May 20, 2013

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

Dear Mr. McCauley,

re: Regulations Amending the Regulations Designating Physical Activities

I am writing on behalf of the Environmental Planning and Assessment Caucus of the Canadian Environmental Network (the Caucus) to comment on the draft Regulations, published April 20 of this year in the Canada Gazette, Part One.

Unfortunately, many of the points made in the Caucus' letter of August 24, 2012 are not reflected in the draft Regulations, and neither are they seriously addressed in the Regulatory Impact Analysis Statement (RIAS) accompanying the Regulations. We did not make those comments frivolously and in the total absence of any public discussions on the content of the Regulations, we would expect the RIAS to provide at least a detailed justification of their eventual disposal. That letter is attached for your reference and inclusion as part of our formal comment on the present draft Regulations.

The Caucus' overall concern remains with the overly restrictive nature of the Regulations Designating Physical Activities (Project List Regulations), both in terms of the activities listed and the thresholds that accompany them. The *Canadian Environmental Assessment Act 2012* (CEAA 2012) is structured so that projects on the list are screened and may be assessed. In our view the restricted list means that many projects that could have significant environmental impacts will simply not be considered. Our August letter explains these points in detail.

While we appreciate the principle that Agency resources should not be "unnecessarily used to consider and screen an overly broad pool of projects," we cannot accept that the Regulations should arbitrarily limit the "pool of projects" without any specific public justification or disclosure of the criteria being applied.

We are encouraged by the additions to the list; adding "diamond mines, apatite mines, railway yards, international and interprovincial bridges and tunnels, bridges that cross the St. Lawrence Seaway, the first offshore exploratory wells in Exploration Licence areas, and expansions to oil sands mines" is a positive move, although again the thresholds given are not justified and neither is the exclusion of offshore exploratory wells that are not the first in an in Exploration Licence area. It is far from obvious that subsequent wells will have no environmental impact, and much more likely that they will – and a significant one at that, although that is not the test under section 10 of the *Act*.

By the same token, although a lower threshold for the inclusion of rare earth metal mines is welcome, no justification has been provided for the application of any threshold at all.

We are, however, greatly concerned by, and opposed to, the deletions from the list. Again, no justification has been provided to assure the public that chemical and pharmaceutical plants, tanneries, heavy oil and "oil sands" (bitumen) processing facilities – among many others – can be assumed to have no adverse

environmental effects and therefore do not even need to be screened for possible assessment. Groundwater extraction facilities should be included in the Regulations; in this case, the Caucus agrees with the original thresholds as it is our understanding that industrial-scale quarrying and groundwater extraction would almost always exceed the 200 000 m^3/a threshold, and project proposals would be unlikely to be manipulated to avoid exceeding it.

Please note that this is the kind of justification we would expect for any thresholds designated in the Regulations.

Finally, we are disturbed that apart from the limited additions mentioned above, our recommendations for additions to the Regulations, although they are acknowledged in the RIAS, have been ignored on the draft Regulations, again without any justification.

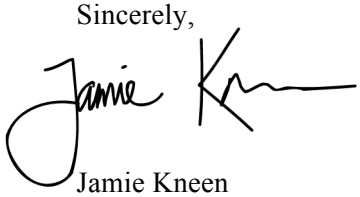
The public deserves a clear explanation as to why the following should not be included in the Regulations:

- Projects located in federal protected areas (e.g., National Parks, but also National Park Reserves, National Marine Conservation Areas, National Wildlife Areas, Marine National Wildlife Areas, Migratory Bird Sanctuaries, and Marine Protected Areas
- Electrical transmission lines, oil and gas pipelines, railway lines, and highways
- The disposal of nuclear waste
- Oil and gas projects including steam-assisted gravity drainage (SAGD) bitumen projects; oil and gas hydraulic fracturing (fracking) projects; ALL exploratory offshore oil and gas seismic and drilling activities; and issuance of offshore oil and gas exploration licences
- Marine and freshwater aquaculture projects
- Bridges over navigable waterways and the construction or expansion of roads on federal lands
- Renewable energy development projects such as wind power, geothermal, tidal power, and solar power projects.

Our submission of last August provided detailed public justifications for the inclusion of each of these classes of project in the Project List. If the government has reasons for rejecting their inclusion beyond simply wanting to limit the application of the Act, we deserve to hear them.

Thank you for your attention to this matter.

Sincerely,



Jamie Kneen
Chair, Environmental Planning and Assessment Caucus
Canadian Environmental Network