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**CCNB Action Response to
“Responsible Environmental Development of the oil and gas activity in New Brunswick:
The Rules for Industry”**

February 20, 2013

On Friday, February 15th, Minister of Energy and Mines, Craig Leonard, and Minister of Environment and Local Government, Bruce Fitch, released “The Rules for Industry” in the “responsible environmental development of oil and gas activity in New Brunswick.”¹

We wish to outline our major concerns about this document and the direction the provincial government is taking in guiding the industry’s development:

- We have an ongoing concern regarding the way in which a democratic consultation process appears to have been “staged” to further a pre-established political agenda. We believe that developing a set of rules for the industry to follow is premature given that the government has not been given the social license to move forward. The majority of people participating in the 8 community meetings hosted by Dr. Louis LaPierre, a government appointed consultant, voiced strong opposition to the industry all together. Dr. LaPierre reported back to the province with a set of recommendations that did not reflect what was said at the public ‘consultations’. Dr. LaPierre was rewarded for giving the province the mandate to move forward with an appointment to Chair an Energy Institute, which he recommended. He also proposed that the Environmental Trust Fund (ETF), a fund that plays a key role in New Brunswick to protect, preserve and enhance the Province’s natural environment, be a source of the Institute’s \$2 million annual budget. Allocating these funds to the Energy Institute seems to be, at best, a blatant departure from the mandate of the ETF.
- Since 2010, we have outlined the inherent risks with this industry and we are convinced that it cannot be appropriately regulated by any government. For example, industry’s own data shows that newly drilled wells leak at a rate of 5-7% and deteriorate to 50% over the next 30 years. The unsustainable use of freshwater resources that this industry thrives on, the inability to deal effectively with toxic wastewater, the industrialization of the land with pads, wells, trucks, pipelines, and compressor stations, and our current climate crisis, to which the shale gas industry will only add an additional burden let alone do nothing to help solve, are facts that the government has not laid out in front of the public.
- The government has been promising the public world-class regulations. What the government has released in “the Rules for Industry” are not regulations; they are conditions that can be attached to permits, Approvals to Operate, or a Determination Certificate from the Environmental Impact Assessment. This difference is very important and may mislead the public into thinking that enforceable guarantees have been put in place. In reality, these conditions are

¹ “The Rules for Industry” can be accessed at:
<http://www2.gnb.ca/content/dam/gnb/Corporate/pdf/ShaleGas/en/RulesforIndustry.pdf>



flimsy, subject to negotiation between the operator and the government and open to ministerial influence if the operator is not happy with what government tries to impose. These conditions are not attached directly to any legislation under any existing Acts and no existing legislation is proposed to be amended any time soon. Furthermore, existing Approvals to Operate well pads in Penobscis are “Class 4” (with respect to air quality impacts) operations. This means that no requirement for public comment is necessary prior to an Approval to Operate being issued. The public therefore does not have an opportunity to verify the conditions on the proposed activity. These conditions are mostly based on existing ‘best practices’; not necessarily meaning ‘safe practices’ , but just the best we can or are willing to do at this time.

In the recent past, the provincial government has demonstrated its unwillingness to enforce its existing policies and regulations, particularly ones designed to protect water and air. In the last two years we have seen ministerial interference dismantle one of the most progressive wetland conservation policies in Canada. Currently the Department of Environment is contravening its own legislation in the Clean Water Act by allowing unregulated development of at least 50% of the province’s wetlands. We also know that the province is not willing to implement its own Watershed Classification Program that would create enforceable water quality standards for some of New Brunswick’s most vulnerable rivers. Furthermore, we have learned through an Access to Information request that there is currently no ground-level air quality monitoring station or air quality reporting on an hourly or daily basis around existing gas well infrastructure in Penobscis. This situation is particularly alarming as residents are living in close vicinity of the gas well infrastructure, and as the absence of monitoring is contravening a requirement of the Clean Air Act.

- Our concerns about the impacts of the shale gas industry to the environment and our communities are echoed by the increasing global evidence that the economic feasibility and long-term sustainability of the shale gas industry is more bust than boom. Financial analysts show us, using industry data, that gas reserves worldwide are chronically overestimated and under produce. The hype that we have seen globally, and locally, is a necessary step for the industry to attract investors to cover large capital costs of drilling many wells in small gas-bearing formations to compensate for quickly depleting production. This over drilling causes a gas glut, which depresses prices. Eventually a company can only sell below costs for a limited time. The industry around the world is currently surviving by selling assets, such as land, leasing rights and equipment or merging with larger firms with deeper pockets, in hopes of seeing the prices rise in the future. . The real winners in this process are the investment banks, which vigorously promoted shale investment, even when prices were going down. Banks then made money by handling the resulting mergers, acquisitions, borrowing and other financial transactions of an industry in trouble. This may suspiciously sound like the recent housing bubble. . It is unwise and irresponsible to bet the future of New Brunswick’s economy on one industry, especially one as volatile and destructive as shale gas.



