



# “When the Enbridge Review Panel Comes to Your Backyard”

## How to participate in the Joint Review Panel process for the Enbridge Northern Gateway Pipelines

On May 5, the Joint Review Panel issued a Hearing Order for the Enbridge Northern Gateway Pipeline and tankers project,<sup>1</sup> which outlines the review process and opportunities for public participation. This backgrounder is meant to be an easy-access summary of how to participate; for more in-depth detail, please refer to the Hearing Order. There are three ways for people to get involved in the Enbridge Review Panel process of the proposed pipeline; each option requires a different level of involvement. These are described below.<sup>2</sup>

**Review Panel Process:** The Enbridge Review Panel process involves several stages:

- 1) Information Sessions:** Before anything else happens, the Review Panel will hold Information Sessions in a series of communities,<sup>3</sup> between June 6 and July 15, 2011. These sessions are to help residents understand how to participate. **There will be no opportunity for comments at the Information Sessions.** The Panel members will not attend these sessions, which will be run by staff.
- 2) Community hearings:** Community hearings will take place at various locations along the proposed pipeline route to be identified later (and in Vancouver and Port Hardy), beginning in January 2012. These hearings will allow anybody to make oral statements (if they register by the deadline). They will also provide the only opportunity for Intervenor (see explanation below) – including First Nations – to introduce oral evidence.
- 3) Written exchange of questions and answers among parties:** Intervenor, Enbridge, and the Panel will be able to ask for further information from each other in writing. Enbridge will have to submit its final evidence in reply to the evidence of other parties prior to the final hearings.
- 4) Final hearings:** The final hearings have two parts. The first is testing the existing evidence through questioning (cross-examination). No new evidence can be presented, except in response to oral questioning. All parties (Intervenor, Enbridge, government) may question evidence presented. The second part is final arguments from all parties.

The Panel has not decided whether there will be further technical information sessions.

### Different ways of participating in the Enbridge Review Panel:

There are three ways to make yourself heard in the Enbridge Review Panel.<sup>4</sup> Each way has advantages and disadvantages, and typically requires a different level of effort:

1. Send a **Letter of Comment**
2. Make an **Oral Statement**
3. Become an **Intervenor**(may only be allowed to provide written evidence)

These categories are for everyone; individuals and groups (First Nations and non-First Nations), and First Nations governments. All of what is described below also covers First Nations because the Panel has not negotiated a unique process that recognizes the inherent authority of First Nations to make decisions about the use of their lands. This document does not cover First Nations consultation and legal issues specifically. For more information please contact our lawyers at 1-800-333-WCEL, or your lawyer.

<sup>1</sup> Including the proposed 1172-km dual crude oil (diluted bitumen) and condensate pipelines between Alberta and Kitimat, the marine terminal at Kitimat, and supertanker traffic on the Pacific North Coast. The Joint Review Panel is a joint federal body made up of the National Energy Board and the Canadian Environmental Assessment Agency.

<sup>2</sup> For more details, please consult the Hearing Order on the Panel’s website at [www.gatewaypanel.review.gc.ca](http://www.gatewaypanel.review.gc.ca).

<sup>3</sup> Sessions will be held in Bruderheim, Grande Prairie and Whitecourt, Alberta, and in Bella Bella, Burns Lake,

Hartley Bay, Kitimat, Kitkatla, Klemtu, Prince George, Prince Rupert, Queen Charlotte City, Smithers, Tumbler Ridge and Vanderhoof, BC.

<sup>4</sup> There is another category for government agencies called “Government Participant”, which provides essentially the same rights as an Intervenor.

