

Table of Contents
Hearing Order MHW-R-1-2008

Hearing Order MHW-R-1-2008	1
Order MO-7-96	9
List of Issues	11
Timetable of Events	13
List of Publications for the Notice	14
List of Persons to be Served with Hearing Order MHW-R-1-2008.....	15



File OF-Fac-Oil-Y016-1995-01 02
2 October 2008

Hearing Order MHW-R-1-2008 Yukon Pipelines Limited - Abandonment Order Review

The Application

On 29 February 2008 the National Energy Board (NEB), on its own motion, ordered a review of Order MO-7-96 pursuant to section 21 of the *National Energy Board Act*. Order MO-7-96 was issued to Yukon Pipelines Limited (YPL) in 1996 granting leave to abandon the operation of its refined petroleum products pipeline running from the international boundary between Alaska, U.S.A and the province of British Columbia, to Whitehorse, Yukon as well as pumping and petroleum storage facilities at Carcross and Whitehorse in the Yukon Territory. The order provided that it would come into force once the Board was satisfied that the seven conditions attached to the Order were met. A copy of Order MO-7-96 is in Appendix I.

This Review Order resulted from an application on behalf of YPL that the NEB find that condition 7 of Order MO-7-96 had been satisfied with regard to one site, the Upper Tank Farm at the City of Whitehorse.

Pre-Hearing Technical Conference

In order to provide clarity to issues regarding the Abandonment Order, the Board convened a Pre-Hearing Technical Conference in Whitehorse on 26 and 27 August 2008 by inviting previous intervenors on Order MO-7-96 and the public to participate. An independent facilitator led the process and produced a Technical Conference Facilitators Final Report on 24 September 2008. This report can be viewed with other background documents referenced in this Order.

Hearing

The Board has decided to conduct a written hearing.

To facilitate public participation and in the interests of fairness and efficiency, the Board has established the following procedures and directs as follows.

Please note that the procedures set out in this Hearing Order supplement the *National Energy Board Rules of Practice and Procedure, 1995*, (Rules) SOR/95-208, which are available at www.neb-one.gc.ca (click on "Acts and Regulations") or by calling the Board toll free at 1-800-899-1265.

Background Documents

1. Documents relating to the satisfaction of the conditions to Order MO-7-96 that have been filed with the Board since the issuance of Order MO-7-96 will form part of the record of this proceeding and can be accessed through the Board's electronic document filing system (repository) at www.neb-one.gc.ca . (click on "View" under Regulatory Documents then "Quick Links" and scroll down to the Yukon Pipelines Limited - Abandonment Order Review).

Correspondence Related to this Hearing

2. Any person filing a document with the Board or serving a document on any person about this hearing must quote:

**Hearing Order MHW-R-1-2008 and
File OF-Fac-Oil-Y016-1995-01 02.**

With the exception of on-line forms, any document filed in this hearing must be signed by the person submitting it.

In this Hearing Order, reference to Service on YPL or on YPL counsel means service on the following:

Mr. Brian R. Hedges President, Yukon Pipelines Limited and Chief Operating Officer, Russel Metals Inc. 1900 Minnesota Court, Suite 210 Mississauga, ON L5N 3C9 Facsimile 905-819-7409 Email bhedges@russelmetals.com	Mr. David Bursey Bull, Housser & Tupper 3000 - 1055 West Georgia Street Vancouver, BC V6E 3R3 Facsimile 604-646-2563 Email dwb@bht.com
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Public Participation

3. Members of the public may participate in this hearing in one of two ways – by filing a letter of comment on the application (see paragraph 4) or by seeking intervenor status (see paragraph 5).

The letter of comment option (paragraph 4) allows interested persons who do not wish to intervene in the hearing an opportunity to provide their views and opinions on the application. In determining the weight to be given to these comments, the Board may take into consideration the fact that they will not be tested by information request.

If you are providing technical or factual evidence, rather than views about the application, it may be more appropriate to participate as an intervenor (paragraph 5).

