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Toronto

November 28, 2019

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Patrick G. Welsh  
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Our Matter Number: 1184765

Calgary

**Sent by Electronic Mail and by Overnight Courier and Filed Electronically on RESS**

Ottawa

Christine Long  
Board Secretary and Registrar  
Ontario Energy Board  
27th Floor - 2300 Yonge Street  
Toronto, Ontario M4P 1E4

Vancouver

New York

Dear Ms. Long:

**EB-2019-0007 – Application for Leave to Construct the Waterdown to Finch Pipeline**

**Re: ENDM Delegation Letter of September 10, 2018**

To ensure that the Ontario Energy Board has as complete a record as possible, please find enclosed a copy of the letter dated September 10, 2018 from the Ontario Ministry of Energy, Northern Development and Mines (ENDM) delegating certain procedural aspects of the duty to consult to Imperial Oil Limited.

Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,



Patrick G. Welsh

c: Richard King/Isabelle Crew, *Osler, Hoskin & Harcourt LLP*  
Jessie Malone/Zahra Allidina, *Imperial Oil Limited*  
All Intervenors in EB-2019-0007

Ministry of Energy, Northern  
Development and Mines

77 Grenville Street  
6<sup>th</sup> Floor  
Toronto ON M7A 2C1

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Ministère de l'Énergie, du  
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Mines

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## Indigenous Energy Policy

VIA EMAIL

September 10, 2018

Kelly Williams  
Imperial Indigenous Relations-Ontario Region  
Imperial Oil Limited  
100 5<sup>th</sup> Conc E, Waterdown,  
ON L0R 2H1

### Re: Waterdown to Finch Pipeline Project

Dear Kelly Williams:

Thank you for your email dated May 23, 2018 notifying the Ministry of Energy, Northern Development and Mines of Imperial Oil's intention to apply for Leave to Construct for the Waterdown to Finch Station Pipeline project and requesting clarification on duty to consult requirements.

I understand that Imperial Oil is planning to redevelop a pipeline in order to provide fuel across the Greater Toronto and Hamilton Area, including jet fuel at Toronto Pearson International Airport, as well as gasoline and diesel fuel. The project consists of approximately 63 kilometers of the existing line with new pipe. The proposed pipeline will commence at Waterdown Station [43.33500° N, 79.93248° W], and will end at the company's terminal storage facility at North York's Finch Terminal [43.76652° N, 79.48878° W]. If approved, construction is anticipated to begin in 2019.

The Ministry has reviewed the information provided relative to its current understanding of the interests of First Nation and Métis communities in the area and has determined that it may have the potential to affect First Nation communities who hold or claim Aboriginal or treaty rights protected under Section 35 of Canada's *Constitution Act* 1982.

As you are aware, the Government of Ontario (the "Crown") has a constitutional duty to consult and accommodate First Nation and Métis communities when Crown project approvals may lead to an appreciable adverse impact on established or asserted Aboriginal or treaty rights. While the legal duty to consult falls on the Crown, the Crown

may delegate the day-to-day, procedural aspects of consultation to project proponents. The Ministry of the Energy, Northern Development and Mines is delegating the procedural aspects of consultation to Imperial Oil through this letter.

Based on the Crown's preliminary assessment of First Nation and Métis community rights and project impacts, the following Aboriginal communities should be consulted on the basis that they have or may have constitutionally protected Aboriginal or treaty rights that may be adversely affected by the Project:

<b>Community</b>	<b>Mailing Address</b>
Mississaugas of the New Credit First Nation	2789 Mississauga Road R.R. #6 Hagersville, ON N0A 1H0
Six Nations of the Grand River *	Six Nations of the Grand River Elected Council PO Box 5000 Ohsweken, Ontario N0A 1M0  Haudenosaunee Confederacy Chiefs Council P.O Box 714 Ohsweken, ON N0A 1M0
Huron Wendat**	255, place Chef Michel Laveau Wendake, QC G0A 4V0

Note:

\*Please note, proponents are required to consult with both, Six Nations Elected Council and Haudenosaunee Confederacy Chiefs Council (HCCC). Please copy Haudenosaunee Development Institute (HDI) on all correspondence to Haudenosaunee Confederacy Chiefs Council (HCCC).

