

September 27, 2010

Ontario Energy Board (OEB)
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Subject: Invitation to Review

**Draft New Edition "OEB Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario"
Board File No. EB-2010-0255**

The Lands, Resources and Consultations (LRC) branch of the Métis Nation of Ontario (MNO) upon further review of the Draft OEB Environmental Guidelines would like to submit these additional comments and concerns as a supplement to our letter dated August 30, 2010. Please find the original letter under Appendix A.

For consideration by the EOB please accept these suggested revisions, comments and questions in addition to our original concerns:

1. p. 19

- a. *It states that information concerning traditional harvesting territories of the MNO will be gathered by the prospective applicant.* The annual harvest is not only integral to the Métis way of life, it is a Métis right. The existence of Métis rights, including the right to harvest was affirmed by the Supreme Court of Canada in the September, 2003 decision in *R. v Powley*. These traditional harvesting territories protect the Métis inherent right to harvest wild game, medicinal plants, plants for food and other aspects to the Métis way of life. The guidelines should also consider recognizing the significance of portage routes, trapping lines, recreation/spirituality and burial sites to the Métis people.

2. P. 37 sec 4.3.6

- a. Revise ANSI as "Areas of Natural and Scientific Interest" rather than "Areas on Natural and Scientific Interest".
- b. *Second paragraph.* The effect of altering *wildlife corridors* and *habitat fragmentation* should be considered. Wildlife corridors are critical for the maintenance of ecological processes, including movement of animals and population viability. The clearance of native vegetation is of concern as this process may create fragmented patches that may isolate many plant and animal species, resulting in a breakdown of

ecological processes, a decline in biodiversity and local extinction of important Metis/sensitive species.

- c. *Third paragraph, second line.* Include locally significant wetlands, traditional plant use areas, sensitive or endangered vegetation (not just wildlife).

3. p. 40 sec 4.3.12

- a. There is no mention of minimum setback requirements for the project and project activities including drilling, blasting, excavation, etc. There should be set distance requirements when performing well surveys and monitoring/sampling well. These distances should be clearly defined. For example, some MTO regulations state that a well survey (including monitoring and sampling) must be completed within 500 m of the project location. Similar minimum distance requirements should apply for the well survey and monitoring.

4. p. 53 sec 5.6

- a. This section should also consider wildlife corridors. Traditional plant use areas should also be considered.

5. p. 57 sec 5.8.1

- a. *Last paragraph, line 8.* Ontario Reg. 153/04 has been updated and amended to Ontario Reg. 511/09.

6. p. 63 sec 5.10

- a. *Third paragraph.* Efforts should be made to reduce unnecessary lighting which may bother activities of nocturnal species.

7. p. 68

- a. *Final Monitoring Report, Item (c).* If recommendations are provided to continue any type of monitoring (ie. water sampling, etc), how will the compliance of the monitoring program be ensured? Will MNO have access to long term monitoring results, and will these results be reviewed by the Board and allow commenting by MNO?

8. General

- a. During the very initial stages of consultation, the applicant should provide to MNO any information that will be considered in the ER, in addition to any concerns regarding potential adverse impacts so that MNO has sufficient time to review and assess the information.

9. General

- a. Overall, there seems to be a lack of detail such as minimum distances from project locations that should be considered for environmental impact studies. Also, details of Environmental Impact Studies/Noise Studies/Air Quality Studies are not outlined

or clearly defined (if required in this type of document). It is concerning that some items are very detailed (such as the mitigation for construction near streams, etc), while other areas are vague.

The LRC would like to once again state that the Métis Nation of Ontario would like to note that no meaningful consultations with the Métis at the community level have yet to occur. As the nature of hydrocarbon pipelines and facility projects in Ontario are complicated and span great distances it is difficult for the Métis community to enter into significant consultation without understanding the basic OEB regulations and industry standards.

Going forward, the MNO reserves the option to submit additional comments to the draft OEB Environmental Guidelines. As the Métis community may express additional concerns not yet recognized in this submission or the August 30th 2010 submission. We wish to stress that the MNO and its Community Councils wish to continue in this process, but we currently have no capacity to review complex documents or to mount effective consultation without appropriate time and assistance. The courts have made it clear that when our Aboriginal rights may be affected, we must be engaged early and in a meaningful way, for consultation to have taken place.

