



Native Council of Nova Scotia

The Self-Governing Authority for Mi'kmaq/Aboriginal Peoples residing Off-Reserve in Nova Scotia throughout traditional Mi'kmaq Territory

"Going Forward to a Better Future"

November 18, 2004

NOV 24 2004	
Action	Info/Copy
faxed	
Doc. Reg. No.:	
File No.:	

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Mr. C. Andrew Parker
Manager, Environment
Canada - Nova Scotia Offshore Petroleum Board
6th Floor, TD Centre
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Halifax, Nova Scotia
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Aboriginal/Treaty Rights
Negotiations Facilitating
Directorate

RE: ENVIRONMENTAL SCREENING REPORT,
Cohasset Phase II Decommissioning
EnCana Corporation,

Education & Student
Services

Dear Mr. Parker:

Rural & Native
Housing Group

We thank your offices for notifying the Native Council of Nova Scotia Netukulimkewe'l Commission about the released Environmental Screening Report (November 2004) prepared by the Canada-Nova Scotia Offshore Petroleum Board, Fisheries and Oceans Canada and Environment Canada (Joint RA's) on EnCana Corporation Cohasset Phase II Decommissioning Project, "Screening Environmental Assessment" of April 2004.

Aboriginal Peoples
Training & Employment
Commission (APTEC)

We have reviewed the Joint RA's Environmental Screening Report (ESR) released on November 8, 2004, and the concurrent News Release inviting public comment.

Social Assistance
Recipient Support for
Employment & Training
(SARSET)

Without limiting our right to make further comments, raise issues and other interventions throughout the regulatory review process available in law or otherwise on any aspect of the "EnCana Cohasset Phase II Decommissioning Project Application", the ESR is flawed and void of information necessary for decision making.

Micmac Language
Program

Native Social
Counselling Agency

Child Help Initiative
Program (CHIP)

E'pit Nuji Ilmuet
Program (Prenatal)

The Joint RA's are established by Crown enactment. The CNSOPB had knowledge before and formally by letter of March 1, 2004 of the Native Council of Nova Scotia interest and call for consultation on the proposed project.

Mobile Aboriginal
Diabetes Initiative (MADI)

Netukulimkewe'l
Commission

The project proponent consciously refused to engage in direct consultation with the NCNS Community of Mi'kmaq/Aboriginal People. There was absent the direct exchange, or discussions on issues, concerns, interests, and needs, consideration, or accommodation, knowledge and understanding, to factor into the EA on the most basic CEAA requirements of:

“the environmental effect or change to the socio-economic conditions, or current use of resources for traditional purposes by Aboriginal Persons” nor on the:

The CNSOPB general EA Scoping document, (if it included Aboriginal Fisheries) of:

“effects upon access to fishing grounds and potential impacts to current and future fishing industries”.

On March 24, 2004 the CNSOPB responded to our letter: “The Board has determined that formal consultation is appropriate”. The Board further:

“We ask that the Native Council of Nova Scotia continue to participate in the EA process by reviewing the EA document when it becomes available and forward any comments and concerns in writing to the Board. Should it be deemed appropriate the Board may request that the Operator undertake additional consultation to resolve any outstanding issues.”

On June 21, 2004, the NCNS Netekulimkewe'l Commission absent of a “process for consultation” by either the project proponent or the CNSOPB, raised several other fundamental concerns and issues remaining in the proponents Screening Environmental Assessment Report for the Cohasset Project Phase II Decommissioning Project issued for public comment.

The EA was devoid of information as to our NCNS Community of Mi'kmaq/Aboriginal Peoples issues, concerns, interests and needs, and our current use of resources and future uses.

The EA recounted a general statement, “EnCana considers consultation an on-going process that will continue throughout the public review period for the EA report”. There was also another general reference to consultation. Clearly absent nothing on the matter of “consultation with Aboriginal Peoples”.

The EA included a qualified one liner assumption. Clearly absent nothing about our Aboriginal Peoples: “current and future use of resources and potential effects or impacts” nor “effects on socio - economic conditions” on the Aboriginal Peoples rights and uses.

On June 21, 2004 we addressed some other obvious fundamental concerns and issues not addressed or clear in the proponents Screening Environmental Assessment of April 2004.

On July 21, 2004, the CNSOPB acknowledge receipt of the additional concerns and issues, and responded:

“the Canada-Nova Scotia Offshore Petroleum Board (the Board) has the regulatory authority to make a determination on this application. Such a determination is considered a fundamental decision under the Accord Acts and subject to review by the Governments of Canada and Nova Scotia.

The Board continues to review this application, associated documentation and public comments. Your comments and questions will be considered as it make its determination.”