\*\*interests are specific to archeological resources

This rights-based consultation list is based on information that is subject to change. First Nation and Métis communities may make new rights assertions at any time, and other developments (e.g. the discovery of Aboriginal archaeological sites) can occur that may require additional First Nation and/or Métis communities to be notified and/or consulted. If you become aware of potential rights impacts on communities that are not listed above at any stage of the consultation and approval process, kindly bring this to the attention of the Ministry with any supporting information regarding the claim. The Ministry will then assess whether it is necessary to include the community on the rights-based consultation list above.

It is the Ministry's expectation that Imperial Oil will communicate directly with the communities listed above, and that Imperial Oil will:

- Notify the communities that Imperial Oil has been delegated the procedural aspects of consultation by the Ministry of Energy, Northern Development and Mines on behalf of Ontario.
- Notify the communities that they may contact the Crown directly should they have any questions or concerns.
- Provide the communities with the following contact information should they wish to communicate directly with the Ministry:

Raina Crasto  
Policy Advisor, Indigenous Energy Policy  
Ministry of Energy, Northern Development and Mines  
416-326-4571/[raina.crasto@ontario.ca](mailto:raina.crasto@ontario.ca)

Shannon McCabe  
Senior Advisor, Indigenous Energy Policy  
Ministry of Energy, Northern Development and Mines  
416-212-6704 / [shannon.mccabe@ontario.ca](mailto:shannon.mccabe@ontario.ca)

- Please copy the Ministry contact when communicating the above information.

The Ministry relies on consultation conducted by proponents when it assesses the Crown's obligations and directs proponents during the regulatory process. Imperial Oil's responsibilities for procedural aspects of consultation include:

- Providing the First Nation communities with timely notice of the project for the purposes of considering possible impacts on their Aboriginal and/or treaty rights;
- In that notice, clearly stating that Imperial Oil has been delegated the procedural aspects of consultation by the Ministry of Energy, Northern Development and Mines on behalf of Ontario for the project.
- Providing First Nation communities with information about the project including anticipated impacts, and information on project timelines;
- Following up with First Nation communities to ensure they have received project information and that they are aware of the opportunity to express comments and concerns about the project;
- Explaining the regulatory and approval processes that apply to the project;
- Gathering information about how the project may adversely impact the relevant Aboriginal and/or treaty rights (for example, hunting, fishing) or sites of cultural significance (for example, burial grounds, archaeological sites);
- Considering the comments and concerns raised by First Nation communities and providing responses;
- Where appropriate, discussing accommodation, including mitigation or other measures to address potential adverse impacts on Aboriginal and/or treaty rights;

- Where appropriate, developing and discussing with the Crown appropriate accommodation measures;
- Taking reasonable steps to foster positive relationships with the First Nation communities;
- Bearing the reasonable costs associated with these procedural aspects of consultation; and
- Maintaining records of activities in relation to carrying out the delegated procedural aspects of consultation and providing information to the Ministry.

If you have any questions about this letter or require any additional information please contact Raina Crasto at 416-326-4571 or [raina.crasto@ontario.ca](mailto:raina.crasto@ontario.ca) and Shannon McCabe at 416-212-6704 or [shannon.mccabe@ontario.ca](mailto:shannon.mccabe@ontario.ca).

Sincerely,



Morgan Owen  
A/Manager  
Indigenous Energy Policy

C: Ontario Pipeline Coordinating Committee (OPCC)  
Jessie Malone, Environmental and Regulatory Advisor, Safety Security Health and Environment, Imperial Oil Limited