



DECISION

IN THE MATTER OF an application by **Potash Corporation of Saskatchewan Inc. (PCS)** for a Permit to Construct an Inter-Site Utility and Process Piping System between its PotashCorp Penobsquis Mine Facility and its new mine site at Picadilly.

August 18, 2009

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

APPLICANT:

Potash Corporation of Saskatchewan Inc. -----

REPRESENTED BY:

Peter Zed, Q.C.
Nadia MacPhee
Barry Spalding

Mark Fracchia
General Manager, PCS

Tony Vecchio, P.Eng.
Senior Project Manager,
AMEC

INTERVENORS:

Intervenor-----

Mac McKnight

New Brunswick Department of Energy-----

Alain Bilodeau

NB ENERGY AND UTILITIES BOARD ----- **Board Staff:**

Todd McQuinn
David Keenan

Panel:

Chairman: Raymond Gorman, Q.C.

Vice-Chairman: Cyril Johnston

Members: Roger McKenzie

Robert Radford, Q.C.

Board Secretary: Lorraine Légère

DECISION

Potash Corporation of Saskatchewan (the “Applicant” or “PCS”) applied to the New Brunswick Energy and Utilities Board (“Board”) for a Permit to Construct an inter-site utility and process piping system between its mine facility at Penobsquis, NB and its new mine site at Picadilly, NB. This application was made pursuant to Section 5(1) of the *Pipeline Act, 2005* (the “Act”). The formal application was filed with the Board on July 13, 2009.

Prior to filing the application, the Applicant requested an exemption from the public notification requirements at Section 4 of the *Pipeline Filing Regulation – Pipeline Act, 2005* (NB Regulation 2006-03). This request was made by letter on April 8, 2009. In requesting the exemption, under Section 4(5) of the regulation, the Applicant noted that the proposed pipeline corridor linking the two mine facilities had been subject to an Environmental Impact Assessment as part of the overall Picadilly mine project approval process in 2007, and that public consultations had been part of that process. The Board did not grant the exemption but did approve a modified Public Information Program (“PIP”) on April 20, 2009.

A pre-hearing conference was scheduled for Sussex, New Brunswick on August 18, 2009. Notice of this pre-hearing conference had been published pursuant to a Board Order of July 20, 2009. The Board received one Notice of Intervention from the Department of Energy, seeking standing as an informal intervenor, and a request to provide comments to the Board by Mr. Mac McKnight of Apahoqui, NB.

Copies of the application were sent to the Ministers and municipalities that are parties to the proceeding, as per Section 6 of the Act. The application was reviewed by the inter-agency Pipeline Coordinating Committee (“PCC”). After completing its review, the Committee agreed that a construction permit should be issued, subject to the conditions outlined in its report of July 5, 2009.

In a letter filed with the evidence on July 13, 2009, the Applicant indicated its intention to present a motion to convert the pre-hearing, scheduled for August 18, 2009, into a final hearing for approval of the application, should no intervenors come forward at the pre-hearing.

At the pre-hearing on August 18, 2009, Mr. Mac McKnight, who had registered to provide comments to the Board, indicated that he wished to ask questions of the Applicant's representatives should the formal hearing proceed. Mr. McKnight was granted formal intervenor status for the hearing, with the opportunity to cross-examine witnesses and make closing arguments before the Board.

As stated in its letter of July 13, 2009, the Applicant made a motion to convert the pre-hearing to a formal hearing on the matter. All parties to the hearing were canvassed and all indicated that they were ready to proceed. The Board then considered the Applicant's request and agreed to proceed to a final hearing of the application.

All of the intervenors attended the hearing and were afforded the opportunity to cross-examine witnesses for the Applicant, to present evidence and to address the Board. None of the intervenors presented any evidence. Mr. McKnight did cross-examine the witness panel.

The Applicant presented two witnesses: Mr. Mark Fracchia, General Manager of PCS potash operations in New Brunswick; and Mr. Tony Vecchio, Project Manager for AMEC Americas, the construction manager for the Picadilly mine project. The Board was informed that the timetable for completing the slurry, brine and process water connections had been moved back to December 31, 2010. All other inter-site process connections remained scheduled for completion no later than December 31, 2009.

None of the intervenors opposed the application. Mr. McKnight, however, expressed concern that the natural gas pipeline be properly marked where it crossed Route 114.

