SUPREME COURT OF NOVA SCOTIA
Citation: *Sorflaten v. Nova Scotia (Environment)*, 2018 NSSC 55

Date: 20180320
Docket: Hfx No. 466745
Registry: Halifax

Between:

Lydia Sorflaten, Fred Blois, Jim Harpell,
Kendall McCulloch and Allan Sorflaten

Applicants

v.

Nova Scotia Minister of Environment, The Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia, and Lafarge Canada Inc., a body corporate

Respondents

DECISION

Judge:	The Honourable Justice James L. Chipman
Heard:	March 6, 2018
Written Decision:	March 20, 2018
Counsel:	William L. Mahody, Q.C. and Jaimie Tax for the Applicants Sean Foreman for the Respondent Nova Scotia Minister of Environment John A. Keith, Q.C., and Jack Townsend for the Respondent Lafarge Canada Inc.

By the Court:

Introduction

[1] The Applicants seek judicial review of the Nova Scotia Minister of Environment's July 6, 2017 decision approving Lafarge Canada Inc.'s pilot project at its cement plant in Brookfield, Colchester County.

[2] The Applicants filed their Notice for Judicial Review on August 11, 2017 setting out four grounds for review. The Respondents filed Notices of Participation and the hearing was set for March 6 and 7, 2018.

[3] In advance of the judicial review hearing, the Applicants made a motion to introduce opinion evidence from toxicologist Dr. Douglas J. Hallett. The motion was heard on December 14, 2017 and in a written decision released on January 18, 2018, the motion was dismissed.

[4] In Justice Boudreau's decision – *Sorflaten v. Nova Scotia (Environment)*, 2018 NSSC 7 – she outlines the background of the matter as follows:

> 4. The respondent Lafarge operates a cement plant in Brookfield, Nova Scotia. Over the past few years the company has developed an interest in the use of scrap tires as a fuel source in their plant. Starting in 2016, in conjunction with Dr. Mark Gibson of the Department of Process Engineering and Applied Science at Dalhousie University, Lafarge began development of a pilot project for doing so. The following steps were undertaken:
>
> > 1. August 16, 2016: a meeting between Lafarge and representatives of Ecology Action Nova Scotia.
> >
> > 2. September 28, 2016: a meeting between Lafarge and local area residents (including some of the applicants) where concerns were raised and discussed; a press release was then sent to advise of the next public meeting.
> >
> > 3. 1470 postcards were sent to area residents about the next public meeting, as well as notices in area newspapers.
> >
> > 4. October 20, 2016: a public meeting with area residents was held. A presentation was made by Dr. Mark Gibson about his research in this area; further discussion was had and a further follow-up meeting was scheduled.
> >
> > 5. December 15, 2016: Lafarge contacted the Department of Environment and provided them with a draft report, seeking to know the environmental assessment requirements of the Department.

6. January 26, 2017: the Department advised Lafarge that a full environmental assessment process was required pursuant to Part IV of the Environment Act. A further public meeting took place, where some information display boards were presented, describing the intention of Lafarge to apply for necessary approval and proceed with the project.

7. February 7, 2017: Lafarge and Dr. Gibson met with representatives of Sipekne'katik First Nation to discuss the project; they also met with Council for the Municipality of the County of Colchester.

8. March 16, 2017: Lafarge submitted an Environmental Assessment Registration Document to the Minister of the Environment. The Minister confirmed that the document met the minimum requirements under the regulations and it was "registered" on March 23, 2017.

9. Public notice of such registration was given in local newspapers, along with a request for written comments from the public, to be addressed to the Nova Scotia Department of the Environment.

10. Five submissions were received as a result of this public notice, but none from any of the applicants herein.

11. Further consultation was undertaken with First Nations communities and 8 other departments and agencies of the federal and provincial governments.

12. May 10, 2017: Nova Scotia Environment staff reported to the Minister and recommended that an Environmental Assessment Approval be issued for the project. Meetings and briefings were held in May 2017 and June 2017 to further discuss the project.

