



# When TransCanada Comes Knocking:

*Living along the proposed Energy East pipeline path*



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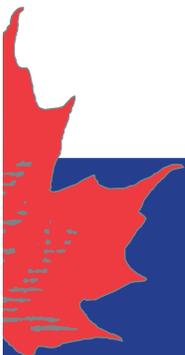


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# When TransCanada Comes Knocking:

## *Living along the proposed Energy East pipeline path*

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## Introduction

TransCanada's proposed Energy East export pipeline project would be the largest oil pipeline in Canada, spanning 4,600 km from Alberta to Saint John, New Brunswick. In New Brunswick, the project would require 1,400 km of new pipeline from the Quebec border, crossing over 280 creeks and rivers, traversing farmland and woodlots towards the Saint John River valley. The pipeline would end at a massive oil tank "farm" located across the street from residential homes on Anthony's Cove Road just outside of Saint John, and a new massive export port in the Bay of Fundy. The port, which would be built beside the existing Canaport LNG terminal, would add between 115 to 290 tankers to the Bay of Fundy every year. The tankers not only risk hitting the whales, but the noise generated by the ships also causes them stress and disruption.<sup>1</sup>

Energy East is a multi-use pipeline that would carry conventional oil, Bakken fracked oil, and unconventional oil. The unconventional oil produced in the tar sands, or "oil sands," including diluted bitumen, will comprise a large – and increasing – portion of what is shipped.<sup>2</sup>

Proponents argue that Energy East is designed to serve Eastern Canadian refineries, including the Irving refinery in Saint John. However, analysis shows that the product is primarily for export. According to TransCanada's documentation, and based on the capacity of the three refineries along the path, up to 90 per cent of the total daily volume of the pipeline would be exported to more lucrative international markets including the U.S., Europe and India.<sup>3</sup>

## TransCanada wants to build the Energy East pipeline on your property. What does this mean for you?

The prospect of a large oil pipeline on your land raises many questions. How deep will the pipeline be buried? What happens if there is a major oil spill? How will the pipe affect your ability to use the land? How long will construction take? Will you be compensated for any related crop loss or damage?

These are all important questions, and there are lessons to be learned from other TransCanada pipeline projects.

Bold Nebraska is a group that has been working with landowners concerned about TransCanada's proposed Keystone XL pipeline – a project that was recently rejected by U.S. President Barack Obama. The group collected landowner accounts of problems with TransCanada's existing southern Keystone system, including trenches that are too shallow, pipeline placed over rocks, and faulty welds that don't seal. The Keystone XL pipeline would have added to the southern Keystone system. According to Jane Kleeb, the director of Bold Nebraska, "several landowners I've spoken to live in fear that a major spill could happen any day."<sup>4</sup>

