

DRAFT

~~December [•], 2014~~ THIS
TRUST AGREEMENT made as of the [•] day of [•], 20[•]. January, 2015.

BETWEEN:

ROYAL TRUST CORPORATION OF CANADA, a licensed trust company
with an office located in the City of Toronto, in the Province of Ontario

(~~the~~ “Royal Trust”)

- AND -

GENESIS PIPELINE CANADA LTD., a corporation incorporated under the
Laws of Canada,

(~~the~~ “Genesis”)

WHEREAS Genesis holds the regulatory authorization allowing it to operate the Pipeline;

AND WHEREAS Genesis is subject to regulation by the Tribunal under the *National Energy Board Act* (Canada);

AND WHEREAS on 26 May 2009 the Tribunal issued the RH-2-2008 Reasons for Decision, which required each person holding an authorization to operate a pipeline under the *National Energy Board Act* (Canada) to file a proposed process and mechanism to set aside funds to pay for the reclamation obligations in respect of the sites in Canada used for the operation of a pipeline;

AND WHEREAS on ~~12 March~~ 19 April 2013, the Tribunal issued the MH-001-2013 Hearing Order, establishing how it would consider each set-aside mechanism proposed;

AND WHEREAS on 3 June 2014, the Tribunal ordered Genesis to establish a set aside mechanism to pay for the reclamation obligations in respect of the sites in Canada used by the Company for the operation of the Pipeline;

AND WHEREAS in satisfaction of the requirements imposed by the Tribunal, Genesis has created a trust the fund of which will be used to accumulate funds to meet the discharge of its reclamation obligations for the sites in Canada used by Genesis for the operation of the Pipeline;

AND WHEREAS Royal Trust has agreed to hold the reclamation funds in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the promises and of the mutual covenants herein contained, it is hereby mutually covenanted, agreed and acknowledged by and between the parties hereto that any property contributed by the Company to the Trustee under this Agreement shall be held by the Trustee in trust on the terms set out herein.

ARTICLE 1: DEFINITIONS

1.01 In this Agreement, the following words or phrases have the following meanings:

- a) “**Abandon**” and “**Abandonment**” have the meaning set out in the definition of “abandon” in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;
- b) ~~a.1)~~ “**Affiliate**” means, with respect to a party, that party’s affiliates within the meaning of the Canada Business Corporations Act (Canada);
- c) ~~b)~~ “**Agreement**” means this trust instrument, as amended from time to time, which instrument is the vehicle for the trust here created;
- d) ~~e)~~ “**Annual Contribution Amount**” means the self-funded amount contributed annually to pay the future cost to Abandon the Pipeline as determined pursuant to Appendix XIV of the MH-001-2013 Reasons for Decision;
- e) ~~d)~~ “**Applicable Laws**” means any laws (including without limitation, legislation and regulations, regulatory orders and policies, and common law) that may be applicable to the Trust and any matters relating to the Trust;
- f) ~~e)~~ “**Authorized Depositories**” has the meaning set out in subsection 4.15(d) of this Agreement;
- g) ~~e)~~ “**Beneficiary**” and “**Beneficiaries**” mean the person or persons, including the Company, having, while entitled to benefit from the Fund, Reclamation Obligations in respect of the Site;
- h) ~~f)~~ “**Business Day**” means any day except a Saturday, Sunday or a statutory holiday in the Province of Ontario;
- i) ~~f.1)~~ “**Clearinghouse**” means an institution that settles mutual indebtedness between a number of financial or market organizations, and is usually financed by membership subscriptions and other dues of the market;
- j) ~~g)~~ “**Company**” means the person holding the regulatory authorization(s) for the time being to operate the Pipeline;
- k) ~~h)~~ “**Company’s Notice of Termination**” has the meaning set out in subsection 3.03(a) of this Agreement;
- l) ~~h.1)~~ “**Custodian**” means a corporate institution, appointed by the Trustee or by a delegate of the Trustee authorized by the Trustee to sub-delegate, which has title to, or Trustee-authorized possession of, the Trust Fund assets with the obligation to hold secure those assets, and to deal with them as authorized by the Trustee or the delegate of the Trustee;

- m) ~~i)~~ “**Deactivate**” and “**Deactivation**” mean the same thing as the definition of “deactivate” in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;
- n) ~~j)~~ “**Decommission**” and “**Decommissioning**” mean the same thing as the definition of “decommission” set out in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;
- o) ~~k)~~ “**Default**” has the meaning set out in subsection 4.05(b) of this Agreement;
- p) ~~k.1)~~ — “**Depositaries**” means a financial corporation that is officially authorized to receive securities, commonly financial instruments in the form of stocks and bonds, and to hold them secure for the depositor;
- q) ~~l)~~ “**Fund**” means collectively (i) all amounts held from time to time by the Trustee, in accordance with this Agreement, including any contributions paid to the Trustee under any section of this Agreement, and (ii) any interest or other return earned by the investment of such amounts; but, for greater certainty, excludes (i) losses on the investment of such amounts and (ii) all amounts which have been paid or disbursed therefrom pursuant to the provisions of this Agreement;
- r) ~~m)~~ “**Fund Property**” has the meaning set out in subsection 3.04(a) of this Agreement;
- s) ~~n)~~ “**NEB Act**” means the *National Energy Board Act* (Canada), as amended from time to time;
- t) ~~o)~~ “**New Trust Fund**” has the meaning set out in subsection 2.04(b) of this Agreement;
- u) ~~p)~~ “**Orphan Pipeline Fund**” means a not-for-profit organization to be established pursuant to a statute of the Parliament of Canada whose purpose includes paying for the cost to Abandon a pipeline constructed or operated under a statute of the Parliament of Canada;
- v) ~~q)~~ “**Permitted Investments**” means investments that are (i) Qualified Investments and (ii) authorized for the investment of the Fund by the SIPP;
- w) ~~r)~~ “**Pipeline**” means the pipeline described in Schedule “A” to this Agreement;
- ~~s) — Saved for future use~~
- x) ~~t)~~ “**Qualified Investments**” means all or any of those investments that from time to time are “qualified investments” for a “qualifying environmental trust” as defined in the Tax Act and for greater certainty, such qualified investments on the date hereof include only those types of property described in paragraphs (a), (b), (c), (c.1), (d) and (f) of the definition of “qualified investment” in section 204 of the Tax Act that are not encompassed within the definition of “prohibited investments” as defined in section 211.6(1) of the Tax Act, as more particularly set out in “Schedule B”;

- y) ~~u)~~ “**QET**” means a “qualifying environmental trust” as that term is defined in subsection 211.6(1) of the Tax Act;
- z) ~~v)~~ “**Reclamation Obligations**” means:
- (i) the duty to carry out the physical Abandonment, Decommissioning or Deactivation of the Pipeline, including costs incurred to satisfy any conditions imposed by the Tribunal in any order or direction approving the Decommissioning or Deactivation of the Pipeline or granting leave to Abandon the Pipeline;
 - (ii) the duty to develop an Abandonment plan, and to prepare an application for leave to Abandon or for approval of the Deactivation or Decommissioning of the Pipeline; and
 - (iii) the duty to carry out post-abandonment monitoring and remediation of the Site, where post-abandonment refers to the period of time after the Company has satisfied the conditions of an order or direction issued by the Tribunal granting leave to Abandon;
- and all costs incurred and consequent thereon.
- aa) ~~w)~~ “**Site**” means the location or locations in Canada used by the Company for the operation of the Pipeline;
- bb) ~~x)~~ “**SIPP**” means the written statement of investment policy and procedures created and approved by the Company and filed with the Tribunal, in respect of the Fund’s portfolio of investments which includes the risk and return objectives, investment principles and beliefs, time horizon, and liquidity requirements, applicable legal provisions and tax constraints, strategic asset allocation, list of eligible investments, rebalancing criteria, fee structure and any other matters required to be addressed in a SIPP by the MH-001-2013 decision or otherwise by the Tribunal;
- cc) ~~y)~~ “**Standard of Care**” has the meaning set out in section ~~4.11~~4.10 of this Agreement;
- dd) ~~z)~~ “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time;
- ee) ~~aa)~~ “**Tribunal**” means the National Energy Board, a board established under the NEB Act or any successor administrative body having authority to regulate the Company in respect of the operation and Abandonment of the Pipeline;
- ff) ~~bb)~~ “**Trust**” means the relationship between the Trustee and a Beneficiary or Beneficiaries, including the obligations of the Trustee towards the Beneficiary or Beneficiaries both personal and with regard to the Fund, and the corresponding rights of a Beneficiary, whether those obligations and rights are created at law or by the terms of this Agreement; and in the context of this trust instrument, means a discretionary trust for the purpose of reclamation in favour of the one or several

Beneficiaries that have Reclamation Obligations with regard to the Site, and also of the Orphan Pipeline Fund;

- ~~gg)~~ ~~ee)~~ “**Trustee**” means a trust company licensed under the *Trust and Loan Companies Act* (Canada), for the time being appointed under this Agreement to hold the office of trustee;
- ~~hh)~~ ~~dd)~~ “**Trustee Fee**” means the annual fee paid to the Trustee pursuant to the Fee Agreement dated ~~insert date~~ September 15, 2014 made between the Company and the Trustee; and
- ~~ii)~~ ~~ee)~~ “**Trust Term**” or “**Term**” shall have the meaning set out in subsection 2.04(b) of this Agreement.

