

From: [Erin Mutrie](#)
To: [Leung,Quincy \[CEAA\]](#)
Cc: [Ross Wilson](#); [Harold Leighton](#); [Walls,Lisa \[CEAA\]](#)
Subject: MSS" comments on the draft EIS Guidelines for the proposed Kitimat Clean project
Date: August 12, 2016 6:52:27 PM
Attachments: [MSS comments on draft EIS Guidelines for Kitimat Clean.pdf](#)

Dear Quincy,

Please see attached Metlakatla's comments on CEAA's draft EIS Guidelines for the proposed Kitimat Clean project.

Please do not hesitate to contact me should you have any questions.

Kind regards,
Erin

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Erin Mutrie
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Metlakatla Stewardship Society
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August 12th, 2016

Quincy Leung

Project Manager

Canadian Environmental Assessment Agency

Quincy.Leung@ceaa-acee.gc.ca

RE: Metlakatla comments on the draft EIS Guidelines for the proposed Kitimat Clean Refinery Project

Dear Quincy Leung,

Thank you for the letter dated July 13th 2016 from CEAA. Metlakatla Stewardship Society (MSS) appreciates the details CEAA provided to us regarding the next steps in the EA process and are pleased to learn that a Federal Environmental Assessment (EA) is required for the Kitimat Clean Project.

As requested, we have reviewed CEAA's draft Environmental Impact Statement (EIS) Guidelines and have prepared comments in the attachment below. As you will note in the attachment, MSS has a number of outstanding concerns with the document and EA process. One of our main concerns is the shipment of oil by rail through Metlakatla territory. The rail line that will be used to ship oil is adjacent to highly sensitive environments and culturally important areas and ecosystems. Currently the draft EIS Guidelines do not identify the shipment of oil by rail as a 'project component', however, with the potential for accidents and malfunctions, Metlakatla asserts that this aspect of the project must be fully assessed in the Environmental Assessment.

Another gap that MSS identified in the EIS Guidelines is the lack of any assessment of socio-economic impacts from the proposed project to reserve communities. The EIS only identifies that socio-economic changes from environmental effects need to be assessed. This should be broadened to ensure that impacts to infrastructure and services on reserves from the project are properly assessed and that any expected residual effects are mitigated for. Given that reserves are federal jurisdiction, Metlakatla expects that the EIS Guidelines will be adjusted to provide direction to the proponent on how these issues will be assessed. MSS has compiled these as well as our other concerns in the attachment below.

We look forward to continuing to work with CEAA so that Metlakatla's concerns are well documented and addressed in the EIS and so that a well-designed, rigorous, and relevant EA is completed.

Please do not hesitate to contact me should you have questions. I may be reached at <email address removed> or by phone at 250-682-3315 ext 2035.

Sincerely,



Erin Mutrie

Metlakatla Environmental Assessment Manager

Cc: Chief Councillor Harold Leighton, Metlakatla First Nation
Ross Wilson, Executive Director, Metlakatla Stewardship Society
Lisa Walls, CEAA Director, Pacific and Yukon Region

Attachment 1: Metlakatla comments on EIS Guidelines for the proposed Kitimat Clean Project

PART 1- Key considerations

2. GUIDING PRINCIPLES

2.4 Application of the precautionary approach (page 3)

It is not clear what CEAA means when referring to 'precautionary approach'. Please define the term 'precautionary manner' in the definitions section of this document.

3. SCOPE OF THE ENVIRONMENTAL ASSESSMENT

3.1. Designated Project (page 3-5)

Marine shipping has not been identified by CEAA as a project component to be scoped into the assessment as part of project operations. Metlakatla expects adverse effects to humans, species and the ecosystem from:

- Accidents and malfunctions
- Acoustic disturbance
- Air emissions
- Cumulative effects
- Invasive species
- Vessel wake
- Vessel strikes
- Visual disturbance

Metlakatla also expects there to be potential impacts to their use of marine resources for traditional purposes (i.e. reduced access to harvesting grounds and travel routes, sensory disturbance from marine shipping and impacts to resources such as fish) and health and socio-economic situation as a result of marine shipping. Marine shipping and any support required from other marine vessels for construction and operation must be added to the description of the designated project in the EIS and fully assessed in the environmental assessment.

Another major gap in the EIS Guidelines is that the shipment of oil by rail has not been identified by as a project component to be scoped into the assessment as part of project operations. Metlakatla is very concerned about the impacts of this potential new activity should an accident or a malfunction ever occur. The rail line passes through highly sensitive environments and culturally important areas and ecosystems (i.e. the Skeena River, the Lakelse River and Lakelse Lake etc). Metlakatla asserts that this aspect of the project must be fully assessed in the in the 'Accidents and Malfunctions' section of the EIS Guidelines document and throughout the Environmental Assessment.