13. July 6, 2017: the Minister of the Environment approved the project, and provided the following written decision:

The environmental assessment of the proposed Lower Carbon Fuel: Tire Derived Fuel (TDF) System, in Colchester County has been completed.

This is to advise that I have approved the above project in accordance with Section 40 of the Environment Act, S.N.S., 1994-95 and subsection 13 (1) (b) of the Environmental Assessment Regulations, N.S. Reg. 348/2008, made under the Act. Following a review of the information provided by Lafarge Canada Inc. and the information provided during the government and public consultation of the environmental assessment, I am satisfied that any adverse effects or significant environmental effects of the undertaking can be adequately mitigated through compliance with the attached terms and conditions.

This approval is subject to any other approvals required by statute or regulation, including but not limited to, approval under Part V of the Nova Scotia Environment Act (Approvals and Certificates section).

5. This decision is the subject of the applicants' application for judicial review, which hearing will be held in the normal course. I should note that there appears to be no dispute that the appropriate standard of review at that judicial review hearing will be "reasonableness"; i.e., was the decision within a range of reasonable outcomes.

6. Given that the Minister's decision references the Nova Scotia Environment Act, I find it appropriate to now reference it myself, specifically its purposes and principles:

> 2. The purpose of this Act is to support and promote the protection, enhancement and prudent use of the environment while recognizing the following goals:
>
> (a) maintaining environmental protection as essential to the integrity of ecosystems, human health and the socio-economic well-being of society;
>
> (b) maintaining the principles of sustainable development, including
>
> > (i) the principle of ecological value, ensuring the maintenance and restoration of essential ecological processes and the preservation and prevention of loss of biological diversity,
> >
> > (ii) the precautionary principle will be used in decision-making so that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation,
> >
> > (iii) the principle of pollution prevention and waste reduction as the foundation for long-term environmental protection, including (A) the conservation and efficient use of resources, (B) the promotion of the development and use of sustainable, scientific and technological innovations and management systems, and (C) the importance of reducing, reusing, recycling and recovering the products of our society,
> >
> > (iv) the principle of shared responsibility of all Nova Scotians to sustain the environment and the economy, both locally and globally, through individual and government actions,
> >
> > (v) the stewardship principle, which recognizes the responsibility of a producer for a product from the point of manufacturing to the point of final disposal,
> >
> > (vi) the linkage between economic and environmental issues, recognizing that long-term economic prosperity depends upon sound environmental management and that effective environmental protection depends on a strong economy, and

> (vii) the comprehensive integration of sustainable development principles in public policy making in the Province;
>
> (c) the polluter-pay principle confirming the responsibility of anyone who creates an adverse effect on the environment that is not de minimis to take remedial action and pay for the costs of that action;
>
> (d) taking remedial action and providing for rehabilitation to restore an adversely affected area to a beneficial use;
>
> (e) Government having a catalyst role in the areas of environmental education, environmental management, environmental emergencies, environmental research and the development of policies, standards, objectives and guidelines and other measures to protect the environment;
>
> (f) encouraging the development and use of environmental technologies, innovations and industries;
>
> (g) the Province being responsible for working co-operatively and building partnerships with other provinces, the Government of Canada, other governments and other persons respecting transboundary matters and the co-ordination of legislative and regulatory initiatives;
>
> (h) providing access to information and facilitating effective public participation in the formulation of decisions affecting the environment, including opportunities to participate in the review of legislation, regulations and policies and the provision of access to information affecting the environment;
>
> (i) providing a responsive, effective, fair, timely and efficient administrative and regulatory system;
>
> (j) promoting this Act primarily through non-regulatory means such as co-operation, communication, education, incentives and partnerships.

