

Sahtu Land and Water Board
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Old Airport Road
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November 15, 2023

Benjamin Fraser
Environment & Regulatory Advisor
Imperial Oil Resources N.W.T. Limited,
750 Mackenzie Drive, Bag 5000,
Norman Wells, NT, X0E 0V0

Dear Benjamin Fraser,

RE: Modification Notification - Norman Wells Line 490 Replacement and Decommissioning (the Project) - Imperial Oil Resources N.W.T. Limited (Imperial) - Type A Water Licence S13L1-007

The Sahtu Land and Water Board (SLWB or Board) met on November 7, 2023 to discuss the Application for Modification in accordance with Part G of the Licence S13L1-007 submitted to the Board on October 27, 2023, which states:

1. The Licensee may, without written consent from the Board, carry out Modification(s) to the water supply and Waste disposal facilities, bunkers, docks, bridges, flowlines, creek banks, and river banks provided that the Modification(s) are consistent with the terms of this Licence and the following requirements are met:
 - a) the Licensee has provided the details of the proposed Modification(s) to the Board, in writing, at least 60 days prior to the commencement of the Modification(s);
 - b) the Modification(s) does not place the Licensee in contravention of either the Licence, the Act or Federal, Territorial or Municipal Legislation;
 - c) the Board has not, during the 60 days following notification of the proposed Modification(s), informed the Licensee that review of the proposal will require more than 60 days; and
 - d) the Board has not rejected the proposed Modification(s).
2. Modification(s) for which all the conditions referred to in Part G: Item 1, have not been met, can be carried out only with written approval from the Board.

The Board discussed the regulatory process for Modification, answering the following questions:

1. Does the proposed "Project" meet the definition of a Modification?
2. Have the proposed Project details been submitted to the Board, in writing, at least 60 days prior to Project commencement? And Is more information required?
3. Can the proposed Modification be reviewed and considered by the Board within the 60-day timeline?
4. Does the Modification require approval beyond the level of Inspector approval?



Each of these questions will be addressed in sequence below.

1. Does the proposed “Project” meet the definition of a Modification?

The Exemptions List Regulations’ definition of modification is, *in respect of a structure* [flowline], *means a change* [install a new flowline using Horizontal Directional Drilling], *other than an expansion* [to restore previous capacity and production], *that does not alter the purpose or function of the structure* [to safely convey products in an underwater under river flowline].

The definition of Modification in the Water Licence conditions is “*an alteration* [change, modification] *to a physical work* [flowline] *that introduces a new structure* [new flowline to be installed] *or eliminates an existing structure* [damaged flowlines are shut-in and currently abandoned in place] *and does not alter the purpose or function of the work* [to convey products] *but does not include an expansion* [to reinstate previous productive capacity]”.

Based on these definitions [the square brackets were the Project components added by staff to each clause], the Project would appear to qualify as a modification as defined in the Exemptions List Regulations and in Imperial’s Licence condition. However, other regulators and parties have not had the opportunity to weigh in on this matter. See below for comments from the CIRNAC Inspector.

2. Have the proposed Project details been submitted to the Board, in writing, at least 60 days prior to Project commencement? YES

The Project schedule was submitted with the notification for modification application. The 60-day timeline expires on December 26, 2023.

- **November to December** - Imperial plans to commence the detailed engineering phase (desktop analysis).
- **Q1 2024** - Two geotechnical boreholes to confirm the HDD design plan are anticipated to be drilled.
- **July 2024** - Construction equipment mobilization is expected to begin early with the main elements of construction including drilling of the HDD and pullback and tie-ins of the new piping between Goose and Bear Islands.
- **October 2024** - Construction is anticipated to be completed.

AND Is more information required? YES

The Modification notification submission is complete for items requiring submission. However, if Imperial proposes to conduct geotechnical drilling of two boreholes in Q1, 2024, and the Flowline Replacement in July 2024, the Board must receive an application(s) for a Land Use Permit as the use of drilling equipment is a trigger under the Mackenzie Valley Land Use Regulations 4.b)i (type A) or 5.b)i (type B), depending on the weight of the borehole drill.



A type A Permit will be required for the drill rig which weighs more than 2.5 t (3 to 4 t).

3. **Can the proposed Modification be reviewed and considered by the Board within the 60-day timeline?** NO.
4. **Does the Modification require approval beyond the level of Inspector approval?** YES

According to the Board's process for Modifications, and the conditions in Part G of Licence S13L1-007, if any answers to the following questions results in a YES, there is a need public review:

- √ **The proposed Modification contravenes the Licence or the Act (Part G, Condition 1.b).** YES
 - a. The most applicable exemption in Schedule 1 of the Exemption List Regulations as per:
 - 1 The operation or maintenance of, or repair to, a structure that
 - (a) will not entail the deposit of waste into a water body; and
 - (b) does not require a land use permit or a water licence under the Mackenzie Valley Resource Management Act, the Waters Act, S.N.W.T. 2014, c. 18 or the Territorial Land Use Regulations.

There is always a risk of deposit of waste into water with Horizontal Directional Drilling. The geotechnical drilling and the Horizontal Directional Drilling activities both trigger the requirement for a Land Use Permit in accordance with the Mackenzie Valley Land Use Regulations.

- b. Horizontal Directional Drilling (HDD) is a new activity that has not been screened in either the 1981 Report of EA for the Expansion Project, nor in the Preliminary Screening Report approved by the Board in 1998 for the first Norman Wells Operations Licence issued by the SLWB under the MVRMA.

