



**ORAL DECISION**

**IN THE MATTER OF an Application dated December  
21, 2001 by Potash Corporation of Saskatchewan Inc.  
for a Permit to Construct Pipelines from the Wells  
McCully #1 and McCully #2 to its mill Facilities in  
Penobsquis, New Brunswick**

**March 21, 2002**

**NEW BRUNSWICK**

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

Based on the record of this proceeding, the Board will issue a permit to construct the facilities described in the evidence presented by the Potash Corporation of Saskatchewan, Inc. (PCS)

The permit to construct will be subject to PCS complying with the following conditions.

1. Subject to Condition (2), PCS shall comply with all undertakings made by its counsel and witnesses, and shall construct the facilities and restore the land according to the evidence of its witnesses at this hearing and in accordance with the Gas Distribution Act or any other applicable legislation.
2. The Board's designated representative for the purpose of these conditions shall be the director of Safety and/or his -- and in his or her absence the Board's secretary. PCS shall advise the Board's designated representative of any proposed significant change in construction or restoration procedures, and except in an emergency, PCS shall not make such change without prior approval of the Board or its designated representative. In the case of an emergency, the Board shall be informed forthwith.
3. PCS shall furnish the Board's designated representative with every reasonable facility for ascertaining whether or not the work has been, and is being, performed in accordance with the Board's Order.
4. PCS shall notice the Board's designated representative of the date on which any installed high pressure pipeline is proposed to be pressure tested at least 72 hour prior to the start of that test.
5. Both during and after construction, PCS shall monitor the effects upon the land and the environment, and shall file three copies of both an interim and a final monitoring

report in writing with the Board. The interim monitoring report shall be filed within six months of the in-service date and the final monitoring report shall be filed within 15 months of the in-service date.

6. The interim monitoring report shall confirm PCS's adherence to Conditions (1) and (2) and shall include a description of the effects noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the construction upon the land and the environment. This report shall describe any outstanding concerns identified during construction.
7. The final environmental monitoring report shall describe the condition of the rehabilitation right-of-way. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with undertakings shall be explained.
8. PCS shall give the Board's designated representative ten days written notice, in advance of the commencement of construction.
9. Permit to Construct shall terminate December 31, 2002, unless otherwise ordered by the Board.
10. PCS shall designate one of its employees as project manager who will be responsible for the fulfilment of undertakings on the construction site and shall provide the name of the project manager to the Board's designated representative.
11. PCS shall attach to its interim and final monitoring reports a log of all complaints that have been received during construction. Such log shall record the times of all

complaints received, the substance of each complaint, the actions taken in response, and the reason underlying such actions.

12. Where properties or structures exist within 200 metres of the pipeline and blasting is necessary, PCS shall:

- i. Use restricted blasting techniques by ensuring that all charged acres are covered with blasting mats to eliminate flying rocks;
- ii. Have the vibrations from blasting operations monitored and measured by a vibration measurement specialist;
- iii. Notify all property owners within 200 metres of the proposed blasting in writing at least 24 hours prior to the blasting and confirmations (if any) of the actual day or days on which blasting will occur;
- iv. Have buildings within 200 metres of the blasting checked by an independent examiner before and after operations to check for problem areas.

13. Where blasting is required, the well location and water quality of all wells within 200 metres of the pipeline shall be tested before and after blasting operations. Results of well testing shall be included in the post construction monitoring reports.

14. PCS shall prepare and comply with timely Site Specific Environmental Protection Plans (SSEPP) as required, including for wetlands. SSEPPs shall be developed in a timely manner that allows for adequate review and approval by regulatory agencies prior to construction (a minimum of 10 working days).