Knowing all of the above, we believe that it is environmentally and economically irresponsible to move forward with shale gas development in New Brunswick. The following comments on some of the large gaps in “The Rules for Industry”, however, help to illustrate why the industry cannot be regulated to an acceptable level of risk:

- According to the draft discussion on “The Rules”, the responsibility for ‘burden of proof’ for issues arising between industry and landowners was to be placed on industry. However, this was revoked because industry lobbied to have that condition removed. The government claims that they will intervene on behalf of landowners with complaints. This creates a conflict of interest. On one hand, the government will be actively facilitating the expansion of the industry to pursue increased royalties, while on the other hand it will play judge and jury on behalf of landowners and communities. We already know from the Penobsquis experience that the government was unwilling to assist the residents in their complaints to the Mining Commissioner, about water loss and ground subsidence issues from Potash mining. In fact, many government staff who were called as witnesses were unable to inform the situation or offer any data or expertise that would help make a case for affected citizens.
- “The Rules” claim that the fracking fluid chemicals must be disclosed; however there are still exemptions for additives considered by the company to be trade secrets. These exemptions may be overridden, but only after an incident and only to ‘necessary professionals’ such as doctors or emergency responders. Other jurisdictions that have adopted frack fluid disclosure rules have also allowed for proprietary exemptions (e.g. Wyoming and Arkansas). Combine this with the fact that pre-drilling water testing does not include testing for chemicals added to the fracture fluid, this still leaves landowners left without being able to prove causation to the drilling activities and their contaminated water. This is why there are so many unresolved water complaint issues in other jurisdictions – landowners cannot prove what they found in their water wasn’t there before.
- “The Rules” identify a setback of 250m of gas wells to water sources. We know from peer-reviewed scientific studies that water wells within 1km of gas wells are highly likely to suffer from methane contamination. Furthermore, the government’s mechanism for dealing with a contaminated well is triggered when “a water supply located within 500m of the well pad of the operator’s oil or gas well has been diminished in quality after well pad construction and prior to abandonment of the oil or gas well.” The 250m setback “rule” is thus an arbitrary number, not corresponding to scientific or administrative evidence. The 250m setback is half the distance established by science. Furthermore, the government’s protection doesn’t cover anything after a well is abandoned, even though substantial contaminants remain under ground over time.
- The setbacks from human populations in the form of schools and nursing homes (500m), dwellings (250m) and outdoor public concourses (250m) are also arbitrary given that the only



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long-term public health study done to date has found seriously increased risks for cancer and other diseases for those living within almost 1km of drilling operations (not determined to be the safety limit but the limit of study).

- Shale gas has been shown in the scientific literature to be a climate change accelerant, on par or even exceeding that of coal and oil. While the NB government moves ahead to establish a framework for the shale gas industry, it has lagged in its commitment to developing and implementing the next phase of our own Climate Change Action Plan, which expired in 2012. The province is leaving the regulation of the GHG emissions from the industry to the federal government. Canadians have been waiting for the federal government to institute these regulations since at least 2006 while at the same time aggressively promoting the expansion of Canada's Energy sector, including Alberta's tar sands and cross-country pipelines. Also, David Alward's Energy Blueprint, released in October 2011 recommitted to a 10% decrease in GHG emissions below 1990 levels by 2020. We fail to see how this commitment can be taken seriously given the simultaneous facilitation of shale gas industry.
- "The Rules" do not require any incorporation of responsibility to address Dr. Cleary's, New Brunswick's Chief Medical Officer of Health, recommendations for baseline monitoring or reporting as conditions in the proponent's Approval to Operate. Furthermore, there is a lack of coordination of these rules with the known public health risks and those yet to be even understood, also as identified by the Cleary Report. This begs the question of how the government can come up with arbitrary numbers for setbacks and allowable emissions, etc, without knowing their public health impacts.
- Finally, "The Rules" do not devolve any formal authority to communities (i.e. municipalities, planning districts or regional service districts, etc.) to make local decisions on if yes, no, where, when, how, pace, and scale of shale gas exploration or development. A Bill was introduced in the New Brunswick Legislature in 2012 that proposed to allow communities to vote on this issue, however, this legislation 'died' on the legislature floor (time ran out in the legislative session for the third reading).

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