

PUBLIC REVIEW
of the
ESSO CHEVRON et al ISSERK I-15
DRILLING PROGRAM

November 1, 1989

Environmental Impact Review Board
Inuvik, Northwest Territories

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ENVIRONMENTAL IMPACT REVIEW BOARD
REPORT ON THE
PUBLIC REVIEW of the
ESSO CHEVRON et al ISSERK I-15
DRILLING PROGRAM

1.0 THE PUBLIC REVIEW

1.1 Jurisdiction of the Environmental Impact Review Board

The Inuvialuit Final Agreement (IFA), dated June 5, 1984, settled the land claim of the Inuvialuit in the Western Arctic Region of Canada. This Agreement was “approved, given effect and declared valid” by Section 3 (1) of the Western Arctic (Inuvialuit) Claims Settlement Act, being Chapter 24, 32-33, Elizabeth II of the Statutes of Canada.

The Act further provided in Section 3 (2) that the beneficiaries under the Agreement “shall have the rights, privileges and benefits set out in the Agreement”, and in Section 4 that the provisions of the Act and of the Agreement will prevail over any other law applying to the Territory in the event of inconsistency of conflict.

Being a land claims settlement within the meaning of Section 35 of the Constitution Act, 1982, the Agreement is thereby affirmed as an existing aboriginal right. In consequence of these statutory provisions, the terms of the Agreement are given a preferred status over all other federal and territorial laws within the defined Inuvialuit Settlement Region in the Western Arctic.

This Agreement is the source of the Board’s jurisdiction to review the **Esso Chevron et al Isserk I-15 Drilling Program** (Isserk I-15).

1.2 Mandate of the Board

Under the IFA, Isserk I-15 is a “development” within the meaning of Section 2 and, as such, is subject to screening by the Environmental Impact Screening Committee (EISC), pursuant to the provisions of Sections 11 and 13 of the Agreement. Section 11 (16) authorizes the EISC to refer the development to the Environmental Impact Review Board (the Board) for a public review and environmental impact assessment if the EISC determines that the development could have significant negative environmental impact, or negative impact on present or future wildlife harvesting [Section 13 (8)].

By a letter dated August 30, 1989, from Gary Wagner, Secretary to the EISC, to J. Livingstone, Chairman of the Board, the EISC referred to Isserk I-15 to the Environmental Impact Review Board for further environmental impact review and assessment. A supplementary letter from Mr. Wagner to Mr. Livingstone dated September 14, 1989, amplified the reasons of the EISC for making the referral. These reasons included concern regarding the thoroughness of contingency planning, as well as

the effectiveness of oil spill countermeasures. In addition, reference was made to a conflict of opinion between the Department of Indian Affairs and Northern Development (DIAND) and the Canada Oil and Gas Lands Administration (COGLA) regarding the effectiveness and applicability of the long-standing policy on “same season relief well capability”.

1.3 Procedures of the Board

Pursuant to the powers given to it by Section 11 (23) of the IFA to establish and adopt by-laws and rules for its internal management and procedures, the Board has enacted By-Law No. 1 and published its Operating Procedures. These documents, together with the IFA, contain the rules and guidelines that constitute the procedures of the Environmental Impact Review Board. These Operating Procedures call for the appointment by the Chairman of Review Panels to conduct Public Reviews.

These Review Panels are to include the Chairman, two Inuvialuit Game Council appointees to the Board, one Member representing Canada, and one Member representing either the Government of the Northwest Territories (GNWT) or the Government of Yukon (YTG), depending on the location of the development.

1.4 Appointment of the Review Panel

By means of letters dated September 23, 1989, the Chairman appointed the following Board members to comprise the Review Panel for the Public Review of the **Esso Chevron et al Isserk I-15 Drilling Program**:

James I. Livingstone	Chairman
Nelson Green	Inuvialuit Game Council
Ron D. Livingston	GNWT
Ewan Cotterill	Government of Canada
Calvin Pokiak	Inuvialuit Game Council

The Review Panel conducts the Public Review on behalf of the Board.