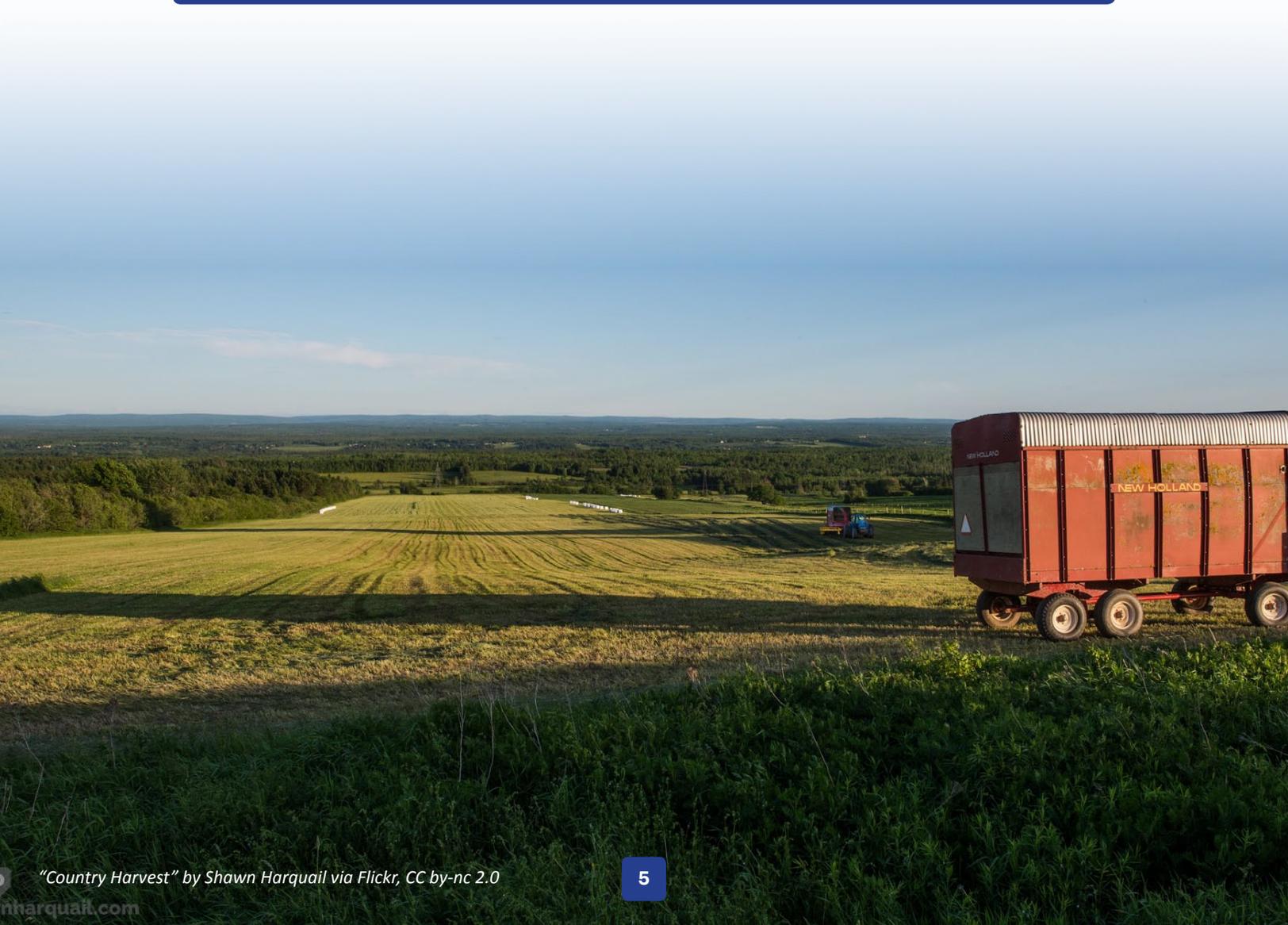
Landowners along Energy East's path face many similar uncertainties.

## Should I be concerned about a diluted bitumen spill on my land?

Diluted bitumen, or “dilbit” is created by diluting the thick, tar-like bitumen from the tar sands with various toxic and explosive chemicals, including cancer-causing benzene, to make it thin enough to pump down a pipeline.

The massive pipeline rupture in Kalamazoo, Michigan in 2010 showed how difficult it is to clean up dilbit. The substance sinks in water and sticks to everything. A federal report confirms that in water like the Bay of Fundy, dilbit forms “tar balls” and sinks.<sup>5</sup> A recently leaked federal report confirms we simply don’t know enough about the toxicity of bitumen or its effects.<sup>6</sup>

The Kalamazoo cleanup is entering its fifth year and has already cost more than \$1 billion. There is still submerged oil in the riverbed.<sup>7</sup>



## TransCanada says they can find a leak quickly and will respond swiftly

According to information provided at TransCanada's Energy East open houses, TransCanada is aiming to be able to shut down its pumping within 10 minutes of the discovery of a leak. Bearing in mind the pipeline's total capacity of 1.1 million barrels of crude per day, Energy East would transport 2,024 litres of oil per second. This means **more than one million litres of oil could spill in just 10 minutes**. A huge amount of oil remaining in the pipeline between valves could also leak. For example, at the Nipigon River crossing in Ontario of the current natural gas pipeline there is 11.8 km between valve stations. This means **more than 10 million litres** of additional oil could leak after the

pumping has stopped, depending on factors such as local topography and response time.<sup>8</sup>

