Court File No. T-1008-20

FEDERAL COURT

BETWEEN:

COALSPUR MINES (OPERATIONS) LTD.

Applicant

and

THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE,
THE ATTORNEY GENERAL OF CANADA,
LOUIS BULL TRIBE, KEEPERS OF THE WATER COUNCIL, KEEPERS OF THE ATHABASCA WATERSHED SOCIETY, THE WEST ATHABASCA WATERSHED BIOREGIONAL SOCIETY, and STONEY NAKODA NATIONS (BEARSPAW FIRST NATION, CHINIKI FIRST NATION AND WESLEY FIRST NATION)

Respondents

RECORD OF THE RESPONDENTS KEEPERS OF THE WATER COUNCIL, KEEPERS OF THE ATHABASCA WATERSHED SOCIETY, and THE WEST ATHABASCA WATERSHED BIOREGIONAL SOCIETY

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FEDERAL COURT

COALSPUR MINES (OPERATIONS) LTD.

Applicant

– and –

THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE, THE ATTORNEY GENERAL OF CANADA, LOUIS BULL TRIBE, KEEPERS OF THE WATER COUNCIL, KEEPERS OF THE ATHABASCA WATERSHED SOCIETY, THE WEST ATHABASCA WATERSHED BIOREGIONAL SOCIETY, and STONEY NAKODA NATIONS (BEARSPAW FIRST NATION, CHINIKI FIRST NATION AND WESLEY FIRST NATION)

Respondents

MEMORANDUM OF FACT AND LAW OF THE RESPONDENTS KEEPERS OF THE WATER COUNCIL, KEEPERS OF THE ATHABASCA WATERSHED SOCIETY, and THE WEST ATHABASCA WATERSHED BIOREGIONAL SOCIETY

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OVERVIEW

1. Keepers of the Water Council, Keepers of the Athabasca Watershed Society, and the West Athabasca Watershed Bioregional Society (the "Community Respondents") ask the Court to dismiss Coalspur Mines (Operations) Ltd. ("Coalspur")'s application to quash the order (the "Designation Order") of the Minister of Environment and Climate Change Canada (the "Minister") designating the Vista Coal Underground Test Mine (the "Vista Underground Mine") and the Vista Coal Mine Phase II Expansion ("Phase II") (together, the "Vista Expansion Phase") for assessment under s. 9(1) of the *Impact Assessment Act*, SC 2019, c 28 (the "IAA").

2. The Minister has broad discretion to designate projects that are not automatically designated under the IAA, based on either their potential adverse effects or public concern about their effects. In this case, both of these grounds for designation are satisfied.

3. It was reasonable for the Minister to designate the Vista Expansion Phase, to reconsider his decision on Phase II, and to consider Phase II and the Vista Underground Mine together. His decision was reasonable based on the record, the plain language of the designation provision, and the IAA's purposes. The Minister's reasons demonstrate intelligibility, justification and transparency; they do not render his decision to designate the Vista Expansion Phase unreasonable.

4. The Applicant's application should therefore be dismissed.

Part I STATEMENT OF FACTS

5. The Community Respondents are three community organizations who jointly submitted a request to the Minister to designate the Vista Expansion Phase for impact assessment.

   a. Keepers of the Water is comprised of First Nations, Métis, and Inuit peoples; environmental groups; concerned citizens; and communities working together to protect air, water, land, and all living things in the Arctic Drainage Basin.[1]

[1] Letter from Community Respondents to Minister McKenna (17 May 2019) ("Phase II Designation Request"), Applicant's Record ("AR") Tab D, p. 640.

b. Keepers of the Athabasca is comprised of First Nations, Métis, Inuit, environmental groups, and citizens working together to protect water, land, air, and all living things in the Athabasca River Watershed.[2]

c. The West Athabasca Bioregional Society is a group of concerned citizens from Edson, Jasper, Hinton, Brule and surrounding areas who work to protect, preserve and restore the Athabasca Watershed through advocacy, education and community projects.[3]

A. Legislative Framework

6. The IAA establishes a process to assess the impacts of major projects prior to operation. Impact assessments evaluate effects including changes to the environment or to health, social or economic conditions, as well as impacts to Indigenous groups and Indigenous peoples' rights.[4]

7. Only designated projects are assessed under the IAA. The IAA defines a "designated project" as one or more physical activities that are designated either through regulations under the Act or by the Minister, as well as physical activities incidental to a designated activity.[5] "Physical activity" is not a defined term within the IAA.

8. The *Physical Activities Regulations*, SOR/2019-285 (the "Regulations") provide that the physical activities set out in the schedule are designated projects for the purposes of the IAA.[6] An expansion to an existing coal mine is a designated project if two thresholds are both met or exceeded: if "the expansion would result in an increase in the area of mining operations of 50 per cent or more" (the "Area Threshold"), and "the total coal production capacity would be 5,000 t/day or more after the expansion" (the "Production Threshold").[7] Area of mining operations is defined as the "area at ground level" occupied by certain mining facilities.[8]

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[2] Letter from Keepers of the Athabasca Letter to Minister McKenna (12 July 2019) ("KoA Letter of Support"), AR Tab D, p. 657.
[3] Phase II Designation Request, AR Tab D, p. 649.
[4] *Impact Assessment Act*, S.C. 2019, c. 18 s. 1 ("IAA"), ss. 22(1)(a), 22(1)(c) [Community Respondents Authorities ("CRA"), Tab 3].
[5] IAA, s. 2(1) [CRA, Tab 3].
[6] *Physical Activities Regulations*, SOR/2019-285 ("Regulations"), s. 2(1) [CRA, Tab 4].
[7] Regulations, s. 19(a) [CRA, Tab 4].
[8] Regulations, s. 1(1) [CRA, Tab 4].

9. Projects not prescribed by the Regulations are also designated for impact assessment if the Minister designates them under s. 9(1) of the IAA, which provides that the Minister "may, on request or on his or her own initiative", designate physical activities that are not prescribed by the Regulations. The Minister may do so "if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation."[9]

10. Subsection 9(4) of the IAA requires the Minister to "respond, with reasons" to a request made under s. 9(1) within 90 days, and to post the response on the Agency's website.

11. Subsection 9(7) specifies two limitations on the Minister's discretion to designate a physical activity: (a) if "the carrying out of the physical activity has already substantially begun", or (b) if a federal authority has exercised a power or performed a duty or function under another Act of Parliament that could permit it to be carried out in whole or in part.[10]

12. The Impact Assessment Agency (the "Agency") is the federal body responsible for conducting impact assessments in many circumstances, as well as advising the Minister on decisions made pursuant to the IAA.[11]

13. Section 9 does not require the Agency to make a recommendation on designation to the Minister, nor does it obligate the Minister to follow any such recommendation. The process for the Agency to make recommendations to the Minister is set out in policy, in the "Operational Guide: Designating a Project under the *Impact Assessment Act*" (the "Operational Guide").[12]

14. Under s. 16(1) of the IAA, once a project has been designated, the proponent has provided an initial project description, and public notice has been posted, the Agency then decides whether an impact assessment of the designated project is required.

B. Phase I

15. Coalspur is the owner and operator of the Vista Coal Mine, a coal mine complex located 10 km east of Hinton, AB. The Vista Coal Mine is comprised of the open-pit Phase I, which

[9] IAA, s. 9(1) [CRA, Tab 3].
[10] IAA, s. 9(7) [CRA, Tab 3].
[11] IAA, ss. 153-156 [CRA, Tab 3].
[12] Impact Assessment Agency, Operational Guide: Designating a Project under the *Impact Assessment Act* (Ottawa: Government of Canada, 2020) ("Operational Guide") [CRA, Tab 8].

currently produces roughly six million tonnes ("MT") of thermal coal each year,[13] along with the proposed open-pit Phase II and Vista Underground Mine. The coal produced at the Vista Coal Mine is exported outside of Canada.[14]

16. Coalspur applied for a provincial assessment of environmental effects of Phase I in 2011. Phase I was assessed by the Alberta Energy Regulator (the "AER") and approved in 2014.[15]

17. Federally, the *Canadian Environmental Assessment Act*, SC 1992, c 37 ("CEAA 1992") applied to Phase I.[16] Under CEAA 1992, environmental assessments were triggered by either the involvement of federal authorities in a project, or the need for federal authorities to exercise powers in relation to a proposed project.[17] In May 2012, the Agency's predecessor, the Canadian Environmental Assessment Agency (the "CEA Agency"), decided Phase I need not undergo an assessment because no federal authority had identified the need to exercise a power, duty or function to allow the project to proceed.[18]

18. Phase I became operational in or around the spring of 2019.

C. Phase II

19. Phase II, proposed in 2018, would be a second open-pit surface thermal coal mine on land immediately adjacent to Phase I, and relying on the existing Phase I infrastructure.[19] Coalspur stated that the maximum production capacity for Phase II would be 6 MT per year or 16,949 tonnes per day, with an anticipated average production of 4.6 MT and a 10-year project life.[20]

20. On May 17, 2019, the Community Respondents submitted a request to the Minister that Phase II be designated for assessment under s. 14(2) of the former *Canadian Environmental*

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[13] Affidavit of R. Simon Stepp ("Stepp Affidavit") at para 9, AR Tab C, p. 23.
[14] Memorandum to Minister: Coalspur Vista Coal Mine Phase II - Recommendation on whether to Designate (5 December 2019) ("Phase II Memorandum"), AR Tab D, p. 628; see also Stepp Affidavit at para 9, AR Tab C, p. 23.
[15] Analysis Report: Whether to Designate the Coalspur Mine Ltd. Vista Coal Mine Phase II Project in Alberta (December 2019) ("Phase II Analysis Report"), AR Tab D, p. 669.
[16] The *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52 ("CEAA 2012") came into force in July 2012: CEAA 2012, AR Tab E, Tab 2.
[17] *Canadian Environmental Assessment Act*, SC 1992, c 37 ("CEAA 1992"), s. 5 [CRA, Tab 2].
[18] Stepp Affidavit, Exhibit 15, AR Tab C, p. 211.
[19] Stepp Affidavit at para 22, AR Tab C, p. 27; Phase II Memorandum, AR Tab D, p. 628.
[20] Stepp Affidavit, Exhibit 27, AR Tab C, p. 315; Phase II Memorandum, AR Tab D, p. 628.

Assessment Act, 2012, SC 2012, c 19, s 52 ("CEAA 2012").[21] The designation request was supported by Louis Bull Tribe ("Louis Bull"), as well as 1750 members of the public.[22]

21. The Community Respondents submitted that Phase II would exceed both the Production Threshold and the Area Threshold and was therefore already a designated project.[23] They further submitted that the increase in production from Phase II would turn the Vista Coal Mine into the largest thermal coal mine in Canada.[24]

22. On May 22, 2019, the CEA Agency requested further information from Coalspur about, *inter alia*, whether Phase II exceeded the thresholds under the Regulations.[25] Coalspur then notified the Agency on May 30, 2019 that it would be reducing the size of Phase II.[26]

23. On July 15, 2019, the CEA Agency told Coalspur it had determined that Phase II did not appear to meet the thresholds set out in the Regulations, and was therefore not a designated project.[27] The CEA Agency stated that it "should be notified of any Project changes to confirm the application of CEAA 2012."[28] The CEA Agency also requested that Coalspur provide updated information regarding Phase II and any other relevant information to inform its recommendation to the Minister about designation.[29]

24. The IAA came into force on August 28, 2019. The Agency issued notifications indicating that the designation request would be considered under s. 9(1) of the IAA.[30]

25. In December 2019, the Agency produced an analysis report in response to the designation requests for Phase II, as well as an internal memorandum to advise the Minister.[31] The Agency

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[21] Phase II Designation Request, AR Tab D, p. 640. Keepers of the Athabasca supported the designation request as a community chapter of Keepers of the Water: KoA Letter of Support, AR Tab D, p. 657
[22] Phase II Analysis Report, AR Tab D, p. 668.
[23] Letter from Community Respondents to Minister Wilkinson and Agency (1 May 2020) ("CR Designation Request"), AR Tab D, p. 700.
[24] Phase II Designation Request, AR Tab D, p. 642.
[25] Stepp Affidavit, Exhibit 24, AR Tab C, p. 298.
[26] Stepp Affidavit, Exhibit 26, AR Tab C, p. 306.
[27] Stepp Affidavit, Exhibit 22, AR Tab C, p. 277.
[28] Stepp Affidavit, Exhibit 22, AR Tab C, p. 277.
[29] Stepp Affidavit, Exhibit 22, AR Tab C, p. 277-278.
[30] Phase II Analysis Report, AR Tab D, p. 669.
[31] Phase II Analysis Report, AR Tab D, p. 666; Phase II Memorandum, AR Tab D, p. 627.

concluded Phase II may result in adverse effects to areas of federal jurisdiction including to fish and fish habitat, migratory birds, and Indigenous peoples of Canada.[32]

26. The Agency determined that, while Phase II would greatly exceed the Production Threshold with total coal production of 16,949 tonnes per day, the expansion would increase area of mining operations by only between 42.7 per cent and 49.4 per cent, short of the 50 per cent increase that would mandate designation of the expansion.[33] The Agency ultimately recommended that the Minister not designate Phase II, on the basis that it expected the adverse effects to be "appropriately managed" by existing legislative mechanisms.[34]

27. On December 20, 2019, the Minister decided not to designate Phase II for impact assessment (the "Phase II Decision").[35] The Minister's decision was informed by the Agency's December 2019 report and memorandum.

D. The Vista Underground Mine

28. In April 2019, Coalspur submitted an application to the AER to amend several existing provincial permits for the Vista Coal Mine to support an underground expansion to the mine, the Vista Underground Mine; it resubmitted this application in February 2020.[36]

29. The Vista Underground Mine would be located within the existing provincial permit boundary for Phase I, northwest of the Phase I open pit.[37] It would share the same processing and transportation infrastructure as Phase I and Phase II.[38]

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[32] Phase II Analysis Report, AR Tab D, p. 672.
[33] Phase II Memorandum, AR Tab D, p. 628.
[34] Phase II Memorandum, AR Tab D, p. 633.
[35] Stepp Affidavit, Exhibit 31, AR Tab C, p. 375.
[36] Stepp Affidavit at para 42, AR Tab C, p. 32; Applicant's Memorandum of Fact and Law ("AMOFL") at para 14, AR Tab E, p. 1638.
[37] Memorandum to Minister: Coalspur Vista Coal Underground Mine and Expansion Activities Project – Recommendation on Whether to Designate (29 July 2020) ("Agency Memorandum") at AR Tab D. p 579; see also Annex II – Project Location Maps, AR Tab D, p. 696.
[38] Agency Memorandum, AR Tab D, p. 579; see also Stepp Affidavit, Exhibit 33 at AR Tab C, p. 388.

30. The Vista Underground Mine would produce a total of 1.7 MT of coal over three years.[39] Coalspur stated the area of the proposed Vista Underground Mine would be an additional 121.8 hectares, though this new footprint would be primarily underground.[40]

31. The April 2019 application to the AER was not the first regulatory step taken to begin work on the Vista Underground Mine. Coalspur had previously submitted consultation records to the Alberta Aboriginal Consultation Office in regards to the Vista Underground Mine, who on January 16, 2019, determined that no further consultation was required.[41]

32. Coalspur did not inform the Agency about its plans for the Vista Underground Mine at any time while the Minister was considering the Phase II Decision.

E. The 2020 Designation Requests

33. In May and June 2020, the Community Respondents, Louis Bull, and Stoney Nakoda Nations ("Stoney Nakoda") submitted designation requests for the Vista Expansion Phase (the "2020 Designation Requests").[42]

34. The 2020 Designation Requests collectively identified a number of new circumstances since the Phase II Decision, including the existence of the previously undisclosed Vista Underground Mine, cumulative impacts from the Vista Expansion Phase on the environment and Indigenous rights, inadequacies in the provincial Indigenous consultation process, and a significant increase in public concern about the proposed expansion.

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[39] Stepp Affidavit, Exhibit 33, AR Tab C, at p. 387.
[40] Analysis Report: Whether to Designate the Coalspur Mine Ltd. Vista Coal Underground Mine and Expansion Activities Project in Alberta pursuant to the Impact Assessment Act (8 September 2020) ("Agency Report") at 0246/AR 823. While the copy of the Agency Report in Canada's certified record is dated September 8, 2020 the Agency Report posted on the Agency Registry is dated July 2020: see Stepp Affidavit, Exhibit 40, AR Tab C, pp 509-542.
[41] Stepp Affidavit, Exhibit 46, AR Tab C, p. 567.
[42] CR Designation Request, AR Tab D, p. 708; Louis Bull Tribe, "Request for Designation under the Impact Assessment Act of Coalspur Mine (Operations) Ltd.'s Vista Coal Mine Expansion" (1 May 2020), ("LBT Designation Request"), AR Tab D, p. 277; Letter in Support of Requests for Designation under the Impact Assessment Act of Coalspur Mine (Operations) Ltd.'s Vista Coal Mine Expansion (20 June 2020), AR Tab D, p. 797; Stoney Nakoda Request for Designation under the Impact Assessment Act of Coalspur Mine (Operations) Ltd.'s Vista Coal Mine Expansion (8 July 2020), AR Tab D, p. 803 ("SNN Designation Request").

35. The Community Respondents submitted that Phase II and the Vista Underground Mine should be assessed as one project, as both occur in the same geographic area, rely on the same mining infrastructure as Phase I, and rely on the same transportation and export infrastructure.[43]

36. Louis Bull's request identified specific potential impacts on their members that may result from the Vista Expansion Phase. Louis Bull noted that they had not been consulted about Phase I, Phase II, or the planned Vista Underground Mine.[44]

37. On June 30 and July 8, 2020, Stoney Nakoda submitted a designation request through two letters to the Agency, identifying impacts to their members' rights and stating that they had never been consulted about Phase I, Phase II, or the planned Vista Underground Mine.[45]

38. In July 2020 the Minister received many emails and letters in support of designation of the Vista Expansion Phase from members of the public and environmental organizations, as well as a petition organized by the non-profit organization Leadnow and signed by 31,928 Canadians.[46]

F. The Designation Decision

39. On July 30, 2020, the Agency released an analysis report (the "Agency Report") in response to the 2020 Designation Requests.[47] The Agency Report's conclusions pertained to the Vista Underground Mine and related expansion activities, and only addressed Phase II with respect to cumulative effects with the Vista Underground Mine.[48] The Agency concluded that the Vista Underground Mine "does not, on its own, warrant designation."[49]

40. The Agency also prepared a memorandum (the "Agency Memorandum") to inform the Minister's decision, which presented the Minister with two options: either decline to designate the Vista Underground Mine, which was the Agency's recommended option, or designate the Vista Underground Mine and Phase II and reconsider the Phase II Decision.[50]

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[43] CR Designation Request, AR Tab D, p. 707.
[44] LBT Designation Request, AR Tab D, p. 778.
[45] SNN Designation Request, AR Tab D, p. 799.
[46] Bundle of emails & letters, AR Tab D, pp. 808-817, 854-887, 908-1634.
[47] Analysis Report, AR Tab D, p. 818.
[48] Analysis Report, AR Tab D, p. 823.
[49] Analysis Report, AR Tab D, p. 833.
[50] Agency Memorandum, AR Tab D, pp. 578-584.

41. The Agency determined that the Vista Underground Mine may have adverse effects on areas of federal jurisdiction; that it alone may have potential impacts on Aboriginal and Treaty rights; that, together with Phase II, it may have cumulative adverse effects on birds, species at risk, water quality and air quality; and that there was uncertainty about whether adequate measures could be proposed to address some of the cumulative adverse effects.[51]

42. The Minister issued the Designation Order on July 30, 2020, designating the Vista Underground Mine and Phase II for impact assessment.[52]

43. The Minister's July 30, 2020 reasons (the "Designation Decision") stated that he had reconsidered the Phase II Decision and decided to designate the physical activities associated with Phase II along with the Vista Underground Mine.[53] The Minister stated that he had considered the previous Phase II Decision, information regarding further expansion plans for Phase I, and additional Indigenous and public concerns received since the Phase II Decision.

44. In support of the Designation Decision, the Minister stated that the total production capacity of the Vista Expansion Phase would be "well above" the Production Threshold of 5,000 tonnes per day under the Regulations, while the increase in the area of mining operations would fall only barely below the 50 per cent Area Threshold.

45. Additionally, the Minister determined designation of the Vista Expansion Phase was warranted as it may result in adverse effects of greater magnitude to those previously considered for Phase II alone, specifically, direct and cumulative effects to areas of federal jurisdiction that may not be mitigated; concerns raised by the requesters, Indigenous groups, federal authorities, and members of the public about the cumulative effects of Phase II and the Vista Underground Mine; and potential impacts to Aboriginal and Treaty rights.

Part II ISSUES

46. The issue in this Application is whether the Minister's decision to designate the Vista Expansion Phase under s. 9(1) of the IAA was reasonable.

47. The underlying issues can be distilled to the following:

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[51] Agency Memorandum, AR Tab D, p. 582-583; Agency Report, AR Tab D, pp. 828-830, 832-833.
[52] Order Designating Physical Activities (30 July 2020), AR Tab B, p. 17.
[53] Minister's Response (30 July 2020) ("Designation Decision"), AR Tab B, p. 18.

a. Was the Designation Decision unreasonable in light of the facts, the law, the Minister's Phase II Decision, and the Agency's advice?

b. Did the reasons themselves render the Designation Decision unreasonable?

