



Ontario | Commission
Energy | de l'énergie
Board | de l'Ontario

DECISION AND ORDER

EB-2022-0171

IMPERIAL OIL LIMITED

Application for approval to construct natural gas pipeline and ancillary facilities in the City of Hamilton

By Delegation, before: Nancy Marconi

September 15, 2022

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SCHEDULE A

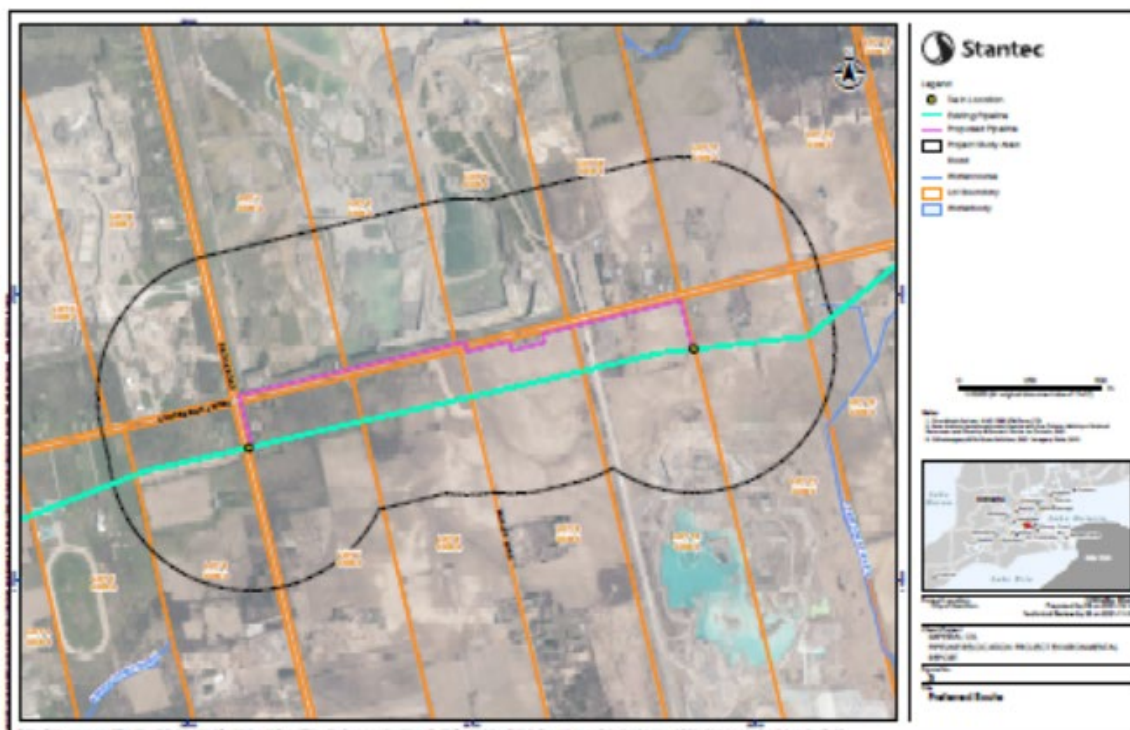
1 INTRODUCTION AND SUMMARY

This is the Decision and Order of the Ontario Energy Board (OEB) regarding an application filed by Imperial Oil Limited (Imperial Oil) on May 27, 2022.

Imperial Oil applied to the OEB under sections 90(1) and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), for an order granting leave to construct approximately 2 km of 12-inch diameter pipeline (Nominal Pipeline Size (NPS) 12) to remove and relocate a segment of its Sarnia Products Pipeline in the City of Hamilton (Relocation Project).

The Sarnia Products Pipeline is a 74.23 km long, NPS 12 petroleum products transportation pipeline, connecting Imperial Oil's Waterdown Pump Station and Nanticoke Pump Station.

Imperial Oil states that the Relocation Project is needed to eliminate interference from a segment of its existing Sarnia Products Pipeline with the approved mining operations of Lafarge Canada Inc. (Lafarge). The existing pipeline segment, which will be decommissioned and removed, is located on the south side of Concession 4 West between Brock Road and Milgrove Side Road in the City of Hamilton on Lafarge's land. The new pipeline segment will be constructed and located on Lafarge's land, about 125 metres north of the existing pipeline segment, adjacent to the municipal road allowances along the Concession 4 West between Brock Road and Milgrove Side Road. With the exception of two road crossings, the new pipeline segment will be located entirely within new easements. The new pipeline will be connected to Imperial Oil's Sarnia Products Pipeline at Brock Road and Milgrove Side Road. The general location of the Relocation Project is shown on the map below.



