



**To: City of Richmond  
General Purposes Committee**

**From: VAPOR Society**

**Date: November 17<sup>th</sup>, 2014 -- GPC Meeting, City Hall, Anderson Room - 4PM**

**Re: VAPOR Request for City of Richmond Support for the November 26-27, 2014 Judicial Review in the BC Supreme Court in the matter of -- VAPOR and Otto E. Langer vs. BC AG (representing Ministers Mary Polak, Rich Coleman and BC EAO) and VAFFC .**

VAPOR is a citizens group formed to oppose the transport of jet fuel on the Fraser River and construct an offloading terminal and tank farm immediately upstream of the Richmond Ice Centre, SilverCity Cinemas, Watermania and the large apartment complexes on the north side of the South Arm of the river.

We all agree that this facility is a high risk project to the environment, property and human safety. Jet fuel is highly toxic and flammable and its transport in the Fraser is not acceptable to anyone.

Indeed after VAPOR presentations to Richmond and Delta City Councils they unanimously passed motions opposing any jet fuel transport into the Fraser River.

Before and after approval of the project VAPOR sought legal advice from two different sources. Both legal firms agreed that the public consultation process was not held in a fair and open manner and thus there were good grounds for a legal appeal of a flawed decision making process. We accordingly then engaged the firm of CliffeTobias to challenge the BC Government's approval of this project.

In January VAPOR lawyers met with Mayor Brodie at a fund raising dinner and there was an offer from the Mayor that the City staff would provide VAPOR lawyers with full cooperation in VAPOR's planned legal challenge. In response to an email in June 2014 VAPOR did receive a letter from the Mayor that Richmond would not support VAPOR's case nor any legal costs without a motion to that effect.

After VAPOR filed the case in BC Supreme Court the cooperation from the City seemed to diminish and Mayor Brodie publicly said he had huddled with Richmond City legal staff and determined that the VAPOR case did not have a good chance of winning and the City would not support it. They would only support a certain win in the courts (*see Richmond News attachment*).


We are here today to ask the City to reconsider this position and to re-articulate it so as to not undermine what VAPOR is trying to accomplish for the City and the Citizens of the Lower Fraser River. We ask the City at minimum to acknowledge to the BC Government that what VAPOR is doing is in the public interest and support us in some manner. We feel there is an overarching moral and ethical issue here if we sit back and now allow this terrible precedent to occur in our river. The Fraser River has indeed defined Richmond (Lulu Island) as a natural legacy along with its abundant life. This project approval runs totally contrary to that claim.

**Schedule 1 to the Minutes of the  
General Purposes Committee  
Meeting of Monday, November 17,  
2014.**

**We respectfully request that the General Purposes Committee recommend to City Council that the City:**

1. Indicate in clear terms that they still oppose to jet fuel transport on the Fraser River and note that it does support the intent of the VAPOR / Otto Langer Judicial Review case i.e. to have the Environmental Certificate quashed and force VAFFC to adopt an environmentally friendly and socially safer transport of jet fuel to YVR.
2. Again clearly state that the environmental review process as run by BC EAO and PMV was unfair, not transparent and did not properly consult with the public or address the concerns of the City of Richmond.
3. Rearticulate certain statements made to the press that VAPOR is simply objecting to an issue of principle after our legitimate concerns were overruled by Ministers Polak and Coleman and the BC EAO and PMV. The view stated by Richmond spokesperson(s) diminishes the efforts of VAPOR when Richmond seems to have abandoned this environmental and public safety issue.
4. Appreciate that VAPOR did apply due diligence and did not lightly take this judicial review upon ourselves and a \$50,000 legal bill just to protest a principle. VAPOR is serious about keeping tankers out of the Fraser River and we respectfully ask that the City show the same resolve as the city of Surrey has shown on coal transport on the river and the City of Burnaby on the increased export of bitumen out of that city.
5. Consider that a small contribution of uncommitted monies from the City be granted to VAPOR to cover legal expenses incurred in launching this Judicial Review.

Presented to the General Purposes Committee by Otto Langer (VAPOR President) on behalf of the VAPOR Society.



Attachments:

1. Recent letters of support from Council of Canadians, David Suzuki Foundation, Fraser River Keepers
2. September 16, 2014 article in the Richmond News "Jet fuel opposition 'vaporizes' from within Richmond City Hall".
3. VAPOR Petition to the Courts.

OEL Nov 16, 2014 10PM

## **Jet fuel opposition 'vaporizes' from within Richmond City Hall**

**Residents opposed to jet fuel being moved by tanker on the Fraser River say city councillors and the mayor have abandoned their fight.**

Graeme Wood / Richmond News

September 16, 2014 05:12 PM



Mayor Malcolm Brodie, seen here at Garry Point Park two weeks ago making a final plea against the fuel delivery plan, is highly critical of the province's decision. Photograph By Alan Campbell/Richmond News

Richmond city council and Mayor Malcolm Brodie talk the talk, but don't walk the walk when it comes to their opposition to a planned jet fuel pipeline and terminal and on the Fraser River.