48. The Community Respondents submit that the answer to both is no. The Designation Decision was reasonable in light of both the decision itself and the reasons.

Part III SUBMISSIONS

A. Standard of Review

49. The Community Respondents agree with Coalspur that a reasonableness standard applies.

50. Reasonableness review gives effect to the legislature's intention to leave certain decisions with administrative decision-makers, while ensuring state decisions are still subject to the rule of law.[54] Deference remains the governing principle for reasonableness review – the Court should not decide the issue itself nor conduct a *de novo* analysis.[55]

51. When conducting a reasonableness review, the Court must begin by examining the reasons with "respectful attention", seeking to understand the reasoning process followed by the decision-maker.[56] Reasons must be read in light of the record, not assessed against a standard of perfection; they need not include "all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred."[57] Decision-makers need not make explicit findings on each constituent element leading to the decision; reasonableness requires that the decision comply with the rationale and purview of the statutory scheme.[58]

B. The Minister's decision was reasonable

52. The Minister's decision to designate the Vista Expansion Phase under s. 9(1) of the IAA – and in doing so, to reconsider his Phase II Decision and to consider the Vista Underground Mine and Phase II together – was reasonable.

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[54] *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 [*Vavilov*] at para 82, AR Tab E, Tab 10.
[55] *Ibid* at para 83, AR Tab E, Tab 10.
[56] *Ibid* at para 84, AR Tab E, Tab 10.
[57] *Ibid* at para 91, 94, AR Tab E, Tab 10.
[58] *Ibid* at para 128, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62 at para 16, AR Tab E, Tab 10; *Vavilov* at para 108 citing *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 18, AR Tab E, Tab 10.

i. It was reasonable for the Minister to designate the Vista Expansion Phase

53. Subsection 9(1) of the IAA gives the Minister broad discretion to designate a project that is not listed in the Regulations, based on his opinion that the potential adverse effects or public concern about those effects, or both, warrant designation.

54. The designation power is an integral part of the statutory scheme, ensuring projects that do not meet the numerical thresholds for automatic designation under the Regulations can nevertheless undergo an impact assessment if their effects, or public concern about them, merit it.

55. No part of the Vista Coal Mine has previously been subject to federal assessment. The first proposed expansion, Phase II, narrowly escaped the need for review, barely falling below the Area Threshold after modifications to its proposed footprint.[59] With the second expansion, the Vista Underground Mine, whose mostly underground area was not captured by the Regulations, the Minister determined designation of the whole Vista Expansion Phase was indeed warranted.

56. The Designation Decision was based on previously unconsidered information. It was reasonable in light of the purposes of s. 9(1) and the IAA overall, the proximity of the Vista Expansion Phase to the thresholds under the Regulations, the Vista Expansion Phase's potential adverse effects, public concern about the potential adverse effects, the fact that no legislated bars to designation apply, and the Agency's overall advice. Furthermore, the fact that the Agency's predecessor did not designate Phase I has no bearing on the reasonableness of the Designation Decision. The Community Respondents address each of these points in turn below.

a. The Designation Decision was reasonable in light of the plain language and purposes of s. 9(1), the IAA, and Agency policy

57. The plain language of s. 9(1) of the IAA gives the Minister broad discretion to designate projects that, <u>in his opinion</u>, may have adverse effects in areas of federal jurisdiction or have attracted public concern that warrants designation. The Supreme Court held in *Vavilov* that when Parliament deliberately uses "broad, open-ended or highly qualitative language — for example, 'in the public interest'", it intends to give the decision-maker greater flexibility in interpreting the provision.[60] Subsection 9(1) is such a provision. If Parliament wished to, it could have used

[59] Phase II Memorandum, AR Tab D, p. 628.
[60] *Vavilov* at para 110, AR Tab E, Tab 10.

"precise and narrow language and delineat[ed] the power in detail, thereby tightly constraining the decision-maker's ability to interpret the provision."[61] It did not.

58. The *raison d'être* of s. 9(1) is to give the Minister discretion to designate projects that do not meet the thresholds in the Regulations but nevertheless merit an impact assessment.

59. The purpose of the designation power is explained in the Regulatory Impact Analysis Statement for regulations amending the former *Regulations Designating Physical Activities* under CEAA 2012 (the "CEAA 2012 RIAS").[62] Subsection 14(2) of CEAA 2012 contained a designation power identical to s. 9(1) of the IAA, the only difference being that s. 9(1) of the IAA now provides for the Minister to designate activities on request as well as on his own initiative.[63] Accordingly, the CEAA 2012 RIAS, which explains the purpose of s. 14(2), also explains the purpose of s. 9(1) of the IAA.

60. The CEAA 2012 RIAS explained that the designation power was "a key element of the CEAA 2012".[64] It stated that the project list approach, new in CEAA 2012, was intended to "focus on those major projects with the greatest potential to cause significant adverse environmental effects in areas of federal jurisdiction".[65] However, using thresholds could result in situations where a physical activity that was not caught by the project list might, due to its "unique characteristics or its location", have "adverse environmental effects in areas of federal jurisdiction", or situations where "public concerns about those adverse environmental effects may warrant the designation."[66] The s. 14(2) designation power existed for these situations.

61. The CEAA 2012 RIAS stated that the Minister's designation power was considered in the development of the amendments to the regulations, some of which reduced the projects included in the project list.[67] One of these added an area threshold to the mine expansion category, which,

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[61] *Ibid* at para 110, AR Tab E, Tab 10.
[62] Regulations Amending the Regulations Designating Physical Activities: Regulatory Impact Analysis Statement, (6 November 2013) C Gaz Part II, Vol. 147, No. 23 ("CEAA 2012 RIAS") [CRA, Tab 6].
[63] CEAA 2012, s. 14(2), AR Tab E, Tab 2.
[64] CEAA 2012 RIAS at p. 2366 [CRA, Tab 6].
[65] CEAA 2012 RIAS at p. 2361 [CRA, Tab 6].
[66] CEAA 2012 RIAS at p. 2357 [CRA, Tab 6].
[67] CEAA 2012 RIAS at p. 2361 [CRA, Tab 6].

prior to the amendments, used only a production capacity threshold; this threshold was the same as the Area Threshold in the current Regulations.[68] In other words, limits to the project list, such as the limit that excluded the Vista Expansion Phase from automatic designation, were first introduced on the basis that the Minister could still designate projects that warranted assessment.

62. The Regulatory Impact Analysis Statement for the Regulations under the IAA confirms that, "[s]imilar to the process under the CEAA 2012", the Minister "continues to have the power to designate projects not on the Project List".[69]

63. At a Standing Committee meeting before the IAA came into force, then-Minister of Environment and Climate Change Catherine McKenna was questioned on the continued use of a project list in the Regulations, and the possibility that other projects with major impacts could slip under the radar, eroding public trust in the process. Minister McKenna noted citizens' ability to raise concerns about projects and the Minister's ability to then designate them.[70] The public's ability to raise concerns and ask for designation is new in the IAA and was not provided for in s. 14(2) of CEAA 2012.[71]

64. Coalspur ignores the purpose of s. 9(1) of the IAA when it argues that designation of the Vista Underground Mine is inconsistent with the Regulations because it alone would "not cause material incremental changes" in production capacity or area.[72] The purpose of s. 9(1) is to look beyond the thresholds. Furthermore, the Community Respondents reject Coalspur's assertion that these measurable increases are not "material", and in particular that a seven per cent increase in production capacity with the Vista Underground Mine (as calculated by Coalspur) – amounting to nearly two million tonnes of coal over three years – is not "material."[73]

65. The Designation Decision was also consistent with the purposes of the IAA overall, which under s. 6(1) include "(a) to foster sustainability" and "(b) to protect the components of the environment, and the health, social and economic conditions that are within the legislative

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[68] CEAA 2012 RIAS at p. 2352 [CRA, Tab 6]; Regulations, s. 19(2) [CRA, Tab 4].
[69] Physical Activities Regulations: SOR/2019-285: Regulatory Impact Analysis Statement, (8 August 2019), C Gaz Part II, Vol. 153, No. 17 at p. 5662 [CRA, Tab 7].
[70] House of Commons, Standing Committee on Environment and Sustainable Development, *Evidence*, 42-1, No 110 (18 May 2018) at p. 8 (Catherine McKenna) [CRA, Tab 9].
[71] IAA, s. (1) [CRA, Tab 3]; CEAA 2012 s. 14(2), AR Tab E, Tab 2.
[72] AMOFL at para 84, AR Tab E, p. 1660.
[73] AMOFL at para 69, AR Tab E, p. 1656; Stepp Affidavit, Exhibit 33, AR Tab C, p. 387.

authority of Parliament from adverse effects caused by a designated project". Subsection 6(2) requires the Minister and Agency to act "in a manner that fosters sustainability, respects the Government's commitments with respect to the rights of the Indigenous peoples of Canada and applies the precautionary principle." Ensuring that the Vista Expansion Phase and its potentially significant adverse environmental effects within federal jurisdiction – effects which may not be mitigated, may be unsustainable, and which may affect Indigenous rights – are subject to an impact assessment furthers these purposes.

66. In response to the submission that the Designation Decision is contrary to the IAA's s. 6(1)(b.1) purpose of "a fair, predictable, timely and efficient process for conducting impact assessments" because s. 7 of the IAA now prevents the Vista Expansion Phase from proceeding without a federal decision – a situation Coalspur inaccurately calls a "veto"[74] – s. 7 is a necessary safeguard to ensure that designated projects are not started prematurely without approval.

67. Furthermore, the decision is not contrary to s. 6(1)(b.1) due to any alleged failure in the reasons to explain the Minister's reconsideration of the Phase II Decision. The reasons do in fact address reconsideration, as discussed further below.

68. Contrary to Coalspur's submissions, any delay caused by the Designation Decision is not contrary to the purposes of the IAA. Coalspur was previously informed by the Agency that changes to its proposed projects could affect how they would be treated under the law, after the Agency reviewed the Phase I proposal, and again after it reviewed the Phase II proposal.[75] Both times, the Agency asked Coalspur to inform it of any expansion activities or changes to projects as soon as possible.[76] Coalspur then failed to provide the Agency with the information about the Vista Underground Mine that ultimately caused the Minister to reconsider the Phase II Decision.

69. Furthermore, concerns about delay are speculative. As Coalspur states, it has not yet submitted its provincial application for Phase II, despite working on the materials since early 2019 and previously planning to submit the application in the first quarter of 2020.[77] The spectre

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[74] AMOFL at para 88, AR Tab E, p. 1661.
[75] Stepp Affidavit, Exhibit 15, AR Tab C, p. 211; Stepp Affidavit, Exhibit 22, AR Tab C, p. 277.
[76] *Ibid*.
[77] Operational Guide at p. 4 [CRA, Tab 8].
[77] AMOFL at para 13, AR Tab E, p. 1638; Stepp Affidavit, Exhibit 27, AR Tab C, p. 313.

of delay that Coalspur raises from combining the Vista Underground Mine with Phase II is further undermined by the fact that Fisheries and Oceans Canada ("DFO") anticipates it will consider both in a single review with respect to possible permits under the *Fisheries Act* and SARA, rather than addressing the Vista Underground Mine sooner; the timeline for this review is unclear.[78] Finally, the Agency could decide under s. 16(1) not to require an impact assessment.[79]

70. Most importantly, delay is not relevant to the Minister's opinion about adverse effects or public opinion, and therefore not relevant to decisions under s. 9(1) of the IAA.

b. The Designation Decision was reasonable in light of the Vista Expansion Phase's proximity to the Area Threshold and Production Threshold

71. The Minister's first stated reason for designation was the Vista Expansion Phase's proximity to the thresholds in the Regulations.[80] As stated above, the record before him indicated that it was just short of the Area Threshold and nearly four times the Production Threshold.

72. This was a relevant consideration in support of the Designation Decision. The Agency's Operational Guide lists whether or not "the project or its expansion(s) is near a threshold set in the Project List" as one of nine potentially "relevant factors" in a designation decision.[81]

73. Coalspur essentially argues that the Vista Expansion Phase not meeting the thresholds meant it was unreasonable to designate it under s. 9(1).[82] However, if Parliament had intended to limit the application of s. 9(1) to only projects of a certain size, that would be reflected in s. 9(1). There is no threshold concerning what size of project can be discretionarily designated, because the purpose of s. 9(1) is to provide a safety net for projects that do not meet the thresholds in the Regulations but nevertheless warrant impact assessment. Indeed, the Vista Underground Mine or Phase II could have been designated on its own under s. 9(1).

74. Furthermore, because the Area Threshold in the Regulations is calculated at ground level, the Regulations do not capture the area of underground operations. While the Vista Underground

[78] Agency Report, AR Tab D, p. 830.
[79] IAA, s. 16 [CRA, Tab 3].
[80] Designation Decision, AR Tab B, p. 19.
[81] Operational Guide at p. 4 [CRA, Tab 8].
[82] AMOFL at paras 83-84, AR Tab E, p. 1660.

Mine has an area of 2.85 hectares at ground level, its total area is actually 121.8 hectares.[83] Looked at this way, the Vista Expansion Phase, which already nearly meets the Area Threshold, is larger than it appears. This illustrates the purpose of s. 9(1): to act as a safeguard for projects that may be significant in ways not addressed by the Regulations.

c. The Designation Decision is reasonable in light of the Vista Expansion Phase's potential adverse effects

75. Either the Minister's opinion that there will potentially be adverse effects on areas of federal jurisdiction or his opinion that public concern about such effects warrants designation is sufficient basis for a s. 9(1) decision. The Designation Decision was justified on both bases.

76. The issue before the Court is whether the Minister's opinion was reasonable based on the record before him. This is a deferential standard, and, based on the Agency's findings, there is ample evidence that the Minister's' decision was reasonable.

77. First, the Agency advised that the Vista Underground Mine alone "may result in adverse effects to areas of federal jurisdiction and potential impacts on Aboriginal and Treaty rights".[84]

78. More specifically, the Agency advised, citing DFO, that the Vista Underground Mine "may cause adverse effects to fish and fish habitat including aquatic species and part of their critical habitat or the residences of their individuals", and it described how underground mining can alter fish habitat and adversely affect fish.[85] It noted that listed Rainbow Trout and Bull Trout, protected under the *Species at Risk Act*, SC 2002, c 29 ("SARA"), occur downstream of the Phase I mine pit, including 100m away, and that critical habitat for one of these species has been identified in the Vista Underground Mine's vicinity.[86]

79. Citing Environment and Climate Change Canada ("ECCC"), the Agency also advised that some SARA-listed species' ranges overlap the Vista Underground Mine, and that the project "may result in adverse effects to migratory birds"; ECCC was unable to assess the severity of the

[83] Regulations, s. 1(1) ("area of mining operations"), [CRA, Tab 4]; Agency Report, AR Tab D, p. 823.
[84] Agency Memorandum, AR Tab D, pp. 580 and 582.
[85] Agency Report, AR Tab D, p. 828.
[86] Agency Report, AR Tab D, p. 828.

effects due to limited information but it identified the nature of the potential effects, which the Agency summarized.[87]

80. While the Agency stated that the adverse effects were "expected to be appropriately managed", it also stated that the Vista Underground Mine alone "may result in adverse effects to area of federal jurisdiction, adverse impacts on Aboriginal and Treaty rights, and adverse direct or incidental effects from the exercise of federal powers", that "there is uncertainty whether the [the Vista Underground Mine's] design and standard mitigation could limit certain effects", and that there were "public and Indigenous concerns regarding the effects."[88]

81. Second, the Vista Underground Mine and Phase II would have cumulative effects greater than the effects of either alone.

82. The Agency previously advised the Minister of the potential effects of Phase II alone. The Agency noted that Phase II may adversely impact SARA-listed Rainbow Trout and Bull Trout and nine species of SARA-listed migratory birds and expressed "high uncertainty as to whether the Project could be carried out in a way that will not jeopardize the survival and recovery of aquatic species at risk".[89]

83. When advising the Minster about the Vista Underground Mine, the Agency stated that "there could be cumulative effects due to the [Vista Underground Mine] and Phase II".[90] The Minister concluded based on this advice that "cumulatively, the Projects may result in adverse effects of greater magnitude to those previously considered" for the Phase II Decision.[91]

84. By focusing on the fact that the Vista Underground Mine's footprint and capacity are smaller than Phase II, Coalspur ignores the purpose of cumulative effects assessment, which is to look at the projects in their real-world context, rather than in isolation, in order to assess their true impacts and determine how to address those impacts.[92]

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[87] Agency Report, AR Tab D, pp. 828-829; Agency Report, AR Tab D, p. 830.
[88] Agency Memorandum AR Tab D, p. 584.
[89] Phase II Analysis Report, AR Tab D, pp. 672, 669, and 673.
[90] Agency Memorandum, AR Tab D, p. 582.
[91] Designation Decision, AR Tab B, p. 20.
[92] AMOFL at paras 69, 76, AR Tab E, p. 1656, 1658.

85. Third, the potential cumulative adverse effects are serious. For example, the Agency advised that ECCC was "of the view that [the Vista Underground Mine] and Phase II may collectively result in adverse environmental effects on migratory birds, species at risk, water quality and air quality."[93] While the Agency stated that cumulative effects would be limited using design, standard mitigations, and existing legislative mechanisms, and that the provincial assessment of Phase II would consider cumulative effects, it also warned that DFO had flagged "high uncertainty as to whether adequate measures to offset harm to fish and fish habitat could be proposed to address impacts" of the Vista Expansion Phase.[94] Regardless, the plain language of s. 9(1) does not limit its application scenarios in which there will be substandard or no mitigation, or where no other legislative mechanisms will apply.

d. The Designation Decision was reasonable in light of public concern

86. In addition to the Minister's opinion about the effects, his opinion that public concern about adverse effects warrants designation is itself an adequate reason for designation under s. 9(1). On the basis of public concern alone, the Designation Decision should be upheld as reasonable.

87. Public concern and public participation are critical components of the IAA. One of the purposes of the IAA is to ensure meaningful opportunities for public participation throughout assessments; participation is mandated under the IAA in several provisions, and public comments must be considered within every assessment.[95] The Minister's power to designate projects not caught by the Regulations is critical to maintaining public trust and addressing public concern.[96]

88. A high degree of public concern about the Vista Expansion Phase's effects, including on air, groundwater, fish, migratory birds, and species at risk, was both summarized by the Agency and before the Minister when he made his decision.[97]

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[93] Agency Memorandum, AR Tab D, p. 582; Agency Report, AR Tab D, p. 830.
[94] Agency Report, AR Tab D, p. 830; Agency Memorandum, AR Tab D, p. 582.
[95] IAA, s. 6(1)(h); see for example IAA, ss. 27, 51(1), 53(3), 89(1), and 114(3); IAA, ss. 22(1)(m) and (n) [CRA, Tab 3].
[96] House of Commons, Standing Committee on Environment and Sustainable Development, *Evidence*, 42-1, No 110 (18 May 2018) at p. 8 (Catherine McKenna) [CRA, Tab 9].
[97] Phase II Analysis Report, AR Tab D, p. 675; Agency Memorandum, AR Tab D, p. 581; Agency Report, AR Tab D, p. 831.

89. The Minister noted the high level of public concern as a primary factor in his decision to designate the Vista Expansion Phase.[98] The Designation Decision was in response to three formal designation requests, along with many letters supporting the requests from members of the public and environmental organizations. Additionally, the Minister received a petition signed by over 30,000 concerned Canadians.[99] Public concern had markedly increased since the Phase II Decision, a relevant factor to the Minister's decision, and reflected in his reasons.

e. The Designation Decision was reasonable because no bars to designation applied

90. The only two scenarios in which designation under s. 9(1) is barred are set out in s. 9(7): where the proponent has substantially begun carrying out a physical activity, or where a federal authority has taken an action under other legislation that could permit the physical activity to be carried out in whole or in part.

91. For example, the Agency advised the Minister that he could not include the relocation of an explosive storage facility associated with Phase I in any decision to designate the Vista Underground Mine, because Coalspur had already received an amendment to a licence allowing this relocation from Natural Resources Canada, but the Agency advised the Minister that neither of the s. 9(7) bars applied to prevent him designating the Vista Underground Mine.[100]

f. The Designation Decision was reasonable in light of the Agency's overall advice

92. No part of s. 9 requires the Agency to provide advice about designation to the Minister. The Operational Guide sets out a process for the Agency to provide advice, but does not suggest that the Minister must follow the Agency's recommendations.[101] Nevertheless, the Minister's decision was reasonable in light of the Agency's overall advice.

93. A main pillar of Coalspur's argument is that the Minister went against the Agency's advice. However, Coalspur misrepresents that advice when it states that the Agency "recommended against designating [the Vista Underground Mine] and Phase II, even if combined".[102] In fact, the Agency concluded that the Vista Underground Mine "does not, <u>on its own</u>, warrant designation"

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[98] Designation Decision, AR Tab B, p. 20.
[99] AR Tab D, pp. 808-817, 854-887, 908-1634.
[100] Agency Report, AR Tab D, p. 827.
[101] Operational Guide [CRA, Tab 8].
[102] AMOFL at para 79, AR Tab E, p. 1659.

