January 21, 2019

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, our file # TCII/58/2018

Dear [Redacted]

On December 20, 2018 the Department of Tourism, Culture, Industry and Innovation received your request for access to the following records:

"The Environmental Indemnification Agreement signed between the province and Friede Goldman Newfoundland Limited around 1997 or 1998 in conjunction with the sale of the Marysvale shipyard assets, any subsequent changes to the agreement when it was assigned to Peter Kiewit Sons Co. Limited around 2002, and the current agreement in effect."

I am pleased to inform you that a decision has been made by the Deputy Minister for the Department of Tourism, Culture, Industry and Innovation to provide access to some of the requested information. Access to the remaining records, and/or information contained within the records, has been refused in accordance with the following exception to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

Disclosure harmful to personal privacy

40. (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.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the Access to Information and Protection of Privacy Act (the Act). 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.

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 8700, St. John's, NL, Canada A1B 4J6
1-709-729-7000 | 1-709-729-4858
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.

If you have any questions please contact me by telephone at 709-729-3356, or by email at heatherbrown@gov.nl.ca.

Sincerely,

Heather Brown
ATIPP Coordinator
THIS ASSIGNMENT made this 27th day of March, 2002

BETWEEN:  FRIEDE GOLDMAN NEWFOUNDLAND LIMITED, a body corporate incorporated under the laws of the Province of Newfoundland and Labrador

(hereinafter called "FGNL")
OF THE FIRST PART

AND:  PETER KIEWIT SONS CO. LTD., a body corporate

(hereinafter called "PKS")
OF THE SECOND PART

AND:  HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR as represented by the Honourable the Minister of Industry, Trade and Rural Development

(hereinafter called "Government")
OF THE THIRD PART

AND:  MARYSTOWN SHIPYARD LIMITED, a body corporate incorporated under the laws of the Province of Newfoundland and Labrador

(hereinafter called "MSL")
OF THE FOURTH PART

AND:  NEWFOUNDLAND OCEAN ENTERPRISES LTD., a body corporate incorporated under the laws of the Province of Newfoundland and Labrador

(hereinafter called "NOEL")
OF THE FIFTH PART

(Government, MSL and NOEL are collectively herein sometimes called "the Confirmors")

WHEREAS MSL and NOEL were the owners of real and personal property consisting of, inter alia, land, buildings, equipment and other assets owned by MSL and/or NOEL and utilized in the business of shipbuilding and metal fabrication carried on by MSL in the Town of Marystown and at the Cow Head facility at Spanish Room, both in the Province of Newfoundland;
AND WHEREAS MSL and NOEL sold, assigned, and transferred those assets to Friede Goldman Marystown Limited pursuant to, *inter alia*, the following agreements:

(a) an Asset Purchase Agreement dated December 22, 1997 (the "Asset Purchase Agreement") between MSL, NOEL, Friede Goldman Marystown Ltd. and Government; and

(b) a Share Purchase Agreement dated January 1, 1998 (the "Share Purchase Agreement") between MSL, NOEL, FGCI, Friede Goldman International Inc. and Friede Goldman Marystown Limited;

(these agreements and the schedules thereto being herein collectively referred to as the "Transfer Agreements");

AND WHEREAS appended to the Asset Purchase Agreement, as Schedule 6 thereto, was an Environmental Indemnity Agreement effective December 31\textsuperscript{st}, 1997 between the Government, Friede Goldman Marystown Limited, MSL and NOEL whereby the Government, in accordance with the terms set forth therein, provided certain indemnification and undertook certain obligations concerning environmental issues relating to the "Lands", "Water Lots" and "Facilities", all as therein defined (and hereinafter collectively referred to as the "Assets"), a copy of which Environmental Indemnity Agreement is attached hereto as Schedule "A" (the "Environmental Agreement");

AND WHEREAS subsequent to the execution of the Transfer Agreements, Friede Goldman Marystown Limited changed its name to Friede Goldman Newfoundland Limited, herein called "FGNL";

AND WHEREAS FGNL has entered into an agreement with PKS for the sale and transfer of the Assets of FGNL to PKS upon the terms and conditions therein contained;