ARTICLE 2: CREATION OF THE TRUST

2.01 Acceptance of the Trust as Qualifying Environmental Trust

- a) The Company hereby establishes the Trust in accordance with the terms of this Agreement and Applicable Laws.
- b) It is the express intention of the parties hereto for the Trust settled under this Agreement to constitute a QET for the duration of the Trust Term. This Agreement shall be read and interpreted in light of and consistently with the definition and attributes of a QET, as set out in the Tax Act. The Company and the Trustee shall ensure that no actions are taken which would jeopardize the status of this Trust as a QET.

2.02 Custody of the Fund

In carrying out its duties and obligations hereunder, the Trustee shall ensure that the Fund is kept separate and distinct from the other assets of the Trustee. If the Fund Property is mixed with the other assets of the Trustee, the resulting mixed property shall be deemed to be held as a whole in trust on behalf of the Beneficiaries.

2.03 Contributions

The Company settles the Fund irrevocably upon the Trustee, to be administered upon the terms and subject to the conditions set out in this Agreement. The Company shall, subject to the terms and conditions set out in this Agreement, pay irrevocably to the Trustee, from time to time, contributions. In furtherance of the foregoing:

- a) the Company shall transfer the Annual Contribution Amount to the Trustee within 30 days of the beginning of a calendar year;
- b) the Company shall transfer the Trustee Fee to the Trustee on or before the first day of each month during the Trust Term;
- c) the Company shall transfer to the Trustee, upon written notice from the Trustee, all reasonable expenses incurred by the Trustee pursuant to subsection 5.01(b);

The Trustee shall have no obligation or responsibility to ensure that Annual Contribution Amounts are ~~remitted~~transferred and shall not be liable for any unpaid contributions, but shall notify the Tribunal in writing if it reasonably believes that the Annual Contribution Amount contemplated in subsection 2.03(a) is due and not paid.

2.04 Duration of the Trust

- a) If the rule against perpetuities does not apply in the Province of Ontario at the relevant time, this Agreement shall have no specific term but shall commence on the date first mentioned above and shall continue until terminated in writing by the Company, with the approval of the Tribunal.
- b) If the rule against perpetuities applies in the Province of Ontario:
 - (i) this Agreement shall terminate no later than the expiration of the perpetuity period as determined under relevant provisions the *Perpetuities Act*, R.S.O. 1990, c.P-9 (the “**Trust Term**”);
 - (ii) not more than five (5) years prior to the expiration of the Trust Term, and provided that the Company is not in Default, the Trustee shall pay the entirety of the Fund to the Company, and the Company covenants upon receipt of the Fund to establish, at once, a new irrevocable trust upon terms and subject to the same conditions set out in this Agreement (the “**New Trust Fund**”), and, if consistent with Applicable Laws, to promptly contribute to the New Trust Fund the entirety of the Fund.
- c) This Agreement is drafted on the basis that the *Accumulations Act* (Ontario) does not apply to the Fund. If the *Accumulations Act* (Ontario) is ever found to apply to the Fund by a Court of competent jurisdiction, any income arising outside of the applicable accumulation period as determined by the court shall be returned to the Company. The Company shall contribute to the Fund any amounts that are returned to it under this subsection 2.04(c). For greater certainty, the Trustee is authorized to seek the direction of the Court to determine the application of the *Accumulations Act* (Ontario) to the Trust.

2.05 Appropriation of Surplus Funds

If property remains in the Fund after all Reclamation Obligations of the Beneficiaries are discharged, then the Trustee, with the approval of the Tribunal, may distribute the Fund or any part thereof among any of the Beneficiaries (including the Company), or the Orphan Pipeline Fund, or, where such is the case, a single Beneficiary and the said Fund, as the Trustee in its sole discretion sees fit.

2.06 Discretionary as to two or more Beneficiaries

The Fund is held by the Trustee on trust for one or several Beneficiaries, the Trustee having a power to appoint among the Beneficiaries at discretion from the Fund responding at the time of payment to the then existing Reclamation Obligations of each Beneficiary. The Trustee may make payment to or for the benefit of the appointed Beneficiary, that is, either to the Beneficiary, or to a

person or persons named by the Tribunal to conduct work in the reclaiming of the Site. Before making any discretionary payment the Trustee must receive the approval of the Tribunal at discretion to the payment, which approval will cover both the reclamation need being addressed and that person or persons that are instructed to carry out the reclamation.

ARTICLE 3: APPOINTMENT, RESIGNATION, AND REMOVAL OF TRUSTEE

3.01 Appointment

The Company has the power to appoint the Trustee, with the approval of the Tribunal. The Trustee hereby accepts the office of Trustee of the Fund and agrees to adhere to the trusts, covenants and obligations set out in this Agreement and Applicable Laws, and agrees to discharge the same upon the terms and conditions herein set forth and to hold and exercise the rights, privileges and benefits conferred upon it by this Agreement for the purposes of the Trust. Any successor trustee appointed as trustee of the Fund by the Company but with the written approval of the Tribunal shall, on accepting such appointment, agree to act as trustee of the Fund in accordance with the terms and conditions that are the same as the terms and conditions of this Agreement.

3.02 Resignation

The Trustee desiring to resign the office shall notify the Company, in writing, ninety (90) days prior to the intended resignation date and, during this period the Company shall appoint a successor trustee, regulated under the *Trust and Loan Companies Act* (Canada), as amended from time to time, subject to the written approval of the Tribunal.

In the event the Company fails to appoint a successor trustee within sixty (60) days of receipt of the written notice of resignation, the Trustee, at the expense of the Fund shall have the right to seek appointment of a successor trustee from the Tribunal or a court.

3.03 Removal

- a) If the Company delivers a written notice (“**Company’s Notice of Termination**”) to the Trustee specifying the intent to terminate the appointment of the Trustee hereunder, such appointment shall terminate on the thirtieth (30th) day following the date that the Company’s Notice of Termination is issued.
- b) The Trustee shall cease to hold the office of Trustee if convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or being a corporation that is dissolved or in liquidation.

Subject to the written approval of the Tribunal, the Company shall appoint a successor corporate trustee regulated under the *Trust and Loan Companies Act* (Canada), as amended from time to time, subject to the written approval of the Tribunal.

3.04 Obligations of Trustee upon Resignation or Removal

Following the resignation or removal of the Trustee and subject to its rights hereunder, the Trustee:

- a) shall continue to hold in trust the Fund and all documents, information, and books and records created, received or maintained by the Trustee which relate to or arise or have arisen in connection with the performance by the Trustee of its duties hereunder (collectively hereinafter referred to as the “**Fund Property**”);
- b) on the direction of the Company, shall promptly transfer, deliver and pay over to the successor trustee, the Fund and all Fund Property on deposit with or in the possession of the Trustee;
- c) shall have no duties, responsibilities or liability with respect to the acts or omissions of the successor trustee.

The successor Trustee shall take title to the Fund and the Fund Property, and possession of all assets deposited with the Trustee, shall secure the same, shall be entitled to call for and receive all contributions that are due, and shall have no duties, responsibilities or liability with respect to the acts or omissions of the Trustee.

ARTICLE 4: THE DUTIES AND POWERS OF THE TRUSTEE

4.01 Responsibilities of the Trustee

The powers, duties and obligations of the Trustee shall be determined solely by the Applicable Laws and the provisions of this Agreement, and accordingly the Trustee shall be responsible only for the performance of such powers, duties and obligations.

4.02 Trustee Receipt of Funds

- a) All contributions made by the Company, as contemplated in section 2.03 of this Agreement shall be received by the Trustee and held in a trust account upon the terms and conditions herein set forth, only to be disbursed or dealt with in accordance with the terms hereof.
- b) The Trustee shall be solely responsible for all Funds delivered to it.

4.03 Investment of Fund

- a) Prior to filing the SIPP or any amendments thereto with the Tribunal, the Company shall deliver a copy of the SIPP to the Trustee. Within ~~ten (10)~~ Business Days of receipt thereof, the Trustee shall advise the Company whether the SIPP or amendment is administratively feasible. Prior to filing the SIPP or any amendment with the Tribunal, the Company shall make such administrative amendments as the Trustee advises, in writing, are necessary to operationalize the SIPP. Within two (2) Business Days following the date the SIPP or any amendment thereto is filed with the Tribunal, the Company shall deliver a copy of the SIPP or amendment to the Trustee.
- b) On or before November 30 of each year during the Term, the Company shall provide to the Trustee a written list of all persons related to or partnerships that are affiliated with the Company, and all persons or partnerships that hold a significant

interest (within the meaning assigned by subsection 207.01(4) of the Tax Act) in the Company. In addition, within two (2) Business Days following the date the Company is aware of changes of such persons, the Company shall provide to the Trustee a written update to such list.

