

CONDITIONS OF ENVIRONMENTAL IMPACT ASSESSMENT APPROVAL PROPOSED PROJECT EIDER ROCK

FEBRUARY 17, 2011

Under subsection 16(2) of N.B. Regulation 87-83, the Environmental Impact Assessment Regulation – Clean Environment Act, the Lieutenant-Governor in Council, having considered the report and the recommendation of the Minister under subsection 16(1), gives approval for the proposed Eider Rock Project, as described in the document Amended Project Description: Project Eider Rock, dated June 18, 2010, subject to the following conditions:

(a) this approval does not relieve Irving Oil Company Limited (the proponent) from the necessity to comply with any other applicable federal, provincial, and municipal acts, regulations, bylaws and codes;

(b) the proponent shall adhere to all obligations, commitments, monitoring and proposed mitigation measures as outlined in the Final Environmental Impact Assessment Report dated April 30, 2009 (hereinafter “Final EIA Report”) applicable to the proposed project as described in the Amended Project Description: Project Eider Rock, dated June 18, 2010, and any other documents or correspondence prepared and submitted by the proponent, or its agents, as deemed applicable by the Minister to this project. In addition, the proponent shall submit compliance updates every six (6) months in the form of a summary table that tracks compliance with all material EIA, permit and approval conditions and commitments made by the proponent during the regulatory review process and project detailed design phase, until such time as all conditions have been met;

(c) commencement of this project must occur within six (6) years of the date of this approval. Should commencement not be possible within this time period, the project must be registered under the Environmental Impact Assessment Regulation – Clean Environment Act (NB Reg. #87-83) again, unless otherwise stated by the Minister of Environment;

(d) the use of the marine terminal is limited to the purposes outlined in the Amended Project Description: Project Eider Rock, dated June 18, 2010. Any other proposed uses of the marine terminal shall be subject to registration under the Environmental Impact Assessment Regulation – Clean Environment Act;

(e) the project will require an Approval to Construct/Operate under the Air Quality Regulation (N.B. Reg. #97-133) – Clean Air Act. This Approval will serve as a framework to ensure appropriate environmental protection measures are properly designed and implemented, and compliance with environmental protection commitments made by the proponent during the EIA review process. During the

project detailed design phase, the proponent must apply for an Approval to Construct/Operate and take into consideration the requirements of the approval process, including but not limited to final design details for the vapour recovery system required to recover vapours from volatile petroleum product storage, from the loading systems used to transfer products to ships, and vapours from ship tanks during filling of ships (as outlined in Section 3.0 of the Final EIA Report);

(f) the proponent must obtain a Watercourse/Wetland Alteration Permit for any activities to be conducted within 30 meters of any watercourse or wetland. Please contact the Manager, Surface Water Protection, at (506) 444-5149 for additional information. Further, once detailed design is completed, a compensation plan for any unavoidable loss or alteration of wetland habitat due to the project must be developed and submitted to the Manager, Environmental Assessment Section, Department of Environment (DENV), for review and approval. The compensation plan must take into consideration any altered wetland habitat, and any opportunities for the potential restoration of habitat in proximity to the project area. Compensation will be required for any wetland area that is shown to have residual impacts as indicated by follow-up wetland monitoring. This will include a wetland monitoring plan which will monitor water quality and wetland function at 1, 3 and 5 year intervals from the date of the onset of initial construction. These results will be compared with baseline data that must be collected prior to the onset of construction. Further compensation may be required in the future, if monitoring indicates a loss of wetland function beyond the initial development area;

(g) dredging activities may require a Quarry Permit, as per the Quarriable Substances Act, from the Department of Natural Resources. In addition, any activities impacting submerged Crown Lands, located outside the proponent's waterlot, will require authorization from the Department of Natural Resources under the Crown Lands and Forests Act. Further, the proponent must indemnify the Crown/Province against all claims resulting from the use or occupation of any subject Crown Lands, if applicable;

(h) in the event that the water quantity or quality of residential wells is negatively impacted by the implementation of the project (as raised by the resident(s)), it will be the proponent's responsibility to investigate and rectify the situation. This may include providing a temporary water supply in the short term or for long term effects to repair or replace any impacted well, which might include but is not limited to, deepening a well or drilling a new well. The proponent must immediately notify the Manager of the Water and Wastewater Management Section and the Manager of the Drinking Water Source Protection Section, DENV, of any complaint(s) received regarding water quantity or quality problems. If an agreement as to the cause of water problems cannot be reached between the proponent and the resident(s), DENV will provide independent third party facilitation/direction to resolve the issue. Further, pre-blast surveys and sampling of potable water wells must be conducted for all wells located within a minimum 500 meter radius of all blasting activity (all wells, not only owner-occupied residences);