### What’s happened up until now?

In fall 2010, the Panel conducted preliminary “Panel Session” hearings to hear input on the issues it should consider in its environmental assessment of Enbridge Northern Gateway, and on whether the information and plans for the pipeline and tankers that Enbridge submitted to government are adequate. Many citizens, groups, First Nations and government departments participated in these Panel Sessions. In January 2011, the Panel released its decision on the List of Issues that it will cover in the hearings. The Panel ruled that Enbridge had to provide a great deal further information, including far more detailed spill scenario plans for the pipelines and tankers, before it could begin to review the project. The Panel also added a number of issues for its consideration, but left out a number of other key issues that many people had asked to be included, such as the broader greenhouse gas and climate change implications of the project and the land, water, air and health impacts of tar sands expansion facilitated by the pipeline. Without considering these issues, the Panel may make a decision that is not based on a complete picture of the impacts of this project.

Enbridge provided a package of updated information in response to the Panel’s ruling on April 1, 2011. The Panel has not yet decided whether this information is sufficient to respond to its concerns.

For more information see West Coast’s Backgrounder: [Joint Review Panel’s Decision on the Scope of the Environmental Assessment for Enbridge Northern Gateway Pipelines](#) at [www.wcel.org](http://www.wcel.org) under “Resources” then “Recent Publications” For information on the potential failure to meet the constitutional duty to consult with and accommodate First Nations, see: [Legal Backgrounder: The Crown’s Approach to First Nations Consultation on the Enbridge Gateway Pipeline](#)

The Enbridge Review Panel hearings are court-like and are open to the public. Everybody can attend and/or listen online to the proceedings, regardless of whether or not they actively participate in one of the ways listed above. There may also be meetings or activities organized by community groups related to participating in the Joint Review Panel's hearings in a community near you. To learn more about these activities, contact Friends of Wild Salmon by visiting their website at [www.friendsofwildsalmon.ca](http://www.friendsofwildsalmon.ca).

## 1) Send a Letter of Comment – deadline March 13, 2012, 11am Pacific/NOON Mountain time

**Anyone can provide the Panel with their knowledge, opinion, or concerns in a letter of comment** (including all individuals and groups (First Nations and non-First Nations), and First Nations governments). This can be as simple as a handwritten note—even one written by a child—or as detailed as a well-researched paper. For many people, sending a Letter of Comment will be the easiest way to participate.

Facts are important, but so are feelings. You can choose to include facts and argument in your letter, or to make a heartfelt pitch, or to do both. If you submitted comments to the Panel during sessions held in August and September 2010, the Panel indicates that there is no need to send them in again. However, if you have something additional that you would like to say, by all means, you may submit another comment.

Because of the volume of letters that the Panel may receive, the impact of your voice will be increased if you also participate in another way, such as by making an Oral Statement (you can do both). By sending a Letter of Comment, you are not considered an Intervenor and will not be entitled to ask written or oral questions, or make final arguments.

Once submitted, your comments will be posted on the Panel's public registry website, and they will be considered by the Panel.

The Panel suggests that your letter should:

- Describe why you're interested in or concerned about the pipeline project;
- Provide any information that supports your comments;
- Include your name, full mailing address, phone number, and, if you are representing an organization, that organization's name;
- Refer to the project name (Enbridge Northern Gateway Project), Hearing Order number (OH-4-2011), and File number (OF-Fac-Oil-N304-2010-01 01).

**DEADLINE FOR LETTERS OF COMMENT:** If you are providing a Letter of Comment, the Panel must receive your letter by **11am Pacific/NOON Mountain time on March 13<sup>th</sup> 2012**. Enbridge's representatives must also receive a copy of your registration by this time.

