Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (File # NR-03-2017)

On January 4, 2017, the Department of Natural Resources received your request for access to the following records/information:

A copy of the following briefing notes provided to the minister in November 2016 - Marine Protected Areas - Waiver of Milestones for underground mine, Voisey's Bay Development Agreement - Environmental Indemnity Arrangement for the North Atlantic Refinery - Muskrat Falls Project Employment Complain - Interest in Wabush Mines Please provide each briefing material as it becomes available

I am pleased to inform you that a decision has been made by the Department of Natural Resources, confirmed by the Deputy Minister, to provide access to some of the requested information. Access to the remaining information 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 (the Act):

27 Cabinet confidences
(1) In this section, "cabinet record" means
   (i) that portion of a record which contains information about the contents of a record within a class of information referred to in paragraphs (a) to (h).
(2) The head of a public body shall refuse to disclose to an applicant
   (a) a cabinet record

P.O. Box 8700, St. John's, NL, Canada A1B 4J6  t 709.729-1466
Policy advice or recommendations

(1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister

Legal advice

(1) The head of a public body may refuse to disclose to an applicant information that would disclose legal opinions provided to a public body by a law officer of the Crown.

Disclosure harmful to the financial or economic interests of a public body

(1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

(d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party

(f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations

Disclosure harmful to business interests of a third party

(1) The head of a public body shall refuse to disclose to an applicant information that would reveal

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party.

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied

Disclosure harmful to personal privacy

(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.
It should be noted that the briefing note on Marine Protected Areas, found on pages 1-18 of our response file, has not been provided at this time pending the completion of public body consultations. These consultations are expected to conclude in a matter of days, after which this additional record will be provided.

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 records have been included with this correspondence.

**Right to Request Review/File Appeal**

As set out in section 42 of the Act you may ask the Information and Privacy Commissioner to review the department’s decision to provide partial access to the requested information. 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 request should identify your concerns with the department’s response and why you are requesting a review.

The request for review may be addressed to the Information and Privacy Commissioner 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

Pursuant to section 52 of the Act, you may also appeal directly to the Supreme Court Trial Division within 15 business days after receiving the department’s decision.

**Response to be Made Public**

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 729-3214 or by e-mail at andreamarshall@gov.nl.ca. Alternatively, please contact Rod Hynes, the department's primary access to information coordinator at 729-0463 or rhynes@gov.nl.ca.

Sincerely,

Andrea Marshall
ATIPP Coordinator
Title: Waiver of milestones for underground mine, Voisey’s Bay Development Agreement

Issue: Vale Newfoundland and Labrador (VNL) have indicated they will be requesting waiver of milestone dates to facilitate better control of construction execution and expenditures.

Background and Current Status:
- VNL operates the Voisey’s Bay mine and Long Harbour nickel processing plant subject to conditions of the Voisey’s Bay Development Agreement (DA).

- The Fifth Amendment to the DA included a commitment to development of the post-ovoid underground mine such that continuous operation at Voisey’s Bay is maintained. The amendment included milestones, based on the schedule in the FEL-2 (prefeasibility) study. Each milestone has a cure period attached, and government has the option of applying remedies including suspension of export. S. 39(1)(a)(ii), S. 39(1)(b), S. 39(1)(c)(i)

- The commitment to construction of the underground mine was secured through financial assurance. On sanction of the project in July 2015, the financial assurance was reduced by, as letters of credit and as a general security agreement and Collateral Realty Mortgage. S. 39(1)(a)(ii), S. 39(1)(b), S. 39(1)(c)(i)

- The 5th Amendment committed VNL to milestones associated with construction including:
  - Sanction of project – June 30, 2015

- VNL approached government in May 2015 indicating that they needed to revise the schedule as defined by the milestones in the 5th Amendment. This was followed by a formal letter on May 29, 2015. S. 27(2)(a), S. 27(1)(i)

- NR sent VNL a letter to providing limited waivers of remedies applying to milestones for underground mine development as defined in the 5th Amendment to the DA.

- The letter contains the following provisions (milestones are summarized in the attached table):
  - Acceptance by government of a revised schedule for development of the underground mine.

S. 39(1)(a)(ii), S. 39(1)(b), S. 39(1)(c)(i)
• The milestones and remedies are, apart from the dates of sanction and first production, confidential due to commercial sensitivity and are redacted from the 5th Amendment.

• On November 7, 2016, VNL met with NR officials to inform them that their new execution strategy is to delay start of underground development until 2018 to facilitate better control of construction execution and expenditures. A formal letter is to follow.

• VNL indicated that first production of ore is still expected in 2020 and that additional concentrate export allowance is not being requested.