AND WHEREAS the sale and transfer of the Assets will see PKS continue to use and operate the FGNL Marystown and Cow Head facilities and to integrate the same into its business plans with a view to creating employment at those facilities;
AND WHEREAS the Confirmors are of the view that the sale and transfer of the Assets to PKS is beneficial to the Province of Newfoundland and Labrador and its people;

AND WHEREAS as a condition of the sale and transfer of the Assets to PKS, PKS has requested that the Environmental Agreement be assigned to PKS for its benefit as the owner of the Assets;

AND WHEREAS the Confirmors are agreeable to that assignment, but SUBJECT TO the terms and conditions as herein set forth;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the mutual covenants and agreements hereinafter contained and the sum of Two Dollars ($2.00) paid by each of the parties hereto to the other parties hereto (the receipt and sufficiency of which is hereby acknowledged), the parties hereto, respectively and as the case may be, covenant and agree as follows:

1. FGNL hereby assigns the Environmental Agreement to PKS, including all the right, title and interest of FGNL therein.

2. PKS hereby assumes the Environmental Agreement and agrees to perform and be responsible for all of the obligations of FGNL under the Environmental Agreement in accordance with the terms thereof.

3. PKS shall indemnify and hold harmless FGNL, their respective agents and employees, from and against any and all claims, demands, losses, costs, damages, actions, suits, or proceedings of whatsoever nature and kind, including without limitation legal fees or expenses on a solicitor and its own client basis which may be made or brought by the Confirmors or any third party against FGNL, directly or indirectly arising out of, attributable, to or in any way relating to any non-performance or defective or insufficient performance by PKS of its obligations under the Environmental Agreement.
4. FGNL represents and warrants to the Confirmors and PKS that since the date of the Sale Agreement referred to in the Environmental Agreement, namely, December 31st, 1997, it has operated in all material respects with and from the Assets in accordance with all Environmental Laws, as that term is defined in the Environmental Agreement.

5. FGNL acknowledges that certain Remedial Work, as that term is defined in the Environment Agreement, has been conducted since December 31st, 1997, pursuant to the Environmental Agreement and under contracts between NOEL and FGNL, generally known as:

   i) Job No. 86211
       Oil Tank Removal/Replacement; and

   ii) Job No. 85937
       Asbestos and Lead Paint Abatement

   (hereinafter called "the Remedial Contracts").

6. FGNL hereby confirms, acknowledges and agrees that the work as completed under the Remedial Contracts has been fully and satisfactorily completed.

7. FGNL and PKS hereby acknowledge and agree that the Environmental Agreement speaks only to the date of the sale of the Assets to FGNL, namely, December 31st, 1997, and that the Confirmors are not responsible for any environmental matters introduced by FGNL or others, or arising at or with respect to the Assets, since that date.

8. For the purposes of Article 10 of the Environmental Agreement, the following facsimile number and address shall apply for PKS:

   Address: McInnes, Cooper
   10 Fort William Place, P.O. Box 5939
   St. John's, NF and Labrador A1C 5X4
   Attention: Caroline C. Watton

   Fax Number: (709) 722-1763
9. Neither PKS nor the Confirmors shall assign this Agreement or any portion thereof without the written consent of the other and, in particular, any assignment of this Agreement by PKS shall require the prior written consent of the Confirmors.

10. Notwithstanding any other clause to the contrary herein contained, it is understood and agreed that this Agreement shall only be effective, and is conditional upon, the sale of the Assets to PKS being concluded and including those conditions in favour of the Confirmors contained in an Agreement between FGNL, the Confirmors and others, of even date herewith whereby, inter alia, the Confirmors' claim against FGNL for $10 Million (Canadian) has been released, having been fully met.

11. The parties hereby acknowledge and agree that save and except as amended or qualified herein, the Environmental Agreement is confirmed to be in full force and effect.

12. This Agreement shall be interpreted in accordance with the laws of the Province and Newfoundland and Labrador and shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly and properly executed.

SIGNED, SEALED AND DELIVERED — in the presence of —

______________________________
Witness

______________________________
FRIEDE GOLDMAN
NEWFOUNDLAND
Per:
I/We have authority to bind the Corporation.
SIGNED, SEALED AND DELIVERED
- in the presence of -

PETER KIEWIT SONS CO. LTD.
Per:
Per:
1/We have authority to bind the Corporation.

HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
NEWFOUNDLAND AND LABRADOR
as represented by the Honourable the
Minister of Industry, Trade and Rural
Development
Per: Beaton Tullock

SIGNED, SEALED AND DELIVERED
- in the presence of -

MARYSTOWN SHIPYARD LIMITED
Per: S.40 (1)
Per: S.40 (1)

SIGNED, SEALED AND DELIVERED
- in the presence of -

NEWFOUNDLAND OCEAN
ENTERPRISES LTD.
Per: 
Per:
ENVIRONMENTAL INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT, is made effective as of the 31st day of December, 1997, at the City of St. John's, in the Province of Newfoundland, and is made:

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND, as represented by the Minister of Industry, Trade & Technology;

(hereinafter called "Her Majesty")

OF THE FIRST PART

AND:

FRIEDE GOLDMAN MARYSTOWN LTD., a corporation created under the Corporation's Act, Revised Statutes of Newfoundland, 1990, Chapter C-36;

(hereinafter called "FGML")

OF THE SECOND PART

AND:

NEWFOUNDLAND OCEAN ENTERPRISES LTD. and MARYSTOWN SHIPYARD LIMITED;

(hereinafter called the "Corporations")

OF THE THIRD PART

WHEREAS the Corporations and their predecessors, all of which have been Crown Corporations or subsidiaries of Crown Corporations owned by Her Majesty, have carried on a shipyard and ship repair business using the Land, Water Lots and Facilities, located at Marystown and Cow Head, Newfoundland;
AND WHEREAS during that period of time the operations have resulted in various portions of the Land, Water Lots and Facilities becoming polluted with Hazardous Substances, to a degree not yet defined;

AND WHEREAS the Corporations, with the approval of Her Majesty, have agreed to sell the said Land, Water Lots and Facilities to FGML on the terms and conditions set forth in the Sale Agreement, under which the parties hereto have agreed to execute this Environmental Indemnity Agreement;

AND WHEREAS FGML has agreed to co-operate with Her Majesty to facilitate to the greatest extent possible, without cost or other adverse consequences to FGML, the discharge of Her Majesty’s responsibilities as aforesaid under this Environmental Indemnity Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the premises and for and in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually covenant and agree each with the other as follows:

ARTICLE 1 - INTERPRETATION

1.01 In this Environmental Indemnity Agreement, unless there is something in the subject matter or context inconsistent therewith,

(a) "Baseline Environmental Investigation" shall mean the Phase II Site Assessment to be conducted on behalf of Her Majesty with respect to the land
surface, soil, subsoil, ground water, harbour water and seabed under and adjacent to the facilities, all being part of the Land, Water Lots, and Facilities;

(b) "Baseline Environmental Investigation Report" shall mean the report of the entire investigation as produced on behalf of Her Majesty to report on the Baseline Environmental Investigation;

(c) "Closing" means the actual transfer and delivery of title by the Corporations and Her Majesty, as the case may be, of the Land, Water Lots and Facilities, all in the manner required by the Sale Agreement;

(d) "Closing Date" shall have the same meaning as in the Sale Agreement;

(e) "Environmental Indemnity Agreement" shall mean this agreement;

(f) "Environmental Laws" shall mean all existing and future federal, provincial and municipal environmental laws, statutes and regulations relating to the protection of the environment and governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials, including, without limitation, air pollution, soil and subsoil pollution, water (including surface water and ground water) pollution and existing and future rules and regulations of federal, provincial and
municipal governmental agencies and authorities having jurisdiction with respect thereto;

(g) "Environmental Liability" shall mean any losses, (other than business interruption losses and consequential losses), fines, penalties, charges, expenses, costs, fees, damages, (including costs reasonably incurred to prevent an Environmental Liability), arising out of or in relation to the presence, in the Shipyard, as at the date of the Sale Agreement of Hazardous Material, which are suffered by FGML as a result of having to comply with, pay, settle, defend or satisfy any claim, demand, action, proceeding, judgment, order or liability in respect of the said presence of Hazardous Material in the Shipyard;