Under Part 5 of the MVRMA, a preliminary screening is required for this new activity. (See below for more detail on Part 5).

- √ **The Inspector has not confirmed acceptability of the proposed Modification to the Board in writing.** YES

Board staff have been in discussions with the Inspector about the modification request. The Inspector has expressed the following concerns:

- the Project does not meet the definition for a Modification,
- the Project requires a new Permit and/or Licence, and
- the Project is not replacing the damaged flowlines, but installing a new flowline in a different, but adjacent location.

- The original design was approved by the Board** – NO - Imperial has never presented a design option for HDD as an operational contingency related to Imperial's Norman Wells Operations.



The Licensee has identified:

- increased environmental impacts from the Modification. **NO Imperial has not provided an impact-mitigation assessment for the Line 490 Replacement Project.**
- impacts to traditional land uses/values. NO
- that a Fisheries Authorizations may be affected by the Modification. NO
- the proposed Modification will have implications on or doesn't conform to existing monitoring or maintenance plans. NO

The lack of information in this section indicates that more information is required for this Project.

- The original design was approved by the Board** – NO Imperial never presented a design option for HDD related to Imperial's Norman Wells Operations.
- √ The Board is unable to consider the proposed modification within the 60-day timeline specified in the condition of the Licence. YES
- a. The next Board meetings are scheduled for December 13, 2023 (47 days), and mid to late January 2024 (84-90 days). The Board is unable to review this item within the 60-day timeline.
- The Licensee did not notify the Board in writing at least 60 days prior to its desired date of implementation and/or the proponent is requesting a decision more quickly than the 60-day timeline. NO

PART 5 Applicability

- A. In their October 5, 2023 notification letter to the CER regarding the Line 490 Replacement Project, Imperial submits that Part 5 of the MVRMA is not engaged as sections 118(1) and 124(1) of the MVRMA refer to Part 5 being triggered by an application for a "licence, permit or other authorization."

However, if one reads the clause in its entirety, then following ...or other authorization is ... "required for the carrying out of a development...." That could mean an amendment a modification, or a renewal.

- B. The MVRMA, sub-section 124 (1) states that the authority or agency shall conduct a preliminary screening of the proposal for the development, unless the development is exempted from preliminary screening because (a) its impact on the environment is declared to be insignificant by regulations made under paragraph 143(1)(c); or (b) an examination of the proposal is declared to be inappropriate for reasons of national security by those regulations.

The Board submits that neither of these two clauses apply to the Line 490 Replacement Project.



- C. Preliminary Screening Requirements under Part 5, Section 157.1 of the MVRMA, does not apply in respect of any licence, permit or other authorization related to an undertaking that is the subject of a licence or permit issued before June 22, 1984, except a licence, permit or other authorization for an abandonment, decommissioning, or other significant alteration of the project.

Imperial is a grandfathered operation for many aspects; however, the Line 490 Replacement Project fits the definition of “significant alteration” and is part of an abandonment in place of existing flowlines and installation of new flowlines using HDD. The assessment of this Project as a significant alteration has been similarly expressed by the Commission of the CER in their November 6, 2023 Notification Letter to Imperial where they stated, “Having considered that the execution of an HDD under the Mackenzie River is unique, novel and unusual, and is likely to attract significant public interest including that of Indigenous Peoples in the local area, the Commission has decided to initiate a public hearing process to assess the application, once it is received.

In conclusion, the Board’s regulatory process for Imperial’s Line 490 Replacement Project Modification Notification request has identified:

- a. Board approval of this Project will be required. This will include a full public review process.
- b. The Board will need more than 60 days to process this Modification.
- c. The Board submits that Part 5 of the MVRMA is applicable to this Modification process being that the activity of Horizontal Directional Drilling (HDD) has not been previously scoped for potential impacts and mitigation measures, and this proposed activity carries the potential for significant adverse environmental impacts AND cause for public concern.
- d. The proposed drilling of boreholes and the HDD method of drilling both trigger the requirement for a Land Use Permit based on the weight of the equipment.
- e. The Project is an Industrial Undertaking that falls under the Licensing Criteria for Watercourse Crossings, including pipelines... construction of a structure across a watercourse 5 or more metres wide at ordinary high water mark at point of construction. Therefore, a Licence may also be a requirement for this Project if the Modification definition is not applicable and because the existing triggers for Licence S13L1-007 were for withdrawal and use of Water and deposit of Waste in Industrial Undertakings, and not specifically for Watercourse related activities.

If you have any questions or concerns regarding this letter of direction, please contact Bonnie Bergsma at bonnie.bergsma@slwb.com or (867) 496-2778.

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Respectfully,

A handwritten signature in black ink, appearing to read "Philippe Di Pizzo".

Philippe Di Pizzo
Interim Chair, Sahtu Land and Water Board

Copy:

John Gregory, Conventional Operations Superintendent, Imperial
Lorie Chow, Project Manager, Imperial
Jaclyn Mersereau, Environment and Regulatory Technical Lead, Imperial
Alysa Fischbein, Norman Wells Technical Supervisor, Imperial
Nathan Baines, Senior Counsel, Imperial
Iain Colquhoun, Chief Conservation Officer, CER
Ramona Sladic, Secretary of the Commission, CER
Tim Morton, Resource Management Officer, CIRNAC