1.5 Decision Making powers of the Board

Under Section 11 (24) of the IFA, the Board is required, once the Public Review has been conducted, to expeditiously render a Decision as to whether or not, on the basis of the evidence and information before it, the development should proceed.

If the Board decides that the development may proceed, it must make recommendations as to Terms and Conditions that should apply to the development, including mitigative and remedial measures.

The Decision containing the recommendations of the Board must be transmitted to the government authority competent to authorize the development [Section 11 (27)]. If

provisions for compensation for loss or damage to wildlife or wildlife harvesting activities are deemed necessary, the Board must also provide “worst case” estimates of potential legal liability [Section 13 (11) (b)].

If the competent government authority is unwilling or unable to accept the recommendations of the Board, or wishes to modify any of them, reasons must be provided in writing within 30 days of the Decision [Section 11 (29)]. The decision of the competent government authority must be sent to all interested parties and be made public.

No licence or approval shall be issued by the competent government authority permitting any proposed development to proceed unless the provisions of the Environmental Impact Screening and Review Process under the IFA have been complied with [Section 11 (31)].

1.6 Initiating the Public Review

In accordance with clause 6 (b) of the Operating Procedures, the Board caused a Public Notice dated September 24, 1989, to be published in regional newspapers and boardcast through local radio stations announcing that public meetings would commence in Tuktoyaktuk on October 24, 1989. (A copy of this Public Notice is attached as Appendix A to this Decision).

1.7 Public Meetings

Public meetings were held in Kitti Hall in Tukoyaktuk on October 24, 25, and 26, 1989. Those organizations and individuals who presented written submissions, and those who appeared at the meetings to present oral submissions, are listed in Appendix C.

Under the Board’s Operating Procedures, the purpose of the public meeting is to determine whether the Board can make a Decision to recommend approving or rejecting the development without holding a more formal public hearing. The public meeting procedures are designed to be informal, but sufficiently rigorous, to enable the Board to make a fully-informed Decision in the event that it should decide that a full public hearing is not necessary.

In this case, detailed information concerning the development was obtained from Esso Resources Canada Limited in the form of the document entitled **Esso Chevron et al Isserk I-15: Submission to the Environmental Impact Review Board**. This document contained the Environmental Impact Statement (EIS) required by the Board. Also provided were supplementary filings and written answers to questions that had been addressed in writing to Esso by the Board.

For the purpose of examining the material submitted by Esso, the Board engaged three consultants: Dr. R. Davis to review environmental issues, Mr. W. Scott to examine oil well drilling procedures, and Mr. E. Owens to comment on containment and cleanup of oil spills.

On the first day of the public meetings, all of the prepared materials were presented on behalf of Esso, the Inuvialuit Game Council/ Inuvialuit Regional Corporation, and the other submitters who are identified in Appendix C.

Government representatives of DIAND, COGLA, and Canadian Coast Guard (CCG), the Department of Environment (DOE), the Department of Fisheries and Oceans (DFO), and the GNWT described the regulatory regimes under which they operate, and provided comments respecting the issues before the Board.

To begin the second day of the public meeting, the Board proposed an agenda of key issues for discussion. These key issues are listed in Appendix F, and they provided the framework for the Board's analysis and Decision related herein. On the second and third days of the public meeting, these issues were carefully tested by a process of direct questioning of the Esso representatives and consultants by the Review Panel, by the Inuvialuit Game Council/ Inuvialuit Regional Corporation, and by the other participants, including the government representatives and the general public.

When this process was completed, the Submitters made final presentations summarizing their recommendations and made suggestions with respect to terms and conditions required should the Board recommend approval of the Isserk I-15 development to the competent government authority. Esso's team responded to these final submissions and provided its own concluding observations.

The proceedings of these public meetings were recorded and transcribed in order to provide a public record. This public record may be examined during normal business hours at the office of the Joint Secretariat, 107 Mackenzie Road, Inuvik, Northwest Territories.

The Board is satisfied that it can recommend approval of the Esso Chevron et al Isserk I-15 Drilling Program, subject to terms and conditions, without holding a full public hearing.

For a copy of the full report, please contact:

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