

SECRET

**MEMORANDUM TO THE DEPUTY MINISTER****ENVIRONMENT CANADA INVOLVEMENT IN THE REVIEW OF THE IRVING OIL LTD. NEW REFINERY – SAINT JOHN, NEW BRUNSWICK****PURPOSE**

To seek concurrence on proposed approach to departmental participation in an environmental assessment of a second Irving Oil Ltd. petroleum refinery in Saint John, New Brunswick.

**SUMMARY**

- Irving Oil Ltd. has proposed a new 300,000 barrel/day refinery subject to federal and provincial environmental assessment (EA), as well as TERMPOL [Technical Review Process of Marine Terminal Systems and Transshipment Sites] which is administered by Transport Canada..
- A disposal at sea permit is required for certain project activities, and therefore, Environment Canada (EC) must fulfill its Responsible Authority obligations under the *Canadian Environmental Assessment Act* (CEAA). There are no federal decisions on the refinery itself which trigger CEAA.
- An interim approach to EA scoping was launched by the Canadian Environmental Assessment Agency (Agency) in December 2006. An EC decision-making framework guiding application of the approach places an emphasis on other mechanisms that could satisfy EC concerns with the whole project.
- The recommended approach of EC reliance on provincial EA and TERMPOL presents risks related to administration of the federal EA process and to implementation of the federal environmental agenda. Risk management options have been identified. EC agreement on the proposed approach to a federal EA is needed as early as May 2, if the federal government is to coordinate with the provincial EA process already underway.

**CURRENT STATUS**

Draft guidelines for an EA of the Irving proposal in accordance with provincial legislation are under public review until May 5.

The Agency is working with EC, Transport Canada (TC) and the Department of Fisheries and Oceans (DFO) to establish the appropriate scope and level of federal EA. The Agency is coordinating ongoing efforts to design and structure a federal EA and TERMPOL (DM and ADM know what this is?) review that could be integrated with the provincial EA as appropriate. EC is being pressed for a decision on how it intends to proceed.

Public concerns with the new refinery, and other proposed developments in the Saint John area involving air emissions, contaminants, and shipping, have been reflected in several recent letters

1

to the Minister and in ongoing media coverage. A petition has been forwarded to the Minister calling for a federal panel level review of the project.

A national EC working group is seeking consistent messaging on the federal environmental agenda as it could relate to the ongoing EA of three proposed heavy oil upgraders in Alberta and three proposed refineries in Ontario, New Brunswick, and Newfoundland and Labrador respectively.

## **ISSUES**

There are several options available for EC's intervention in the EA of the proposed project, with each option having its own advantages and disadvantages. Senior management direction is necessary before proceeding with any of the options.

## **OPTIONS**

The options for federal intervention in the EA include:

1. Early referral to a federal panel based on public concern.
2. An EC request that the scope of the federal EA be broadened to include the entire project.
3. Limit the scope of the federal EA to the CEEA triggers (i.e. certain marine components of the project associated with the need to issue authorizations – disposal at sea permits, habitat alteration authorization, navigable waters protection authorization.)

## **CONSIDERATIONS**

- The Clean Air agenda is one of the government's top priorities. EC published a Notice of Intent to Develop and Implement Regulations and other Measures to Reduce Air Emissions in the *Canada Gazette*, Part I on Oct. 30, 2006, which would address industry sources such as refineries, and is expected to announce a regulatory framework for air emissions and greenhouse gases in the near future.
- Air emissions from the existing Irving refinery in Saint John have been an ongoing source of community concern, and Irving has just announced a \$70 million plan to improve its sulphur oxides (SOx) emission controls. This will not, however, address all of the community concerns.
- The proposal could increase refining capacity in Canada by as much as 15%. However, the proposed refinery will be located in an area affected by several local industrial emission sources and long range transport. In addition, there is an increased likelihood that air quality objectives and standards will be exceeded in the Saint John area on a more frequent basis.
- Refineries are responsible for a significant number of substances which will be addressed as part of the government's Chemicals Management Plan.
- The new refinery will add considerable vessel traffic to Bay of Fundy shipping channels and increase the risk of environmental emergencies in an ecosystem sensitive to impacts.
- While the Government of New Brunswick has publicly expressed support for this proposal as part of ongoing efforts to create an energy hub in the Saint John area, it has also determined that the project will be subject to the highest level of EA under provincial legislation ("a comprehensive environmental impact assessment"). However, at least some segments of the public remain concerned about the ability of the provincial government to conduct an objective and thorough EA.