• VNL indicated that their employees, the Nunatsiavut Government and Innu Nation will be informed of the new execution strategy in the coming days.

Analysis:

• S. 39(1)(a)(ii), S. 39(1)(b), S. 39(1)(c)(i)

• S. 39(1)(a)(ii), S. 39(1)(b), S. 39(1)(c)(i)

• With the additional time, VNL believe they can significantly advance engineering, investigate measures to reduce cost, produce a better procurement package and negotiate better contract pricing.

• S. 39(1)(a)(ii), S. 39(1)(b), S. 39(1)(c)(i), S. 39(1)(c)(ii)

Action Being Taken:
• NR will review VNL’s request when formally received and will seek further technical information and justification from VNL.

Prepared/Approved by: A. Smith / Ministerial Approval: Received from Hon.

November 8, 2016

Attachment:
Annex A: Summary of Milestones, waivers granted and requested changes
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<table>
<thead>
<tr>
<th>Milestone</th>
<th>5th Amendment</th>
<th>Cure (days)</th>
<th>Remedy</th>
<th>Adjustment per 2 Jul 2015 Letter</th>
<th>Vale Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sanction</td>
<td>30 Jun 2015</td>
<td></td>
<td></td>
<td>Milestone Achieved</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First production</td>
<td>31 Dec 2019</td>
<td></td>
<td></td>
<td>No waiver requested. Vale has indicated first production expected in 2020.</td>
<td></td>
</tr>
</tbody>
</table>

S. 39(1)(a)(ii), S. 39(1)(b), S. 39(1)(c)(i)
Information Note
Department of Natural Resources

Title: Environmental Indemnity Arrangement for the North Atlantic Refinery

Issue: To provide an overview of the indemnity arrangement and an update of the ongoing Environmental Site Assessment at the North Atlantic refinery site.

Background and Current Status:

- During the North Atlantic (NARL) sale arrangement negotiations in late 2013/early 2014, Harvest refused to assume responsibility for pre-existing environmental liabilities at the refinery. At the time, SilverRange indicated to Government that it would not purchase NARL from Harvest without such an indemnity and asked Government to consider whether it would provide the indemnity to help support the NARL sale and continued operations. Government subsequently agreed to provide the indemnity in 2014.

- Government had entered into previous indemnity arrangements related to the refinery including:
  - In 1986, to facilitate the reopening of the refinery by Newfoundland Energy Limited (NEL), the Province undertook arrangement of the cleanup and containment of existing environmental hazards at the site and indemnified NEL from all costs arising from such environmental hazards. A subsidiary of NEL, Newfoundland Processing Limited, completed the refinery acquisition on December 5, 1986.
  - In 1994, Vitol, as part of its acquisition of the refinery, entered into a memorandum of agreement with the Province relating to environmental matters at the site. This included an extension of the previous indemnity with NEL. This arrangement was for a 10 year term and it was not extended beyond 2004.

- The latest indemnity arrangement for the NARL refinery was executed in two parts:
  - The Memorandum of Agreement was executed on September 5, 2014. NR and NARL Acquisitions LLC (NACQ - the NARL acquiring company owned by SilverRange) agreed to enter into the Environmental Agreement and NACQ would direct NARL to do the same at the time of acquisition. This was executed prior to close of the NARL acquisition to signal the intent of the parties to enter into the Environmental Agreement at the time of acquisition.
  - The Environmental Agreement was executed by NR, NACQ and NARL on November 10, 2014 at the time of closing of the NARL sale. The indemnity expires after a 10 year term from the execution date. These two agreements govern the scope of the indemnity arrangement.

- Some key provisions of the indemnity arrangement include:
  - NR indemnifies NACQ and NARL against pre-existing environmental contamination and remediation liabilities relating to soil, sediment, groundwater and surface water at the refinery site. Indemnity does not cover NARL assets, operations or business losses.
  - NACQ and NARL indemnify the Province against liability and responsibility for environmental contamination and remediation that is caused by their ownership, operation, maintenance and remediation of the refinery.
  - Indemnity could expire before 10 year term if the refinery ceases operations for one year or more, or ceases operations for six months in the event of insolvency.

Analysis:

- The Environmental Site Assessment (ESA) will define the extent of the Province’s indemnity. The ESA is being done in a phased approach in accordance with ENVC’s Guidance Document for the Management of Impacted Sites, S. 29(1)(a)
• An ESA is an assessment of the environmental conditions at a site, conducted in accordance with applicable guidance from Atlantic PIRI, CCME and Canadian Standards Association. A Phase I ESA includes a review of current and historical activities associated with the subject site and adjacent properties, in order to determine the potential for contamination. A Phase II ESA involves the preliminary collection and laboratory analysis of samples of potentially impacted media (soil, sediment, groundwater and/or surface water). A Phase III ESA involves further sampling and laboratory analysis to delineate the extent of impacts identified during the Phase II ESA. Subsequent phases involve remedial action planning and remediation/risk management.