That's according to VAPOR, a grassroots group of residents that is now taking the province to court over the BC Environmental Assessment Office's December decision to conditionally green light the facility, which will be able to

store up to just over 100 million litres of fuel next to the Riverport entertainment and recreation complex in east Richmond.

After years of strongly worded letters and statements to the provincial government on the issue, Brodie told the *Richmond News* the city will not be taking part in any court action now that it's a go.

"In terms of the jet fuel line, we did everything (to oppose it.) We devoted staff resources; we did everything politically and administratively to voice our displeasure with the VAFFC, the airline consortium that was addressing the jet fuel and it was their project," said Brodie, adding that he and city lawyers "huddled" and determined it was not prudent to take on a legal battle.

"The courts are no place to make a statement of principle and just demonstrate you're opposed to something. You have to be assured that when you come out of that court that you're going to have a decision that's in your favour," said Brodie, a lawyer to trade.

Although when the project was approved, the City of Richmond said it had "significant flaws."

VAPOR chair Otto Langer, a retired DFO marine biologist, said he and the group are challenging the EAO decision via a petition for a judicial review by BC Supreme Court because the public consultation process was flawed.

"VAPOR is, of course, very disappointed with the position Mayor Brodie has taken," said Langer.

Langer said the city pledged outside support early on but since the group filed its lawsuit Brodie and his bureaucrats have since "disappeared."

He said the group has good legal grounds to challenge VAFFC and noted Burnaby's mayor Derek Corrigan who is taking the National Energy Board to court over its decision to subvert municipal bylaws.

"He (Corrigan) is using action to support his rhetoric. Such is apparently not forthcoming from Richmond City Council," said Langer.

The longtime Richmond resident also critiqued the city's decision in June to forward a report outlining a set of project objectives for a bridge at the George Massey Tunnel, including a demand that its design be "iconic."

Only Coun. Harold Steves opposed the report.

The bridge is critical for the jet fuel terminal to proceed as the tunnel is an impediment to fuel tankers.

Brodie denied endorsing a bridge, stating he merely endorsed objectives the city wants to see.

Langer scoffed at the notion Brodie had any reasonable intention to actually oppose the bridge and, ultimately, the jet fuel facility.

"Why (have) councillors and the mayor lost their voices on an issue that will open up the Fraser to all sorts of undesirable heavy industry over the next many years? Have they turned their backs on the Fraser River and its wealth of salmon and wildlife resources and the public interest found in 'an island by nature' community?" asked Langer.

He said he hopes to reinvigorate council's once-determined opposition to the fuel terminal by making a presentation soon.

He said it would be ironic to have Burnaby win its case, which could potentially result in an additional fuel/oil terminal on the Fraser River Estuary.

VAPOR says it presented a 6,000-signature petition to independent Delta MLA Vicki Huntington. Langer said Richmond's Liberal MLA's merely "sat on the fence" during the four-year approval process, bowing to cabinet solidarity.

MLA John Yap told the *Richmond News* Langer skipped a meeting with him last year. Langer acknowledged doing so, calling a previous meeting with Yap "useless."

The group is now fundraising money to pay for legal fees. It requires close to \$20,000, said Langer, who will be hosting a burger and drink event on Oct. 1 at the Buck and Ear Pub and Grill.

Pending VAPOR has enough money to proceed, the challenge could be heard as early as early next year.

[@WestcoastWood](https://twitter.com/WestcoastWood) (<http://www.twitter.com/WestcoastWood>)

[gwood@richmond-news.com](mailto:gwood@richmond-news.com) (<mailto:gwood@richmond-news.com>)

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**S=143182**  
Court File No. \_\_\_\_\_  
Vancouver Registry

**IN THE MATTER OF THE JUDICIAL REVIEW PROCEDURE ACT  
R.S.B.C. 1996, c.241**

BETWEEN:

**VAPOR –  
A Society For Vancouver Airport Fuel Project  
Opposition For Richmond  
and  
Otto Emil LANGER,**

PETITIONERS

AND

**Her Majesty the Queen in Right of the Province of British Columbia as  
represented by the Minister of Environment for the Province of British Columbia,  
the Minister of Natural Gas Development for the Province of British Columbia, the  
Attorney General of the Province of British Columbia,  
and  
The Executive Director of the British Columbia Environmental Assessment  
Office, and  
The Vancouver Airport Fuel Facilities Corporation,**

RESPONDENTS

**PETITION TO THE COURT**

ON NOTICE TO:

The Honourable Mary Polak, Minister of Environment  
PO Box 9047 STN PROV GOVT  
Victoria, BC, V8W 9E2

The Honourable Rich Coleman, Minister of Natural Gas Development  
PO Box 9060 STN PROV GOVT  
Victoria, BC, V8W 9E2

The Attorney General of British Columbia  
Duty Counsel Clerk, Law Services Branch  
PO BOX 9044  
Victoria, BC  
V8W 9E2

Executive Director of the British Columbia Environmental Assessment Office  
2<sup>nd</sup> Floor, 836 Yates Street  
PO Box 9426 STN PROV GOVT  
Victoria, BC V8W 9V1

Vancouver Airport Fuel Facilities Corporation (VAFFC)  
#103 – 12300 Horseshoe Way  
Richmond, BC V7A 4Z1