- c) The Trustee shall have and be vested with the power to retain, invest or reinvest any cash, funds or property constituting the whole or any part of the Fund in Permitted Investments that the Trustee shall in its absolute discretion consider advisable.
- d) The Trustee may delegate investment selection power to, and to obtain investment management advice from, investment managers or advisors, in order (i) to invest and reinvest assets of the Fund in Permitted Investments, and (ii) to exercise any powers or functions relating to the investment and reinvestment of such assets in Permitted Investments in such manner, on such terms and conditions, and for such remuneration, as the Trustee, in the Trustee's absolute discretion considers advisable and as the Trustee shall specify in writing, including, without limitation, the power at any time and from time to time to choose, acquire, dispose of or change any such investments or reinvestments and to sub-delegate any powers or functions so conferred on it by the Trustee, provided that the Trustee selects and monitors the obligations of such person in accordance with the Standard of Care, ensures that the person has the necessary information to fulfill its functions, and provides such supervision of the person as is required by Applicable Laws, and any sub-delegation by a delegate of the Trustee shall be subject to the same requirement. The Trustee may appoint and retain for such purpose any person, including any of its Affiliates or subsidiaries, or any successors thereof, or any corporation with which any of these may amalgamate or become part thereof as a result of any reorganization, and it is acknowledged that such appointment may be made by the Trustee irrespective of any such relationship between them, provided that the terms of any such appointment, including the remuneration, are on market terms and conditions.
- e) Subject to the Standard of Care and compliance with the requirements in subsection 4.03(d), the Trustee shall have no liability (i) for any investment losses resulting from investments made by the Trustee or its delegates in accordance with the terms of this Agreement, including any losses on any investment required to be liquidated prior to maturity in order to make a payment required pursuant to the terms of this Agreement, and any losses resulting from a loss of opportunity or (ii) to any person should it be unable to invest all or any portion of the Fund as aforesaid for any period of time.
- f) All interest and earnings received from the investment of the Fund shall be credited to, and shall become part of, the Fund (and any losses on such investments shall be debited to the Fund).
- g) Within ~~thirty~~sixty (3060) days following the end of each calendar year during which the Trustee has held the Fund, the Trustee shall cause to be issued to the Company ~~a form T-5, or other form~~forms as appropriate pursuant to the Tax Act, in respect of any interest, dividend, capital gains or other earnings or losses on the Fund.

- h) ~~g.1)~~—The Trustee, for the purposes of this section, shall in no circumstances appoint the Company, a Beneficiary or any Affiliates of either.

4.04 **Funds to Be Used for Reclamation**

Subject to Article 5, the Trustee shall draw upon the Fund solely for the purpose of funding the discharge of the Reclamation Obligations of the Beneficiaries.

For greater certainty, access to the Fund, including the identity of the Beneficiary to receive the Funds and the precise amount of the Fund to be released for payment of amounts required to satisfy Reclamation Obligations of the Beneficiaries, is subject to the Tribunal's written approval on the facts of the particular case before it.

4.05 **Release of Funds to a Beneficiary**

The Trustee shall draw upon the Fund and pay to a Beneficiary with respect to the Reclamation Obligations of the Beneficiary, on presentation by the Beneficiary of and pursuant to:

- a) a written direction or an order from the Tribunal confirming the amount to be disbursed from the Fund, the timing of the disbursement and the identity of the Beneficiary to receive the Funds; and
- b) a certificate of an officer of the Beneficiary confirming that, as of the date of the Tribunal's written direction or order under subsection 4.05(a), the Beneficiary has not (1) ceased to carry on business; (2) become insolvent or committed any act of bankruptcy; (3) filed a petition for bankruptcy, or suffered a petition for bankruptcy being filed, against it; (4) made any proposal to or sought arrangement with its creditors; (5) made an assignment for the benefit of creditors; (6) appointed or suffered the appointment of a receiver in respect of its property and/or assets; or (7) had or suffered proceedings being commenced (voluntarily or involuntarily) for the liquidation, dissolution or winding up of itself ("**Default**"), and that, to the officer's knowledge, the Beneficiary will not suffer Default within one (1) year following the date of the certificate of the officer.

4.06 **Release of Funds to a Third Party**

The Trustee shall draw on the Fund and pay to any third party for the purposes of funding the discharge of the Reclamation Obligations of a Beneficiary on presentation by the third party of a written direction or an order from the Tribunal, with such direction or order confirming the precise amount to be disbursed from the Trust Fund and the timing of the disbursement. On receipt of the written direction or order, the Trustee shall release the requested funds to the third party set out in the order or direction of the Tribunal.

4.07 **Duties of the Trustee Regarding Release of the Requested Funds**

The Funds which are to be released in accordance with Sections 4.05 and 4.06 shall be obtained by the Trustee calling in or redeeming certain investments which it holds in the Trust, provided that the Trustee shall only call in or redeem those investments upon consultation with and approval of the Company.

~~4.08~~ ~~Saved for Future Use~~

4.08 ~~4.09~~ **Sale of the Pipeline or a Portion Thereof**

For greater certainty, monies from the Fund may be released in accordance with this Agreement upon the Tribunal's direction or order approving the sale, assignment, transfer or other disposition of the Pipeline or a portion thereof from a Beneficiary to another person pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act.

4.09 ~~4.10~~ **Books, Records and Accounts**

- a) The Trustee shall maintain proper and accurate books, records and accounts of all transactions affected or controlled by the Trustee hereunder including, without limitation, the receipt, investment, reinvestment and disbursement of monies from the Fund, and shall provide to the Company:
 - (i) on or before the fifteenth (15th) Business Day following the last day of each month, a statement of account setting forth all contributions paid to the Trustee and all relevant information concerning the Funds held by the Trustee including, without limitation, information detailing all investments made, reinvestment undertaken, investment income earned, and disbursement of Funds, during the immediately preceding month;
 - (ii) on or before the ~~thirtieth (30th)~~ thirtieth (30th) day following the close of each fiscal year of the Fund or such other period as may be agreed upon between the Trustee and the Company, and within fifteen (15) days after the end of the month following the removal or resignation of the Trustee or termination of the Trust, a statement of account setting forth all contributions paid to the Trustee and all relevant information concerning the Funds held by the Trustee including, without limitation, information detailing all investments made, reinvestment undertaken, investment income earned, and disbursement of Funds, during the immediately preceding fiscal year, or preceding month in the event of removal or resignation of the Trustee or termination of the Trust; and
 - (iii) any other report or information reasonably requested by the Tribunal or the Company.
- b) The Trustee shall, on reasonable prior notice and during normal business hours, make available to and permit the officers, employees and authorized agents of the Tribunal or the Company and/or the auditors of the Company to inspect all books, records and accounts required to be maintained by the Trustee, in connection with this Agreement or as required by Applicable Laws.
- c) The Trustee shall prepare and file or issue, on a timely basis, all income tax returns, elections and other forms which, by virtue of the Tax Act, must be filed or issued in respect of a QET, and such other returns or forms as may be agreed upon between the Company and the Trustee.

4.10 ~~4.11~~ Standard of Care

- a) In the discharge of its obligations and duties or the exercise of its powers at law or hereunder, the Trustee shall ~~act honestly and in good faith and shall:~~
- (i) ~~act honestly and in good faith;~~
 - (ii) ~~a)~~ exercise that degree of care, diligence and skill that a prudent trustee acting in like capacity would exercise in comparable circumstances; and
 - (iii) ~~b)~~ comply with the terms of this Agreement and any and all Applicable Laws in respect of the Trustee's dealing with, or handling of the Fund pursuant to the terms hereof; ~~and~~
- (collectively "Standard of Care").
- b) ~~e)~~ Trustee shall be responsible for loss occasioned by reason of the failure of the Trustee to comply with its obligations at law or duties under this Trust, or its negligence or breach of the Standard of Care or willful misconduct on the part of itself, its employees, officers or agents.

4.11 ~~4.12~~ Appointment of Agents

- a) The Trustee may appoint such agents and employ or retain such legal counsel, accountants, financial advisors, appraisers or other experts or advisors as may be reasonably required for the purpose of discharging its duties or exercising its powers hereunder provided that the Trustee selects and monitors the obligations of such person in accordance with the Standard of Care, ensures that the person has the necessary information to fulfill its functions and provides such supervision of the person as is required by Applicable Laws. As agreed to from time to time between the Company and the Trustee, the Trustee may pay out of the Fund reasonable remuneration for all services performed for it in the discharge of its duties or the exercise of its powers hereunder without taxation for costs or fees of any counsel, solicitor or attorney, including solicitor fees on a solicitor and own client basis.
- b) Subject to the Standard of Care, the Trustee may act in good faith on the opinion or advice of, or information obtained from, any agent, legal counsel, accountant, appraiser or other expert or advisor retained or employed by it in relation to any matter arising in the performance of its duties under this Agreement and the Trustee shall not be responsible for any loss occasioned by so acting or not acting, as the case may be.
- c) The Trustee, for the purposes of this section, shall in no circumstances appoint the Company or a Beneficiary or any Affiliates of either.

4.12 ~~4.13~~ Safekeeping of Funds

So far as is allowed by Applicable Laws, the Trustee shall control and hold in Trust, in such form and manner as may be necessary to impress a trust thereon as against any creditor or creditors of the

Beneficiaries, all Funds held pursuant to the terms hereof until such Funds are disbursed or otherwise dealt with in accordance with the terms and conditions of this Agreement.

4.13 ~~4.14~~ **Decision to Act or Not Act**

The Trustee shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear documentation which complies with the terms of this Agreement.