- There are several other projects at various stages of planning and development in the Saint John area. These include the controversial Brunswick Pipeline, that would take gas from the approved Irving liquefied natural gas (LNG) facility to US markets (a federal panel report was issued on April 11, 2007), and a conversion of the Coleson Cove Thermal Generating Station (TGS) to burn heavy fuel oil and petroleum coke that will be undertaken on a one-year trial basis based in accordance with an April 18, 2007 provincial EA decision.

### **Option 1 – Early Referral to a Panel Review**

- A Panel level assessment would ensure that the Government of Canada is visibly engaged in the review of this proposed project, which has impacts related to current government clean air and chemical management priorities.
- Early referral to a panel review would be favorably received by many community organizations, some of whom have already written or submitted petitions to the Minister requesting a panel level assessment.
- A Canada-New Brunswick Cooperation Agreement on EA is not in place, and as the provincial government has already released draft guidelines for an EA of the proposed project for public review. The opportunity to negotiate an agreement and conduct a joint panel review is minimal.
- Conducting a federal review panel that is not coordinated with the provincial EA is not consistent with government efforts to streamline the regulatory burden of proponents.

### **Option 2 – EC Request to Broaden the Scope of the Federal EA**

- Based on application of the interim approach now being used by the federal government, it is likely that the federal EA would be limited to certain marine components of the project. The federal EA would not include the refinery itself unless EC is prepared to request a broader scope.
- Should EC request a broader scope, the Department would be responsible for the EA of other project components, including public consultation and First Nations engagement as appropriate. At this time, the Department has limited capacity to assume the responsibilities for an EA of the entire project, and would require additional or reallocated resources to do so.
- The CEA Act presents several opportunities for the public to influence and challenge federal EA scoping. For a comprehensive study level of assessment, the Act requires the preparation of a scoping document which will be released for public comment, and a track report which will ultimately be submitted to the Minister of the Environment for a final decision on the level of assessment (continue on the comprehensive study track or refer to a panel).
- In this scenario, EC would be responsible to coordinate the development of the scoping document and track report; but ultimately, would have no more authority or decision making associated with the project than the decision associated with the authorization of a permit for disposal at sea activities.
- Following receipt of the track report, it is possible that the Minister may choose to refer the project to a panel level review. Such a decision, made well into the process, would result in essentially both a federal and provincial panel review that are not synchronized, potentially creating some confusion and an increase in the level of effort required by both the proponent and interveners to participate in both processes.

- The Government of New Brunswick has long been a proponent of “one project, one assessment and one decision”. Of all of the options considered this one least adheres to that principle.

