

**From:** [Barry Robinson](#)  
**To:** [Kitimat Clean Refinery / Raffinerie de Kitimat Clean \(CEAA/ACEE\)](#)  
**Subject:** Submission on draft EIS Guidelines  
**Date:** August 12, 2016 8:00:58 AM  
**Attachments:** [2016 08 12 Douglas Channel Watch comments on draft Kitimat Clean EIS guidelines.pdf](#)

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Please see the attached letter with respect to the draft Environmental Impact Statement guidelines for the Kitimat Clean Project.

**Barry Robinson**

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August 12, 2016

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***Sent via email***

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Canadian Environmental Assessment Agency  
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Vancouver, British Columbia V7Y 1C6  
Email: KitimatCleanRefinery-RaffineriedeKitimatClean@ceaa-acee.gc.ca

Dear Sir/Madam:

**Re: Kitimat Clean Refinery Project, Ref. No. 80125  
Comments on Draft Guidelines for the Preparation of an Environmental Impact Statement**

I write to you on behalf of our client, Douglas Channel Watch, with respect to the *Draft Guidelines for the Preparation of an Environmental Impact Statement: Kitimat Clean Refinery Project* (“*Draft EIS Guidelines*”). Douglas Channel Watch provides the following comments on the *Draft EIS Guidelines*:

**1. Public Consultation**

The *Draft EIS Guidelines* state that:

The proponent is encouraged to consult with the Agency, federal and provincial government departments and agencies, local government and Indigenous groups, and take into account public comments when defining the spatial and temporal boundaries used in the EIS.<sup>1</sup>

(Underlining added.)

Further, the *Draft EIS Guidelines* state, with respect to cumulative effects:

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<sup>1</sup> Canadian Environmental Assessment Agency, *Draft Guidelines for the Preparation of an Environmental Impact Statement: Kitimat Clean Refinery*, (12 July 2016), at 8 [*Draft EIS Guidelines*].

The proponent is encouraged to consult with key stakeholders and Indigenous groups prior to finalizing the choice of VCs and the appropriate boundaries to assess cumulative effects.<sup>2</sup>

(Underlining added.)

Given the importance of local knowledge in defining both Valued Components (“VCs”) and the spatial and temporal boundaries in which to assess the environmental impacts on those VCs, public consultation in defining those features should be mandatory rather than optional. Further, the consultation with respect to cumulative effects should be as broad as for other effects and should include government agencies and the public, not just key stakeholders and Indigenous groups.

More generally, Douglas Channel Watch submits that the *Draft EIS Guidelines* should provide more explicit direction to Kitimat Clean on responding to public concerns. The *Draft EIS Guidelines* require Kitimat Clean to identify the efforts made to distribute information and materials to the public, to identify the concerns voiced and to identify the extent to which this information is incorporated into the design of the project.<sup>3</sup> However, it has been Douglas Channel Watch’s experience to date that Kitimat Clean has presented information in open houses and has gathered concerns about the project, but there has been limited opportunity for dialogue. Kitimat Clean has not been responsive to the concerns raised. Kitimat Clean should be required to engage interested parties in two-way discussion and should communicate directly to those parties about how their concerns have been taken into account in the design of the project.

## **2. Baseline Conditions**

The *Draft EIS Guidelines* refer to baseline conditions for several components of the Environmental Impact Statement. However, “baseline” conditions are not well defined in the *Draft EIS Guidelines*. Douglas Channel Watch notes that the project area has been affected by previous development that has already impacted ecosystems and species in the area. Douglas Channel Watch submits that pre-disturbance or pre-industrial condition should be included as a baseline condition in order to avoid the problem of a shifting baseline due to prior disturbance.

## **3. Spatial Boundaries**

Douglas Channel Watch understands that spatial and temporal boundaries in the environmental assessment will vary depending on the VC and will be considered separately for each VC.<sup>4</sup> However, Douglas Channel Watch submits that the *Draft EIS Guidelines* should provide a more explicit statement of the expected boundaries for certain components of the environmental assessment.

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<sup>2</sup> *Ibid*, at 39.

<sup>3</sup> *Ibid*, at 18.

<sup>4</sup> *Ibid*, at 8.

### **(a) Marine impacts**

The *Draft EIS Guidelines* state the Agency requires, under the authority of paragraph 19(1)(j) of the *Canadian Environmental Assessment Act, 2012* (“*CEAA 2012*”), consideration of:

- the environmental effects of marine shipping associated with the Project, including the environmental effects of malfunctions or accidents and any cumulative environmental effects, the significance of those effects, suggested mitigation measures and follow-up program requirements.<sup>5</sup>

Douglas Channel Watch submits that, for greater clarity, this paragraph should read:

- the environmental effects of marine shipping associated with the Project, from the marine terminal to the 12 mile nautical limit of the Territorial Sea of Canada, including the environmental effects of malfunctions or accidents and any cumulative environmental effects, the significance of those effects, suggested mitigation measures and follow-up program requirements.

