

Ministers' Reasons for Decision

Vopak Pacific Canada Project

Proposed by Vopak Development Canada Inc.

On April 20, 2022, pursuant to Section 17(3)(c) of the *Environmental Assessment Act* (2002), we, the Minister of Environment and Climate Change Strategy and the Minister of Energy, Mines and Low Carbon Innovation, issued an Environmental Assessment Certificate/ordered that further assessment be conducted for the Vopak Pacific Canada (VPC) Project. These are the reasons for our decision.



1.0 NATURE AND SCOPE OF DECISION

The environmental assessment (EA) of the Vopak Pacific Canada (VPC) Project began on July 26, 2018 and included the establishment of an advisory working group (Working Group), consultation and collaboration with Indigenous nations and engagement with the public. Vopak Development Canada Inc.'s (Vopak) VPC Project includes the construction, operation and decommissioning of a new bulk liquids storage facility, including an offshore jetty, that would store liquefied petroleum gas (such as propane), light diesel and/or gasoline, and methanol on behalf of Vopak's customers.

The VPC Project is proposed to be located on Ridley Island, British Columbia (B.C.), on lands and waters under jurisdiction of the Prince Rupert Port Authority (PRPA). The VPC Project is intended to provide berthing and loading facilities for bulk liquid cargo that would be received via the existing rail loop on Ridley Island. Products would be transported from various locations across Western Canada to the VPC Project site via the existing Canadian National Railway system. While customers are ultimately driven by market demands, Vopak's customers currently intend to ship the products to markets in Asia and Latin America.

On September 22, 2021, the Environmental Assessment Office (the EAO) referred the Application for an EA Certificate (Application) to us for a decision. Section 17(3) of the *Environmental Assessment Act* (2002) (the Act) requires that we consider the EAO's Assessment Report, and any recommendations accompanying the Assessment Report and may also consider any other matters relevant to the public interest in making our decision on an Application. We must decide whether to issue an environmental assessment certificate (EAC) with any conditions we consider necessary, to refuse to issue an EAC, or to order that further assessment be carried out.

The 2002 version of the Act applies to the VPC Project, rather than the *Environmental Assessment Act* (2018), because Vopak provided notice under section 78(6) of the 2018 Act that it wished to continue the assessment of the VPC Project under the 2002 Act.

We have considered the documents provided by the EAO, including the Assessment Report and Summary Assessment Report, the Recommendations of the Chief Executive Assessment Officer (CEAO), the draft Certified Project Description and EAC conditions, submissions from Indigenous nations received prior to and post-referral, meetings with Indigenous nations post-referral, and submissions from environmental non-governmental organizations received post-referral.

The VPC Project is also subject to a federal review under section 67 of the *Canadian Environmental Assessment Act, 2012* (CEAA, 2012) ("Section 67 Determination"), and section 82 of the federal *Impact Assessment Act* (IAA) ("Section 82 Determination"; collectively "Federal Determinations"). We have also considered these ongoing federal reviews including mitigations that have been proposed. We have taken into account that the VPC Project will be developed on federal land, under the jurisdiction of the PRPA, and that the project cannot proceed without federal approval – that is, without positive Federal Determinations. We have also considered areas where the federal government generally takes the lead

when it comes to addressing issues given its legislative authority – that is, areas of primary federal jurisdiction and have focused our decision and EAC conditions on matters of provincial jurisdiction.

2.0 CONSIDERATIONS

2.1 EAO'S ASSESSMENT

The EAO reviewed Vopak's Application, Working Group and Indigenous nation review comments and Vopak's supplementary information and other analyses that were developed during the Application Review process. Upon review and analysis of these materials, the EAO provided its detailed findings in the Assessment Report and summarized these findings in the Summary Assessment Report. As described in the Assessment Report and Summary Assessment Report, the EAO worked closely with Indigenous nations and the Working Group, including provincial and federal agencies and local governments to identify issues and seek ways to address these issues and concerns, including by proposing 10 EAC conditions for our consideration.

As noted by the federal authorities overseeing the Federal Determinations, the VPC Project is not a designated activity as defined in Regulations Designating Physical Activities under CEAA, 2012. Since the VPC Project is proposed to be constructed and operated on federal lands and was proposed prior to the introduction of the IAA in 2019, an environmental effects determination under Section 67 of CEAA 2012 is required. A determination is also required under Section 82 of the IAA by Environment and Climate Change Canada (ECCC) as the project requires a permit related to the *Species at Risk Act*.