(emphasis added).[103] It recommended that the Minister not designate the Vista Underground Mine alone, but it presented this to the Minister as Option 1, and also presented him with an Option 2: designating the Vista Underground Mine and reconsidering the Phase II Decision.[104]

g. The Agency's predecessor not designating Phase I is irrelevant to the reasonableness of the Designation Decision

94. Finally, contrary to Coalspur's submission, the fact that the CEA Agency decided in 2012 that Phase I did not need an environmental assessment under CEAA 1992 does not mean that it was unreasonable for the Minister to designate the Vista Expansion Phase under the IAA.

95. First, if anything, the fact that there was never a federal assessment of Phase I's effects on areas of federal jurisdiction is an argument in favour of designating the Vista Expansion Phase. Up to this point, no part of the Vista Coal Mine has been assessed federally.

96. Second, the Phase I decision was made by a different decision-maker under different legislation. Whereas the IAA uses a project list to determine what projects require assessments, and contains the s. 9(1) designation power, s. 5 of CEAA 1992 used a system in which the involvement of federal authorities or the need for federal authorities to exercise powers in relation to proposed projects triggered environmental assessments.[105] Based on input from federal departments, the Agency decided that Phase I did not require an assessment under CEAA 1992.[106]

97. Coalspur's submission that the CEA Agency decided that that no federal assessment was required because Phase I was already undergoing a provincial assessment is directly contradicted by the evidence Coalspur cites and by s. 5 of CEAA 1992.[107]

98. The Community Respondents note that Rainbow Trout and Bull Trout were not protected under SARA at the time of the Phase I decision in 2012, but now are.[108] Approval of Phase I

[103] Agency Report, AR Tab D, p. 833.
[104] Agency Memorandum, AR Tab D, p. 584.
[105] CEAA 1992, s. 5 [CRA, Tab 2].
[106] Stepp Affidavit, Exhibit 15, AR Tab C, p. 211.
[107] AMOFL at para 72, AR Tab E, p. 1657; Stepp Affidavit, Exhibit 15, AR Tab C, p. 211; *CEAA 1992* at s. 5 [CRA, Tab 2].
[108] Phase II Analysis Report, AR Tab D, p. 669.

today would require permitting decisions from DFO, as the approval of the Vista Expansion Phase does now.[109] Under CEAA 1992, this would have triggered an assessment.

99. Furthermore, if Coalspur had applied for Phase I under the IAA, the mine would have been a designated project given its production capacity exceeding 5,000 tonnes per day.[110]

100. Third, regardless of why Phase I was not designated, that decision does not prevent an expansion to Phase I being designated, whether under the Regulations or s. 9(1).

ii. It was reasonable for the Minister to reconsider the Phase II Decision

101. It was reasonable for the Minister to reconsider his earlier decision, both because circumstances have changed, and because the IAA and policy do not prevent him from reconsidering, and indeed indicate that he can and must reconsider in this situation.

102. First, new circumstances arising since the Phase II Decision warranted reconsideration. As explained above, Coalspur failed to inform the Agency about the Vista Underground Mine while Phase II was under consideration, or at any time before the Community Respondents did. As stated above, once informed about the Vista Underground Mine, the Agency found that it alone may have adverse effects, that the Vista Underground Mine and Phase II would have cumulative effects greater than the effects of either, and that the cumulative effects are notable and may not be mitigated. Louis Bull and Stoney Nakoda also raised previously unconsidered issues with consultation for each phase of the Vista Coal Mine, and specific impacts to their rights.[111] There was also significant substantial public concern about the effects, exceeding the level of concern over Phase II. The Minister reconsidered the Phase II Decision based on this information.

103. Second, the IAA does not limit the Minister's ability to reconsider a s. 9(1) decision. No part of s. 9 forbids the Minister from reconsidering previous decisions when responding to designation requests. Indeed, s. 9(4) obligates the Minister to respond to each request for designation. The only two scenarios in which the Minister may not designate an activity under s.

[109] Agency Report, AR Tab D, p. 830.
[110] Regulations, s. 18(a) [CRA, Tab 4]; for Phase I production capacity see Stepp Affidavit, Exhibit 10, AR Tab C, p. 169.
[111] LBT Designation Request, AR Tab D, p. 778; SNN Designation Request, AR Tab D, p. 799.

9(1) are set out in the exhaustive two item list in s. 9(7) of the IAA, described above. As the Agency advised the Minister, neither applies in this case.[112]

104. Furthermore, the Agency's Operational Guide contemplates the possibility of the Minister reconsidering previous decisions when it lists whether "a response to a prior request to designate the project has been rendered" among nine "relevant factors" that the Agency may take into account in developing a recommendation to the Minister.[113]

105. The Agency also advised the Minister that he could reconsider his previous decisions when it presented him with an option to designate the Vista Underground Mine and reconsider his decision not to designate Phase II.[114]

106. Coalspur unhelpfully contrasts s. 9 with s. 68 of the IAA, which explicitly permits the Minister to amend decision statements, to argue that the lack of explicit permission in s. 9 prohibits reconsideration.[115] Decision statements are final decisions issued to proponents after impact assessments, about whether projects' effects are in the public interest.[116] The final decision on a project is not comparable to a decision to designate a project, let alone when such decisions may be effectively undone by subsequent Agency decisions under s. 16. The lack of explicit discussion of reconsideration in s. 9 should therefore not be read as a lack of permission.

107. A decision by this Court that the Minister is bound by his previous decision could create a perverse incentive for future proponents to withhold information until designation decisions are made in order to lock in those decisions and avoid designation.

108. Third, contrary to Coalspur's submission, the doctrine of *functus officio* did not prevent the Minister from reconsidering his previous Phase II Decision.

109. Coalspur submits that *functus officio* prevented the Minister from reconsidering his previous decision unless there was either statutory authority or a clerical error in the previous decision.[117] While this is the starting point of the Supreme Court's decision in *Chandler*, upon

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[112] Agency Report, AR Tab D, p. 672.
[113] Operational Guide at p. 4 [CRA, Tab 8].
[114] Agency Memorandum, AR Tab D, p. 584.
[115] AMOFL at para 67, AR Tab E, p. 1655.
[116] IAA, s. 65 [CRA, Tab 3].
[117] AMOFL at para 67, AR Tab E, p. 1655.

which Coalspur relies, the Court further held that the policy reason for *functus officio* in the administrative decision-making context is an interest in the finality of proceedings, as opposed to strict rules in the context of courts' decisions; its application must therefore be more flexible in the administrative context, and it "should not be strictly applied where there are indications in the enabling statute that a decision can be reopened."[118] In this case, reconsideration is, at least implicitly, authorized by the IAA, as described above.

110. Furthermore, in keeping with the goal of finality that underpins *functus officio* in the administrative context, this doctrine only arises "when the final step is taken", to prevent a decision-maker undoing actions "of such finality that they cannot be revisited".[119] There is nothing in the IAA or policy to suggest that s. 9(1) decisions are final. Furthermore, the Minister's decision on Phase II was a decision concerning designation, not a decision as to whether an assessment will ultimately be done, let alone a final decision concerning approval or rejection. Coalspur cites distinguishable cases that concern final decisions, including *Gordon*, which concerned a final approval decision under a statute that "emphasized finality".[120]

111. The only limit on designation under s. 9 is s. 9(7), which fully addresses the concern for finality that *functus officio* is intended to address by forbidding designation in the two specific scenarios where it would undermine a final step upon which a proponent should be able to rely.

iii. It was reasonable for the Minister to consider the Vista Underground Mine and Phase II together

112. Considering and designating the Vista Underground Mine and Phase II together was reasonable as it was consistent with the facts, the IAA, and the Agency's advice to the Minister. Coalspur's arguments on this point are based on inapplicable case law.

113. As described above, both Phase II and the Vista Underground Mine are expansions to Phase I. Both would be directly adjacent to Phase I, and the Vista Underground Mine would be

[118] *Chandler v Alberta Association of Architects*, [1989] 2 SCR 848 at pp. 860-862, AR Tab E, Tab 13.
[119] *Ferring Inc v Canada (Minister of Health)*, 2007 FC 300 at paras 77-79, [CRA, Tab 5].
[120] *Gordon v Manitoba (Minister of Conservation)*, 2005 MBQB 260 at paras 64-76, AR Tab E, Tab 16.

partially underneath existing Phase I infrastructure.[121] They would have cumulative effects on areas of federal jurisdiction, would fall just below the Area Threshold, and would produce nearly four times the Production Threshold.[122]

114. Under the IAA, a designated project may consist of one or more physical activities.[123] Designating the Vista Expansion Phase in its entirety is also consistent with the IAA's purposes of fostering sustainability and protecting components of the environment within federal jurisdiction from the adverse effects of designated projects, as the assessment can address the full extent of these effects.[124]

115. A decision by this Court to the contrary could create a precedent that prevents the Minister from using s. 9(1) to address project splitting concerns with future projects. As with the former CEAA 2012 and CEAA 1992, the IAA assumes that proponents will provide accurate information concerning the full extent of the scope of a proposed project.[125] A precedent preventing any reconsideration of a s. 9(1) decision could incentivize proponents to provide limited information in regards to a proposed project, or otherwise to engage in project splitting.

116. The Agency clearly contemplated that the two activities could be considered together when it presented the Minister with a second option to designate the Vista Underground Mine and reconsider his decision not to designate Phase II.[126] It stated that s. 9(7) was what prevented the Minister also designating the relocation of an explosive storage facility along with the Vista Underground Mine, as opposed to any provision, policy, or other reason that would also bar designating the Vista Underground Mine and Phase II together.[127]

117. The Agency's advice reflected its opinion that multiple activities can and sometimes should be designated together, including in this case. It advised the Minister to instruct Coalspur to

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[121] Agency Memorandum, AR Tab D, p. 579; Agency Memorandum, AR Tab D, p. 800; Phase II Memorandum, AR Tab D, p. 628.
[122] Designation Decision, AR Tab B, p. 19.
[123] IAA, s. 2(1) ("designated project") [CRA, Tab 3].
[124] IAA, ss. 6(1)(a)-(b) [CRA, Tab 3].
[125] *MiningWatch Canada v. Canada (Fisheries and Oceans),* 2010 SCC 2, [2010] 1 SCR 6 at para 40, AR Tab E, Tab 17.
[126] Agency Memorandum, AR Tab D, p. 584.
[127] Agency Memorandum, AR Tab D, p. 580.

provide information on "further expansion activities or changes" to the Vista Underground Mine "as soon as possible to receive guidance on the application of the IAA and its Regulations, including whether individual activities should be considered separately or together."[128]

118. The Agency also advised the Minister that DFO plans to consider the impacts of Phase II and the Vista Underground Mine together in a single review with respect to the possible need for permits under the *Fisheries Act* and SARA.[129]

119. Coalspur's case law on this issue does not support limiting the Minister's discretion to designate the Vista Expansion Phase.

120. Coalspur's cases about the "connected actions" test under CEAA 1992 are of limited relevance due to differences between CEAA 1992 and the IAA. CEAA 1992 provided in s. 15(2) that the Minister "may determine that [two or more] projects are so closely related that they can be considered to form a single project" and conduct a single assessment of those projects.[130] The Operational Policy Statement under CEAA 1992 contained a "connected actions" test to guide the application of s. 15(2) by indicating when it would be preferable for the Minister to combine two or more separately triggered projects in one joint assessment.[131]

121. Notably, s. 15(2) concerned combining assessments of projects "in relation to which an environmental assessment is to be conducted".[132] In other words, it applied to projects that would receive environmental assessments regardless of whether they were assessed together, not to activities that might not receive assessments.

122. Subsection s. 15(2) of CEAA 1992 has no equivalent in later legislation. The IAA, and CEAA 2012 before it, simply define "designated projects" to mean "one or more physical activities" that are designated in regulations or by the Minister; there is no specified requirement or test for the degree of connection between the activities.[133] As such, the jurisprudence under

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[128] Agency Memorandum, AR Tab D, p. 583.
[129] Agency Report, AR Tab D, p. 830.
[130] CEAA 1992, s. 15(2) [CRA, Tab 2].
[131] *Conseil des Innus de Ekauanitshit*, 2013 FC 418 [*Conseil des Innus*] at para 57, AR Tab E, Tab 14.
[132] CEAA 1992, s. 15(1) [CRA, Tab 2].
[133] CEAA 2012, s. 2(1) ("designated project"), AR Tab E, Tab 2; IAA, s. 2(1) ("designated project") [CRA, Tab 3].

CEAA 1992 and the Operational Policy Statement, which did prescribe this, should not be used to limit the Minister's discretion to designate two expansions of the same mine under the IAA.

123. Coalspur misleadingly cites *Conseil des Innus*, which concerned a choice to conduct two separate assessments and not combine them under s. 15(2) of CEAA 1992, to suggest that assessing two projects together can waste work and money.[134] That case dealt with two projects that would both receive full federal environmental assessments regardless, with one already underway, such that resources would be wasted if the assessments were combined, in exchange for no environmental benefit compared to conducting two separate assessments.[135] Here, the issue is not the most efficient way to assess each of the Vista Underground Mine and Phase II but whether the Minister should have designated them for assessment at all.

124. The Newfoundland cases Coalspur cites to bolster the relevance of the "connected actions" test are distinguishable.[136] First, they concern whether a proponent or the provincial minister scoped projects too narrowly by excluding one activity, unlike the present case, where the Minister's discretion to designate two activities together is at issue. Second, the court stated that it found the "connected actions" test "relevant and helpful" due to the lack of direction on scoping in the provincial legislation, as compared to federal legislation.[137]

125. The Newfoundland *Salmonid Association* decision in particular does not assist Coalspur as it supports interpreting environmental laws "broadly and liberally, using the precautionary approach", on the basis that "environmental protection is a fundamental value of Canadian society".[138] This supports the reasonableness of the Designation Decision.

126. Coalspur's cited cases concerning what activities are "incidental" to a physical activity are not relevant. The IAA provides that a designated project, consisting of one or more physical activities, also "includes any physical activity that is incidental to those physical activities".[139] In

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[134] *Conseil des Innus*, AR Tab E, Tab 14.
[135] *Conseil des Innus* at para 68, AR Tab E, Tab 14.
[136] *Atlantic Salmon Federation (Canada) v Newfoundland (Environment and Climate Change)*, 2017 NLTD(G) 137 [*Atlantic Salmon*], AR Tab E, Tab 7; *Salmonid Association of Eastern Newfoundland v Her Majesty the Queen in Right of Newfoundland and Labrador*, 2020 NLSC 34 [*Salmonid Association*], AR Tab E, Tab 20.
[137] *Salmonid Association* at paras 84-86, AR Tab E, Tab 20.
[138] *Salmonid Association* at paras 47, 73, AR Tab E, Tab 20.
[139] IAA, s. 2(1) ("designated project") [CRA, Tab 3].

other words, if one or more physical activities are determined to be a designated project, the question of what additional activities are incidental becomes relevant for determining the full scope of the designated project for the purposes of an impact assessment. The question of what is "incidental" is therefore a separate question from whether multiple physical activities should be designated together, and is not at issue.

127. The Federal Court of Appeal decision Coalspur cites with respect to the meaning of "incidental" refers to a set of five criteria that includes whether activities have, are directed or influenced by, or benefit, the same proponent, as well as whether they are subordinate or complementary to a project.[140] These criteria would be met in this case if the meaning of "incidental" was at issue; however, it is not, and this case and its criteria are not relevant.

128. Finally, contrary to Coalspur's submissions, the Minister did not fetter his discretion. Fettering refers to constraining one's discretion for arbitrary reasons or due to policies that are not actually set out in the statute conferring the discretionary power in question.[141] There is no evidentiary basis for Coalspur's claim that the Minister fettered his discretion by allegedly proceeding on an assumption he was required to consider the Vista Underground Mine and Phase II together because the Community Respondents, Louis Bull, and Stoney Nakoda combined them in the 2020 Designation Requests. The evidence shows that the Agency presented the Minister with options to consider them separately or together, and the Minister made a deliberate choice to consider them together.[142]

C. The Minister's decision met the criteria of justification, intelligibility, and transparency

129. Coalspur's submissions concerning the alleged inadequacy of the Minister's reasons demand more than the IAA and the jurisprudence on reasonableness actually require.

130. Subsection 9(4) of the IAA requires that the Minister "respond, with reasons", to designation requests. It does not specify the contents of the Minister's reasons. However, s. 9(1) indicates that the relevant considerations for a designation decision are whether there are

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[140] *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153 at para 403, AR Tab E, Tab 25.
[141] *Stemijon Investments Limited v Canada (Attorney General)*, 2011 FCA 299 at para 24, AR Tab E, Tab 22.
[142] Agency Memorandum, AR Tab D, p. 582, Designation Decision, AR Tab B, p. 19.

potential "adverse effects within federal jurisdiction or adverse direct or incidental effects" and "public concerns related to those effects"; the Minister's reasons address both.

131. Consistent with *Vavilov*, the Minister's reasons reveal a rational chain of analysis in which he considered "the potential for the Projects to cause adverse effects within federal jurisdiction, adverse direct or incidental effects, as well as adverse impacts on Aboriginal and Treaty rights"; considered the Agency Memorandum and Agency Report; and decided that designation of the Vista Expansion Phase was warranted for two reasons. First, the total area is just below the Area Threshold in the Regulations, and the total production capacity is well above the Production Threshold.[143] Second, based on the previous Phase II Decision, the information about the Vista Underground Mine, and Indigenous and public concerns, the Expansion Phase may result in greater adverse effects than the Minister previously considered.

132. *Vavilov* requires that the rationale for essential elements of a decision be addressed in the reasons or capable of being inferred from the record.[144] The two reasons described above address the essential elements of the Minister's decision, which can additionally be inferred from the record, and in particular from the Agency Memorandum and Agency Report summarizing the potential effects and public concern about those effects.

133. Contrary to Coalspur's submission, there is no "fundamental gap" in the reasons with respect to the Vista Underground Mine and Phase II being considered together.[145] The Designation Decision described both as expansions of Phase I. The reasons can further be inferred from the record, as described above: the facts, including cumulative effects, joint proximity to the Area Threshold, and jointly exceeding the Production Threshold; consistency with the IAA's provisions and purposes; and the Agency's advice, which provided this option.

134. Coalspur overstates the degree to which reasons must respond directly and in detail to parties' submissions. The jurisprudence is clear that the meaning of the requirement to

[143] *Vavilov* at paras 103, 98, AR Tab D, Tab 10; Phase II Memorandum, AR Tab D, p. 628; Agency Memorandum, AR Tab D, p. 579.
[144] *Vavilov* at para 98, AR Tab E, Tab 10.
[145] AMOFL at para 60, AR Tab E, p. 1653-1654.

"meaningfully account for the central issues and concerns" will "vary with the circumstances".[146] The Designation Decision's circumstances are distinguishable from the case Coalspur cites, where a formal appeal before an appeals officer involved detailed submissions from an employer and a union, which the quasi-judicial administrative decision had to address in detail.[147]

135. Coalspur submits that the Minister failed to justify his alleged departure from "longstanding practices or established internal authority", or the precedent of the Phase I and Phase II decisions.[148] First, if this Court decides that reconsidering a s. 9(1) decision does constitute a departure from longstanding practices, the Minister did in fact provide reasons.[149] This is wholly distinguishable from a case where a decision-maker gave no justification.[150] Second, the previous decisions do not constitute "binding precedent" or a practice or authority of the kind envisioned by *Vavilov*.[151] The Phase I decision was made by the CEA Agency and in a wholly different statutory context under CEAA 1992. The Phase II Decision was a single discretionary Ministerial decision, based on a different set of facts, and addressing only one of the two activities later addressed in the Designation Decision. The Designation Decision reaching a different conclusion based on new facts is distinguishable from the case Coalspur cites, which dealt with a decision by the Canada Border Services Agency reversing its consistent past interpretation of provision of customs legislation, to modify its policy without explanation.[152]

136. Coalspur essentially faults the Minister's reasons for being less detailed than the record and the law that informed it.[153] However, the Minister stated in his reasons that he considered the Agency's analysis, which in turn reflected the submissions made to the Agency. There is no requirement in *Vavilov*, the IAA, or elsewhere for him to repeat the analysis upon which he relied.

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[146] *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 60, AR Tab E, Tab 11.
[147] *Ibid.*
[148] AMOFL at para 71, AR Tab E, p. 1657.
[149] Designation Decision, AR Tab B, pp. 19-20.
[150] *Honey Fashions* at para 39, AR Tab E, Tab 8.
[151] *Vavilov* at paras 112, 131, AR Tab E, Tab 10.
[152] *Canada (AG) v Honey Fashions Ltd*, 2020 FCA 64 [*Honey Fashions*] at paras 38-40, AR Tab E, Tab 8.
[153] AMOFL at para 58, AR Tab E, p. 1653.

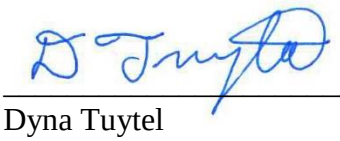
137. Coalspur claims that it was entitled to more detailed reasons due to "the stakes", and in particular the delay it says will result from an impact assessment.[154] As explained above, the delay concern is overstated and speculative. Furthermore, *Vavilov* emphasizes the rights and interests of individuals, and particularly ordinary or vulnerable ones, in cases with "severe" impacts on their "life, liberty, dignity, or livelihood", such as deportation cases.[155] This is not comparable in severity to a company's project potentially undergoing an impact assessment. Nor are the scenarios comparable in terms of certainty of effects. The Designation Decision is not a final decision that the Vista Expansion Phase will undergo an assessment; rather, it begins a process where the Agency will ultimately determine whether one is required.[156]

Part IV ORDER SOUGHT

138. For the foregoing reasons, the Community Respondents respectfully submit that this application for judicial review be dismissed, with costs to the Respondents.

