

Concerned Residents of Frost Fish Cove

www.frostfishcove.org

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A number of issues have been reported in the local media concerning conflicts between the traditional natural environment and construction/community growth in the area of St. Margaret's Bay, HRM.

The Concerned Residents of Frost Fish Cove have identified a number of environmental policy and regulatory issues, in particular, systemic problems with Nova Scotia's septic system legislation. These relate to a specific matter of construction for sewage disposal at the water's edge in the cove, for a home constructed on a small tidal flat and former beach at 50 Indian Point Road. This has raised concerns about the pollution of the cove, involving the provincial Natural Resources and Environment departments, HRM bylaws, and also consultation from Fisheries & Oceans and Environment Canada at the federal level.

1. Environmental decisions related to the design of a septic system:

Under the On Site Sewage Disposal System Regulations of the NS Environment Act there is a multi conflict of interest built into the Level 1 Qualified Person (professional engineer) requirement where the QP1 is paid by the landowner, is the designer of system and is required to carry out an inspection of the system after installation. There are no requirements for the QP1 to have formal training in environmental assessment, water quality or sustainable development.

2. The granting of variances and the powers of the Ombudsman and Auditor General:

In the specific case, a variance was granted by the NS Department of Environment, as lead regulator, to remove set back requirements and permitting the end of the septic field to go to the water's edge. This appears to have been in violation of the Environment Act which specifies that a variance can only be granted if it is not likely to cause an adverse effect. Putting sewage effluent into the cove causes adverse effects.

A review by the provincial Ombudsman's Office, concluded in May 2008, found there were inconsistencies in the case with regard to the Environment department's handling of the regulatory requirements; however the Office has no powers of enforcement.

The Auditor General (which also has no powers of enforcement) also reviewed the provincial Environment department this year, stating that it is doing a poor job of monitoring and inspecting, with approvals being given that should not have been, and cases of no or inadequate inspection. (See links on our web site.)

3. In violation of other legislation:

The Department of Environment appears to be approving a septic system that violates the federal Fisheries Act. Section 36[3] prohibits the deposit of deleterious substances (such as sewage effluent) into fish habitat.

4. FOIPOP requirements not being met:

In July 2007, the Concerned Residents group made a request under the NS Freedom of Information Act for all information related to the on-site sewage disposal applications, approvals and investigation. Some of the requested documents are still being illegally withheld by NS Environment without exemptions, after nearly a year.

5. Environmental regulations being interpreted too narrowly:

The legislation cannot specify every possible situation. Where legislation is not specific on an issue under consideration, it leaves room for various departments to interpret too narrowly. But ignoring the intention of the legislation and making only literal interpretations allows for passing the buck by regulatory agencies, from one to another to another.

6. Need for communication between different regulatory agencies and with the public:

The regulatory agencies should be coordinated. The lead regulator needs to ensure that legislative and regulatory requirements from other agencies are satisfied as part of approvals. Other agencies should be able to intervene proactively if they are not being consulted, at least to document a potential concern.

This would also help to avoid contradictions between agencies. In this case, the public has been receiving conflicting messages from different agencies about whether the water was already contaminated or not. Aside from inconsistency between regulators, NS Environment has also given different messages at different times and from different staff on whether this sewage effluent goes into the cove.

7. Need for link in septic legislation to sustainable development and health

Regulations for on-site sewage disposal systems contain details about plumbing connections, but apparently nothing directly about sustainable development or public health. While these may be implicit, there are no direct references or requirements.

8. Enforcement and Accountability

Public servants in Canada seem to be largely immune from prosecution when breaking the law as part of their jobs. When an employee in a private organization in Canada breaks the law as part of their job, they are held accountable. Yet when provincial employees violate the Freedom of Information (FOIPOP) legislation, the Fisheries Act, or illegally grant Variances, they are apparently unaccountable and immune from prosecution. The Canadian Newspaper Association has complained publicly about this (see reference on our web site).

In Nova Scotia the Ombudsman's Office has no powers of enforcement when wrongdoing is found. Nor does the FOIPOP Review Office.

9. Environmental assessment process - difficult to trigger

Unlike the industrial-scale provincial Environmental Assessments, the federal ones can be small or large. The small federal ones are called Screening Reports and are done through the Canadian Environmental Assessment Agency, which has a Halifax office. These can be used with small construction such as an individual seawall or septic system.

However, it is extremely difficult to get an environmental assessment triggered even when conceptually it seems warranted. This would be an excellent way to proactively consider sustainable development issues, if it was more accessible.

10. Impact on other provincial policies

This construction project raised a number of issues falling under the jurisdiction of the Department of Natural Resources, including infilling of crown land below the high water mark. While already documented in the provincial GIS database, there is a *practice* of not enforcing this, even though this could have been used to trigger an Environmental Assessment. This practice was not required by the legislation and was not in the public interest in this case.

The specifics of the residents concerns - a home constructed on a small tidal flat and former beach, and construction for sewage disposal at the water's edge in the cove - are also applicable to considerations under the province's current Coastal Management Framework initiative including proposed LIDAR (Light Detection and Ranging) Mapping.