

December 6, 2012

Honourable Peter Kent
Minister of the Environment
401 Confederation Building
House of Commons
Ottawa, ON K1A 0A6

Dear Minister Kent,

Re: Amendment of the *Regulations Designating Physical Activities (RDPA)* under the *Canadian Environmental Assessment Act 2012 (CEAA 2012)*

As evidenced by our previous submissions¹ on the subject, we have many ongoing and outstanding concerns in relation to the *Regulations Designating Physical Activities (RDPA)* under the *Canadian Environmental Assessment Act 2012*, c.19, s.52 (“CEAA 2012”), which are currently before you for consideration and amendment. Given the inadequacy of the current RDPA as well as the inadequacy of the “pre-consultation” process undertaken by the Canadian Environmental Assessment Agency and the ensuing summary report, we urge you to send the RDPA back to the Agency to undertake a more thorough and meaningful consultation.

Although the Agency had been tasked with providing a regulation that would function as the “Project List”, it was not given adequate time to do so in a thorough manner. The RDPA/Project List itself is a pivotal instrument to the scope and implementation of CEAA 2012, but what was attached to CEAA 2012 closely resembles the previous *Comprehensive Study List Regulation* (enacted under the former CEAA, for a completely different legal purpose), with only minor amendments.

In August, the Agency carried out a circumscribed ‘pre-consultation’ on the already-in-force RDPA with a limited number of stakeholder groups. The recommendations for amending the RDPA put forward by 44 stakeholder groups involved in the pre-consultation were compiled by the Agency in a high level summary document (“Stakeholder Pre-Consultations Summary of Issues Raised,” circulated by Ms. Helen Cutts on September 13, 2012).

A number of stakeholders, notably Aboriginal groups, did not have an adequate chance to participate or could not participate in the “pre-consultation” process, and the absence of any actual discussion among stakeholders as part of the process forestalled any possibility of developing any kind of broad agreement on recommendations or even on what criteria should be used to develop recommendations. The Agency’s summary, in turn, does not make any attempt to evaluate the potential impact or value of the range of proposals made by various stakeholders in the ‘pre-consultation’, either in terms of the purposes of the Act or in terms of the integrity of the federal environmental assessment process, or to seriously evaluate the rationale and justifications behind those recommendations. We are deeply concerned that recommendations made by parties that are, for their own aims, seeking to further limit and weaken the application of the Act seem to be given the same consideration as the practical proposals to reinforce the integrity of the Act made by other participants. Simply observing that some commenters said

¹ See resources listed under “Submissions to the Canadian Environmental Assessment Agency regarding proposed amendments to the *Regulations Designating Physical Activities* (“Project List Regulations”)” at <http://rcen.ca/caucus/environmental-planning-and-assessment/resources>

one thing and others said something different is a poor substitute for taking participants' reasoning and rationales into account to come up with a logical and coherent set of recommendations.

It is asking a lot of the Agency to be able to evaluate and balance a wide range of recommendations, especially in the absence of clear criteria by which to do so. It is in this context that multistakeholder discussions can be very useful, in developing criteria and establishing broad agreement – or at minimum, clear decision points – across various sectors.

In light of the concerns raised by key stakeholders and the fact that the Agency had an extremely short timeframe within which to 'draft' regulations (with the result that none were drafted: they were simply copied from previous legislation), **we urge you to direct the Agency to proceed with more comprehensive consultation to allow meaningful stakeholder involvement – and the development of more coherent and positive recommendations.**

To achieve the stated aim of certainty and predictability that the government is seeking, we urge you to respond to outstanding concerns raised by all parties in relation to these pivotal and influential regulations and to work cooperatively toward finalizing them.

We would appreciate your timely response, including a timeline for next steps on the RDPA.

Yours sincerely,



Jamie Kneen



Josh Paterson

Co-Chairs, Environmental Planning and Assessment Caucus of the Canadian Environmental Network

Copy: Elaine Feldman and Helen Cutts, Canadian Environmental Assessment Agency