[5] Following the release of Justice Boudreau's decision, the parties and the Court agreed to a filing schedule as follows:

- Applicants' pre-hearing brief – February 6, 2018
- Respondents' pre-hearing brief – February 23, 2018
- Applicants' reply brief – February 28, 2018

[6] The filing dates were adhered to but additionally on February 6, the Applicants filed an affidavit of one of their lawyers, Jaimie Tax. Ms. Tax's affidavit, sworn on the same date it was filed, attached 7 papers referenced in a July 21, 2015 report (the "Dalhousie Report") contained at tab 37 of the Record.

For the reasons articulated in my oral decision on the day of the hearing I struck out Ms. Tax's affidavit along with the 7 articles. In the result, and consistent with the judicial review process, I have considered the briefs, authorities, oral argument and Record. The latter consists of 38 tabbed documents and was filed under the title, "Record of the Respondent (Nova Scotia Minister of Environment)" on September 26, 2017.

Issues

[7] The Applicants' original four grounds of review were refined through their briefs and oral argument. They argue that the Minister's decision is unreasonable because:

1. There is no evidence to support the project that was actually approved; and
2. The Minister failed to consider relevant factors as required by the *Environment Act*, S.N.S., 1994-95 ("*Environment Act*") and the *Environmental Assessment Regulations*, N.S. Reg. 348/2008 ("*Regulations*").

[8] The Applicants say that based on the facts disclosed in the Record, the Minister's decision falls outside the range of reasonable outcomes. Accordingly, they submit the Court should set aside the decision and remit the matter back to the Minister for reconsideration.

Standard of Review – Reasonableness

[9] A majority of the Supreme Court of Canada defined "reasonableness" in *Dunsmuir v. New Brunswick*, 2008 SCC 9:

> 47. Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[10] Central to the concept of "reasonableness" is the concept of "deference". As the majority noted at para. 48 of *Dunsmuir*, deference in this context requires a respectful attention to the reasons offered – or which could be offered – in support of a decision. The majority decision continued:

> 49. Deference in the context of the reasonableness standard therefore implies that courts will give due consideration to the determinations of decision makers. As Mullan explains, a policy of deference "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime": D. J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 C.J.A.L.P. 59, at p. 93. In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

[11] The Supreme Court of Canada elaborated upon the proper application of the reasonableness standard in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. The Court clarified the relationship between reasons, and the Record which supports those reasons. In particular, the Court confirmed that the proper approach is broad-based, in which the analysis is not focused solely on the reasons, but rather whether the result is reasonable in light of the Record. At para. 14 Justice Abella, writing for the Court stated:

> 14. Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses -- one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, Judicial Review of Administrative Action in Canada (loose-leaf), at s. 12:5330 and 12:5510). It is a more organic exercise -- the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

[12] In *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, Justice Abella (on behalf of the majority) affirmed the approach as follows:

> 54 The board's decision should be approached as an organic whole, without a line-by-line treasure hunt for error (*Newfoundland Nurses*, at para. 14). In the absence of finding that the decision, based on the record, is outside the range of reasonable outcomes, the decision should not be disturbed. In this case, the board's conclusion was reasonable and ought not to have been disturbed by the reviewing courts.

[13] This approach is consistent with recent jurisprudence from our Court of Appeal. In *Canadian Union of Public Employees, Local 3912 v. Nickerson*, 2017 NSCA 70, Justice Fichaud described the role of the Court in the following terms in the context of a review for reasonableness:

> 35. The reviewing judge's perspective is wide-angled, not microscopic. The judge appraises the reasonableness of the "outcome", with reference to the tribunal's overall reasoning path in the context of the entire record. The judge does not isolate and parse each phrase of the tribunal's reasons, and then overturn because the judge would articulate one extract differently.