In the Assessment Report the EAO outlined the coordination process that took place throughout the EA, involving federal authorities and provincial regulators. This helped to assess effects and to develop mitigations, having regard to federal and provincial jurisdiction and legislative tools.

The EAO developed a proposed EAC Table of Conditions and project design requirements set out in the proposed Certified Project Description to prevent or reduce potential adverse environmental, economic, social, heritage or health effects from the VPC Project, such that no significant adverse effects are expected in relation to areas under provincial jurisdiction. We concur with the EAO's conclusion in this regard. As noted above, the EAO worked in close coordination with federal authorities to propose mitigations.

2.2 RECOMMENDATIONS OF THE CHIEF EXECUTIVE ASSESSMENT OFFICER

The CEO of the EAO considered the EAO's Assessment Report, Summary Assessment Report, the proposed EAC conditions and the project design requirements set out in the proposed EAC. The CEO has recommended that an EAC be issued for the VPC Project.

Throughout the EA, the EAO consulted with Gitga'at First Nation (Gitga'at), Gitxaala Nation (Gitxaala), Kitselas First Nation (Kitselas), Kitsumkalum First Nation (Kitsumkalum), Lax Kw'alaams Band (Lax Kw'alaams) and Metlakatla First Nation (Metlakatla). The CEO advised that the collaborative

engagement and consensus seeking efforts with Gitga'at, Gitxaala, Kitselas, Kitsumkalum, Lax Kw'alaams, and Metlakatla has been carried out in good faith and the Crown's process of seeking to understand potentially outstanding issues and impacts was reasonable. Upon their individual requests, the EAO engaged with the Office of the Wet'suwet'en (OW) and two Gitxsan Wilps (Wilp Gwininitxw and Wilp Luutkudziiwus).

The CEAO also considered concerns expressed by the Indigenous nations regarding the scale of provincial oversight on the VPC Project and was of the view that the proposed EAC conditions address the anticipated potential VPC Project effects in respect of provincial interests. The CEAO noted that many of the concerns raised by Indigenous nations fall in areas primarily under federal jurisdiction. She also noted that the requirements included in the federal Section 67 Determination would be enforced by PRPA and relevant federal authorities. While this list is expansive and contained in Appendix B *Summary Table of Mitigation Measures* of the draft federal Section 67 Determination Rationale that was shared with the EAO and Indigenous nations, some specific examples of federally-managed mitigations include: schedule in-water works to occur during Fisheries and Oceans Canada-approved least-risk windows; the requirement for Vopak to develop and implement management plans, including a Spill Prevention and Emergency Response Management Plan, Petrochemical Storage and Handling Plan, Marine Water Quality and Sediment Quality Management Plan, Marine Underwater Noise and Vibration Management Plan, Air Quality and Dust Control Management Plan, Energy Management Plan, Marine Access and Vessel Communication Plan, Archaeological Resources Management Plan, and Construction and Operation Environmental Management Plans, including requirements for post-construction reporting on the implementation and efficacy of mitigation measures applied; use of subsurface buoys in the multi-buoy mooring system; development of construction activity specific stop work protocols; and prevention of vessels from operating in shallow water to avoid grounding on the seabed.

The CEAO advised that she was satisfied that with the application of the proposed EAC conditions, as well as the proposed federal requirements included in the draft Section 67 Determination Rationale, that the potential effects on the asserted or established Indigenous rights, including title (collectively the "Indigenous Interests") of Indigenous nations have been avoided, mitigated, or otherwise accommodated to an acceptable level.

We heard directly from some Indigenous nations post referral, through submissions and meetings regarding their outstanding concerns and requests. Our detailed consideration of Indigenous nations' concerns is discussed below in Section 2.3.2. While there are outstanding concerns, given the nature of those concerns and in the context of this particular project, we are of the view that consultation with Indigenous nations has been carried out in good faith and that the process of seeking to understand and address outstanding issues and project effects was reasonable and appropriate in the circumstances of the VPC Project. We are also of the view that the potential for adverse effects on Indigenous Interests of Indigenous nations has been appropriately avoided, minimized or otherwise accommodated to an acceptable level in relation to areas under provincial jurisdiction. We have written to the federal government recommending that Indigenous nations' concerns in areas of primary federal jurisdiction be addressed through its Federal Determinations, and other related actions. In Section 2.3.2 below we discuss our consideration of the ongoing federal reviews in reaching these conclusions.