(h) "Environmental Permits" means any and all permits, licences, approvals, authorizations, consents or registrations, currently required by any applicable Environmental Law in connection with the ownership, use and/or operation of the Shipyard for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Material or the sale, transfer or other disposition of the Shipyard;

(i) "Facilities" shall mean and include the dock, the wharves and all similar assets affixed or appurtenant to the Land and Water Lots described in the Deeds of Conveyance or Assignments as contemplated by the Sale Agreement;
(j) "Hazardous Material" shall mean any pollutants, dangerous substances, wastes or other substances, materials, liquids, or gases regulated under any applicable Environmental Laws;

(k) "Heavy Industrial Use" shall mean use as a Shipyard, as a ship repair, maintenance and service centre and as a steel fabrication facility;

(l) "Land" shall mean all those pieces or parcels of land located in Marystown and Cow Head, Newfoundland, and more particularly described in the Deeds of Conveyance as contemplated by the Sale Agreement;

(m) "Remedial Work" shall mean any work:

(i) Required under any federal or provincial law to remedy an adverse environmental condition caused by the existence, as at the date of the Sale Agreement, of a Hazardous Material affecting the soil of or the water in, on, over or under the Lands, Water Lots or Facilities; and

(ii) Appropriate to satisfy legislated standards of sound and responsible environmental management in dealing with adverse environmental conditions caused by the existence as of the date of the Sale Agreement of Hazardous Material in the Lands, Water Lots and Facilities, in circumstances where significant improvement or expansion was being undertaken.
or carried out;

but only to a level not exceeding that required by applicable Environmental Law for a property which is subjected to Heavy Industrial Use, irrespective of the use then being made of the Lands, Water Lots or Facilities.

(n) "Remediation" shall mean the completion of all steps necessary to remove, to the extent required by Environmental Laws, as they apply to property subjected to Heavy Industrial Use, all Hazardous Material existing in the Shipyard at the date of execution of the Sale Agreement, consistent with the due diligence that any responsible party should exercise in the circumstances and taking into account the use of the Shipyard;

(o) "Sale Agreement" shall mean the agreement dated the 22nd day of December, 1997 whereby the Corporations and Her Majesty agreed to sell the Shipyard assets to FGML;

(p) "Shipyard" shall mean all of the Land, Water Lots and Facilities at Marystown and Cow Head, Newfoundland used by the Corporations during the conduct of its shipyard, ship fabrication and repair business and steel fabrication and repair business;

(q) "Water Lots" means and include all of the right, title and interest of the Corporations in and to lands originally covered by water and on which the
Facilities and certain appurtenances are located and which are conveyed pursuant to the Sale Agreement;

(x) "Work Plan" shall mean the description and character of the effort to be made and the activities to be carried out on behalf of Her Majesty in the conduct of the Baseline Environmental Investigation, same to be added hereto as Appendix "A" when completed;

1.02 Words importing the singular include the plural and vice versa, and words importing gender include masculine, feminine and neutral genders.

1.03 The division of this Environmental Indemnity Agreement into articles, sections, sub-sections, paragraphs, sub-paragraphs, clauses, sub-clauses and Appendixes, the provision of a table of contents and insertion of headings are for the convenience of reference only, and shall not affect the construction or interpretation of this Environmental Indemnity Agreement.

ARTICLE 2 - BASELINE ENVIRONMENTAL INVESTIGATION AND REPORT

2.01 The Corporations and Her Majesty shall cause to be completed the Baseline Environmental Investigation of the Shipyards to be conducted, at their request and at the expense of the Corporations or Her Majesty, in order to identify the nature and extent of Hazardous Material which currently exists in the Shipyards and will ensure that the same is conducted in accordance with the Work Plan annexed hereto as Appendix "A", the report of which
shall, when completed and identified by the Parties hereto, be added to this Environmental Indemnity Agreement as Appendix "B".

2.02 The Corporations and Her Majesty shall cause to be delivered to FGML, immediately upon receipt by the Corporations or Her Majesty, a full copy of the Baseline Environmental Investigation Report and all additional information obtained in connection therewith.