[14] In this judicial review the relevant statutory regime is the *Environment Act* and *Regulations*. In *Bay of Fundy Inshore Fisherman's Association v. Nova Scotia (Environment)*, 2017 NSSC 96, Justice Robertson considered the same statutory regime when reviewing a decision of the Minister of Environment. After referring to *Dunsmuir* and *Newfoundland and Labrador Nurses' Union*, Justice Robertson cited this quote from Justice Wood in *Specter v. Nova Scotia (Minister of Fisheries and Aquaculture)*, 2012 NSSC 40:

> 77. It is not the function of this Court, sitting in appeal of the Minister's decision, to review the scientific and technical evidence, and resolve any inconsistencies or ambiguities which might exist. To do so would turn this Court into an "academy of science" as that term has been used in other cases. Such an approach is inappropriate. It is the function of the Minister and his staff to review the scientific information and determine whether it supports the particular application. It is the role of this Court to assess that decision based on the standard of reasonableness and not to second guess the Minister's interpretation of the evidence.

[15] In another recent case considering a judicial review of a provincial Minister's decision, *3076525 Nova Scotia Ltd. v. Nova Scotia (Minister of Environment)*, 2015 NSSC 137, Justice Arnold noted as follows:

> 53. The purpose of this statutory regime is relevant to any consideration of the reasonableness of the Ministerial Order. The purpose of the EA impacts on the interpretation of the relevant statutory provisions. The purpose can also affect the overall assessment of whether the Minister created an Order outside the range of possible outcomes. If the Minister has made an Order contrary to the purpose of the statutory regime such Order is more likely to be found outside of the range of possible outcomes.

[16] As a final point in my discussion of the jurisprudence surrounding reasonableness, I note that the Supreme Court of Nova Scotia has recently affirmed that a finding of fact must be based on some evidence supporting the fact. In *Amero v. Nova Scotia (Community Services)*, 2017 NSSC 231, Justice Muise stated:

> 8. A finding of fact will be reasonable if there is some evidence reasonably supporting it: *Bresson v. Nova Scotia (Community Services)*, 2016 NSSC 64, at para 49; and, Sara Blake, Administrative Law in Canada, 5th Edition (Toronto: LexisNexis, 2011), at page 219.

Discussion of Issue 1

The Applicants' Position That There Is No Evidence To Support The Project That Was Actually Approved.

[17] Picking up on *Amero*, the Applicants assert that the Minister's decision is unreasonable on the basis that there is no factual support for the material conclusion reached by the Minister. In the main, the Applicants say that whereas the decision allows for a pilot project to burn whole tires, mid-kiln, there is nothing in the Record that discloses an environmental assessment was carried out in respect of this project. In their brief the Applicants put it this way:

> 39. In fact, there are two distinct projects represented in the Record and the Minister's Decision:
>
> > I. Project A – This project is the undertaking actually applied for by Lafarge and approved by the Minister. Project A involves the burning of whole tires at the mid-point of the kiln. The Record contains no analysis or estimate of the environmental impacts associated with Project A.

> II Project B – This project involves the insertion of tire crumbs and pieces of tires into the hottest area of the kiln – the same are where coal and other materials are currently inserted. All of the evidence as to environmental impacts relates to Project B, however the undertaking approved is in no way consistent with Project B.
>
> 40. Lafarge's Tire Burning Undertaking (Project A) proposes a mid-kiln injection system, whereby whole tires will be fed into the mid-point of the kiln. There is no environmental impact analysis or air dispersion modelling in the Record relating to the burning of whole tires at the mid-point of the kiln.
>
> 41. The project supported by the scientific data relating to the burning of tire crumb or shredded tires into the base of the kiln. The scientific evidence that exists in the record relates to this project. However, this is not the project that was approved by the Minister.

[18] I pause at this point to note that the Record does not use the phraseology of "Project A" and "Project B". In any event, scrutiny of the Record is obviously critical in determining whether or not the Applicants' submission is meritorious. Having said this, given the direction of the Supreme Court of Canada and our Court of Appeal, I must be careful to take a wide-angled approach. In so doing, I shall appraise the reasonableness of the outcome with reference to the Minister's reasoning path in the context of the entire Record.