139. If the Court decides that the Designation Order is unreasonable, the normal remedy is to remit the decision to the Minister to be decided afresh in accordance with the Court's reasons.[157] *Vavilov* is clear that a court should only direct a specific outcome in limited scenarios.[158] As the outcome is not inevitable in this case, directing the Minister to issue an order declining designation would be inappropriate in these circumstances.[159]

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of March, 2021.



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[154] AMOFL at para 62, AR Tab E, p. 1654.
[155] *Vavilov* at paras 133-135, AR Tab E, Tab 10.
[156] IAA, ss. 10-16 [CRA, Tab 3].
[157] *Vavilov* at para 141, AR Tab E, Tab 10; *Nation Rise Wind Farm Limited Partnership v Minister of the Environment, Conservation and Parks*, 2020 ONSC 2984 at para 157, AR Tab E, Tab 18.
[158] *Vavilov* at para 141, AR Tab E, Tab 10.
[159] *Ibid*.

Part V LIST OF AUTHORITIES

Statutes

Canadian Environmental Assessment Act, SC 1992, c 37, repealed 2012, c 19, s 66

Impact Assessment Act, S.C. 2019, c 18, s 1

Physical Activities Regulations, SOR/2019-285

Case Law

Ferring Inc v Canada (Minister of Health), 2007 FC 300

Secondary Sources

Regulation Amending the Regulations Designating Physical Activities: Regulatory Impact Analysis Statement, (6 November 2013) C Gaz Part II, Vol. 147, No. 23

Physical Activities Regulations, SOR/2019-285: Regulatory Impact Analysis Statement, (8 August 2019), C Gaz Part II, Vol 153, No. 17

Impact Assessment Agency, Operational Guide: Designating a Project under the *Impact Assessment Act* (Ottawa: Government of Canada, 2020)

House of Commons, Standing Committee on Environment and Sustainable Development, Evidence, 42-1, N. 110 (18 May 2018)

Canadian Environmental Assessment Act, SC 1992, c 37

Repealed, 2012, c. 19, s. 66
This statute is repealed or spent since 2012-07-06.

Past version: in force between Jul 12, 2010 and Jul 6, 2012

Canadian Environmental Assessment Act

S.C. 1992, c. 37

Assented to 1992-06-23

An Act to establish a federal environmental assessment process

Preamble

WHEREAS the Government of Canada seeks to achieve sustainable development by conserving and enhancing environmental quality and by encouraging and promoting economic development that conserves and enhances environmental quality;

WHEREAS environmental assessment provides an effective means of integrating environmental factors into planning and decision-making processes in a manner that promotes sustainable development;

WHEREAS the Government of Canada is committed to exercising leadership within Canada and internationally in anticipating and preventing the degradation of environmental quality and at the same time ensuring that economic development is compatible with the high value Canadians place on environmental quality;

AND WHEREAS the Government of Canada is committed to facilitating public participation in the environmental assessment of projects to be carried out by or

with the approval or assistance of the Government of Canada and providing access to the information on which those environmental assessments are based;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Canadian Environmental Assessment Act*.

INTERPRETATION

Definitions

2. (1) In this Act,

"Agency"
« Agence »

"Agency" means the Canadian Environmental Assessment Agency established by section 61;

"assessment by a review panel"
« examen par une commission »

"assessment by a review panel" means an environmental assessment that is conducted by a review panel established pursuant to section 33 and that includes a consideration of the factors required to be considered under subsections 16(1) and (2);

"comprehensive study"
« étude approfondie »

"comprehensive study" means an environmental assessment that is conducted under section 21, and that includes a consideration of the factors required to be considered under subsections 16(1) and (2);

"comprehensive study list"
« liste d'étude approfondie »

"comprehensive study list" means a list of all projects or classes of projects that have been prescribed by regulations made under paragraph 58(1)(*i*);

"environment"
« environnement »

"environment" means the components of the Earth, and includes

(*a*) land, water and air, including all layers of the atmosphere,

(*b*) all organic and inorganic matter and living organisms, and

(*c*) the interacting natural systems that include components referred to in paragraphs (*a*) and (*b*);

"environmental assessment"

(*a*) to ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects;

(*b*) to encourage responsible authorities to take actions that promote sustainable development and thereby achieve or maintain a healthy environment and a healthy economy;

(*b.1*) to ensure that responsible authorities carry out their responsibilities in a coordinated manner with a view to eliminating unnecessary duplication in the environmental assessment process;

(*b.2*) to promote cooperation and coordinated action between federal and provincial governments with respect to environmental assessment processes for projects;

(*b.3*) to promote communication and cooperation between responsible authorities and Aboriginal peoples with respect to environmental assessment;

(*c*) to ensure that projects that are to be carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out; and

(*d*) to ensure that there be opportunities for timely and meaningful public participation throughout the environmental assessment process.

Duties of the Government of Canada

(2) In the administration of this Act, the Government of Canada, the Minister, the Agency and all bodies subject to the provisions of this Act, including federal authorities and responsible authorities, shall exercise their powers in a manner that protects the environment and human health and applies the precautionary principle.

1992, c. 37, s. 4; 1993, c. 34, s. 19(F); 1994, c. 46, s. 1; 2003, c. 9, s. 2.

ENVIRONMENTAL ASSESSMENT OF PROJECTS

Projects to be Assessed

Projects requiring environmental assessment

5. (1) An environmental assessment of a project is required before a federal authority exercises one of the following powers or performs one of the following duties or functions in respect of a project, namely, where a federal authority

(*a*) is the proponent of the project and does any act or thing that commits the federal authority to carrying out the project in whole or in part;

(*b*) makes or authorizes payments or provides a guarantee for a loan or any other form of financial assistance to the proponent for the purpose of enabling the project to be carried out in whole or in part, except where the financial assistance is in the form of any reduction, avoidance, deferral, removal, refund, remission or other form of relief from the payment of any tax, duty or impost imposed under any Act of Parliament, unless that financial assistance is provided

for the purpose of enabling an individual project specifically named in the Act, regulation or order that provides the relief to be carried out;

(*c*) has the administration of federal lands and sells, leases or otherwise disposes of those lands or any interests in those lands, or transfers the administration and control of those lands or interests to Her Majesty in right of a province, for the purpose of enabling the project to be carried out in whole or in part; or

(*d*) under a provision prescribed pursuant to paragraph 59(*f*), issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part.

Projects requiring approval of Governor in Council

(2) Notwithstanding any other provision of this Act,

(*a*) an environmental assessment of a project is required before the Governor in Council, under a provision prescribed pursuant to regulations made under paragraph 59(*g*), issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part; and

(*b*) the federal authority that, directly or through a Minister of the Crown in right of Canada, recommends that the Governor in Council take an action referred to in paragraph (*a*) in relation to that project

(i) shall ensure that an environmental assessment of the project is conducted as early as is practicable in the planning stages of the project and before irrevocable decisions are made,

(ii) is, for the purposes of this Act and the regulations, except subsection 11(2) and sections 20 and 37, the responsible authority in relation to the project,

(iii) shall consider the applicable reports and comments referred to in sections 20 and 37, and

(iv) where applicable, shall perform the duties of the responsible authority in relation to the project under section 38 as if it were the responsible authority in relation to the project for the purposes of paragraphs 20(1)(*a*) and 37(1)(*a*).

Confidences of Queen's Privy Council for Canada

6. Notwithstanding any other provision of this Act, no confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the *Canada Evidence Act* applies shall be disclosed or made available to any person.

Excluded Projects

Exclusions

7. (1) An assessment of a project is not required under section 5 or sections 8 to 10.1, where

(4) For greater certainty, agreements contemplated by subsection (3) may apply generally and not be specific to a particular project.

2003, c. 9, s. 7.

Obligation to comply with coordinator's requests

12.5 Every federal authority shall comply in a timely manner with requests and determinations made by the federal environmental assessment coordinator in the course of carrying out its duties or functions.

2003, c. 9, s. 7.

Action of Federal Authorities Suspended

Action suspended

13. Where a project is described in the comprehensive study list or is referred to a mediator or a review panel, notwithstanding any other Act of Parliament, no power, duty or function conferred by or under that Act or any regulation made thereunder shall be exercised or performed that would permit the project to be carried out in whole or in part unless an environmental assessment of the project has been completed and a course of action has been taken in relation to the project in accordance with paragraph 37(1)(*a*).

ENVIRONMENTAL ASSESSMENT PROCESS

General

Environmental assessment process

14. The environmental assessment process includes, where applicable,

(*a*) a screening or comprehensive study and the preparation of a screening report or a comprehensive study report;

(*b*) a mediation or assessment by a review panel as provided in section 29 and the preparation of a report; and

(*c*) the design and implementation of a follow-up program.

Scope of project

15. (1) The scope of the project in relation to which an environmental assessment is to be conducted shall be determined by

(*a*) the responsible authority; or

(*b*) where the project is referred to a mediator or a review panel, the Minister, after consulting with the responsible authority.

Same assessment for related projects

(2) For the purposes of conducting an environmental assessment in respect of two or more projects,

(*a*) the responsible authority, or

(*b*) where at least one of the projects is referred to a mediator or a review panel, the Minister, after consulting with the responsible authority,

may determine that the projects are so closely related that they can be considered to form a single project.

All proposed undertakings to be considered

(3) Where a project is in relation to a physical work, an environmental assessment shall be conducted in respect of every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work that is proposed by the proponent or that is, in the opinion of

(*a*) the responsible authority, or

(*b*) where the project is referred to a mediator or a review panel, the Minister, after consulting with the responsible authority,

likely to be carried out in relation to that physical work.

1992, c. 37, s. 15; 1993, c. 34, s. 21(F).

Minister's power to establish scope of project

15.1 (1) Despite section 15, the Minister may, if the conditions that the Minister establishes are met, determine that the scope of the project in relation to which an environmental assessment is to be conducted is limited to one or more components of that project.

Availability

(2) The conditions referred to in subsection (1) must be made available to the public.

Delegation

(3) The Minister may, in writing and subject to any conditions that the Minister may specify, delegate to a responsible authority in relation to a project the power conferred on the Minister by subsection (1) in respect of that project.

Project or class of projects

(4) The delegation may be in respect of a project or a class of projects.

2010, c. 12, s. 2155.

Factors to be considered

16. (1) Every screening or comprehensive study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors:

(*a*) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in

combination with other projects or activities that have been or will be carried out;

(*b*) the significance of the effects referred to in paragraph (*a*);

(*c*) comments from the public that are received in accordance with this Act and the regulations;

(*d*) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project; and

(*e*) any other matter relevant to the screening, comprehensive study, mediation or assessment by a review panel, such as the need for the project and alternatives to the project, that the responsible authority or, except in the case of a screening, the Minister after consulting with the responsible authority, may require to be considered.

Additional factors

(2) In addition to the factors set out in subsection (1), every comprehensive study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors:

(*a*) the purpose of the project;

(*b*) alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;

(*c*) the need for, and the requirements of, any follow-up program in respect of the project; and

(*d*) the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the present and those of the future.

Determination of factors

(3) The scope of the factors to be taken into consideration pursuant to paragraphs (1)(*a*), (*b*) and (*d*) and (2)(*b*), (*c*) and (*d*) shall be determined

(*a*) by the responsible authority; or

(*b*) where a project is referred to a mediator or a review panel, by the Minister, after consulting the responsible authority, when fixing the terms of reference of the mediation or review panel.

Factors not included

(4) An environmental assessment of a project is not required to include a consideration of the environmental effects that could result from carrying out the project in response to a national emergency for which special temporary measures are taken under the *Emergencies Act*.

1992, c. 37, s. 16; 1993, c. 34, s. 22(F).

Community knowledge and aboriginal traditional knowledge

16.1 Community knowledge and aboriginal traditional knowledge may be considered in conducting an environmental assessment.

2003, c. 9, s. 8.

Regional studies

16.2 The results of a study of the environmental effects of possible future projects in a region, in which a federal authority participates, outside the scope of this Act, with other jurisdictions referred to in paragraph 12(5)(*a*), (*c*) or (*d*), may be taken into account in conducting an environmental assessment of a project in the region, particularly in considering any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out.

2003, c. 9, s. 8.

Publication of determinations

16.3 The responsible authority shall document and make available to the public, pursuant to subsection 55(1), its determinations pursuant to section 20.

2003, c. 9, s. 8.

Delegation

17. (1) A responsible authority may delegate to any person, body or jurisdiction within the meaning of subsection 12(5) any part of the screening or comprehensive study of a project or the preparation of the screening report or comprehensive study report, and may delegate any part of the design and implementation of a follow-up program, but shall not delegate the duty to take a course of action pursuant to subsection 20(1) or 37(1).

Idem

(2) For greater certainty, a responsible authority shall not take a course of action pursuant to subsection 20(1) or 37(1) unless it is satisfied that any duty or function delegated pursuant to subsection (1) has been carried out in accordance with this Act and the regulations.

Screening

Screening

18. (1) Where a project is not described in the comprehensive study list or the exclusion list made under paragraph 59(*c*), the responsible authority shall ensure that

(*a*) a screening of the project is conducted; and

(*b*) a screening report is prepared.

Source of information

(2) Any available information may be used in conducting the screening of a project, but where a responsible authority is of the opinion that the information

CANADA

CONSOLIDATION

CODIFICATION

Impact Assessment Act

Loi sur l'évaluation d'impact

S.C. 2019, c. 28, s. 1

L.C. 2019, ch. 28, art. 1

NOTE

[Enacted by section 1 of chapter 28 of the Statutes of Canada, 2019, in force August 28, 2019, *see* SI/2019-86.]

NOTE

[Édictée par l'article 1 du chapitre 28 des Lois du Canada (2019), en vigueur le 28 août 2019, *voir* TR/2019-86.]

Current to March 10, 2021

Last amended on August 28, 2019

À jour au 10 mars 2021

Dernière modification le 28 août 2019

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to March 10, 2021. The last amendments came into force on August 28, 2019. Any amendments that were not in force as of March 10, 2021 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 10 mars 2021. Les dernières modifications sont entrées en vigueur le 28 août 2019. Toutes modifications qui n'étaient pas en vigueur au 10 mars 2021 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

TABLE OF PROVISIONS

An Act respecting a federal process for impact assessments and the prevention of significant adverse environmental effects

TABLE ANALYTIQUE

Loi concernant le processus fédéral d'évaluation d'impact et la prévention d'effets environnementaux négatifs importants

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S.C. 2019, c. 28, s. 1

An Act respecting a federal process for impact assessments and the prevention of significant adverse environmental effects

[*Assented to 21st June 2019*]

Preamble

Whereas the Government of Canada is committed to fostering sustainability;

Whereas the Government of Canada recognizes that impact assessments provide an effective means of integrating scientific information and Indigenous knowledge into decision-making processes related to designated projects;

Whereas the Government of Canada recognizes the importance of public participation in the impact assessment process, including the planning phase, and is committed to providing Canadians with the opportunity to participate in that process and with the information they need in order to be able to participate in a meaningful way;

Whereas the Government of Canada recognizes that the public should have access to the reasons on which decisions related to impact assessments are based;

Whereas the Government of Canada is committed, in the course of exercising its powers and performing its duties and functions in relation to impact, regional and strategic assessments, to ensuring respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*, and to fostering reconciliation and working in partnership with them;

Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

L.C. 2019, ch. 28, art. 1

Loi concernant le processus fédéral d'évaluation d'impact et la prévention d'effets environnementaux négatifs importants

[*Sanctionnée le 21 juin 2019*]

Préambule

Attendu :

que le gouvernement du Canada s'engage à favoriser la durabilité;

qu'il reconnaît que l'évaluation d'impact constitue un moyen efficace pour intégrer l'information scientifique et les connaissances autochtones dans les processus décisionnels relatifs aux projets désignés;

qu'il reconnaît l'importance de la participation du public dans le processus d'évaluation d'impact, y compris à l'étape préparatoire, et s'engage à donner aux Canadiens l'occasion d'y participer et à donner l'accès aux renseignements nécessaires pour permettre une participation significative;

qu'il reconnaît que le public devrait avoir accès aux motifs sur lesquels se fondent les décisions relatives aux évaluations d'impact;

qu'il s'engage, dans l'exercice de ses attributions à l'égard des évaluations d'impact et des évaluations régionales et stratégiques, à veiller au respect des droits des peuples autochtones du Canada reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982* et à promouvoir la réconciliation et le travail en partenariat avec ceux-ci;

qu'il s'engage à mettre en œuvre la Déclaration des Nations Unies sur les droits des peuples autochtones;

qu'il reconnaît l'importance de coopérer avec les instances ayant des attributions relatives à l'évaluation

Whereas the Government of Canada recognizes the importance of cooperating with jurisdictions that have powers, duties and functions in relation to the assessment of the effects of designated projects in order that impact assessments may be conducted more efficiently;

Whereas the Government of Canada recognizes that a transparent, efficient and timely decision-making process contributes to a positive investment climate in Canada;

Whereas the Government of Canada recognizes that impact assessment contributes to Canada's ability to meet its environmental obligations and its commitments in respect of climate change;

Whereas the Government of Canada recognizes the importance of encouraging innovative approaches and technologies to reduce adverse changes to the environment and to health, social or economic conditions;

And whereas the Government of Canada recognizes the importance of regional assessments in understanding the effects of existing or future physical activities and the importance of strategic assessments in assessing federal policies, plans or programs that are relevant to conducting impact assessments;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

des effets des projets désignés afin d'accroître l'efficacité des évaluations d'impact;

qu'il reconnaît qu'un processus décisionnel transparent, efficace et opportun favorise un climat d'investissement positif au Canada;

qu'il reconnaît que les évaluations d'impact contribuent à la capacité du gouvernement du Canada de respecter ses obligations en matière environnementale et ses engagements à l'égard des changements climatiques;

qu'il reconnaît l'importance d'encourager des approches et technologies novatrices pour réduire les changements négatifs causés à l'environnement et aux conditions sanitaires, sociales ou économiques;

qu'il reconnaît l'importance des évaluations régionales dans la compréhension des effets des activités concrètes existantes ou futures et celle des évaluations stratégiques dans l'évaluation des politiques, plans ou programmes fédéraux pertinents dans le cadre des évaluations d'impact,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Short Title

Short title

1 This Act may be cited as the *Impact Assessment Act*.

Titre abrégé

Titre abrégé

1 *Loi sur l'évaluation d'impact*.

Interpretation

Definitions

2 The following definitions apply in this Act.

Agency means the Impact Assessment Agency of Canada that is continued under section 153. (*Agence*)

analyst means a person or a member of a class of persons designated as an analyst under subsection 120(1). (*analyste*)

assessment by a review panel means an impact assessment that is conducted by a review panel. (*examen par une commission*)

Définitions et interprétation

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

Agence L'Agence canadienne d'évaluation d'impact, maintenue en vertu de l'article 153. (*Agency*)

agent de l'autorité Personne désignée comme tel en vertu du paragraphe 120(1) soit à titre individuel, soit au titre de son appartenance à une catégorie déterminée. (*enforcement officer*)

analyste Personne désignée comme tel en vertu du paragraphe 120(1) soit à titre individuel, soit au titre de son

Canadian Energy Regulator means the Canadian Energy Regulator established by subsection 10(1) of the *Canadian Energy Regulator Act*. (*Régie canadienne de l'énergie*)

Canadian Nuclear Safety Commission means the Canadian Nuclear Safety Commission established by section 8 of the *Nuclear Safety and Control Act*. (*Commission canadienne de sûreté nucléaire*)

designated project means one or more physical activities that

(a) are carried out in Canada or on federal lands; and

(b) are designated by regulations made under paragraph 109(b) or designated in an order made by the Minister under subsection 9(1).

It includes any physical activity that is incidental to those physical activities, but it does not include a physical activity designated by regulations made under paragraph 112(1)(a.2). (*projet désigné*)

direct or incidental effects means effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity or designated project, or to a federal authority's provision of financial assistance to a person for the purpose of enabling that activity or project to be carried out, in whole or in part. (*effets directs ou accessoires*)

effects means, unless the context requires otherwise, changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes. (*effets*)

effects within federal jurisdiction means, with respect to a physical activity or a designated project,

(a) a change to the following components of the environment that are within the legislative authority of Parliament:

(i) *fish* and *fish habitat*, as defined in subsection 2(1) of the *Fisheries Act*,

(ii) *aquatic species*, as defined in subsection 2(1) of the *Species at Risk Act*,

(iii) *migratory birds*, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and

(iv) any other component of the environment that is set out in Schedule 3;

appartenance à une catégorie déterminée à cet effet. (*analyst*)

autorité fédérale

a) Ministre fédéral;

b) agence fédérale, *société d'État mère* au sens du paragraphe 83(1) de la *Loi sur la gestion des finances publiques* ou autre organisme constitué sous le régime d'une loi fédérale et tenu de rendre compte au Parlement de ses activités par l'intermédiaire d'un ministre fédéral;

c) ministère ou établissement public mentionnés aux annexes I, I.1 ou II de la *Loi sur la gestion des finances publiques*;

d) tout autre organisme mentionné à l'annexe 1.

