

Andrew Younger

Member of the Legislative Assembly
Dartmouth East

Député de Dartmouth Est

House of Assembly
Nova Scotia

Assemblée législative
Nouvelle-Écosse



January 26, 2016

Chief Rufus Copage
Sipekne'katik
522 Church Street
Indian Brook First Nation, Nova Scotia
BON 1W0

By E-mail: chiefcopage@sipeknekatik.ca

Dear Chief Copage,

I trust this letter finds you and the members of your community well. I've had a large number of people in the area of Sipekne'katik and the proposed Alton Gas Storage project contact me for my view and input on the recent announcement by the Government of Nova Scotia to grant Industrial Approval to the project. Some of the queries have come to me because I chaired a meeting as Minister of Energy in the fall of 2014 which you attended, along with representatives of KMKNO, Aboriginal Affairs, Alton Gas, and other government representatives.

That meeting was held largely in response to the fact that there appeared to be a gap in meaningful discussions with First Nations, their treaty and other rights (particularly concerning traditional lands and land potentially subject to aboriginal title) and especially concerns in light of a recent Supreme Court ruling at the time which further clarified the meaning of "Duty to Consult".

At the meeting I specifically recognized at the start that government recognized that Sipekne'katik was not part of KMKNO for the purpose of consultation and negotiation, and therefore we understood any measures to satisfy the obligations to meaningful involve, assist, and consult Mi'kmaq in Nova Scotia would have to be met for both the KMKNO and Sipekne'katik. You stated at that meeting, that your view was you had an obligation to have direct input of community members, both early on and before any decision was made. I understand you recently indicated your community was seeking a referendum on the issue, and sounds to me like it would have been entirely within the range of possibilities you outlined at that initial meeting.

It was also stated clearly the meeting that Department of Environment was present but they would not speak to the issues in the meeting or be the lead for consultation as their requirement was to stay open to all possibilities as it related to any future authorization of an Industrial Approval. They also indicated a necessity to be independent of any Department of Energy processes. As such I share the surprise of some who have asked me about whether the announcement of the final Industrial Approval by the Department of Energy was unusual. It's my view this announcement would normally (at least as far as that meeting and my experience) come from the Department of Environment due to the necessity to demonstrate independence.



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As you will recall I indicated that I believed gas storage is an important part of the overall natural gas network, and, if developed appropriate, could have important benefits to both First Nations and Nova Scotians. As well, with no gas storage facility in the region, such a facility if appropriately located and managed would benefit the region. However, speaking for the government at the time, and with the support of other government representatives present, it was made clear that we recognized that work and effort through previous years on this project had failed to address the requirements of consultation and that not only would gaps be identified and addressed to the satisfaction of both KMKNO and Sipekne'katik, but that also support would be provided to ensure your community had the ability to understand and express their informed views on the project. I also believe that when the expected consultation and involvement is not met, this can significantly, and negatively, impact the development of projects themselves as it can cast a shadow over them which is not beneficial to either future economic development or the viability of individual projects.

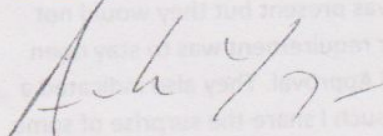
To those who have been in touch with me, I have told them I no way of knowing what efforts took place (if any) to meet the commitments made to your community since November and the decision which was announced. I therefore cannot judge whether the process was followed as I have not spoken to you about it in some time. Only you and your community can determine whether this was met. That being said, with the number of inquiries I have received, I wanted to be sure I was in touch with you, so you were aware of the concerns, and my perspective on them as the past minister.

As you know from our discussions on this and other files, I believe that the obligation of government and business to properly address First Nations concerns is paramount, and morally and legally required. The Canadian government has written extensively on this, and particular to your situation as well as your early and consistent request to ensure your community is involved, I find the *Aboriginal Consultation and Accommodation Guidelines* of the Federal Government to be particularly telling:

The consultation process should be responsive and flexible. Officials need to adjust the process as new information about the strength of claim or the severity of adverse impacts comes to light, or if a new Aboriginal group, with a credible claim, alleges that their potential or established Aboriginal or Treaty rights may be impacted by the project. If the processes being relied on by the Crown will not allow it to fulfill its consultation obligations, additional steps must be taken.

I hope the above thoughts are useful as you look forward to deciding your own plans as it relates to addressing the concerns of your community with this project. As always, I would be happy to discuss this or other matters with you at any time.

Sincerely,



Andrew Younger MLA
Dartmouth East