Imperial Oil has also applied under section 97 of the OEB Act for approval of the form of land rights agreement it has offered or will offer to landowners for the routing and construction of the proposed pipeline.

Imperial Oil indicated that the planned in-service date is late Q4 2022. Construction is planned to start in September 2022 and be completed in December 2022.

The OEB has examined all aspects of Imperial Oil's leave to construct application and is satisfied that the Relocation Project is in the public interest. Leave to construct is granted to Imperial Oil, subject to the conditions of approval contained in Schedule A to this Decision and Order. The OEB also approves the form of land rights agreement Imperial Oil has offered for the routing and construction of the Relocation Project.

2 PROCESS

A Notice of Hearing was issued on June 20, 2022. No party requested intervenor status in this proceeding.

On July 27, 2022, the OEB issued Procedural Order No.1 setting the timeline for interrogatories and a written hearing. OEB staff filed interrogatories on August 4, 2022 and Imperial Oil responded to the interrogatories on August 18, 2022. OEB staff's written submission was filed on August 29, 2022. Imperial Oil filed a reply submission on September 2, 2022.

3 DECISION AND FINDINGS

This application seeks an order for leave to construct a natural gas pipeline under section 90 of the OEB Act. Section 96 of the OEB Act provides that the OEB shall make an order granting leave if the OEB finds that “the construction, expansion or reinforcement of the proposed work is in the public interest”. When determining whether a project is in the public interest, the OEB typically considers the need for the project, the nature of the proposed facilities and any alternatives, project cost and economics, environmental impacts, landowner agreements, Indigenous consultation, and conditions of approval.

The decision and findings are organized to address each of the issues in the OEB’s Standard Issues List¹ for leave to construct applications, with the exception of project cost and economics because Imperial Oil is a non-rate regulated company and the Relocation Project will be financed by Imperial Oil. Accordingly, project cost and economics have not been considered as issues in this case since Imperial Oil is not seeking to recover the costs of the Relocation Project from ratepayers. The decision and findings will cover the following issues:

- Need for the Project
- Project Alternatives
- Environmental Impacts
- Landowner Agreements
- Indigenous Consultation
- Conditions of Approval

¹ The OEB’s [Standard Issues List](#) for section 90 applications was provided publicly in the notice of hearing the OEB issued for the Relocation Project.

3.1 Need for the Project

Imperial Oil stated that the need for the Relocation Project is to eliminate the existing pipeline segment which is obstructing Lafarge's mining operations in the subject area.

The relocation of this pipeline segment is needed to maintain operation of Imperial Oil's Sarnia Products Pipeline.

Lafarge will be mining its approved South Quarry Extension lands located on the south side of Concession 4 West. The existing segment of the Sarnia Products Pipeline would impede on Lafarge's mining operations. OEB staff submitted that Imperial Oil established the need for the Relocation Project. In its Written Reply Submission, Imperial Oil confirmed that the Relocation Project is needed to allow Lafarge to mine the South Quarry Extension.

Findings

The OEB finds that Imperial Oil has demonstrated the need for the Project.

Lafarge will be mining its approved South Quarry Extension lands located on the south side of Concession 4 West, and Imperial Oil's existing pipeline crosses Lafarge's South Quarry Extension lands and must be removed and relocated in order for quarrying operations to continue.

3.2 Project Alternatives

Imperial Oil submitted that the Relocation Project is the best alternative to meet the need. The route for the relocation pipeline was selected based on the comparative assessment of two alternative routes. The proposed route is located further away from the active quarry and has less potential impediment to the operations of Lafarge's quarry. Imperial Oil submitted in its Written Reply Submission that the proposed route has the least potential adverse environmental and socioeconomic impacts.²

OEB staff agreed that the Relocation Project is the best alternative to meet the stated need and that the proposed route is acceptable.