Port Metro Vancouver  
100 The Pointe  
999 Canada Place  
Vancouver, BC V6C 3T4

**This proceeding has been started by the petitioner for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) File a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) Serve on the petitioner(s)
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

### **Time for Response to Petition**

A response to petition must be filed and served on the petitioner(s)

- (a) If you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) If you served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) If you were served with the petition anywhere else, within 49 days after that service, or
- (d) If the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: Law Courts, 800 Smithe Street Vancouver, BC V6Z 2E9
(2)	THE ADDRESS FOR SERVICE of the petitioner is:  Cliffe Tobias, Barristers & Solicitors 1570 – 789 West Pender Street Vancouver, BC V6C 1H2  Fax number address for service of the petitioner: (604) 684-1512  E-mail address for service of the petitioner: <a href="mailto:ctobias@cliffetobias.ca">ctobias@cliffetobias.ca</a>
(3)	The name and office address of the petitioner's lawyer is:  Cheryl J. Tobias, Q.C. Cliffe Tobias, Barristers & Solicitors 1570 – 789 West Pender Street Vancouver, BC V6C 1H2



## CLAIM OF THE PETITIONER

### PART 1: ORDERS SOUGHT

1. An order declaring that the environmental assessment of the Vancouver Airport Fuel Delivery Project conducted pursuant to the *Environmental Assessment Act*, S.B.C. 2002 c.43, (the "EAA"), failed to satisfy the public consultation requirements of the EAA and regulations made pursuant to the EAA including the *Public Consultation Policy Regulation*, B.C. Reg 373/2002, and the *Prescribed Time Limits Regulation*, B.C. Reg 372/2002.
2. An order declaring that the Assessment Report and Recommendations of the Executive Director, made pursuant to s.17(2) of the EAA, and the issuance of the Environmental Assessment Certificate #E13-02 by the Honourable Mary Polak, Minister of the Environment, and the Honourable Rich Coleman, Minister of Natural Gas Development, on December 11, 2013, to the Vancouver Airport Fuel Facilities Corporation (the "VAFFC") for the Vancouver Airport Fuel Delivery Project (the "proposed project") failed to comport with the common law requirements of natural justice and procedural fairness.
3. An order in the nature of *certiorari* quashing the Environmental Assessment Certificate #E13-02.
4. Costs of this Petition.
5. Such further and other relief as this Honourable Court may deem just.

### PART 2: FACTUAL BASIS

#### The Parties to this Proceeding

1. VAPOR – A Society for Vancouver Airport Fuel Project Opposition for Richmond ("VAPOR") was formed in March, 2011, and was registered pursuant to the *Society Act*, RSBC 1996 Chapter 433 on May 11, 2012. The objects of the society are: (a) To oppose any jet fuel water borne transport on the Fraser River and to promote a safer and more secure fuel delivery system to the Vancouver International Airport by means of a land pipeline fuel delivery system; (b) To protect the wildlife and fish habitat and minimize the risks to the ecology and public safety in the Fraser River and associated waterways in British Columbia;

and (c) To undertake similar activities or initiatives as agreed upon by the membership and executive.

2. The directors of VAPOR are:

- a. Carol Day, a small-business owner, who has resided in the City of Richmond, British Columbia ("Richmond"), for 50 years;
- b. The Petitioner, Otto Langer; a semi-retired marine biologist, who has resided in Richmond for over 40 years;
- c. Judy Emily Williams, a retired school teacher and a resident of Bradner, British Columbia;
- d. James Ronback, a retired systems safety engineer and a resident of Delta, British Columbia;
- e. Scott Carswell, an electrical mechanical engineering technologist, who was a resident of Richmond between 2006 and 2013;
- f. Barbara Huisman, a business sustainability consultant, who has resided in Richmond for over 30 years.

3. The Petitioner, Otto Langer, and many of the directors and members of VAPOR are directly affected by the proposed project.
4. The Respondent Minister for Environment for British Columbia, the Honourable Mary Polak, and the Respondent Minister of Natural Gas Development for British Columbia, the Honourable Rich Coleman, issued Environmental Assessment Certificate #E13-02 on December 11, 2013, to the VAFFC for the proposed project pursuant to s.17(3) of the *EAA*.
5. The Respondent Executive Director is appointed by the Lieutenant Governor in Council to oversee the operations of the British Columbia Environmental Assessment Office ("EAO") pursuant to s.3 of the *EAA* and is assigned various powers and duties under the *EAA*.
6. The Respondent Executive Director has the responsibility pursuant to s.11 of the *EAA* to determine the scope of the environmental assessment and the procedures and methods for

conducting the assessment. This responsibility includes determining what public consultation is required as part of an environmental assessment. The Respondent Executive Director also has the responsibility assigned by s.4 of the *Public Consultation Policy Regulation* to assess whether the public consultation that the proponent proposed was adequate. Section 4(1) of the *EAA* permits him to delegate these responsibilities to employees of the EAO. Project Assessment Managers at the EAO made most of the orders and directions in relation to the environmental assessment of the proposed project as the delegate of the Executive Director.

