



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

## **Comments on NEB Arctic Offshore Drilling Report & Filing requirements**

-January 4, 2012-

On December 15, 2011, following months of consultation across the North and a four day Policy Review Roundtable held in Inuvik, North West Territories, the National Energy Board (NEB) released filing requirements for future applications to drill in the Canadian Arctic offshore as well as a companion report: *The Past is Always Present, Review of Offshore Drilling in the Canadian Arctic Report, Preparing for the Future*.

Although there is currently no offshore drilling in Canada's Arctic waters and there are no applications for drilling before the NEB, a number of companies hold exploration licenses in the Beaufort Sea.

### **CELA's registered Major Concerns, July, 2010**

In July 2010, CELA registered several issues of major environmental concern with the NEB for consideration throughout their Arctic drilling policy review. These issues include a review of the adequacy of:

1. liability of oil companies and related parties in the case of major oil spills;
2. industry and government planning for worst case scenarios;
3. safety monitoring by industry and government and compulsory continuous safety improvements and accident protection technology, specifically whether sufficient redundancy exists in safety systems and oversight systems, both technological and regulatory;
4. regulatory oversight and review of drilling approvals and licensing, including follow-up and monitoring of conditions of approval;
5. public reporting of safety incidents, assessments, improvements and risks; and
6. public participation in reviews of incidents, safety records, adverse events, responses and continuous improvement.

### **CELA's registered recommendation for the December 2011 NEB Report**

In CELA's October 2011 watching brief of NEB's Canadian Arctic offshore drilling policy review Roundtable conducted in Inuvik, NWT in September 2011, we made the following recommendations for the NEB's December report and filing requirements:

- the issues of major concern outlined above and addressed to various extents throughout the roundtable, should properly be addressed in the NEB's December 2011 report;
- the NEB should take the US BP spill report's findings into consideration;



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- the NEB should be equipped with sufficient resources to undertake the necessary oversight activities to ensure rig operators have 'good management systems' in place;
- Arctic drilling should be delayed until further knowledge of proper safety systems and spill response technology is ascertained; and
- Canada should amend any legislation limiting liability and ensure that oil companies are made fully financially accountable for any environmental disasters for which they are responsible.

The watching brief concluded that as there are extremely high risks presented by Arctic offshore drilling and as it is not possible to obtain assurance that the limited spill prevention technology available in the Arctic conditions will be able to stop the spill quickly, or at all, or that the spill response will be adequate, the precautionary principle would suggest that Arctic drilling be delayed until further knowledge of proper safety systems and spill response technology is ascertained. Even if Canada stopped its policy of protecting oil companies from full financial responsibility for any human or environmental damage they cause, some things, like northern cultures and communities as well as the ecosystem, cannot be compensated.

**NEB's December 15, 2011 Report**

NEB's filing requirements were published with a companion report that outlines the processes leading up to the new filing requirements and their justification.

As CELA recommended in its watching brief, the report considers the US report on BP's Deep Water Horizon spill, as well as several other major offshore drilling spills. The report also addresses the issue of how to drill safely and protect the environment and how to respond to emergencies, such as spills.

The report's key findings include:

- The NEB has the necessary tools to protect the safety of workers, the public and the unique Arctic environment.
- The root cause of most offshore accidents is the lack of a broadly shared safety culture. In other words, people don't do what they are supposed to do.
- The NEB has reaffirmed its same season relief well policy, but companies can depart from it if they can demonstrate how they would meet or exceed the intended outcome of the policy.
- During the Arctic Review, industry representatives acknowledged northern residents' concerns and committed to engaging communities in more meaningful ways early in the planning processes.



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- Industry representatives also spoke of developing and offering appropriate training opportunities to northerners to help prepare them for employment and business opportunities as well as emergency response training.

### **NEB Filing Requirements**

Filing requirements set out the technical information required in future applications for offshore drilling in the Canadian Arctic.