**HOW TO SUBMIT A LETTER OF COMMENT:** Letters of Comment can be submitted in a few different ways. You must submit the Letter both to the Review Panel *and* to Enbridge - a total of 4 copies to 4 places:

- **SUBMIT TO THE PANEL**

- **EITHER** by electronic submission on the Panel's website:
  - Visit [www.gatewaypanel.review.gc.ca](http://www.gatewaypanel.review.gc.ca). Click "Submit documents electronically" under the "Public Registry" heading, then click "Letter of comment."<sup>5</sup>
  - *Emailed submissions are NOT accepted.* Electronic submission of documents must be done by the method above.
- **OR** by mail, courier, fax, or hand delivery to:

**JOINT REVIEW PANEL ADDRESS:**

Secretary to the Joint Review Panel, Enbridge Northern Gateway Project  
 444 Seventh Avenue S.W.  
 Calgary, Alberta T2P 0X8 **Fax:** 403-292-5503 or **toll free fax** at 1-877-288-8803

<sup>5</sup> For more information, consult the "Filers Guide to Electronic Submission." This document is available on the Panel's website at [www.gatewaypanel.review.gc.ca](http://www.gatewaypanel.review.gc.ca).

- **AND SEND 3 COPIES TO ENBRIDGE:** you must also mail, courier, fax, or hand deliver a hard copy of your letter to **each** of the following Enbridge representatives (a total of 3 copies) by mail or fax, by the deadline above:

**ENBRIDGE REPRESENTATIVE ADDRESSES:**

Kenneth MacDonald VP, Law and Regulatory Affairs Enbridge Northern Gateway Pipelines Inc. 30 <sup>th</sup> Floor, 425 – 1 <sup>st</sup> Street SW Calgary, Alberta T2P 3L8 <b>Fax:</b> 403-718-3525	Abby Dorval Manager, Regulatory Affairs Enbridge Northern Gateway Pipelines Inc. 30 <sup>th</sup> Floor, 425 – 1 <sup>st</sup> Street SW Calgary, Alberta, T2P 3L8 <b>Fax:</b> 403-231-7380	Richard Neufeld, Q.C. Barrister & Solicitor Fraser Milner Casgrain 15 <sup>th</sup> Floor, 850 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 0R8 <b>Fax:</b> 403-268-3100
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## 2) Make an Oral Statement – deadline to register October 6, 2011, 11am Pacific/NOON Mountain

The second way for people to participate in the review process is to make an oral statement at one of the community hearings, held in January or February 2012. Oral Statements are a very important way for you to express your views to the Panel. They may have a greater impact on the Panel than simply writing a Letter of Comment: seeing real people who are expressing their thoughts, concerns, and emotions in relation to this project is important for the Panel in making their decision. The amount of effort required can range from simply walking in and speaking from the heart about your concerns, right through to serious and intensive preparation and research for a very detailed presentation. You can bring notes to help you, but how much you prepare for the hearing is up to you. You will be asked by the Panel to confirm the truthfulness of your statement and may also be asked to clarify what you've said. All that is required is for you to register, explaining why you're interested in the pipeline project and to describe your knowledge, opinion, or concerns. **Generally, the Panel has indicated that Oral Statements should be no longer than 10 minutes.** You can submit more detailed information in a Letter of Comment, in addition to your Oral Statement, if you wish.

All individuals and groups (First Nations and non-First Nations), and First Nations governments, may make an Oral Statement if they register by the deadline (for information on oral evidence by Intervenors, see below).

**\*\*\*The Panel says that “Active participation in the community hearings is RESTRICTED to the registered participants.”\*\*\*** Everyone is welcome to attend and observe community hearings, or to listen to them over the Internet on the Panel's website under “Hearings,” but only those people who register may speak. For this reason, it is **critical** that you register by the deadline if you wish to speak. The Panel may decide to allow people to register late, but there is no way to be sure that they will allow it, or whether they will allow people to speak who simply show up at the community hearings without registering.

While Oral Statements by people and groups who are not Intervenors may be subject to some questions for *clarification* by the Panel, or by Enbridge and other parties, your statement will not likely be subjected to rigorous testing through questioning. For this reason, the Panel will treat the evidence that is presented by Intervenors as having added reliability, because it may be tested through questioning by other parties in the Final Hearings. In a court-like setting such as the Review Panel hearings, evidence that is tested through detailed questioning is generally given more “weight,” or is considered to have extra reliability, than evidence that is not tested. By making an Oral Statement, you are not considered an Intervenor and will not be entitled to ask written or oral questions, or make final arguments.