² Reply Submission by Imperial Oil, September 2, 2022, page 3, paragraph 12

Findings

The OEB finds that Imperial Oil has appropriately assessed other feasible alternatives, and that the proposed route is appropriate.

The new pipeline follows a reasonably direct path between the points of connection to Imperial Oil's Sarnia Products Pipeline and avoids potential constraints such as Lafarge-owned lands zoned for mining purposes, environmental features, a Provincially Significant Wetland, and potential geological hazards³. The route evaluation was supported by a review of available background information, desktop studies, environmental and socio-economic field surveys, consultation with regulators and other stakeholders and constructability reviews. The preferred route was circulated to agencies and stakeholders for review, and no comments were received⁴. In Imperial Oil's view, the proposed route has the least potential adverse environmental and socioeconomic impacts.

3.3 Environmental Impacts

Stantec Consulting Ltd. (Stantec) completed an *Environmental Report: Pipeline Relocation Project* (ER) dated January 6, 2022. Imperial Oil stated that the ER studies and the consultation were conducted in accordance with the *OEB's Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines in Ontario [7th Edition, 2016]* (OEB Environmental Guidelines). The ER studies assessed the existing bio-physical and socio-economic environment in the study area, the alternative routes, proposed the preferred route, conducted public consultation, conducted impact assessments, and proposed mitigation measures to minimize the impacts.

On January 12, 2022, the ER was made available to the Ontario Pipeline Coordinating Committee (OPCC) for review and comments. The consultation record indicates that, prior to filing the application with the OEB, Imperial Oil notified the OPCC and other stakeholders, including the City of Hamilton and Hamilton Conservation Authority, about the Relocation Project and the ER. According to the Consultation Record and supporting documentation, Imperial Oil received comments from the Technical

³ Exhibit B-1-1, page 1.

⁴ Exhibit C-1-1, page 1.

Standards and Safety Authority (TSSA), the Ministry of Environment, Conservation and Parks (MECP), and the Ministry of Tourism, Culture and Sport (MTCS).⁵

The TSSA requested that Imperial Oil submit for the TSSA's review an Application for Review of Pipeline Project.⁶ Imperial Oil, in the Written Reply Submission, stated that it anticipated that the TSSA will complete its review of the Application for Review of Pipeline Project by September 23, 2022.⁷

The MECP's comments, received on April 28, 2022, recommended coordination of blasting with Lafarge, reminded Imperial Oil of their responsibilities with respect to potential Species at Risk (SAR) and commented on potential requirements for a permit to take water for pipeline testing. Imperial Oil responded the same day on all the comments received from the MECP. In its response, Stantec (on behalf of Imperial Oil) stated that it would coordinate with Lafarge regarding any blasting impacts and consult the MECP if any SAR is encountered along the route of the pipeline. Stantec also stated that it determined that a permit to take water for testing the pipeline would not be required for the Relocation Project.⁸ Imperial Oil, in the Written Reply Submission, stated that it did not receive any additional comments following the April 28th communication with the MECP.⁹

As part of the environmental assessment process for the Relocation Project, and in accordance with the *Ontario Heritage Act*, Imperial Oil is required to complete a *Cultural Heritage Assessment Report* (CHAR) and submit it to the MTCS for their review and comment. The ER includes a Cultural Heritage Checklist but no report.¹⁰

The record of consultation indicates that MTCS recommended that the Cultural Heritage Report: Existing Conditions and Preliminary Impact Assessment (CHECPA) be prepared to inform the Environmental Report and to make preliminary recommendations for the conservation of known and potential cultural heritage resources.¹¹ In response to this recommendation, Stantec stated that all required reports and findings would be

⁵ Imperial Oil's response to OEB staff interrogatory Staff 4.1.1

⁶ Application, Exhibit G, Tab 1, Schedule 2, Table G.1.2-1: Summary of Correspondence with the Ontario Energy Board (OPCC), page 2, Records 2,4,6 and Imperial Oil response to OEB staff interrogatory Staff 4.1.1 Appendix C

⁷ Reply Submission by Imperial Oil, September 2, 2022, page 4, paragraph 18 a)

⁸ Imperial Oil response to OEB staff interrogatory Staff 4.1.1 Appendix B

⁹ Reply Submission by Imperial Oil, September 2, 2022, page 4, paragraph 18 b)

