Title: Comments for Consideration during the Review of CEAA 2012

Prepared by: D. McDonell

Prepared for: Ms. Johanne Gélinas, Chair of the Expert Panel

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I raise the following comments and suggestions for the Panel's consideration with the hope of providing further clarity, robustness and transparency to the Canadian Environmental Assessment Act, 2012 (CEAA, 2012). My personal background and experience is from working in the environmental science field over the past 20 years. My overarching belief is that environmental assessments (EAs) are intended to evaluate the potential impacts of a proposed project *"in a careful and precautionary manner to avoid significant adverse environmental effects"* (*CEAA, 2012. Section 4.(1)(b) Pg. 5).*

Planning Environmental Assessment

- Q1 - Under what circumstances should federal environmental assessment be required?

It is my understanding that a proposed project is considered for a federal EA through the initial screening against the list of eligible Physical Activities identified in the Schedule of CEAA 2012's "*Regulations Designating Physical Activities*" [the Schedule]. While this list is quite comprehensive in its inclusion of many of the large–scale, potential project types that may result in large-scale adverse impacts, I would like to suggest a few areas that may warrant further review. In particular:

- Item 16 of the Schedule, which outlines the thresholds for the types and sizes of mines potentially requiring a federal EA (depending on an evaluation against Section 5); and,
- Item 17 of the Schedule, which details the thresholds that should be used to determine if an expansion of an existing mine could also require a federal EA (also depending on a subsequent evaluation against Section 5).

I would like to suggest that these two thresholds be further evaluated due to the potential for unintentional gaps that they could cause. It is possible that these lists could be too limiting in terms of identifying specific types of mining activities to be assessed through a federal EA. For example, other types of mining activities (such as a large-scale graphite mine) could result in significant adverse environmental effects, but due to the current phrasing of the aforementioned items, they would not be eligible for consideration.

It may also be possible that the threshold for either the proposed size and/or the threshold of expansion (e.g., 50% or more) could be problematic. For example, if a proposed mine is to be expanded but the expansion is only by 49%, it will not be assessed due to the threshold of change that has currently been set. However, this proposed mine expansion could potentially result in a large, significant adverse environmental impact (e.g., due to its proximity to an important Indigenous site not on federal lands, or due to nearby significant ecological features).

Another factor, in terms of the effects that are scoped into a federal EA, that could potentially be strengthened is Section 67 of the Act. This section of the Act applies to projects to be carried out on federal lands. The Act notes that

"An authority must not carry out a project on federal lands, or exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that would permit a project to be carried out, in whole or in part, on federal lands, unless

(a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or

(b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effect and the Governor in Council decides that those effects are justified in the circumstances under subsection 69(3)." (CEAA 2012, Section 67. pg. 35-36)

However, the clarity of how the potential effects from these projects will be evaluated on federal lands and how the findings of these evaluations are publically shared is not clear.

- Q2 - For project environmental assessments, do you think the current scope and factors considered are adequate?

It is my understanding that under CEAA 2012, Section 5 limits the areas that can be assessed through a federal EA. These areas include: fish, aquatic Species at Risk, migratory birds, and impacts to indigenous people that has resulted from a change to the environment. I suggest that this Section should be expanded, as it currently may miss important adverse environmental impacts. For example, if a federally listed terrestrial species at risk is found within the proposed project site, it appears that it cannot be considered under this section. Another example might be if a non-Indigenous person is located directly adjacent to the proposed project, any impacts resulting from a change to the environment (e.g., air quality) on that person would not be considered under this section.

- Q3 - Are there other things (effects, factors, etc.) that should be scoped into an environmental assessment?

CEAA 2012 states that any "federal authority to exercise a power or perform a duty or function conferred on it under any Act of Parliament other than this Act..." (CEAA 2012, Section 5 (2), pg. 7) must also be taken into account. However, there appears to be a possible disconnect between the federal EA process and other federal regulatory processes (e.g. Metal Mining Effluent Regulations [MMER] under the Fisheries Act). For example, a federal EA can currently be completed on a proposed metal mine which includes the assessment of the proposed location of the Tailings Management Area on a watercourse containing fish but not include the MMER processes. However, after the

EA is complete the proponent would then be required to complete the Schedule 2 Amendment process within MMER due to the proposed impact through the placement of metal mine waste on a watercourse containing fish. From my review of publically available EIS guidelines that have been issued for metal mining projects, it appears that the Canadian Environmental Assessment Agency (the Agency) can only encourage, and not require, the incorporation of such information into the federal EA process.

Thus, it is possible that this second regulatory process will result in a different conclusion for the proposed project (e.g. conclude with a different preferred location for the metal mine waste) and thus invalidate the federal EA's assessment. I would recommend that the Act be examined to see if it might be possible to harmonize EA and regulatory processes when possible.

In terms of the effects that are scoped into a federal EA, another factor that could potentially be strengthened in CEAA 2012 is around accidents and malfunctions. Currently, CEAA 2012 does mention them in the "Factors to be Considered," noting that "*the environmental effects of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and ...."* (CEAA 2012, Section 19. (1)(a). pg. 12-13.

