



Catarina de Albuquerque March 12, 2014  
Special Rapporteur on the human right to safe drinking water and sanitation  
Sustainable Human Development Section, Special Procedures Division  
UNOG-OHCHR  
Palais des Nations  
CH-1211 Geneva 10, Switzerland  
[srwatsan@ohchr.org](mailto:srwatsan@ohchr.org)

RE: Council of Canadians' submission on violations of the human right to water and sanitation

### **Who we are**

Founded in 1985, the Council of Canadians is a social justice organization, committed to promoting progressive policies and advocating for clean water, green energy and climate justice, fair trade, public health care and a vibrant democracy. We educate and empower people to hold our governments and corporations accountable, and do this work ourselves and through our grassroots networks, which includes 60 chapters.

We are a membership-based organization and do not receive funding from corporations or government.

In terms of our role in these community struggles, the Council of Canadians monitors fracking projects in Canadian and Indigenous communities and works with community groups and members to assess the impacts of fracking on water. The Council participates in public comment processes and organizes public events to raise concerns about drinking water and other issues. We also provide support to residents and community groups to stop fracking in their region in order to protect their water sources.

### **Reason for our submission**

We are making a submission relating to the community of Penobsquis, New Brunswick (Canada). This small community, which is in the South-West of the province (close to Sussex and not far from Saint John) is an industry town, with its first non-conventional wells drilled in 2000 and 2001. Since then, many more rounds of seismic testing have taken place and several more wells have been drilled. There are approximately 30 gas-producing wells there now.

The community faces the dangerous combination of unconventional drilling and potash mining, which has resulted in several issues including personal-use wells drying up, health concerns, and subsidence causing damage to homes and properties (and drastically decreasing real estate values).

A few community members filed a complaint with the New Brunswick Mining Commissioner against PotashCorp seeking compensation. Halifax Media Co-op noted that “the New Brunswick Mining Commissioner heard 16 separate property complaints filed in 2009. Water-related cases were not resolved until 2012, and cases related to subsidence or other concerns were withdrawn by complainants or dismissed due to lack of evidence.” Concerned Citizens of Penobscis noted that many of them withdrew their complaint before New Brunswick’s Mining Commission relating to issues of subsidence up to July 15th, 2010 because of numerous obstacles they faced to obtain justice including the difficulty in securing expert testimony due to conflicts of interest or costs.

According to one resident, this (sic. water) issue has been resolved (in July 2012) to the satisfaction of all parties, including a new water system that was built in 2013. For more information, please see the links [here](#) and [here](#).

Potash mining causes water problems as the mines are being flooded. This water is then transported to the Bay of Fundy by pipeline and double tanker-trailers and dumped in these waters.

Sixteen households have several health issues. Penobscis is a 'company' town which prevents people raising complaints about the mine because a family member might lose his/her job.

Some of the fracking/drilling waste currently being produced goes to Mercier, Quebec, and Fredericton and Dieppe in New Brunswick. Previously, a facility in Debert, Nova Scotia had accepted fracking waste. None of the fracking waste is currently being left in the community. Some contaminated water will surface from current fracking projects and then companies drill in that location mixing the contaminated water with the soil and other water sources which raises concerns about leaching and how this impacts local water sources. The government is not monitoring industry and is failing in its duty to regulate and protect the human right to water and sanitation.

Activity is ramping up again with Corridor Resources going through an Environmental Impact Assessment with the Province of New Brunswick for Phase III of a hydraulic fracturing operation, including a proposal to frack using propane in place of water. (Our submission to the NB government responding to that proposal is also included as Appendix A.) To note, PotashCorp owns 25% of unconventional wells in partnership with Corridor Resources.

It is also important to note that this community does not have municipal representation. The province is responsible for representing the interests of the community but, other than finally working with a neighbouring community and the federal government to secure funding for the new water system, have failed to date. This hinders community members’ right to say ‘no’ to projects – such as fracking and potash mining – that affect their water sources, public health and their home life. This is further exacerbated by the influence that the oil and gas industry has on the government. This power dynamic is the root cause for disempowering communities and violations of the human right to water and sanitation. The province and many local governments across the province hand power to corporations by issuing resource permits

without community consent, depending on industry to provide regulatory frameworks, and creating barriers to public input and consultation.