7. The Respondent, the VAFFC, is the proponent of the proposed project. The VAFFC is a not-for-profit company owned by a group of commercial airlines, including most of the domestic and international carriers operating at the Vancouver International Airport. VAFFC also owns and operates fuel storage and distribution facilities at the Vancouver International Airport, including mechanisms used to transfer fuel from storage tanks to airplanes.

### **The Vancouver Airport Fuel Delivery Project**

8. The VAFFC's proposed project is the development of a new aviation fuel delivery system in Richmond. The proposed project consists of:
  - a. Upgrades to an existing marine terminal wharf located on the South Arm of the Fraser River to accommodate fuel cargo vessels and construction and operation/maintenance of new facilities at the marine terminal for off-loading fuel cargo;
  - b. Construction and operation/maintenance of a new fuel receiving facility that comprises six steel above-ground storage tanks capable of holding approximately 80 million litres of fuel;
  - c. Construction and operation/maintenance of a new pipeline to transfer fuel from the marine terminal to the fuel receiving facility and a pipeline approximately 15 kilometres long to deliver fuel from the fuel receiving facility to the Vancouver International Airport ("YVR"); and
  - d. Movement of fuel cargo vessels within the South Arm of the Fraser River to and from the marine terminal.

9. The marine terminal and the site proposed for the new fuel receiving facility are situated on the north shore of the South Arm of the Fraser River at the foot of Williams Road, in Richmond, approximately two kilometres east of Highway 99 and approximately 15 kilometres upstream from the mouth of the Fraser River. They are in close proximity to condominium complexes and to a large commercial and recreational area of Richmond. The South Arm of the Fraser River and the estuaries of the South Arm are highly valuable wildlife habitat and most of the Fraser River salmon travel through the South Arm to and from their spawning grounds.

### **Initiation of the Environmental Assessment**

10. The proposed project was designated a reviewable project pursuant to s.7(3)(a) of the *EAA* in February, 2009, on the basis that:
  - a. It had the potential to result in significant adverse environmental, economic, health, heritage and social effects; and
  - b. Strong public interest was anticipated and a clear, transparent environmental assessment process would be in the public interest.
11. The environmental assessment was to be a cooperative environmental assessment between British Columbia and Canada on the basis that the proposed project is subject to the *Canadian Environmental Assessment Act* S.C. 1992, c.37.
12. By an order made pursuant to s.11 of the *EAA* on November 18, 2009 and amended on December 12, 2009, (the "scoping order") the environmental assessment was to include consideration of potential adverse environmental, economic, social, heritage and health effects and practical means to prevent any such effects or to reduce them to an acceptable level. The assessment was also to consider spill management control and emergency response.
13. The scoping order required the VAFFC to set out in its materials submitted in support of its application for an environmental assessment certificate (its "Application") the public consultation activities it had already carried out and a proposal for a public consultation program for the purpose of the review of its Application; this information was to be used to assess the adequacy of the proposed public consultation activities. The scoping order

required the VAFFC to carry out its proposed public consultation activities subject to any modifications ordered by the Project Assessment Manager. At least one formal comment period was to be established by the Project Assessment Manager.

14. The VAFFC's proposal for public consultation as set out in its Application for review of that Application included opportunities for public comment as follows:
  - a. Open houses and any other activities directed by the EAO; and
  - b. VAFFC would receive comments and respond to enquiries it received via its website, email and dedicated telephone line;
  - c. Public review in accordance with regulations established by the EAO, to take place after the Application was accepted by the EAO;
  - d. Comments and correspondence regarding the Application received by the EAO either in written form or via their online comment submittal portal would be documented and posted on the EAO website. The VAFFC would prepare responses to these comments within the timeframe established by the EAO following completion of the public comment period. The VAFFC's responses would in turn be posted on the EAO's website.
15. The public was given electronic access through the EAO's Project Information Centre internet site (e-PIC) to the VAFFC's Application and to the other information and records listed in s.6 of the *Public Consultation Policy Regulation* where such information and records were generated for the assessment of the proposed project.

### **The Environmental Assessment**

16. On January 5, 2011, the EAO received the VAFFC's Application. On February 3, 2011, pursuant to s.16 of the *EAA*, the EAO formally accepted the VAFFC's Application for detailed review. The EAO did so without any explicit written assessment of the adequacy of the public consultation activities that the VAFFC had conducted or proposed to conduct in relation to its application for an environmental assessment certificate as specified in s.4 of the *Public Consultation Policy Regulation*. The EAO established a 45-day public comment

period on the Application from February 25 to April 11, 2011. On April 8, 2011, the public comment period was extended by 15 days to April 26, 2011.

