

August 24, 2012

Mr. John McCauley
Director, Legislative and Regulatory Affairs
Canadian Environmental Assessment Agency
160 Elgin St., 22nd floor
Ottawa, Ontario K1A 0H3
e-mail: RegulationsReglements2012@ceaa-acee.gc.ca

Dear Mr. McCauley,

re: Proposed Amendments to the Regulations Designating Physical Activities (“Project List Regulations”)

This is to follow up on the meeting held in your offices on July 25 concerning amendments to the Regulations Designating Physical Activities that have been promulgated pursuant to the *Canadian Environmental Assessment Act 2012* (CEAA 2012). This letter is the submission of Environmental Planning and Assessment Caucus of the Canadian Environmental Network (the Caucus).

The letter sets out several principles that the Caucus believes are key to informing the amendment of the Project List Regulations. It then sets out several categories of specific amendments, which are described in more detail in the appendix.

Principles for Amending the Project List Regulations

1. The Caucus recommends that the government *adopt a broad and inclusive approach* to adding projects to the Regulations. We propose a broad and inclusive approach in order to ensure that all projects that may have significant environmental effects are at least subject to mandatory screenings, the process for which is set out in sections 8 to 10 of CEAA 2012. Screenings are subject to tight time frames (e.g., the 45-day Agency review period for the project description) and so are minimally inconvenient to project proponents. Under section 10.(b) the Agency has broad discretion to decide that an environmental assessment is not required for a designated project. Although we do not agree with the breadth of this discretion, if that approach is used then there is minimal risk to the proponent that a designated project with insignificant adverse environmental effects would be subjected to a federal environmental assessment.
2. The Caucus further recommends that *the use of thresholds as a means for including projects on the Project List Regulations be minimized*. Experience with some provincial environmental assessment laws has shown that proponents may tailor a proposed project so that it does not meet the threshold. In addition, under CEAA 1992, we have seen that proponents have “gamed the system” to avoid a comprehensive study through project splitting wherein a single project that would otherwise have required a comprehensive study is divided into smaller projects subject only to CEAA 1992 screening. The use of thresholds is even more problematic for projects potentially subject to CEAA 2012 environmental assessments than for projects potentially subject to comprehensive study under CEAA 1992 because project splitting under CEAA 2012 to avoid identification as a designated project means that there will be no federal environmental assessment at all, whereas under CEAA 1992 project splitting meant that an environmental assessment was still undertaken, just not as a comprehensive study.
3. The Caucus recommends that *no thresholds be applied* with respect to mining projects for determining whether or not such projects are designated under the Project List Regulations. All

proposed mines should be considered for CEAA 2012 environmental assessment regardless of the size and production capacity of the mine. Mine size and production capacity is at best a crude indicator for predicting the significance of adverse environmental effects. Small mines can have significant environmental effects (e.g., acid mine drainage from mine workings or wastes, or a gold mine that releases arsenic). If all mines are subject to screening by virtue of their inclusion on the Project List Regulations regardless of the quantum of expected mineral production, then the decision to conduct an environmental assessment can focus on environmentally relevant factors such as siting, environmental sensitivity, and cumulative effects. As noted above, the history under CEAA 1992 is that thresholds have provided loopholes for project splitting.