¹⁰ Application, Exhibit G: Appendix 1: Environmental Report: Pipeline Relocation Project, Appendix F

¹¹ Application, Exhibit G, Tab 1, Schedule 2, Table G.1.2-1: Summary of Correspondence with the Ontario Energy Board (OPCC), page 2, Record 8

submitted to MTSC for review.¹² The CHAR was filed with the MTCS on August 18, 2022 for review and approval.¹³ Imperial Oil, in its Written Reply Submission, noted that no comments or response were received from the MTCS as of September 2, 2022.¹⁴

In accordance with the requirements of *Ontario Heritage Act* and by *Standards and Guidelines for Consultant Archaeologists* (Government of Ontario, 2011) Stantec has completed the Stage 1 and Stage 2 archaeological assessments for the Relocation Project. Archeological Assessment (AA) Stage 1 was submitted to the MTSC review on March 16, 2022. Subsequently AA Stage 2 was completed and circulated on August 18, 2022 to three Indigenous communities engaged in the consultation about the Relocation Project.¹⁵ Imperial Oil stated that any comments received by the Indigenous communities on the AA Stage 2 report will be incorporated into the AA Stage 2 Report, which will be filed with the MTSC for review.¹⁶ Imperial Oil, in its Written Reply Submission, noted that no comments on the AA Stage 2 report have been received from the Indigenous communities as of September 2, 2022.¹⁷ Imperial Oil also confirmed that it would file clearance letters for both AA Stage 1 and AA Stage 2 reports as soon it receives them from the MTCS.¹⁸

In its Written Submission, OEB staff submitted that Imperial Oil has completed the ER in accordance with the OEB Environmental Guidelines. OEB staff had no concerns with the environmental aspects of the Relocation Project, given that Imperial Oil is committed to implementing the mitigation measures set out in the ER and to completing the project specific Environmental Protection Plan prior to the start of construction. OEB staff noted that the OEB's Standard Conditions of Approval for leave to construct require Imperial Oil to obtain all necessary approvals, permits, licences, and certificates needed to construct, operate and maintain the proposed Relocation Project and ensure that the environmental impacts are addressed, mitigated and monitored.¹⁹

¹² Application, Exhibit G, Tab 1, Schedule 2, Table G.1.2-1: Summary of Correspondence with the Ontario Energy Board (OPCC), page 2, Record 9

¹³ Imperial Oil's response to OEB staff interrogatory Staff 4.1.2 a)

¹⁴ Reply Submission by Imperial Oil, September 2, 2022, page 4, paragraph 18 c)

¹⁵ For a description of the Indigenous consultation activities related to the Relocation Project please see section 3.6 of this OEB Staff Submission

¹⁶ Imperial Oil's response to OEB staff interrogatory Staff 4.1.3

¹⁷ Reply Submission by Imperial Oil, September 2, 2022, page 4, paragraph 18 d)

¹⁸ Reply Submission by Imperial Oil, September 2, 2022, page 4, paragraph 17

¹⁹ OEB Staff Written Submissions, August 29, 2022, 3.4. Environmental Impacts, pages 3-5

Findings

The OEB finds that Imperial Oil has followed the OEB Environmental Guidelines to assess the potential environmental impact of the Project and that Imperial Oil is able to adequately address environmental issues by implementing the recommendations and mitigation measures identified in the ER and by adhering to the conditions of approval for this Decision and Order.

The ER prepared by Stantec identified an environmentally preferred route and outlined various environmental mitigation and protection measures for the construction and operation of the Project, while meeting the requirements of the OEB Environmental Guidelines. The ER concludes that the recommended program of supplemental studies, mitigation and protective measures are considered sufficient to protect the features encountered, and that with the implementation of the recommendations in the report, on-going communication and consultation, and adherence to permit, regulatory and legislative requirements, potential adverse residual environmental and socio-economic impacts of the Relocation Project are not anticipated to be significant.