3.2. Factors to be considered

3.2.2. Valued components to be examined (page 7, 8)

The final list of VCs to be included in the EIS by the proponent should be verified with MSS before being finalized so that Metlakatla can ensure that their concerns and potentially impacted values will be properly assessed under the selected VCs.

3.2.3. Spatial and Temporal boundaries (page 8)

The delineation of spatial and temporal boundaries is a critical step in an environmental assessment. The language in the first paragraph in this section needs to be strengthened to

state ‘The proponent *must solicit input from* the Agency, federal and provincial government departments and agencies, local government and Indigenous groups, and take into account public comments when defining and *finalizing* the spatial and temporal boundaries used in the EIS’.

4. PREPARATION AND PRESENTATION OF THE ENVIRONMENTAL IMPACT STATEMENT

4.2. Use of information

4.2.1. Government expert advice (page 9)

Metlakatla requests that experts from federal or provincial agencies participating in the process, whenever possible, are representatives who have local knowledge specific to the project site and surrounding waters.

4.2.3. Existing information (page 9)

MSS requests that proponents attempt to get information with respect to impacts to Aboriginal rights and title directly from Indigenous groups rather than seeking out existing information. Proponents often attempt to incorporate information relating to impacts on First Nations from past EAs- this information is often mischaracterised or incomplete. Metlakatla prefers to supply project-specific information relating to impacts to their uses directly to proponents.

4.3. Study strategy and methodology (page 11)

The proponent should be asked to explain how they plan to measure such variables as “resilience”. Metlakatla agrees that resilience of species, populations and habitats is an extremely important factor in environmental assessment, but recognizes that measuring resilience in some cases may be challenging. The proponent should be asked to justify how their methods address the question of resilience at an ecosystem level, and the working group should be given opportunity to evaluate whether maintaining resilience while advancing the project is possible.

4.5. Summary of the Environmental Impact Statement (page 12, 13)

In the second bullet, Indigenous groups should have the opportunity to review and approve the summary of engagement prior to its inclusion in the EIS. Indigenous groups should be given a reasonable amount of time to conduct their review. Please adjust the wording in this section to reflect this.

PART 2- Content of the EIS

1. INTRODUCTION AND OVERVIEW

1.4. Regulatory framework and the role of government (page 15)

The third bullet could be expanded or a new bullet should be created to specifically detail that the EIS will identify ‘policies relating to efforts to reduce BC and Canada’s contribution to climate change through emissions reductions’.

2. PROJECT JUSTIFICATION AND ALTERNATIVES CONSIDERED

2.2. Alternative means of carrying out the project (page 16)

The working group should have an opportunity to provide criteria against which the proponent carries out their alternatives assessment. The working group should also be given an opportunity to review and provide feedback on the alternatives assessment after it is executed.

In addition to what is written in this section, MSS believes that the alternatives assessment should be more inclusive and should examine alternative timing for project development, size of terminal and shipping options.

5. ENGAGEMENT WITH INDIGENOUS GROUPS AND CONCERNS RAISED

5.1. Indigenous Groups & Engagement Activities (page 21)

This section outlines that “The EIS will describe all efforts, successful or not, taken to solicit the information required from groups to support the preparation of the EIS”. In addition, the Proponent should describe all efforts that have occurred to date to resolve outstanding issues.

6. EFFECTS ASSESSMENT

6.1. Project setting and baseline conditions

6.1.1. Atmospheric Environment (page 23)

In addition to considering historical records, the EIS should analyze *predicted* values for precipitation, mean, max and min temperatures considering climate change.

6.1.6. Marine environment (page 25)

In this section, CEAA should add wording outlining that the proponent is required to consult First Nations to ensure culturally significant species are included in the assessment. Habitats for all life stages of these fish should be identified and assessed for their role in maintaining healthy stocks.

6.1.8. Migratory birds and their habitat (page 26)

In this section, CEAA should add wording outlining that the proponent is required to consult with First Nations to ensure culturally significant species are included in the assessment.

6.1.10. Indigenous peoples (page 27)

In addition to describing traditional uses currently and recently practiced, the EIS should identify and describe historical and potential future uses of lands, waters and resources by Aboriginal peoples in order to comprehensively capture impacts of the project in subsequent sections of the EIS.

6.3. Predicted Effects on Valued Components

6.3.3. Marine Plants (page 32)

The bullet should read “*any effects to* marine plants, including all benthic and detached algae, marine flowering plants, brown algae, red algae, green algae and phytoplankton.