### **Option 3 – Limited Scope of Federal EA, Utilization of Provincial Process to Address Federal Interests**

- Risks posed by narrow scoping, or what could be perceived as an inadequate level of assessment, could include petitions for a panel review of transboundary effects or demands for a panel review of the whole project. During any public consultation on the federal EA, it will be a challenge to explain to the public, that their comments/concerns should be limited to marine project components and not the refinery itself. In this scenario, it is not clear if substantial public concern on scoping issues could/should be captured in the track report to be submitted to the Minister of Environment for decision.
- The interim approach to EA scoping allows the federal government to utilize provincial (or other) EA processes to address issues of federal interest. The Government of New Brunswick has determined that this proposed project will be subject to the highest level of EA under provincial legislation. As such, issues of federal interest (but where there is no decision making) could be captured within the provincial process allowing the federal EA to be limited to marine project components directly regulated by CEAA triggers.
- Relying on a provincial process to address federal concerns related to air emissions from the proposed refinery will likely result in limited federal government visibility on a project which impacts current federal priorities.
- EC is taking steps to secure assurances that departmental concerns related to the whole project can be adequately addressed in the provincial EA. Preliminary discussions with NB Department of Environment representatives suggest that they are willing to include EC interests within the broad scope of the provincial EA. However, greater certainty would be beneficial for both parties. For example, a letter of understanding, or an exchange of letters, between the two governments, regarding the nature and extent of federal participation in the provincial EA process, could be used publicly to demonstrate that the federal government is indeed looking at the entire project. For its part, the provincial government would be looking for greater certainty on the federal EA (e.g. the level of EA would not change following submission of the Track Report to the Minister).
- This option is consistent with senior management direction on the application of the Interim Approach to Scoping, and would streamline the assessment process for the proponent, interveners and the federal government. In addition, TC, DFO and the Agency accept that this option may be pursued as a result of the interim approach and would be supportive.
- Annexes to this note summarize how the provincial EA (and TERMPOL) processes could be applied so as to minimize the risk of challenges to narrow scoping of the federal EA (Annex 1) and how the gaps remaining between a CEAA review of the whole project and the provincial EA could be filled (Annex 2).

### **RECOMMENDATION**

It is recommended that the Department formalize an agreement with the NB Department of Environment on how it will participate in the provincial EA of the entire project, and formally identify to the CEA Agency that EC agrees that the federal EA can be limited to certain marine components and activities of the project.

## **NEXT STEPS**

EC will secure necessary assurances through a letter of understanding, or an exchange of letters, which document how the federal government will participate in the provincial process (and in the design of a TERMPOL review process).

EC will provide formal comments to the NB Department of Environment on the provincial EA guidelines, which are currently out for review. EC will confirm its acceptance of a federal EA scoping document by as early as May 2 to facilitate coordination with the provincial EA process and will work with the Agency, TC, and DFO in finalizing a scoping document for a federal EA that would ultimately support a track decision by the Minister of the Environment.

A communications strategy will be developed and implemented to help explain how the federal environmental agenda will be respected through a cooperative federal-provincial EA and TERMPOL review of the Irving Oil Ltd. proposal.

Atlantic staff will continue to participate in the national working group on refineries and upgraders to ensure consistent messaging, and to help ensure the federal and provincial governments have adequate technical capacity in place to review the proposals.

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Cynthia Wright, ES Board

### **I concur:**

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Michael Horgan

cc: Associate Deputy Minister

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## **BACKGROUND**

No new refineries have been built in Canada and the United States since 1984 and 1976 respectively.

The new Irving refinery will process imported crude oil and will export most, if not all, of the refined petroleum products.

The project is expected to cost up to \$7 billion and employ 5,000 workers during the construction phase and 1,000 permanent workers when commissioned.

Irving's existing refinery performs well relative to U.S. and Canadian refineries for all pollutants except nitrogen oxides and carbon monoxide. Provincial authorities are requiring the development of an emission management strategy for these two pollutants. However, the Irving facility has exceeded local ambient concentration limits for sulphur oxides and will be installing control equipment to remedy the situation.

Upon Environment Canada's request, Irving coordinated an information session on February 7, 2007 for provincial and federal government representatives, which consisted of a tour of the existing refinery and liquefied natural gas terminal (under construction) and a presentation on the environmental assessment process.

The project fits into the government of New Brunswick's promise to make Saint John an energy hub. The provincial government has also committed to assisting industry in becoming more energy efficient, and will work to reduce greenhouse gas emissions.

Transport Canada is investigating options for administering a TERMPOL review of marine facilities and traffic related to the proposal as requested by Irving Oil Ltd, and meetings have been held with process administrators to clarify what components of the project will be captured within this review.