Imperial Oil has stated that a Relocation Project-specific Environmental Protection Plan (EPP), along with several management and contingency plans, will be developed through the detailed design process prior to construction. The EPP will outline the required environmental protection measures and commitments to avoid or reduce potential effects on the environment as a result of the Relocation Project, and will build on the mitigation measures, monitoring and contingency plans identified within the ER.²⁰

In addition, Imperial Oil stated that adjacent landowners, tenants and neighbours were advised of the proposed Relocation Project and will be kept informed of progress as the work progresses.²¹

The OEB notes that Imperial Oil is required to adhere to the conditions of approval for this Decision and Order, which includes implementing all of the recommendations in the ER. Imperial Oil is also obligated to monitor the impacts of construction both during and after construction and report to the OEB.

Imperial Oil stated that any comments received by Indigenous communities on the AA Stage 2 report will be incorporated and the AA Stage 2 report will then be filed with the

²⁰ Exhibit C-1-3, page 1

²¹ Exhibit E-1-2, page 1

MTSC for review. Imperial Oil also confirmed that it would file clearance letters for both AA Stage 1 and AA Stage 2 reports as soon it receives them from the MTCS. The OEB notes that the conditions of approval for this Decision and Order require Imperial Oil to obtain all approvals, permits, licences and certificates required to construct, operate and maintain the Relocation Project.

3.4 Landowner Agreements

Regrading land rights needed for the Relocation Project location and construction, Imperial Oil needs a new permanent easement (length 2000 m width 15 m), a working area easement from Lafarge and two crossing permits of Concession 4 West from the City of Hamilton. According to Imperial Oil, all necessary land rights have been obtained from Lafarge and no landowners, except Lafarge and the City of Hamilton will be affected by the Relocation Project.

Imperial Oil filed a form of permanent easement²² which was agreed upon by Lafarge. Imperial Oil also stated that it reached an agreement with Lafarge regarding the use of its land for a working area during construction. It is noted that Imperial Oil did not file a form of the working areas easement and that the working area rights have already been agreed upon between Lafarge and Imperial Oil.

OEB staff submitted that the OEB should approve the proposed form of permanent easement agreement as it contains the standard elements of land use agreements as set by the OEB in the the Appendix C of the *Natural Gas Facilities Handbook* (2022).

Findings

The OEB finds that the form of permanent easement agreement filed by Imperial Oil contains the standard elements of land use agreements as set by the OEB and is therefore approved. The OEB expects that in accordance with the standard conditions, Imperial Oil will obtain all approvals, permits, licences and certificates required to construct, operate and maintain the Project, including the crossing permits.

²² Application and Evidence, Exhibit E.1.4 Attachment 1- Grant of Easement Pipeline (Ontario) Agreement 2

3.5 Indigenous Consultation

Imperial Oil notified the Ministry of Energy, Northern Development and Mines (MENDM)²³ about the Relocation Project and sought direction as to whether Indigenous consultation was required and if duty to consult is triggered by the Relocation Project. MENDM responded that no duty to consult has been triggered and it is not necessary for MENDM to provide a letter of opinion regarding the sufficiency of consultation.²⁴

OEB staff observed that, although MENDM did not identify any potentially impacted Indigenous communities, Imperial Oil and Stantec proactively identified and engaged the Indigenous communities in the wider general area of the Relocation Project: i) the Mississaugas of the Credit First Nation ii) Six Nations of the Grand River (Haudenosaunee Confederacy Chiefs Council), and iii) Six Nations of the Grand River (Elected Council).²⁵ Imperial Oil notified these Indigenous communities about the Relocation Project, served them with the Notice, and provided notice of and access to the Environmental Report.²⁶ The ER also includes an Indigenous Consultation Report, and copies of communications with Indigenous communities. No Indigenous communities sought to intervene in the proceeding, and no significant concerns appear to have been raised. Imperial Oil has committed to continuously include the Indigenous communities in the archeological assessments and to continue the engagement. Imperial Oil in its Written Reply Submission confirmed that no significant adverse impacts or outstanding concerns are expected to be raised by the engaged Indigenous communities.²⁷

Findings

MENDM stated that based on information provided by Imperial Oil, it was of the view that the Relocation Project would not result in any appreciable adverse impacts on the asserted or established rights of First Nations or Métis communities and that no duty to consult has been triggered.