TransCanada's actual track record of responding quickly to leaks on their mainline pipeline system tells a concerning story. In some cases, the natural gas flow was shut down in a matter of minutes. In one case it took over two hours, in another, it took six hours to isolate natural gas flow to the damaged section of pipeline.<sup>9</sup>

Additionally, the sheer capacity of the pipeline also means TransCanada's electronic leak detection system won't catch some potentially significant spills. TransCanada's leak detection system will only detect leaks that are greater than 1.5 per cent of the pipeline capacity. This means that **up to 2.64 million litres of crude oil could leak out per day without any signal from the system**. Even a small spill could have lasting impacts on your land.

## TransCanada land agents have presented us with an easement agreement. Do I need to sign it?

**You are under no obligation to sign an easement agreement – there is still a lot of time to consider it.**

By this point in time, you've likely had one of TransCanada's land agents visit your home. These agents are often eager to get signatures from landowners on easement agreements. These agreements give TransCanada the right to have their pipeline cross your land, and the ability to access and maintain it, without owning the land itself.

**One of the most important things you can do as a landowner to protect yourself is not sign anything TransCanada's land agents provide until you've considered your options. It is important you understand your rights, talk with other landowners and get legal advice.**

*"I have been fighting to stop the Keystone XL project for more than seven years. It threatens the ecologically fragile Sandhills of Nebraska and the Ogallala Aquifer, which supplies water to millions of people.*

*"The easements TransCanada has offered are perpetual and owners are faced with the loss of control of their property. The restoration plans for the project are insufficient. I have not seen a recovery plan that would deal with the volume of bitumen which threatens to be released. There is no plan for the decommissioning of the pipeline and landowners would be faced with rusting pipes forever.*

*"I am fighting the Keystone XL Pipeline to protect my family. I am fighting to keep our land and water clean. I am fighting for farmers and ranchers and small businesses that depend on the land for their livelihoods. I am fighting for our children and grandchildren and all the future generations that they may see the beauty of God's creation."*

*- Susan Dunavan, whose native pasture in Southern Nebraska is in the path of the proposed Keystone XL pipeline*

## Can TransCanada expropriate my land?

TransCanada can apply to the National Energy Board (NEB) to expropriate your land, but must first give you notice and this can only happen **if the project is approved**.

While TransCanada is eager to sign easement agreements as soon as possible in an effort to show there is landowner support for the project, landowners can, in fact, enter into these agreements at any time before their land is expropriated. There is still quite a bit of time before then. TransCanada has proposed starting construction sometime in 2017 with the project operational in 2020. Changes to the federal environmental review process should push these dates back even further.

If a pipeline company has approval to build a pipeline across land where they have not been able to settle a compensation agreement or sign an easement agreement with the landowner, the company may apply for a “Right of Entry.”<sup>10</sup>

If the NEB grants this, it allows the company to enter the land without the consent of the owner. In other words, the NEB has the power to give TransCanada property rights on land without the consent of the landowner where they deem it to be in the public interest.<sup>11</sup>

TransCanada must **notify landowners of their intention to apply for a Right of Entry 30-60 days before submitting their application to the NEB**. There is a legal process for landowners to

challenge the Right of Entry order. These steps would only happen **if TransCanada has approval for the Energy East project**.

If you feel that TransCanada or land agents are **threatening you with expropriation in order to pressure you into an agreement**, please document this threat. If a court finds that a pipeline company is using duress to force agreements onto landowners, the agreement may be found invalid.