2.3 KEY CONSIDERATIONS

2.3.1 POTENTIAL ADVERSE ENVIRONMENTAL, ECONOMIC, SOCIAL, HERITAGE AND HEALTH EFFECTS

The EAO examined whether the VPC Project would have adverse environmental, economic, social, heritage or health effects to a wide range of valued components. After considering the proposed conditions for this EAC, as well as the mitigation measures and management plans required by the draft federal Section 67 Determination, the EAO determined that residual adverse effects would be not significant. This section provides a summary of the key issues that, due to their complexity and level of attention given to them by Indigenous nations and the Working Group, became the main focus of the EA, and our conclusions on them.

Accidents and Malfunctions, Flora Bank, Dundas Island and Salmon

Indigenous nations and some members of the public raised concerns during the EA process and in post-referral submissions about the potential effects that the VPC Project could have on Flora Bank, Dundas Island and salmon, especially if a product spill occurred, or generally during marine activities in the construction and operations phases. These submissions requested Vopak to provide its Quantitative Risk Assessment (QRA) and for a third-party review of Vopak's spill modelling data. Flora Bank is a bio-diverse region that supports salmon populations and other marine life. Dundas Island is north of the VPC Project and associated shipping route.

The EAO requested additional information from Vopak regarding accidents and malfunctions risk during Application review to complete its assessment. The additional information provided by Vopak assessed the probability of spills, including the probability of spills migrating to Flora Bank and Dundas Island, and the effects to marine and human health and salmon based on potential accidents and malfunctions scenarios and using data from the QRA.¹ The EAO's Assessment Report outlined the regulatory regime in place, and the party responsible for responding to each of the scenarios assessed. The Working Group reviewed the additional information provided by Vopak and later the EAO's Assessment Report, providing technical review and feedback on the EAO's assessment of effects from accidents and malfunctions.

In Section 2.2 of these reasons, we discuss the federal government and authorities' role in response plan development, review, and execution, the management plan requirements related to the marine environment in the draft determination that followed the review of Section 67 of CEAA, 2012, and other mitigations included in the draft Federal Determinations.

We understand that there are also design elements for the VPC Project that are in place to reduce the likelihood of a spill, including navigational guidance through shallow shipping areas under the direction of the B.C. Pilotage Authority.

¹ Vopak did not provide the QRA to the EAO or Indigenous nations due to concerns regarding commercial sensitivity. The PRPA received the QRA as the federal land manager for the VPC Project.

The EAO determined there would likely be significant adverse human and environmental effects, should a worst-case scenario involving large spills of liquid petroleum products into the marine environment occur. The EAO also concluded that such a spill would be highly unlikely. We agree with the EAO's conclusions. We note that the federal authorities, as regulators of the marine environment, require management plans as well as other requirements listed above in respect of the Federal Determinations to address these effects, and future studies have been suggested for Vopak to undertake as part of the planning process.

We also note that the EAO's Assessment Report includes outstanding concerns identified by Indigenous nations regarding risks in the marine environment, many of which were relayed to us directly from Indigenous nations post-referral, which we describe further in Section 2.3.2 of these reasons. Specifically, we have heard from Indigenous nations that they have a lack of confidence in the federal mitigations and management plans, and they have asked us to delay issuing the EAC until such a time as greater certainty exists. Given Vopak's commitments to engaging Indigenous nations on the development of management plans, federal mitigations and management plans proposed, and existing and future federal regulatory requirements to manage potential accidents and malfunctions in respect of the VPC Project, we are raising Indigenous nations' concerns in this regard to the federal government, urging it to consider these issues in the Federal Determinations, or any other appropriate instrument.

Greenhouse Gas Emissions

The EAO assessed greenhouse gas (GHG) emissions from the VPC Project as part of the EA. GHG emissions were assessed to be of low magnitude, with annual emissions about 0.14% of B.C.'s total 2017 emissions, and not significant, having regard for provincial and federal programs to reduce total GHG emissions over time.