**DEADLINE TO REGISTER TO MAKE AN ORAL STATEMENT:** To make an Oral Statement, you must register and the Panel must receive your registration by **11am Pacific/NOON Mountain time on October 6, 2011**. Enbridge's representatives must also receive a copy of your registration by this time. *If you think you might want to participate, but are unsure, it's better to register now – you can cancel later if you decide not to participate.*

**HOW TO REGISTER TO MAKE AN ORAL STATEMENT:** All that is required is for you to register with the Panel, and notify Enbridge's representatives, by the deadline above. This means you send a total of 4 copies to 4 different places. You can do this in a few ways:

- **REGISTER WITH THE PANEL:**
  - **EITHER** On the Panel's website;
    - Visit [www.gatewaypanel.review.gc.ca](http://www.gatewaypanel.review.gc.ca). Click "Submit documents electronically," under the "Public Registry" heading, then click "Oral statement."
  - **OR** by phone, toll-free: 1-855-202-4559;
  - **OR** by completing the "Registration to make an oral statement" form, available on the Panel's website, **OR**, if you'd rather not use the form, by writing a letter that includes the information requested on that form (for clarity, it is best to write a *separate* letter from your Letter of Comment for this purpose). The form or the letter can be mailed, couriered, faxed or hand-delivered to the Secretary to the Joint Review Panel (address provided above);
- **AND SEND 3 COPIES TO ENBRIDGE:** by mailing, couriering, faxing, or hand delivering one hard copy of the completed registration form to *each* of Enbridge's representatives (addresses provided above) by the deadline above.

Any documents (reports, maps, articles, letters, or any other evidence) you plan to refer to in your oral statement must be sent to the Panel at least **2 weeks before you make your statement**.

**Language:** If you wish to make a statement or oral presentation in a language other than English or French, such as an Indigenous language, you will need to identify an interpreter and contact Louise Niro, Regulatory Officer, at 403-299-3987 or toll-free at 1-800-899-1265.

### **3) Become an Intervenor – deadline to register is July 14, 2011, 11am Pacific/NOON Mountain time**

**The third way to participate in the Enbridge pipeline joint review process is to become an Intervenor.**

*Because non-First Nations Intervenors may not be allowed to provide oral evidence, if you wish to ensure that you are allowed to speak in person to the Panel, you may wish to consider registering to make an Oral Statement instead (see explanation below).* However, only Intervenors may ask formal questions about Enbridge's evidence.

Being an Intervenor does NOT have to be scary or challenging. How much time and effort you put into it is totally up to you. On the low end, you can become an Intervenor simply to receive notice of any documents in the hearing, but do nothing else; on the high end, being an Intervenor can be equivalent to becoming deeply involved in a serious court case, taking much more time and effort than simply making an Oral Statement or writing a Letter of Comment. You could choose to focus on a single issue of interest to you and participate actively only on that issue. You could also choose to involve yourself in a wider range of issues, depending on your available time and capacity. You may simply have one or more specific information requests you wish Enbridge to answer, based on your expertise or knowledge – you need to be an Intervenor to have the right to ask questions and receive answers in the Final Hearings. Based on the answer to your information request, you may be satisfied, or you might wish to ask further questions of Enbridge's evidence or make a final statement or argument during the hearings.

While you do not need a lawyer to intervene, the Panel's proceedings will be court-like and a lawyer's services may be beneficial if you can afford it, as the questioning of evidence, making and responding to motions, and making final arguments can be a fairly lawyer-like task. However, don't be afraid to participate just as yourself if you can't afford a lawyer. As an Intervenor, you can do as much or as little as you like, so you do not need to participate in arguments of legal motions if you do not wish to do so.

First Nations governments, groups and individuals may participate as Intervenors; the Crown has not created any unique status in the JRP process to recognize the authority of First Nations governments.

