

**Testimony of Vermont Environmental Conservation Commissioner David K. Mears  
Regarding the North American Energy Infrastructure Act**

Tuesday, October 29, 2013

Summary

The federal government should continue to perform a full and careful review of international cross-boundary energy transmission projects. The current system involving the issuance of a Presidential Permit issued by the U.S. State Department after an analysis of environmental impacts and less harmful alternatives under the National Environmental Policy Act is a reasonable approach that should not be replaced with a narrow, time constrained review by other federal agencies.

Pipeline reversals, such as the potential reversal of the Portland to Montreal Pipeline to carry tar sands oil, should remain subject to environmental review in the same manner as new projects. Changing the direction of flow and changing the oil from light or medium crude to tar sands oil has the potential to increase the risk of environmental harm from spills. Further, the federal government should also evaluate the air pollution impacts of increased refinery capacity associated with the flow of more tar sands oil through Montreal as well as the impacts of tar sands oil extraction and refining on global climate disruption.

Vermont's natural resources are vital to our economy and we have a strong interest in ensuring that any increased risks to these resources are carefully evaluated. The National Environmental Policy Act provides a process that allows Vermont's citizens both to evaluate and comment on an environmental analysis of projects like the reversal of an oil pipeline. While Vermont has some authority to regulate the siting and environmental impacts of pipeline projects, that authority is not as broad as that of the federal government. Further, Vermont does not have the same resources as the federal government to evaluate the full range of environmental and other impacts of large energy transmission projects.

## Testimony

Thank you Mr. Chairman and members of the committee for the opportunity to appear before you today to testify regarding the North American Energy Infrastructure Act.

My name is David Mears, and I am Commissioner of the Vermont Department of Environmental Conservation. My department is responsible for implementing Vermont's laws relating to environmental protection including laws relating to air pollution, water pollution and spill response. The State of Vermont has an interest in this legislation because consideration is being given to modification of the existing Portland to Montreal Pipeline that runs through our state. The modification being discussed would reverse the direction of the flow of the pipeline to allow the transmission of tar sands oil from Canada to Portland, Maine.

Vermont's Governor Shumlin has expressed reservations about this project in light of its environmental risks and supports a thorough federal review of its environmental impacts. Our state is concerned about legislation that would alter the current federal regulatory framework for this kind of project.

The goal of the legislation before you as stated in the opening section is to improve the security and efficiency of our energy market with Mexico and Canada. Improving our ability to move energy across borders more effectively has the potential for multiple benefits. Vermont has, for instance, benefited economically and environmentally from a strong relationship with the Province of Quebec over shared energy projects. The approach taken in the bill before you would, however, shortchange the full consideration of economic and environmental issues necessary to ensure that these complex projects will make affordable and sustainable sources of energy securely and efficiently available to our citizens in the long-term and in a manner that also protects our natural resources.

Our major concern is that a primary result of the North American Energy Infrastructure Act will be to exempt international cross-boundary oil pipelines from (a) the current requirement that such projects obtain a thorough federal review by the State Department and a Presidential Permit under Executive Order 13337, and (b) the associated obligation that the federal government perform an environmental impact review and alternatives analysis under the National Environmental Policy Act. This level of careful federal review is necessary for complex, transboundary transmission projects. A one hundred twenty (120) day review limited solely to consideration of whether the project is in the national security interest, as described in the current bill, is insufficient for this category of project.

Even more concerning, while new pipeline projects would at least be subject to federal agency review, albeit a narrow and time-limited one, modifications to existing pipelines, including flow reversal, would be expressly exempted from any review at all. As a result, a proposal to reverse the flow of oil in the Portland to Montreal Pipeline would not get the careful federal review and analysis of environmental impacts that a project of this significance deserves. An additional consequence of this approach is that the Vermont public would not have the opportunity to review or comment on the federal government's analysis of environmental impacts and alternatives.

Any modifications to a major oil pipeline, certainly changes as consequential as changing the type of oil being transmitted and the direction of the flow, should be subject to a federal review. Both of these changes will increase the risk of direct environmental harms from accidental releases. Tar sands oil has different characteristics than the light to medium crude that the pipeline currently transports – the tar sands oil is more acidic and abrasive. It is also more viscous, which requires that it be pumped under greater pressures than the lighter crude oils. This set of facts raises questions about whether the change in the type of oil will increase the risk of spills. In addition, these characteristics will make responding to spills more challenging. Volatile organic chemicals are released during spills of tar

sands oil with risks of explosion if ignited and of harm to public health if people are exposed to those emissions. Further, the physical characteristics of tar sands oil cause it to sink in water making cleanup more difficult and time-consuming.

The Portland to Montreal Pipeline at issue in Vermont runs across a number of important ecological and economic resources in Vermont including: (a) The Missisquoi River which flows through a National Wildlife Refuge and then into Lake Champlain; (b) the Black River flowing into Lake Memphremagog which is a source of drinking water and an important recreational resource; and (c) the Victory State Forest, an ecologically sensitive area that includes a wildlife management area and a state park. The pipeline also runs close to the drinking water source for Irasburg, Vermont.