[19] The focus of the Applicants' written and oral submissions is that the Minister (and Lafarge) relied extensively on the Dalhousie Report. They assert that the Dalhousie Report considers scientific literature which relates to the burning of tire crumb or shredded tires at very high temperatures or through pyrolysis (a method which is an alternative to the combustion process). They say that the relied upon literature does not address the project approved by the Minister. In the result, they say there is no scientific evidence in the Dalhousie Report, or anywhere else in the Record, to support the Minister's decision.

[20] Based on my reading of the Record, I cannot accept the Applicants' arguments. For one thing, the Dalhousie Report (tab 37) is but one of the 38 tabs of materials. As I will review, there are several references within the other tabs to Lafarge's plan to obtain Tire Derived Fuel ("TDF") by burning whole tires in the middle of their kiln.

[21] I would add that even when I examine the Dalhousie Report in isolation, I find Dr. Mark Gibson (the Associate Professor at the Department of Process Engineering and Applied Science at Dalhousie University who submitted the Dalhousie Report) referenced the differences between shredded / tire crumb and

whole tires in the process. For example, the Dalhousie Report specifically discusses alternative fuel tires at pp 7, 8 as follows:

> 2 Literature Review of Tires as Fuel
>
> 2.1 Brief overview of used tire-recycling approaches
>
> ….
>
> As an alternative fuel tires are used in cement kilns, paper and pulp mills, electric utilities, and industrial boilers in parts of Europe, Asia, United States and Canada. Tires as fuel are most effective in cement kilns and paper and pulp mills since no pre-treatment of the tires is required. In electric utilities and industrial boilers, the tires must be shredded prior to being processed for fuel. Specific facilities for converting tires to energy are cost prohibitive due to the initial investment costs (EPA 2012).
>
> [emphasis added]

[22] I take the above to mean that tires need not be shredded or crumbled (i.e., the notion of "pre-treatment") when they are used as fuel in pulp and paper mills, and cement kilns. The Lafarge plain in Brookfield is obviously a cement kiln. In any event, when I read the Dalhousie Report in its entirety, I am of the view that Dr. Gibson was "alive" to TDF from whole tires burned mid-kiln, which is what the Minister ultimately approved.

[23] Various references to the mid-kiln combustion of whole tires appear in the other 37 tabs. For example, Lafarge submitted this project description in a letter addressed to the Nova Scotia Department of Environment on December 15, 2016:

> 3 Project Description
>
> The proponent intends to operate a new Tire Derived Fuel (TDF) system on the Brookfield Cement Plant's kiln # 2 which will use scrap tires by mid-kiln injection. In a mid-kiln system, tires are fed whole; they are not shredded, chipped, or otherwise processed prior to co-processing in the cement manufacturing process. It is anticipated that roughly 20 tonnes per day or up to 5200 tonnes of use tires per year will be used in place of fossil fuels at Brookfield. The used tires will be delivered to the plan by truck and unloaded on site for use in Kiln 2. The system consists of conveyors and controls to feed 2-3 tires per kiln rotation to an injection point mid-way down the kiln where they instantly ignite and non-combustible fractions drop to the kiln floor for incorporation into the final product.
>
> Used tires will replace a portion of the coal and petcoke in use today, the traditional fuel used in the manufacture of Portland cement. The active ingredient of concrete, Portland cement is a closely controlled chemical combination of

> calcium, silicon, aluminum, iron and small amounts of other ingredients to which gypsum is added in the final grinding process to regulate the setting time of the concrete.
>
> A cement kiln has important attributes that make it a safe and desirable means of tire re-use. First is the extreme high temperatures within the cement kiln where the tire is subjected to temperatures over 1,600 degrees C. Another attribute is the long residence times that material within the kiln is subjected to this high temperature. The combination of these factors, plus the excess oxygen present, results in extremely high combustion efficiencies. Further, no byproducts are formed. The rubber and other combustible portions of the scrap tires replace fossil fuels and the non-combustible portions, such as iron (eg steel belts) and silica combine with the other ingredients of cement to form the final product. Finally, because no shredding is required the process uses very little energy to "process" the scrap tires for their use as fuel leading to very good results when TDF is considered from a life cycle perspective.
>
> [emphasis added]
>
> [Record, tab 3]

[24] At tab 7 appears Lafarge's March, 2017 "Environmental Assessment Registration…". The report is replete with references to the use of TDF in cement kilns, including mid-kiln injection of whole tires (see pp. 9-17; 28-30). There are similar references in Lafarge's March, 2017 "Consultation Report" (see tab 12, pp. 7, 17, 33, 34 and 38).