On October 25, 2021, the Ministry of Environment and Climate Change Strategy announced the Clean BC Roadmap to 2030² policy that sets direction for future legislation to set requirements for projects to meet GHG reduction targets. We were also advised by the CEO that a key federal Section 82 Determination requirement is for Vopak to develop a 'credible Net-Zero GHG 2050 Plan' within two years of receiving ECC's approval. The Federal Determinations also include the requirement for Vopak to develop and implement an Air Quality and Dust Control Management Plan and an Energy Management Plan, as noted above. In addition, Vopak would need to be compliant with any future legislation following the direction set in the Clean BC Roadmap.

To ensure the VPC Project aligns with the direction of the Clean BC Roadmap, following the referral of the application to us for decision, we decided to draft an EAC condition to require Vopak to include an estimation of the projected GHG emissions over the Project's lifetime and include a consideration of emission reduction targets and schedules as set out in relevant Provincial statutes and supporting policies (GHG Emissions Reduction Plan). We asked the EAO to engage with Indigenous nations and Vopak on the draft condition. Vopak did not have any comments on the draft condition. Indigenous nations provided detailed feedback on the draft condition. In response to feedback received from Indigenous nations, we

² [CleanBC Roadmap to 2030 \(gov.bc.ca\)](https://www2.gov.bc.ca/gov2/cleanbc/cleanbc-roadmap-to-2030)

made changes to the draft GHG Emissions Reduction Plan condition that the EAO engaged Vopak on.

We are satisfied that the existing and future regulatory requirements, including through the requirements listed above of the Federal Determinations and future provincial requirements, and the Greenhouse Gas Emissions Reduction Plan EAC condition, will effectively manage GHG emissions from the VPC Project.

Rail Traffic Beyond Scope of the VPC Project

Rail traffic associated with the VPC Project beyond the Port of Prince Rupert was not scoped into the provincial EA as Transport Canada is the lead regulator of interprovincial rail transportation in B.C. and Canada. Although increased rail traffic was not part of the EA, for our information the EAO's Assessment Report includes outstanding concerns identified by Indigenous nations regarding rail transportation, many of which were relayed to us directly from Indigenous nations post-referral, which we describe further in Section 2.3.2 of these Reasons.

We understand that as a result of the rail concerns raised by Indigenous nations and the public with respect to the scoping of the provincial EA with respect to VPC Project rail traffic, Indigenous nations, Transport Canada, PRPA, and Canadian National Railway have initiated a four-party rail dialogue forum to discuss the rail regulatory framework, share information, and consider appropriate avenues for Indigenous engagement on rail transportation matters. As described further in Section 3.0 of these Reasons, we have written to the federal government strongly urging them to meaningfully address the outstanding issues through the rail dialogue forum, and any other related actions.

Community Services and Infrastructure

The EA identified residual effects to community services and infrastructure, including Northern Health's service capacity. The EAO has proposed Condition 10 (Socio-Economic) requiring Vopak to provide socio-economic engagement summary reports to Indigenous nations and the EAO regarding Vopak's engagement through the Community Services and Infrastructure Committee. This committee will consider matters related to economic conditions, community services and infrastructure, health and medical services, and community well-being. The reports of the committee will be submitted to Indigenous nations (for comment/input) and to the EAO for each year during which construction is taking place, and for two years into operations. The EAO may adjust or extend this reporting requirement as needed to manage effects.

We agree with the EAO's conclusions that the VPC Project would not have significant adverse residual effects on community services and infrastructure, and we are satisfied that the EAC conditions will effectively manage project effects in this regard.

Marine Use and Navigation

The EA identified residual effects to commercial, recreational and Indigenous marine use and navigation due to reduced access to marine travel routes and marine resources due to increased shipping traffic and access changes resulting from the VPC Project during construction, operation and decommissioning. We

also heard directly from Indigenous nations post-referral regarding effects to Indigenous Interests related to marine use and navigation.

We understand that the EAO considered the current state of the environment, which includes the effects of past and present projects or activities. These factors were considered when determining overall levels of impact of the VPC Project. Where the cumulative effects of past and present projects or activities have negatively affected conditions today compared to those conditions required for the meaningful practice of an Indigenous right, the EAO's conclusion on effects from a current project on that right is generally more serious. To address these concerns, the EAO recommended to us condition 9 (Cumulative Effects Management) requiring Vopak to participate in regional cumulative effects initiatives, if requested by the EAO. We also understand that the draft Section 67 Determination includes the requirement for Vopak to develop and implement a Marine Access and Vessel Communication Plan.

Given the federal government jurisdiction with respect to the marine environment, we are raising Indigenous nations' concerns regarding marine use and navigation to the federal government, urging it to consider these issues through the Federal Determinations, or any other appropriate instrument.

