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canadienne
de pipelines
d'énergie

Suite 200, 505 – 3rd St. SW
Calgary, Alberta T2P 3E6
PHONE 403.221.8777
FAX 403.221.8760

December 14, 2012

Honourable Peter Kent, PC, MP
Minister of Environment
Environment Canada
10 Wellington Street
Gatineau, Quebec K1A 0H3

Dear Minister Kent,

I am writing to you today on behalf of the Canadian Energy Pipeline Association (CEPA) to raise for your consideration some concerns with the implementation of the *Canadian Environmental Assessment Act 2012* (CEAA 2012). CEPA represents Canada's transmission pipeline companies. Our members transport 97% of Canada's daily natural gas and onshore crude oil production from producing regions to markets throughout Canada and the US. Our members build and operate pipelines and associated facilities that are under the regulation of the National Energy Board (NEB) and, when pipelines are solely within a province, under the regulation of provincial energy authorities, such as the British Columbia Oil and Gas Commission or the Ontario Energy Board.

Our member companies are directly affected by and supportive of the amendments to the *National Energy Board Act* and to the environmental assessment regime as now set out in CEAA 2012. However, CEPA believes that an amendment to the CEAA 2012 Regulations Designating Physical Activities (the Regulation) is required to properly achieve the intent of the NEB Act and CEAA 2012 changes and avoid duplication between federal and provincial processes.

In August, at the invitation of the Canadian Environmental Assessment Agency, we provided comments on the Regulation. A copy of that letter is attached for your reference. In the intervening months, our member companies have gained further experience with the new legislation and its implementation, and those experiences have reinforced our concern about duplication of federal and provincial processes on pipeline projects.

The duplication arises through section 14(a) of the Regulation that requires provincially regulated pipeline projects that create more than 75 km of new right-of-way to undergo assessment under CEAA 2012. These projects do not cross a territorial or provincial boundary, are properly within provincial jurisdiction and as such are subject to the environmental assessment processes of the province in which they occur, yet are now required to undergo a federal assessment.

This duplication is contrary to the intent of CEAA 2012, and the misalignment between federal and provincial processes, timelines and requirements creates inefficiency. We recognize that options exist for substitution of provincial processes, but those options can only be accessed on a case by case through discussion between the Minister and provinces, likely creating uncertainty and delay.

CEPA recommends that s 14 (a) of the regulation be amended to read:

*14 (a) The construction, operation, decommissioning and abandonment of an oil ~~and~~ or gas pipeline more than 75 km in length on a new right-of-way **on federal lands**.*

We believe this simple change accomplishes the intent of CEAA 2012 by focusing federal assessment on areas of federal interest and avoiding duplication with provincial processes. It reinforces the approach of 'one project, one review by the best-placed regulator'. In this case, the best-placed regulator is the relevant provincial agency or department.

Our industry is committed to the construction and operation of safe energy pipelines and facilities and to the protection and conservation of the environment through which they pass. We believe that the approaches set out in CEAA 2012 reflect a modern approach to environmental assessment that supports environmental protection and development of infrastructure in the interests of Canadians. As currently written, the Regulation counters the intention of the federal government to avoid duplication and focus federal assessment on areas of federal interest. Our recommended amendment redresses that situation.

CEPA would be pleased to answer any questions that you might have about this amendment and our proposed approach with you or your officials.

Sincerely,



Brenda Kenny
President & CEO

Cc: Honourable Joe Oliver, Minister Natural Resources Canada
Elaine Feldman, President, Canadian Environmental Assessment Agency

Encl. CEPA Designated Activities Comments to CEAA FINAL August 17 2012



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Suite 200, 505 – 3rd St. SW
Calgary, Alberta T2P 3E6
PHONE 403.221.8777
FAX 403.221.8760

August 17, 2012

Ms. Helen Cutts, Vice President
Mr. John McCauley, Director
Canadian Environmental Assessment Agency
22nd Floor, Place Bell
160 Elgin Street
Ottawa ON K1A 0H3

Dear Ms. Cutts and Mr. McCauley,

**RE: Regulations Designating Physical Activities (the “Regulations”)
Canadian Environmental Assessment Act, 2012 (“CEAA 2012”)**

I am writing to you today on behalf of the Canadian Energy Pipeline Association (“CEPA”). Thank you for the opportunity to provide comments on the Regulations Designating Physical Activities under CEAA 2012.