4.14 ~~4.15~~ **Trustee Not to Expend Own Funds**

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

4.15 ~~4.16~~ **Other Powers and Duties of the Trustee**

For greater certainty, in administering the Trust and investing the Fund, the Trustee shall be specifically authorized to:

- a) **Appoint Custodians.** Appoint or cause to be appointed domestic Custodians, including ~~affiliates~~Affiliates of the Trustee (provided such ~~affiliate~~Affiliate is appointed on market terms and conditions), as to part or all of the Fund Property. The Trustee shall be responsible for holding its Custodians to the Standard of Care under their contract of appointment. Upon request by the Company, the Trustee shall provide the Company with a list of its current Custodians;
- b) **Hold Investments.** Hold or cause to be held Fund Property in nominee name, in bearer form, or in book entry form, in a Clearinghouse~~—corporation~~ or in a ~~depository~~Depository, including an ~~affiliate~~Affiliate of the Trustee (provided such ~~affiliate~~Affiliate holds the Fund Property on market terms and conditions);
- c) **Purchase and Sell Property.** Purchase and sell and engage in other transactions, including receipts and deliveries, exchanges, exercises, conversions, subscriptions, and other voluntary corporate actions, with respect to Fund Property;
- d) **Deposit of Assets.** The ~~Trustees~~Trustee may deposit assets of the Fund, including cash, in or with Royal Trust Corporation of Canada, any financial institution affiliated or related to the Trustee, or any Depositories which are an agent of or advisor to the Trustee (collectively, “**Authorized Depositories**”) notwithstanding that any of the Authorized Depositories may benefit therefrom, and the Authorized Depositories shall not be required to account for, or to give up, any such benefit (provided such Affiliate or related party holds any assets of the Fund on market terms and conditions). For greater certainty, it shall not be improper for the ~~Trustees~~Trustee to deposit moneys or custody the assets of the trust or trusts established under this Agreement with Royal Trust Corporation of Canada or its ~~affiliated~~Affiliate, subsidiary, holding or related companies, notwithstanding any benefit realized as a result, including retaining a profit in excess of interest paid (if any) on, or fees payable to any affiliated or related companies in respect of, such deposit or custody arrangement;

- ~~e) **Power to Invest in Own and Related Party Securities and Investment Offerings.**~~
- e) **Power to Invest in Own and Related Party Securities and Investment Offerings.** The Trustees may invest in the securities, shares, obligations or other interests of, (including any form of property offered for purchase as an investment by), the Trustee or an agent of or advisor to the Trustee, including Royal Trust Corporation of Canada or any affiliated, subsidiary, holding or related company or companies of any of the Trustee or any agent or advisor to the Trustee, notwithstanding that the Trustee and/or the Trustee's agent or advisor may benefit therefrom; and the Trustee shall not be required to account for, or to give up, any such benefit (provided such ~~affiliate~~Affiliate, subsidiary or related party holds the assets of the Fund on market terms and conditions);
- f) **Exercise Owner's Rights.** Deal with any securities, shares, or other interests of any corporation which is held by the Trust, and in doing so may vote upon any Fund Property; give general or special proxies or powers of attorney with or without power of substitution; exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and delegate discretionary powers, and pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to all Fund Property held as part of the Fund Property;
- g) **Nominate Directors.** Nominate members of the boards of directors of corporations, and appoint representatives or trustees in connection with investments of the Trust whenever or wherever such right of nomination or appointment is available;
- h) **Deal with Claims.** Subject to the prior consultation with the Company, settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust and commence or defend suits or legal or administrative proceedings and represent the Trust in all suits and legal and administrative proceedings in any court or before any other body or tribunal as the Trustee shall deem necessary to protect the Trust, provided that the Trustee shall not be obligated to do so until it has first been indemnified by the Company to its reasonable satisfaction against any fees and expenses or liabilities which it may incur as a result thereof. For greater certainty, funds to be used for the indemnification of the Trustee shall not be paid out of the Trust Fund;
- i) **Collect Income and Proceeds.** Collect income payable to and distributions due to the Trust and sign on behalf of the Trust any declarations, affidavits, certificates of ownership and other documents required to collect income and principal payments, including but not limited to, tax reclamations, rebates and other withheld amounts and collect proceeds from Fund Property, which may mature, provided that whenever a Fund Property offers the Trustee the option of receiving dividends in shares or cash, the Trustee is authorized to select the shares option;

- j) **Redeem Securities.** Present for redemption or exchange any Fund Property which may be called, redeemed, withdrawn or retired provided that timely receipt of written notice of the same is received by the Trustee from the issuer;
- k) **Execute Instruments.** Make, execute and deliver any and all documents, agreements or other instruments in writing as are necessary or desirable for the accomplishment of any of the powers and duties in this Agreement;
- l) **Determine Value.** Determine the fair market value of the Fund Property not less frequently than quarterly and as at December 31 of each fiscal year, in accordance with methods consistently followed and uniformly applied and which comply with any requirements of the Tribunal;
- m) **Power to Do Any Necessary Act.** Generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable, acting in accordance with the Standard of Care, for the fulfillment of its duties hereunder.

ARTICLE 5: REMUNERATION AND EXPENSES OF THE TRUSTEE

5.01 Trustee's Fees and Expenses of the Trustee

- a) The Trustee shall be paid out of the Fund as compensation for acting as Trustee, the Trustee Fee. The Trustee is also entitled to be reimbursed its expenses out of the Fund.
- b) All reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration of its duties hereunder (including, without limitation, legal fees and expenses on a solicitor and own client basis, investment expenses, including management and advisory expenses, and the reasonable compensation and disbursements of all other advisers, agents or experts employed or retained pursuant to this Agreement) shall be drawn from the Fund; provided, however, under all circumstances the Trustee shall first deliver to the Company true copies of all invoices, statements or receipts in relation thereto or in evidence thereof ~~and~~ within ~~thirty (30) days~~ of receipt of such invoice, statement or receipt.
- c) The Trustee, and every delegate or sub-delegate of the Trustee, including any investment manager referred to under section 4.03(d), is to ensure that every expense item about to be incurred in the discharge of a Trustee duty or the exercise of a Trustee power is necessarily incurred and is demonstratively reasonable in cost, the intent of such prudence being to maximize the Trust Fund resources that are available for Reclamation Obligations.

5.02 Payment by the Trustee of Taxes

In the event the Trust created hereunder becomes liable to or subject to any taxes under the Tax Act, any similar provincial legislation or otherwise, the Trustee shall prepare and file all required tax returns and shall be entitled to make payment of such taxes out of the Fund to the appropriate taxing authority without prior approval or instruction of the Tribunal. The Trustee shall deliver a copy of each tax return for the Trust to the Company on or before the ~~thirty~~sixtieth (60th) day

following the close of each fiscal year of the Fund or such other period as may be agreed upon between the Trustee and the Company.

ARTICLE 6: INDEMNIFICATION AND OTHER OBLIGATIONS

6.01 Indemnity

- a) In addition to and without limiting any other protection of the Trustee hereunder or otherwise by law, the Company shall indemnify and hold the Trustee harmless from any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements including any and all reasonable legal and adviser fees and disbursements of whatever kind of nature including legal fees on a solicitor and own client basis (but excluding consequential losses) which may at any time be suffered by, imposed on, incurred by or asserted against the Trustee, whether groundless or otherwise, unless the claim results from any act, omission or error of the Trustee or a delegate (including for greater certainty, an agent) of the Trustee (i) failing to act in accordance with an order, direction or written approval of the Tribunal, or (ii) failing to comply with an obligation imposed at law or under this Agreement including, without limitation, the Standard of Care. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this Agreement. For greater certainty, the funds for such indemnification shall not be paid out of the Trust Fund.

- b) In addition to and without limiting any other protection of the Company hereunder or otherwise, subject to Section 2.03, the Trustee shall indemnify and hold the Company harmless from any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements including any and all reasonable legal and adviser fees and disbursements arising out of the Trustee's breach of the Standard of Care or failure to comply with the terms of this Agreement; provided, however, that the Trustee shall not be liable nor indemnify the Company for any liabilities, losses, claims, damages, penalties, actions, suits, demand, levies, costs or expenses arising as a result of the Trustee investing in the securities of persons related to or partnerships that are affiliated with a Beneficiary, or persons or partnerships that hold a significant interest (within the meaning assigned by subsection 207.01(4) of the Tax Act) in a Beneficiary if the Trustee has not been notified of such persons. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this Agreement. For greater certainty, the funds for such indemnification shall not be paid out of the Trust Fund.

ARTICLE 7: AMENDMENT AND TERMINATION OF THE TRUST

7.01 Amendment

The Company and the Trustee may agree to amend the terms of the Trust, including the terms of this Agreement. No amendment to the terms of the Trust or this Agreement shall be binding or effective unless and until the Tribunal approves the amendment in writing.

7.02 **Trust Irrevocable**

The Trust, and the schedules hereto which are hereby incorporated into the Trust, may not be revoked by the Company or Beneficiaries acting as a whole, or the Trustee, except that the Tribunal in its total discretion may direct the termination of the Trust, and order such successive arrangements as are appropriate.

ARTICLE 8: NOTICES

8.01 **Acting on Written Notice**

The Trustee shall not incur liability for acting upon any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any person authorized to do so by the terms of this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the verity of any information therein contained, provided the Trustee is acting in accordance with the Standard of Care in accepting the representations made to it.

8.02 **Company's Obligation to Give Notice of Applicable Laws**

On the date of this Agreement, the Company shall provide to the Trustee a written description of all Applicable Laws relating to the Reclamation Obligations of the Beneficiaries and the distributions of any Funds from the Trust, record keeping, reporting or any other administrative obligations specifically applicable to pipeline reclamation trusts that may affect the administration of the Trust, and shall promptly notify the Trustee of any changes to such Applicable Laws.

8.03 **Mode of Giving Notice**

Any notice or other document required to be given or delivered hereunder will be valid and effective if given by registered letter (postage prepaid), courier, by personal delivery or by fax addressed by the party to whom such notice is to be given, and will be deemed to have been effectively delivered on:

- a) the date of actual delivery, if couriered or personally delivered during normal business hours of the party to whom such notice is delivered (and if not, on the next following Business Day); or
- b) the first Business Day following the date of the fax, if faxed; or
- c) on the fifth Business Day after effectual posting, if sent by mail.

8.04 **Addresses of the Parties**

The addresses of the parties for purposes of this Section 8.04 shall be as follows, but may be changed by any party by the delivery of notice of such change in accordance with the notice requirements hereof:

Royal Trust Corporation of Canada
155 Wellington Street West
Toronto, [Ontario](#) [ON](#) M5V 3K7

Attention: Vice President, Estate and Trust Services

Facsimile No.: (416) 955-3499

Genesis Pipeline Canada Ltd.

c/o NOVA Chemicals Corporation

1000 Seventh Avenue SW

Calgary, AB ~~Canada~~ T2P 5L5

Attention: Leader, Pension and Savings Plan Management

Facsimile No.: (403) 750-4828

With a copy to:

Attention: Vice President and Deputy General Counsel

Facsimile No.: (403) 750-3942

or to any other address notified by any party to the other parties.

