CCNB's Response to the New Brunswick Government's Discussion Paper

"Responsible Environmental Management of Oil and Gas Activities in New Brunswick"

Preamble

CCNB does not support the development of the shale gas industry in New Brunswick. We have compiled research from within Canada and the United States, visited areas of intensive gas operations in Canada and the United States, talked with many people in other jurisdictions who are on the front lines of shale gas development, and heard from a vast number of New Brunswickers who are being forced to shoulder the burden of the exploration activity here. Through this research and first-hand accounts, we have identified the following general impacts and risks of shale gas exploration and development:

- Large scale water withdrawals and long term sustainability of freshwater resources
- Potential contamination of groundwater and surface waters
- Potential contamination of well water
- Generation of enormous volumes of toxic wastewater
- Increased greenhouse gas emissions preventing us from meeting our targets to reduce our contribution to dangerous climate change
- Increased air pollution in rural communities
- Rural industrialization
- Increased human health risks
- Degradation of well-being and quality of life
- Social upheaval and loss of community cohesion
- Potential long-term economic burden on taxpayers

Given the nature of the unavoidable impacts and known risks of shale gas development, CCNB has come to the conclusion that the costs of permitting the exploitation of shale gas in New Brunswick outweigh any potential benefits; that no regulatory regime will be able to sufficiently mitigate the impacts and risks of shale gas development; and that furthering our economy's dependence on fossil fuels is not sustainable, nor does it align with our vision of our future New Brunswick. Responding to this discussion paper should in no way be construed as support for the government's intent to move forward with shale gas exploration and development, nor should it be considered as consultation with our organization.

Response to the discussion paper

Overview

We were expecting to see draft regulations, rather than a discussion paper. The discussion paper is simply a statement of intent, some of which maintains the status quo from a regulatory standpoint rather than adding anything new. It is impossible to determine how this statement of intent will be translated into new legislation and/or regulations from the discussion Paper and therefore no

reasonable comment can be made on the efficacy of the intentions it contains. This means it is also impossible to determine what kind of investigative and enforcement capacity will be necessary, which as we have repeatedly stated, is already woefully inadequate for our environmental regulator to enforce the currently existing statutes and regulations for which it is responsible.

There has also been conflicting communications from elected government and departmental staff on the next steps of this discussion paper. Premier Alward and Minister Fitch have indicated publically that this document will evolve into 'regulations', while staff at DELG have indicated publicly this document will not result in amendments to any existing Acts, or a new Act, citing that we currently have adequate regulations in place.

There has been synonymous use of the terms regulations, best management practices, standards, and recommendations, however each of these terms have large differences in the way they are applied and enforced. Only legislative regulations under an Act are legally binding.

Applicability

It is not stated as to whether the intentions contained in the discussion paper, if converted into law, will retroactively apply either to firms holding existing licenses to explore, or to firms holding leases to develop production wells (other than their existing "facilities"). Nor is it stated whether these would apply only to future license and lease-holder.

Transparency

There is no commitment to the full public disclosure of primary data with respect to such things as chemical composition of drill cuttings, fracture fluids, formation and produced water, air emissions, ambient air concentrations of air toxics, greenhouse gas emissions, surface water monitoring, air quality monitoring, well water contamination etc.

Permitting

The prevalence of comments expressing the intent to issue conditional permits found throughout the discussion paper, particularly with respect to water reuse and recycling options, traffic options, water sources, site restoration and remediation, is disconcerting.

Monitoring

There are a lack of details around pre and post seismic water monitoring, particularly about reporting requirements (to whom and what data and when) and data ownership. There are still no draft regulations governing water monitoring protocols, nor does the discussion paper commit to implementing them legally. This is unacceptable at this stage, particularly for pre-post geophysical surveying, given that companies have already begun (and some cases completed) this phase of exploration.