The Native Council of Nova Scotia community of Mi’kmaq/Aboriginal Peoples had no cause to think that the RA’s involved in this project would not uphold the honour of the determination for consultation. That the RA’s would not raise with the proponent the serious void of information on current or future use of resources by Aboriginal Persons, a required environmental effects to be addressed. The EA was deficient in this regard, among other matters.

The ESR is clearly flawed and a deficient report filing precluding decision making.

Within everyone’s knowledge:

1. The proponent consciously refused to engage or hold any “formal consultation” with the NCNS community of Mi’kmaq/Aboriginal Peoples.
2. The CNSOPB had knowledge of this fact, and had made a determination that it was appropriate to hold consultation. The RA’s did not undertake consultation with our Community.
3. The joint RA’s, more particularly DFO had knowledge that our NCNS community of Mi’kmaq/Aboriginal Peoples are exercising an Aboriginal Right and fishery resources access through the orderly “Aboriginal Communal Commercial fishery” by arrangements between our Community and DFO.
4. Since 1992 onwards RA’s and Project Proponents operating in the Canada - Nova Scotia Offshore, have knowledge of Aboriginal Peoples exercising Aboriginal Rights. Have knowledge about the “duty for consultation”. The RA’s have knowledge about the “duty to uphold the honour of the Crown”. The RA’s have knowledge about how important the fishery resources and access and use is to the social, economic and material well-being of Aboriginal Peoples. The DFO RA has knowledge about the criteria taken into account by the government in allocating communal commercial licenses amongst different users to include the Aboriginal Peoples.
5. The CNSOPB RA has knowledge about our interest in this project and has assured us that our comments and questions would be considered as it makes its determination.

We had no reason to believe that the Joint RA’s would prepare an ESR devoid of Aboriginal consultation, devoid of Aboriginal Peoples resources use information, devoid of explanation for not upholding its determination for consultation, devoid of information to report on the fundamental

requirements under the CEAA , and devoid of recognition of the *Accords Acts* consideration for Aboriginal Peoples lose of opportunity.

The Joint RA's ESR compounds the proponent's EA deficiencies, and have prepared a deficient report filing which precludes decision making.

Two examples, on just two issues raised with the CNSOPB throughout this Review Process to date.

“lack of consultation”

The proponent made the choice not to engage in direct consultation process. The EA does not address “consultation with Aboriginal Peoples” nor “use of current or future resources”.

Rather than ask the proponent to address this obvious deficiency and information void which the CNSOPB indicated that it could, or may ask the proponent to “consult”, or where one or all three of the RA's could have undertaken a direct consultation process on this project with our Community to uphold the duty of consultation, and thereby determine all the issues, concerns, interests, accommodations, mitigation or what have you to ensure that the parties are better informed as to the environmental effects, and our resource uses, instead the RA's choose to prepare an ESR and the unthinkable.

The Joint RA's arbitrarily introduced in their ESR a section 9.14. The Joint RA's ignore the knowledge that the “proponent consciously choose not to consult”. The CNSOPB did not “implement their determination that consultation is appropriate for this project. The Joint RA's ignored the knowledge that Aboriginal Peoples are exercising Aboriginal Rights of organized Communal Commercial Fisheries by arrangements with the DFO, and hold licenses in the site sector of the project.

The Joint RA's gratuitously make up a section 9.14 in the ESR to fill the void from a vacuum. We reserve comment on RA's role to fill in substantive gaps knowingly and consciously left out by a proponent.

The Joint RA's in the ESR then take and use on face value without substantiating information the proponent's one liner to fit into section 9.14, and to top that off, characterize our involvement in the process, our several correspondences, our substantive issues raised on many subjects of this project and EA, our overarching consideration for decisions makers to think forward and foremost for our living environment with a cavalier sentence: “Aboriginal comment” “It did not directly address use of resources by aboriginals (sic)”.

We are not responsible to write Scoping Documents, EA's and ESR, nor “Decisions” by decision makers, and that much more.

The Joint RA's know that the preparation of the “scoping document” was extensively developed internally between the Joint RA's. The CNSOPB did not invite public comment on the scoping document for phase II decommissioning. As noted by the CNSOPB it consulted with regulators and fisheries groups and it prepared the Scoping Document. There is no indication of any effort

to invite or consult with Aboriginal Peoples on the “Scope of the Project Assessment” for Phase II decommissioning.

We hold a responsibility to express interest, provide comment when invited and required. We hold a responsibility to hold Crown authorities to the “duty to ensure consultation”. We hold a responsibility to protect our Aboriginal Rights, and our use of resources, and improve our socio economic conditions in the spirit of reconciliation. Reconciliation best achieved by the process of consultation and accommodation where all parties are better informed and can make decisions.