8.05 Address of the Tribunal

Any notice or other document required to be given or delivered to the Tribunal shall be addressed to:

Secretary

National Energy Board

517 10th Avenue ~~S.W.~~ SW

Calgary, ~~Alberta~~ AB T2R 0A8

ARTICLE 9: MISCELLANEOUS

9.01 Assignment and Enurement

This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. Subject to section 9.06, no party may assign this Agreement or any benefits or obligations hereunder without the approval of the Tribunal.

9.02 Applicable Law

This Agreement (and any amendments hereto) shall be governed by the law of the Province of Ontario and the laws of Canada applicable therein.

9.03 Severability

In the event that any provisions hereof shall be determined to be invalid or unenforceable in any respect, such determination so far as the law permits shall not affect any other provision in any other respect or any other provision hereof, all of which shall remain in full force and effect.

9.04 Entire Agreement and Amendment

For greater certainty, this Agreement represents the entire agreement amongst the parties respecting the Trust, and supersedes all prior discussions, agreements and understandings of every kind and nature amongst them.

9.05 Right to Disclose

The Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of the Trustee, or its legal counsel, it is required to disclose under any Applicable Laws, court order or administrative directions. The Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred relating to such disclosure.

9.06 Merger, Consolidation, Amalgamation

Any company with which the Trustee may be merged, consolidated or amalgamated will become the successor Trustee hereunder without any further action on the part of the Trustee.

9.07 Review of Agreement

This Agreement shall be reviewed by the parties and the Tribunal at least every five (5) years, or earlier if directed by the Tribunal.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first set forth above.

ROYAL TRUST CORPORATION OF CANADA

Per: _____

Per: _____

GENESIS PIPELINE CANADA LTD.

Per: _____

~~Grant C. Thomson~~ Naushad Jamani, President

Per: _____

Ronald E.J. Kemle, Corporate Secretary

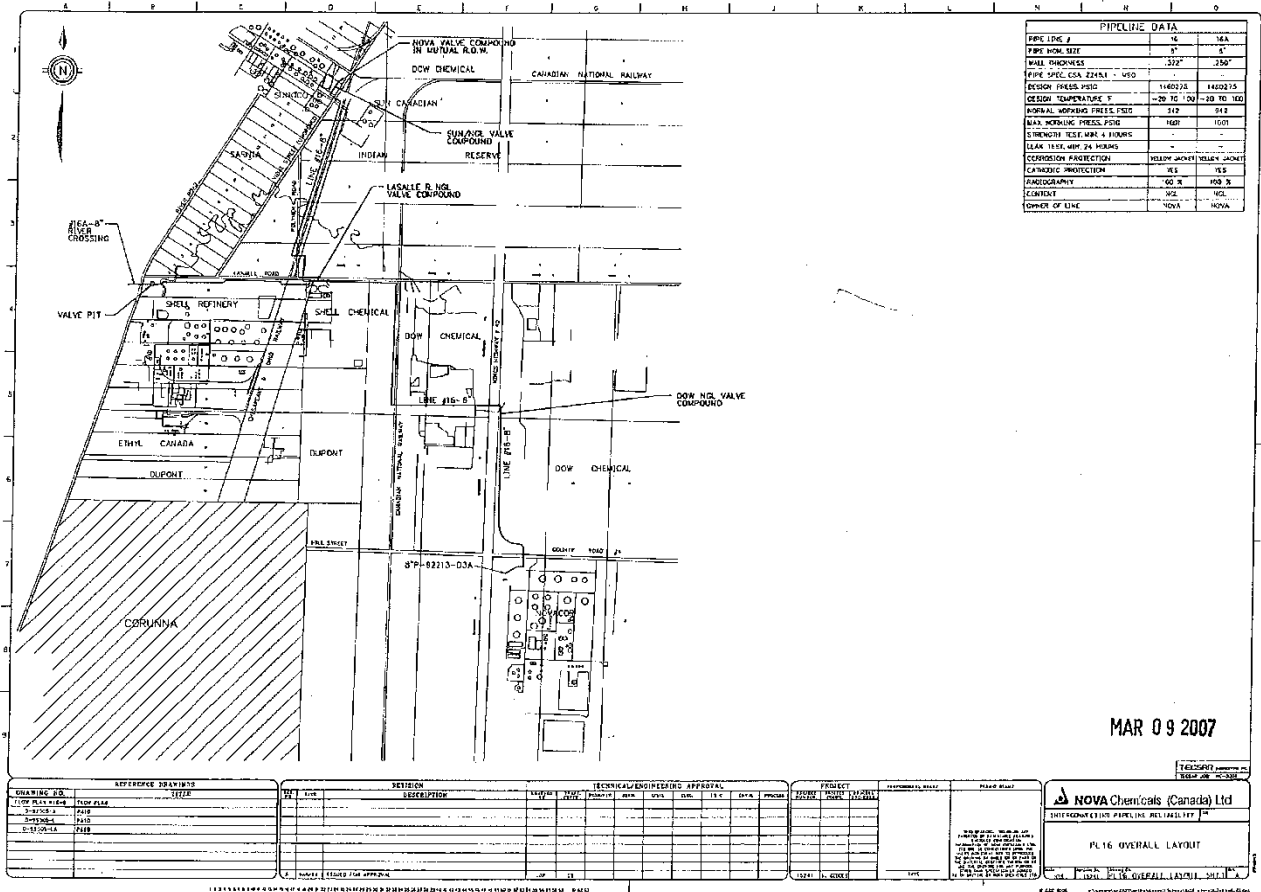
Schedule "A"

Accurately describe the pipeline i.e. where and how far it extends, under what instruments it was authorized i.e. NEB Orders/Certificates numbers, and insert a map showing the Pipeline.

Pipeline 16 a – a bidirectional 8" hydrocarbon pipeline which runs underground from a valve pit in Lot 72 of the Front Concession, St. Clair Township westward to the International Boundary between Canada and the United States.

Length – 2.0 kms

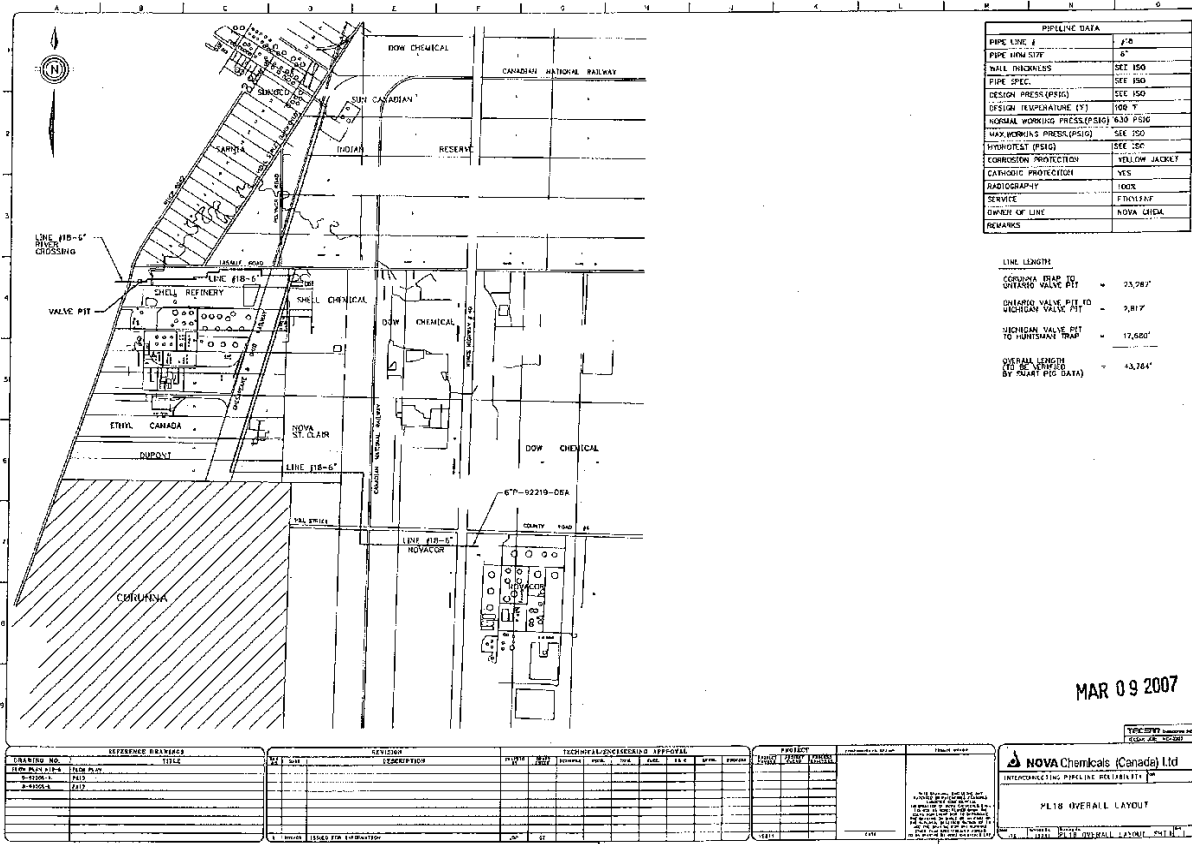
Order No. – NEB XO-1-86
NEB OPLO-P61-13-86



Pipeline 18 – a 6” ethylene pipeline which runs underground from a pipeline connection in Lot 24 of Concession 10, St. Clair Township to the International Boundary between Canada and the United States at a point west of Lot 72 of the Front Concession, St. Clair Township.

