

Southwind Development Corporation Ltd.
Chippewas of Kettle and Stony Point First Nation
6247 Indian Lane, ON N0N 1J1
consultation@kettlepoint.org



March 14, 2022

Public Input Coordinator
MNDMNR - RPDPB - Resources Development Section
300 Water Street
2nd Floor, South Tower
Peterborough, ON K9J 3C7

Re: Comments on Geological Storage of Carbon in Southwestern Ontario – ERO #019-4770

Chippewas of Kettle and Stony Point First Nation (CKSPFN) are pleased to present the following comments to the Ministry of Northern Development, Mining, Natural Resources and Forestry (NDMNR), regarding the proposed legislative changes to allow for geologic carbon storage in Ontario. These comments are submitted by Southwind Development Corporation (Southwind), the wholly owned economic development corporation of CKSPFN, on behalf of CKSPFN.

Our comments focus on three key themes:

1. Process – Early First Nation Engagement
2. Duty to Consult and Accommodate
3. Climate Change

Background

As stated in the NDMNR’s “Discussion Paper: Geologic Carbon Storage in Ontario, January 2022”¹, the proposed legislative changes will focus on activities occurring in southwestern Ontario where the geology is the most conducive for geological storage of carbon. These are the treaty lands of Chippewas of Kettle and Stony Point First Nation and other First Nations. For over 100 years, we have witnessed the cumulative impacts of the expansion of energy infrastructure across our territory, including oil, gas, petrochemical, power generation, and electricity transmission facilities on a massive scale. Much of this Crown approved infrastructure has been responsible for huge quantities of greenhouse gas emissions contributing to climate change.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on September 13, 2007. With the federal government’s *Bill C-15 An Act respecting the*

¹ <https://ero.ontario.ca/notice/019-4770>

United Nations Declaration on the Rights of Indigenous Peoples, the Government of Canada must take all measures necessary to ensure that the laws of Canada are consistent with UNDRIP.

The preamble of Bill C-15 refers to the Calls to Action - Truth and Reconciliation Commission of Canada², the Calls for Justice - National Inquiry into Missing and Murdered Indigenous Women and Girls³, and acknowledges that **provincial** governments can establish their own approaches to contributing to the implementation of the Declaration by taking various measures that fall within their authority.

Under the *Oil, Gas and Salt Resources Act*, the Ministry of NDMNRF regulates the drilling and operation of wells, and associated pipelines and equipment, used for activities such as the exploration and production of oil and natural gas, salt solution-mining, the underground storage of hydrocarbons, and compressed air energy storage projects using salt caverns.

The proposed legislative changes present the Province of Ontario with an opportunity to uphold the commitments made in UNDRIP, to work toward social, environmental, and economic reconciliation with the impacted First Nations in southwestern Ontario, and to address historic and ongoing greenhouse gas emissions in our treaty lands.

Process – Early First Nation Engagement

The proposed changes would create new authority under the *Oil, Gas and Salt Resources Act* for the Ontario Crown to make decisions to enter into agreements with proponents looking to test, pilot or demonstrate new or innovative activities in wells that are or will be drilled in areas where oil, gas and salt resources are generally found. Proponents that choose to enter into an agreement may be required to undertake studies, consultations, monitoring, and reporting activities, etc. as a part of the agreement, but entering into agreements would be voluntary.

The proposed changes say nothing about early First Nations involvement in these agreements. CKSPFN wishes to be engaged early, during the policy and planning processes and kept informed and actively engaged in all studies, consultations, monitoring, and reporting activities, whether a proponent is entering into an agreement with the province or acting independently. CKSPFN may also wish to enter into an agreement with the Ontario Crown as a proponent for geological storage of carbon within our treaty lands.

First Nations must be brought into the early discussions on policy, procurement, ownership options, and ongoing environmental assessment to avoid challenges such as those we are now facing with the Ministry of Energy regarding transmission lines and other energy projects. Our treaties with the Crown pre-date Confederation and may be interpreted to include subsurface rights that could be impacted by projects to geologically store carbon, or that might extinguish the use of subsurface resources for other productive purposes that may be of interest to our nation.

Duty to Consult and Accommodate

² https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf

³ https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf

Given the novel nature of geological storage of carbon in southwestern Ontario and the potential for testing new technology beyond carbon storage, it is essential that First Nations be afforded a high degree of consultation prior to any Crown decisions that may impact rights and interests. Given that these potential projects would not be subject to regulatory oversight by the Ontario Lands Tribunal or Ontario Energy Board, the Ministry of NDMNRF will play a significant role in fulfilling the Crown's Duty to Consult, along with project proponents.

The Ministry of NDMNRF is proposing that changes be made to the Mining Act framework that would allow NDMNRF to grant authorizations to use Crown land for carbon storage activities. This land is subject to treaties with our people. As UNDRIP highlights the need for Free, Prior, and Informed Consent (FPIC), it is important that the Ministry of NDMNRF ensure First Nations are consulted early and provided opportunities for meaningful participation in any of the projects that may arise from the legislative changes.

Where appropriate, First Nations must be accommodated for the impacts on our treaty rights and interests.

Climate Change

While carbon storage may play a role in climate change mitigation, it must not become an easy excuse for continued expansion of fossil fuel extraction and infrastructure. As TVO reported⁴, gas companies have publicly cited carbon sequestration as being part of their vision for keeping natural gas as part of Canada's energy mix into the 2050s. This is not acceptable to our First Nation.

CKSPFN agrees with the continued prohibition of injecting carbon dioxide for the purpose of carbon sequestration, when used in association with a new project to enhance the recovery of oil or gas. CKSPFN will, however, consider geological carbon storage for addressing historic and current oil and gas extraction.

In absence of a regulator, CKSPFN encourages enhanced provisions/orders to be put in place for corporate accountability regarding potential risks to the public or environment, including accidents or malfunctions that may result in large releases of carbon or other substances association with the new concepts and technologies being deployed.

Recommendations

- That NDMNRF must not enter into case-by-case agreements with companies without first consulting with First Nations.
- That NDMNRF strongly encourage companies with which it does enter into agreements, to also have economic agreements with First Nations, on whose territory these projects could be carried out.

⁴ <https://www.tvo.org/article/why-ontario-is-interested-in-trapping-carbon-dioxide-underground>

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- That NDMNRF require proponents to work alongside with First Nations during all phases of the project including any post decommissioning, long-term monitoring and ongoing management that may be required post-closure.

By way of these initial comments, Chippewas of Kettle and Stony Point are expressing our initial and ongoing interest to participate in this shared learning and collection of valuable knowledge to inform the development of future frameworks for commercial-scale projects. CKSPFN looks forward to your continued treaty partnership as we move forward together.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Richardson', with a long horizontal flourish extending to the right.

Don Richardson, Consultation Advisor

Southwind Development Corporation Inc., is a wholly owned subsidiary of the Chippewas of Kettle and Stony Point First Nation