The NEB's new Arctic offshore drilling filing requirements include:

- public notice of safety & contingency plans (incl. emergency response procedures);
- a Ministry approved benefits plan, unless waived by the Ministry;
- an environmental assessment containing details of:
  - project development,
  - potential impacts to the environment,
  - consultations with aboriginal groups and the public,
  - socio-economic effects, and
  - mitigation measures to protect the environment;
- “Operations Authorization”, which include:
  - operating & exploration licenses (from outside ministries),
  - declaration and certification of fitness of the drilling equipment (from objective experts),
  - a description of management systems and their implementation, including assurances that they:
    - provide for a strong foundation for a culture of safety,
    - take into account ‘human factors’ when making risk assessments, and
    - outline lessons learned from prior internal and external incidents and near-misses,
  - safety plan,
  - ice management; and
  - transportation and helicopter safety;
- an environmental protection plan, outlining:
  - waste management,
  - pollution monitoring and response,
- both an emergency and contingency plan for an uncontrolled release of reservoir fluids, including capping, containment and same season relief-well strategies, based on and including:
  - a worst case scenario description and its consequences,
  - ‘response gaps’ for each response mechanism,
  - the coordination of response measures with various levels of government,



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- the plan for monitoring adverse impacts to the Arctic environment from significant or persistent spills,
- a well approval, which requires:
  - a detailed drilling schedule,
  - pressure prediction during drilling,
  - blowout preventors and well control system, and
  - well suspension and abandonment programs, etc.

### **Conclusion**

Although major environmental risks have been acknowledged by the NEB, their report concludes that “the NEB has the necessary tools to protect the safety of workers, the public and the unique Arctic environment.” As a result, Arctic offshore drilling will be permitted subject to proponents satisfying the NEB’s new filing requirements. However, CELA is less certain about the NEB’s ability to protect the environment.

Liability remains a major issue of concern. Although the report stated at pages 48 and 49 that “the NEB would need to be assured that any company that wanted to drill a well in Arctic waters had the financial capacity to handle losses or damages from a blow-out and spill, with no upper limit on the amount required,” and “that drilling companies would be subject to absolute liability,” the report does not mention how oil and gas companies will be liable without proof of fault or negligence for up to *only* \$40 million.<sup>1</sup> \$40 million is a tiny figure in comparison to the over \$40 billion required in other major spills. It has been argued that proper liability is assured through the Inuvialuit Final Agreement, the land claim that covers a large part of the area in question. It requires companies to have an unlimited “wildlife compensation process in place for timely and effective reimbursement for loss of wildlife harvest.” However, the extent of liability under the Inuvialuit Agreement is uncertain as it only applies to present and future “harvest loss”.

CELA supports the NEB maintaining its same-season relief well policy, contrary to the urging of industry. Although, CELA is concerned that the door has been left open for unknown alternatives as the relief well requirement can be avoided if the proponent can demonstrate how they would meet or exceed the intended outcome of the policy, which is to kill an out-of-control well in the same season in order to minimize impacts on the environment. As Trevor Taylor, policy director with Oceans North Canada, explained: “the problem with the report is that it is not clear what [the NEB] will accept as a fallback from the same-season relief well.”

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<sup>1</sup> According to section 26 of the *Canada Oil and Gas Operations Act* and its Regulations as well as the *Arctic Water Pollution Prevention Act*, which applies to the Eastern Arctic.



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It is also a positive step that the new filing requirements will increase transparency by requiring oil and gas companies to make their safety, emergency and contingency plans public. On the other hand, it is unclear how and if the public would be empowered to participate in decision-making with this information.

Finally, CELA hopes that the NEB's affirmations in its report regarding the sufficiency of its staff to effectively enforce its regulations, through thorough review of applications and site visits, holds true.

As the Pembina Institute has reported, and Ecojustice and WWF have echoed, Canada's Arctic offshore drilling regulations are some of the most robust regulations in the world. Nonetheless, major environmental risks have been acknowledged. Therefore, CELA believes that oil and gas companies should be held fully liable for any potential environmental contamination, that the public be able to participate in reviews of incidents and decision making, and that permissible alternatives to the same season relief well policy be outlined.