We are satisfied that the EAC conditions are appropriate in the context of the VPC Project, in respect of provincial jurisdiction.

2.3.2 EFFECTS TO INDIGENOUS INTERESTS, INDIGENOUS ENGAGEMENT AND ACCOMMODATION

The EAO collaborated on the EA and sought consensus with Gitga'at, Gitxaala, Kitselas, Kitsumkalum, Lax Kw'alaams and Metlakatla. The six Indigenous nations participated in the Working Group, were provided opportunities to develop workplans, review and comment on Vopak's Application and supplemental information, participate in specific topic discussions with Vopak, the Province and the federal authorities, discuss process, timelines and issues of concern, and collaborate with the EAO on its draft decision materials. Gitxaala, Kitselas, Lax Kw'alaams and Metlakatla drafted their own assessments of potential project effects on their Indigenous Interests, contained in the EAO's Assessment Report; Kitsumkalum and Gitga'at co-drafted their sections with the EAO.

As part of the EA, the EAO also engaged with the Office of the Wet'suwet'en (OW) who provided a submission during a public comment period and two Gitxsan Wilps (Gwininitxw and Luutkudziiwus) who reached out to the EAO during the EA regarding the effects of marine or rail accidents and/or spills to fisheries (particularly salmon) and communities. In response to a letter from the two Gitxsan Wilps, the EAO held virtual meetings directly with them and provided the opportunity to comment on the draft Assessment Report. The EAO also provided supplementary information that was specific to their concerns and offered to facilitate introductions between these two Gitxsan Wilps with Vopak and the PRPA.

We note that Gitga'at, Kitsumkalum, Lax Kw'alaams, Metlakatla and the two Gitxsan Wilps identified outstanding issues at the conclusion of the EA and post-referral to us through letters and meetings.

Gitga'at asserted its opposition to the VPC Project in a letter to the EAO on August 25, 2021 and subsequently in letters to us on October 6, 2021 and March 7, 2022 and during a meeting with us on February 16, 2022. Gitga'at provided its view that consultation has not been sufficiently completed to warrant a decision being made to issue an EAC for the VPC Project. Gitga'at stated that meaningful discussions with the Province or Vopak have not occurred about what accommodation measures could be put in place to secure Gitga'at's consent on the VPC Project. Gitga'at's October 6, 2021 letter identified the following outstanding issues: Vopak's failure to disclose its QRA and request for an independent expert review of the QRA; the EAO's consideration of cumulative effects to Gitga'at interests; the EAO's assessment conclusions on VPC Project effects to Gitga'at's interests; inadequate mitigation and response measures; inadequate assessment of VPC Project health effects to disaggregated Indigenous populations; risks related to air quality, navigation and rail safety; and risks and impacts from accidents and malfunctions.

The EAO provided its view that Gitga'at has been provided with extensive opportunities to engage directly with the EAO and Vopak throughout the EA on any key identified issues and proposed mitigation measures during biweekly calls, Application review and comment periods, and through co-drafting of Gitga'at's Part C Chapter of the EAO's Assessment Report. This engagement provided opportunities for Gitga'at to raise issues regarding assessment methods, information requirements, mitigation measures and assessment conclusions including in relation to the assessment of health effects, risks related to air quality, navigation, accidents and malfunctions and cumulative effects. In response to Gitga'at's August 25, 2021 letter, the EAO encouraged Gitga'at and Vopak to continue to work together to resolve issues outside of the EA process.

As described above, Vopak did not provide the QRA to the EAO or Indigenous nations but did draw upon the QRA to provide additional information upon the EAO's request. The Working Group provided technical review and feedback on Vopak's additional information and the EAO's assessment of effects from accidents and malfunctions. As we noted above, the draft Section 67 Determination includes requirements for Vopak to: prevent vessels from operating in shallow water or grounding upon the seabed; and develop and implement a Spill Prevention and Emergency Response Management Plan, a Petrochemical Storage and Handling Plan and a Marine Access and Vessel Communication Plan.

Gitga'at's March 7, 2022 letter urged us to require additional EAC conditions requiring Vopak to: negotiate an impact benefit agreement with Gitga'at; commit to information sharing and engagement with Gitga'at throughout the life of the VPC Project; and identify mitigation measures to address impacts to Gitga'at's interests.

