnes on the refinery's SO₂ emissions for each of the next 3 years (since extended to two more years). This limit was based on continual peak production occurring throughout the year. The CA included additional provisions to further restrict NARL's emissions at lesser production levels.
- In return for this "stay" in SO₂ emission reductions, NARL committed to focusing significant resources on the inspection and recertification of several of their 41 petroleum storage tanks.
- In November 2014 the refinery was purchased by SilverRange Financial Partners (SilverRange). To help facilitate the transfer, the Department of Natural Resources (NR) entered into an Environmental Agreement with SilverRange whereby SO₂ emissions were limited to 11,390 tonnes during each of the first two years of operation following an initial grace period (i.e. from May 2015 – May 2016 and from May 2016 to May 2017).
- In late 2016, NARL increased the refinery's crude rate capability from 120,000 barrels per day (BPD) to approximately 140,000 BPD by installing new pre-heat exchangers.
- In 2017 and 2018, MAE and NARL worked to negotiate the terms and conditions of a new CofA and CA. Consensus has been reached on most issues, including a commitment to ensure that 90% of the refinery's storage tanks are properly recertified within two years.

- The main outstanding issue is NARL's SO₂ emission limit schedule for the next 5 years.

[Redacted]

Analysis:

- [Redacted]

- [Redacted]

- [Redacted]

- Since SilverRange assumed ownership, the refinery has been mainly processing low sulphur crude. As a result, NARL's SO₂ emissions have been well below 17,000 tonnes in recent years (Appendix A).

- [Redacted]

- NARL's SO₂ emissions had been in the vicinity of 17,000 tonnes during the period of 2007 to 2010 (Appendix A). There were no exceedances of SO₂ limits in nearby communities during this period, with all monitored levels being well below regulatory limits.

- [Redacted]

- [Redacted]

- [Redacted]

- NARL have also expressed concerns with a stepped reduction approach as there are limits to the reductions that may be achieved with existing infrastructure. To maintain the flexibility to process heavy crudes at high production levels, costly upgrades to their Sulphur Recovery Unit (SRU) may be necessary.

s.29(1)(a)

- [Redacted]

- [Redacted]

s.29(1)(a)

- Appendix B contains a summary of the new proposal along with MAE's initial proposal and NARL's current proposal.

s.29(1)(a)

Alternatives:

- [Redacted]
- [Redacted]

Prepared/Approved by:
Ministerial Approval:

D. Pittman / S. Squires /
Received from Hon. Graham Letto

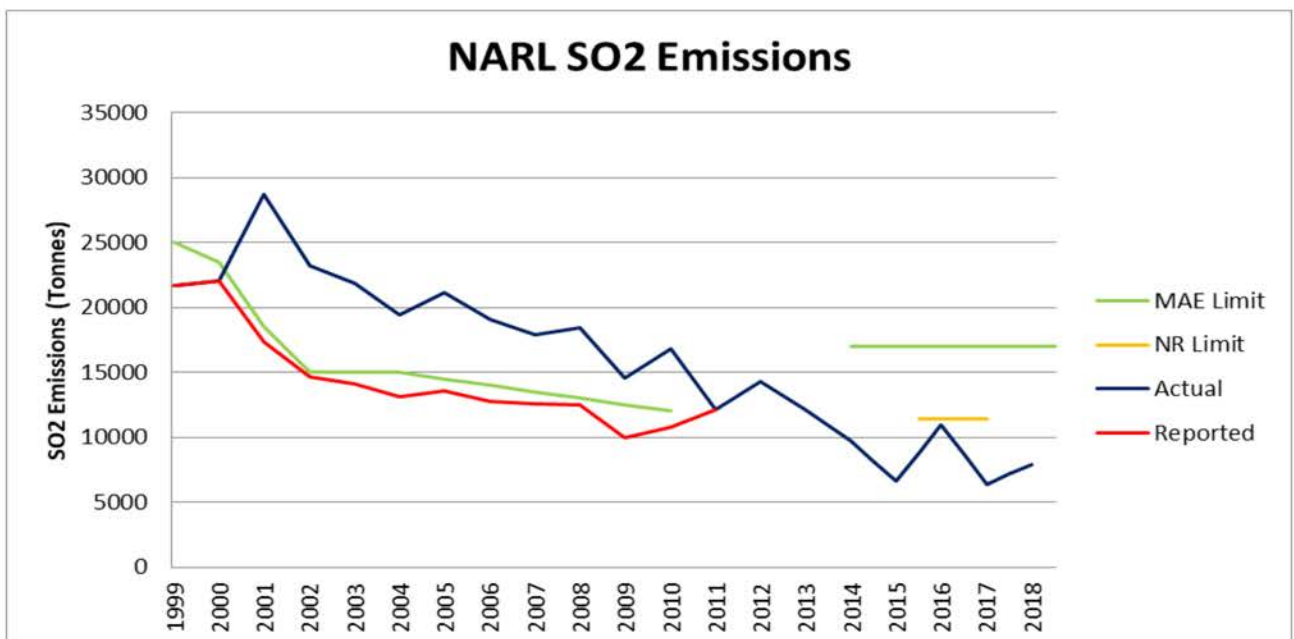
Signature

April 1, 2019

Appendix A

Period Covered		MAE SO ₂ Limits (Tonnes)	NR SO ₂ Limits (Tonnes)	Actual SO ₂ Emissions (Tonnes rounded to nearest 100)	Erroneously Reported SO ₂ Emissions ¹ (Tonnes rounded to nearest 100)
MAE	NR				
1999		25,000		21,700	
2000		23,500		22,000	
2001		18,500		28,700	17,400
2002		15,000		23,200	14,700
2003		15,000		21,900	14,100
2004		15,000		19,400	13,100
2005		14,500		21,100	13,600
2006		14,000		19,100	12,800
2007		13,500		17,900	12,600
2008		13,000		18,400	12,500
2009		12,500		14,600	10,000
2010		12,000		16,800	10,800
2011		No Limit ²		12,100	
2012		No Limit ²		14,300	
2013		No Limit ²		12,100	
2014		17,000		9,700	
2015		17,000		6,600	
	May 2015 – 2016		11,390	6,600	
2016		17,000		11,000	
	May 2016 – 2017		11,390	11,200	
2017		17,000		6,400	
2018		17,000		7,900	