Letters of Comment

4. Any interested person who does not wish to register as an intervenor and become a party in the proceeding (see paragraph 5), but who still wishes to comment on the application, may file a letter of comment with the Board by **noon, Calgary time on Friday, 21 November 2008**. The Board will serve a copy on all parties.

A letter of comment should:

- (a) describe the nature of your interest in the application;
- (b) provide comments on the application; and
- (c) provide any relevant information that will explain or support your comments.

There is an on-line letter of comment form available on the Board's Internet site at www.neb-one.gc.ca which you may use to file your letter of comment (click on "Submit" under Regulatory Documents then click on "Submit Documents Electronically" and then scroll down to select "Letter of Comment").

Note: If you choose to file a letter of comment, you are not considered an intervenor. Therefore, you will not have the right to participate in any other way during the proceeding.

Application for Intervention

5. Any person wanting to become an intervenor in the hearing must file a written request to intervene with the Board and serve a copy on YPL and its counsel by **noon, Calgary time on Tuesday, 14 October 2008**. Those who were accepted as participants in the Pre-Hearing Technical Conference were also accepted as intervenors in the Hearing and are identified in Appendix V.

A written application to intervene must:

- (a) set out your name, mailing address, address for personal or courier service (if this is different from your mailing address), e-mail address, telephone number and other telecommunications numbers;
- (b) set out the name, mailing address, address for personal or courier service (if this is different from the mailing address), e-mail address, telephone number and other telecommunications numbers for your authorized representative if you have one;

- (c) describe the nature of the your interest in the proceeding;
- (d) state clearly the issues that you intend to address via the hearing;
- (e) indicate whether you have the capability to access documents through the Board's electronic document repository and therefore receive documents by being served with a notification that the document is available in the Board's electronic document repository;
- (f) indicate if applicable, why you are not able to use the Board's electronic document repository; and
- (g) indicate the official language you wish to use in correspondence with the Board.

Note: Any party that can access the repository must accept notification that an e-filed document is available in the repository rather than requiring a hard copy of the document.

There is an on-line application to intervene form available on the Board's Internet site at www.neb-one.gc.ca which you may use to file your application to intervene (click on "Submit" under Regulatory Documents then click on "Submit Documents Electronically" and then scroll down to select "Application for Intervenor Status").

Intervenor Status

6. Those who were accepted as participants in the Pre-Hearing Technical Conference were also accepted as intervenors in the Hearing and are identified in Appendix V. No application for intervention is required for them.

Other Persons and agencies listed in Appendix V or otherwise served with this Hearing Order are not automatically considered intervenors. Any person wishing to be included as an intervenor must file an application to intervene containing the information as described in paragraph 5.

List of Issues

7. The Board intends to examine the issues contained in the List of Issues, attached as Appendix II. Any party who wishes to suggest an amendment or addition to this List of Issues must file their suggestion with the Board and serve a copy on YPL and its counsel by **noon, Calgary time on Tuesday, 14 October 2008**. You must include a clear explanation of the relevance of the suggestion to the hearing.

List of Parties

8. Shortly after the deadline for comments on the List of Issues, the Board will issue a List of Parties (which will consist of Pre-Hearing Technical Conference Participants and new Intervenors).

Immediately after receiving the List of Parties, Intervenors must serve a copy of their application to intervene on all other Intervenors.

If there are parties who cannot access documents through the Board's repository, and therefore cannot be served by being notified that the document has been e-filed, the Board will indicate on the List the manner of service for those parties.

If a party's contact information changes, it must file an update with the Board.

Service of Documents

9. If a party to be served with a document has indicated that it has the ability to access documents through the Board's repository, anyone required to serve a document on that party may serve a notification that the document is on the repository instead of serving a copy of the document. It will then be the responsibility of the party being served to retrieve the document from the repository.

Where it is indicated that documents must be served on other parties, one copy must be served on YPL, its counsel and each person on the List of Parties.