Sont exclus le conseil exécutif et les ministres du Yukon, des Territoires du Nord-Ouest et du Nunavut, ainsi que les ministères et les organismes de l'administration publique de ces territoires, tout conseil de bande au sens donné à « conseil de la bande » dans la *Loi sur les Indiens*, Exportation et développement Canada et l'Office d'investissement du régime de pensions du Canada. Est également exclue toute *société d'État* au sens du paragraphe 83(1) de la *Loi sur la gestion des finances publiques* qui est une *filiale à cent pour cent* au sens de ce paragraphe, toute commission portuaire constituée par la *Loi sur les commissions portuaires* et toute société sans but lucratif qui a conclu une entente en vertu du paragraphe 80(5) de la *Loi maritime du Canada*, à moins qu'elle ne soit mentionnée à l'annexe 1. (*federal authority*)

commission Toute commission constituée :

a) en vertu de l'article 41;

b) en vertu du paragraphe 44(1);

c) en vertu du paragraphe 47(1);

d) au titre d'un accord conclu en vertu des paragraphes 39(1) ou (3);

e) au titre du document visé au paragraphe 40(2). (*review panel*)

Commission canadienne de sûreté nucléaire La Commission canadienne de sûreté nucléaire constituée par l'article 8 de la *Loi sur la sûreté et la réglementation nucléaires*. (*Canadian Nuclear Safety Commission*)

Rights of Indigenous peoples of Canada

3 For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of the Indigenous peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

Droits des peuples autochtones du Canada

3 Il est entendu que la présente loi ne porte pas atteinte à la protection des droits des peuples autochtones du Canada découlant de leur reconnaissance et de leur confirmation au titre de l'article 35 de la *Loi constitutionnelle de 1982*.

Application

Non-application

4 This Act does not apply in respect of physical activities to be carried out wholly within lands described in Schedule 2.

Application

Non-application

4 La présente loi ne s'applique pas aux activités concrètes devant être exercées entièrement sur des terres décrites à l'annexe 2.

Her Majesty

Binding on Her Majesty

5 This Act is binding on Her Majesty in right of Canada or a province.

Sa Majesté

Sa Majesté

5 La présente loi lie Sa Majesté du chef du Canada et des provinces.

Purposes

Purposes

6 (1) The purposes of this Act are

(a) to foster sustainability;

(b) to protect the components of the environment, and the health, social and economic conditions that are within the legislative authority of Parliament from adverse effects caused by a designated project;

(b.1) to establish a fair, predictable and efficient process for conducting impact assessments that enhances Canada's competitiveness, encourages innovation in the carrying out of designated projects and creates opportunities for sustainable economic development;

(c) to ensure that impact assessments of designated projects take into account all effects — both positive and adverse — that may be caused by the carrying out of designated projects;

(d) to ensure that designated projects that require the exercise of a power or performance of a duty or function by a federal authority under any Act of Parliament other than this Act to be carried out, are considered in a careful and precautionary manner to avoid adverse effects within federal jurisdiction and adverse direct or incidental effects;

(e) to promote cooperation and coordinated action between federal and provincial governments — while

Objet

Objet

6 (1) La présente loi a pour objet :

a) de favoriser la durabilité;

b) de protéger les composantes de l'environnement et les conditions sanitaires, sociales et économiques qui relèvent de la compétence législative du Parlement contre les effets négatifs importants de tout projet désigné;

b.1) de mettre en place un processus d'évaluation d'impact équitable, prévisible et efficace qui accroît la compétitivité du Canada, encourage l'innovation dans la réalisation de projets désignés et crée des possibilités de développement économique durable;

c) de veiller à ce que l'évaluation d'impact des projets désignés prenne en compte l'ensemble des effets qui peuvent être entraînés par la réalisation de ces projets, qu'ils soient positifs ou négatifs;

d) de veiller à ce que les projets désignés dont la réalisation exige l'exercice, par une autorité fédérale, d'attributions qui lui sont conférées sous le régime d'une loi fédérale autre que la présente loi soient étudiés avec soin et prudence afin qu'ils n'entraînent pas d'effets relevant d'un domaine de compétence fédérale qui sont négatifs ou d'effets directs ou accessoires négatifs;

respecting the legislative competence of each — and the federal government and Indigenous governing bodies that are jurisdictions, with respect to impact assessments;

(f) to promote communication and cooperation with Indigenous peoples of Canada with respect to impact assessments;

(g) to ensure respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*, in the course of impact assessments and decision-making under this Act;

(h) to ensure that opportunities are provided for meaningful public participation during an impact assessment, a regional assessment or a strategic assessment;

(i) to ensure that an impact assessment is completed in a timely manner;

(j) to ensure that an impact assessment takes into account scientific information, Indigenous knowledge and community knowledge;

(k) to ensure that an impact assessment takes into account alternative means of carrying out a designated project, including through the use of best available technologies;

(l) to ensure that ***projects***, as defined in section 81, that are to be carried out on federal lands, or those that are outside Canada and that are to be carried out or financially supported by a federal authority, are considered in a careful and precautionary manner to avoid significant adverse environmental effects;

(m) to encourage the assessment of the cumulative effects of physical activities in a region and the assessment of federal policies, plans or programs and the consideration of those assessments in impact assessments; and

(n) to encourage improvements to impact assessments through the use of follow-up programs.

e) de promouvoir, en ce qui touche les évaluations d'impact, la collaboration des gouvernements fédéral et provinciaux, dans le respect des compétences de chacun, et du gouvernement fédéral et des corps dirigeants autochtones qui sont des instances, ainsi que la coordination de leurs activités;

f) de promouvoir la communication et la collaboration avec les peuples autochtones du Canada en ce qui touche les évaluations d'impact;

g) de veiller au respect des droits des peuples autochtones du Canada reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*, dans le cadre des évaluations d'impact et de la prise de décisions sous le régime de la présente loi;

h) de veiller à ce que le public ait la possibilité de participer de façon significative aux évaluations d'impact, aux évaluations régionales ou aux évaluations stratégiques;

i) de veiller à ce que les évaluations d'impact soient menées à terme en temps opportun;

j) de veiller à ce que les évaluations d'impact prennent en compte l'information scientifique, les connaissances autochtones et les connaissances des collectivités;

k) de veiller à ce que les évaluations d'impact prennent en compte les solutions de rechange à la réalisation des projets désignés, notamment l'utilisation des meilleures technologies disponibles;

l) de veiller à ce que soient étudiés avec soin et prudence, afin qu'ils n'entraînent pas d'effets environnementaux négatifs importants, les ***projets*** au sens de l'article 81 qui sont réalisés sur un territoire domanial, qu'une autorité fédérale réalise à l'étranger ou pour lesquels elle accorde une aide financière en vue de leur réalisation à l'étranger;

m) d'encourager l'évaluation des effets cumulatifs d'activités concrètes dans une région, l'évaluation des politiques, plans ou programmes fédéraux ainsi que la prise en compte de ces évaluations dans le cadre des évaluations d'impact;

n) d'encourager l'amélioration des évaluations d'impact au moyen de programmes de suivi.

Mandate

(2) The Government of Canada, the Minister, the Agency and federal authorities, in the administration of this Act, must exercise their powers in a manner that fosters

Mission

(2) Pour l'application de la présente loi, le gouvernement du Canada, le ministre, l'Agence et les autorités fédérales doivent exercer leurs pouvoirs de manière à favoriser la

community or people and the proponent have agreed that the act or thing may be done.

Federal authority

8 A federal authority must not exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a designated project to be carried out in whole or in part and must not provide financial assistance to any person for the purpose of enabling that designated project to be carried out, in whole or in part, unless

(a) the Agency makes a decision under subsection 16(1) that no impact assessment of the designated project is required and posts that decision on the Internet site; or

(b) the decision statement with respect to the designated project that is issued to the proponent of the designated project under section 65 sets out that the effects that are indicated in the report with respect to the impact assessment of that project are in the public interest.

Designation of Physical Activity

Minister's power to designate

9 (1) The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.

Factors to be taken into account

(2) Before making the order, the Minister may consider adverse impacts that a physical activity may have on the rights of the Indigenous peoples of Canada — including Indigenous women — recognized and affirmed by section 35 of the *Constitution Act, 1982* as well as any relevant assessment referred to in section 92, 93 or 95.

Agency's power to require information

(3) The Agency may require any person or entity to provide information with respect to any physical activity that can be designated under subsection (1).

collectivité ou du peuple autochtones pour que la mesure soit prise.

Autorité fédérale

8 L'autorité fédérale ne peut exercer les attributions qui lui sont conférées sous le régime d'une loi fédérale autre que la présente loi et qui pourraient permettre la réalisation en tout ou en partie d'un projet désigné et ne peut accorder à quiconque une aide financière en vue de permettre la réalisation en tout ou en partie d'un tel projet que si, selon le cas :

a) l'Agence décide, au titre du paragraphe 16(1), qu'aucune évaluation d'impact du projet n'est requise et affiche sa décision sur le site Internet;

b) la déclaration remise au promoteur au titre de l'article 65 relativement au projet donne avis d'une décision portant que les effets qui sont identifiés dans le rapport d'évaluation d'impact du projet sont dans l'intérêt public.

Désignation des activités concrètes

Pouvoir du ministre de désigner

9 (1) Le ministre peut par arrêté, sur demande ou de sa propre initiative, désigner toute activité concrète qui n'est pas désignée par règlement pris en vertu de l'alinéa 109b), s'il estime que l'exercice de l'activité peut entraîner des effets relevant d'un domaine de compétence fédérale qui sont négatifs ou des effets directs ou accessoires négatifs, ou que les préoccupations du public concernant ces effets le justifient.

Éléments pris en compte

(2) Avant de prendre l'arrêté, le ministre peut prendre en compte les répercussions préjudiciables que l'activité concrète peut avoir sur les droits des peuples autochtones du Canada — incluant les femmes autochtones — reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982* ainsi que toute évaluation pertinente visée aux articles 92, 93 ou 95.

Pouvoir d'exiger des renseignements

(3) L'Agence peut exiger de toute personne ou entité qu'elle lui fournisse des renseignements relativement à toute activité concrète qui peut être désignée en vertu du paragraphe (1).

Minister's response — time limit

(4) The Minister must respond, with reasons, to a request referred to in subsection (1) within 90 days after the day on which it is received. The Minister must ensure that his or her response is posted on the Internet site.

Suspending time limit

(5) The Agency may suspend the time limit for responding to the request until any activity that is prescribed by regulations made under paragraph 112(1)(c) is completed. If the Agency suspends the time limit, it must post on the Internet site a notice that sets out its reasons for doing so.

Notice posted on Internet site

(6) When the Agency is of the opinion that the prescribed activity is completed, it must post a notice to that effect on the Internet site.

Limitation

(7) The Minister must not make the designation referred to in subsection (1) if

(a) the carrying out of the physical activity has substantially begun; or

(b) a federal authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament other than this Act that could permit the physical activity to be carried out, in whole or in part.

Posting of notice of order on Internet site

(8) The Agency must post on the Internet site a copy of the order made under subsection (1).

Planning Phase

Obligations

Proponent's obligation — description of designated project

10 (1) The proponent of a designated project must provide the Agency with an initial description of the project that includes the information prescribed by regulations made under paragraph 112(1)(a).

Copy posted on Internet site

(2) The Agency must post a copy of the description on the Internet site.

Réponse du ministre — délai

(4) Le ministre répond, motifs à l'appui, à la demande visée au paragraphe (1) dans les quatre-vingt-dix jours suivant sa réception et, dans un tel cas, il veille à ce que la réponse soit affichée sur le site Internet.

Suspension du délai

(5) L'Agence peut suspendre le délai prévu pour répondre à la demande jusqu'à ce que l'exercice de toute activité désignée par règlement pris en vertu de l'alinéa 112(1)c) soit terminé et, dans un tel cas, elle affiche un avis sur le site Internet indiquant les motifs à l'appui.

Avis affiché sur le site Internet

(6) Lorsqu'elle estime que l'exercice de l'activité visée au paragraphe (5) est terminé, l'Agence affiche un avis à cet effet sur le site Internet.

Restriction

(7) Le ministre ne peut exercer le pouvoir prévu au paragraphe (1) si, selon le cas :

a) l'essentiel de l'exercice de l'activité concrète a commencé;

b) une autorité fédérale a exercé des attributions qui lui sont conférées sous le régime d'une loi fédérale autre que la présente loi et qui pourraient permettre l'exercice en tout ou en partie de l'activité.

Avis de l'arrêté affiché sur le site Internet

(8) L'Agence affiche une copie de l'arrêté pris au titre du paragraphe (1) sur le site Internet.

Étape préparatoire

Obligations

Obligation des promoteurs — description du projet désigné

10 (1) Le promoteur d'un projet désigné fournit à l'Agence une description initiale du projet, qui contient les renseignements prévus par règlement pris en vertu de l'alinéa 112(1)a).

Copie affichée sur le site Internet

(2) L'Agence affiche une copie de la description sur le site Internet.

Public participation

11 The Agency must ensure that the public is provided with an opportunity to participate meaningfully, in a manner that the Agency considers appropriate, in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.

Agency's obligation — offer to consult

12 For the purpose of preparing for a possible impact assessment of a designated project, the Agency must offer to consult with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project and any Indigenous group that may be affected by the carrying out of the designated project.

Federal authority's obligation

13 (1) Every federal authority that is in possession of specialist or expert information or knowledge with respect to a designated project that is the subject of the Agency's preparations must, on the Agency's request and within the period that it specifies, make that information or knowledge available to the Agency.

Engaging proponent

(2) Every federal authority that has powers, duties or functions conferred on it under any Act of Parliament other than this Act with respect to a designated project that is the subject of the Agency's preparations — including the Canadian Energy Regulator, the Canadian Nuclear Safety Commission, the Canada-Nova Scotia Offshore Petroleum Board and the Canada–Newfoundland and Labrador Offshore Petroleum Board — must, on the Agency's request, engage the proponent of the designated project in order that the federal authority may specify to the proponent the information, if any, that it may require in order to exercise those powers or perform those duties or functions.

Agency's obligation — summary of issues

14 (1) The Agency must provide the proponent of a designated project with a summary of issues with respect to that project that it considers relevant, including issues that are raised by the public or by any jurisdiction or Indigenous group that is consulted under section 12, and with any information or knowledge made available to it by a federal authority that the Agency considers appropriate.

Copy posted on Internet site

(2) The Agency must post on the Internet site a copy of the summary of issues that it provided to the proponent.

Participation du public

11 L'Agence veille à ce que le public ait la possibilité de participer de façon significative, selon les modalités qu'elle estime indiquées, à ses travaux préparatoires en vue de l'évaluation d'impact éventuelle d'un projet désigné, notamment en l'invitant à lui faire des observations dans le délai qu'elle précise.

Obligation de l'Agence — offre de consulter

12 Afin de préparer l'évaluation d'impact éventuelle d'un projet désigné, l'Agence est tenue d'offrir de consulter toute instance qui a des attributions relatives à l'évaluation des effets environnementaux du projet et tout groupe autochtone qui peut être touché par la réalisation du projet.

Obligation des autorités fédérales

13 (1) Il incombe à toute autorité fédérale possédant l'expertise ou les connaissances voulues en ce qui touche un projet désigné faisant l'objet de travaux préparatoires de fournir à l'Agence, sur demande et dans le délai qu'elle précise, les renseignements utiles.

Lancement des discussions

(2) Toute autorité fédérale ayant des attributions qui lui sont conférées sous le régime d'une loi fédérale autre que la présente loi à l'égard d'un projet désigné faisant l'objet de travaux préparatoires — notamment la Régie canadienne de l'énergie, la Commission canadienne de sûreté nucléaire, l'Office Canada — Nouvelle-Écosse des hydrocarbures extracôtiers et l'Office Canada — Terre-Neuve-et-Labrador des hydrocarbures extracôtiers — est tenue, sur demande de l'Agence, d'entamer des discussions avec le promoteur du projet afin que l'autorité fédérale puisse lui préciser les renseignements dont elle pourrait avoir besoin pour exercer ces attributions.

Obligation de l'Agence — sommaire

14 (1) L'Agence transmet au promoteur d'un projet désigné le sommaire des questions à l'égard du projet qu'elle estime pertinentes, notamment les questions soulevées par le public ou par toute instance ou tout groupe autochtone consultés en application de l'article 12, et tout renseignement fourni par une autorité fédérale possédant l'expertise ou les connaissances voulues que l'Agence estime indiqué.

Copie affichée sur le site Internet

(2) L'Agence affiche une copie du sommaire qu'elle transmet au promoteur sur le site Internet.

Proponent's obligation — notice

15 (1) The proponent must provide the Agency with a notice that sets out, in accordance with the regulations, how it intends to address the issues referred to in section 14 and a detailed description of the designated project that includes the information prescribed by regulations made under paragraph 112(1)(a).

Additional information

(2) If, after receiving the notice from the proponent, the Agency is of the opinion that a decision cannot be made under subsection 16(1) because the description or the prescribed information set out in the notice is incomplete or does not contain sufficient details, the Agency may require the proponent to provide an amended notice that includes the information or details that the Agency specifies.

Copy posted on Internet site

(3) When the Agency is satisfied that the notice includes all of the information or details that it specified, it must post a copy of the notice on the Internet site.

Obligation du promoteur — avis

15 (1) Le promoteur d'un projet désigné fournit à l'Agence un avis qui indique, conformément aux règlements, la façon dont il entend répondre aux questions visées à l'article 14 et qui comprend une description détaillée du projet qui contient les renseignements prévus par règlement pris en vertu de l'alinéa 112(1)a).

Renseignements supplémentaires

(2) Si elle estime qu'une décision ne peut être prise au titre du paragraphe 16(1) du fait que la description ou les renseignements prévus par règlement qui ont été fournis par le promoteur sont incomplets ou qu'ils ne sont pas suffisamment précis, l'Agence peut exiger du promoteur qu'il lui fournisse une version modifiée de l'avis dans laquelle il ajoute les renseignements ou les précisions qu'elle demande.

Copie affichée sur le site Internet

(3) Lorsqu'elle est convaincue que l'avis comprend tous les renseignements ou toutes les précisions qu'elle demande, l'Agence en affiche une copie sur le site Internet.

Decisions Regarding Impact Assessments

Agency's Decision

Decision

16 (1) After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required.

Factors

(2) In making its decision, the Agency must take into account the following factors:

(a) the description referred to in section 10 and any notice referred to in section 15;

(b) the possibility that the carrying out of the designated project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects;

(c) any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;

(d) any comments received within the time period specified by the Agency from the public and from any

Décisions à l'égard des évaluations d'impact

Décision de l'Agence

Décision

16 (1) Après l'affichage sur le site Internet de la copie de l'avis au titre du paragraphe 15(3), l'Agence décide si une évaluation d'impact du projet désigné est requise.

Éléments à considérer

(2) Pour prendre sa décision, l'Agence prend en compte les éléments suivants :

a) la description visée à l'article 10 et tout avis visé à l'article 15;

b) la possibilité que la réalisation du projet entraîne des effets relevant d'un domaine de compétence fédérale qui sont négatifs ou des effets directs ou accessoires négatifs;

c) les répercussions préjudiciables que le projet peut avoir sur les droits des peuples autochtones du Canada reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*;

d) les observations reçues, dans le délai fixé par l'Agence, du public et de toute instance ou de tout

jurisdiction or Indigenous group that is consulted under section 12;

(e) any relevant assessment referred to in section 92, 93 or 95;

(f) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency; and

(g) any other factor that the Agency considers relevant.

groupe autochtone consultés en application de l'article 12;

e) toute évaluation pertinente visée aux articles 92, 93 ou 95;

f) toute étude effectuée ou tout plan préparé par une quelconque instance, qui ont été fournis à l'Agence, à l'égard d'une région ayant un lien avec le projet;

g) tout autre élément que l'Agence estime utile.

Posting notice on Internet site

(3) The Agency must post a notice of its decision and the reasons for it on the Internet site.

Avis affiché sur le site Internet

(3) L'Agence affiche un avis de sa décision sur le site Internet, motifs à l'appui.

Minister's Notice

Minister's obligation

17 (1) If, before the Agency provides the proponent of a designated project with a notice of the commencement of the impact assessment of the designated project under subsection 18(1), a federal authority advises the Minister that it will not be exercising a power conferred on it under an Act of Parliament other than this Act that must be exercised for the project to be carried out in whole or in part, or the Minister is of the opinion that it is clear that the designated project would cause unacceptable environmental effects within federal jurisdiction, the Minister must provide the proponent with a written notice that he or she has been so advised or is of that opinion. The written notice must set out the reasons why the federal authority will not exercise its power or the basis for the Minister's opinion.

Copy posted on Internet site

(2) The Agency must post a copy of the notice on the Internet site.

Décision du ministre

Avis du ministre

17 (1) Si, avant que l'Agence ne fournisse, en application du paragraphe 18(1), l'avis du début de l'évaluation d'impact à l'égard d'un projet désigné, une autorité fédérale avise le ministre qu'elle n'exercera pas un pouvoir qui lui est conféré sous le régime d'une loi fédérale autre que la présente loi et dont l'exercice est nécessaire à la réalisation en tout ou en partie du projet, ou si le ministre conclut qu'il est évident que le projet entraînerait des effets relevant d'un domaine de compétence fédérale qui relèvent de l'environnement et qui sont inacceptables, le ministre avise, par écrit, le promoteur du projet de ce fait. L'avis précise les motifs pour lesquels l'autorité n'exercera pas ses pouvoirs ou pour lesquels le ministre en est venu à cette conclusion.