2.03 FGML shall not disclose the contents of the Baseline Environmental Investigation Report or any additional information obtained from the Corporations or Her Majesty to any third party unless required by law to do so or unless its professional advisors, lenders, employees and servants require the same in connection with future financing or the implementation of this Environmental Indemnity Agreement or the Sale Agreement and the representations, warranties and obligations of the Corporations and Her Majesty contained herein and therein, in which case FGML shall obtain a written undertaking from its professional advisors and lenders not to disclose such information to third parties unless required by law to do so.

2.04 If the Sale Agreement shall be terminated without the Closing having been completed FGML shall return to the Corporations and Her Majesty the Baseline Environmental Investigation Report and any and all information obtained in connection therewith and shall thereafter keep all information it obtained confidential and shall not disclose the same to any third parties unless required by law to do so.
ARTICLE 3 - INFORMATION RELATING TO HAZARDOUS MATERIAL

3.01 The Corporations and Her Majesty shall promptly make available to FGML all information presently known to, or that may become known to the Corporations and Her Majesty respecting the existence of any Hazardous Material in existence on the date of the Sale Agreement in the Shipyard.

3.02 The Corporations and Her Majesty covenant and agree to authorize and direct any and all federal and provincial governments and regulatory authorities having jurisdiction respecting the enforcement of applicable Environmental Laws to release to FGML any and all information in their possession respecting the Shipyard or the conduct of operations by the Corporations.

3.03 The Corporations and Her Majesty covenant and agree that they and each of them, shall promptly execute and deliver to FGML any and all consents necessary for the release of the information referred to in Section 3.02, and the specific authorization which FGML reasonably requires to gain access to any and all such information.

ARTICLE 4 - RESPONSIBILITY OF HER MAJESTY AND INDEMNITY OF FGML BY HER MAJESTY

4.01 Her Majesty acknowledges that by reason of the fact that the Shipyard was in the exclusive possession and control of Her Majesty or Crown Corporations or their subsidiaries who operated therefrom a Shipyard and general vessel fabrication, repair, maintenance and service operation, Hazardous Material, known and unknown,
exist on the Shipyard as at the date of the Sale Agreement and Her Majesty acknowledges that both the consequences of and Remediation required by applicable Environmental Laws remains Her Majesty's responsibility until such time as Remediation is achieved.

4.02 The parties hereeto agree that the objective of this Agreement is Remediation, to the extent that Remedial Work is required, of the Shipyard.

4.03 Her Majesty covenants and agrees to indemnify and save harmless FGML from and against any and all Environmental Liability which FGML may be required to bear as a result of:

(a) any federal or provincial governmental authority acting under or pursuant to applicable Environmental Laws;

(b) a claim, demand, action, or proceeding by a third party; or

(c) the conduct of Remedial Work;

which results from the presence, release, loss, discharge or spillage of any Hazardous Material which is present or occurring on or from the Shipyard as at the date of the Sale Agreement and without limiting the generality of the foregoing all costs necessarily incurred by FGML in carrying out its obligations under Articles 5, 6 and 7 hereof.

4.04 From time to time, for so long as Her Majesty has any
obligation to perform or to indemnify under this Environmental Indemnity Agreement, Her Majesty may, on reasonable notice to FGML and at Her Majesty’s expense, enter the Shipyard and carry out such investigation or examination as Her Majesty may deem necessary to fulfil its obligations hereunder.

4.05 FGML will not, for so long as Her Majesty continues to have any obligation to perform or to indemnify under this Environmental Indemnity Agreement, so change the use of the Shipyard or the commercial and industrial activities carried on therefrom in such a manner as to cause an increase in or acceleration of Her Majesty’s obligations hereunder provided that nothing herein shall contain or limit the right of FGML to carry out such improvement and expansion of the Shipyard and Facilities as may be necessary to enable FGML to carry on a full scale Shipyard, ship repair, marine service and maintenance facility, fabrication yards, offshore supply and support facility and all other industrial and commercial activities relating to the supply of goods, support and services to marine and industrial activities, and no such activity by FGML shall be held to cause an increase in or acceleration of Her Majesty’s obligations under this Environmental Indemnity Agreement.