CEPA has reviewed CEAA 2012 and the associated Regulations with great care as these changes are of material significance to our members as they proceed with important infrastructure projects in Canada. Our comments pertain only to those aspects of the Regulations that are directly applicable to the federally and provincially regulated pipeline industry.

The current Regulations reflect the processes underpinning the previous Comprehensive Study List. As this phase of environmental assessment has been replaced and as the role of responsible and federal authorities has changed, it is appropriate to reflect on the regulation and update it. CEPA supports the efforts of the Agency to initiate this process.

Regarding section 14(a), for which the Canadian Environmental Assessment Agency (the “Agency”) is the responsible authority:

s 14 (a) The construction, operation, decommissioning and abandonment of an oil and gas pipeline more than 75 km in length on a new right-of-way.

This section will apply to provincially regulated pipeline projects that create more than 75 km of new right-of-way. These projects do not cross a territorial or provincial boundary, are properly within provincial jurisdiction, and are subject to the environmental assessment processes of the province in which they occur. As currently written, section 14(a) of the Regulations creates the potential for duplication of federal and provincial assessment or requires a discussion between the Minister and the province on substitution or equivalency on a project by project basis. Duplication is contrary to the intent of CEAA 2012 and case by case discussions between the Minister and provinces are likely to result in project delays.

CEPA recommends the following:

- The phrase “operation, decommissioning and abandonment” should be deleted from the section as these activities cannot occur on ‘new right-of-way’. We understand that the intention is to capture the full life cycle of a pipeline project in the assessment; that requirement to assess the potential impacts related to all phases of a project should be conveyed elsewhere, perhaps in guidance regarding the Project Description.
- The phrase “an oil and gas pipeline” be amended to “an oil **or** gas pipeline.”

- The potential for duplication of federal and provincial processes should be reduced by amending the section to read: "... more than 75 km of new right-of-way **on federal land.**" This is consistent with the constitutional division of powers, respects provincial assessment processes, and supports the policy objective of focussing on federal lands and interests.

Presently, section 14(a) represents the continuation of an arbitrary 75 km criterion that attempts to distinguish pipeline projects that may have the potential for significant adverse effects. CEPA suggests that length of new right-of-way alone is not an effective proxy for potential environmental impact on areas of federal interest in provincially regulated projects. It may be more appropriate to focus on specific areas of federal interest more directly. CEPA would be pleased to participate in discussions with the Agency of other criteria that might serve as a better indicator.


With respect to section 38(a), for which the National Energy Board ("NEB") is the responsible authority:

s. 38 (a) The construction, operation, decommissioning and abandonment of an oil and gas pipeline more than 75 km in length on a new right-of-way.

CEPA considers that this section of the Regulations appropriately reflects federal jurisdiction in federally regulated pipelines. While 75 km of new right-of-way is still an arbitrary figure, we believe that there is no potential duplication of process arising in this situation as the project will be reviewed by the NEB in any case. Accordingly, CEPA makes only two recommendations for change in this section – removal of the phrase "operation, decommissioning and abandonment" from the text as these cannot, by definition, occur on new right-of-way, and replacement of 'and' with 'or' in the phrase "an oil and gas pipeline...".

CEPA appreciates this opportunity to provide comments on the Regulations. We look forward to continuing to participate in discussions with the Agency and other stakeholders as CEAA 2012 is implemented.

Sincerely,



Brenda Kenny
President & CEO