4. The Caucus recommends that the Project List Regulations include *additional projects located in federal protected areas* (e.g., National Parks) because the statutory regimes governing these protected areas (e.g., *Canada National Parks Act*) require a higher level of environmental protection, and environmental assessment has been a key tool in support of this higher level of protection. Subsection 8(2) of the *Canada National Parks Act*, for example, provides that: “Maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.”
5. Further, CEAA 2012 provides no legal requirement for environmental assessment of projects located on federal lands *unless* those projects are listed under the Project List Regulations. *Additional projects should be considered for inclusion* on the Regulations for the following categories of protected areas: National Parks, National Park Reserves, National Marine Conservation Areas, National Wildlife Areas, Marine National Wildlife Areas, Migratory Bird Sanctuaries, and Marine Protected Areas. For example, the following categories of projects located in National Parks have been subject to legally binding CEAA assessments, but would not be subject to assessment under CEAA 2012 unless they are included on the Project List Regulations: construction or expansion of golf courses; construction or expansion of ski resorts; construction of new roads; widening or existing roads; expansion of rail lines; construction or expansion of visitor centres and facilities; and construction or expansion of buildings outside townsites.
6. The Caucus recommends that the *limitations on and exemptions related to expansions of existing projects and projects that are proposed to take place in existing right of ways be re-examined* with the aim of requiring environmental assessments for those projects that are likely to cause adverse environmental effects despite the pre-existing activity or right of way. With respect to right of ways, in particular we recommend that the same environmental assessment requirements apply to electrical transmission lines, oil and gas pipelines, railway lines, and highways.
7. The Caucus recommends that section 33 of the Schedule to the Project List Regulations be *amended to apply to any federal lands and to include the disposal of nuclear waste* regardless of the proposed location for disposal.

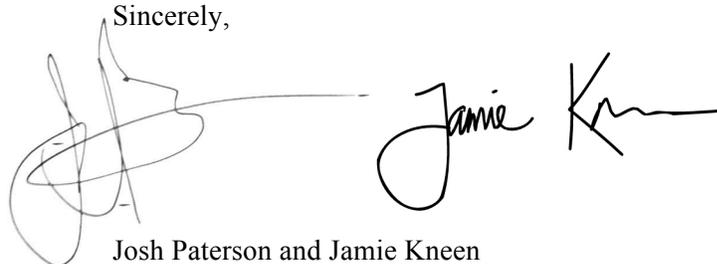
Categories of Additional Projects to be Included on the Project List Regulations

1. The Caucus recommends that oil and gas development projects that employ technologies deployed since the Comprehensive Study List Regulations came into force in 1995 should be included in the Project List Regulations. These projects include:
 - steam-assisted gravity drainage (SAGD) oil sands projects;
 - oil and gas hydraulic fracturing (fracking) projects;
 - exploratory offshore oil and gas seismic and drilling activities; and

- issuance of offshore oil and gas exploration licences.
2. There are important environmental issues (water and air pollution, damage to fish habitat, threats to marine mammals) that arise with these types of projects.
 3. The Caucus recommends that new marine and freshwater aquaculture projects be included in the Project List Regulations. Diseases in farmed fish populations requiring elimination of entire populations as well as adverse effects on wild fish populations due to the spread of pathogens and sea lice from farmed populations are serious environmental concerns.
 4. The Caucus recommends that bridges over navigable waterways and the construction or expansion of roads on federal lands be added to the Project List Regulations. The Minister has determined, in *Schedule 1 to the Order Designating Physical Activities*, that the carrying out of the physical activities listed – including five road/bridge projects – may cause adverse environmental effects and that screenings already underway under CEAA 1992 should be continued as CEAA 2012 environmental assessments. Similar future road/bridge projects should therefore also be assessed.
 5. The Caucus recommends that renewable energy development projects such as wind power, geothermal, tidal power, and solar power projects be included in the Project List Regulations, subject perhaps to thresholds based on electricity production capacity or to other characterization or siting criteria. The Caucus strongly supports development of renewable energy sources, but recognizes that these projects may have adverse environmental effects that must be understood and mitigated before such projects are built.

Our earlier correspondence with the Agency has highlighted our concerns with the process being employed to review these Regulations and we will not revisit those here except to note that a more participatory multistakeholder process would provide the Agency and the Government with much more reliable and comprehensive recommendations, as there are many areas we are not in a position to comment on with limited research capacity and on short notice, but which clearly require modification.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is more complex and stylized, while the signature on the right is simpler and more legible, appearing to read 'Jamie Kneen'. A horizontal line connects the two signatures.

Josh Paterson and Jamie Kneen
Co-Chairs, Environmental Planning and Assessment Caucus
Canadian Environmental Network

cc: Elaine Feldman, President, Canadian Environmental Assessment Agency
Helen Cutts, Vice President, Policy, Canadian Environmental Assessment Agency