Regulation for fracking falls largely on the provinces' shoulders because of their power to issue drilling and water permits. However, the federal government has a responsibility to regulate fracking under the National Pollutant Release Inventory as well as federal legislation such as the Fisheries Act, the Species at Risk Act and the Canadian Environmental Assessment Act. The Council of Canadians is a contributor to the [water chapter](#) of the Alternative Federal Budget, and in it, we have highlighted concerns about the 2012 omni-budget bills which implemented sweeping changes to environmental laws and removed critical safeguards for water protection. The Canadian Environmental Assessment Act was replaced with a new act that eliminated 3,000 federal environmental assessments. One example of the cancelled environmental assessment was a water withdrawal application by Encana for a B.C. fracking project. The federal government also gutted the Fisheries Act so that the legislation only protects commercial, recreational or Aboriginal fisheries. Not only did it abdicate responsibility for 99% of lakes and rivers by overhauling the Navigable Waters Protection Act, the new Navigation Protection Act specifically exempts large pipelines – including those carrying fracked oil or gas – from government oversight.

The bills mark a troubling move to stifle democratic debate on policies related to fracking and also cast doubt on the government's ability to uphold the human right to water and sanitation. An [Access to Information request](#) shows that these changes were made at the request of industry. The structural causes and power dynamics that violate the human right to water and sanitation are now embedded in federal environmental legislation through these changes.

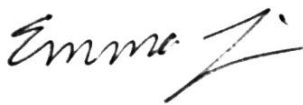
## Conclusion

The Council of Canadians is watching what is happening in Penobsquis with keen interest but given their experience of violations of the human right to water, wanted to take the opportunity to flag these concerns with your office.

We apologize for the belated submission. Thank-you for your time and consideration, and for the amazing work done by yourself and your office.



Angela Giles  
Atlantic regional organizer



Emma Lui  
National water campaigner

## APPENDIX 'A'

The Council of Canadians  
c/o 211-2099 Gottingen Street  
Halifax NS B3K 3B2  
[agiles@canadians.org](mailto:agiles@canadians.org)

Minister Danny Soucy  
NB Department of Environment and Local Government  
Sheila Goucher, Project Manager of EIA 1368  
Marysville Place, P O Box 6000  
Fredericton, NB E3B 5H1  
[danny.soucy@gnb.ca](mailto:danny.soucy@gnb.ca) and [Sheila.Goucher@gnb.ca](mailto:Sheila.Goucher@gnb.ca)  
**RE: Phase III, EIA 1368 Public Comment Period**  
March 08<sup>th</sup>, 2014

Dear Honorable Danny Soucy, NB Minister of Environment and Local Government, and Ms. Sheila Goucher, Project Manager,

We are writing to you in response to the comment period for the Environmental Impact Assessment for Corridor's proposed Phase III proposal for hydraulic fracturing in the Penobscus area.

### **Environmental Impact Assessment**

Before getting into the details of our concerns with the proposal, we wanted to flag Council of Canadians supporters' concerns with the EIA process overall, which some contend is confusing. Overall it would appear that industry is really setting the agenda, given the proponent for the project provides the base research for the NB Government, and are seen as qualified to author a study on the environmental impacts of their own project.

We would also like to voice concerns about staff capacity allocated to the EIA process and are concerned that budget cuts over the last several years have impacted the ability of government's ability to facilitate an accessible public consultation process.

In this particular instance, there was a lack of access to information needed for an adequate public response period and the information was not available in French. Both of these issues relate to democracy in the province. In terms of addressing these barriers, we hope that an extension of the response period will be approved and French materials be provided. We also hope that this is not consistent with your department's typical submission procedures.

## **Corridor's proposal**

We found this proposal to be inadequate in that:

- The focus of the environmental study was limited primarily to plants and animals
- There was a lack of information relating to watershed and air and water quality
- No assessment of public health impacts whatsoever was included
- There was no waste management plan included

Corridor's submission was lacking detail and adequate information.

## **Use of propane for hydraulic fracturing**

There are serious concerns from our supporters relating to the use of a flammable substance for fracking. There has been no long term study of this method of natural gas extraction, in particular relating to how safe or unsafe it is. In addition to concerns about its usage during the fracking process, there are concerns about the transportation of propane or liquefied propane gas (LPG) to and from the site and the storage of LPG onsite.