The LRC-MNO would like to thank the OEB for considering Métis participation during the development of their Environmental Guidelines and anticipate your feedback on the submitted comments and notes.

We look forward to continuing to develop this positive relationship.

Sincerely,

James Wagar
Consultation Coordinator, Lands Resources & Consultations, Métis Nation of Ontario

cc. Melanie Paradis, Director, Lands, Resources and Consultation, Métis Nation of Ontario
Brian Tucker, Manager, Lands, Resources and Consultation, Métis Nation of Ontario
Zora Crnojacki, Ontario Energy Board
Kirsten Walli, Board Secretary, Ontario Energy Board
John Pickernell, Assistant Board Secretary, Ontario Energy Board
Lake of the Woods/Lac Seul and Rainy Lake/Rainy River Traditional Territories Consultation Committee
Lakehead/Nipigon/Michipicoten Traditional Territories Consultation Committee
Abitibi/Temiscamingue & James Bay Territories Consultation Committee
Historic Sault Ste. Marie Traditional Territory Consultation Committee
Mattawa/Lake Nippising Traditional Territory Consultation Committee
Ottawa River & Kawartha Community Councils
The Georgian Bay Traditional Territory Consultation Committee
Region 8 Community Councils
Region 9 Community Councils

APPENDIX A

August 30, 2010

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Board File No. EB-2010-0255**

The Lands, Resources and Consultations (LRC) branch of the Métis Nation of Ontario (MNO) would like to confirm receipt of the Draft New Edition “OEB Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario” dated August 10, 2010. Although this letter confirms receipt of said documentation, it does not confirm that consultation between the OEB, the MNO and Métis communities have taken place. It is the position of the LRC-MNO that information sharing between the MNO and the OEB is ongoing. The following comments are staff comments only, and their submission does not constitute consultation between the OEB and potentially affected Métis communities as represented by the MNO.

For consideration by the EOB please accept the following staff suggested revisions, comments and questions:

1. Page 18. Remove the “s” from Métis Nationss of Ontario.
2. Page 18. Include the recognition of areas of concern that are specific through Métis Traditional Ecological Knowledge studies.
3. Page 34 (1st paragraph). Ontario Regulations 9/96 & 10/96 should read 9/06 & 10/06.
4. Page 35. Under “Historic Navigation Corridors” include traditional Métis portage routes.
5. Page 46. 5.1 include Métis interests with socio-economic and biophysical as part of the areas of concern along preferred route or on the preferred site.
6. Page 52. Define the term riparian.
7. Page 52. Herbicide use shall be used only as a last resort after administering more ecologically friendly alternatives and then only through an integrated pest management strategy where “spot” spraying is utilized. If herbicides are to be applied the MNO shall receive a notification and the opportunity to participate in the development of the strategy and application.
8. Page 61. If any spills or other accidents from new or existing hydrocarbon pipelines and facilities were to occur, the LRC-MNO shall be contacted immediately to determine impact to Métis rights.

9. Page68. Are there currently no long term monitoring requirements? If so what are they?

The Métis Nation of Ontario would like to note that no meaningful consultations with the Métis at the community level have yet to occur. As the nature of hydrocarbon pipelines and facility projects in Ontario are complicated and span great distances it is difficult for the Métis community to enter into significant consultation without understanding the basic OEB regulations and industry standards.

In future engagements with the Métis, it is important to consider that the Métis Community Councils and the Regional Protocol Committees do not receive funding to implement either consultation programs or traditional land use/traditional ecological knowledge studies and that accommodation may be required to satisfy the duty of the Crown as it relates to consultation and accommodation. The only way to properly assess the potential impact of the draft guidelines on Métis rights is to engage in a meaningful consultation process.

Additional information regarding the Métis Way of Life, the Duty to Consult and the Métis Nation of Ontario's Regional Consultation Protocols are available at www.metisnation.org/consultations/ . This link outlines the general process and key elements for effective consultation with the Métis in Ontario.

The LRC-MNO would like to thank the OEB for considering Métis participation during the development of their Environmental Guidelines and anticipate your feedback on the submitted comments and notes.

We look forward to continuing to develop this positive relationship.

Sincerely,

James Wagar

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