



March 31, 2022

**TO: All Natural Gas Distributors  
All Natural Gas Transmitters  
All Natural Gas Storage Companies  
All Participants in EB-2020-0091, EB-2021-0002, EB-2022-0081  
All Other Interested Stakeholders**

**RE: Release of the new Natural Gas Facilities Handbook  
Ontario Energy Board: EB-2022-0081**

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Today the Ontario Energy Board (OEB) is releasing its Natural Gas Facilities Handbook (Handbook). The Handbook brings together the legislative and policy frameworks applicable to different types of applications that regularly come before the OEB for natural gas facilities approvals, including filing requirements based on OEB practice. Release of the Handbook is an important milestone on the OEB's path to modernization and will enhance the timeliness and efficiency of the OEB's processes.

This initial iteration of the Handbook is not intended to create significant new policy or impose new requirements for applicants or other persons that participate or have an interest in OEB proceedings. The Handbook will be a living document, with updates made over time as needed.

## **Background**

The Handbook provides guidance to applicants and others that have an interest in the following application types:

1. Under the *Municipal Franchises Act*
  - a. Section 8, Certificate of Public Convenience and Necessity Applications
  - b. Sections 9 and 10, Municipal Franchise Agreement Applications
2. Under the *Ontario Energy Board Act, 1998*
  - a. Section 38, Designated Storage Area Applications
  - b. Section 40, Well Drilling Licence Application Referrals
  - c. Sections 90 and 91, Leave to Construct Applications

- d. Section 95, Applications for Exemption from Leave to Construct
- e. Section 99, Expropriation Applications related to Leave to Construct Approvals

As noted above, the Handbook largely reflects current OEB practices and requirements that have developed over time on the different application types covered by the Handbook. Within that scope, and to ensure clarity and accuracy, the OEB invited a representative group of stakeholders to comment on a draft of the Handbook; specifically, Enbridge Gas Inc., EPCOR Natural Gas Limited Partnership; the Chiefs of Ontario, the Association of Municipalities of Ontario; the School Energy Coalition, the Federation of Rental-Housing Providers of Ontario, and Environmental Defence.

The OEB extends its thanks for the comments that were provided, which were very helpful in finalizing the Handbook. The OEB has chosen not to make some of the proposed changes at this time, where for example they went beyond the scope of the Handbook or would have created new practices or requirements beyond those that are in place today. The OEB will remain mindful of these proposals as the Handbook evolves.

The OEB provides additional detail below regarding two important issues that were raised in the comments; namely, the legal rights and interests of Indigenous peoples and climate change concerns.

### **Indigenous Rights and Interests**

The rights and interests of Indigenous peoples was a focus of comments received from the Chiefs of Ontario (COO). In particular, COO recommended that the Handbook: (i) reflect the law of Canada in respect of free, prior and informed consent of Indigenous peoples for developments on their lands in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Canada's UNDRIP Act; and (ii) include a much more robust description of the Duty to Consult and Accommodate in keeping with the current state of Canadian law.

The OEB's current practices are largely set out in the OEB's *Environmental Guidelines for Hydrocarbon Pipelines and Facilities in Ontario* (Environmental Guidelines), which were last updated in 2016. The OEB expects applicants to be proactive. At the outset of project planning, they should begin consultation with Indigenous communities whose constitutionally protected rights may be affected to ensure an opportunity for meaningful consultation.

While the OEB's practices remain consistent with the law in Ontario, we have initiated an internal review of the Environmental Guidelines to assess whether and how

improvements and updates should be reflected. The OEB needs to engage the Ministry of Energy early in this review given its significant role in relation to consultation with Indigenous communities, and is committed to seeking input from representatives of Indigenous peoples and other interested parties on any proposed updates to the Environmental Guidelines. While the OEB has made revisions to the Handbook that are responsive to some of COO's comments, more substantive changes are therefore not being made at this time.

The OEB also takes this opportunity to highlight that nothing in the Environmental Guidelines limits the evidence or submissions that Indigenous peoples can bring forward in individual natural gas facilities proceedings that may affect their rights or interests. The OEB will continue to be assisted by the participation of Indigenous peoples in our proceedings. Indigenous peoples and their representatives are encouraged to participate in any proceedings that may impact their rights or interests and to make their views known to the OEB. The OEB provides cost awards so that funding is not a barrier to participation.

### **Climate Change**

A common theme in the comments, in particular those provided by COO, the School Energy Coalition and Environmental Defence, is the need to address climate change. Some of these comments recognize this as an area that may require legislative change.

The Handbook reflects work that the OEB is already doing on this front, most notably in relation to Integrated Resource Planning, and the OEB has made refinements to the text in response to comments received. As work in this area evolves, any relevant changes to legislation or OEB policies will be reflected in future versions of the Handbook.

The OEB looks forward to working with applicants, representatives of Indigenous peoples, consumer groups and others as we work to further improve the efficiency and effectiveness of our adjudication. Any questions related to the Handbook should be directed to [Registrar@oeb.ca](mailto:Registrar@oeb.ca). The OEB's toll-free number is 1-888-632-6273.

Yours truly

Nancy Marconi  
Registrar

Encl.