



## DECISION

**IN THE MATTER OF** an application by **Potash Corporation of Saskatchewan Inc. (PCS)** for a Permit to Construct a brine disposal pipeline between PotashCorp Penobsquis Mine and PotashCorp Cassidy Lake Mill.

January 9, 2009

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

**APPLICANT:**

Potash Corporation of Saskatchewan Inc. -----

**REPRESENTED BY:**

Mr. Peter Zed, Q.C.  
Ms. Nadia MacPhee  
Barry Spalding  
  
Mr. Mark Fraecchia  
General Manager, PCS  
  
Brian Roulston  
Supt. of Engineering, PCS  
  
Janet Blackadar  
Mgr. Envtl. Sciences, AMEC  
  
Lance Reid  
Construction Manager, AMEC

**INTERVENORS:**

**Hammond River Angling Association**-----  
**MLA Kings East**-----  
**Self-Represented Dairy Farmer**-----  
**Self Represented Property Owner**-----  
**New Brunswick Department of Energy**-----  
**Village of Sussex Corner**-----

Ms. Sarah Campbell  
Mr. Bruce Norling  
Mr. Roy Chisholm  
Ms. Teresa Clegg  
Mr. Alan K. O'Leary  
Mr. John McHenry

**NB ENERGY AND UTILITIES BOARD** -----

**Board Counsel:**

**Board Staff:**

Ms. Ellen Desmond  
Mr. Todd McQuinn  
Mr. David Young  
Mr. David Keenan

**Panel:**

Mr. R. Gorman, Q.C.  
Mr. C. Johnston  
Ms. Constance Morrison  
Mr. S. Toner  
  
Ms. L. 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 a brine disposal pipeline between its facilities at Penobsquis, NB and Cassidy Lake, NB. This application was made pursuant to the *Pipeline Act, 2005* (the “Act”). The formal application was filed with the Board on November 4, 2008.

In conjunction with the application, the Public Information Program (“PIP”) had been filed and was approved by the Board on July 4, 2008. An open house public information session was held July 24, 2008.

A pre-hearing conference was scheduled for Sussex, New Brunswick on December 8, 2008. Notice of this pre-hearing conference had been published pursuant to the Board Order of November 5, 2008. The Board received five Notices of Intervention from interested parties.

In accordance with Section 6 of the Pipeline Act, copies of the application were sent to the government departments and agencies represented on the Pipeline Coordinating Committee. After completing its review, the Committee recommended that a construction permit should be issued, subject to the conditions outlined in its report of November 3, 2008.

On December 2, 2008, the Applicant requested that, if appropriate, the Board treat the pre-hearing conference as a final hearing for approval of the Application. This issue was raised as a Motion at the pre-hearing on December 8, 2008. All of the parties present at the pre-hearing were canvassed on this issue and, as not all parties were ready to proceed at that time, the Motion was denied. The full-hearing was then scheduled to commence on January 7, 2009, at the Board’s premises in Saint John.

At the commencement of the hearing on January 7, 2009, the Applicant stated that it was in agreement with all of the conditions recommended in the Pipeline Coordinating Committee’s

letter of November 3, 2008 (Exhibit #6) save one; and requested that Condition 4, the requirement to give the Board's representative 10 days written notice before commencing construction, be amended to permit certain preliminary construction activities, such as clearing and grubbing of the right-of-way and the construction of access roads, without notice.

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. All of the intervenors present supported the Application, subject to certain recommendations.

The Hammond River Angling Association requested that it be provided with a site specific environmental protection plan for each watercourse along the pipeline route. Further, it requested that it be given prior notice of, and reasonable access to examine, trenching activities on fish-bearing streams and watercourses to be trenched outside the period June 1 through September 30. The Applicant agreed to these conditions.

Mr. Roy Chambers supported the project, subject to a number of recommendations he made, including that an additional two kilometres of the pipeline (one kilometre on either end of the proposed double-walled section) be double-piped. Although Mr. Chambers provided a rationale for his request, he did not provide any evidence that single-walled pipe was inadequate for these areas nor did he demonstrate any benefit that would accrue from such a change. In the absence of any evidence in support of Mr. Chambers' proposals, the Board will not impose them as conditions to the permit.

As per Section 20 of the Act, the Applicant has provided the Board with proof of insurance to cover the construction and operation of the brine disposal pipeline. The Board finds that the Applicant's liability insurance, including pollution liability, is appropriate for the project.

As per Condition #1, the Applicant shall:

1. Provide site access to those parties, on a reasonable basis, who request to examine the pipeline construction and water course crossings; subject to safety considerations.

2. Keep the public advised, in a reasonable manner, of construction activity and progress.
3. Provide the Hammond River Angling Association with a site specific environmental protection plan for each watercourse along the pipeline route.

The Board has considered the Application for a Permit to Construct the pipeline and has determined that the Permit to Construct, as requested, will be issued forthwith subject to the 15 conditions contained in the Certificate of Determination from the Department of the Environment, dated October 14, 2008; and the 21 conditions contained in the Pipeline Coordinating Committee's report to the New Brunswick Energy and Utilities Board, dated November 3, 2008, as modified by 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 21 conditions 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 absences 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. PCS may commence clearing and grubbing of rights-of-way, construction of associated access roads on rights-of-way, and excavation and foundation work for the Penobsquis Pump Station one day following notice to the Board's designated representative.
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 October 14, 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, 2009 unless otherwise ordered by the Board.



Dated at the City of Saint John, New Brunswick this 9<sup>th</sup> day of January, 2009.

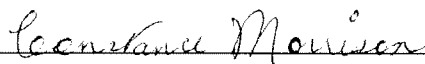


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Raymond Gorman, Q.C., Chairman

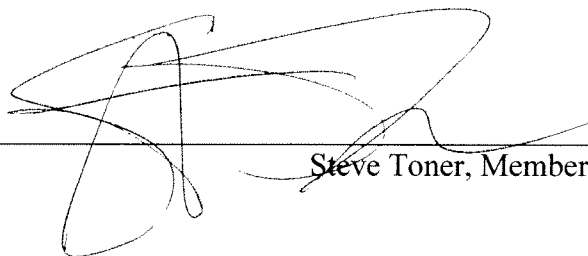
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Cyril W. Johnston, Vice-Chairman



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Constance Morrison, Member



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Steve Toner, Member