The Board considered the application for a Permit to Construct the inter-site utility and process piping system and issued an oral decision. It was ordered that the Permit to Construct, as

requested, be issued subject to the 18 conditions contained in the Certificate of Determination from the Department of the Environment, dated January 11, 2008, and the 21 conditions contained in the Pipeline Coordinating Committee's report to the New Brunswick Energy and Utilities Board, dated July 5, 2009, as modified by the Board. The Applicant is to ensure that the Board receives written confirmation that its liability insurance, required as per Condition 19 of the PCC report, is up-to-date and is provided in a form that is satisfactory to the Board. In the event of any discrepancy between the conditions of the Certificate of Determination and the following conditions, the more stringent condition shall apply. The Applicant is further required to properly mark both sides of the roadway where the natural gas pipeline crosses Route 114, in accordance with the *CSA-Z662-07, Oil & Gas Pipeline Systems* standard.

The 21 conditions contained in the PCC report are as follows:

1. Subject to Condition (2), PCS shall comply with all undertakings made by its counsel and witnesses, and shall construct the facilities and shall restore the land according to the evidence of its witnesses at this hearing and in accordance with the *Pipeline Act, 2005*, any other applicable legislation and the conditions contained in this decision.
2. The Board's designated representative for the purpose of these conditions shall be the Director of Safety or, in his/her absence, the Secretary of the Board. 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 event 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 the work has been, and is being, performed in accordance with this decision.
4. PCS shall give the Board's designated representative ten days written notice, in advance of the commencement of construction.

5. PCS shall designate one of its employees as project manager who will be responsible for the fulfillment of undertakings on the construction site and PCS shall provide the name of the project manager to the Board's designated representative.
6. PCS shall notify the Board's designated representative of the date on which any installed pipeline is proposed to be pressure tested at least 72 hours prior to the start of the test.
7. 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 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.
8. 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.
9. The final environmental monitoring report shall describe the condition of the rehabilitated 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.
10. PCS shall attach to its interim and final monitoring reports a log of all complaints that have been received during construction. Such logs shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.

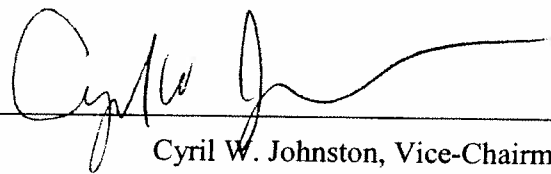
11. Where properties or structures exist within 200 metres of the pipeline and blasting is necessary, PCS shall:
 - i. Use restricted blasting techniques by ensuring that all charged acres are covered with blasting mats to eliminate flying rocks;
 - ii. Have the vibrations from blasting operations monitored 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 necessary) 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.
12. Where blasting is required, the well location and water quality of all wells within 500 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.
13. PCS shall take *immediate* corrective action upon being notified of deficiencies in environmental protection measures by an environmental inspector (from any agency).
14. PCS shall ensure that there is appropriate environmental training of contractor personnel.
15. Unless the Board otherwise directs, PCS shall maintain, in New Brunswick, 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 file with the Board any subsequent variations to any permits, approvals or authorizations obtained prior to, or following, the commencement of construction.

16. Unless the Board otherwise directs, PCS shall maintain for audit purposes, in New Brunswick, a copy of the joining procedures and non-destructive testing procedures used on the project, together with all supporting documentation.
17. PCS shall preserve any historical materials found during construction and promptly notify the appropriate authorities of any such findings.
18. 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.
19. PCS shall obtain and maintain liability insurance in a form acceptable to the Board. PCS shall furnish the Board with a certificate evidencing coverage and describing the relevant particulars prior to the start of construction. The certificate shall state that the Board will be notified not less than sixty (60) days prior to cancellation of or any material change in the policy.
20. PCS shall comply with all requirements stated in the Certificate of Determination dated January 11, 2008 under the EIA legislation that was issued with respect to this project.
21. Construction of the facilities as allowed under this permit must be completed by December 31, 2010 unless otherwise ordered by the Board.

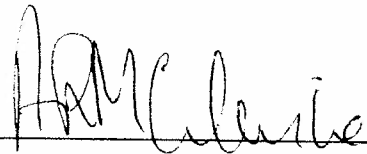
Dated at the City of Saint John, New Brunswick this 18th day of August, 2009.



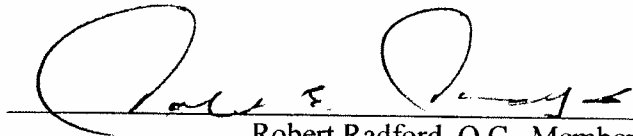
Raymond Gorman, Q.C., Chairman



Cyril W. Johnston, Vice-Chairman



Roger McKenzie, Member



Robert Radford, Q.C., Member