• The ESA work is ongoing and NARL has been working in consultation with NR. However, the ESA schedule outlined in the Environmental Agreement has not been met. Several delays in 2015 related to the hiring of the Site Professional, approvals and ESA work including challenges in executing site work during continuing refinery operations. On November 23, 2015, NARL sent a letter to the Minister of Natural Resources outlining ESA work to date, challenges with the work and requiring more time to complete.

• The Site Professional, Stantec, was approved and hired in January 2015 following a Request for Proposals process conducted by NARL in late 2014.

• Stantec conducted the Phase I ESA work in the first half of 2015. The first draft of the Phase I report was provided to NR in March 2015 with a revised version submitted in June 2015. The report found evidence of actual and potential contamination at the site and recommended that a Phase II study and analysis be undertaken. Environment Canada was initially delayed in providing its historical records to NARL/Stantec. Records were provided in September 2015 and Stantec’s review determined that the information does not change Phase I recommendations.

• The Phase II work was undertaken in the second half of 2015 and the draft report was provided to NR on December 21, 2015. Given the extent and technical subject matter of the Phase II report, the review by NR and ENVC required several months to complete. NR has provided Phase II report comments to NARL and NARL’s review is ongoing.

• Concurrent with NR/ENVC’s review of the Phase II report, NARL/Stantec progressed some Phase III site sampling work and analysis in late 2015 and into 2016. It was agreed that proceeding with this work was in the interest of overall schedule but would likely require follow up based on Phase II feedback.

• The Phase II report does not address remediation or costs to remediate. This will be done as part of the final phase of the ESA which would include analysis of any remediation work, costs and liabilities that may be required. As well, the final phase would include a description of any Immediate Remediation Plan work that may be required if directed by ENVC or other regulatory authority. The completed ESA will be submitted to government for review and approval.

Action Being Taken:
• Awaiting response from NARL on Phase II comments and will schedule a follow up meeting between NR/ENVC and NARL/Stantec to review comments and discuss next steps towards completing ESA.

Prepared / Approved by: P. Parsons / L. Sullivan

Ministerial Approval:
November 10, 2016
Information Note
Department of Natural Resources

Title: Muskrat Falls Project Employment Complaints

Issue: To provide a summary of the issues surrounding emails and phone calls between [Redacted] and Government officials.

Background and Current Status:

- [Redacted] who has been employed by Astaldi on the Muskrat Falls Project.
- Since September 22, 2016, he has sent three emails to a list of people including the Premier, Minister Coady, MHA Lisa Dempster, MP Yvonne Jones, and Astaldi officials. He also sent his first email to Nalcor Energy to the attention of “Mr. Marshall”. These emails relating to his work on the Project are provided in Attachment A.
- An official with NR’s Electricity and Alternative Energy division contacted [Redacted] following his first email to determine if and how NR might be able to assist [Redacted] with his concerns. In a follow up phone call, NR provided [Redacted] with contact information for an official in the Labour Relations Division of Advanced Education, Skills and Labour as [Redacted] had explained his concerns related primarily to how he felt he had been treated as a union employee on the Project.
- In his phone call and emails, [Redacted] has stated:
  - [Redacted] indicated to NR that he had witnessed numerous events and actions by Nalcor during his employment on the Project that convinced him the company was doing a poor job managing the project, but he did not provide any details or examples.
  - [Redacted] he was informed by his employer Astaldi with his shop steward present that he was being suspended.
  - During his phone calls, he stated he wanted the Premier, Minister, or Nalcor CEO Stan Marshall to sit down and speak with him and arrange for him to receive his lost wages since his suspension began.
Following NR’s initial phone call with [name redacted] NR contacted Nalcor October 18, 2016 to ask for the company’s perspective on the issues he raised. Nalcor investigated and subsequently informed NR that its contractor Astaldi regularly files employment reports with Nalcor. One such recent report stated [name redacted] had been suspended or documenting his conduct.

In his most recent email dated November 10, 2016, [name redacted] stated that he was going to contact the media to tell his suspension story and mistreatment at the hands of the companies involved. He also promised to publicize his experience at the site including why the Project is over budget.

Action Being Taken:
- NR will monitor media coverage to determine if any further action is required.

