



canadian | association  
energy | canadienne  
pipeline | de pipelines  
association | d'énergie

Suite 200, 505 – 3rd St. SW  
Calgary, Alberta T2P 3E6  
PHONE 403.221.8778  
FAX 403.221.8760

April 23, 2014

Tara Shannon  
Director  
Resource Policy and Programs  
Aboriginal Affairs and Northern Development Canada  
15 Rue Eddy  
Gatineau, QC K1A 0H4

Dear Ms. Tara Shannon

**RE: Draft Legislative Proposal to amend the *Nunavut Waters and Nunavut Surface Rights Tribunal Act***

On behalf of the Canadian Energy Pipeline Association (CEPA) we thank you for the opportunity to comment on the proposed amendments to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*. Our member companies operate transmission pipelines that carry 97% of the oil and natural gas produced in Canada safely to markets throughout North America. Our members construct and operate both federally (NEB) and provincially regulated facilities.

CEPA is supportive of the objective to further implement the Action Plan to Improve Northern Regulatory Regimes and we believe that the intentions of these amendments are a step in that direction. An improved regulatory regime should enable “fit for purpose” permitting and full life cycle regulation for pipelines, recognizing that transmission pipelines are different from other oil and gas projects, with much different footprints and surface impacts.

The following comments are intended to address two main areas that require further consideration: (1) the timeframe for decisions/excluded periods, and, (2) the development of regulations and policies.

**1. Timeframe for decisions/excluded periods**

CEPA is supportive of the amendments to enhance certainty and predictability of process. We believe the amendments to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* should be focused on enhancing timeliness, efficiency, and facilitating best use of scarce technical resources in both environmental assessment and regulatory review of projects in Northern Canada. We support the establishment of timelines for all phases of review, including ministerial decision-making.

The current proposed amendments should provide greater certainty of process in relation to exclusion periods. CEPA recognizes the need for exclusion periods for actions out of the government's control. However, the reasons for these exclusions are primarily related to compensation. A requirement for the determination that compensation requirements have been met as part of the completeness review stage should be incorporated into the Act, as this would result in fewer extensions to the time limit and a more timely process.

**2. Priority should be given to the development of regulations and policies**

The development of policies and regulations is an important next step in achieving the goals set out by the Action Plan to Improve Northern Regulatory Regimes. CEPA would encourage the Ministry to make this a priority moving forward in order to implement the powers provided in the potential amendments. Specific

attention should be made to regulations and policies regarding: (a) the amount, form and nature of security; (b) cost recovery; and (c) Administrative Monetary Penalties (AMPs).

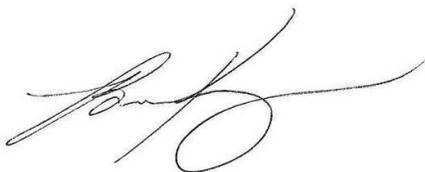
- a) Amount, Form and Nature of Security** - There is no regulation currently under paragraph 76 that would provide the criteria and process for determining the amount of security its form and nature. These regulations/policies should include the following considerations;
- financial capability should be based on a company-wide, not asset- or project-specific, consideration of risk
  - financial capability should be commensurate with risk and a well-defined reasonable worst case scenario, not based on an arbitrary specified limit
  - pipeline operators are best-placed to respond to any incident involving their facilities; assumption of management control by the Ministry should only be considered in extraordinary circumstances
- b) Cost Recovery** - There is no regulation currently under to paragraph 81.1 that would detail the criteria for determining cost recovery amounts. CEPA encourages the Ministry to develop regulations that ensure a reasonable cost recovery model is developed that establishes a high level of certainty of process.
- c) Administrative Monetary Penalties** - There is no regulations under the proposed amendments that would detail the criteria for the use of AMPS. The implementation of AMPs is an opportunity for the Ministry to refresh its communications on pipelines and the safety record of pipeline operators in Northern Canada. Public reference materials should be updated to reflect the availability of AMPs as an additional tool in managing non-compliance by all parties.

We are encouraged that the proposed amendments clearly state that the purpose of a penalty is intended to be an incentive to compliance, rather than a first tool in enforcement or a punitive measure. In order to ensure that this intention is realized, CEPA believes that compliance agreements should be provided for in the regulations. This would allow the Ministry to work effectively and transparently with individuals or companies to resolve the situation that has created a violation. It provides the opportunity to agree on clear steps and timelines toward resolution and creates a benchmark against which progress can be measured. We recommend that compliance agreements be incorporated into the Board's enforcement policy and procedures and regulations dealing with AMPS.

### Summary

Thank you for the opportunity to provide comments on the proposed amendments to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*. We believe the intentions of the proposed amendments are a positive step toward further implementation of the Action Plan to Improve Northern Regulatory Regimes. Moving forward the Ministry should give priority to the development of policies and regulations to ensure effective regulatory regimes. Once again, thank you for the opportunity to comment and if you have any questions about our comments please do not hesitate to contact the undersigned.

Yours Truly



Brenda Kenny  
President and CEO