Copie affichée sur le site Internet

(2) L'Agence affiche une copie de l'avis sur le site Internet.

Information Gathering

Notice of commencement

18 (1) If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with

Collecte de renseignements

Avis du début de l'évaluation d'impact

18 (1) Si elle décide qu'une évaluation d'impact d'un projet désigné est requise — et que le ministre n'a pas autorisé la substitution visée à l'article 31 à l'égard du projet —, l'Agence fournit au promoteur du projet, dans les cent quatre-vingts jours suivant l'affichage d'une copie de la description du projet en application du paragraphe 10(2), ce qui suit :

a) un avis du début de l'évaluation d'impact dans lequel elle indique les études ou les renseignements

review panel — must offer to consult and cooperate with respect to the impact assessment of the designated project with

(a) any jurisdiction referred to in paragraph (a) of the definition *jurisdiction* in section 2 if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of a designated project that includes activities that are regulated under the *Canada Oil and Gas Operations Act*, the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada Transportation Act*; and

(b) any jurisdiction referred to in paragraphs (c) to (i) of that definition if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of the designated project.

ministre est tenu d'offrir de consulter toute instance ci-après et de coopérer avec elle à l'égard de l'évaluation d'impact du projet :

a) toute instance visée à l'alinéa a) de la définition de *instance* à l'article 2 qui a des attributions relatives à l'évaluation des effets environnementaux du projet, si le projet comprend des activités régies par la *Loi sur les opérations pétrolières au Canada*, la *Loi de mise en œuvre de l'Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers*, la *Loi de mise en œuvre de l'Accord atlantique Canada — Terre-Neuve-et-Labrador* ou la *Loi sur les transports au Canada*;

b) toute instance visée à l'un des alinéas c) à i) de cette définition qui a des attributions relatives à l'évaluation des effets environnementaux du projet.

Factors To Be Considered

Factors — impact assessment

22 (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:

(a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including

(i) the effects of malfunctions or accidents that may occur in connection with the designated project,

(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and

(iii) the result of any interaction between those effects;

(b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;

(c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;

(d) the purpose of and need for the designated project;

Éléments à examiner

Éléments — évaluation d'impact

22 (1) L'évaluation d'impact d'un projet désigné, qu'elle soit effectuée par l'Agence ou par une commission, prend en compte les éléments suivants :

a) les changements causés à l'environnement ou aux conditions sanitaires, sociales ou économiques et les répercussions positives et négatives de tels changements que la réalisation du projet est susceptible d'entraîner, y compris :

(i) ceux causés par les accidents ou défaillances pouvant en résulter,

(ii) les effets cumulatifs que sa réalisation, combinée à l'exercice d'autres activités concrètes, passées ou futures, est susceptible de causer,

(iii) le résultat de toute interaction entre ces effets;

b) les mesures d'atténuation réalisables, sur les plans technique et économique, des effets négatifs du projet;

c) les répercussions que le projet désigné peut avoir sur tout groupe autochtone et les répercussions préjudiciables qu'il peut avoir sur les droits des peuples autochtones du Canada reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*;

d) les raisons d'être et la nécessité du projet;

(e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;

(f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project;

(g) Indigenous knowledge provided with respect to the designated project;

(h) the extent to which the designated project contributes to sustainability;

(i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;

(j) any change to the designated project that may be caused by the environment;

(k) the requirements of the follow-up program in respect of the designated project;

(l) considerations related to Indigenous cultures raised with respect to the designated project;

(m) community knowledge provided with respect to the designated project;

(n) comments received from the public;

(o) comments from a jurisdiction that are received in the course of consultations conducted under section 21;

(p) any relevant assessment referred to in section 92, 93 or 95;

(q) any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;

(r) any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition *jurisdiction* in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;

(s) the intersection of sex and gender with other identity factors; and

e) les solutions de rechange à la réalisation du projet qui sont réalisables sur les plans technique et économique, notamment les meilleures technologies disponibles, et les effets de ces solutions;

f) les solutions de rechange au projet qui sont réalisables sur les plans technique et économique et qui sont directement liées au projet;

g) les connaissances autochtones fournies à l'égard du projet;

h) la mesure dans laquelle le projet contribue à la durabilité;

i) la mesure dans laquelle les effets du projet portent atteinte ou contribuent à la capacité du gouvernement du Canada de respecter ses obligations en matière environnementale et ses engagements à l'égard des changements climatiques;

j) les changements qui pourraient être apportés au projet du fait de l'environnement;

k) les exigences du programme de suivi du projet;

l) les enjeux relatifs aux cultures autochtones soulevés à l'égard du projet;

m) les connaissances des collectivités fournies à l'égard du projet;

n) les observations reçues du public;

o) les observations reçues d'une quelconque instance dans le cadre des consultations tenues en application de l'article 21;

p) toute évaluation pertinente visée aux articles 92, 93 ou 95;

q) toute évaluation des effets du projet effectuée par un corps dirigeant autochtone ou au nom de celui-ci et qui est fournie à l'égard du projet;

r) toute étude effectuée ou tout plan préparé par une quelconque instance — ou un corps dirigeant autochtone non visé aux alinéas f) et g) de la définition de *instance* à l'article 2 — qui a été fourni à l'égard du projet et qui est relatif à une région ayant un lien avec le projet;

s) l'interaction du sexe et du genre avec d'autres facteurs identitaires;

t) tout autre élément utile à l'évaluation d'impact dont l'Agence peut exiger la prise en compte.

(t) any other matter relevant to the impact assessment that the Agency requires to be taken into account.

Scope of factors

(2) The Agency's determination of the scope of the factors made under subsection 18(1.2) applies when those factors are taken into account under subsection (1).

Portée des éléments

(2) L'évaluation de la portée des éléments effectuée par l'Agence en application du paragraphe 18(1.2) s'applique lorsque ces éléments sont pris en compte en application du paragraphe (1).

Federal Authority's Obligation

Specialist or expert information

23 Every federal authority that is in possession of specialist or expert information or knowledge with respect to a designated project that is subject to an impact assessment must, on request, make that information or knowledge available, within the specified period, to

(a) the Agency;

(b) the review panel; and

(c) a government, an agency or body, or a jurisdiction that conducts an assessment of the designated project under a substituted process approved under section 31.

Obligation des autorités fédérales

Fourniture des renseignements pertinents

23 Il incombe à toute autorité fédérale possédant l'expertise ou les connaissances voulues en ce qui touche un projet désigné devant faire l'objet d'une évaluation d'impact de fournir, sur demande et dans le délai précisé, les renseignements utiles :

a) à l'Agence;

b) à la commission;

c) au gouvernement, à l'organisme ou à l'instance qui effectue une évaluation du projet qui découle d'un processus d'évaluation se substituant à l'évaluation d'impact au titre d'une autorisation donnée en vertu de l'article 31.

Impact Assessment by Agency

General Rules

Application only when no referral to review panel

24 Sections 25 to 29 cease to apply to a designated project if the impact assessment of the project is referred by the Minister to a review panel.

Agency's obligations

25 The Agency must ensure that

(a) an impact assessment of the designated project is conducted; and

(b) a report is prepared with respect to that impact assessment.

Information

26 (1) The Agency may, when conducting the impact assessment of a designated project and preparing the report with respect to that impact assessment, use any information that is available to it.

Évaluation d'impact effectuée par l'Agence

Règles générales

Application en l'absence de renvoi pour examen par une commission

24 Les articles 25 à 29 cessent de s'appliquer au projet désigné si le ministre renvoie l'évaluation d'impact du projet pour examen par une commission.

Obligations de l'Agence

25 L'Agence veille :

a) à ce qu'il soit procédé à l'évaluation d'impact du projet désigné;

b) à ce que soit établi un rapport d'évaluation d'impact du projet.

Renseignements

26 (1) Dans le cadre de l'évaluation d'impact d'un projet désigné et de l'établissement du rapport d'évaluation d'impact du projet, l'Agence peut utiliser tous les renseignements disponibles.

Studies and collection of information

(2) However, if the Agency is of the opinion that there is not sufficient information available to it for the purpose of conducting the impact assessment or preparing the report with respect to the impact assessment, it may require the collection of any information or the undertaking of any study that, in the Agency's opinion, is necessary for that purpose, including requiring the proponent to collect that information or undertake that study.

Études et collecte de renseignements

(2) Toutefois, si elle est d'avis que les renseignements disponibles ne lui permettent pas de procéder à l'évaluation d'impact ou d'établir le rapport d'évaluation d'impact, elle peut faire procéder, notamment par le promoteur, aux études et à la collecte de renseignements qu'elle estime nécessaires à cette fin.

Public participation

27 The Agency must ensure that the public is provided with an opportunity to participate meaningfully, in a manner that the Agency considers appropriate, within the time period specified by the Agency, in the impact assessment of a designated project.

Participation du public

27 L'Agence veille à ce que le public ait la possibilité de participer de façon significative, selon les modalités qu'elle estime indiquées et dans le délai qu'elle fixe, à l'évaluation d'impact des projets désignés.

Public notice in certain cases — draft report

28 (1) The Agency must ensure that a draft report with respect to the impact assessment of a designated project is prepared, and must ensure that the following are posted on the Internet site:

(a) a copy of the draft report or an indication of how a copy may be obtained; and

(b) a notice that invites the public to provide comments on the draft report within the period specified.

Avis public d'une ébauche du rapport dans certains cas

28 (1) L'Agence veille à ce qu'une ébauche du rapport d'évaluation d'impact du projet désigné soit établie et à ce que soient affichés sur le site Internet :

a) une copie de l'ébauche du rapport ou une indication de la façon de se la procurer;

b) un avis invitant le public à lui faire des observations sur l'ébauche du rapport dans le délai qui y est précisé.

Final report submitted to Minister

(2) After taking into account any comments received from the public, the Agency must, subject to subsection (5), finalize the report with respect to the impact assessment of the designated project and submit it to the Minister no later than 300 days after the day on which the notice referred to in subsection 19(4) is posted on the Internet site.

Rapport final remis au ministre

(2) Après avoir pris en compte les observations qui lui sont présentées, l'Agence, sous réserve du paragraphe (5), finalise le rapport d'évaluation d'impact et le présente au ministre dans les trois cents jours suivant l'affichage sur le site Internet de l'avis visé au paragraphe 19(4).

Effects set out in report

(3) The report must set out the effects that, in the Agency's opinion, are likely to be caused by the carrying out of the designated project. It must also indicate, from among the effects set out in the report, those that are adverse effects within federal jurisdiction and those that are adverse direct or incidental effects, and specify the extent to which those effects are significant.

Effets indiqués — rapport

(3) Le rapport indique les effets que, selon l'Agence, la réalisation du projet désigné est susceptible d'entraîner. Il identifie, parmi ces effets, les effets relevant d'un domaine de compétence fédérale qui sont négatifs ainsi que les effets directs ou accessoires négatifs et précise la mesure dans laquelle ils sont importants.

Report — Indigenous knowledge

(3.1) Subject to section 119, the report must set out how the Agency, in determining the effects that are likely to be caused by the carrying out of the designated project,

Connaissances autochtones — rapport

(3.1) Le rapport indique, sous réserve de l'article 119, de quelle manière l'Agence a pris en compte et utilisé —

this Act and the regulations in respect of an impact assessment.

Additional information

35 If, after taking into account the report with respect to the impact assessment of a designated project that is submitted to the Minister at the end of the assessment under the substituted process approved under section 31, the Agency is of the opinion that additional information is required for the purposes of subsection 60(1), it may require the proponent of the designated project to provide the additional information to the Minister or may make a request to the jurisdiction that followed the process to provide that information to the Minister.

Renseignements supplémentaires

35 Si, après avoir pris en compte le rapport présenté au ministre à l'égard d'un projet désigné au terme de l'évaluation autorisée en application de l'article 31, elle est d'avis que des renseignements supplémentaires sont requis pour l'application du paragraphe 60(1), l'Agence peut exiger que le promoteur du projet désigné les fournisse au ministre ou demander à l'instance ayant effectué l'évaluation de les fournir à ce dernier.

Impact Assessment by a Review Panel

General Rules

Referral to review panel

36 (1) Within 45 days after the day on which the notice of the commencement of the impact assessment of a designated project is posted on the Internet site, the Minister may, if he or she is of the opinion that it is in the public interest, refer the impact assessment to a review panel.

Public interest

(2) The Minister's determination regarding whether the referral of the impact assessment of the designated project to a review panel is in the public interest must include a consideration of the following factors:

(a) the extent to which the effects within federal jurisdiction or the direct or incidental effects that the carrying out of the designated project may cause are adverse;

(b) public concerns related to those effects;

(c) opportunities for cooperation with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project or any part of it; and

(d) any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Évaluation d'impact renvoyée pour examen par une commission

Règles générales

Renvoi pour examen par une commission

36 (1) Dans les quarante-cinq jours suivant l'affichage sur le site Internet de l'avis du début de l'évaluation d'impact d'un projet désigné, le ministre peut, s'il l'estime dans l'intérêt public, renvoyer l'évaluation d'impact du projet pour examen par une commission.

Intérêt public

(2) Il tient notamment compte des éléments ci-après lorsqu'il décide s'il est dans l'intérêt public de renvoyer l'évaluation d'impact du projet désigné pour examen par une commission :

a) la mesure dans laquelle les effets relevant d'un domaine de compétence fédérale ou les effets directs ou accessoires que le projet pourrait entraîner sont négatifs;

b) les préoccupations du public concernant ces effets;

c) la possibilité de coopérer avec toute instance qui exerce des attributions relatives à l'évaluation des effets environnementaux de tout ou partie du projet;

d) les répercussions préjudiciables que le projet peut avoir sur les droits des peuples autochtones du Canada reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*.

Suspending time limit

(3) The Agency may suspend the time limit within which the Minister may refer an impact assessment to a review panel until any activity that is prescribed by regulations made under paragraph 112(1)(c) is completed. If the Agency suspends the time limit, it must post on the Internet site a notice that sets out its reasons for doing so.

Notice posted on Internet site

(4) When the Agency is of the opinion that the prescribed activity is completed, it must post a notice to that effect on the Internet site.

Posting notice on Internet site

(5) The Agency must post on the Internet site a notice of any decision made by the Minister to refer the impact assessment of the designated project to a review panel, including the Minister's reasons for making that decision.

Time limit

37 (1) If the Minister refers the impact assessment of a designated project to a review panel, the Agency must establish the following time limits:

(a) the time limit, after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site, within which the review panel must submit a report with respect to that impact assessment to the Minister; and

(b) the time limit, after the day on which the review panel submits the report, within which the Agency must post its recommendations under subsection 55.1(2).

Limit of 600 days

(2) Subject to subsection (3), the total number of days for the time limits established under subsection (1) must not exceed 600 unless the Agency is of the opinion that more time is required to allow the review panel to cooperate with a jurisdiction referred to in section 21 with respect to the impact assessment of the designated project or to take into account circumstances that are specific to that project.

Extension of time limit by Minister

(3) The Minister may extend the time limit established under paragraph (1)(a) by any period — up to a maximum of 90 days — that is necessary to permit the review panel to cooperate with a jurisdiction referred to in section 21 or to take into account circumstances that are specific to the designated project.

Suspension du délai

(3) L'Agence peut suspendre le délai dont dispose le ministre pour renvoyer l'évaluation d'impact du projet pour examen par une commission jusqu'à ce que toute activité désignée par règlement pris en vertu de l'alinéa 112(1)c) soit terminée et, dans un tel cas, l'Agence affiche un avis sur le site Internet indiquant les motifs à l'appui.

Avis affiché sur le site Internet

(4) Lorsqu'elle estime que l'exercice de l'activité visée au paragraphe (3) est terminé, l'Agence affiche un avis à cet effet sur le site Internet.

Avis affichés sur le site Internet

(5) L'Agence affiche sur le site Internet un avis de toute décision du ministre de renvoyer l'évaluation d'impact du projet pour examen par une commission, motifs à l'appui.

Délai

37 (1) Si le ministre renvoie l'évaluation d'impact d'un projet désigné pour examen par une commission, l'Agence fixe les délais suivants :

a) le délai imparti à la commission pour présenter au ministre le rapport d'évaluation d'impact du projet, qui doit commencer à courir après la date de l'affichage sur le site Internet de l'avis relatif au projet désigné au titre du paragraphe 19(4);

b) le délai imparti à l'Agence pour afficher ses recommandations au titre du paragraphe 55.1(2), qui doit commencer à courir après la date à laquelle la commission présente son rapport.

Délai — six cents jours

(2) Sous réserve du paragraphe (3), le total des délais fixés en application du paragraphe (1) ne peut excéder six cents jours, sauf si, de l'avis de l'Agence, la commission a besoin de plus de temps pour lui permettre de coopérer avec toute instance visée à l'article 21 à l'égard de l'évaluation d'impact du projet ou de tenir compte des circonstances particulières de celui-ci.

Prolongation du délai par le ministre

(3) Le ministre peut prolonger le délai fixé en application de l'alinéa (1)a) pour permettre à celle-ci de coopérer avec toute instance visée à l'article 21 ou de tenir compte des circonstances particulières du projet. Il ne peut toutefois prolonger le délai de plus de quatre-vingt-dix jours.

Establishment of roster — *Nuclear Safety and Control Act*

(2) In establishing a roster under paragraph (1)(b), the Minister must consult with the Minister of Natural Resources or the member of the Queen's Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the *Nuclear Safety and Control Act*.

Establishment of roster — *Canadian Energy Regulator Act*

(3) In establishing a roster under paragraph (1)(c), the Minister must consult with the member of the Queen's Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the *Canadian Energy Regulator Act*.

Review panel's duties

51 (1) A review panel must, in accordance with its terms of reference,

(a) conduct an impact assessment of the designated project;

(b) ensure that the information that it uses when conducting the impact assessment is made available to the public;

(c) hold hearings in a manner that offers the public an opportunity to participate meaningfully, in the manner that the review panel considers appropriate and within the time period that it specifies, in the impact assessment;

(d) prepare a report with respect to the impact assessment that

(i) sets out the effects that, in the opinion of the review panel, are likely to be caused by the carrying out of the designated project,

(ii) indicates which of the effects referred to in subparagraph (i) are adverse effects within federal jurisdiction and which are adverse direct or incidental effects, and specifies the extent to which those effects are significant,

(ii.1) subject to section 119, sets out how the review panel, in determining the effects that are likely to be caused by the carrying out of the designated project, took into account and used any Indigenous knowledge provided with respect to the designated project,

(iii) sets out a summary of any comments received from the public, and

Liste — *Loi sur la sûreté et la réglementation nucléaires*

(2) Pour établir une liste en application de l'alinéa (1)b), le ministre consulte le ministre des Ressources naturelles ou le membre du Conseil privé de la Reine pour le Canada que le gouverneur en conseil désigne à titre de ministre chargé de l'application de la *Loi sur la sûreté et la réglementation nucléaires*.

Liste — *Loi sur la Régie canadienne de l'énergie*

(3) Pour établir une liste en application de l'alinéa (1)c), le ministre consulte le membre du Conseil privé de la Reine pour le Canada que le gouverneur en conseil désigne à titre de ministre chargé de l'application de la *Loi sur la Régie canadienne de l'énergie*.

Devoirs de la commission

51 (1) La commission, conformément à son mandat :

a) procède à l'évaluation d'impact du projet désigné;

b) veille à ce que le public ait accès aux renseignements qu'elle utilise dans le cadre de cette évaluation;

c) tient des audiences de façon à donner au public la possibilité de participer de façon significative, selon les modalités qu'elle estime indiquées et dans le délai qu'elle fixe, à l'évaluation;

d) établit un rapport de l'évaluation, lequel :

(i) indique les effets que, selon elle, la réalisation du projet est susceptible d'entraîner,

(ii) identifie, parmi ces effets, les effets relevant d'un domaine de compétence fédérale qui sont négatifs ainsi que les effets directs ou accessoires négatifs et précise la mesure dans laquelle ils sont importants,

(ii.1) indique, sous réserve de l'article 119, de quelle manière elle a pris en compte et utilisé — pour déterminer les effets que la réalisation du projet est susceptible d'entraîner — les connaissances autochtones fournies à l'égard du projet,

(iii) comprend un résumé des observations reçues du public,

(iv) est assorti de sa justification et de ses conclusions et recommandations relativement à l'évaluation, notamment aux mesures d'atténuation et au programme de suivi;

e) présente son rapport d'évaluation au ministre;

(iv) sets out the review panel's rationale, conclusions and recommendations, including conclusions and recommendations with respect to any mitigation measures and follow-up program;

(e) submit the report with respect to the impact assessment to the Minister; and

(f) on the Minister's request, clarify any of the conclusions and recommendations set out in its report with respect to the impact assessment.

f) sur demande de celui-ci, précise l'une ou l'autre des conclusions et recommandations dont son rapport est assorti.

