

## **DOCUMENT “A”**

### **MINISTER’S DETERMINATION CONDITIONS OF APPROVAL**

Pursuant to Regulation 87-83 under the Clean Environment Act

**May 29, 2009**

File Number: 4561-3-1191

---

1. In accordance with section 6(6) of the Regulation, it has been determined that the undertaking may proceed following approval under all other applicable acts and regulations.
2. This Determination supersedes the April 27, 2009 Determination issued to the Ocean Spray Agriculture Supply Canada Corp for the Ocean Spray Cranberry Development located on PIDs 40301764, 40356883, and 40152449.
3. Commencement of this undertaking must occur within three years of the date of this Determination. Should commencement not be possible within this time period the undertaking must be registered under the *Environmental Impact Assessment Regulation (87-83) – Clean Environment Act* again, unless otherwise stated by the Minister of Environment.
4. The proponent shall implement measures to require adherence by all contractors, sub-contractors and workers on this project, to all obligations, commitments, monitoring and proposed mitigation measures presented in the EIA registration document (submitted December 19, 2008), as well as all those identified in all subsequent correspondence during the Determination review. In addition, the proponent shall also submit a summary table detailing the status of all obligations, commitments, monitoring and proposed mitigation measures to the Manager of the Project Assessment Section, New Brunswick Department of Environment (NB ENV), every 6 months from the date of this Determination until the construction of all Project Phases are complete and the Manager is satisfied that all obligations, commitments, monitoring and proposed mitigation measures have been completed.
5. Field surveys of South Lake, tributaries HA10 and HA12 of Black Brook and tributaries HA6 and HA7 of Salmon Brook will need to be completed and the results submitted to the Department of Fisheries and Oceans (DFO). No work potentially affecting fish or fish habitat in South Lake, tributaries HA10 and HA12 of Black Brook and tributaries HA6 and HA7 of Salmon Brook shall be carried out prior to receiving a decision from the DFO regarding potential impact to fish or fish habitat. Please contact Fernand Savoie, Habitat Biologist, Fisheries and Oceans Canada, at (506) 851-2365 for additional information.
6. The proponent must make arrangements with the Archaeological Services Section, New Brunswick Department of Wellness, Culture and Sport, to meet with Archaeological Services Section staff on-site to delineate the historical resource “crash site remains of Canadian Forces Mk V F-86 jet fighter (1959)”. No impacts to this resource from the project construction or operation will be permitted.

The resource shall be clearly marked and fenced off prior to construction. The fence shall be maintained during the construction and operation Phases of the Project.

7. A weekly construction schedule including identification of daily hours of construction operation as well as a weekly progress report must be provided to the NB ENV, Moncton and Miramichi Regional Offices as well as to the Project Assessment Section Manager. All Copies of the initial construction schedule must be submitted a minimum of fourteen (14) calendar days prior to the commencement of construction.
8. No works associated with the Project Phase one (1) shall encroach within 50 metres of the known occurrences of *Listera australis* (as identified in the Environmental Impact Assessment Registration for this undertaking). Prior to the commencement of construction, a diagram clearly demonstrating that any works associated with the Project Phase one (1) will not encroach within 50 metres of the known occurrences of *Listera australis* must be provided to the Manager, Project Assessment Section, NB ENV.
9. Prior to the commencement of construction of Project Phases two (2), three (3), four (4), and five (5) of this undertaking, appropriate botanical surveys carried out during appropriate periods must be carried out to verify the presence and document the locations of any rare or endangered species that may be impacted by this project. For additional information regarding the botanical survey requirements, please contact the Manager of the Species at Risk Program, New Brunswick Department of Natural Resources (NB DNR).
10. Prior to the commencement of construction of Project Phases two (2), three (3), four(4), and five (5), of this undertaking, assessments showing the potential interactions between the project development (construction and operation) and any rare or endangered species must be submitted to the Manager of the Project Assessment Section, NB ENV, for review. The assessments must also demonstrate what mitigation measures will be put in place (where required) to ensure there are no significant impacts to any rare or endangered species. In addition Project Phases, for which a corresponding assessment of the potential interactions between the project development and any rare or endangered species is being reviewed, shall not commence until the assessment is approved.
11. Prior to commencement of any construction on Crown Lands under the Administration and Control of the NB DNR including but not limited to the water intake structure for Lac Després, pipeline structures for the current and future Project Phases, appropriate permissions for easements must be received from NB DNR. Easement applications must be completed and submitted to the Land Use Application Service Centre (LUASC) where appropriate. For additional information on land use tenures or application packages, please contact the Land Use Application Service Centre (LUASC) at 1-888-312-5600 or by visiting NB DNR's website at: [www.gnb.ca/0263](http://www.gnb.ca/0263)
12. A monitoring plan to verify the potential presence of project related pesticide residues as well as nutrient loading within the receiving environment must be submitted to the manger of the Project Assessment Section, NB ENV for review and approval. No application of pesticides or fertilizers shall take place until such a time the pesticides and nutrient monitoring plan is approved. The plan shall identify the frequency of sampling, sampling parameters, and thresholds for corrective action, as well as rationale for any future frequency of monitoring or monitoring parameter modifications.

