the PEMBINA institute *Sustainable Energy Solutions*

PEMBINA INSTITUTE

SUBMISSION TO THE MINISTRY OF ENERGY, MINES AND PETROLEUM RESOURCES ON THE DRAFT NOTIFICATION AND CONSULTATION REGULATION UNDER THE *OIL AND GAS ACTIVITIES ACT*

JANUARY 22, 2010

The Pembina Institute has reviewed the Consultation Draft of the Consultation and Notification Regulation under the *Oil and Gas Activities Act* and offers the following comments.

Overall, we have real concerns that this regulation does not provide enough in the way of opportunities for meaningful consultation and issue resolution between landowners and company representatives, appropriate follow up where negotiations have occurred, and broad enough opportunity throughout for the engagement to be truly meaningful for landowners involved in negotiations with company representatives.

In the past 10 years, gas development activity in northeast British Columbia has risen steadily. This regulation should be applied in the context that this activity is always hazardous and occasionally deadly, and that companies and government should at all times err on greater disclosure for potentially affected individuals and communities, and broad sharing of public information.

Our first recommendation is that we believe that the distinction between consultation and notification is artificial. In our view, if a company is required to notify a landowner about potential activities that pose a hazard to their land or their family, that the company should be prepared to discuss any concerns that might arise. For a regulation to identify requirements to notify, but not to elaborate on a process for addressing those concerns may end up causing confusion and a lack of clarity amongst landowners and company representatives. We recommend that all references to notification be removed, and the consultation provisions be substituted in their place.

Secondly, this regulation does not appear to set a threshold or define criteria for reaching agreement with the landowner. It appears to merely require notification/consultation, some reasonable effort to respond to identified concerns, and then notification of any changes in a written report. It does not address what happens if the landowner remains concerned, nor does it address expressly what will happen if an agreement cannot be reached. We understand that landowner recourse provisions exist in the Act, but unless and until there is some guidance on how these mechanisms will operate, it seems premature to finalize this regulation without providing some guidance to landowners to understand how the system will function.

Recommendations Based Upon Specific Sections

Section 2 requires that distances be measured from the centre point of a facility or well. Given that the size of well pads tends to be increasing, we recommend that distances be measured from the end point of the well pad or facility nearest the landowner's property, not the centre point. This will afford additional distance and ensure that consultation can include a full range of potentially affected landowners.

Section 3(1)(b), (c), and (d) would allow the company to inform landowners of proposed activities via regular mail, email, or leaving a copy in the mailbox respectively. We recommend that these three subsections be removed, and that a company be required to notify landowners via registered mail, or by personal representative, and in either case with proof of service. Regular mail and email are not always reliable, and some landowners may leave their homes for extended holidays in the winter. Companies must be expected to make comprehensive efforts to consult with landowners about activities that could impact lands and families, and the onus should be on the company to clearly establish contact through a means such as registered mail and personal service.

We recommend that **section 3(2),** which "deems" service to have been received, be substantially rewritten. It would be of concern if a consultation document was left in the mailbox of a landowner who was away, only to come home to find that he or she had been "deemed" to have been served in their absence and to not have an opportunity to comment. Documents should only be deemed served after the company has made several attempts to personally notify the landowner, over a minimum of 2 months time, and these efforts have failed. Deeming service after 3 days of effort is simply inadequate.

We recommend that the distinction between notification and consultation be abolished, and that this regulation focus on consultation. With respect to the notification and consultation distances for sour gas and sweet gas in **sections 5 and 6**, we recommend that the farther of the two distances be utilized for consultation (for example, 1.5 kilometres for sweet gas and 3.0 kilometres for sour gas), subject to our next recommendation below.

With respect to **sections 5, 6, 7 and 8**, establishing distances for notification and consultation for various activities, we cannot comment directly on the proposed distances, but we strongly recommend that direct consultation with northeast landowners occur prior to these distances being finalized, to ensure that they will be considered appropriate by potentially affected landowners, and respond to their potential concerns. One such mechanism is the NEEMAC, whose input should be sought and whose recommendations should be implemented in this case.

One example of the potentially hazardous application of this regulation is that as it currently stands, **section 6(3)** would merely require a company to notify landowners within 200 metres of a sour gas pipeline about the existence of that pipeline. Any mishap to that pipeline, in particular a leak or blowout, would almost definitely cause impacts beyond 200 metres, particularly if there was an H2S leak. This section states that

the distance would be either 0.2 kilometres or Schedule C, whichever is larger, but Schedule C is blank in this consultation draft.

As noted earlier, with respect to **section 9**, we recommend that it be revised to afford all entities an invitation to consult.

Section 10(f)(i) provides landowners 14 days to respond to the notice. We recommend that this time be extended to 60 days. There may well be many situations where the landowner is unable to respond within 14 days – perhaps they are away on holiday, or working on their farm during haying or calving season, making it difficult for them to respond and engage in discussions with the company. Given that the regulation is presumably intended to ensure meaningful consultation with landowners, there should be a opportunity for the landowner to engage in dialogue with the company at time that is reasonably appropriate for the landowner, not within 14 days of receiving a notice delivered at the pleasure of the company.

We object to **section 10(g)** which states that a company proposing a sour facility, well, or pipeline does not need to share its information regarding emergency planning for such a facility with potentially affected landowners until after it has received its permit. In our view, one of the key purposes of notification or consultation is to share, and receive input on emergency planning for sour gas operations. The company should be able to prove that it has already considered the health and safety of nearby landowners and landowners should have the right to comment on the adequacy of the emergency plan BEFORE the permit is granted, particularly where H2S is a threat.

We are concerned about the disproportionate allocation of time frames on the part of the landowner and the company. As noted earlier, if the landowner receives a notice, he or she is currently expected to respond within 14 days. However, the company has up to a year to respond to the landowner's concerns, as stated in **section 15(3).** While this may make sense as the company will need more time to potentially adjust its development plans, we recommend that the company be required to apprise the landowner of amendments or changes underway with respect to the proposed development sooner than 1 year, perhaps through quarterly updates. This reasoning should also apply to **section 17** with respect to modifications.

With respect to the modification provisions in **section 16**, we recommend that some consideration be given to potential situations whereby multiple minor modifications are proposed in different time frames that would have the effect of a major amendment to the project, but are introduced as minor amendments. To ensure that landowners receive maximum benefit, the broadest consultation requirements should be required after 2 modifications to an application.