- 15.PCS shall complete all required fish and fish habitat assessments and provide designs and drawings for all watercourse crossings. This information shall be approved by regulatory agencies prior to construction. This information should be included -- include the proposed crossing technique, contingency crossing technique, erosion/sedimentation control plan, stream bank/channel restoration measures, et cetera. Once approved, they must be included as appendices in the Environmental Protection Plan (EPP). The determination of crossing method should be made in a timely manner to allow adequate time for the review of proposals by regulatory agencies and for PCS to carry out and pre-construction assessments.
- 16.PCS shall develop and implement an approved Environmental Effects Monitoring (EEM) Program prior to construction where required.
- 17.PCS shall monitor Total Suspended Solids and take appropriate correction action where appropriate.
- 18.PCS shall include in its construction manual, and other documents as appropriate, information that specifically, and adequately, addresses the prevention of siltation/sedimentation relating to trenching and other associated activities in road ditches that lead to watercourses.
- 19.PCS shall take immediate corrective action upon being notified of deficiencies in environmental protection measures by an environmental inspector (from any agency).

- 20.PCS shall ensure that there is appropriate environmental training of contractor personnel.
- 21.PCS shall conduct appropriate surveys for species and special status unless it is clear that the method of construction will have no potential impact on critical habitat for these species.
- 22.In the event of construction through identified waterlands, PCS shall ensure monitoring of wetland mitigation is conducted as part of the Environmental Effects Monitoring program that includes at least one year of monitoring post-construction unless follow-up monitoring is required. The EEM program for wetlands shall not be limited to TSS monitoring.
- 23.Unless the Board otherwise directs, PCS shall maintain at its Penobscot office, copies of any permits, approvals or authorizations for the applied-for facilities issued by federal, provincial and other permitting agencies, which include environmental conditions or site-specific mitigative, monitoring and restorative measures. In addition, PCS shall maintain at its Penobscot office, an information file that will include any subsequent variations to any permits, approvals or authorizations obtained prior to, or following, the commencement of construction.
- 24.Unless the Board otherwise directs, PCS shall maintain for audit purposes, at the Penobscot office, a copy of the joining procedures and non-destructive testing procedures used on the project, together with all supporting documentation.

25. Unless the Board otherwise directs, PCS shall file with the Department of Environment for approval, at least 14 days prior to the commencement of ground-breaking activities, in area of acid rock, its Acid Rock Drainage Mitigation Program and the results of its Acid Rock Sampling and Assessment Program.
26. As the preferred crossing option at all crossings, PCS shall avoid in-stream work. Any departure from this approach will require the provision of an adequate rationale to the Department of Environment.
27. Unless the Board otherwise directs, PCS shall file with the Department of Environment, at least 14 days prior to the commencement of construction, a detailed waste management plan to be developed in consultation with the Department of Environment and municipal authorities.
28. PCS shall preserve any historical materials found during construction and promptly notify the appropriate authorities of any such findings.
29. PCS will inform and work in conjunction with the Union of New Brunswick Indians if any sites of archaeological significance to the aboriginal people are found during construction.
30. PCS shall maintain liability insurance in a form acceptable to the Board with policy limits of at least \$5 million Canadian per occurrence during the construction of the pipeline and the installation of the well site and gas processing equipment. PCS shall furnish the Board with a certificate evidencing coverage and describing the relevant

particulars. The certificate shall state that the Board will be notified not less than 30 days prior to cancellation of or any material change in the policy.

31.PCS shall obtain a certificate of determination under the EIA regulation and comply with all requirements stated in the certificate.

Those are all of the conditions. The Board has chosen not to include the condition suggested by the Union of New Brunswick Indians in the conditions to the Permit to Construct.

As discussed during summation yesterday, the proposed condition appears to flow from the recommendations of the Royal Commission on Aboriginal Peoples. This Board does not believe that it would be appropriate for a tribunal such as ours to attempt to initiate policies based upon that Royal Commission in the absence of the Government of this Province giving directions on this policy matter.

In the absence of that kind of policy directive, this Board will not order utilities over which we have jurisdiction to comply with any recommendation of that Royal Commission. We, therefore, recommend to the Union of New Brunswick Indians that they approach the Government of this Province and seek a policy directive from it, and not this Board, concerning the recommendations of the Royal Commission on Aboriginal Peoples.

DATED at the city of Saint John this 21<sup>st</sup> day of March 2002

BY THE BOARD

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Lorraine R. Légère  
Secretary