However, from my review of publically available EIS guidelines and EA final reports it appears that this current wording is more focused on the construction phase of a project. Thus, I would like to suggest that special consideration should be given to the accidents and malfunctions that can occur on large scale projects during the operations and closure phases. The reason specifically highlight these phases is because of the potentially very long time span that they may cover. For example, a metal mine that produces waste rock (which might be potentially acid generating/metal leaching) could represent an adverse environmental effect risk that does not disappear over time. The wording in the Act could be expanded to help provide clarity on how the federal EA should evaluate the risks presented from an accident and malfunction over a ten year time span versus over a 100-1000 year time span.

Conduct of Environmental Assessment

- Q1 - Who should be responsible for conducting federal environmental assessments? Why?

It is my understanding from reviewing the Act that currently the only authorities that can be responsible for conducting a federal EA is either the Canadian Environmental Assessment Agency, the Canadian Nuclear Safety Commission or the National Energy Board (the Responsible Authorities or RAs). However, I would like to suggest that it may be worthwhile to evaluate the potential for the expansion of this RA list depending on which federal department has the most expertise on the proposed project. For example, if the proposed project is to be located near or in a waterway and the majority of effects will be related to fish and fish habitat, then it might be more effective and efficient to

identify Fisheries and Oceans Canada as the RA for the federal EA as they will already hold the majority of interest and knowledge on the environmental effects.

- Q3 - How can environmental assessment processes be improved to ensure a timely, yet thorough process has been conducted?

It is my understanding from reviewing the Act that the timing of a federal EA under CEAA 2012 is driven by the timelines the Act outlines. However, it does not appear that the Act allows for the RAs to determine if the process would be more efficient if the entire project's EA timeline was to be linked to the provincial EA process (when it also applies to the project). Thus, I would suggest that there may be the potential for these two EA processes to become de-harmonized and multiple redundant processes would then need to be followed regardless of the value that they might provide. I would like to suggest that it may be worthwhile to consider a greater level of RA discretion in terms of the timing of the federal EA within the Act.

It is also my understanding that under the previous federal EA Act there was the option to “bump up” a Comprehensive/Standard EA to a panel based on the environmental risk(s) and public/indigenous communities concern(s) that developed during the assessment of the project during the EA process. Unfortunately, this option was removed in CEAA 2012 and the Canadian Environmental Assessment Agency must now make the determination on whether a project should require a review panel or not in the first 105 days (when the EIS guidelines are being developed). I would like to suggest that a potential problem with the current process is that not all of the potential adverse environmental effects are known during the EIS guidelines phase. These potential effects and the public/indigenous communities understanding of the project are only clear during the review of the proponent’s EIS. I feel that the previous “bump up” option represented a better process to help ensure a timely yet thorough process.

Decision and Follow-Up

- Q2 - What would a fair, transparent and trustworthy decision-making process look like?

It is my understanding from reviewing the Act that CEAA 2012 outlines (broadly) that, when a decision is made, it must be posted on the internet which then results in triggering formal time limits (e.g., accepting the project description, or the Minister's decision). However, I would like to suggest that CEAA 2012 could be further enhanced by providing further clarity in terms of what other types of information should be posted on the internet during the course of the federal EA. This information could also include typical information developed during the course of an EA such as addendum reports, Information Requests received, letters of support received, etc.

- Q3 - Who should participate in the implementation of follow-up and monitoring programs and how should that participation be encouraged or mandated?

From my review of CEAA 2012 it appears to mention follow-up and monitoring in two areas. These areas include:

1. *" 'follow-up program' means a program for*
(a) verifying the accuracy of the environmental assessment of a designated project; and
(b) determining the effectiveness of any mitigation measures."
(CEAA 2012, Interpretations. pg. 3)

2. The Act also notes that the conditions in the decision statement include mitigation measures and *"the implementation of a follow-up program" (CEAA 2012, Section* 53.(4)(b). pg. 31)

I would like to suggest that the current interpretation of follow-up program could be further enhanced by expanding it to also include specific mention of "adaptive management". It is recognized that an EA is a planning tool that can only be completed using relatively limited data that is currently available at the time that the project is proposed. However, as the project is constructed, the specific nature of many of the proposed environmental components becomes much more certain. A follow-up program would benefit from being able to adjust to and incorporate this expanding awareness. This type of follow-up program could also be flexible enough to adjust to changes in the components that were assumed in the EA versus what becomes known in the construction and operation of the project.

I would also like to suggest that Section 53 could be further enhanced by detailing what is to be included in the "implementation of a follow-up program". It is unclear if this is simply a yearly checklist related to the conditions of the decision statement, or detailed information/data that supports the conclusions that the conditions are being met. I would also like to suggest that the federal EA decision statement could also be enhanced by including a comprehensive follow-up monitoring framework (including roles and responsibilities, thresholds for decision making, timing and options for adaptive management).

- Q4 - Are enforceable conditions the right tool to ensure that the Government of Canada is meeting its environmental assessment objectives and, if so, who should have a role in compliance and enforcement?

From my review of CEAA 2012, it does not appear to allow for the Minister to amend, add or remove conditions from the decision statement once it is posted. I would like to suggest that, as an EA is a planning tool that is completed relatively early in a project's life cycle, it would help to strengthen the Act if RA or the Minister was given the ability to adjust conditions if warranted by the receipt of new or better data. Currently, the Act does not include wording related to "adaptive management"; however, with the incorporation of this principle, it would allow the conditions developed through the federal EA process to remain applicable and relevant.