### **(b) Rail transportation impacts**

With respect to rail transportation, the *Draft EIS Guidelines* specify that the project components include rail tracks at the receiving facility and the rail spur connecting to the CN main line. However, the *Draft EIS Guidelines* also require the environmental assessment of rail operations beyond these facilities, including:

- (i) estimation of upstream greenhouse gas emissions that are linked to the project, which must include the greenhouse gas emissions from rail transport of raw materials to the facility;<sup>6</sup>
- (ii) consideration of alternative means of transportation of raw materials, including pure bitumen;<sup>7</sup> and
- (iii) description and evaluation of potential effects to the environment caused by accidents and malfunctions resulting from rail transportation “associated with the project”.<sup>8</sup>

The spatial boundaries for each of these considerations is unclear. The scope of rail transport “associated with the project” is unclear. Douglas Channel Watch submits that rail transportation of bitumen from the point of loading to delivery to the refinery is a physical activity incidental to the construction and operation of the refinery and therefore is included within the definition of the “designated project” as defined in paragraph 2(1) of *CEAA 2012*. Importantly, the transport

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<sup>5</sup> *Ibid*, at 6.

<sup>6</sup> *Ibid*, at 6.

<sup>7</sup> *Ibid*, at 16.

<sup>8</sup> *Ibid*, at 37.

of bitumen by rail entails derailment risks. Derailments of trains carrying bitumen can cause significant adverse environmental effects to human life and the environment.

The transportation of bitumen by rail is an integral part of the project. Kitimat Clean is proposing to ship bitumen to the refinery on dedicated trains and without the project there would be no need or purpose for the proposed rail transit of bitumen. The proposed rail transit is meaningfully related and linked to the designated project aspects of Kitimat Clean's proposal and thus it meets the legal test for being an incidental activity.

The rail transit of bitumen also meets the Agency's own criteria as set out in the *Guide to Preparing a Description of a Designated Project under the Canadian Environmental Assessment Act, 2012*, in that it is both subordinate and complementary to the designated project as set out above.<sup>9</sup> While Kitimat Clean will commission Canadian National Railway ("CN") to transport bitumen from Alberta to the project,<sup>10</sup> Kitimat Clean will be directing and influencing the carrying out of this shipping and has entered into discussions to that effect with CN.<sup>11</sup> Kitimat Clean also identified the construction of additional siding on the CN mainline to handle refinery rail traffic arising from the project as key element of the construction phase of the project.<sup>12</sup> The rail shipping of bitumen is proposed solely for the benefit of the Kitimat Clean project. Finally, the Proponent does not set out any process for the assessment of the transportation of raw materials to the facility.

In order to provide clarity of the scope of the environmental assessment of the rail components of the project, Douglas Channel Watch submits that the Agency should add a third factor to be considered under paragraph 19(1)(j) of *CEAA 2012*, namely:

- the environmental effects of rail transportation of bitumen from the point of loading to delivery to the refinery.

### **(c) Other impacts**

Douglas Channel watch submits that the *Draft EIS Guidelines* should be more explicit with respect to the expected spatial boundaries for other impacts, particularly for cumulative impacts. For example, the spatial boundaries for cumulative fisheries impacts and cumulative spill impacts should be the entire watershed. The spatial boundaries for cumulative air emission impacts should be the study area as identified in the *Kitimat Airshed Emissions Effects Assessment*.<sup>13</sup>

The *Draft EIS Guidelines* specify that the Environmental Impact Statement must identify movement corridors for species at risk.<sup>14</sup> However, the Environmental Impact Statement should identify movement corridors for all species, in addition to species at risk, and should assess the

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<sup>9</sup> Canadian Environmental Assessment Agency, *Guide to Preparing a Description of a Designated Project under the Canadian Environmental Assessment Act, 2012*, (March 2015) at 6.

<sup>10</sup> Hatch Ltd., *Kitimat Clean Refinery Project Description*, (May 2016), at 50 [Project Description].

<sup>11</sup> *Ibid* at 14 and 105.

<sup>12</sup> *Ibid* at 67.

<sup>13</sup> ESSA Technologies Ltd., *Kitimat Airshed Emissions Effects Assessment*, (25 April 2014), Vancouver, at 1.

<sup>14</sup> *Draft EIS Guidelines*, *supra* note 1, at 27.

impact of the project on those movement corridors. Douglas Channel Watch notes in particular that the proposed project site is in an area with a high concentration of grizzly bears and sits on a movement corridor for grizzly bears.

#### 4. Spill Modelling

The *Draft EIS Guidelines* require that Kitimat Clean describe and evaluate the potential effects to the environment caused by accidents and malfunctions resulting from marine and rail transportation associated with the project, and assess the potential of minor and major accidental releases of fuel, or loss of dangerous goods.<sup>15</sup> However, the *Draft EIS Guidelines* do not describe the procedure or level of details for identifying and describing these effects. Douglas Channel Watch submits that Kitimat Clean must be required to use state-of-the-art stochastic models to predict the spatial distribution of the spilled materials over time. The models should model both summer and winter conditions and a variety of weather and hydrological conditions. The Environment Impact Statement should include maps showing the movement of spilled materials over time under the various scenarios. The scenarios should include spills associated with rail transportation, marine shipping and refinery operations.

#### Summary

Subject to the comments above, Douglas Channel Watch finds the *Draft EIS Guidelines* to be fairly comprehensive and commends the Agency for its work in preparing the *Guidelines*. We trust that the Agency will give careful consideration to the deficiencies identified above.

Sincerely,

A solid black rectangular box redacting the signature of Barry Robinson.

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Barry Robinson  
Staff Lawyer

CC: Cheryl Brown, Douglas Channel Watch

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<sup>15</sup> *Ibid*, at 37.