ARTICLE 5 - CONTAINMENT AND PREVENTION OF ESCAPE OF HAZARDOUS MATERIAL

5.01 FGML shall, in the conduct of all operations at the Shipyard and after Closing until such time as Remediation occurs, do all things necessary, and in particular all things requested by the Corporations or Her Majesty, or
directed or ordered by any competent authority acting under any Environmental Law, to contain Hazardous Material existing in the Shipyard at the date of the Sale Agreement and prevent the escape of such Hazardous Material from the Shipyard and shall do so in a manner that will result in the lowest reasonable cost necessary in the circumstances.

5.02 From and after the execution of the Sale Agreement until such time as Remediation shall have occurred, Her Majesty shall reimburse FGML, within thirty (30) days of receiving an invoice, for all cost necessarily incurred by FGML solely for the purpose of fulfilling its obligation set forth in Section 5.01.

ARTICLE 6 - REMEDIATION REQUIRED BY GOVERNMENTAL AUTHORITY OR AS A RESULT OF THIRD PARTY ACTION

6.01 Immediately upon receipt of notice of an Environmental Liability, or facts which will likely give rise to an Environmental Liability, FGML shall give written notice of the Environmental Liability or potential Environmental Liability to Her Majesty.

6.02 Upon receipt of written notice of Environmental Liability or potential Environmental Liability Her Majesty shall have the right, at Her option and expense, to participate in or assume control of the response, remediation, negotiation, payment, settlement or defence of the Environmental Liability or potential Environmental Liability.

6.03 Where Her Majesty assumes control of the Environmental
Liability or potential Environmental Liability no settlement may be effected by FGML without the prior written consent of Her Majesty to such settlement, which consent shall not be unreasonably withheld, and Her Majesty shall not be liable for any settlement of any such Environmental Liability or potential Environmental Liability effected without Her Majesty first giving prior written consent to such settlement, but no settlement made by Her Majesty shall in any manner obligate FGML without the prior written consent of FGML.

6.04 Where Her Majesty does not assume control pursuant to this Article Her Majesty shall:

(i) pay to FGML, within thirty (30) days of receiving an invoice for the same, the full assessment necessarily paid by FGML, and all costs of FGML necessarily incurred, as a result of discharging the Environmental Liability, and

(ii) pay directly any invoice FGML may receive from independent third parties as a result of this Article, such invoices to be delivered by FGML to Her Majesty upon receipt.

ARTICLE 7 - REMEDIATION DURING IMPROVEMENT OR EXPANSION AT SHIPYARD

7.01 Her Majesty acknowledges the intent of FGML to improve and expand the Facilities and other aspects of the Shipyards operation, and Her Majesty and FGML agree that it is desirable to carry out Remedial Work during the course of any such improvement or expansion.
7.02 In the event that FGML plans to undertake an improvement or expansion to the Shipyard, FGML shall give written notice thereof to Her Majesty with sufficient detail to enable Her Majesty to judge how much Remedial Work needs to be carried out co-incident with the conduct of the improvement or expansion.

7.03 Within thirty (30) days of delivery of a notice pursuant to 7.02 hereof to Her Majesty either FGML or Her Majesty may propose a course of Remedial Work required to be carried out pursuant to this Agreement, in conjunction with the improvement and expansion.

7.04 If Her Majesty and FGML do not agree on the course of Remedial Work to be carried out co-incident with the improvement or expansion either party may apply to the government agency or other environmental authority having jurisdiction under Environmental Law for direction as to the course of conduct to be followed to deal with Hazardous Material encountered during such improvement or expansion and FGML shall follow the direction given by such authority having jurisdiction.

7.05 If, ultimately, changes, improvements or capital expenditures to the site are undertaken FGML shall undertake such changes or improvements in such a manner as to minimize the risk of any Environmental Liability resulting.

7.06 Her Majesty shall be responsible for all cost incurred in carrying out Remedial Work, including the cost of removal and replacement of any structure not otherwise being removed or replaced, to the extent required by applicable
Environmental Law or, to the extent agreed upon by FGML and Her Majesty, or to the extent directed by competent governmental authority having jurisdiction, as being necessary to deal appropriately with the presence of Hazardous Material in the course of the improvement or expansion and shall pay to FGML, within thirty (30) days of receiving an invoice therefor, the actual cost necessarily incurred by FGML in connection with such removal and replacement.

