

August 26, 2012

John McCauley, Director
Legislative and Regulatory Affairs
Canadian Environmental Assessment Agency
1600 Elgin Street, 22nd Floor
Ottawa, ON K1A 0H3

Re: Amendments to the *Regulations Describing Physical Activities* - CEAA 2012

Dear Sir:

Please find below the Conservation Council of New Brunswick and CCNB Action Inc.'s comments on and recommended amendments to CEAA 2012 – *Regulations Describing Physical Activities* (RDPA).

1) The RDPA should be amended to remove the thresholds from projects listed in the RDPA

At present, the RDPA is a relisting, with a few modifications, of the projects described in the *Comprehensive Study List Regulations* (CSLR) of the previous CEAA. It is important to note that the CSLR captured a very small subset of the projects subject to an assessment under the former CEAA. Under the former CEAA, most projects underwent a screening level environmental assessment. The public was told many times by the CEA Agency and past Responsible Authorities these screenings were complete and rigorous EAs. Therefore, for example, a metal mine that impacted fish habitat underwent a complete EA whether or not it was on the CSLR, or in other words, regardless of the size of the mine.

Taking this further, there is no substantive difference between a 1,499 t/d and a 1,500 t/d metal mine. As one person who was involved with the drafting of the CSLR noted during the Agency – ENGO conference call of July 25th regarding the RDPA, the thresholds set out in the CSLR were more art than science. That an arbitrary threshold could be used in the CSLR was understandable as both mines would be subject to a complete, if different, EA process. As a 1,499 t/d mine will have no less impact on the environment versus a 1,500 t/d mine, the use of these arbitrary thresholds in the RDPA is no longer acceptable. Both should be subject to CEAA 2012.

It is clear that throughout the history of EA legislation in Canada the types of projects listed in the RDPA, regardless of their size, have been seen as having the potential to cause significant environmental harm. Removing the thresholds from the RDPA, and therefore making “smaller” projects, e.g., metal mines less than 1,500 t/d, subject to CEAA 2012 would not place an onerous burden on the proponents of these projects. If those projects that would be subject to

a screening by the Agency (CEAA 2012, ss. 8 and 9) cannot be delayed at most 45 days, or the proponent does not have the competence or wherewithal to file the simple registration document, then frankly, the viability of such projects is highly suspect and they should not be allowed to proceed.

Given the above, any thresholds should immediately be removed from sections 1 to 31 of the RDPA. Any thresholds in sections 32 to 39 should be subject to amendment after review by a multi-stakeholder, expert committee.

2) The RDPA should be amended to include more types of projects

The main purpose of environmental assessment is to provide decision-makers and the public with information so that they can take actions to prevent projects from causing significant harm to the environment. One of the first steps in the information gathering is learning about and understanding what projects or physical activities are proposed *before they are undertaken and cause environmental harm*. At present, the RDPA captures a very narrow range of physical activities or projects. In order to promote environmental protection, the RDPA should be broadened, particularly in light of the fact that, as discussed above, doing so would not subject proponents to much delay or extra responsibility.

We recognize that s. 14 of CEAA 2012, allows the Minister to designate a project for an environmental assessment that is not a physical activity listed in the RDPA. However, this presupposes that a physical activity not on the RDPA will come to the attention of the Minister and/or the public before it is undertaken, something which CEAA 2012 does not provide for.

In addition, one of the main purposes of CEAA 2012 is to provide certainty regarding federal EAs. However, it can be argued that the more limited the RDPA, the less certain the public and proponents will be about the potential undertaking of a federal EA. We foresee that unless the RDPA is expanded, the Minister, under s. 14, will be deluged with requests, from within and outside his department, to designate projects. In addition, a physical activity that comes to the attention of the public in one region, such as a marine aquaculture operation, may be designated by the Minister, while a similar project that does not come to the public's attention may not. This creates uncertainty and unfairness as different rules may apply to two very similar projects. Finally, we foresee a situation where proponents of unlisted RDPA physical activities will attempt to hide knowledge of their projects from the public and Minister so as to avoid any potential s.14 designation.

Given the above, we submit the RDPA should be amended to include the additional following physical activities:

- a) Offshore exploration work for oil or natural gas through seismic survey and exploratory drilling.***

- b) Terrestrial exploration work for oil or natural gas through seismic survey and exploratory drilling.**
- c) All physical activities that would impact Canada's ability to meet its Kyoto and post-Kyoto commitments and targets.**
- d) Diamond mines.**
- e) Renewable energy facilities.**
- f) Marine aquaculture.**
- g) Underwater power cables.**

3) CEAA 2012 or the RDPA should be amended to provide for regular review of designated physical activities

It is our recommendation that there be a legislative requirement for the RDPA to be reviewed on a regular basis, such as every 2 or 3 years. This review would identify physical activities that need to be added to the RDPA based on things such as public concerns, new or changing physical activities, new technologies, and new or increased concerns about a physical activities' impact upon the environment.

The first review could begin by the Agency making public a compilation of all the types of projects subject to a screening under the former CEAA, the numbers of each kind of project screened, and the common environmental impacts of these projects that were of concern to the Agency and/or Responsible Authorities.

Finally, please pass on to the Minister and the Agency our organizations' disappointment with how the "consultation" for the RDPA has been conducted. It is difficult to feel that our and other environmental organizations' time and efforts are "important" and "valued" when, during the height of summer holiday season, we are provided with less than 3 weeks' notice for a half-day meeting, and then given one month, again in the summer, to provide comments on a regulation that will have important consequences for the protection of the environment in Canada.

Thank you for giving your time and attention to our submission.

Sincerely,

David Coon