What is likely to make the most difference in the compensation package awarded landowners signing easement agreements is **having effective legal counsel negotiating the terms of the agreement**. While you can sign an easement agreement at any point, pipeline companies may offer a bonus or additional compensation for signing early. The experience with TransCanada’s Keystone XL pipeline in Nebraska offers a different example, where landowners holding out on signing easements have subsequently been offered substantially more.<sup>12</sup> The Canadian Association of Energy and Pipeline Landowners Associations (CAEPLA) says the best easement agreements happen when landowners join together and are represented as a group before the NEB and in negotiations with the company.<sup>13</sup>

## Does signing an easement agreement mean I support the Energy East project?

No, signing an easement agreement does not mean you support the pipeline. You can still speak out and join with others who are trying to stop it.

Landowners should **be aware of clauses that may limit their ability to speak critically about the project.** While TransCanada will suggest otherwise, *signing an easement agreement*

*does not equate to supporting the project.* Landowners should be able to retain the right to act according to their principles and beliefs.

## What would be included in an easement agreement?

TransCanada is legally obligated to include a number of elements in an easement agreement, including compensation for the land and restrictions on what the land can be used for, amongst other things.

When a landowner enters into an easement agreement with a pipeline company, there are requirements for what **must** be included. These include compensation for the land and for any damage suffered because of the company's operations (for example, trees cut down or loss of topsoil) and restrictions on what the land can be used for (potentially including ingress and egress).<sup>14</sup>

Under the regulations in *National Energy Board Act's* (NEBA) Section 112, the 30-metre control zone for the pipeline and crossing restrictions (egress/ingress) will adversely affect farming and woodlot operations. As a landowner, you may be financially liable for a contractor or employee that accidentally crosses the pipeline. You will have to "apply to pipeline companies for written permission before carrying out activities such as driving farming equipment across the pipeline, ploughing deeper than 30 centimetres, or carrying out excavation and construction."<sup>15</sup> Bill C-38 made it so that anyone who violates crossing requirements would face criminal charges.

You must look at the details carefully. Landowners **must** ensure that they have included permission, or have gained clearance to conduct any activities that may require permission.

Landowners should also be aware of clauses covering maintenance of the easement area. Some questions landowners may want to ask – and have clear information included in any agreement – could include:

- How often will the company be doing maintenance, and will they notify the landowner first?
- What kind of equipment or materials will the company be using?
- Will chemical herbicides or pesticides be used? If so, how often?
- Will there be an impact on landowners, pets and livestock, wildlife, or the environment?
- Will there be mechanical brush removal? What will happen to the waste material?

**Principles adopted by the Nebraska Easement Action Team (NEAT) supporting landowners along proposed Keystone XL path:**

1. TransCanada must pay for the use of the land annually.
2. TransCanada must be responsible for all payments for all spill related matters unless a landowner commits a willful, wrongful act to cause a spill.
3. TransCanada must take out its pipe when it is exhausted and spent, at its own expense and the land must revert to the landowners when this happens.

**If the pipeline is decommissioned will it be removed from my property?**

**As it stands now, if the pipeline is decommissioned it becomes the landowner's liability.**

Companies now have the right to leave the majority (80 per cent) of pipelines in place, leaving their collapse and contamination a landowner's responsibility. According to legal analysis done for the CAEPLA, "The abandoned pipeline may lower property values, cause safety hazards, hide historical contamination, and pose future environmental liabilities."<sup>16</sup>

In 2015, the NEB set up a fund to cover some of the risks of pipeline abandonment. According to a lawyer, current plans for the fund are only sufficient to accomplish the removal of approximately 20 per cent of pipeline infrastructure.<sup>17</sup> With the fund as insufficient as it is, questions remain about who will be responsible for paying to clean up contaminated land.

# Take action! Join the growing wall of opposition to stop Energy East

## TransCanada's Energy East pipeline can be stopped.

There is a growing movement of people who are working to stop the Energy East pipeline.

In Winnipeg, people are concerned because the pipeline route runs alongside – and at points only two metres under – the sole aqueduct that supplies the drinking water for the city. In fact, a spill would threaten the entire Shoal Lake watershed.