1. SO₂ emissions were erroneously reported by NARL from 2001 to 2010 based on an error in the formula used for estimated. This error was corrected and numbers revised in 2011.
2. No formal SO₂ limit from 2011-2013 as the CA had expired and there were lengthy negotiations for a new agreement.

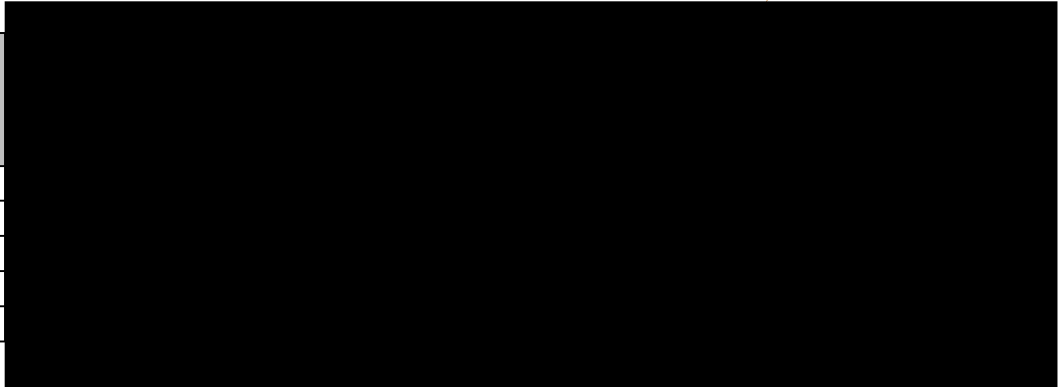


Appendix B

s.29(1)(a)

Refinery SO₂ Emission Limit Proposals

Year
2019
2020
2021
2022
2023



Decision/Direction Note
Department of Municipal Affairs and Environment

Title: Management of Greenhouse Gas Act (MGGA) Performance Credits – potential revenue to Newfoundland and Labrador Hydro

Decision/Direction Required:

s.29(1)(a)

Background and Current Status:

- Performance credits are awarded to industrial facilities regulated by the MGGA that reduce their greenhouse gas (GHG) emissions by more than they are required to do. Credits are an “asset” that the facility can either (i) bank to meet GHG reduction targets in future years, or (ii) sell to another regulated facility at a price agreed by the two transacting facilities.
- Under MGGA regulations, Newfoundland and Labrador Hydro (NLH) will be awarded performance credits for foregone GHG emissions at the Holyrood Generating Station (HGS). As the HGS will cease generating electricity before the end of its useful life in the mid-2030s, the legislative framework recognizes the environmental benefit that will accrue as a direct result of investments by NLH into renewable electricity to displace electricity generated by HGS. That is, the MGGA contains a provision to award NLH with performance credits for GHG reductions that exceed those that would have been required if HGS had continued to operate. NLH can sell these credits (the credits will not be required by NLH for future GHG compliance as the HGS will close). Any revenues from the sale of credits will be received by NLH as the owner of the HGS. MAE understands from NLH that performance credit revenues will be reported to the PUB.

Analysis

- MAE developed internal projections for the demand for performance credits to 2030 as well as the potential level of revenues that may be received by NLH. The modeling work was informed by consultations with the facilities as well as by a review of how industrial facilities responded to carbon pricing in Alberta that has a similar regulatory structure for the industrial sector. The projections are based on a range of assumptions, including:
 - Which facilities will be regulated and for what period, and what their production and GHG emissions will be to 2030. For example, assumptions have been made about new facility start-ups (e.g., Tacora Resources) and facility expansions (e.g., Voisey’s Bay), as well as the potential facility closures (e.g., Terra Nova in 2027);
 - How regulated facilities will respond, over the next 11 years, to the price signal generated by MGGA regulations. For example, some facilities may purchase performance credits for the majority of MGGA regulatory compliance while others may invest to achieve GHG reductions on-site at their facility. The timing of such investments is also unknown as many investment opportunities may require front end engineering work or may be completed during pre-scheduled future downtime periods;
 - The price that NLH charges for its performance credits. In the absence of these credits, the next best opportunity to purchase credits may be through the GHG Fund established in the MGGA in which the price is set at the minimum federal carbon tax rate (\$20/tonne in 2019 and rising to \$50/tonne by 2022). Moreover, GHG Fund credits (which are sold by government) are likely to not be subject to the HST while

performance credits (which are sold be regulated facilities) are likely to be subject to the HST. Offsets are not included in modeling at this time; and

- o The federal government does not alter its GHG reduction framework, either in terms of stringency or price signal, after a scheduled review in 2022, and the Province does not otherwise increase its GHG stringency targets or price signal after 2022.

- [Redacted]

s.29(1)(a)

s.29(1)(a)

- [Redacted]

s.29(1)(a)

[Redacted]

Action Being Taken:

- [Redacted]

s.29(1)(a)

Prepared/Approved by: G. Crane/J.Janes

Minister Approval: Received from Hon. Graham Letto (pending)

April 1, 2019

