

April 23, 2018

Menzie McEachern,
Mineral and Petroleum Resources Division,
Department of Industry, Tourism and Investment,
Government of the NWT,
Yellowknife,
NWT XIA 2L9

Dear Mr. McEachern:

Re GNWT Petroleum Legislation

This letter is further to the NWT Chapter's comments made to you at the NGO petroleum legislation engagement session in Yellowknife on April 4, 2018.

To reiterate, the NWT Chapter is concerned that the engagement paper generally and specifically in the 'regulatory framework' section, seems isolated from other GNWT legislative and policy commitments, particularly with respect to climate change, ecosystem approaches, and human and Indigenous rights. There is no mention of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) which in 2008, the 16th Legislative Assembly unanimously agreed to recognize and support. An isolated approach to the petroleum legislation is troubling as it is likely to contravene many important GNWT responsibilities with respect to human rights, public safety, and environmental protection. It is also likely to put the NWT at risk as it is clear from scientific evidence around the world that at least 70% of undeveloped fossil fuels must be left in the ground if humans are to have a livable environment. Given the need to keep fossil fuels in the ground, Canada's commitment to the Paris Agreement, and the accelerating impacts of a changing climate on all aspects of society and the natural environment, it truly makes no sense to pursue this industry especially in a jurisdiction such as ours where the energy returned for the energy invested is so low.

Even though you contend that hydraulic fracturing is the future of the petroleum industry, it is incomprehensible to us that the GNWT would develop legislation that permits such a practice. The growing body of research shows that regulations are simply not capable of preventing the harm done by fracking. Northerners have consistently expressed these same concerns, which is the reason that:

- The Dene Nation called for a moratorium on fracking in 2011.
- The Gwich'in Tribal Council banned fracking in its territory in 2013.
- The Sahtu Secretariat Inc. called for a comprehensive review of fracking in 2014.
- The Akaitcho Government called for a ban on fracking in 2014.
- In 2014, almost 800 northerners from 24 communities called on the GNWT to require that any land or water use applications involving fracking be evaluated through a full environmental assessment that includes public hearings.
- Tulita petitioned the NWT Legislative Assembly in March 2014, calling for future fracking applications be put to a vote in the Sahtu.
- The May 2014 'mock' NWT Elders' Parliament voted unanimously to place a moratorium on fracking in the NWT until impacts are better understood and government can manage the practice in a way that ensures the well-being of our land and communities.

- More than 1,100 northerners signed a petition in May 2015, calling for a moratorium on fracking until a comprehensive review of the risks is completed.

We note again that even in the face of so many northern appeals for a comprehensive regional review of fracking, the GNWT continues to refuse to confront the scientific evidence of the harmful if not lethal consequences of this practice, and now is proposing legislation to permit it. This is simply unbelievable.

The GNWT must confront the realities of this harmful practice. Most recently, they were documented in the 2017 *Compendium of Scientific, Medical and Media Findings Demonstrating Risks and Harms of Fracking*¹ which reviewed 685 studies from scientific journals studying the health effects of fracking. The review found that 84% of studies indicated adverse public health effects associated with drilling and fracking including poor birth outcomes, reproductive and respiratory impacts, cancer risks, and occupational health and safety problems; 69% indicated evidence of water contamination; and 87% indicated a decline in air quality associated with fracking including toxic air pollution and smog (ground-level ozone) at levels known to have health impacts. A range of other studies on fracking document the incidence of earthquakes and the ecosystem impacts related to naturally occurring radioactive materials being brought to the surface as a result of hydraulic fracturing. Over the past 12 months, research has also indicated that industry has grossly underestimated methane emissions from fracking, emissions that are 34 times greater than the impact of carbon dioxide as a greenhouse gas/climate change agent. So again, we reiterate that this practice should not be permitted unless it can be studied locally and proven to be 100% safe for people and our natural environment and climate.

As noted at the stakeholders' meeting, fossil fuel reserves and the impacts of any development activities do not recognize human imposed political, socio-economic, climatic, or geographic boundaries. As such, it is astounding to us that the engagement paper ignores the political reality in the NWT that public governments must work in concert with Indigenous governments (e.g., a co-management/co-regulatory approach). Further, in these times of reconciliation and new relationships, no one government should operate in isolation of other orders of government. Any legislative initiative should recognize these inter-dependent relationships.

At the stakeholders' meeting, we identified several other concerns that we hope will be addressed in the legislation. Rather than discuss all of them again, we are just listing our major concerns here.

- *Significant Discovery Licence*: A monopoly on a resource for an indefinite amount of time without any obligation to undertake any work is a ludicrous way to manage a public resource for the benefit of the public. It is incomprehensible that a government should permanently surrender the public right to ownership of resources. Further, the granting of these licences carries the implied expectation of government's agreement that these resources should be developed. Counsel should be taken from past instances of rights-holders demanding damages from governments for loss of implied opportunity.
- *Production Licence*: While we applaud efforts to improve accountability of the petroleum industry, more work is needed in this area. A transparent public process is needed to support any decisions made by the Minister. In fact, in all decision processes there should be a transparent system of checks and balances to ensure that the scope of powers and responsibilities always respect the paramountcy of the public interest and public and environmental safety.
- *Authority for Petroleum Legislation*: As we expressed, regulatory capture is a huge concern in Canada. We just have to look at the very flawed NEB process for the proposed TransMountain pipeline as an example. Ideally, the authority for petroleum legislation would not rest with one Minister but with an intergovernmental committee or at the very least, a committee of the NWT legislature. Above all, it is ethically unacceptable that a department with the responsibility for

¹ <http://concernedhealthny.org/compendium/>

promoting the oil and gas industry should be regulating it. Foxes don't make good guardians of the hen house. Any new legislation or amendments must include law to correct this situation.

- *Oil and Gas Committee*: It is desirable for this Committee to have a 'check and balance' function with membership drawn from diverse interests. Public accountability is required.
- *Proof of Financial Responsibility*: Under no circumstances should the public be left with any liabilities associated with decommissioning, clean-up, or remediation of any oil and gas activities. Thus, a mechanism is required to collect and steward industry fees for the eventuality where a corporation goes bankrupt before completing its decommissioning, clean-up, or remediation. In all instances, licencing must include a requirement for the posting of irrevocable security adequate at point in time for the costs of remediation and abandonment. The days of public expenditure cleaning up the trash of private profit must end
- *Unconventional Methods/Modern Technology*: As noted, petroleum legislation should not permit hydraulic fracturing unless the practice can be proven to cause no public or ecosystem harm.
- *Confidentiality*: Public government legislation is about protecting public interests including our health and safety and that of our natural environment, not the corporate interest. In all cases, any use of public resources requires full and complete public disclosure. Trade secrets are not in the public interest. Disclosure requirement legislation must supersede all claims to confidentiality on the basis of propriety interest. Public health and safety trumps individual or corporate profit. If transparency is unacceptable, capital should go elsewhere to pollute.
- *Environmental Studies Management Board*: To achieve necessary checks and balances, this Board should include both Indigenous government and public representation. In both cases, representatives must demonstrate that they have no association with the petroleum industry.
- *Environmental Studies Research Fund*: This mysterious fund lacks public processes and accountability, and raises questions about dubious interests and purposes it potentially serves. There needs to be a transparent and public process for identifying research priorities and awarding funds. Monitoring and research results should be widely shared and effort made to identify linkages with the impacts of research on industry practices and/or public policy.

In closing, thank you for the opportunity to comment on this engagement paper. We look forward to reviewing the draft legislation.

Sincerely,



Lois Little,
Co-Chair,
Council of Canadians, NWT Chapter