Length – 7.4 kms

Order No. – NEB XO-1-86
NEB OPLO-P61-13-86



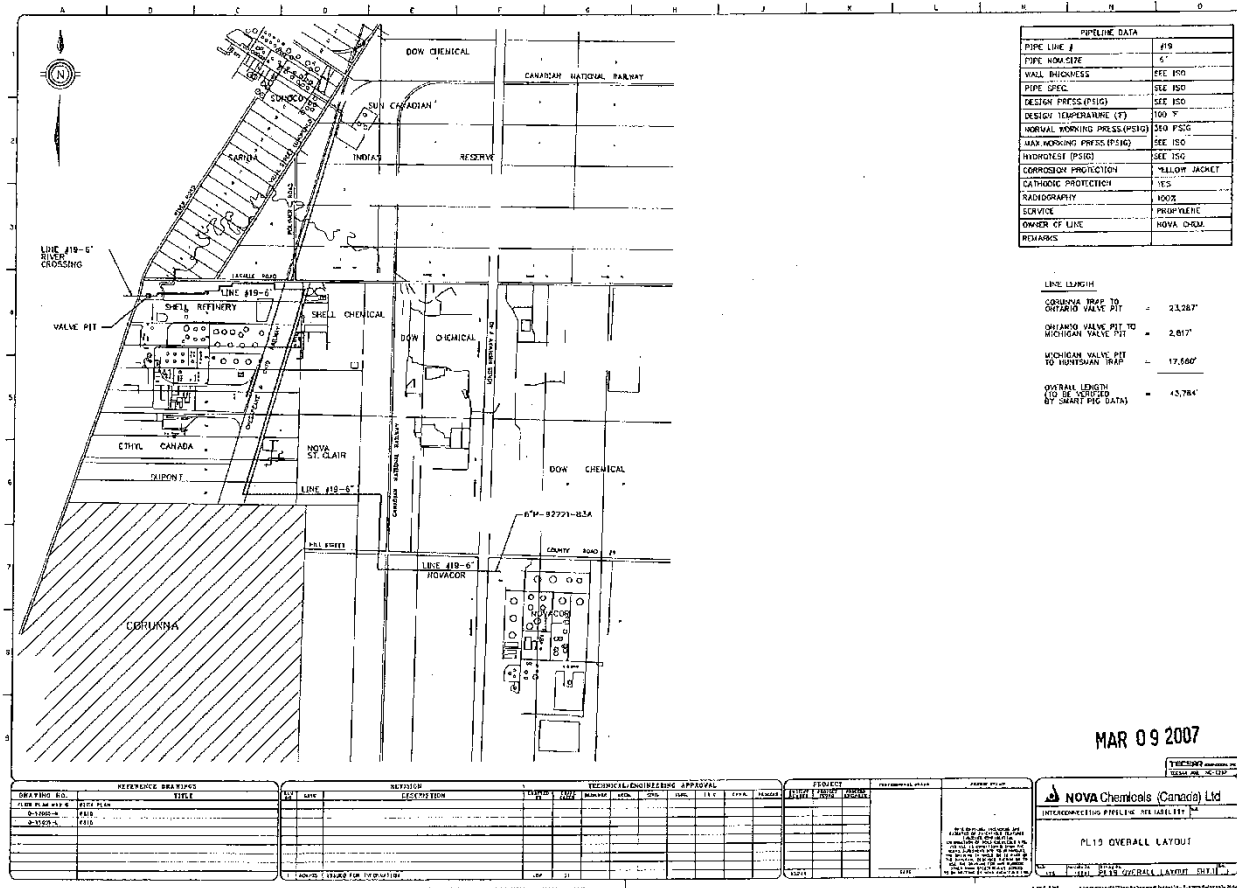
MAR 09 2007

DESIGNER'S REVIEW		REVISION		TECHNICAL SPECIFICATIONS APPROVAL										PROJECT		NOVA CHEMICALS (CANADA) LTD.			
DATE	BY	NO.	DESCRIPTION	BY	DATE	BY	DATE	BY	DATE	BY	DATE	BY	DATE	BY	DATE	BY	DATE	BY	

Pipeline 19 – a 6” propylene pipeline which runs underground from a pipeline connection in Lot 24 of Concession 10, St. Clair Township to the International Boundary between Canada and the United States at a point west of Lot 72 of the Front Concession, St. Clair Township.

Length – 7.4 kms

Order No. – NEB XO-1-86
NEB OPLO-P61-13-86



MAR 09 2007

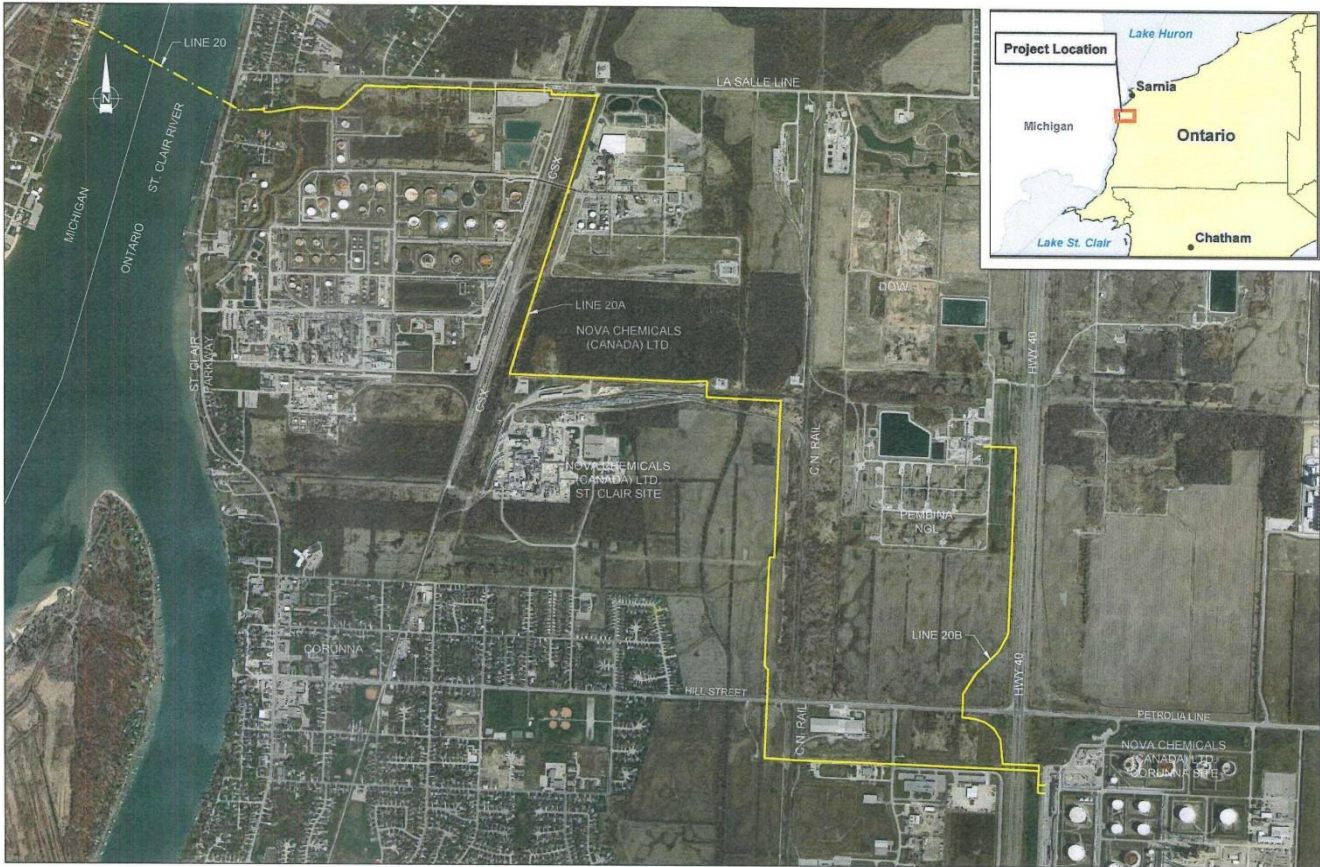
DRAWING NO.		REFERENCE DRAWINGS		REVISION		TECHNICAL ENGINEERING APPROVAL				PROJECT		PROPERTY	
NO.	DATE	NO.	DATE	NO.	DESCRIPTION	DESIGNED	CHECKED	DATE	SCALE	PROJECT NO.	PROJECT NAME	OWNER	ADDRESS
0-1000-19	2007-03-09	P&ID											
0-1000-19	2007-03-09	P&ID											

NOVA Chemicals (Canada) Ltd
 INTEGRATED PETROLEUM PIPELINE NETWORK
 PL19 OVERALL LAYOUT
 SHEET NO. 01 OF 01
 DATE: 2007-03-09

Pipeline 20 – a 12” Ethane pipeline which runs underground from a pipeline connection in Lot 72 of the Front Concession, St. Clair Township to the International Boundary between Canada and the United States at a point west of Lot 72 of the Front Concession, St. Clair Township.