17. The 180 day review period provided by s.3 of the *Prescribed Time Limits Regulation*, B.C. Reg. 372/2002, of VAFFC's application for an environmental assessment certificate began on February 18, 2011. On the same day, one week before the beginning of the public comment period, the VAFFC's Application, comprising over 1,500 pages, was posted to the e-PIC site. A paper copy of VAFFC's Application was placed in one branch of each of the Richmond and Vancouver Public Libraries. Notices in English only appeared in various English language newspapers and in one Chinese language newspaper. The notices gave no specific information about the location of either the proposed marine terminal and fuel receiving facility or of the proposed pipeline or any other details of the proposed project.
18. An open house and presentation by the EAO, the VAFFC and Port Metro Vancouver was held in Richmond on March 7, 2011, during which members of the public, including Otto Langer, were permitted to speak for a maximum of two minutes each.
19. Otto Langer and other VAPOR members submitted written comments on VAFFC's application during the public comment period. They did not receive any response to their submissions nor, in most cases, any acknowledgment that the EAO had received their submissions. VAFFC prepared a table of responses dated June, 2011, to all comments by members of the public during the public comment period. This table was not posted to the e-PIC site until January 3, 2012. Many of the responses to comments made by VAPOR members were not meaningful.
20. On April 8, 2011, after 69 days of the 180 day review period, at the request of VAFFC, the time period for the review was suspended pursuant to s.24(2) of the *EAA* to allow VAFFC to complete an assessment of an alternate pipeline route following Highway 99 and to prepare a report. The EAO received the report (the "Highway 99 Addendum") on November 3, 2011. The suspension was lifted approximately nine months later on January 4, 2012.
21. On January 3, 2012, the EAO announced a public comment period from January 11, 2012 to February 1, 2012, for comments relating only to the Highway 99 Addendum. The Highway 99 Addendum was posted to the e-PIC site on January 3, 2012. An open house was held Richmond on January 28, 2012.

22. Otto Langer and other members of VAPOR sent written comments to VAFFC and to the EAO during this public comment period. Once again, they did not receive any response or, in most cases, any acknowledgment that their submissions had been received. The VAFFC provided summary responses to the comments from VAPOR members and other members of the public in a single table dated February 14, 2012 that was posted to the e-PIC site February 20, 2012.
23. No further public comment periods or open houses took place to permit any public comment with respect to further studies required by the Project Assessment Manager or by the Minister of Environment.
24. On March 7, 2012, the time period for the review was once again suspended after 133 days of review at the request of VAFFC to complete several studies in response to Environment Canada's request for further information related to potential effects of an aviation fuel spill. These studies were expected to take several months to complete. The VAFFC was also required to provide additional information regarding potential effects of medium and small fuel spills and the effectiveness of proposed mitigation measures.
25. The EAO received one of the studies, entitled "Spill Risk in the South Arm of the Fraser River", in June, 2012. On November 19, 2012, the suspension of the review was lifted on the basis that the information required had been adequately supplied by two reports: "Fraser River Delta Biofilm: Sensitivity to Jet A Fuel Spills Summary Report" (September, 2012) and the above "Spill Risk in the South Arm of the Fraser River".
26. On December 14, 2012, the VAFFC's Application, the Assessment Report prepared pursuant to s.16 of the *EAA* and the Recommendations of the Executive Director (collectively the "Referral Package") were referred to the Minister of Environment and the Minister of Energy, Mines and Natural Gas pursuant to s.17 of the *EAA*.
27. On February 25, 2013, then Minister of Environment, the Honourable Terry Lake, suspended the assessment pursuant to s. 30(1) of the *EAA* until the later of two reports was received by him: an Interim Report, consisting of internal evaluations of consultations and a symposium held in the development of a Land Based Spill Preparedness and Response study; and a Marine Report, providing insight on the requirements of establishing a world-class marine spill regime. The suspension order specified that the Minister had directed the

Executive Director to consider the findings of the Interim Report and the Marine report and provide a supplement to the Referral Package that the Executive Director considered appropriate.

28. On October 10, 2013, the suspension was lifted and the environmental assessment resumed with 75 days remaining in the assessment period. The reports, entitled "West Coast Spill Reponse Study" and "Ministry of Environment Spill Preparedness and Response Interim Report", were posted to the e-PIC site on October 10, 2013. Responses to the reports were solicited by November 8, 2013, from members of a Working Group that the EAO had established at the beginning of the assessment process, to be referred to the Ministers for their consideration.
29. On November 18, 2013, the Executive Director completed his Recommendations. On December 11, 2013, the Respondent Ministers issued Environmental Certificate #E13-02 to the VAFFC for the proposed project. The Assessment Report of December 14, 2012, the Recommendations of the Executive Director of November 18, 2013, and the Environmental Certificate #E13-02 and Reasons for Ministers' Decision, both of December 11, 2013, were posted to the e-PIC on December 12, 2013.

### **PART 3: LEGAL BASIS**

1. The Petitioner will rely on:
  - a. The *Supreme Court Civil Rules*, B.C. Reg. 168/2009, generally, particularly Rules 2, 14 and 16;
  - b. The *Judicial Review Procedure Act*, R.S.B.C. 1996, c.241;
  - c. The *Environmental Assessment Act*, S.B.C. 2002, c.43;
  - d. The *Public Consultation Policy Regulation*, B.C. Reg. 373/2002;
  - e. The *Prescribed Time Limits Regulation*, B.C. Reg. 372/2002; and
  - f. The *Interpretation Act*, R.S.B.C. 1996, c.238, particularly s.8.