13. Prior to commencement of any construction activities within 30 metres of any watercourse or wetland, the proponent must obtain a Watercourse and Wetland Alteration Permit from the New Brunswick Department of Environment. If additional information is required, please contact the Manager of the Watercourse and Wetlands Alteration Program, NB ENV.
14. Prior to commencement of any water withdrawal from Lac Després or South Lake as well as the impounding of South Lake, a detailed plan demonstrating how the water quality standards will be maintained and managed in accordance with the requirements of the *Water Classification Regulation* under *Clean Water Act* must be submitted to the Manager of the Project Assessment Section, NB ENV, for review and approval. In addition, water withdrawal from Lac Després or South Lake as well as the impounding of South Lake shall not commence until the plan is approved. For additional information on the requirements of the *Water Classification Regulation* under *Clean Water Act*, please contact the Manager of the Water Planning Section, NB ENV.
15. Prior to commencement of construction of Project Phases three (3), four (4), and five (5), assessments of all potential interactions between all environmental features and the Project (construction and operation) including a detailed operational water balance and cumulative impacts analysis must be submitted for review and approval to the Manager, Project Assessment Section, NB ENV. The assessment must include a detailed list of all potential environmental impacts, demonstrate what mitigation measures will be put in place (where required), a statement detailing the significance of the predicted residual impacts (after mitigation) and what monitoring will be put in place to verify the impact predictions. In addition, Project Phases, for which a corresponding assessment is being reviewed, shall not commence until an approval of the assessment has been received from the Manager, Project Assessment Section, NB ENV.
16. In accordance with the objectives of the New Brunswick Wetland Conservation Policy (NB DNR/NB ENV 2002), a plan to identify, restore and or rehabilitate previously impacted wetlands within the development (lease) area, developed in consultation with NB ENV, must be implemented as part of this project. The plan must be initiated prior to the ground disturbance activities and must be submitted to the Manager of the Project Assessment Section, NB ENV for review and approval within 6 months from the date of this Determination. The plan must detail what activities will be carried out to identify appropriate rehabilitation and restoration projects including milestones for the identification and completion of the projects. The approved restoration and or rehabilitation plan implementation must be completed prior to the commencement of construction of the cranberry beds associated with Project Phases three (3), four (4) or five (5), whichever is carried out first.
17. Prior to commencement of the Project construction, the proponent must submit, to the Manager, Project Assessment Section, NB ENV, a joint statement with the First nations adjacent to the Project area (Elsipogtog First Nation, Metepenagiag First Nation, Indian Island First Nation, Buctouche First Nation, and Eel Ground First Nation), that acknowledges that the proponent has committed to working with these First Nations to identify and address the environmental aspects of the Project; the impacts on the Aboriginal and Treaty rights of these First Nations that might be caused by the Project; and the socio-economic impacts of the Project on these First Nations.
18. A Traditional Knowledge (TK) study will be carried out in a manner that will meet the requirements of the Aboriginal Affairs Secretariat for review and approval. The TK study must be implemented within the 1<sup>st</sup> construction season associated with this undertaking. The TK study report

must be submitted to the Aboriginal Affairs Secretariat for review and approval within 6 months of the commencement of construction associated with this undertaking. In addition, construction of the cranberry beds associated with Project Phases three (3), four (4) or five (5), whichever is carried out first, shall not be commenced until such a time the TK study report is approved.

19. An Environmental Management Plan (EMP) must be submitted to the Manager of the Project Assessment Section, NB ENV, and must be reviewed and approved by the Manager prior to commencement of construction. The EMP may be submitted in phases to be completed as the various project activities become more defined. However, only activities described within a Project Phase that have an approved EMP may be carried out. The EMP must include the appropriate site specific environmental protection plans, linking mitigation to location, monitoring plans (compliance and environmental effects monitoring), and contingency plans.
20. The Environmental Effects Monitoring (EEM) plan portion of the EMP (*Condition 19*) must include details demonstrating how predicted project related environmental effects will be verified. The plan must include, however, is not limited to, monitoring for pesticide residues within the receiving environment, in-stream total suspended sediments (TSS), effects to Després and South Lakes (including monitoring regarding the *Water Classification Regulation, Condition 5*, as well as water levels), effects to any endangered or rare species (including effects to *Listera australis*), stream maintenance flows and groundwater levels (including verifying the typical distances the ditches will affect water removal from the bog under various pumping and non-pumping conditions). The EEM plan may be submitted in phases that correspond to the potential effects associated with each Project Phase of the undertaking. However, appropriate EEM plans must be submitted prior to the commencement of construction of any Project Phase unless otherwise stated in other conditions herein.
21. If it is suspected that remains of archaeological significance are discovered during construction, all activity shall be stopped near the find and the Resource Manager of the Archaeological Services Section, NB Department of Wellness, Culture and Sport, shall be contacted at (506) 453-2756 for further direction.
22. Use of pesticides must follow manufacturer's application specifications as approved by the Pest Management Regulatory Agency of Health Canada (PMRA).
23. Petroleum or chemical products shall not be stored within 100 metres of any potable water supplies.
24. Refuelling and maintenance of equipment must take place in designated areas, on level terrain, a minimum of 30 m from any surface water bodies and potable water supply wells, on a prepared impermeable surface with a collection system to contain oil, gasoline and hydraulic fluids. Appropriate spill response equipment must be maintained in a readily accessible location during project construction and operation. All spills and releases shall be promptly contained, cleaned up and reported to the 24-hour emergency response line (1-800-565-1633).
25. At the end of the Project life (permanent closure of operations), the proponent must decommission the facility in accordance with all applicable acts and regulations, including the restoration of areas of wetland loss due to infill back to functional wetland.