Duties in relation to *Nuclear Safety and Control Act*

(2) A review panel established under subsection 44(1) must, in accordance with its terms of reference, include in the report that it prepares the information necessary for the licence referred to in the panel's terms of reference to be issued under section 24 of the *Nuclear Safety and Control Act* in relation to the designated project that is the subject of the report.

Devoirs — *Loi sur la sûreté et la réglementation nucléaires*

(2) Conformément à son mandat, la commission constituée aux termes du paragraphe 44(1) inclut dans le rapport qu'elle établit les renseignements nécessaires à la délivrance d'une licence ou d'un permis en vertu de l'article 24 de la *Loi sur la sûreté et la réglementation nucléaires* relativement au projet qui fait l'objet du rapport.

Duties in relation to *Canadian Energy Regulator Act*

(3) A review panel established under subsection 47(1) must, in accordance with its terms of reference, include in the report that it prepares the conclusions or recommendations necessary for a certificate, order, permit, licence or authorization to be issued, a leave or an exemption to be granted or a direction or approval to be given under the *Canadian Energy Regulator Act* in relation to the designated project that is the subject of the report.

Devoirs — *Loi sur la Régie canadienne de l'énergie*

(3) Conformément à son mandat, la commission constituée au titre du paragraphe 47(1) inclut dans le rapport qu'elle établit les conclusions et recommandations nécessaires à la délivrance de certificats, permis, licences, ordonnances, autorisations, approbations ou dispenses sous le régime de la *Loi sur la Régie canadienne de l'énergie* relativement au projet désigné qui fait l'objet du rapport.

Information

52 (1) A review panel may, when conducting the impact assessment of a designated project and preparing the report with respect to the impact assessment of the designated project, use any information that is available to it.

Renseignements

52 (1) Dans le cadre de l'évaluation d'impact du projet désigné et de l'établissement du rapport d'évaluation d'impact du projet, la commission peut utiliser tous les renseignements disponibles.

Studies and collection of information

(2) However, if the review panel is of the opinion that there is not sufficient information available for the purpose of conducting the impact assessment or preparing the report with respect to the impact assessment of the designated project, it may require the collection of any information or the undertaking of any study that, in the opinion of the review panel, is necessary for that purpose, including requiring the proponent to collect that information or undertake that study.

Études et collecte de renseignements

(2) Toutefois, si elle estime que les renseignements disponibles ne lui permettent pas de procéder à l'évaluation d'impact ou d'établir le rapport d'évaluation d'impact, elle peut faire procéder, notamment par le promoteur, aux études et à la collecte de renseignements qu'elle estime nécessaires à cette fin.

Power to summon witnesses

53 (1) A review panel has the power to summon any person to appear as a witness before it and to order the witness to

(a) give evidence, orally or in writing; and

Pouvoir d'assigner des témoins

53 (1) La commission a le pouvoir d'assigner devant elle des témoins et de leur ordonner :

a) de déposer oralement ou par écrit;

(b) produce any records and other things that the panel considers necessary for conducting its impact assessment of the designated project.

b) de produire les documents et autres pièces qu'elle juge nécessaires en vue de procéder à l'examen dont elle est chargée.

Enforcement powers

(2) A review panel has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce records and other things as is vested in a court of record.

Pouvoirs de contrainte

(2) La commission a, pour contraindre les témoins à comparaître, à déposer et à produire des documents et autres pièces, les pouvoirs d'une cour d'archives.

Hearings to be public

(3) A hearing by a review panel must be public unless the panel is satisfied after representations made by a witness that specific, direct and substantial harm would be caused to the witness or specific harm would be caused to the environment by the disclosure of the evidence, records or other things that the witness is ordered to give or produce under subsection (1).

Audiences publiques

(3) Les audiences de la commission sont publiques, sauf si elle est convaincue, à la suite d'observations faites par un témoin, que la communication des éléments de preuve, documents ou pièces qu'il est tenu de présenter au titre du paragraphe (1) lui causerait directement un préjudice réel et sérieux ou causerait un préjudice réel à l'environnement.

Non-disclosure

(4) If a review panel is satisfied that the disclosure of evidence, records or other things would cause specific, direct and substantial harm to a person or Indigenous group, the evidence, records or things are privileged and even if their disclosure is authorized under subsection 119(2) must not, without the authorization of the person or Indigenous group, knowingly be, or be permitted to be, disclosed by any person who has obtained the evidence, records or other things under this Act.

Non-communication

(4) Si la commission est convaincue que la communication d'éléments de preuve, de documents ou de pièces causerait directement un préjudice réel et sérieux à une personne ou à un groupe autochtone, ces éléments de preuve, documents ou pièces sont protégés; la personne qui les a obtenus au titre de la présente loi ne peut — même si leur communication est autorisée au titre du paragraphe 119(2) — sciemment les communiquer ou permettre qu'ils le soient sans l'autorisation de la personne ou du groupe autochtone en cause.

Non-disclosure

(5) If a review panel is satisfied that the disclosure of evidence, records or other things would cause specific harm to the environment, the evidence, records or things are privileged and must not, without the review panel's authorization, knowingly be, or be permitted to be, disclosed by any person who has obtained the evidence, records or other things under this Act.

Non-communication

(5) Si la commission est convaincue qu'un préjudice réel, pour l'environnement, résulterait de la communication d'éléments de preuve, de documents ou de pièces, ces éléments de preuve, documents ou pièces sont protégés; la personne qui les a obtenus au titre de la présente loi ne peut sciemment les communiquer ou permettre qu'ils le soient sans l'autorisation de la commission.

Enforcement of summonses and orders

(6) Any summons issued or order made by a review panel under subsection (1) must, for the purposes of enforcement, be made a summons or order of the Federal Court by following the usual practice and procedure.

Exécution des assignations et ordonnances

(6) Aux fins de leur exécution, les assignations faites et ordonnances rendues au titre du paragraphe (1) sont, selon la procédure habituelle, assimilées aux assignations ou ordonnances de la Cour fédérale.

Immunity

(7) No action or other proceeding lies against a member of a review panel for or in respect of anything done or omitted to be done during the course of and for the purposes of the assessment by the review panel.

Immunité

(7) Les membres de la commission sont soustraits aux poursuites et autres procédures pour les faits — actes ou omissions — censés accomplis dans le cadre d'un examen par la commission.

Informal proceedings

54 A review panel must, to the extent that is consistent with the general application of the rules of procedural fairness and natural justice, emphasize flexibility and informality in the conduct of hearings and in particular must allow, if appropriate, the admission of evidence that would not normally be admissible under the rules of evidence.

Copy posted on Internet site

55 On receiving a report with respect to the impact assessment of the designated project by a review panel, the Minister must ensure that a copy of the report is posted on the Internet site.

Recommendations

55.1 (1) The Agency must make recommendations to assist the Minister in establishing conditions under section 64 in respect of the designated project that is the subject of a report referred to in section 55.

Recommendations posted on Internet site

(2) The Agency must post its recommendations on the Internet site.

Studies and collection of information

56 The Minister may, before making a referral under section 61, require the proponent of the designated project to collect any information or undertake any studies that are necessary for the Governor in Council to make a determination under section 62.

Confidential Information

Non-disclosure

57 If the Agency is of the opinion that, in respect of a review panel to which it is providing or has provided support under paragraph 156(1)(a), the disclosure of a record would reveal the substance of the panel's deliberations in relation to an impact assessment that the panel is conducting or has conducted, the Agency may refuse to disclose the record to any person who is not a member of the review panel.

Rules in Case of Termination

Power to terminate

58 (1) The Minister may terminate the assessment by a review panel of a designated project if

Absence de formalisme

54 La commission favorise, dans la mesure où cela est compatible avec l'application générale des principes d'équité procédurale et de justice naturelle, l'instruction des affaires avec souplesse et sans formalisme et, en particulier, permet, si cela est indiqué, l'admission d'éléments de preuve qui ne seraient pas normalement admissibles en vertu des règles de la preuve.

Copie affichée sur le site Internet

55 Sur réception du rapport d'évaluation d'impact de la commission, le ministre veille à ce qu'une copie soit affichée sur le site Internet.

Recommandations

55.1 (1) L'Agence formule des recommandations afin d'aider le ministre à fixer des conditions en vertu de l'article 64 à l'égard de tout projet désigné faisant l'objet d'un rapport visé à l'article 55.

Recommandations affichées sur le site Internet

(2) Elle affiche ses recommandations sur le site Internet.

Études et collectes de renseignements

56 Avant de faire le renvoi prévu à l'article 61, le ministre peut faire procéder par le promoteur du projet désigné en cause aux études et à la collecte de renseignements nécessaires pour permettre au gouverneur en conseil de prendre une décision au titre de l'article 62.

Renseignements confidentiels

Non-communication

57 Si elle estime que la communication d'un document divulguerait le contenu des délibérations à l'égard d'une évaluation d'impact qu'une commission, à laquelle l'Agence fournit ou a fourni un soutien en application de l'alinéa 156(1)a), effectue ou a effectuée, l'Agence peut refuser la communication du document à toute personne qui n'est pas membre de la commission.

Règles en cas d'arrêt de l'examen

Pouvoir d'arrêter l'examen

58 (1) Le ministre peut mettre fin à l'examen par une commission d'un projet désigné, dans les cas suivants :

a) il estime que la commission ne présentera pas le rapport d'évaluation d'impact dans le délai qui lui est imparti, y compris par prolongation;

designated project to be carried out, in whole or in part, or to the provision of financial assistance by a federal authority to a person for the purpose of enabling the carrying out, in whole or in part, of that designated project — in relation to the adverse direct or incidental effects with which the proponent of the designated project must comply.

Conditions subject to exercise of power or performance of duty or function

(3) The conditions referred to in subsection (2) take effect only if the federal authority exercises the power or performs the duty or function or provides the financial assistance.

Mitigation measures and follow-up program

(4) The conditions referred to in subsections (1) and (2) must include

(a) the implementation of the mitigation measures that the Minister takes into account in making a determination under paragraph 60(1)(a), or that the Governor in Council takes into account in making a determination under section 62, other than those the implementation of which the Minister is satisfied will be ensured by another person or by a jurisdiction; and

(b) the implementation of a follow-up program and, if the Minister considers it appropriate, an adaptive management plan.

Decision Statement

Decision statement issued to proponent

65 (1) The Minister must issue a decision statement to the proponent of a designated project that

(a) informs the proponent of the determination made under paragraph 60(1)(a) or section 62 in relation to that project and the reasons for the determination;

(b) includes any conditions that are established under section 64 in relation to the designated project and that must be complied with by the proponent;

(c) sets out the period established under subsection 70(1); and

(d) includes a description of the designated project.

Detailed reasons

(2) The reasons for the determination must demonstrate that the Minister or the Governor in Council, as the case may be, based the determination on the report with respect to the impact assessment of the designated project

fédérale en vue de permettre la réalisation en tout ou en partie du projet, que le promoteur du projet est tenu de respecter relativement aux effets directs ou accessoires négatifs.

Conditions subordonnées à l'exercice d'attributions

(3) La prise d'effet des conditions visées au paragraphe (2) est toutefois subordonnée à l'exercice par l'autorité fédérale des attributions en cause ou à la fourniture par elle de l'aide financière.

Mesures d'atténuation et programmes de suivi

(4) Les conditions visées aux paragraphes (1) et (2) sont notamment les suivantes :

a) la mise en œuvre des mesures d'atténuation prise en compte dans le cadre de la décision prise par le ministre ou le gouverneur en conseil au titre de l'alinéa 60(1)a) ou de l'article 62, respectivement, sauf celles dont le ministre est convaincu que la mise en œuvre sera assurée par une autre personne ou par une instance;

b) la mise en œuvre d'un programme de suivi et, lorsque le ministre l'estime indiqué, d'un plan de gestion adaptatif.

Déclaration

Déclaration remise au promoteur

65 (1) Le ministre fait une déclaration qu'il remet au promoteur du projet désigné, dans laquelle :

a) il donne avis de la décision prise au titre de l'alinéa 60(1)a) ou de l'article 62 relativement au projet, motifs à l'appui;

b) il énonce toute condition fixée en vertu de l'article 64 relativement au projet que le promoteur est tenu de respecter;

c) il indique la période fixée en vertu du paragraphe 70(1);

d) il inclut une description du projet.

Motifs détaillés

(2) Les motifs à l'appui de la décision doivent démontrer que le ministre ou le gouverneur en conseil, selon le cas, a fondé sa décision sur le rapport d'évaluation d'impact

and considered each of the factors referred to in section 63.

Time limit of decision statement — Minister's determination

(3) When the Minister makes a determination under paragraph 60(1)(a), he or she must issue the decision statement no later than 30 days after the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site.

Time limit of decision statement — Governor in Council's decision

(4) When the Governor in Council makes a determination under section 62, the Minister must issue the decision statement no later than 90 days after

(a) the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site, if the report is submitted to the Minister under subsection 28(2) or section 59 or at the end of the assessment under the process approved under section 31; or

(b) the day on which the Agency posts its recommendations on the Internet site under subsection 55.1(2), if the recommendations are in respect of a designated project that is the subject of a report received by the Minister under section 55.

Extension of time limit by Minister

(5) The Minister may extend the time limit referred to in subsection (3) or (4) by any period — up to a maximum of 90 days — for any reason that the Minister considers necessary.

Extension of time limit by Governor in Council

(6) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (5) any number of times.

Proponent informed of extension

(7) The Minister must inform the proponent in writing of any extension granted under this section and the reasons for granting it and ensure that a notice of the extension and the reasons for granting it are posted on the Internet site.

Posting of decision statement on Internet site

66 The Agency must post on the Internet site any decision statement that the Minister issues under section 65.

du projet désigné et a pris en compte tous les éléments visés à l'article 63.

Délai — décision du ministre

(3) Lorsqu'il prend une décision au titre de l'alinéa 60(1)a), le ministre fait la déclaration dans les trente jours suivant l'affichage sur le site Internet du rapport d'évaluation d'impact du projet désigné ou de son résumé.

Délai — décision du gouverneur en conseil

(4) Lorsque le gouverneur en conseil prend une décision au titre l'article 62, le ministre fait la déclaration dans les quatre-vingt dix jours suivant :

a) soit l'affichage sur le site Internet du rapport d'évaluation d'impact du projet désigné ou de son résumé, s'il s'agit d'un rapport présenté au ministre en application du paragraphe 28(2) ou de l'article 59 ou au terme de l'évaluation autorisée au titre de l'article 31;

b) soit l'affichage sur le site Internet des recommandations de l'Agence au titre du paragraphe 55.1(2), si les recommandations portent sur un projet désigné faisant l'objet d'un rapport que le ministre a reçu au titre de l'article 55.

Prolongation du délai par le ministre

(5) Le ministre peut prolonger le délai visé aux paragraphes (3) ou (4) de la période qu'il estime nécessaire. Il ne peut toutefois prolonger le délai de plus de quatre-vingt-dix jours.

Prolongation du délai par le gouverneur en conseil

(6) Le gouverneur en conseil peut, sur recommandation du ministre, accorder une ou plusieurs prolongations du délai prolongé en vertu du paragraphe (5).

Avis des prolongations

(7) Le ministre avise, par écrit, le promoteur de toute prolongation accordée en vertu du présent article, motifs à l'appui. Il veille à ce qu'une copie de l'avis soit affichée sur le site Internet.

Déclarations affichées sur le site Internet

66 L'Agence affiche sur le site Internet les déclarations que le ministre fait en application de l'article 65.

Minister's power — decision statement

68 (1) The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project's description. However, the Minister is not permitted to amend the decision statement to change the decision included in it.

Limitation — condition

(2) The Minister may add, remove or amend a condition only if he or she is of the opinion that doing so will not increase the extent to which the effects that are indicated in the report with respect to the impact assessment of the designated project are adverse.

Limitation and application

(3) The Minister may add or amend a condition only if the new or amended condition could be established under subsection 64(1) or (2). Subsection 64(3) applies with respect to the new or amended condition if it could be established under subsection 64(2).

Limitation — *Nuclear Safety and Control Act*

(4) The Minister is not permitted to amend or remove a condition designated under subsection 67(1) and is not permitted to designate, under that subsection, any condition added under this section.

Public notice — amendment to decision statement

69 (1) If the Minister intends to amend a decision statement under section 68, the Minister must ensure that the following are posted on the Internet site:

(a) a draft of the amended decision statement; and

(b) a notice that invites the public to provide comments on the draft within the period specified.

Posting of amended decision statement on Internet site

(2) If, after taking into account any comments received from the public, the Minister decides to amend the decision statement, he or she must ensure that the amended decision statement and his or her reasons for amending the decision statement are posted on the Internet site.

Minister's obligation

70 (1) The Minister must, after considering any views provided by the proponent on the matter, establish the period within which the proponent must substantially begin to carry out the designated project.

Pouvoir du ministre — déclaration

68 (1) Le ministre peut modifier la déclaration, notamment pour ajouter ou supprimer des conditions, en modifier ou modifier la description du projet désigné. Toutefois, il ne peut modifier la déclaration afin de changer la décision qui y est indiquée.

Restriction — condition

(2) Il ne peut ajouter, supprimer ou modifier une condition que s'il est d'avis que l'ajout, la suppression ou la modification n'aura pas pour effet d'accroître la mesure dans laquelle les effets identifiés dans le rapport d'évaluation d'impact à l'égard du projet sont négatifs.

Restriction et application

(3) Il ne peut ajouter ou modifier une condition que dans le cas où la nouvelle condition ou la condition modifiée serait autorisée par les paragraphes 64(1) ou (2). Le paragraphe 64(3) s'applique à la nouvelle condition ou à la condition modifiée dans le cas où elle serait autorisée par le paragraphe 64(2).

Restriction — *Loi sur la sûreté et la réglementation nucléaires*

(4) Il ne peut modifier ou supprimer une condition désignée en vertu du paragraphe 67(1) et ne peut désigner, en vertu de ce paragraphe, toute condition ajoutée au titre du présent article.

Avis public — modification de la déclaration

69 (1) S'il a l'intention de modifier une déclaration en vertu de l'article 68, le ministre veille à ce que soient affichés sur le site Internet :

a) une ébauche de la déclaration modifiée;

b) un avis invitant le public à lui faire des observations sur l'ébauche dans le délai précisé.

Déclaration modifiée affichée sur le site Internet

(2) Si, après avoir pris en compte les observations qui lui sont présentées en vertu du paragraphe (1), le ministre décide de modifier la déclaration, il veille à ce que la déclaration modifiée soit affichée sur le site Internet, motifs à l'appui.

Obligation du ministre

70 (1) Le ministre fixe la période dans laquelle le promoteur doit débuter l'essentiel de la réalisation du projet, et ce, après avoir pris en considération tout point de vue fourni par le promoteur à cet égard.

Projects excluded

(2) Sections 82 and 83 do not apply to an authority in respect of a project that is part of a class of projects that is designated under subsection (1).

Notice inviting public comments

89 (1) If the Minister intends to designate a physical activity, or a class of physical activities, under section 87 or a class of projects under subsection 88(1), the Agency must post on the Internet site a notice that invites the public to provide comments respecting the designation within 30 days after the day on which the notice is posted.

Minister must consider public comments

(2) The Minister must consider any comments received from the public in deciding whether to make the designation.

Posting notice on Internet site

(3) If the Minister designates a physical activity, or a class of physical activities, under section 87 or a class of projects under subsection 88(1), the Agency must post on the Internet site a notice that includes a description of the physical activity, the class of physical activities or the class of projects, as the case may be, and the Minister's reasons for making the designation.

Referral to Governor in Council

90 (1) If the authority determines that the carrying out of a project on federal lands or outside Canada is likely to cause significant adverse environmental effects, the authority may refer to the Governor in Council the matter of whether those effects are justified in the circumstances.

Referral through Minister

(2) When the determination is made by an authority other than a federal Minister, then the referral to the Governor in Council is made through the Minister responsible before Parliament for that authority.

Governor in Council's decision

(3) When a matter has been referred to the Governor in Council, the Governor in Council must decide whether the significant adverse environmental effects are justified in the circumstances and must inform the authority of its decision.

Non-application — national emergency or emergency

91 Sections 82 and 83 do not apply to an authority in respect of a project

Projets exclus

(2) Les articles 82 et 83 ne s'appliquent pas à une autorité à l'égard des projets qui font partie d'une catégorie désignée au titre du paragraphe (1).

Avis invitant les observations du public

89 (1) Si le ministre entend désigner une activité concrète ou une catégorie d'activités concrètes au titre de l'article 87 ou désigner une catégorie de projets au titre du paragraphe 88(1), l'Agence affiche sur le site Internet un avis invitant le public à lui faire des observations à l'égard de la désignation dans les trente jours suivant l'affichage.

Obligation de tenir compte des observations du public

(2) Avant de faire la désignation, le ministre prend en compte les observations reçues du public.

Avis affiché sur le site Internet

(3) Si le ministre désigne une activité concrète ou une catégorie d'activités concrètes au titre de l'article 87 ou une catégorie de projets au titre du paragraphe 88(1), l'Agence affiche sur le site Internet un avis comportant une description de l'activité, de la catégorie d'activités ou de la catégorie de projets, avec les motifs du ministre à l'appui de la désignation.

Renvoi d'une question au gouverneur en conseil

90 (1) L'autorité qui décide que la réalisation d'un projet sur un territoire domanial ou à l'étranger est susceptible d'entraîner des effets environnementaux négatifs importants peut renvoyer au gouverneur en conseil la question de savoir si ces effets sont justifiables dans les circonstances.