(i) the proponent must submit an overall Project Waste Management Plan to the Manager, Environmental Assessment Section, DENV, for review and receive approval prior to the onset of construction. The plan must address, but not be limited to, the following:

(i) details on all project generated wastes, and confirmation that all project-related wastes will be disposed of at an appropriate, approved facility, and

(ii) address the issue of any/all ballast water discharges to comply with the requirements of the federal Ballast Water Control and Management Regulations (SOR/2006-129) under the Canada Shipping Act, 2001;

(j) the proponent must submit to the Manager, Environmental Assessment Section, DENV, for review and approval, the details of all physical works required in or near the water. Additionally, final designs must be reviewed by Fisheries and Oceans Canada (DFO) to determine Fisheries Act requirements/authorizations. This condition includes but is not limited to the following:

(i) in keeping with DFO's Policy for the Management of Fish Habitat, exhaust a hierarchy of preferences to minimize the direct and indirect effects of the project on fish and fish habitat,

(ii) confirm the design of the marine terminal, barge landing facility, and any other physical works in water,

(iii) confirm the design footprint and loss of fish habitat and/or fish associated with in-water physical works occurring during both the construction and operation of the project,

(iv) collect additional baseline information to assess the potential impacts to fish and fish habitat if deemed necessary by DFO,

(v) submit a detailed fish habitat compensation plan in accordance with DFO's Policy for the Management of Fish Habitat to ensure that a no-net-loss of fish habitat is maintained, and

(vi) develop a detailed follow-up monitoring program to assess the effectiveness of mitigation techniques, accuracy of predicted fish mortalities and effectiveness of fish habitat compensation;

(k) the construction and operation of the marine terminal and related in-water works and/or structures have the potential to interfere with established fishing activity. The proponent shall establish a fisheries liaison committee to address project interactions with fishing activity, including potential compensation. Please contact the DFO Area Director for South-West New Brunswick (506) 755-5060, regarding the committee's representation and terms of reference;

(l) in order to demonstrate how appropriate adaptation measures have been incorporated into the project design, an updated assessment of the potential effects of the environment on the project must be submitted to the Manager, Environmental Assessment Section, DENV, for approval, including up to date information on storm surges, current and wave measurements, and detailed site-specific wave modelling at the marine terminal;

(m) the proponent must undergo and complete, with respect to the project, the “Technical Review Process of Marine Terminal Systems and Transshipment Sites” (TERMPOLE Review) as described in Transport Canada’s “TERMPOLE Review Process 2001 - TP 743E” document, prior to commencing operation of the marine terminal;

(n) the proponent must submit an overall Emergency Management/Response Plan and additional contingency/ operational plans during the detailed design phase to the Manager, Environmental Assessment Section, DENV, for review and receive approval prior to the onset of operation. The plan(s) must address, but shall not be limited to, the following requirements:

(i) integrated emergency plans for the project and its ongoing operations (sign off will be required from The City of Saint John Fire Chief/Director of the Saint John Emergency Management Organization, and New Brunswick Emergency Measures Organization, Department of Public Safety),

(ii) a detailed oil pollution emergency plan shall be developed and submitted by the proponent, which will be subject to approval by the Director, Standards Setting / Program Operations and Enforcement Branch, DENV. Approval must be received prior to any vessels carrying product for delivery to the marine terminal entering the Bay of Fundy. Further, an Oil Pollution Emergency Plan (OPEP) and an Oil Pollution Prevention Plan (OPPP) shall be developed and submitted by the proponent to Transport Canada’s Marine Safety Branch to satisfy section 168 of the Canada Shipping Act, 2001, for review and approval prior to any Oil Handling operation,

(iii) in addition, the Oil Handling Facility (OHF) must have an arrangement with a response organization for oil spill response, have on site a declaration and prescribed procedures, equipment and resources available for immediate use in the event any oil spills during loading and unloading,

(iv) an emergency evacuation plan is required for the facility, and shall be prepared by the proponent and submitted to The City of Saint John Fire Chief, and the Director, New Brunswick Emergency Measures Organization, Department of Public Safety for approval prior to the start of operation of the facility. A draft of this plan shall be submitted at least six (6) months in advance of operation of the facility,