2. The *EAA*, read together with the *Public Consultation Regulation*, requires consultation of the public as well as various other entities as an integral part of an environmental assessment.
3. The Respondent Executive Director had the duty under s.11 of the *EAA* to determine the means by which the public was to be provided with notice of the assessment, access to information during the assessment and opportunities to be consulted, and also the opportunities for the public to provide comments during the assessment. In making that determination, he was subject to the direction in s.3 of the *Public Consultation Policy Regulation* that he take into account the policies it sets out and ensure that they are reflected in the assessment.
4. Those policies include "general policy requirement[s]" in s.4(2) to (3) of the *Public Consultation Policy Regulation* that, when the Executive Director makes a decision under s.16 of the *EAA* to accept for review an application for an environmental assessment certificate, he make a written assessment of the adequacy of the public consultation that the proponent has carried out or proposes to carry out. In his assessment, he must order further public consultation activities if required "to ensure adequate public consultation".
5. The Executive Director also has the power, provided by s.13 of the *EAA*, to modify his order made under s.11 of the *EAA*, and he was thereby able to modify the public consultation requirements during the assessment to deal with evolving circumstances.
6. To be adequate, consultation must be meaningful. In the context of an environmental assessment under the *EAA* and the Vancouver Airport Fuel Delivery project in particular, meaningful public consultation means that the public is given a reasonable opportunity to comment on the significant assertions, information and justifications relied upon by the proponent in its application for the environmental assessment certificate. Meaningful consultation also requires that the public's comments receive serious consideration. A reasonable opportunity to comment includes timely access to the materials, filed by the proponent or other parties, to be included in the application for the environmental assessment certificate and that form the basis for the Report of the Environmental Assessment Office and the Recommendation of the Executive Director made pursuant to s.17(2) of the *EAA*. These materials, together with the Report and Recommendation, are to be considered by the Ministers in making their decision under s.17(3) on the application for the environmental assessment certificate, as required by s.17(3) of the *EAA*.

7. The Executive Director unreasonably failed to fulfill the obligation to take into account the general policy requirements established by the *Public Consultation Policy Regulation* and to ensure that they were reflected in the environmental assessment of the proposed project, in that:
- a. The opportunities afforded to the public to be consulted and provide comments in relation to key issues and to Application of the VAFFC and the additional important studies and other information provided by the proponent, EAO and other participants, including the Highway 99 Addendum, the Fraser River Delta Biofilm: Sensitivity to Jet A Fuel Spills Summary Report (September, 2012), the Spill Risk in the South Arm of the Fraser River (June 2012), the West Coast Spill Response Study and the Spill Preparedness and Response Internal Interim Report, that supported the application for the environmental assessment certificate were seriously inadequate.
  - b. The Executive Director failed to make the written assessment specified by s.4(2) of the *Public Consultation Policy Regulation* of the adequacy of the public consultation activities that the VAFFC had conducted or proposed to conduct in deciding to accept for review the VAFFC's application for an environmental assessment certificate under s.16(1) of the *EAA*;
  - c. Materials that were key parts of the information upon which the Assessment Report and the Executive Director's Recommendations were based and which were referred to the Respondent Ministers for their decision under s.17 of the *EAA* to issue the environmental assessment certificate for the proposed project were not provided to the public in a timely way. These materials included the Application submitted by the VAFFC, the Highway 99 Addendum, and the report on Spill Risk in the South Arm of the Fraser River (June 2012).

The combined effect of these failures was that there was materially inadequate public consultation in relation to VAFFC's application for an environmental assessment certificate for the proposed project.

8. The Assessment Report to the Respondent Ministers and the recommendation of the Executive Director made pursuant to s.17(2)(a) and s.17(2)(b) of the *EAA*, respectively, were made on the basis of inadequate public consultation and are therefore invalid.

Accordingly, the Environmental Assessment Certificate #E13-02 issued on December 11, 2013, by the Respondent Ministers to the VAFFC for the proposed project pursuant to s.17(3)(c), on the basis of the Assessment Report and ED's recommendation, is invalid, and should be quashed.

9. In addition, and in the alternative, the Environmental Assessment Certificate #E13-02 should be quashed because the environmental assessment process on which the certificate was based failed to comport with the requirements of natural justice and procedural fairness in that:
  - a. the Applicants were not given reasonable notice of the materials upon which the Assessment Report and Executive Director's recommendation were based, and
  - b. the Applicants were not permitted an adequate opportunity to be heard.

**PART 4: MATERIAL TO BE RELIED UPON**

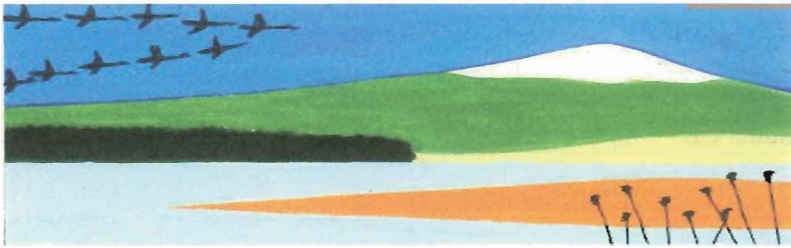
30. Affidavit of Otto Emil Langer, made April 14, 2014
31. Affidavit of James Ronback, made April 22, 2014,
32. Affidavit of Carol Day, made April 22, 2014, and
33. Affidavit of Scott Carswell, made April 20, 2014.
34. Affidavit of Katie Lohrasb, made April 24, 2014.