We do not agree that these conditions are necessary. Impact benefit agreements are negotiated between proponents and Indigenous nations outside of the EA process, often following EAC decisions, and the EAO or Ministers are typically not privy to the details of such agreements. Impact benefit agreements are also influenced by a variety of factors outside the control of the provincial government. As such, it would not be appropriate for us to require Vopak to negotiate an agreement with Gitga'at through an EAC condition.

As described in section 21.2.2 of the EAO's Assessment Report, we note that Vopak has committed to engaging Indigenous nations including Gitga'at on the development of management plans including monitoring and reporting, and adaptive management, as described in Vopak's Engagement Process Memo. We encourage Vopak to meet its engagement commitments with Indigenous nations throughout the life of the VPC Project. We have also written to the federal government, noting Gitga'at's requests for continued Indigenous engagement in the development, approval and implementation of management plans and information sharing throughout the life of the VPC Project and have recommended that these requests be addressed through their Federal Determinations and other related actions. Therefore, we are of the view that Vopak engagement with Gitga'at throughout the life of the VPC Project should be addressed by Vopak and the federal government.

Lastly, we note that section 22 of the EAO's Assessment Report identified mitigation measures for project effects to Gitga'at's interests including those contained in the draft federal Section 67 Determination Rationale. We acknowledge Gitga'at's view that the mitigation measures identified in the EA rely on additional assessment, monitoring and adaptive management and are therefore not satisfactory to Gitga'at. As described above, we have written to the federal government recommending that Indigenous nations' concerns regarding mitigations be addressed through their Federal Determinations, and other related actions. We understand that federal authorities are undertaking further review of these mitigations that may result in additional mitigations that may further address outstanding concerns raised by Indigenous nations, or a strengthening of those mitigations that have been proposed. We have concluded that the measures identified in the EAC are appropriate to avoid, mitigate, or otherwise accommodate the potential project effects on Indigenous Interests to an acceptable level in relation to provincial jurisdiction.

We met with Kitsumkalum on February 25, 2022 and Kitsumksalum followed up with a letter on February 28, 2022. Kitsumkalum shared with us their concerns regarding the impacts of a potential major spill along the shipping route and impacts to Kitsumkalum's Indigenous Interests associated with the marine environment, as well as concerns regarding risks associated with rail transportation. Kitsumkalum communicated its lack of consent to the VPC Project and we appreciated understanding this from Kitsumkalum. Kitsumkalum requested that we delay our decision on the VPC Project until Kitsumkalum's outstanding concerns have been addressed.

Through their submission on October 29, 2021 and in a meeting on February 25, 2022, Lax Kw'alaams expressed their outstanding concerns regarding the EA of the VPC Project. Lax Kw'alaams provided notice of its lack of consent to the project, noting a lack of assessment of impacts, effects, and risks from marine shipping, including potential accidents and malfunctions from shipping on fish habitat, proposed marine protected areas, and existing parks and conservancies. Lax Kw'alaams also requested a specific study of the sediment and specific potential impacts to Flora Bank, as well as an independent risk assessment for the project. We appreciate Lax Kw'alaams providing clarity regarding its lack of consent to the VPC Project.

Metlakatla submitted a letter to us on October 6, 2021 outlining their outstanding concerns with the VPC Project including terrestrial effects resulting in effects to Metlakatla's Indigenous Interests, including from cumulative effects. We also met with Metlakatla on March 4, 2022. Concerns regarding irreversible

impacts to members, need for more time to engage with the proponent, and a lack of confidence in the federal government's engagement on management plans were raised. Metlakatla provided notice of its lack of consent to the project due to the lack of accommodation including an impact benefit agreement with Vopak. We appreciate Metlakatla providing clarity on its position with respect to the issuance of the EAC and also understand that Vopak has committed to continue engaging Metlakatla regarding an impact benefit agreement.

Wilp Gwininitxw and Wilp Luutkudziiwus submitted a letter to us on September 14, 2021, reiterating their concerns regarding impacts to their fisheries (particularly salmon) and communities resulting from increased rail activities and marine shipping, including accidents, incidents and malfunctions. We also met with Wilp Gwininitxw and Wilp Luutkudziiwus on February 18, 2022. Concerns were raised to us regarding the risks to salmon populations from a rail accident or spill and Gitxsan's lack of involvement in the EA, among others. These two Gitxsan Wilps also assert that the EAO has refused to consult with them regarding the VPC Project. As noted above, the EAO has engaged the two Wilps to better understand their concerns. Based on the EAO's assessment and advice from federal and provincial agencies, the EAO concluded it has met its consultation obligations to Wilp Gwininitxw and Wilp Luutkudziiwus.