Prepared/Approved by: C. Snook/W. Parsons
Ministerial Approval: November 14, 2016

Attachments:
Attachment A – Emails from [name redacted]
Attachment A – Emails from

September 22, 2016

Dear Mr. Marshall:

My name is [redacted] and work at Muskrat Falls.

I want to start with a little about myself. [redacted]

At the time I wasn’t on Nalcor site, or wasn’t on Astaldi’s payroll either. [redacted]

They suspended me. [redacted]

Government is speaking to the public about Bulling all the time. This is the prime case of Bulling. Nalcor against me. [redacted]

But still Nalcor and Astaldi took it away from me. [redacted]

I wanted to speak to the media on this issue, but I feel that if I do, more could be said then the issue at hand. I worked at Muskrat Falls [redacted] and for what I’ve seen and know the media would go wild. At this point I may not have a choice. [redacted]

With the amount of conflict of interest that’s happening at Muskrat Falls, and for them to do what they done to me, someone should question their decision on my suspension. [redacted]

It’s not right when a crown corporation can suspend people. [redacted] There are people running the show at Muskrat Falls and making decisions that don’t have a clue, and you or government are totally in the dark. [redacted]

If Nalcor is true to what they say, accountability then I would wish You would intervene [redacted]

Thank you. [redacted]
November 6, 2016

When I was suspended, I was NEVER given any reason in WRITING why I was suspended, and how they came about their ruling. Someone DROPPED the ball and I was the one that suffered, and my family. They played with people’s lives.

Talking to my lawyer, we feel that the hardship that they put my family through financially and the stress I suffered. Astaldi, and Nalcor should be held responsible.

When I was taken of site I was in a position. I feel that my position should be re-instated. I also should be paid from to the present date, LOA included, with rate.

According to my lawyer, because there was NEVER anything given to me in writing to why, is a violation of the law and charter.

If I have to take the route of court in a lawsuit, then I will have no choice but to go that way.

November 10, 2016

In the past three months, Astaldi and Nalcor put myself and my family through hell. [Financially], physically, and emotionally. A suspension that has no meaning and still nothing in writing from to the present. They played with OUR lives.

At this point I don’t have anything to lose.

I thought long and hard about this, and the stress is too much. Now it’s time for me to fight back, and drag them through the mud. I will contact CBC, and NTV, and VOCM and tell them my story. Also, I spent about two years at Muskrat Falls. I have two ears, and two eyes. I will give them a few points of what’s happening at Muskrat Falls. Why it’s SO over budget. I will blow their minds on things that are happening, and had happened. The new CEO, Stan Marshall, and Government officials, and the people of this province will go wild, and I’m hoping that the people of this province will ask for an audit.

Nalcor thinks they can act as bullies and get away with what they like. Now the time has come I will show them that someone small like me can fight back. And when I make my calls, I promise I will go all the way.
I can say sorry, but at this point I have no choice. I feel that I’m in the corner, but I’m coming out fighting.
Information Note
Department of Natural Resources


Issue: [Redacted] have expressed interest in the Wabush Mines operations and met with Natural Resources (NR) on November 17, 2016.

Background and Current Status:

- Wabush Mines, owned by US-based Cliffs Natural Resources (Cliffs), began producing iron ore in 1965. Concentrates produced at the mill were delivered via railway to a pelletizing plant at Point Noire, Quebec (closed in June 2013) and shipped to markets. The mine provided 495 jobs in 2013.

- Cliffs sub-leased the mineral rights from MFC Bancorp, the lessor.

- The mine was idled in February 2014 and, on October 30, 2014, Government was notified that the mine was permanently closed.

- Cliffs’ fully owned Canadian subsidiaries, including Wabush Mines Joint Venture property near Wabush, are under creditor protection per the federal Companies’ Creditors Arrangement Act (“CCAA”). The CCAA stay of proceedings against Wabush Mines has been extended 7 times and is currently in effect until January 31, 2017.

- An acceptable rehabilitation and closure plan (RC Plan), dated September 2014, and associated financial assurance of $49.7 million are in place. Rehabilitation of the site has been conditionally released from environmental assessment and an updated RC Plan, [Redacted] is currently under review by NR.

- On November 17, 2016, NR officials met with the principal of [Redacted] and a consultant for Cliffs Natural Resources, [Redacted] S. 40(1)

The Court is hearing a motion to terminate the Wabush Mines sublease on December 9, 2016.
NR

has opinions from Strathcona Minerals and Rance Associates, both mining experts with experience in iron ore in Lab West.

### Action Being Taken:

- S. 29(1)(a), S. 30(1)(b)

### Prepared/Approved by:

- A. Smith / Received from Hon.

- November 18, 2016

- S. 29(1)(a), S. 35(1)(d), S. 35(1)(f)