After significant public participation, the Ontario Energy Board concluded the Energy East pipeline project is more risk than reward for the province.<sup>18</sup> The mayor of North Bay in Ontario has publicly promised to protect Trout Lake, their city's drinking water source, from an oil spill. The pipeline crosses several creeks that flow into Trout Lake.

Only one-third of Quebecers support the Energy East project.<sup>19</sup> This should come as no surprise since the pipeline runs alongside the St. Lawrence River, another critical drinking water source and bedrock of local economies. The mayor of the province's third largest city, Laval, openly opposes Energy East and says he has the power to block the pipeline.<sup>20</sup>

The Quebec government is currently reviewing the project,<sup>21</sup> while 70 Quebec municipalities have declared their opposition to the pipeline.<sup>22</sup> Strong opposition in Quebec led to the cancellation of the controversial Cacouna port, which would have been beside a protected beluga whale habitat.

Opposition is also growing in New Brunswick, as shown in the lively march to the “end of the line” in Red Head in May 2015. There is the newly formed Peace and Friendship Alliance in the province bringing together Indigenous and non-Indigenous community members and groups in opposition to the project.

Indigenous opposition to Energy East is also rising along the pipeline path. This includes outspoken critics from communities in Treaty 3, from Kanehsatàke and the Wolustuk Grand Council. Many have applied to intervene in the NEB process. Ontario's First Nations leaders are calling for a halt to the NEB process until they are properly consulted.<sup>23</sup> Indigenous peoples have unique rights, including the right to free, prior and informed consent under the United Nations Declaration on the Rights of Indigenous Peoples. These legal rights are widely considered a potentially serious roadblock to TransCanada's pipeline ambitions. Legal challenges are already underway over Indigenous opposition to Enbridge's Northern Gateway project.

There is also a growing movement to oppose tar sands pipelines because of what they mean for our shared climate. People sent more than 100,000 messages to the NEB asking that climate impacts be included in the pipeline review.



## You can add your voice to the growing movement opposing Energy East.

1. Share your story. Be in touch with us about where the pipeline crosses your land. We'll help you share your story and connect with others who share your concerns.
2. Host a "kitchen table meeting" with some neighbours at your house. If you want we can come to your home to share our research on the risks of Energy East, and the plans that are underway to stop the project.
3. Make sure your municipal, provincial and federal representatives know how you feel about the Energy East pipeline crossing your property. Your voice is important! Premier Brian Gallant has been a vocal supporter of the project, and is even lobbying for other premiers' support.
4. Join our mailing list to get updates on our campaign actions in New Brunswick at [www.noenergyeastnb.ca/join](http://www.noenergyeastnb.ca/join)
5. Apply to intervene at the National Energy Board review of the Energy East project.

## How can landowners oppose the pipeline route and project?

### Landowners can participate in the NEB review of the project, or whatever new review potentially replaces it.

The NEB public hearings are *currently the only mechanism the board has for landowners and the public to object to the pipeline project itself*. This is where you could outline arguments about the impacts the project would have on your property and argue for rerouting the pipeline away from your land, or stop it altogether. TransCanada will resist rerouting the pipeline, but experience shows strong landowner opposition can force reroutes, which can be costly for pipeline companies and force delays.

While the deadline for applying to participate in the existing Energy East certificate hearings has now passed, there is the possibility the hearings will be re-opened under changes brought in by the new federal government. There is also an existing process for late applications and directly impacted landowners are very likely to be allowed to participate. ***If you want to participate in the regulatory process*** email a process advisor at: [EnergyEast.ProcessHelp@neb-one.gc.ca](mailto:EnergyEast.ProcessHelp@neb-one.gc.ca).

You will be asked to send a letter in outlining why your application is delayed. If you want help in this process, please email Mark D'Arcy at [mdarcy@canadians.org](mailto:mdarcy@canadians.org).