As an Intervenor, you have the right to fully participate in all Final Hearings in June and July 2012 (and beyond if necessary), **but you may not be able to make an Oral Statement of your evidence in the Community Hearings (see below)**. You will have full rights to question Enbridge and other Intervenors and may have to answer questions regarding your own evidence. You will be able to submit written questions, or "information requests,"

as well as your own evidence in writing and, with the permission of the Panel, you can present evidence orally at the community hearings. You will be able to participate in “notices of motion”—questions about substance or procedure that require the Panel to make a decision before the final hearing— and will have the opportunity to make a final argument, summarizing your position, at the Final Hearings.

**Oral evidence by Intervenors: Other than First Nations oral traditional evidence, the Panel will not allow Intervenors to give an oral presentation at the Community Hearings unless the evidence cannot be provided in writing.** If Intervenors wish to present evidence orally at the Community Hearings, they must request permission. This may be especially important for First Nations who will likely wish to present Oral Evidence from elders and community members. To present oral evidence that is *not* First Nations oral traditional evidence, an Intervenor must convince the Panel, in its written application, that the evidence cannot be provided in writing – this could be, for example, if you have a particularly emotional story that you wish to be able to share in person with members of the community present, or if the Intervenor has some sort of difficulty expressing themselves in writing. *It is not guaranteed that you will be granted permission to make an oral presentation, so if you are determined to make an oral presentation, you may prefer to register to make an Oral Statement instead of registering as an Intervenor.* The Community Hearings are the only place for Intervenors to introduce oral evidence. You will not be able to introduce new evidence in the Final Hearings, except in response to questions. *The deadline for an Intervenor to request permission to present oral evidence is October 6, 2011, as discussed below.*

**DEADLINE FOR INTERVENOR REGISTRATION:** Your registration for Intervenor Status must be received by the Panel and by Enbridge’s representatives by **11am Pacific/NOON Mountain time on July 14<sup>th</sup> 2011.**

**HOW TO REGISTER AS AN INTERVENOR:** Generally, the Panel will allow any person or group who wishes to become an Intervenor, by registering using the appropriate form.

On your registration form, you must indicate:

- What topics on the List of Issues you are interested in (the List of Issues is attached to the Hearing Order and can be found at [www.gatewaypanel.review.gc.ca](http://www.gatewaypanel.review.gc.ca))
- You must provide your address and contact information, and *if* you have a representative, like a lawyer or someone else you’re working with, their contact information.
- There are numerous other questions, like whether you will submit written evidence, whether you intend to question Enbridge, and whether you request to provide oral evidence at the Community Hearings. You can answer yes, no, or unknown (if you have not yet decided what you will do). If you request permission to give oral evidence, you have to explain your reason for doing so and give an overview of what you expect to present. If you have not yet decided whether you would like to give oral evidence, or if you do not yet know what you would like to say, you can wait and apply for permission to give oral evidence up until the October 6, 2011 deadline to register for oral presentations.

The Panel may decide *not* to allow someone to intervene if they think it would be inappropriate, but they are likely to do this only in very rare cases. However, because the Panel has the power not to accept an Intervenor registration, it is important to ensure that your registration form is completed correctly and that it sets out the topics on the List of Issues in which you are interested. *Make sure that the topics you include on the form are part of the List of Issues; the Panel may not accept Intervenors who indicate that they wish to talk about issues beyond the List of Issues.* You can make an argument later during the hearing, by motion, if you wish the Panel to consider a matter that is not included on the list.