Despite this, Imperial Oil and Stantec identified Indigenous Communities based on experience on past projects in the area and maintained a record of interactions with Indigenous communities about the Relocation Project. The OEB also provided notice of

²³ Now the Ministry of Energy (MOE)

²⁴ Evidence, Exhibit F, Tab 1, Schedule 1, page 1

²⁵ Evidence, Exhibit F, Tab 1, Schedule 1, Indigenous Consultation Report

²⁶ Evidence, Exhibit F, Tab 1, Schedule 2, Figure 1.2. Indigenous Correspondence Summary Table

²⁷ Reply Submission by Imperial Oil, September 2, 2022, page 5, paragraph 25

the proceeding to the three communities identified by Imperial Oil, and none of them sought to intervene in the proceeding.

Imperial Oil has stated that its commitments to Indigenous Communities support positive and progressive Indigenous relations, demonstrated through Imperial Oil's guiding principles.²⁸ Imperial Oil has also stated that it will continue to ensure that feedback, comments, and concerns can be raised by the Indigenous Communities at any time for consideration and response by Imperial Oil.

The OEB is satisfied with Imperial Oil's Indigenous engagement activities and finds that, to the extent the duty to consult is triggered, it has been discharged sufficiently to allow the OEB to approve the Relocation Project.

3.6 Conditions of Approval

Section 23 of the OEB Act permits the OEB, when making an order, to impose such conditions as it considers appropriate. In interrogatories, OEB staff suggested that the OEB standard conditions of approval should apply to the Relocation Project with the exception of a condition that the applicant file a post-construction financial report on the actual cost of the project. As noted above, Imperial Oil is not a rate-regulated entity and the costs of the Relocation Project will be financed by Imperial Oil. Hence, there is no need for the filing of a post-construction financial report.

Imperial Oil agreed with this suggestion and stated that it agrees with all the other conditions in the standard conditions of approval list.²⁹

Findings

The OEB accepts the conditions of approval proposed by OEB staff and accepted by Imperial Oil.

²⁸ Exhibit F-1-1, page 1

²⁹ Imperial Oil response to OEB staff interrogatory Staff.7.1 5

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Imperial Oil Limited is granted leave, pursuant to section 90(1) of the OEB Act, to construct the Relocation Project in the City of Hamilton as described in its application.
2. Pursuant to section 97 of the OEB Act, the OEB approves the form of permanent easement agreement that Imperial Oil Limited has offered or will offer to each owner of land affected by the Relocation Project.
3. Leave to construct is subject to Imperial Oil Limited complying with the Conditions of Approval set out in Schedule A.
4. Imperial Oil Limited shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto September 15, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

SCHEDULE A
DECISION AND ORDER
IMPERIAL OIL LIMITED
EB-2022-0171
SEPTEMBER 15, 2022

**Leave to Construct Application under
Section 90 of the OEB Act**

**Imperial Oil Limited
EB-2022-0171
Conditions of Approval**

1. Imperial Oil Limited shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2022-0171 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued unless construction has commenced prior to that date.
(b) Imperial Oil Limited shall give the OEB notice in writing:
 - i. of the commencement of construction, at least 10 days prior to the date construction commences
 - ii. of the planned in-service date, at least 10 days prior to the date the facilities go into service
 - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
 - iv. of the in-service date, no later than 10 days after the facilities go into service
3. Imperial Oil Limited shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
4. Imperial Oil Limited shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
5. Imperial Oil Limited shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Imperial Oil Limited shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
6. Both during and after construction, Imperial Oil Limited shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:
 - a) A post construction report, within three months of the in-service date, which shall:
 - i. provide a certification, by a senior executive of the company, of Imperial Oil Limited adherence to Condition 1
 - ii. describe any impacts and outstanding concerns identified during construction
 - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction

- iv. include a log of all complaints received by Imperial Oil Limited, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate, and maintain the proposed project
- b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
- i. provide a certification, by a senior executive of the company, of Imperial Oil Limited adherence to Condition 3
 - ii. describe the condition of any rehabilitated land
 - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
 - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. include a log of all complaints received by Imperial Oil Limited, including the date/time the complaint was received; a description of the complaint; any actions taken to address the complaint; and the rationale for taking such action.
7. Imperial Oil Limited shall designate one of their employees as project manager who will be the point of contact for these conditions and shall provide the employee's name and contact information to the OEB and to all affected landowners and shall clearly post the project manager's contact information in a prominent place at the construction site.