There are varying levels of participation in the NEB process, from filing a letter of comment, making an oral statement, to applying for intervenor status. Being an intervenor is the most involved process, and requires filing written evidence, receiving all documents filed by TransCanada and other intervenors, commenting on evidence, asking questions of all parties involved, and making a final argument.<sup>24</sup> Landowners can also apply as a group to represent their interests. Whether intervening as individuals or as a group, landowners can apply for participant funding.<sup>25</sup> These funds can be used to better understand potential impacts on their lands, hire legal representation, or to cover costs for attending hearings.

## Do landowners have any recourse if the project is approved?

**Answer: Yes, landowners can request a detailed route hearing.**

Under the existing process, if the NEB grants TransCanada approval through the certificate process, landowners have another opportunity to challenge the proposed route through “detailed route hearings.” TransCanada is required to serve notice to all landowners whose lands are proposed to be acquired with a notice in local newspapers describing the detailed route and procedure for making representations to the board

about the route. This includes arguing for a rerouting away from your property.<sup>26</sup> After this, landowners have 30 days to write the board to explain why they oppose the proposed route and request a detailed route hearing.<sup>27</sup>

*“When I first learned of the proposed path for the Energy East pipeline through our area, Hampton/Bloomfield, I knew it was a bad idea. TransCanada has the pipeline going through high quality farmland and wetland on its path to cross the Kennebecasis River towards Saint John. I wrote a proposal to TransCanada outlining the reasons why our area is not*

*suitable for a pipeline and how they could reroute the path no more than eight kilometres away following an area where there are major power lines further upstream. Despite sending them the proposal and having an initial call, I have yet to hear back from TransCanada.”*

*- Carl Wolpin, organic farmer*



## **I've heard the NEB process is a sham and that the new federal government plans to change it.**

**The NEB process is highly flawed but it is currently the only regulatory space for landowners to give their opinion. We remain hopeful that changes brought in by the new federal government will improve public participation and the effective review of pipeline projects.**

The Harper government's omnibus budget bills brought in sweeping changes to how pipeline projects are reviewed. It made the oil-industry friendly NEB responsible for project reviews and added a new, more restrictive 18-month timeline. It also gave the federal Cabinet final say on whether pipelines are approved. Public participation in the NEB was significantly limited to those individuals considered "directly affected" or with relevant expertise. Environmental regulations were dismantled.

The NEB has come under fierce criticism from landowners, Indigenous peoples, environmental organizers and others. Even the former CEO of BC Hydro pulled out of the NEB review of the controversial Kinder Morgan pipeline expansion, stating the NEB is "industry captured" with a bias in favour of pipeline approval.<sup>28</sup>

The Liberal, NDP and Green party campaigns all called for an overhaul of this broken regulatory process. Justin Trudeau said TransCanada lacks "social licence" for their Energy East project, noting the significant opposition building along the pipeline route, particularly in Quebec. He has also said that while governments can grant permits, only communities can grant permission.<sup>29</sup>

Prime Minister Justin Trudeau now has the task of following through on his promises, including launching a public review of Canada's environmental assessment processes. According to the Liberal's election platform, these changes will include providing ways for Canadians to express their views and meaningfully participate in the assessment process, consider upstream climate pollution impacts of projects, and ensuring the NEB has "broad regional representation and sufficient expertise in fields such as environmental science, community development, and Indigenous traditional knowledge."<sup>30</sup>

If Prime Minister Trudeau follows through on his promise and updates the pipeline review process, ***TransCanada should be forced to start over with the NEB.*** This massive pipeline project would have long-lasting and devastating impacts if there was a spill – it is all risk and little reward. The public must be given meaningful opportunities to participate in how pipeline reviews are updated and in the new process for evaluating Energy East.

