



MiningWatch Canada

Mines Alerte

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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”) – Thresholds for Environmental Review of Mining Projects

MiningWatch Canada would like to comment on specific aspects of the Regulations Designating Physical Activities (“Project List Regulations”) under the *Canadian Environmental Assessment Act 2012* (CEAA 2012). These comments are not to be considered comprehensive or conclusive, as we may have further comments once we have more time to review the text and application of the Act and Regulations.

Given that the Project List Regulations were largely drawn from the old Comprehensive Study List, which served a different purpose, they clearly need to be reviewed and revised to take into consideration the design and limitations of the CEAA 2012 process. One of the features of the Comprehensive Study List that does not match the CEAA 2012 process is the application of thresholds to the listing of mining projects.

CEAA 2012 requires projects to undergo a screening to determine if an environmental assessment (Standard or Review Panel) will be conducted if they are listed under sections 15-17. Under CEAA 1992 there were problems with potentially damaging mining projects avoiding a Comprehensive Study due to the thresholds for mining projects. The existing Project List Regulations replicate the CSL thresholds, which are no longer appropriate. A project that triggered CEAA 1992 but was below the CSL threshold would at least be subject to an environmental screening; under CEAA 2012 any project not captured on the Project List Regulations is not even considered for an environmental assessment.

In our view the use of thresholds for new mines should be eliminated. All new commercial scale metal and industrial mining operations, including diamond mines, should be required to submit a project description to CEAA. Our rationale for this recommendation is outlined below.

1. Filing a project description is a minimal burden on the proponent and providing the Agency is adequately resourced, review of the description can be readily done in a timely fashion with minimal burden on the proponent.
2. Distinguishing different types of mines with different thresholds – especial metal and gold mines – is especially problematic with polymetallic mines that may be hard to define as one type of mine or the other. This came to be an issue with the environmental assessment process for the Tulsequah Chief mine that was below the Comprehensive Study List threshold for a metal mine but above it for a gold mine, and despite being a poly-metal mine with significant gold values it was not evaluated as a Comprehensive Study but only underwent a CEAA 1992 screening. Under the current CEAA 2012 Regulations this project would have received no federal review whatsoever despite significant potential impacts on various areas of federal responsibility, notably fish and fish habitat and the rights and title of Aboriginal peoples.
3. Mines that fall under the current thresholds may well have the potential for significant negative effects. Proposed mines that would fall under the threshold could be small open pits but would mostly be underground mines, so their physical footprint would be smaller. Even so they would still be required to manage hundreds of thousands if not millions of tonnes of mine wastes, millions of litres of reagents, mine water, and process water, and may still require extensive infrastructure to support the operation. The potential impact of smaller-scale mining on fish is clearly demonstrated by the history of the Mt. Washington mine on Vancouver Island. This was a small open pit that only operated for three years in the 1960s and would have come in under the 3,000 tpd threshold in the existing regulations. Despite its short life span and small size, the amount of acid mine drainage generated was enough to wipe out resident and anadromous trout and salmon populations. The clean up of the site has improved water quality and some of the fish are returning, but only after significant resources have been spent on clean up. Modern mining regulations reduce but by no means eliminate the potential for such effects.
4. Mines and their surrounding infrastructure also have potential to significantly affect Aboriginal rights and title in a number of ways, from alienating areas of traditional territory from current use as well as potential land claims, to impacts on resources such as fish and game, to disturbance of important cultural areas. Such impacts do not stop at any threshold of mining activity.
5. The use of thresholds for new mining projects is inconsistent with the application of the Act to the pulp and paper industry, where all new pulp mills are required to file a project description for a screening (section 18); also the threshold for a pulp mill expansion is lower than for mining (35% vs. 50%). There is no apparent rationale for such discrepancies.
6. Thresholds may be used by proponents to avoid an environmental assessment, despite plans to operate above the threshold. We have seen examples of project that have incrementally increased the size and scale of operation. For example, Quebec Lithium recently submitted an application for a mine just below the 3,000 tpd threshold. Little would stop a firm from making such an application and then increasing their extraction rate at a later time. Under the

current regulation the mine could avoid an environmental assessment so long as its incremental increases were less than 50% of production.

Environmental assessments should make for better mining projects from a technical and environmental protection perspective, but they should also provide a public forum to assure people that the highest standards are being applied and that community concerns are being appropriately and adequately addressed, especially if the rights and title of Aboriginal peoples may be affected. In addition to assisting in meeting other legal obligations, this helps provide the project with a social licence to operate. Allowing mines to escape this scrutiny based on an arbitrary threshold does no favours to the public, the environment, or the proponent.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie Kneen". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Jamie Kneen,
Communications and Outreach Coordinator