The surface and groundwater monitoring network proposed (long term) is less than meaningful when we have no legally enforceable water quality standards, and given government's decision to abandon plans to issue watershed classification orders under the Water Classification Regulation to the Clean Water Act, despite a dozen years of preparatory work, would make this possible.

Water Withdrawals

There are no details on how "sustainable limits" of water withdrawals will be defined in practical terms; i.e. how will it be determined, monitored and enforced, etc. There is no mention of restrictions on water use/withdrawals during dry/yearly/seasonal water conditions. New Brunswick currently has no Comprehensive Water Management Strategy to guide these decisions (a commitment of the climate action plan 2007-2012 which appears to have been abandoned since the election) or to evaluate the cumulative impacts of multiple water users from multiple sectors over the long term.

There is a lot of focus on discussing surface water extraction monitoring, however it is to be named as one of the last recommended options to proponents by the regulator. This suggests it is expected that industry will favour surface water extraction options regardless of recommendations.

Air Pollution, Air Quality and Greenhouse Gases

There are no new measures or proposed changes to existing practices on establishing emission limits, emissions monitoring, ambient air quality monitoring, emissions reduction, greenhouse gas emissions or reporting.

However, the cumulative nature of toxic and criteria air contaminant emissions from numerous and new sources (e.g. wells, pipelines, compressor stations, flare stacks, etc.) into an unpolluted environment, the close proximity to human populations of these emissions, and recent reports and peer reviewed studies which have found the magnitude of the climate-forcing qualities of shale gas to be on par with coals make it impossible to mitigate these impact through regulation, and argues for avoiding this activity altogether.

Human and Livestock Health

To our surprise there is no mention of human or livestock health baseline studies, monitoring, or protective measures. This is a significant gap in the discussion paper.

Local Authority

The discussion paper fails to address how to extend local communities the authority to exclude shale gas development, or control the scale, pace and location of that development - though Bill 62 currently before the Legislative Assembly relates to local authority.

Exclusion Zones

To suggest that the Wetlands and Watercourse Regulation of the Clean Water Act will acceptably restrict the development of shale gas infrastructure in wetlands and floodplains given the ease which

permits to alter watercourses and wetlands or their buffers are acquired. It is an even more extraordinary contention given that 50% of wetlands in this province have been deregulate through ministerial fiat, ignoring the legal definition in the Clean Water Act.

Restoration, Reclamation, Compensation, and Conflict Resolution

The dollar amount for providing a security and bonding are wholly inadequate given the sizeable cost of clean-up and damages.

Well water testing carried out by landowners, as long as they follow proper chain of custody, should be accepted when claiming financial compensation for damage. It should not be limited to government or industry well water testing.

A limit of 12 months on submitting claims for water restoration or replacement is unreasonable. There have been no long terms studies on the migration of methane or fracture fluids from the wellbore/well site and therefore placing any time limitations at this point is inappropriate.

Regarding the decision to replace or restore damaged water wells, the lack of detail on the definitions for “significantly diminished” and “reduced capacity” of wells is problematic. There are also no details specific to addressing methane gas and its differentiation (through proper analysis) of biogenic and thermogenic sources. This is critical for determining where methane is derived from. At the same time, compensation should be available in cases where methane is not detected in baseline pre- testing, but appears following geophysical work, drilling, fracking, maintenance, and abandonment activities which can mobilize gas whether the source is biogenic or thermogenic.

In addition to conflict resolution mechanisms, resources must be made available for complainants’ participation in an adjudicated process. This is a need comes from our observation of the direct experience of the residents of Penobsquis. Without resources to effectively participate in a tribunal process, landowners are no match for the resources of the oil and gas industry, making it a futile endeavour for complainants.

A Brief Note on Royalties

The economic royalties the discussion paper proposes are not royalties which are based on the volumes of gas being produced. The royalties are being kept at current levels and instead proposing a tax on profits from shale gas production within a community. It is easy to manipulate this number to minimize any tax ("economic royalty") paid. And this of course, will further damage community cohesion when some landowners are seen to be profiting from development which others see as damaging the community.