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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