The Petitioner estimates that the hearing of the petition will take approximately 6 hours.

Dated: April 25, 2014

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Cheryl J. Tobias, Q.C.  
Counsel for the Petitioners



## DELTA NATURALISTS' SOCIETY

PO Box No. 18136  
1215C 56<sup>th</sup> Street  
DELTA B.C. V4L 2M4

2014 November 17

The Honourable Christy Clark, Premier of British Columbia  
Legislative Assembly,  
501 Bellville St.  
Victoria, BC, V8V 2L8

Dear Madam Premier:

**Subject: The Fraser River jet fuel issue is an environmental and public safety issue.**

**Re: Judicial review on lack of proper public consultation during an Environmental Assessment**

The Delta Naturalists Society is concerned with preservation of the Fraser Delta for the benefit of wildlife, birds, fish, and the ensuing economic and environmental benefits to society. The approval of the Vancouver Airport Fuel Facilities which will allow supertankers conveying toxic and flammable jet fuel on the Fraser River poses a clear and present danger to wildlife, migratory bird habitat and salmon fishery in the lower reaches of the Fraser. This proposed facility provides an offloading marine terminal and tank farm that stores 80,000,000 liters of hazardous jet fuel near condominiums and an entertainment and sports complex. The impacts of a spill would be serious; the impacts of a fire and an explosion would be catastrophic.

The Delta Naturalists Society supports VAPOR (a citizens group formed in 2011) in their launch of a judicial review on the lack of proper public consultation for this high risk project. Four polls indicated over 85% of Lower Fraser citizens were opposed to jet fuel transport and handling on the Fraser River. Richmond and Delta city councils were unanimously opposed to it. The vulnerable Fraser River and its estuary needs much better environmental, property and public safety protection than seen in this granting of an Environmental Certificate that allows a corporation to ship hazardous jet fuel into the heart of the Fraser River Estuary for unloading and storage.

Limited environmental assessments do not allow a safer, more reliable and environmentally friendlier jet fuel transport options to be pursued. The environment, our safety, the ALR and our quality of life in Delta and Richmond will greatly suffer. Also if this jet fuel facility is built it will open up the Fraser River to heavy industrial development by Port Metro Vancouver. The hazardous jet fuel issue is just the tip of the iceberg.

The Delta Naturalists Society supports the public's right to challenge the consultation process used in these government decisions. We support VAPOR on their concerns for protecting the public and the environment and applaud their opposition to hazardous jet fuel transport on the Fraser River.

We urge your government to review how you conduct environmental assessments, especially in light of on-going harmonization efforts, and revise legislation and procedures to ensure the public has the opportunity to provide formal comments on that process in a full and transparent manner. Also, the reviews should seriously consider all options, not just the one favored by the proponent. Your government's reconsideration of the high risk threats to the Fraser River and its estuary is long overdue.

Sincerely yours,

*James Ronback, Director - on behalf of*

Tom Bearss, President, Delta Naturalists Society

c.c. Mary Polak, Honourable Minister of the Environment  
c.c. Rich Coleman, Minister of Energy, Mines and Natural Gas  
cc. Kerry-Lynn Findlay, MP (Delta Richmond East)  
cc. Vicki Huntington, MLA for Delta South  
cc. VAPOR  
c.c. Media



Council of Canadians Pacific Regional Office  
700-207 West Hastings St., Vancouver, BC, V6B 1H7  
Delta/Richmond Chapter

To:

Premier Christy Clark; Ministers Mary Polak and Rich Coleman  
Legislative Assembly  
501 Belleville St.  
Victoria BC V8V 2L8

November 5, 2014

Dear Premier and Hon. Ministers:

As you are aware the VAPOR Society and Otto Langer are taking your decision to issue the Vancouver Airport Fuel Facilities Corp. an Environmental Certificate to BC Supreme Court for a Judicial Review due to the manner in which the public was involved in the environmental assessment. The certificate allows jet fuel barges, tankers, a terminal and tank farm in the Fraser River. The case is to be heard on Nov 26 - 27, 2014 in Vancouver Supreme Court.

We feel your approval has not been based on the best science and to some large degree has ignored the large amount of public opposition to the project as well as the unanimous opposition of Richmond and Delta City Councils. Key to the approval was the inability of government, its EA process and VAFFC to give the public the opportunity for any hearing during a four year review process. To make matters worse, your BC EA Office then partnered in recommending the approval when PMV was to financially benefit greatly from the approval – an obvious conflict of interest that has been totally ignored.

The Council of Canadians supports the public right to challenge such poorly made decisions in our court system. We urge your government to review how you conduct environmental assessments and revise your legislation and procedures to insure that the public is given better options of being heard.

In a time of great economic growth promotion in BC and the downsizing of environmental review and enforcement staff and the elimination of FREMP and the neutering of federal CEAA and Fisheries Act and NWPA legislation it is hoped that your government can at least attempt to do a better job to protect Beautiful BC or the Best Place on Earth!