ARTICLE 8 - INDEMNITY OF HER MAJESTY BY FGML

8.01 FGML covenants and agrees to indemnify and save harmless Her Majesty from and against all Environmental Liability which Her Majesty may be required to bear as a result of or arising from the presence, release, loss, discharge, spillage or migration of any Hazardous Material in the Shipyards contrary to any Environmental Laws, which was caused by FGML, its servants, agents, employees, or its authorized representatives, and which cause occurred subsequent to the date of the Sale Agreement, but for greater certainty it is agreed that FGML shall not be responsible for the release, discharge or migration of any Hazardous Material which is present on, in or under the Shipyards prior to the date of the Sale Agreement unless and to the extent that Environmental Liability arose solely as a result of negligence on the part of FGML its servants, agents, employees, or its authorized representatives. For greater certainty, and without limiting the generality of the foregoing, FGML shall be responsible for any additional Environmental Liability resulting from FGML’s change of the zoning or land use of
the Shipyard from a commercial or industrial use.

ARTICLE 9 - RESOLUTION OF DISPUTES

9.01 Without restricting the generality or extent of the indemnities contained in Articles 4 and 8 and without altering the obligations of the parties under Articles 4 to 8 of this Environmental Indemnity Agreement, in the event that the parties are unable to agree with respect to the nature and extent of any Remedial Work or other measures required to settle an Environmental Liability or potential Environmental Liability, or determine the quantity and nature of Remedial Work which should be done during the conduct of any improvement or expansion referred to in Article 6 hereof, or the amount of or allocation of responsibility for costs in connection with any of the foregoing, including professional fees and disbursements, it is agreed that any such unresolved issue or issues and any other claim or dispute arising out of or in connection with this Environmental Indemnity Agreement other than any claim or dispute pertaining to a question of public law, shall be submitted by the parties hereto to binding arbitration pursuant to the Arbitration Act, R.S.N., 1990, c. A-6, as amended, or any succeeding legislation.

ARTICLE 10 - NOTICES

10.01 All notices given pursuant to this agreement shall be in writing and, if to the Corporations or Her Majesty shall be given by transmitting the same by facsimile, or delivering the same to Her Majesty at the following
facsimile number or address:

Her Majesty in Right of Newfoundland
C/O Department of Industry, Trade
and Technology
P.O. Box 8700
4th Floor, West Block
Confederation Building
St. John’s, Newfoundland
A1B 4J6

Attention: Deputy Minister

and if to FGML shall be given by transmitting the same by
facsimile or delivering the same to FGML at the following
facsimile number or address:

FGML
C/O Friede Goldman Marystown Ltd.
Ville Marie Drive
P.O. Box 262
Marystown, Newfoundland
A0E 2M0

Attention: Manager

Facsimile: (709) 279-1408

and to:

White, Ottenheimer & Baker
Barristers & Solicitors
P.O. Box 5457, Station C
6th Floor, Baine Johnston Centre
St. John’s, Newfoundland
A1C 1W4

Attention: Charles White, Q.C. and/or
Gregory W. Dickie

Facsimile: (709) 722-9210
10.02 Any notice being delivered or transmitted by facsimile shall be deemed to have been given or made on the date on which it was delivered or transmitted.

10.03 The address for any notice of a party hereunder may be changed by written notice given in the manner hereinbefore prescribed. Notices shall be effective upon being given or when deemed to have been given.

10.04 Nothing in this Environmental Indemnity Agreement is intended to impose, nor should anything be construed as imposing, upon Her Majesty any liability other than liability respecting Remedial Work, notwithstanding any provisions to the contrary.

IN WITNESS WHEREOF the parties have executed these presents in accordance with their respective rules and regulations this 31st day of December, A.D., 1997.

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND

[Signature]

WITNESS
FRIEDE GOLDMAN MARYSTOWN LTD.

NEWFOUNDLAND OCEAN ENTERPRISES LTD.

MARRYSTOWN SHIPYARD LIMITED