Keeping these resources clean and free of oil spills is critical to the ecological health of these areas and also to the region's economy. Vermont's economy is generally dependent upon the natural beauty of its landscapes and its clear waters. The area of Northern Vermont where the pipeline runs is particularly reliant upon recreation. People come from across the Northeastern United States, Eastern Canada and beyond to enjoy fishing, hunting, swimming and boating in the summer, the chance to view the rich colors of our fall foliage, and skiing, snowshoeing and snowmobiling in the winter.

These areas and water bodies are national and, in the case of Lakes Champlain and Memphremagog, international resources. The federal government should bring its considerable expertise and authority to bear to ensure these resources are adequately considered and protected.

In addition to the direct risks to these environmentally sensitive areas, we are also concerned about the secondary air pollution impacts of moving significant volumes of tar sands oil through Montreal. The proposed Enbridge pipeline reversal, a precursor to the use of the Portland to Montreal Pipeline to transmit tar sands oil, has the potential to contribute to air pollution in Vermont. Vermont has unsuccessfully attempted to file comments with the Canadian National Energy Board about the

potential for new refinery capacity associated with the Enbridge pipeline reversal to negatively impact Vermont's air quality. Vermont has at times experienced air pollution transmitted from the Montreal area and increased oil refining in Quebec could increase the frequency of such events. Given the international implications of this issue, and the challenge for a state to influence the Canadian government, it is vital that the federal government play a role in evaluating the potential for increased air pollution transport into the United States associated with pipeline projects.

Another impact associated with tar sands oil pipeline projects is that the extraction, transmission and refining of tar sands oil all contribute to increased carbon emissions at a greater rate than other forms of oil processing. This is of concern to my department because Vermont is vulnerable to the impacts of increased carbon emissions and the associated disruptions to our climate. Our maple sugar industry is at risk due to climate change as is our outdoor recreation sector, particularly the ski industry. Our landscape of working forests and farms is also suffering the effects of climate change due to a range of problems including increases in invasive insects and plants, weather patterns that disrupt traditional planting and harvesting practices, and increased extreme weather events.

Specific to considerations of the impacts of extreme weather associated with climate change, Vermont has seen a substantial increase in flood events as our winters grow shorter and are punctuated by higher frequency, more intense precipitation events. Tropical Storm Irene was a wake-up call for our state and reinforced our interest in doing whatever we can to reduce our carbon emissions. We want the federal government to carefully evaluate the broader risks of transporting tar sands oil across our borders given that the process of capturing and turning this form of oil into gasoline is significantly more energy intensive than other forms of oil.

Finally, Vermonters also have an interest in the world beyond our borders. Many are concerned about the devastation to Canada's northern boreal forests and the loss of water and wildlife resources in

the regions impacted by tar sands oil extraction. These Vermonters deserve the opportunity to comment on the broader national and international implications of transporting tar sands oil across our state.

Careful federal review, including an analysis of environmental impacts, of a project to modify a cross-boundary pipeline is necessary if Vermonters are to have a meaningful voice in the decision to implement such a project. Neither my department nor any other departments in Vermont have the authority or capacity to consider the full range of impacts from this type of project. In Vermont, we have a state land use law, referred to as Act 250, under which we can make decisions about where projects are sited, and can evaluate and require mitigation of some of the environmental impacts of pipeline projects. That law was recently determined to apply to the proposed reversal of the Portland to Maine Pipeline, though it is expected that the owner of the pipeline will sue to overturn that decision.

There are limits on the state's authority, however, due to the need to avoid regulating in the area of pipeline safety which is preempted by federal law and the additional need to avoid running afoul of the Commerce Clause of the U.S. Constitution. Further, my department and our small state does not have the same level of scientific and technical resources available to the federal government to review and evaluate the environmental impacts of massive and complex projects such as new or modified cross-boundary, international pipelines.

It is for these reasons that Vermont's Governor Shumlin wrote to Secretary of State John Kerry asking that the State Department exercise its authority to require a Presidential Permit in the event that the owner of the Portland to Maine Pipeline seeks to reverse the flow of the pipeline and to use it to transport tar sands oil. Similarly, New Hampshire, our sister state to the East does not have an equivalent to Vermont's Act 250 in their state law and has even less opportunity to protect her citizens from the potential negative impacts of a pipeline reversal. Consequently, New Hampshire's Governor

Hassan has also written to Secretary of State Kerry seeking to ensure that the State Department requires the Presidential Permit.

Improving the security and efficiency of our energy transmission systems across our boundaries with Mexico and Canada is a laudable and important goal. I recommend that the honorable members of this committee evaluate other alternatives for expediting the flow of energy across our boundaries with Canada and Mexico, alternative approaches that do not shortchange other important environmental and economic interests in the way that the proposed North American Energy Infrastructure Act would.

Thank you again for the opportunity to testify and I am available to answer any questions.