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October 7, 2011

# Pipeline Review Is Faced With Question of Conflict

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The State Department assigned an important environmental impact study of the proposed [Keystone XL](#) pipeline to a company with financial ties to the pipeline operator, flouting the intent of a federal law meant to ensure an impartial environmental analysis of major projects.

The department allowed [TransCanada](#), the company seeking permission to build the 1,700-mile pipeline from the [oil sands](#) of northern Alberta to the Gulf Coast in Texas, to solicit and screen bids for the environmental study. At TransCanada's recommendation, the department hired [Cardno Entrix](#), an environmental contractor based in Houston, even though it had previously worked on projects with TransCanada and describes the pipeline company as a "major client" in its marketing materials.

While it is common for federal agencies to farm out environmental impact studies, legal experts said they were surprised the State Department was not more circumspect about the potential for real and perceived conflicts of interest on such a large and controversial project.

John D. Echeverria, an expert on environmental law, referred to the process as "outsourcing government responsibility."

The [subsequent study](#), released at the end of August, found that the massive pipeline would have

“limited adverse environmental impacts” if operated according to regulations. That positive assessment removed one of the last hurdles for approval of the proposed pipeline.

Cardno Entrix also played a substantial role in organizing the [public hearings](#) on the project for the State Department, the last of which was held Friday in Washington. The proposal is open for [public comment](#) until midnight Sunday, and the department’s Web site [directs comment](#) to a Cardno Entrix e-mail address.

Environmental groups, as well as some citizens and public officials along the route, have opposed the project, citing the relatively high emissions created by extracting crude from oil sands and the spill threat posed to important aquifers by a pipeline filled with a potentially corrosive crude, among other concerns. The E.P.A. has criticized two prior draft environmental impact statements prepared by Cardno Entrix on Keystone XL as “inadequate” and providing “insufficient information,” but has not yet rendered an appraisal of the final study. The E.P.A.’s role is purely advisory.

Advocates for the project say that Keystone XL, which would carry 700,000 barrels of crude a day, would create thousands of jobs and help ensure a stable fuel supply from a friendly neighbor.

The State Department is the agency that approves transboundary pipelines by determining whether they are in the national interest. Its decision is expected by the end of the year.

The [National Environmental Policy Act](#), which took effect in 1970, allows for agencies to hire outside contractors to perform its required environmental impact studies, but advises that contractors be chosen “solely by the lead agency” and should “execute a disclosure statement” specifying that they “have no financial or other interest in the outcome of the project.”

And yet legal experts said it had become common for companies applying to build government projects to be involved in assigning and paying for the impact analysis. Some say such arrangements are nearly inevitable because federal agencies typically lack the in-house resources or money to conduct these complex studies. “What’s normal is deplorable, and it’s NEPA’s dirty little secret,” said Mr. Echeverria,

acting director of the Environmental Law Center at Vermont Law School, referring to the law. He said federal agencies are supposed to review the findings, but often lack the expertise to do so.

Oliver A. Houck, a law professor at Tulane University and an expert on NEPA, said Cardno Entrix should never have been selected to perform the environmental study on Keystone XL because of its relationship with TransCanada and the potential to garner more work involving the pipeline. The company provides a wide ranges of services, including assisting in [oil spill](#) response.

Cardno Entrix had a “financial interest in the outcome of the project,” Mr. Houck said, adding, “Their primary loyalty is getting this project through, in the way the client wants.”

Kerri-Ann Jones, the assistant secretary of state for oceans and international environmental and scientific affairs, in an interview, said the State Department followed all federal regulations and had closely managed and supervised the company’s work, adding, “We have final say.”

She said that TransCanada had managed the bidding process and recommended three candidates with Cardno Entrix topping the list. The department vetted Cardno Entrix by consulting with other agencies like the Bureau of Land Management. TransCanada pays the consultant directly, but would not reveal the amount.

Ms. Jones said that Cardno Entrix provided a solid and impartial study, which became more robust through the draft process, with advice from agencies like the E.P.A. “I think it required a lot a lot of work to get it where it is now,” she said. “We have done an objective environmental impact statement.”

The State Department has also [faced charges of political conflict of interest](#) over its handling of the Keystone XL application because TransCanada’s chief Washington lobbyist, Paul Elliott, was a top official in Hillary Rodham Clinton’s 2008 presidential campaign.

Cardno Entrix officials referred all questions about its participation to the State Department. Cardno Entrix did submit a disclosure statement acknowledging that it was paid \$2.9 million to handle the environmental review of an earlier pipeline in the Keystone network. It did not mention another

project it had done for TransCanada, consulting on a natural gas pipeline that runs through Wyoming, Montana and North Dakota.

A spokesman for TransCanada, Terry Cunha, said that his company had recommended contractors to the State Department based on “technical ability, experience, and appropriate personnel.” But he said the final contract for the environmental assessment “provides that Department of State directs Entrix. As a result, we don’t have a direct relationship with Entrix.” The American company, Entrix, merged with the Australian company Cardno Limited in 2010.

Environmental groups say the study underplays both the emissions impact of the new pipeline and the danger posed by a spill of crude from oil sands, called diluted bitumen, a hard-to-remediate mixture. An **accident at a pipeline** owned by Enbridge Energy in July 2010 dumped 843,000 gallons of such oil near Marshall, Mich.

A 35-mile stretch of the Kalamazoo River remains closed and cleanup has **proved extremely difficult**, running over budget and past deadlines set by the E.P.A. Estimates of cleanup costs have run well over \$500 million. The E.P.A.’s regional administrator said her office had never seen a river system affected by so much submerged oil.

But the impact report for the Keystone XL project says that “response to a spill from the proposed pipeline would not require unique clean up procedures.”

The Enbridge spill is only mentioned briefly in addendums. And Cardno Entrix would have been aware of the challenges in Michigan: it was hired by Enbridge to assess the damage to natural resources caused by the spill.

Steven Da Silva, a retired science teacher who attended public hearings in Austin and Port Arthur, Tex., last week to oppose the pipeline, said he was surprised to see officials wearing Cardno Entrix nametags and was not sure whether State Department employees were present.

The department said its personnel moderated all hearings.

Legal experts said it is not unusual for subcontractors to conduct hearings and prepare responses to complaints. But they also said the State Department should closely monitor the work to make sure that any concerns raised are taken seriously. James W. Spensley, a Colorado-based environmental lawyer with broad experience in government pointed out that the courts provided an import check on abuse, since shoddy or biased studies are vulnerable to legal challenges.

“Generally,” he said, “lead agencies are very cautious about finding someone who is going to give them good, reliable, information because they are the ones that are going to get sued.”



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