Sincerely yours,

Cathy Wilander

Council of Canadians,  
Chairperson, Delta/Richmond Chapter



**David  
Suzuki  
Foundation**

**Vancouver (Head Office)**  
219-2211 West 4th Avenue  
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514 871 4932

The Honourable Christy Clark, Premier of British Columbia  
Legislative Assembly  
501 Belleville St.  
Victoria, BC, V8V 2L8

October 27, 2014

Dear Premier,

As you are aware, your decision to issue the Vancouver Airport Fuel Facilities Corporation an Environmental Certificate is being challenged in the B.C. Supreme Court for a Judicial Review. This challenge is by the VAPOR Society\* and Otto Langer and is based on limits to public involvement in the environmental assessment. The certificate allows jet fuel barges, tankers, a terminal and tank farm in the Fraser River.

The David Suzuki Foundation has engaged the province in email, phone conversations and via written concerns about the wisdom of allowing jet fuel transportation on the Fraser when there are cost-effective alternatives available that offer greater environmental security (DSF to BC EAO October 3, 2011).

We are concerned that your approval is not based on the best science and does not adequately address public opposition to the project or the unanimous opposition of Richmond and Delta city councils. We believe that the provincial approval and Environmental Assessment processes did not give the public a credible opportunity for a hearing during the four-year review. Attempts to formalize federal-provincial project review harmonization were underway, further confusing matters. Additionally, concerns have been raised that the BC Environmental Assessment Office did not deal appropriately with potential conflict of interest issues relating to their work on the approval with Port Metro Vancouver, an agency that benefits directly from the approval.

The David Suzuki Foundation supports the public's right to challenge these kinds of decisions in our court system. Court proceedings, however, are costly, time consuming and do not always leave room for reasoned compromise. The best way to avoid them is through a fair and open environmental review process led by government.

We urge your government to review how you conduct environmental assessments, especially in light of on-going harmonization efforts, and revise legislation and procedures to ensure that the public has the opportunity to provide formal comments as part of that process. In addition, environmental reviews should consider all options, not just those favored by the proponent.



**David  
Suzuki  
Foundation**

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514 871 4932

We believe it is essential that government provide rigorous processes, regular and meaningful public access to decision-making and direction to ministries and staff that this is a mandatory component of environmental assessments in the province.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jay Ritchlin".

**Jay Ritchlin**  
Director-General, Western Canada

Copy to:  
The Honourable Leona Aglukkaq, Minister of the Environment  
The Honourable Gail Shea, Minister of Fisheries and Oceans  
Vicki Huntington, MLA  
John Yap, MLA  
Linda Reid, MLA  
Teresa Wat, MLA  
Robin Silvester, President and CEO, Port Metro Vancouver

\*VAPOR Society is a Lower Fraser River citizens group that opposes jet fuel tankers in the Fraser River and promotes an environmentally safer on-land option for jet fuel to YVR.







# FRASER RIVERKEEPER®

October 23rd, 2014

Joe Daniels, Riverkeeper  
Fraser Riverkeeper  
90 - 425 Carrall Street  
Vancouver, British Columbia, V6B 6E3  
Tel: 250-600-6262  
joe@fraserriverkeeper.ca

Premier Christy Clark; Ministers Mary Polak and Rich Coleman  
Legislative Assembly  
501 Belleville St.  
Victoria, British Columbia, V8V 2L8

Dear Premier and Hon. Ministers:

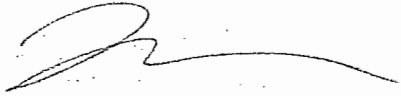
As you are aware, the VAPOR Society and Otto Langer is taking your decision to issue the Vancouver Airport Fuel Facilities Corp. an Environmental Certificate to the BC Supreme Court for a Judicial Review due to the manner in which the public was involved in the environmental assessment. The issuing of this certificate will allow jet fuel barges, tankers, a terminal and tank farm in the Fraser River. The case is to be heard on Nov 26 -27, 2014 in Vancouver Supreme Court.

We at Fraser Riverkeeper agree with VAPOR and Mr. Langer's view that your approval has not been based on the best available science and has largely ignored the considerable public opposition to the project; in addition to the unanimous opposition of Richmond and Delta City Councils. During a four-year review process neither the government, its environmental assessment process, or VAFFC gave the public the opportunity for any real hearing on the project.

Fraser Riverkeeper supports the public's right to challenge these sorts of poorly made decisions in our court system; however, such challenges are costly and should be avoided where we have a fair and open environmental review process, as well as strong leadership from government. We urge that your government review how you conduct environmental assessments and revise your legislation and procedures to insure that the public is given better opportunities to make their opinions heard. Furthermore, government must have a process in place that will consider better options than simply those preferred by the proponent who purchased the land for the project long before an EA was even contemplated.

At a time when Canadians are faced with a government agenda of economic growth at any cost, when environmental review and enforcement staff have been downsized, when the Federal environmental protections that have kept our fish and waters safe for generations have been utterly defanged; it falls to provincial government to show strong, thoughtful leadership in safe-guarding Super Natural BC: The approval of this project not only represents a failure in leadership, it also damages our democracy as it signals to BC citizens that the rights of deep-pocketed developers and special interests trump their own.

Sincerely,

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

Joe Daniels  
Riverkeeper  
Fraser Riverkeeper