Length – 0.5 kms

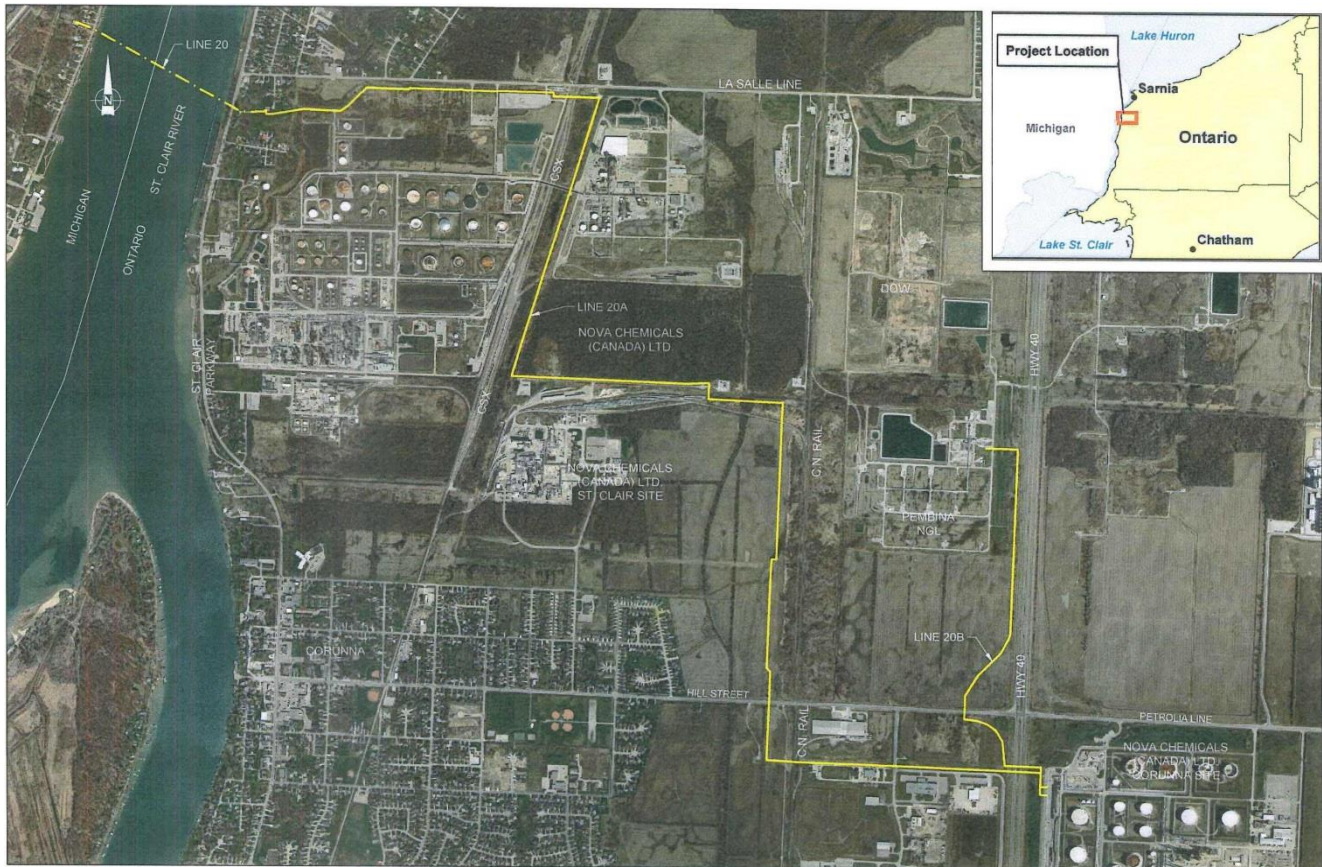
Order No. – NEB XO-1-86
NEB OPLO-P61-13-86



Pipeline 20 a – a 12”/10” Ethane/NGL pipeline which runs underground from a pipeline connection in Lot 24 of Concession 10, St. Clair Township to a valve connection in Lot 72 of the Front Concession, St. Clair Township.

Length – 6.9 kms

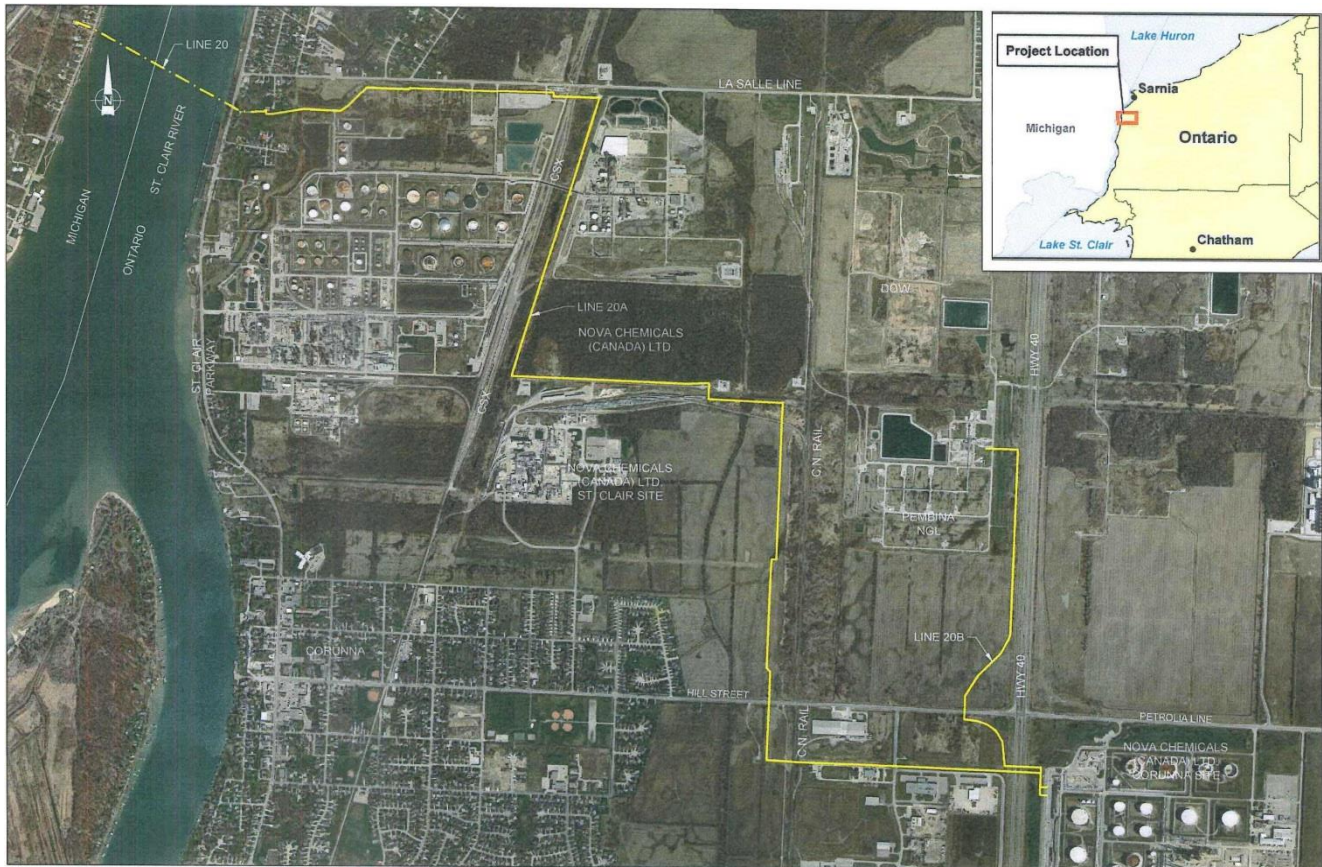
Order No. – X0-G062-009-2012



Pipeline 20 b – a 10” Ethane/NGL pipeline which runs underground from a pipeline connection in Lot 24 of Concession 10, St. Clair Township to a valve connection in Lot 25 of Concession 11, St. Clair Township.