We hold a responsibility to declare an “EA”, an “ESR” or an “Order” on manner and content filed or delivered as either “deficient” or “sufficient”. We hold a responsibility to pursue remedies available at law or other forum as deemed necessary and appropriate.

If we didn’t have an interest, issues, concerns, needs, or didn’t assess possible or potential “environmental effects” or “impacts” from a proposed project on the NCNS community of Mi’kmaq/Aboriginal Peoples, why would the Native Council of Nova Scotia expend time and effort to clearly advise the CNSOPB that for this project we require consultation and have an interest.

The Joint RA’s preparing the ESR have forehand knowledge of our several stated concerns, there remain many others. The Joint RA’s have knowledge that there are serious information gaps in the EA as to “use of resources by Aboriginal Persons” and “environmental effects or impacts and their mitigation or accommodation”. The Joint RA’s have knowledge that they could not determine the potential effects on Aboriginal Peoples use of resources or potential “actual loss or damage, or loss of fishing and gathering opportunities” because there had been no consultation nor information in the EA.

The Joint RA’s know that a “gratuitous make up section in an ESR on a fundamental aspect of an EA required by CEAA legislation” does compromise the principles of “good faith on all sides for all parties”.

The EA is deficient by the proponents choice. The Joint RA’s know it’s deficiencies and have prepared a fundamentally flawed and deficient ESR.

On another subject matter discussed in the ESR which we also specifically raised with the CNSOPB directly on the decommissioning project:

“To what time and level of legally binding long term liability and compensation is EnCana or its legal successors prepared to commit to the CNSOPB, Nova Scotia Canada and Share Users of the ocean environment”.

The proponent responded to the CNSOPB;

“EnCana will honour whatever obligations, authorized by the applicable offshore legislation and regulations are imposed upon it by the CNSOPB”.

Why would the Joint RA's in the ESR limit and compromise a specific issue raised by our community? Why would the joint RA's limit and qualify the proponents stated response, and limit their liability and compensation to only "interference with fishing equipment" if the application decisions was for the "partial removal only option"?

It is disheartening at best when we can't get "consultation". It is disheartening when RA's "fill in sections to cover information gaps not provided by the proponent". Imagine our feeling and that of other share users of the ocean environment when "RA's further qualify and limit a proponent's broad response" to a specific question on term and liability.

What reason is there for Decision Makers to require, expect and insist on a "sufficient ESR report filing"?

What reason is there for Aboriginal Peoples who express an interest in a specific project to engage in a process at great personal expense of time and effort, raise fundamental issues and concerns, (ten months and counting) only to read in an ESR "gratuitous make up sections for the proponents information deficiency", or see nothing about the "lack of consultation", or to read "RA's further qualifying and limiting a proponent's response to long term liability and compensation"?

Canadians embrace "dialogue", Aboriginal Peoples embrace "meaningful consultation" all of us embrace the process of exchanging information, testing and being prepared to amend proposals in light of information received and providing feedback. Dialogue and Consultation is the process that ensures all interests are better informed to make decisions.

We remain available and open to suggestions or approaches which may help remedy the deficient ESR filed. We know that consultation does not guarantee agreement on all issues, subjects, concerns or needs, however at least some fundamental issues and concerns could be reconciled to some mutual understanding and advance the ESR to move it from a deficient filing to a best effort sufficient ESR.

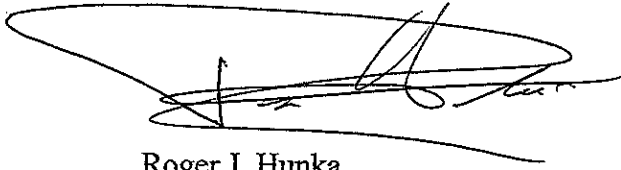
Going Forward to
A Better Future



For → Grace Conrad
Chief and President



Tim Martin,
Commissioner Netukulimkewe'l Commission

A handwritten signature in black ink, appearing to read 'Roger J. Hunka', is written over a large, horizontal, oval-shaped scribble or stamp.

Roger J. Hunka
Facilitator/Advisor NCNS Netukulimkewe'l Commission
Mi'kma'ki Environments Resources Developments Secretariat (MERDS)

c.c. The Honourable R. John Efford
The Honourable Cecil Clark
The Honourable Stephane Dion
Mr. Glen R. Yungblut, CNOSPB
Mr. J. E. Dickey, CNSOPB
Mr. K.G. Hamilton, Environment Canada
Carol-Ann Rose, DFO