[25] Given my review of the Record, I find (per *Amero*) that there is ample evidence to support the factual conclusion of the Minister's decision to permit Lafarge to burn whole tires, mid-kiln, at their Brookfield Cement Plant. I would add that based on the Record this is an easily determined conclusion. The analysis does not require the Court to become bogged down in an "academy of science" review. In taking a wide-angled perspective it is apparent that there is no support for the Applicants' primary ground on this judicial review. When I evaluate the Minister's decision as an organic whole, I find it easily passes muster and must be regarded as an outcome within the range of reason.

Discussion of Issue 2

The Applicants' Position That the Minister Failed To Consider Relevant Factors As Required By The Environment Act and Regulations.

[26] In setting out their position on this ground, the Applicants again distinguish between Projects A and B:

> 59. For each of the enumerated factors, the only project considered by the Minister was Project B – burning of crumb or shredded tire at very high temperatures. None of the enumerated factors have been considered in light of Project A – the undertaking actually applied for and approved.
>
> 60. The *Regulations* require that Minister consider the nature and sensitivity of the surrounding area (s. 12(a)) and the potential and known adverse effects of environmental effects of the proposed undertaking (s. 12(e)).
>
> 61. The factors enumerated in s. 12 of the *Regulations* are important to ensure that the Minister considers all the consequential impacts of allowing an Undertaking to proceed.

[27] As reviewed in the previous section, I have found the Record does not support the Applicants' attempted distinction. Nevertheless, out of an abundance of caution, I will now discuss the Applicants' second ground for judicial review of the reasonableness of the Minister's decision.

[28] When quoting from Justice Boudreau's decision, I previously set out (see pp. 4,5 *infra*) s.2 of the *Environment Act* which describes the purpose of the statute. The primary purpose of the *Environment Act* is not solely to "protect" the environment. The stated purpose of the *Act* is to support and promote the protection, enhancement, and prudent use of the environment, while recognizing a list of goals outlined in s. 2(a) through (j), including recognizing "the linkage between economic and environmental issues" and "encouraging the development and use of environmental technologies, innovations and industries". In any event, when I return to the purpose of the *Environment Act*, I am of the view that the polycentric goals make environmental regulation subject to the greatest deference from the Court. In my view, it is for the Minister tasked with making the decision to consider the various policy choices. Such decisions require a balancing of potentially competing interests in meeting the goals of the *Act*.

[29] The Applicants refer to the May 10, 2017 "Advice and Recommendation to the Minister" document contained at tab 36. They ask the Court to focus on the assessment of the following areas offering "no recommendation":

> **3.2 Surface and Ground Water Resources**
>
> No assessment of surface or ground water conditions was provided by the proponent. The Registration document was confined to air and waste emissions as well as transportation effects.

> NSE Water Management Unit commented that no detailed surface or ground water information as provided in the assessment.
>
> **Recommendation**
>
> There are no recommendations for this section.
>
> **3.3 Wetlands**
>
> No wetland delineation or characterization was completed for this environmental assessment as no impact are anticipated.
>
> **Recommendation**
>
> There are no recommendations for this section.
>
> **3.4 Flora and Fauna**
>
> No wildlife or flora assessments were undertaken for the Registration Document as project activities are anticipated to occur within the existing footprint.
>
> **Recommendation**
>
> There are no recommendations for this section.