### Annex 1: Potential CEEA Challenges and Management Approaches

Potential CEEA Challenges to Narrow scoping	Risk Factors	Current Management Approach based on discussions with NBDOE and TC to date
<p>Transboundary Petitions requesting panel review (ss. 46-48)</p>	<ul style="list-style-type: none"> <li>• Perceived or arguable international, province to province, or province to federal land impacts</li> <li>• Recent Bennett Incinerator precedent for transboundary panel referral based on perceived inadequacy of provincial EA and health concerns</li> <li>• Ongoing LNG-related issues between NB and Maine in Passamaquoddy</li> </ul>	<ul style="list-style-type: none"> <li>• Province prepared to ensure explicit consideration of transboundary impacts included in provincial EA</li> </ul>
<p>Public demands for panel review:</p> <ul style="list-style-type: none"> <li>• Track report (s. 21)</li> <li>• Early RA referral before track decision (s. 25)</li> <li>• Minister discretion before track decision (s. 28)</li> </ul>	<ul style="list-style-type: none"> <li>• Several ministerials requesting “highest level” of review of which some specifically note CEEA panel</li> <li>• Recent Brunswick pipeline precedent for s. 25 CEEA panel referral principally justified by community concern for a Saint John park.</li> <li>• Public participation in NEB hearings for Brunswick pipeline amongst the highest of any in Canada</li> <li>• Considerable media attention to refinery and other Saint John area projects in connection with air issues</li> <li>• Considerable uncertainty re: nature and extent of future federal powers that would govern refinery</li> <li>• High potential for refinery to result in increased exceedances of air quality thresholds for Saint John</li> <li>• Strong community organization and concern related to air quality and human health. Tolerance for any increase in air contaminants limited.</li> <li>• Ongoing EA reviews of Coleson Cove TGS fuel conversion and Brunswick pipeline likely to intensify public concerns regarding environmental quality</li> <li>• If federal comprehensive study conducted, participant funding limited to review of marine components.</li> </ul>	<ul style="list-style-type: none"> <li>• Provincial EA at highest level of review and will consider whole project including marine components</li> <li>• NB prepared to provide assurances that all federal EA factors and environmental issues will be addressed and necessary mitigation/monitoring implemented through EA terms and conditions and subsequent approvals</li> <li>• Proponent committed to ecological and human health risk assessments</li> <li>• Proponent committed to TERMPOL review and meeting amongst regulators being scheduled to scope effort and EA linkage</li> <li>• Province committed to maximizing opportunities for public participation throughout the EA including open houses, workshops, and independent “panel review” of any outstanding public concerns (usually based on a public meeting)</li> </ul>



## Annex 2: Gaps in Provincial EA Process and Federal Options for Provision of Support

Gap	Nature of Gap	Management Option
Lack of provincial "equivalency" to CEAA panel and lack of public trust in provincial process	Under NB EA process, independent "panel" is appointed after guidelines issued, EIS submitted and results of government review tabled. The panel hears any outstanding public concerns and reports back to provincial government regarding findings.	Provincial government could be encouraged to: <ul style="list-style-type: none"> <li>• appoint a panel early in the EA process and expand role to include oversight of specific steps such as guideline development</li> <li>• appoint federal nominees to panel based on CEAA criteria.</li> </ul> EC could investigate potential to refer to panel under CEAA with pilot MOU arrangement for provincial government lead if certain conditions are satisfied
Lack of EA Cooperation Agreement	No formal cooperation agreement in place to govern federal-provincial EA relationship	Irving Refinery EA arrangement could build on a pilot cooperation agreement proposed by NB government in 2004
Lack of participant funding program	Public likely to be highly critical of lack of funding to support involvement in a major project review	Provincial government could be encouraged to make provisions for participant funding with support from federal government
Lack of financial resources	Requirements for detailed study and public involvement based in part on federal interests will necessitate considerable resources. The Petitcodiac Causeway Modification EA effort in NB addressed federal EA needs but resulted in substantial cost over-runs and ongoing demands for federal financial support	EC could lead efforts to secure federal funding to support a provincial process that satisfies federal needs and interests (e.g. for training opportunities for conducting specific studies, for contracting external experts).