Given the Indigenous nations' outstanding concerns described above primarily relate to matters best addressed by the federal government due to its powers over navigation, shipping, fisheries, and interprovincial rail transportation, we have conveyed these concerns to it, recommending that Indigenous nations' concerns regarding marine and rail be addressed through the Federal Determinations and other related actions.

The CEAO considered the mitigations proposed by Vopak and proposed to be conditioned by the EAO and the three federal authorities through the Federal Determinations. Those mitigations and management plans proposed will allow Gitga'at, Gitxaala, Kitselas, Kitsumkalum, Lax Kw'alaams and Metlakatla to continue to provide input to the development of detailed management planning, to propose adaptive mitigations and to receive regular engagement opportunities and reporting from Vopak for the life of the VPC Project. The OW did not engage the EAO beyond a public comment period submission, and Wilp Gwininitxw and Wilp Luutkudziiwus have been invited to engage with Vopak and the PRPA should they see value in an ongoing dialogue.

The CEAO also advised that she was satisfied that with the application of the proposed EAC conditions, as well as the proposed federal requirements included in the draft federal Section 67 Determination Rationale, the potential effects on Indigenous Interests of Indigenous nations have been avoided, mitigated or otherwise accommodated to an acceptable level. We have considered the concerns raised in the decision materials and the submissions, information provided by Indigenous nations, including Gitga'at, Kitsumkalum, Lax Kw'alaams, Metlakatla, Wilp Gwininitxw and Wilp Luutkudziiwus in making our decision. We are of the view that consultation with the six Indigenous nations and with the two Wilps for the EA has been carried out in good faith and was reasonable and appropriate in the circumstances of the VPC Project.

It is our understanding that the EAO engaged collaboratively and deeply with the Indigenous nations throughout the Vopak EA to understand the nations' Indigenous Interests, ways to address and mitigate

effects, and incorporate the nations' views in the Assessment Report. We have read the EAO's Assessment Report which describes the extensive opportunities the EAO offered to Indigenous nations to engage directly with the EAO and Vopak throughout the EA on any key identified issues and proposed mitigation measures during biweekly calls, review and comment periods, and through collaboration during the development of the EAO's Assessment Report in areas related to provincial jurisdiction.

We also understand that Gitga'at, Gitxaala, Kitselas, Kitsumkalum, Lax Kw'alaams and Metlakatla were also members of the EAO's Working Group and participated in Working Group meetings throughout the EA. These meetings provided a forum for technical discussions of Vopak's documents including the Application and supplemental memos, and of the EAO's draft Assessment Report and draft EA certificate including proposed conditions.

We also understand that federal authorities have also responded to the concerns raised by the Indigenous nations, pointing to mitigations in the draft Federal Determinations. We note that federal authorities' consultation with Indigenous nations is ongoing and includes further review of these mitigations. This may result in additional mitigations that may further address outstanding concerns raised by Indigenous nations, or a strengthening of those that have been proposed. There is no indication from federal authorities that the measures that have been proposed will become less stringent if the federal approvals are granted. We also understand Vopak is agreeable to the mitigations that have been proposed. In our view, it is very unlikely that the mitigation measures that have been currently proposed will become less stringent in the event the Federal Determinations are positive.

We understand that although best efforts were made in good faith, Indigenous nations and the EAO did not achieve consensus on aspects of the EA including conclusions regarding potential effects of the project on the Indigenous Interests of Indigenous nations. The EAO has also indicated to us its willingness to meet with Indigenous nations to further explore how the EAO and Indigenous nations can continue to enhance their collaborative engagement in future EAs and how to bring the lessons learned from the Vopak EA into other EAs in the region.

After careful consideration of the outstanding issues identified in the EAO's Assessment Report and raised to us directly through letters and in meetings, and given the nature of the project and outstanding concerns and our understanding of the ongoing federal reviews including mitigations that have been proposed that would, if adopted, address many of the outstanding concerns raised by Indigenous nations as described above, and that the project cannot proceed without federal approval, we conclude that potential effects on Indigenous Interests of Indigenous nations have been avoided, mitigated or otherwise accommodated to an acceptable level in relation to provincial jurisdiction.