Additional Written Evidence and Submission from YPL

10. If YPL wishes to file any additional evidence and also wants to make a submission on what the Board should do and why, they must file the written evidence and submission with the Board and serve a copy on all parties by **noon, Calgary time on Friday, 17 October 2008.**

Information Requests to YPL

11. If Intervenors have any information requests about evidence for YPL, they must serve them on YPL and its counsel, file a copy with the Board and serve a copy on all Intervenors by **noon, Calgary time on Thursday, 30 October 2008.**
12. YPL must file its responses to the information requests received by the deadline with the Board and serve a copy on all parties by **noon, Calgary time on Wednesday, 12 November 2008.**

Written Evidence and Submission of Intervenors

13. If Intervenors wish to provide evidence and want to also make a submission on what the Board should do and why, they must file their written evidence and submission with the Board and serve a copy on YPL and all Intervenors by **noon, Calgary time on Friday, 21 November 2008.**

Information Requests to Intervenors

14. If YPL or any Intervenor has any information requests about the evidence of Intervenors, they must serve them on the Intervenor, file a copy with the Board and serve a copy on YPL and all Intervenors by **noon, Calgary time on Friday, 28 November 2008.**
15. Intervenors must file a copy of all responses to the information requests received by the deadline with the Board and serve a copy on YPL and all Intervenors by **noon, Calgary time on Tuesday, 9 December 2008.**

Final Submission of YPL

16. YPL may file any additional submission with the Board and serve a copy on all parties by **noon, Calgary time on Tuesday, 16 December 2008.**

Public Notification

17. The Board will:
 - (a) serve a copy of this Hearing Order and Appendices on all parties and on all persons or agencies listed in Appendix V in the official language of their choice; and
 - (b) publish the Notice of Public Hearing in each of the publications listed in Appendix IV;

Timetable of Events

18. Appendix III lists the deadlines for filing and serving documents and the party responsible.

Filing Documents with the Board

19. All documents and correspondence being filed with the Board should be addressed to the Secretary of the Board, Ms. Claudine Dutil-Berry. The Board will accept filings of documents by hand delivery, mail or courier at the following address:

Ms. Claudine Dutil-Berry
Secretary of the Board
National Energy Board
444 - 7th Avenue S.W.
Calgary, Alberta T2P 0X8

Filings may also be made by facsimile at 403-292-5503 or electronically.

Electronic Filing and the Electronic Document Repository

20. Parties who have the ability of filing documents electronically are expected to file documents through the Board's electronic document filing system (repository) at www.neb-one.gc.ca (click on "Submit" under Regulatory Documents to file a document). Any party who has the ability to access documents through the repository must accept service of a notification that the document is in the repository rather than requiring a hard copy of the document be served (click on "View" under Regulatory Documents then "Quick Links" and scroll down to the Yukon Pipelines Limited - Abandonment Order Review to view and print a document).

For more information about filing electronically, please refer to the "Filers Guide to Electronic Submission" and the "Memorandum of Guidance on Electronic Filing". Both of these documents are available on the Board's Internet site at www.neb-one.gc.ca. (Click on "Acts and Regulations" then "Rules, Regulations, Guidelines, Guidance Notes, and Memoranda of Guidance pursuant to the *National Energy Board Act*" then select "Rules of Practice and Procedure" and scroll down to "Electronic Filing").

Please note that e-mails are not considered electronic filing and will not be accepted in this hearing.

The Board's electronic document repository will contain the full text of those documents filed electronically (following the procedures mentioned above). When documents are filed by hard copy or facsimile, the Board will attempt to scan them into the repository but may, in some instances, create an electronic placeholder. This placeholder indicates that a document has been filed in hard copy and is available in the Board's library but it will not be possible to view or search these documents on the electronic document repository.

Number of Copies and Delivery of Documents

21. Parties filing documents electronically, following the procedures set out in paragraph 20, only need to file one hard copy with the Board, along with the electronic filing receipt, which will be sent by the repository system when a document is electronically filed.

When this Hearing Order requires the filing or service of documents by certain deadlines, the documents are only considered to meet the deadline when the intended person receives them.

The intended recipient must receive the documents by noon, Calgary time.

References to Websites

22. Any person making a reference to information on a website must ensure that:

- (a) the reference is sufficiently precise to allow any person accessing the site to know the exact information which is being referenced;
- (b) the website does not require a password or subscription in order to access the information; and
- (c) a hard copy of all of the information being referenced on the website is filed with the Board.