6.3.6. Indigenous peoples (page 33)

Metlakatla is concerned that there will not be a full assessment of the potential health impacts that could be created by the project, including social determinants of health. Metlakatla expects the proponent to provide a thorough assessment of social impacts on health resulting from the proposed project, and expects regulators to develop a strategy to effectively review and regulate the potential impacts of the project on the health of local and First Nations populations.

In addition to what is listed in this section, the proponent should be directed to consider, explore and assess the ways in which First Nation resource users' perception of their environment may change as a result of the project. For example, if there is no evidence that there will be a predicted increase in contamination of traditional harvest resources, or no predicted impact to navigator safety, but First Nations resource harvesters and navigators perceive a change to their food quality or safety, impacts of the project will still be real and impactful and must be fully considered in the assessment.

Lastly, MSS identified that the EIS Guidelines do not instruct the proponent to carry out any assessment of socio-economic impacts to reserve communities. The EIS only identifies that socio-economic changes related to environmental effects need to be assessed. This assessment should be broadened to ensure that impacts to infrastructure and services on reserves as a result of the project are properly assessed and that any expected residual effects are mitigated for. Given that reserves are federal jurisdiction, Metlakatla expects that the EIS Guidelines will be adjusted to provide direction to the proponent on how these issues will be assessed.

6.5. Significance of residual effects (page 35-36)

The proponent should directly involve Metlakatla in the determination of significance for environmental effects, especially those with a direct impact on the Metlakatla community and resources. The EIS should also contain a section that explains how First Nation views were incorporated into the determination of significance.

In the last paragraph, in addition to the proponent identifying the probability and uncertainty related to data and methods, it would also be useful for the proponent to communicate uncertainty in terms of a range of possible outcomes, for clearer understanding by reviewers.

6.6. Other effects to consider

6.6.1. Effects of potential accidents or malfunctions (page 37)

In the last paragraph of this section, MSS is pleased to see that the proponent must describe the safeguards that have been established to respond to accidents and malfunctions as well as the contingency plan and emergency response procedures that would be put in place if an accident were to occur. In addition to what is written, the proponent should assess the capacity of local resources and institutions to respond to effectively to emergencies, both immediately following and for as long as impacts will be experienced. For example, are there geographic response plans in place that ensure environmentally and culturally sensitive areas can be prioritized for protection in the event of a marine accident? Are First Nation communities equipped to be first responders? MSS believes these types of questions should be detailed and assessed in the EIS.

6.6.3. Cumulative effects assessment (page 37-39)

With regard to the cumulative effects assessment, First Nations should be consulted to determine the list of past, present or future physical activities. In addition, Metlakatla argues that not just "physical activities" should be assessed, but also ongoing initiatives that may not have a physical project associated should be considered. Projects that have not been fully planned out or designed to date should also be recognized in some capacity in the document, even if their full predicted effects cannot be incorporated into the assessment.

Metlakatla would like to highlight the need for a non-project-specific, strategic level cumulative impact assessment encompassing the numerous projects underway and proposed for the North

Coast. The assessment should include a rigorous analysis of the impacts of these project developments on Metlakatla title, rights, and community wellbeing.

6.6.1. Effects of potential accidents or malfunctions

Accidents or Malfunctions Related to Marine and Rail Transportation (page 37)

Given that the transportation of oil by rail to the proposed refinery is not considered a 'project component', it is not clear whether there will be a full assessment of rail accidents or malfunctions along the transportation route. Metlakatla asserts that this assessment is necessary given that the rail line is located adjacent to culturally and ecologically sensitive locations.

In the second paragraph under this section, the guidelines state "If serious accidents or malfunctions are likely to occur and if the necessary data are available, the proponent will determine whether it is necessary to carry out an assessment of the probability that such an event occur and an assessment of its consequences, taking into account the contributing factors such as weather conditions or external events." Please provide further guidance to the proponent regarding the term "likely to occur". This term is very subjective. Indigenous groups, the public, Kitimat Clean and CEAA may have different views on what levels of likelihood are acceptable.

8. FOLLOW-UP AND MONITORING PROGRAMS (page 39-40)

Metlakatla would like to emphasize the importance of having a detailed monitoring program designed before completion of the EA. The Agency should ensure expectations for monitoring planning are clear to the proponent early in the EA process. Further, Metlakatla would like to emphasize the importance of First Nation involvement in follow up and monitoring, the need for third party verification and enforcement, and the importance of including plans to address unforeseen and emergency situations.

8.1. Follow-up Program (page 40)

The second last bullet should be reworded to read "opportunity for the proponent *to solicit input from* Indigenous groups on the affected territory, during the development and implementation, *and evaluation* of the follow-up programs."

8.2. Monitoring (page 40-41)

For the monitoring programs, a third party (approved by the working group) should be required to be responsible for monitoring the effects predictions and mitigation actions. Metlakatla must be involved in all follow up activity that occurs in their territory.