2.3.3 PUBLIC CONSULTATION

We are aware of the opportunities for the public to submit comments during the three public comment periods held during the EA, as well as participate in two virtual open houses. Friends of Wild Salmon and T.Buck Suzuki Environmental Foundation wrote to Minister Heyman on October 7, 2021 outlining their concerns regarding spill risk to salmon from the VPC Project and requesting an independent expert review

of Vopak's QRA and asserting that ministers require further assessment of the risk and effects of diesel spills.

As described above, the EAO assessed the effects of accidents and malfunctions including from diesel spills and concluded that in the highly unlikely worst-case scenario involving large spills of liquid petroleum products into the marine environment, the EAO concluded there would likely be significant adverse environmental and human effects. We acknowledge that the existing and future regulatory requirements regarding spills in the marine environment are in areas of primary federal jurisdiction and include the Spill Prevention and Emergency Response Management Plan, Petrochemical Storage and Handling Plan, Marine Access and Vessel Communication Plan and vessel operation restrictions required under the draft Section 67 Determination that can effectively manage project effects.

We note that public comments, and Vopak's and the EAO's responses, were appropriately considered during the EA as reflected in the EAO's Assessment Report and EAC conditions.

2.3.4 PROVINCIAL AND COMMUNITY BENEFITS

We are aware that the VPC Project would provide local, regional and provincial benefits. Vopak provided estimates that total capital expenditures during the construction phase would reach \$885 million. The VPC Project is expected to generate a total of \$178 million in federal and provincial taxes as well as \$16 million in municipal taxes during construction. Vopak estimated that an average of \$29 million would be spent annually during the operations phase. A total of \$100 million in provincial and federal taxes and \$15 million in municipal taxes is expected to be generated during operations.

The VPC Project is estimated to result in an annual 250 full-time-equivalent positions during the two years of construction and 39 during operations.

3.0 ISSUES RAISED TO THE FEDERAL GOVERNMENT

As discussed above, Indigenous nations and others raised concerns with respect to the potential effects of the VPC Project related to the marine environment and increased rail traffic. These concerns were expressed during the EA, in submissions received post referral, and in subsequent meetings we had with Indigenous nations. As we note above, increased rail traffic was not scoped into the EA.

With respect to the marine environment, the federal government generally takes the lead when it comes to addressing issues in that regard. Given its powers over navigation and shipping and fisheries, this is entirely understandable. The province has, where necessary, also addressed those impacts. Notably, we recently added conditions to the Trans Mountain pipeline expansion EAC that relate to the marine environment. However, we do have constitutional limitations on the conditions we can add to an EAC, given the federal powers referred to above. It is also worth noting, as we have said above that the VPC Project will be developed on federal land, under the jurisdiction of the PRPA, and that the project cannot proceed without federal approval – that is, without positive Federal Determinations. In our view, this

means that, while the Act applies to projects on federal land like the VPC Project, it cannot be used to prohibit the development of federal property.

As we have set out above, the Assessment Report demonstrates that potential marine impacts of the project are being addressed in a number of ways by federal government, including through mitigations that are proposed to be included in the Federal Determinations. As described above, these mitigations may be strengthened or added to through the ongoing federal reviews. As we note above, it is not likely, in our view, that these mitigations will become less stringent. Given the federal mitigations that have been proposed, Vopak's concurrence with them, and the potential for additional mitigation measures, in our view the conditions that we have attached to the EAC appropriately address the potential impacts of the VPC Project from the provincial perspective.

However, we will ensure that the federal government is aware of the concerns that have been raised with respect to the marine environment and increased rail traffic so that this valuable input is considered by the appropriate agencies responsible for addressing the concerns. A letter to this effect is being sent at the same time we are releasing these reasons. We will continue to press and work with the federal government to ensure that strong protections that are within its jurisdiction are put in place and enforced.

4.0 CONCLUSION

We have decided to issue an EAC for the VPC Project in order to include conditions and design parameters that the EAC Holder must abide by in the event the VPC Project receives federal approval. These give us the confidence to conclude that the VPC Project will be carried out such that no significant adverse effects are likely to occur with respect to matters of provincial jurisdiction.



Honourable George Heyman
Minister of Environment and Climate Change
Strategy



Honourable Bruce Ralston
Minister of Energy, Mines and Low Carbon
Innovation

signed this 20 day of April, 2022