(v) costs associated with first responders' initial and on-going training for emergency purposes associated with the marine terminal shall be borne by the proponent. This training shall be to the satisfaction of The City of Saint John Fire Chief and shall be similar and current to the training programs for such facilities in other jurisdictions (e.g., the United States, Europe and elsewhere in Canada),

(vi) the Overall Emergency Management/Response Plan shall be consistent with Canada Standards Association Standard Z 1600 (emergency management and business continuity programs), and shall be submitted to The City of Saint John Fire Chief and the Director, New Brunswick Emergency Measures Organization, Department of Public Safety for approval prior to the start of operation of the facility. A draft of this plan shall be submitted six (6) months in advance of operation of the facility,

(vii) the Emergency Management / Response Plan and additional contingency/operational plans must satisfy Transport Canada's new marine security requirements under the International Maritime Organization's (IMO) International Ship and Port Facility Security (ISPS) Code, the federal Marine Transportation Security Regulations (SOR/2004-144) under the Marine Transportation Security Act, and the International Convention for the Safety of Life at Sea, 1974 (and amendments);

(o) the proponent shall fund one (1) DENV Environmental Monitoring and Compliance Officer for the period of construction and commissioning of the facility. The duties of the Officer include, but are not limited to: monitoring compliance of commitments made, coordinating reviews of plans among different levels of government and ensuring the public is adequately informed. Specific Terms of Reference shall be developed by DENV in consultation with the proponent;

(p) a comprehensive Environmental Management Plan (EMP) must be developed and submitted to the Manager, Environmental Assessment Section, DENV for review, and commencement of activities related to the implementation for each stage of construction cannot be undertaken prior to approval of the specific phase EMP by the Manager, Environmental Assessment Section, DENV. The EMP must include: an Environmental Protection Plan (EPP) that links mitigation to locations, a monitoring plan (compliance and environmental effects monitoring), and contingency plans. The EMP must also define and identify roles and responsibilities, accountability and reporting procedures during each phase of the Project;

(q) any impact within 100 meters of the recorded archaeological site identified as Borden No. BhDI-2 in the Final EIA Report will require the identification of appropriate mitigation for the site by a licensed archaeologist, with submission of a final analytical report (subject to approval by Archaeological Services Section – Department of Wellness, Culture and Sport) upon completion. No work may be carried out at the site until the report is approved, and all necessary mitigation is in place. If it is suspected

that remains of archaeological significance are discovered elsewhere within the assessment area during construction or operation, all activity shall be stopped within 50 meters of the remains and the proponent must contact the Project Executive, Archaeological Services, Heritage Branch at (506) 453-3014;

(r) prior to the initiation of construction, the proponent shall develop a Built Heritage Management Plan for Fort Mispec and submit the plan for review/approval by the Manager, Environmental Assessment Section, DENV. The plan must include, but is not limited to, a delineation of the boundaries of Fort Mispec;

(s) the proponent must develop a site-specific environmental protection plan (SSEPP) for Mispec Park/Beach which must receive approval from The City of Saint John and the Manager, Environmental Assessment Section, DENV. The SSEPP must include a monitoring program to survey Park users to assess the impact of project-related nuisance effects (e.g., odour). The SSEPP must also identify action thresholds and associated mitigation procedures in relation to monitored nuisance effects;

(t) a Decommissioning Plan must be submitted to the Manager, Environmental Assessment Section, DENV for review, and receive approval prior to decommissioning/ abandonment of the facilities;

(u) the project construction schedule must be submitted to the Manager, Environmental Assessment Section, DENV, for review/approval and finalized taking into consideration a variety of factors, including transportation and noise (nuisance) considerations, etc. In addition the local public must be notified of the finalized project construction schedule prior to the commencement of construction activities;

(v) all of the above terms and conditions are an integral part of this approval and the approval, including all terms and conditions, apply to the project notwithstanding the rights of any partners, users, lessees, and/or subsequent owners;

(w) in the event of the sale, lease, or any other conveyance or change of control of the project, or any portion thereof, the proponent shall provide written notice of the conditions to the lessee, controller, or purchaser. The proponent shall also provide written notice to the Minister of Environment and the Saint John Regional Office of the Department of Environment;

(x) notwithstanding the preceding conditions, the proponent shall adhere to, and ensure adherence by all developers, contractors, sub-contractors, agents and workers for this project, to all conditions listed herein, and all obligations, commitments, monitoring and proposed mitigation measures identified in the Amended Project Description: Project Eider Rock, dated June 18, 2010, and any other documents or correspondence prepared and submitted by the proponent, or its agents during the EIA review.