# Endnotes

1. <http://www.conservationcouncil.ca/wp-content/uploads/2015/08/Bay-of-Fundy-Infographic-Eng.pdf>
2. Currently the tar sands produce around 2 million barrels per day. The Canadian Association of Petroleum Producers had predicted production to exceed 5 million barrels per day by 2030. The newly proposed Alberta Climate Change Plan puts a cap on tar sands emissions which allows emissions to rise from the current 70 megatonnes to 100 megatonnes of pollution. Current pipeline infrastructure is nearing its limits, which is why new pipelines are critically important to producers. <http://calgaryherald.com/business/energy/ewart-albertas-new-climate-plan-touted-as-a-marketing-solution-for-oilsands>
3. <http://canadians.org/publications/transcanadas-energy-east-export-pipeline-not-domestic-gain>
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8. <http://canadians.org/sites/default/files/publications/EE-Safety-Briefing.pdf>
9. Ibid
10. Section 104 of the *National Energy Board Act* (NEBA)
11. Sections 104 and 106 of the NEBA
12. <http://www.nebraskaeasement.org/>
13. <http://www.landownerassociation.ca/>
14. [http://landownerassociation.ca/images/May\\_1\\_2014\\_-\\_David-versus-Goliath.pdf](http://landownerassociation.ca/images/May_1_2014_-_David-versus-Goliath.pdf)
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18. <http://www.ontarioenergyboard.ca/html/oebenergyeast/resources.cfm#.VnG6KUorLIU>
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22. <http://www.equiterre.org/en/communiqué/quebecs-third-largest-city-rejects-transcanadas-energy-east-project-equiterre-applauds-de>
23. <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/first-nations-cite-grave-concern-in-request-for-neb-to-halt-energy-east-review/article22817125/>
24. <https://www.neb-one.gc.ca/prtcptn/Indwnrgd/Indwnrgd-eng.pdf>
25. <https://www.neb-one.gc.ca/pplctnflng/mjrpp/nrgyst/nrgystprsnntn/nrgystprsnntn-eng.pdf>
26. Section 34 of the NEBA
27. For more information on how to pursue a detailed route hearing, refer to the National Energy Board Rules of Practice and Procedure 1995 (SOR/95-208). Some funding is available to cover the expenses of landowners who wish to make a representation, but it is not guaranteed to cover the full costs.

28. <http://www.vancouverobserver.com/news/former-bc-hydro-ceo-calls-neb-industry-captured-pulls-out-kinder-morgan-hearings>
29. <https://www.liberal.ca/realchange/environmental-assessments/>
30. Ibid

## Top Four Reasons Energy East is all risk and little reward

- 1. Pipeline spill.** TransCanada's pipeline safety record in Canada is bad and is getting worse. The portion of the existing pipeline that will be converted as part of the Energy East project is up to 40 years old and has ruptured nine times since 1991. Two whistleblowers have come forward with serious allegations against TransCanada for not following Canadian pipeline regulations. Most pipeline spills are found by people, not spill detection systems, including the spills on TransCanada's Mainline natural gas system.
- 2. Threats to waterways.** Energy East would ship oil, including diluted bitumen, which presents heightened risks when spilled in or near waterways. Heavy bitumen sinks more quickly in water, making it harder to clean up. A recent federal report found not enough is known about the toxicity of bitumen, or its effects.
- 3. Ignoring Indigenous rights.** The pipeline would cross through the land of more than 50 First Nations that have the right to free, prior and informed consent, including the right to say "no." Many First Nations along the pipeline route are expressing concerns or opposing the project, including from Treaty 3 territory, Kanasatake in Quebec, and Wolastoq Grand Council in New Brunswick. Ontario First Nations leaders have called for a halt to the National Energy Board's review of the project because they have not been properly consulted.
- 4. Tar sands expansion is bad for the climate.** Filling the Energy East pipeline would generate 32 million tonnes of carbon pollution. This is more than any single Atlantic province generates. The industry needs Energy East and other proposed pipelines in order to achieve their expansion targets for the tar sands. Tar sands expansion would make meaningful cuts to our climate pollution nearly impossible.

**For more information about the campaign to stop Energy East in New Brunswick visit [www.noenergyeastNB.ca](http://www.noenergyeastNB.ca)**

**For information about the Council of Canadians' cross-Canada efforts to stop the pipeline visit [www.canadians.org/energyeast](http://www.canadians.org/energyeast)**