[30] Having considered the entirety of the Record, I am of the view that the suggestion that the Minister failed to consider relevant factors is without merit. Section 12 of the *Regulations* outlines various general categories of information that the Minister must consider in formulating any decision pursuant to s.34 of the *Environment Act* and how to proceed further, once an undertaking has been registered pursuant to s.33 of the *Act*.

[31] The Record is clear that the Environmental Assessment Registration Document filed by Lafarge to commence the process was reviewed by Department of Environment staff. The Minister did not require additional information to be filed for the process to continue. Although ss. 3.2, 3.3 and 3.4 of the "Advice and Recommendation to the Minister" confirm that there are no specific recommendations provided, there is nothing to support the notion that the s.12 requirements were not considered. Indeed, I find that all of the general categories of information referenced by s.12 of the *Regulations* are contained within the Record.

[32] The Applicants have also raised concerns with regard to alleged failure to address surface or ground water issues. They point to comments provided by a Nova Scotia Department of Environment Water Quality Specialist regarding no assessment of surface water impacts provided in the Environmental Assessment Registration Document (tab 22). When I review the entirety of the document at tab 22, I find that there is further reference to the following: "However, the nearest surface water supplies are thought to be in a separate watershed and therefore not at risk of impact from this proposed project". The memorandum author also notes that such issues are already included with Lafarge's existing industrial approval for operation of the cement plant.

[33] In the result, I find that the second ground for judicial review must fail. Review of the Record confirms there is evidence of the Minister having considered all relevant factors in keeping with the *Environment Act* and *Regulations*.

Conclusion

[34] When I apply the reasonableness standard as articulated by the Supreme Court of Canada and our Court of Appeal, I find the application for judicial review must be dismissed. As I have gone over in detail, there was ample evidence for the essential findings of fact behind the Minister's decision to approve Lafarge's pilot project. As outlined by Justice Boudreau (see, para. 4, *infra*), the Record confirms that Nova Scotia Environment staff conducted a preliminary review of Lafarge's materials. Staff concluded that they met the minimum requirements under the *Regulations*, with the result that the undertaking was registered for environmental assessment purposes effective March 23, 2017. Copies of Lafarge's applications were made available for review by the public at a number of locations. First Nations in the area were advised of the registration, and Lafarge notified the public of the registration and the locations at which the application could be reviewed by placing advertisements in area newspapers. The public and the First Nations were advised that they had until April 24, 2017 to submit any comments to Nova Scotia Environment in response to the application. The Record reflects that comments were ultimately received from one First Nation and the Native Council of Nova Scotia, as well as from five members of the public.

[35] The Department of Environment also received comments from several other governmental officials and departments. After feedback was received, staff supplied the Minister with a May 10, 2017 report and recommendations regarding the project. The Record discloses that staff outlined the factors the Minister had to

consider under s.12 of the *Regulations*, as well as his decision-making option under s.13.

[36] The Nova Scotia Department of Environment staff concluded that the project could be established and operated without adverse effects or significant adverse effects, provided it was operated in compliance with their recommended conditions. Accordingly, staff recommended that the Minister exercise his authority under s.13(1)(b) of the *Regulations*, and approve the undertaking, subject to a number of specified conditions.

[37] By letter dated July 6, 2017, the Minister advised Lafarge that he had approved the project. In light of the information provided by Lafarge and collected from government and the public during the assessment process, the Minister was satisfied that any adverse effects or significant environmental effects could be adequately mitigated through compliance with terms and conditions attached to the letter.

[38] Returning to the purpose of the *Environment Act*, given the Record, I am satisfied that the Minister employed the precautionary principle. That is to say, the process involved consideration and evaluation of the risks. The Lafarge pilot project has been approved by the Minister of Environment and the Minister is entitled to the Court's deference, in making what I have determined to be a reasonable decision.

[39] In the result, I hereby dismiss the Application with costs to the Respondents. If the parties are unable to agree on costs, I will receive written submissions within 30 days of this decision.

Chipman, J.