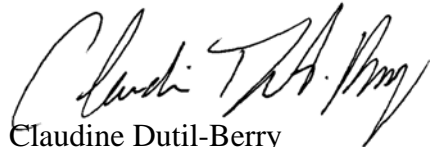
Fairness and Efficiency

23. The Board encourages fairness and efficiency in all of its proceedings and therefore asks that all parties and persons observe the deadlines set out in this Hearing Order. The Board encourages the use of electronic filing and facsimile or courier to ensure that documents are received on time. The Board will not allow an exception to a deadline unless, in the Board's view, it can be reasonably justified.

Further Information

24. For information on this hearing, or the procedures governing the hearing, please contact Erin Dutcher, Regulatory Officer, at 403-299-2782 in Calgary or by calling the Board toll-free at 1-800-899-1265 and specifying the Yukon Pipeline Abandonment Order Review hearing.

NATIONAL ENERGY BOARD



Claudine Dutil-Berry
Secretary of the Board

Order MO-7-96

IN THE MATTER OF the *National Energy Board Act* ("the Act") and the regulations made thereunder; and

IN THE MATTER OF an application, pursuant to section 74 of the Act filed with the Board by Yukon Pipelines Limited ("YPL"); under File No. 3400-Y001-2.

BEFORE the Board on 6 September 1996.

WHEREAS the Board has received an application filed by YPL dated 12 July 1995, respecting the abandonment of the operation of the refined petroleum products pipeline running from a point on the international boundary between Alaska, U.S.A and the province of British Columbia, to Whitehorse, Yukon;

AND WHEREAS the Board considered evidence and arguments of the Applicant and Interested Parties in an oral public hearing held on 20 August 1996 pursuant to Hearing Order MH-3-96;

AND WHEREAS pursuant to the *Canadian Environmental Assessment Act* ("CEAA"), the Board has considered the information submitted by YPL and has performed an environmental screening of the abandonment proposal;

AND WHEREAS the Board has determined, pursuant to paragraph 20(1)(a) of the CEAA, that, taking into account the implementation of YPL's proposed mitigative measures and those set out in this Order, the proposal is not likely to cause significant adverse environmental effects;

AND WHEREAS, the Board has examined the application and the evidence and arguments presented by YPL and Intervenors in this proceeding and has found it to be in the public interest to grant the relief requested in the application;

IT IS ORDERED THAT YPL is granted leave to abandon the operation of its pipeline in accordance with the policies, practices, recommendations and procedures included or referred to in its application, including the environmental reports and other materials filed as part of its application, its responses to information requests and the undertakings and statements made by it in this proceeding. In accordance with an undertaking made by YPL, in planning and conducting the remaining investigation, decommissioning and remedial work, YPL shall provide information to and consider the comments of any persons who indicate to YPL that they wish to be consulted. Pursuant to subsection 19(1) of the Act, this Order shall come into force on the performance to the satisfaction of the Board of the following conditions:

1. Unless the Board otherwise directs, YPL shall file a report on the results of the Phase I field investigation for the Carcross pump station which shall include a summary of the comments and concerns of interested persons and a summary of how YPL has addressed or will address those comments and concerns.
2. Unless the Board otherwise directs, YPL shall provide to the Board the results of its review of the inconsistencies in the spill data identified by Environment Canada, including an assessment of whether further action is required.
3. Unless the Board otherwise directs, YPL shall file a report before commencing the Phase II field investigation programs for the pipeline, the Upper Tank Farm and the Carcross pump station which shall describe the detailed methodologies for those programs and shall include a summary of the comments and concerns of interested persons and a summary of how YPL has addressed or will address those comments and concerns.
4. Unless the Board otherwise directs, YPL shall dismantle its facilities to facilitate the Phase II field investigation programs.
5. Unless the Board otherwise directs, YPL shall file a report following completion of the Phase II field investigation programs which shall describe the results of those programs and the remedial measures selected for the pipeline, the Upper Tank Farm and the Carcross pump station and shall include a description of any remedial measures already undertaken, a summary of the comments and concerns of interested persons, a summary of how YPL has addressed or will address those comments and concerns, a priority ranking for the sites requiring remedial work, a schedule for the work to be undertaken at each site and projected costs.
6. YPL shall carry out the remedial work in accordance with the report to be filed pursuant to Condition 5 above, subject to any modifications, including additional investigative or remedial work, that may be directed by the Board from time to time before the Board accepts the final report to be filed pursuant to Condition 7 below.
7. Unless the Board otherwise directs, YPL shall file a final report following completion of the remedial work which shall demonstrate the success of the remedial work based on the criteria outlined by YPL in its application and in other evidence filed or otherwise given by YPL in this proceeding.