Length – 2.0 kms

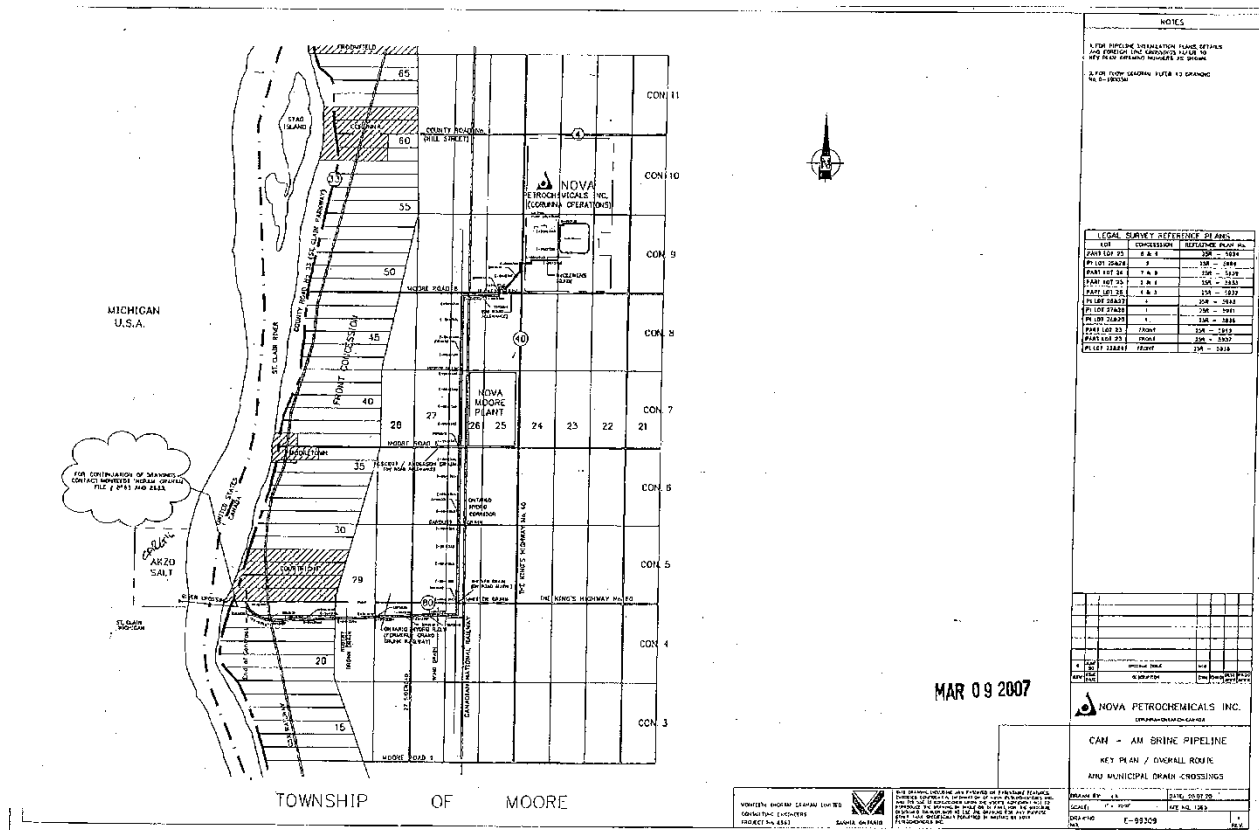
Order No. – X0-G062-009-2012



Pipeline 39 – a 6" brine pipeline which runs underground from a pipeline connection in Lot 24 of Concession 9, St. Clair Township to the International Boundary between Canada and the United States at a point west of Lot 24 of the Front Concession, St. Clair Township.

Length – 12.0 kms

Order No. – NTA Order
1991-P-235



Schedule “B”

The relevant paragraphs of the definition of “qualified investment” in section 204 currently read as follows:

- (a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank) of such money standing to the credit of the trust,
- (b) debt obligations described in paragraph (a) of the definition “fully exempt interest” in subsection 212(3) [*being a bond, debenture, note, mortgage, hypothecary claim or similar debt obligation*]
 - (i) *of, or guaranteed (otherwise than by being insured by the Canada Deposit Insurance Corporation) by, the Government of Canada, (ii) of the government of a province,*
 - (ii) *of an government of a province,*
 - (iii) *of an agent of a province,*
 - (iv) *of a municipality in Canada or a municipal or public body performing a function of government in Canada,*
 - (v) *of a corporation, commission or association to which any of paragraphs 149(1)(d) to (d.6)¹ applies or*

¹ The following relevant paragraphs read as follows:

(d) [**corporations owned by the Crown**] – a corporation, commission or association all of the shares (except directors’ qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

(d.1) [**corporations 90% owned by the Crown**] – a corporation, commission or association not less than 90% of the shares (except directors’ qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a Province;

(d.2) [**wholly-owned [by Crown corporation] corporations**] – a corporation all of the shares (except directors’ qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

(d.3) [**90% [Crown] owned corporations**] -- a corporation, commission or association not less than 90% of the shares (except directors’ qualifying shares) or of the capital of which was owned by:

- (i) one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period, or
- (ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in

(vi) of an educational institution or a hospital if repayment of the principal amount of the obligation and payment of the interest is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province],

(c) debt obligations issued by

(i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada,²

(ii) a corporation the shares of which are listed on a designated stock exchange outside Canada,³ or

(a) an authorized foreign bank⁴ and payable at a branch in Canada of the bank,

right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period;

(d.4) [combined [Crown] ownership] -- a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

(d.5) [[municipally-owned corporation earning] income with boundaries of entities] – subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the municipalities does not exceed 10% of its income for the period;

(d.6) [subsidiaries of municipal corporations] -- subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more entities (referred to in this paragraph as "qualifying owners") each of which is a corporation, commission or association to which paragraph (d.5) applies, a corporation to which this paragraph applies, a municipality in Canada, or a municipal or public body performing a function of government in Canada, if no more than 10% of the particular corporation's income for the period is from activities carried on outside

(i) if a qualifying owner is a municipality in Canada, or a municipal or public body performing a function of government in Canada, the geographical boundaries of each such qualifying owner,

(ii) if paragraph (d.5) applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in that paragraph in its application to each such qualifying owner, and

(iii) if this paragraph applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in subparagraph (i) or paragraph (d.5), as the case may be, in their respective applications to each such qualifying owner.

² A "designated stock exchange" is defined in subsection 248(1) of the Tax Act as a stock exchange, or that part of a stock exchange, for which a designation by the Minister of Finance under Section 262 of the Tax Act is in effect. Section 262 gives the Minister the authority to designate a stock exchange or part thereof for the purposes of the Act. Pursuant to subsection 262(4) of the Tax Act, the Minister of Finance is required to post on the internet website of the Department of Finance or by any other means considered appropriate, the names of the stock exchanges or parts thereof that are designated under Section 262. The current list can be found at <http://www.fin.gc.ca/act/fim-imf/dse-bvd-eng.asp>. In Canada, the designated stock exchanges include the Canadian National Stock Exchange (CNSX), the Montreal Exchange, the TSX Venture Exchange (Tiers 1 and 2) and the Toronto Stock Exchange.

³ Ibid. The Department of Finance website referred to also includes a list of designated stock exchanges outside Canada.

⁴ An "authorized foreign bank" is defined in subsection 248(1) of the Tax Act as having the meaning in Section 2 of the Bank Act (Canada), being "a foreign bank that is the subject of an order under subsection 524(1)". Subsection 524(1) states that on application by a foreign bank, the Minister may make an order permitting the foreign bank to establish a branch in

(c.1) debt obligations that meet the following criteria, namely,

(i) any of

(A) the debt obligations had, at the time of acquisition by the trust, an investment grade rating with a prescribed credit rating agency,⁵

(B) the debt obligations have an investment grade rating with a prescribed credit rating agency,⁶ or,

(C) the debt obligations were acquired by the trust in exchange for debt obligations that satisfied the condition in clause (A) and as part of a proposal to, or an arrangement with, the creditors of the issuer of the debt obligations that has been approved by a court under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act, and

(ii) either

(A) the debt obligations were issued as part of a single issue of debt of at least \$25 million, or,

(B) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations had issued and outstanding debt under the program of at least \$25 million,

(d) securities (other than futures contracts or other derivative instruments in respect of which the

Canada to carry on business in Canada under Part XII.1 of the Bank Act (Canada). The definition of "foreign bank" is found in Section 2 of the Bank Act. It reads:

"foreign bank", subject to Section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that

(a) is a bank according to the laws of any foreign country where it carries on business, (b) carries on a business in any foreign country that, if carried on in Canada, would be, wholly or to a significant extent, the business of banking, (c) engages, directly or indirectly, in the business of providing financial services and employs, to identify or describe its business, a name that includes the word "bank", "banque", "banking" or "bancaire", either alone or in combination with other words, or any word or words in any language other than English or French corresponding generally thereto, (d) engages in the business of lending money and accepting deposit liabilities transferable by cheque or other instrument, (e) engages, directly or indirectly, in the business of providing financial services and is affiliated with another foreign bank, (f) controls another foreign bank, or (g) is a foreign institution, other than a foreign bank within the meaning of any of paragraphs (a) to (f), that controls a bank incorporated or formed under this Act,

but does not include a subsidiary of a bank named in Schedule I as that Schedule read immediately before the day section 184 of the Financial Consumer Agency of Canada Act comes into force, unless the Minister has specified that subsection 378(1) no longer applies to the bank.

⁵ Pursuant to regulation 4900(2) of the *Income Tax Regulations* (Canada), the following prescribed credit rating agencies for the purposes of section 204: A.M. Best Company Inc.; DBRS Limited; Fitch, Inc.; Moody's Investors Service Inc.; and Standard & Poor's Financial Services LLC.

⁶ *Ibid.*

holder's risk of loss may exceed the holder's cost) that are listed on a designated stock exchange,⁷ and

(e) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province.

The definition of "prohibited investment" in subsection 211.6(1) reads as follows:

"prohibited investment", of a trust at any time, means a property that

(a) at the time it was acquired by the trust, was described by any of paragraphs (c), (c.1) or (d) of the definition "qualified investment" in section 204; and

(b) was issued by

(i) a person or partnership that has contributed property to, or that is a beneficiary under, the trust,

(ii) a person that is related to, or a partnership that is affiliated with, a person or partnership that has contributed property to, or that is a beneficiary under, the trust, or

(iii) a particular person or partnership if

(A) another person or partnership holds significant interest (within the meaning assigned by subsection 207.01(4) with any modifications that the circumstances require)⁸ in the particular person or partnership, and

(B) the holder of that significant interest has contributed property to, or is a beneficiary under, the trust.

⁷ Supra note 2

⁸ Subsection 2.07.01(4) reads:

(4) [Significant interest] – An individual has a significant interest in a corporation, partnership or trust at any time if

(a) in the case of a corporation, the individual is a specified shareholder of the corporation at that time;

(b) in the case of a partnership, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm's length, holds at that time interests as a member of the partnership that have a fair market value of 10% or more of the fair market value of the interests of all members in the partnership; and

(c) in the case of a trust, the individual together with persons and partnerships with which the individual does not deal at arm's length, holds at that time interests as a beneficiary (in this paragraph, as defined in subsection 108(1)) under the trust that have a fair market value of 10% or more of the fair market value of the interests of all beneficiaries under the trust.

Document comparison by Workshare Professional on Tuesday, January 20, 2015
9:36:23 AM

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