

Special Fracking Update

December 9, 2013

NEB needs more data to assess fracking in NWT and Nunavut

The National Energy Board (NEB) wants detailed information from energy companies in order to assess “the unique aspects” of future hydraulic fracturing activities in the Northwest Territories and Nunavut.

The *Filing Requirements for Onshore Drilling Operations Involving Hydraulic Fracturing* (NE23-175/2013E) sets out the information applicants must now submit with an application for an Operating Authorization (OA) issued under the *Canada Oil and Gas Operations Act*. In order to conduct its environmental assessment of proposals, the NEB requires information on project development, potential impacts to the environment, potential impacts from accidents and malfunctions, consultation with Aboriginal groups and the public, socio-economic impacts arising from environmental impacts and mitigation measures used to protect the environment. The Board can request any additional information it needs to assess an application, or may waive certain filing requirements if they are not relevant to the work applied for or activities. Additional data may also be required with each subsequent application for an approval, such as a Well Approval or Formation Flow Test Approval. The Filing Requirements, which took effect in September, are available online at www.neb-one.gc.ca/.

Newfoundland halts fracking permits until review completed

On November 4, the Minister of Natural Resources for Newfoundland and Labrador announced that the province will not be accepting applications for onshore and onshore-to-offshore petroleum exploration using hydraulic fracturing.

The moratorium will allow the province to undertake “a balanced review” of the regulations, rules and guidelines covering fracking in other jurisdictions, as well as complete the technical work necessary to fully assess the geological impact of fracking in western Newfoundland. Earlier this year, Shoal Point Energy and Black Spruce Exploration applied for several exploration licences for the extensive Green Point oil-in-shale play on the province’s west coast. The play borders Gros Morne National Park. Plans to begin fracking operations near the UNESCO World Heritage Site have triggered

local and international protest. Following the internal review, the province will launch public consultations to ensure residents have an opportunity to comment before any decision is made. The Minister says that the government's "first and main consideration when exploring an economic development opportunity is the health and safety of our people and protection of the environment." While supporting the public review, Black Spruce Exploration says it still plans on drilling three to five conventional wells, which do not require fracking, on the Port au Port Peninsula south of the park in 2014.

New Brunswick supports responsible exploration and development of shale gas

Despite widespread and at times violent protest against hydraulic fracturing in New Brunswick, the government is pushing ahead with plans to develop the province's shale gas resources.

In the province's November 5 Speech from the Throne, Lieutenant-Governor Graydon Nicholas said, "Responsible resource development will protect the rights and interests of future generations while at the same time improving the quality of life for all New Brunswickers, including First Nations ... As you may recall, your government has done a great deal of work towards making sure that our natural resources – and, in particular, our natural gas potential – are identified to determine whether there is potential for economic benefits in the future ... Backed by the strongest rules for industry, introduced in February, as well as an action-oriented Oil and Natural Gas Blueprint for New Brunswick, introduced in May, your government will continue on the course of responsible exploration and development."

In related news, SWN Resources Canada has resumed its seismic testing of shale gas reserves along Highway 11 in Kent County, N.B. The target of Aboriginal roadblocks, public demonstrations, vandalism and a police crackdown, the company obtained a 14-day injunction on November 22 to keep protesters at least 20 metres away from the side of roads where the company is working and 250 metres away from the front or back of its trucks. The company is back in Court seeking an extension of the injunction and has filed a lawsuit in the New Brunswick Court of Queen's Bench against several of the protesters.

Meanwhile, Elsipogtog First Nation sought an injunction suspending SWN's shale gas exploration, stating that the Crown had failed to fulfill the duty to consult concerning the permits, and that the Applicant's Aboriginal rights and Treaty rights are being violated. The Applicant sought an injunction to prevent clashes between and among the parties and "outside radical elements". The Court declined to issue the injunction stating that it was odd for the Applicant to request an injunction due to the risk of violent protests. Justice Judy Clendenning stated that the Band's claims would have to be carefully considered at trial.

NEB asks industry to post fracking data online

On November 27, the National Energy Board (NEB) announced it would soon request companies regulated under the Canada Oil and Gas Operations Act to publicly disclose information on the practices and fluids used in hydraulic fracturing operations.

Companies will be asked to post the information on the Fracfocus.ca website 30 days after completing a fracking operation. The website, a project of the B.C. Oil & Gas Commission, allows Canadian jurisdictions to upload fracking data provided to them by industry. It is based on a companion site, FracFocus.org, which provides similar information south of the border. The NEB's full participation, confirmed in a recent agreement with Commission (as well as the U.S.-based Ground Water Protection Council and Interstate Oil and Gas Compact Commission), will become effective once the necessary website updates have been completed in early 2014.

Company files NAFTA notice to sue for Quebec fracking ban

On September 6, 2013, Lone Pine Resources Inc. served a Notice of Arbitration on the Government of Canada regarding Quebec's "arbitrary, capricious and illegal revocation" of the company's permits to mine for shale gas under the St. Lawrence River. With headquarters in Calgary but incorporated in Delaware, Lone Pine is attempting to invoke the dispute settlement provisions of the North American Free Trade Agreement (NAFTA), seeking an estimated \$250 million in compensation plus costs.

In June 2011, Quebec passed Bill 18, *An Act to Limit Oil and Gas Activities*, suspending all permits pertaining to shale gas oil and gas resources beneath the St. Lawrence River upstream of Île d'Anticosti. The company says the move was a "political decision" and a clear violation of NAFTA Chapter Eleven, which protects U.S. investors from the expropriation of investments without a public purpose, due process or the payment of compensation. Lone Pine claims to have invested "millions of dollars and considerable time and resources" between 2006 and 2011 to obtain the necessary shale gas exploration approvals and permits from the Government of Quebec.

Not covered by the original Notice of Arbitration, Quebec has gone even further in its fracking ban by introducing Bill 37, *An Act to Prohibit Certain Shale Natural Gas Exploration and Production Activities*, on May 15, 2013. Bill 37 proposes a moratorium on all shale gas exploration in the St. Lawrence lowlands and will revoke all drilling licences without compensation. While Lone Pine continues to negotiate its claim with federal and provincial authorities, the financially troubled firm is now restructuring its operations under the *Companies' Creditors Arrangement Act*.