List of Issues

The Board has identified but does not limit itself to the following issues for discussion in the proceeding:

1. Regarding the Carcross Site:
 - a) Degree of remediation conducted and required including; recovery of hydrocarbons and monitoring of the hydrocarbon plume.
2. Regarding the Tank Farm Site:
 - a) Appropriate land use remediation standards to be employed to allow the Abandonment Order to come into force.
 - b) Adequacy of current soil and groundwater delineation.
 - c) Significance of off-site migration of contaminants as well as, need for delineation, remediation and source control.
 - d) Appropriateness of a risk assessment approach including:
 - i Applicability of the approach to the entire site;
 - ii Demonstration that adequate bioremediation is occurring in support of monitored natural attenuation;
 - iii Ongoing groundwater monitoring plans; and
 - iv Monitoring and interpretation of groundwater and surface water at the point of compliance in Baxter's Gulch.
 - e) Hydrocarbon vapour control for future structures and utilities.

The Board will also consider the following issues as agreed to by the Participants at the Pre-Hearing Technical Conference:

1. There should be clear direction from the NEB as a result of the Abandonment Review process.
2. There are no outstanding abandonment requirements with regard to the pipeline right of way.
3. Product recovery at the Carcross site is not complete. The Plan of Restoration will continue to be implemented and annual update reports will be provided.
4. It would be appropriate for the NEB to deal with the three sites separately in terms of the Abandonment Order (through severance of the Order or otherwise).
5. A remediation standard should apply at the Whitehorse Upper Tank Farm site and the NEB is to determine the standard.
6. At the UTF site contaminated soil has been removed to 3 metres.
7. At the UTF site, site specific remediation standards for soil at depths greater than 3 metres were implemented.
8. The following continue to be issues for all or some of the parties:
 - a) Whether the risk assessment approach applies to both the UTF and off site to Baxter's Gulch.
 - b) The significance of offsite contamination migration.
 - c) The significance of soil hydrocarbon vapours on the UTF site.
 - d) Who "watches" the UTF contamination after the NEB process.

Timetable of Events

Actions	Hearing Order Reference	Person Responsible	Deadline (noon, Calgary time unless otherwise indicated)
Application to intervene	paragraph 5	Intervenors	14 October 2008
Amendments to List of Issues	paragraph 7	All Parties	14 October 2008
List of Parties issued	paragraph 8	Board	shortly after 14 October 2008
Interventions served	paragraph 8	Intervenors	immediately after receiving the List of Parties
Additional Written Evidence and Submission	paragraph 10	YPL	17 October 2008
Information Requests to YPL	paragraph 11	Board and Intervenors	30 October 2008
Responses to Information Requests	paragraph 12	YPL	12 November 2008
Letters of Comment	paragraph 4	Commenter	21 November 2008
Written Evidence and Submissions	paragraph 13	Intervenors	21 November 2008
Information Requests to the Intervenors	paragraph 14	Board, YPL and Intervenors	28 November 2008
Responses to Information Requests	paragraph 15	Intervenors	9 December 2008
Final Submission	paragraph 16	YPL	16 December 2008

List of Publications for the Notice

Publication

Yukon News
Whitehorse Star

Location

Whitehorse, Yukon
Whitehorse, Yukon

Notice to be published in French

L'aurore boreale

Whitehorse, Yukon

List of Persons to be Served with Hearing Order MHW-R-1-2008

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MHW-R-1-2008***

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