You may register in a number of ways. You must submit a total of 4 copies of your form to 4 different places:

- **REGISTER WITH THE PANEL:**
  - **EITHER** on the Panel’s website;
    - Visit [www.gatewaypanel.review.gc.ca](http://www.gatewaypanel.review.gc.ca). Click “Submit documents electronically,” under the “Public Registry” heading, then click “Intervenor.”
  - **OR** by completing the “Registration for Intervenor Status” form, available on the Panel website, **OR** by writing a letter that includes all the information requested in that form. The form or letter may be mailed, couriered, faxed or hand-delivered to the Secretary to the Joint Review Panel (address provided above);
- **AND SEND 3 COPIES TO ENBRIDGE:** You do not need to notify Enbridge of your registration right away on the July 14 due date, although you are welcome to do so if it makes things easier for you. You are required, however, to send 3 hard copies of your form by mail, courier, fax or hand delivery to Enbridge’s

representatives (one to each address above) when the Panel releases the List of Parties, which lists everyone who has registered. The List of Parties should be issued shortly after July 14.

#### **ADDITIONAL INFORMATION FOR INTERVENORS:**

- Intervenors must submit written evidence to the Panel by **December 22 2011**. Copies must be sent to Enbridge, all other Intervenors, and Government Participants.
- **IF YOU REQUEST PERMISSION TO MAKE PRESENT ORAL EVIDENCE AT A COMMUNITY HEARING, the you must send a request by October 6<sup>th</sup> 2011**, or indicate on your Intervenor Registration form that you request permission to give oral evidence). Your request (whether you submit it on the Intervenor Registration form, or as a separate request) must include: (1) the reason for the request **including why it cannot be provided in writing**, (2) expected length of the presentation, (3) overview of the evidence to be provided orally, and (4) the names of those expected to present to the Panel.
- To question Government Participants, a request must be sent to the Panel by May 15 2012, with copies sent to Enbridge, all other Intervenors, and Government Participants.
- As an Intervenor, you must respond to information requests about your own evidence in writing and at the final hearings. Requests submitted by March 20 2012 must be responded to by May 15 2012. Copies must be sent to the other parties.
- If you provide written or oral evidence, you must be available to be questioned about that evidence (you may not receive any questions, but you must be available). If you are unavailable for questioning, the Panel may remove your written evidence from the registry and refuse to consider it.
- You can withdraw from being an Intervenor at any time by writing to the Panel.

#### **Key deadlines:**

- **June 9, 2011:** Additional written evidence must be filed by Enbridge.
- **July 14, 2011:** **Deadline to register as Intervenor**
- **August 25, 2011:** Deadline for first round of written information requests by Intervenors
- **October 6, 2011:** Enbridge must reply to first round of written information requests
- **October 6, 2011:** **DEADLINE TO REGISTER TO MAKE AN ORAL STATEMENT AT COMMUNITY HEARINGS** and deadline for Intervenors to apply for permission to present oral evidence at community hearings
- **November 3, 2011:** Deadline for second round of written information requests by Intervenors
- **November 24, 2011:** Enbridge must reply to second round of written information requests
- **December 22, 2011:** Deadline for Intervenors (and government) to submit written evidence
- **March 13, 2012:** **Deadline for Letters of Comment**

The Panel's deadline for each date is always **11am Pacific/NOON Mountain time**.

**Take Note:** Missing a deadline does not necessarily prevent you from participating. You must get the approval of the Panel to submit a document, or to register to make an Oral Statement or to be an Intervenor, after the deadline has passed. To decide on your late request, the Panel will consider how the pipeline will affect you, the reason why the deadline was not met, whether your submission is likely to help the Panel, whether similar submissions have already been or are likely to be made by other participants, and whether other parties could be disadvantaged due to the late submission. *An extension of a deadline, or late acceptance of registration, is NOT guaranteed.*

You may contact the Process Advisory Team with questions about the joint review process at 1-866-582-1884 or via e-mail at ProcessAdvisoryTeam@ceaa-acee.gc.ca. You may also sign up to receive updates from the Panel about information sessions, to be held between June 6 and July 15, 2011. You may also call West Coast for more information at 1-800-330-WCEL.

**The information provided in these materials is for public education purposes only. If you have particular questions about a specific legal question, please contact one of West Coast's lawyers at 1 800 330-WCEL.**

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