It is even costlier with the recent propane shortage across North America and has a difficult, hazardous and polluting recovery process.

Propane fracking has been proposed as an alternative to using large quantities of water for fracking. However, energy research engineer Scott McNally warns "the impacts to the total lifecycle water consumption throughout the entire production pathway are not clear. There is a significant amount of water that goes in to producing and liquefying propane, so while you might not use much water at the well site, the total amount of water consumed could still be high. Using liquid propane could also pose a safety risk. Propane, under normal conditions, is a gas. Liquid propane is a liquid because it is held under pressure. If there is a leak above ground, the propane could form a vapor cloud and explode, if there were any ignition sources nearby (a running vehicle, perhaps). This risk already exists because the natural gas that you are producing is a gas, as the name suggests, so the incremental risk may not be significant. GasFrac Services claims that they have multiple safety barriers, and insists the process is safe. However, regardless of their barriers, propane is still significantly more explosive than water so there is some added risk. GasFrac mentions that the liquid propane is "gelled with proprietary chemicals". In other words, we don't know what they are putting in the propane. But, it is likely similar to the chemicals used in conventional fracturing. For those concerned with groundwater contamination by fracking chemicals, using propane does not eliminate the risk for water contamination..."

Given these concerns for public safety and potential water contamination, we believe this proposal should be denied or at the very least, subject to a full comprehensive environmental impact review.

## Geography and History of Penobsquis

From our understanding and research of the area, neither the geography nor the history of industry in Penobsquis bode well for this type of proposal. This phase of the project appears to be located in a floodplain, with several ponds and waterways in the general area. In fact, because of the proximity between the wetlands and Corridor's gas plant in the McCully Field, a stop work order was issued back in 2007.

Subsidence has also occurred in the community as a result of industry operations. A history of subsidence puts bore-well integrity at risk: according to Dr. Tony Ingraffea, it is dangerous to drill wells where subsidence has already been an issue for this reason.

## Waste management

Flaring is the only apparent mention of any plan for managing the waste created by this proposed project. This is a major concern. For a typical fracking project, given all of the chemicals used in the process, there is no safe method of disposal for fracking waste. The public should be aware of what Corridor is proposing so that they may also comment on this aspect. Nova Scotia is currently debating how to safely dispose of the ponds of wastewater, some of which originated from fracking projects in New Brunswick.

This project should not be approved until Corridor provides a detailed plan on how it will safely dispose of fracking waste that does not pose a risk to public health, watersheds and ecosystems.

## Health Impact Assessment

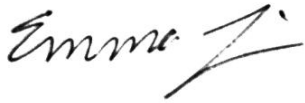
To reiterate what others have expressed, the most damning gap in the current proposal is the lack of a Health Impact Assessment (HIA). The Phase III EIA is a test of the blueprint by Dr. Eilish Cleary, Chief Medical Officer of Health, for a public health framework for a HIA of shale gas projects. The province should immediately require a comprehensive review to fully implement this blueprint.

In summary, given serious risks to public health, water sources and the environment, we believe that this proposal should be denied but at the very least a **comprehensive environmental impact review** must be established in order to implement Dr. Cleary's blueprint for HIA, and to have a fully democratic and inclusive participatory process. In addition, we call on the NB government to ensure well testing to establish baseline data, and propose the new Energy Institute perform a cost/benefit analysis of this project.

Thanks for your time,



Angela Giles  
Atlantic regional organizer



Emma Lui  
National water campaigner

cc: [eilish.cleary@gnb.ca](mailto:eilish.cleary@gnb.ca)  
[nbombud@gnb.ca](mailto:nbombud@gnb.ca)  
[Craig.Leonard@gnb.ca](mailto:Craig.Leonard@gnb.ca)  
[David.Alward@gnb.ca](mailto:David.Alward@gnb.ca)  
[Brian.Gallant@gnb.ca](mailto:Brian.Gallant@gnb.ca)  
[dcardy@nbndp.ca](mailto:dcardy@nbndp.ca)  
[david.coon@greenpartynb.ca](mailto:david.coon@greenpartynb.ca)