Renvoi par l'entremise du ministre

(2) Le cas échéant, s'agissant d'une autorité autre qu'un ministre fédéral, le renvoi se fait par l'entremise du ministre responsable de l'autorité devant le Parlement.

Décision du gouverneur en conseil

(3) Saisi d'une question au titre du paragraphe (1), le gouverneur en conseil décide si les effets environnementaux en cause sont justifiables dans les circonstances. Il informe l'autorité de sa décision.

Non-application — crise nationale ou urgence

91 Les articles 82 et 83 ne s'appliquent pas à une autorité à l'égard d'un projet dans les cas suivants :

Externally produced documents

113 (1) A regulation made under this Act may incorporate by reference documents that are produced by a person or body other than the Agency, including a federal authority referred to in any of paragraphs (a) to (d) of the definition *federal authority* in section 2.

Ambulatory incorporation by reference

(2) A document may be incorporated by reference either as it exists on a particular date or as amended from time to time.

Accessibility of incorporated document

(3) The Minister must ensure that any document incorporated by reference in a regulation is accessible.

No registration or publication

(4) For greater certainty, a document that is incorporated by reference into a regulation is not required to be transmitted for registration or published in the *Canada Gazette* by reason only that it is incorporated by reference.

Minister's powers

114 (1) For the purposes of this Act, the Minister may

(a) issue guidelines and codes of practice respecting the application of this Act;

(b) establish research and advisory bodies in the area of impact assessment, including with respect to the interests and concerns of Indigenous peoples of Canada, and appoint as a member of any such bodies one or more persons;

(c) enter into agreements or arrangements with any jurisdiction referred to in paragraphs (a) to (g) of the definition *jurisdiction* in section 2 respecting assessments of effects;

(d) if authorized by the regulations, enter into agreements or arrangements with any jurisdiction referred to in paragraph (e) or (f) of the definition *jurisdiction* in section 2 to

(i) authorize the jurisdiction, on lands with respect to which it already has powers, duties or functions in relation to an assessment of the environmental effects of a designated project, to exercise powers or perform duties or functions in relation to impact assessments under this Act — except for those set out in section 16 — that are specified in the agreement or arrangement, or

Documents externes

113 (1) Peut être incorporé par renvoi dans un règlement pris en vertu de la présente loi tout document établi par une personne ou un organisme autre que l'Agence, notamment toute autorité fédérale visée à l'un des alinéas a) à d) de la définition de *autorité fédérale* à l'article 2.

Portée de l'incorporation par renvoi

(2) L'incorporation par renvoi peut viser le document soit dans sa version à une date donnée, soit avec ses modifications successives.

Accessibilité

(3) Le ministre veille à ce que tout document incorporé par renvoi dans le règlement soit accessible.

Ni enregistrement ni publication

(4) Il est entendu que les documents incorporés par renvoi dans le règlement n'ont pas à être transmis pour enregistrement ni à être publiés dans la *Gazette du Canada* du seul fait de leur incorporation.

Pouvoirs du ministre

114 (1) Pour l'application de la présente loi, le ministre peut :

a) donner des lignes directrices et établir des codes de pratique concernant l'application de la présente loi;

b) établir des organismes de recherche et de consultation en matière d'évaluation d'impact, notamment en ce qui concerne les intérêts et préoccupations des peuples autochtones du Canada, et en nommer le ou les membres;

c) conclure des accords avec toute instance visée à l'un des alinéas a) à g) de la définition de *instance* à l'article 2 en matière d'évaluation des effets;

d) dans la mesure où les règlements le prévoient, conclure des accords avec toute instance visée aux alinéas e) ou f) de la définition de *instance* à l'article 2 :

(i) soit, s'agissant de terres à l'égard desquelles elle a déjà des attributions relatives à l'évaluation des effets environnementaux de projets désignés, pour l'autoriser à y exercer des attributions en matière d'évaluation d'impact prévues sous le régime de la présente loi, à l'exception de celles prévues à l'article 16, et qui sont précisées dans l'accord,

(ii) soit, s'agissant de terres, précisées dans l'accord, à l'égard desquelles elle n'a pas déjà des

(ii) in relation to lands, specified in the agreement or arrangement, with respect to which it does not already have powers, duties or functions in relation to an assessment of the environmental effects of a designated project,

(A) provide that the jurisdiction is considered to be a jurisdiction for the application of this Act on those lands, and

(B) authorize the jurisdiction, on those lands, to exercise powers or perform duties or functions in relation to impact assessments under this Act — except for those set out in section 16 — that are specified in the agreement or arrangement;

(e) if authorized by the regulations, enter into agreements or arrangements with any Indigenous governing body not referred to in paragraph (f) of the definition *jurisdiction* in section 2 to

(i) provide that the Indigenous governing body is considered to be a jurisdiction for the application of this Act on the lands specified in the agreement or arrangement, and

(ii) authorize the Indigenous governing body, with respect to those lands, to exercise powers or perform duties or functions in relation to impact assessments under this Act — except for those set out in section 16 — that are specified in the agreement or arrangement;

(f) enter into agreements or arrangements with any jurisdiction for the purposes of coordination, consultation, exchange of information and the determination of factors to be considered in relation to the assessment of the effects of designated projects of common interest;

(g) establish criteria for the appointment of members of review panels; and

(h) establish criteria for the appointment of members of committees established under section 92 or 93.

International agreements and arrangements

(2) The Minister and the Minister of Foreign Affairs may enter into agreements or arrangements with any jurisdiction referred to in paragraphs (h) and (i) of the definition *jurisdiction* in section 2 respecting assessments of environmental effects, including for the purposes of implementing the provisions of any international agreement or arrangement respecting the assessment of environmental effects to which the Government of Canada is a party.

attributions relatives à l'évaluation des effets environnementaux de projets désignés, à la fois :

(A) pour prévoir que l'instance est considérée être une instance dans ces terres,

(B) pour l'autoriser à y exercer des attributions en matière d'évaluation d'impact prévues sous le régime de la présente loi, à l'exception de celles prévues à l'article 16, et qui sont précisées dans l'accord;

e) dans la mesure où les règlements le prévoient, conclure des accords avec tout corps dirigeant autochtone non visé à l'alinéa f) de la définition de *instance* à l'article 2, à la fois :

(i) pour prévoir que le corps dirigeant autochtone est considéré être une instance pour l'application de la présente loi dans les terres précisées dans l'accord,

(ii) pour l'autoriser à exercer, dans ces terres, des attributions en matière d'évaluation d'impact prévues sous le régime de la présente loi, à l'exception de celles prévues à l'article 16, et qui sont précisées dans l'accord;

f) conclure des accords avec toute instance en matière de coordination, de consultation, d'échange d'information et de détermination des éléments à prendre en compte relativement à l'évaluation des effets de projets désignés d'intérêt commun;

g) fixer les critères de nomination des membres des commissions;

h) fixer les critères de nomination des membres des comités constitués au titre des articles 92 ou 93.

Accords internationaux

(2) Le ministre et le ministre des Affaires étrangères peuvent conclure des accords avec toute instance visée à l'un des alinéas h) et i) de la définition de *instance* à l'article 2 en matière d'évaluation des effets environnementaux, notamment pour la mise en œuvre de tout accord international auquel le gouvernement du Canada est partie concernant l'examen des effets environnementaux.

Opportunity for public to comment

(3) The Minister must provide reasonable public notice of and a reasonable opportunity for anyone to comment on draft guidelines, codes of practice, agreements, arrangements or criteria under this section.

Availability to public

(4) Any guidelines, codes of practice, agreements, arrangements or criteria must be made available to the public.

Agreements or arrangements posted on Internet site

(5) The Minister must ensure that an agreement or arrangement referred to in paragraph (1)(d) or (e) is posted on the Internet site.

Non-application — national security

115 (1) The Governor in Council may, by order, exclude a designated project from the application of this Act if, in the Governor in Council's opinion, the designated project is one in relation to which there are matters of national security.

Non-application — national emergency or emergency

(2) The Minister may, by order, exclude a designated project from the application of this Act if, in the Minister's opinion, the designated project is one to be carried out in response to

(a) a national emergency for which special temporary measures are being taken under the *Emergencies Act*; or

(b) an emergency, and carrying out the designated project without delay is in the interest of preventing damage to property or the environment or is in the interest of public health or safety.

Posting of notice of order on Internet site

(3) The Agency must post on the Internet site a notice of any order made under subsection (2).

Statutory Instruments Act

116 An order made under subsection 9(1) or 115(1) or (2) is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

Préavis

(3) Le ministre donne un préavis public raisonnable des projets de lignes directrices, de codes de pratique, d'accords ou de critères établis en application du présent article, ainsi que la possibilité, pour quiconque, de faire des observations à leur sujet.

Accessibilité

(4) Les lignes directrices, codes de pratique, accords et critères sont accessibles au public.

Accords affichés sur le site Internet

(5) Le ministre veille à ce que les accords visés aux alinéas (1)d) ou e) soient affichés sur le site Internet.

Non-application — sécurité nationale

115 (1) Le gouverneur en conseil peut, par décret, soustraire tout projet désigné à l'application de la présente loi s'il est d'avis que le projet soulève une question de sécurité nationale.

Non-application — crise nationale ou situation d'urgence

(2) Le ministre peut, par arrêté, soustraire tout projet désigné à l'application de la présente loi s'il est d'avis, selon le cas :

a) que le projet est réalisé en réaction à des situations de crise nationale pour lesquelles des mesures d'intervention sont prises aux termes de la *Loi sur les mesures d'urgence*;

b) que le projet est réalisé en réaction à une situation d'urgence et qu'il importe, soit pour la protection de biens ou de l'environnement, soit pour la santé ou la sécurité publiques, de le réaliser sans délai.

Avis de l'arrêté affiché sur le site Internet

(3) L'Agence affiche sur le site Internet un avis de tout arrêté pris en application du paragraphe (2).

Loi sur les textes réglementaires

116 Le décret ou l'arrêté pris en application des paragraphes 9(1) ou 115(1) ou (2) n'est pas un *texte réglementaire* au sens de la *Loi sur les textes réglementaires*.

Notice

(4) No document referred to in this section may be received in evidence unless the party intending to produce it has provided reasonable notice of that intention to the party against whom it is intended to be produced together with a copy of the document.

Notice to shareholders

151 If a corporation that has shareholders is convicted of an offence under this Act, the court must make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

Publication

Power

152 The Agency must publish, in the manner it considers appropriate,

(a) information or a document provided by a proponent to comply with a condition established under section 64 or added or amended under section 68;

(b) a summary of a report that an enforcement officer or analyst may prepare in the exercise of their powers or the performance of their duties and functions under sections 122 to 125;

(c) a notice of non-compliance referred to in section 126;

(d) a written order issued by an enforcement officer in accordance with section 127 or by a review officer under section 134; or

(e) a decision rendered under section 135.

Impact Assessment Agency of Canada

Agency continued

153 (1) The Canadian Environmental Assessment Agency is continued as the Impact Assessment Agency of Canada. The Impact Assessment Agency must advise and assist the Minister in exercising the powers and performing the duties and functions conferred on him or her by this Act.

Minister's responsibility

(2) The Minister is responsible for the Agency. The Minister may not, except as provided in this Act, direct the

Préavis

(4) Ils ne sont reçus en preuve que si la partie qui entend les produire contre une autre lui donne un préavis suffisant, en y joignant une copie de ceux-ci.

Avis aux actionnaires

151 En cas de condamnation d'une personne morale ayant des actionnaires pour infraction à la présente loi, le tribunal lui ordonne d'aviser ceux-ci, de la façon et dans les délais qu'il précise, des faits liés à la perpétration de l'infraction et des détails de la peine infligée.

Publication

Pouvoir

152 L'Agence publie, de la manière qu'elle estime indiquée, les renseignements ou documents suivants :

a) les renseignements ou documents fournis par le promoteur pour se conformer à une condition fixée au titre de l'article 64 ou ajoutée ou modifiée au titre de l'article 68;

b) les sommaires des rapports que peuvent préparer les agents de l'autorité ou les analystes dans l'exercice de leurs attributions au titre des articles 122 à 125;

c) les avis de non-conformité visés à l'article 126;

d) les ordres écrits donnés par un agent de l'autorité en conformément à l'article 127 ou par un réviseur en vertu de l'article 134;

e) les décisions visées à l'article 135.

Agence canadienne d'évaluation d'impact

Maintien

153 (1) L'Agence canadienne d'évaluation environnementale est maintenue sous le nom de l'Agence canadienne d'évaluation d'impact. Cette dernière est chargée de conseiller et d'assister le ministre dans l'exercice des attributions qui lui sont conférées par la présente loi.

Responsabilité du ministre

(2) L'Agence est placée sous la responsabilité du ministre. Celui-ci ne peut, sauf disposition contraire de la

President of the Agency or its employees, or any review panel members, with respect to a report, decision, order or recommendation to be made under this Act.

présente loi, donner des directives au président de l'Agence ou à ses employés, ou aux membres d'une commission, à l'égard d'un rapport établi, d'une décision prise, d'une ordonnance rendue ou d'une recommandation formulée au titre de la présente loi.

Delegation to Agency

154 (1) The Minister may, subject to any terms and conditions that the Minister specifies, delegate to an officer or employee of the Agency any of the powers, duties and functions that the Minister is authorized to exercise or perform under this Act.

Délégation d'attributions à l'Agence

154 (1) Le ministre peut, selon les modalités qu'il fixe, déléguer à tout dirigeant ou employé de l'Agence les attributions qui lui sont conférées sous le régime de la présente loi.

Restriction

(2) However, the Minister is not authorized to delegate a power to make regulations or a power to delegate under subsection (1).

Réserve

(2) Il ne peut toutefois déléguer le pouvoir de prendre des règlements ni le pouvoir de délégation prévu au paragraphe (1).

Agency's objects

155 The Agency's objects are

(a) to conduct or administer impact assessments and administer any other requirements and procedures established by this Act and the regulations;

(b) to coordinate — during the period that begins on the day on which a copy of the description of the project referred to in subsection 10(1) is posted on the Internet site, and that ends on the day on which the decision statement in respect of the project is issued — consultations with Indigenous groups that may be affected by the carrying out of a designated project;

(c) to promote harmonization in relation to the assessment of effects across Canada at all levels of government;

(d) to promote or conduct research in matters of impact assessment and to encourage the development of impact assessment techniques and practices, including testing programs, alone or in cooperation with other agencies or organizations;

(e) to promote impact assessment in a manner that is consistent with the purposes of this Act;

(f) to promote, monitor and facilitate compliance with this Act;

(g) to promote and monitor the quality of impact assessments conducted under this Act;

(h) to develop policy related to this Act; and

(i) to engage in consultation with the Indigenous peoples of Canada on policy issues related to this Act.

Mission

155 L'Agence a pour mission :

a) d'effectuer ou de gérer les évaluations d'impact et de gérer toute autre procédure ou exigence établies par la présente loi et les règlements;

b) de coordonner — au cours de la période commençant à la date de l'affichage sur le site Internet de la description du projet visée au paragraphe 10(1) et se terminant à la date de la déclaration faite relativement au projet — les consultations avec les groupes autochtones qui peuvent être touchés par la réalisation d'un projet désigné;

c) de promouvoir l'harmonisation en matière d'évaluation des effets à l'échelle du Canada et à tous les niveaux administratifs;

d) seule ou en collaboration avec d'autres organismes, de promouvoir la recherche en matière d'évaluation d'impact ainsi que de mener des recherches et de favoriser l'élaboration de techniques et façons de faire en la matière, notamment en ce qui a trait aux programmes d'essais;

e) de promouvoir les évaluations d'impact conformément à l'objet de la présente loi;

f) de promouvoir, de surveiller et de faciliter l'observation de la présente loi;

g) de promouvoir et de contrôler la qualité des évaluations d'impact effectuées sous le régime de la présente loi;

h) d'élaborer des politiques liées à la présente loi;

i) de tenir des consultations avec les peuples autochtones du Canada au sujet des questions de politique liées à la présente loi.

Agency's duties

156 (1) In carrying out its objects, the Agency must

(a) provide support for review panels and any committees established under section 92 or under an agreement or arrangement entered into under paragraph 93(1)(a) or (b);

(b) provide, on the Minister's request, administrative support for any research and advisory body established under paragraph 114(1)(b); and

(c) provide information or training to facilitate the application of this Act.

Attributions de l'Agence

156 (1) Dans l'exécution de sa mission, l'Agence :

a) fournit un soutien aux commissions et à tout comité constitué aux termes de l'article 92 ou au titre d'un accord conclu aux termes des alinéas 93(1)a) ou b);

b) à la demande du ministre, fournit un soutien administratif aux organismes de recherche et de consultation créés en vertu de l'alinéa 114(1)b);

c) fournit toute information ou formation en vue de faciliter l'application de la présente loi.

Agency's powers

(2) In carrying out its objects, the Agency may

(a) undertake studies or activities or conduct research relating to impact assessment;

(b) advise persons and organizations on matters relating to the assessment of effects;

(c) issue guidelines and codes of practice;

(d) negotiate agreements or arrangements referred to in paragraphs 114(1)(c) to (f) on the Minister's behalf; and

(e) establish research and advisory bodies for matters related to impact assessment and monitoring committees for matters related to the implementation of follow-up programs and adaptive management plans, including with respect to the interests and concerns of Indigenous peoples of Canada, and appoint as a member of any such bodies one or more persons.

Pouvoirs de l'Agence

(2) Dans l'exécution de sa mission, l'Agence peut :

a) mener des études, réaliser des travaux ou mener des recherches en matière d'évaluation d'impact;

b) conseiller toute personne ou tout organisme en matière d'évaluation des effets;

c) donner des lignes directrices et établir des codes de pratique;

d) négocier, au nom du ministre, les accords prévus aux alinéas 114(1)c) à f);

e) établir des organismes de recherche et de consultation en matière d'évaluation d'impact et des comités de surveillance à l'égard de la mise en œuvre des programmes de suivi et des plans de gestion adaptatifs, notamment en ce qui concerne les intérêts et préoccupations des peuples autochtones du Canada, et en nommer le ou les membres.

Expert committee

157 (1) The Agency must establish an expert committee to advise it on issues related to impact assessments and regional and strategic assessments, including scientific, environmental, health, social or economic issues.

Comité d'experts

157 (1) L'Agence établit un comité d'experts chargé de la conseiller sur les enjeux liés aux évaluations d'impact et aux évaluations régionales et stratégiques, notamment sur tout enjeu de nature scientifique, environnementale, sanitaire, sociale et économique.

Appointment

(2) The Agency may appoint any person with relevant knowledge or experience as a member of the expert committee. The membership of the committee must include at least one Indigenous person.

Nomination

(2) L'Agence peut nommer à titre de membre du comité d'experts toute personne dont les connaissances ou l'expérience sont pertinentes; au moins un membre du comité doit être un Autochtone.

Physical Activities Regulations

SOR/2019-285

IMPACT ASSESSMENT ACT

Registration 2019-08-08

Physical Activities Regulations

P.C. 2019-1182 2019-08-07

Her Excellency the Governor General in Council, on the recommendation of the Minister of the Environment, pursuant to sections 109 and 188 of the *Impact Assessment Act*[a], makes the annexed *Physical Activities Regulations*.

[a]S.C. 2019, c. 28

Definitions

1 (1) The following definitions apply in these Regulations.

aerodrome has the same meaning as in subsection 3(1) of the *Aeronautics Act*. (*aérodrome*)

area of mining operations means the area at ground level occupied by any open-pit or underground workings, mill complex or storage area for overburden, waste rock, tailings or ore. (*aire d'exploitation minière*)

boundary water has the meaning assigned by the definition boundary waters in subsection 2(1) of the *Canada Water Act*. (*eaux limitrophes*)

canal means a waterway constructed for navigation. (*canal*)

Class IA nuclear facility has the same meaning as in section 1 of the *Class I Nuclear Facilities Regulations*. (*installation nucléaire de catégorie IA*)

disposal at sea means disposal, as defined in subsection 122(1) of the *Canadian Environmental Protection Act, 1999*, but does not include any omission that constitutes a disposal in paragraph (g) of the definition of that term. (*immersion*)

exploratory well has the same meaning as in subsection 101(1) of the *Canada Petroleum Resources Act*, but does not include a delineation well or development well as those terms are defined in that subsection. (*puits d'exploration*)

hazardous waste means anything referred to in any of paragraphs 1(1)(a) to (f) or 2(1)(a) to (f) of the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*, but does not include nuclear substances, domestic waste water or anything collected from households in the course of regular municipal waste collection services. (*déchet dangereux*)

international electrical transmission line has the meaning assigned by the definition international power line in section 2 of the *Canadian Energy Regulator Act*. (*ligne internationale de transport d'électricité*)

marine terminal means a facility, including its areas, structures and equipment, that is used for berthing ships and that is

(a) related to the movement of goods between ships and shore; or

(b) used for the receiving, holding, regrouping, embarkation or landing of passengers transported by water. (*terminal maritime*)

national marine conservation area means a marine conservation area or a reserve, as those terms are defined in subsection 2(1) of the *Canada National Marine Conservation Areas Act*, or the Saguenay-St. Lawrence Marine Park established under section 5 of the *Saguenay-St. Lawrence Marine Park Act*. (*aire marine nationale de conservation*)

national park means a park or a park reserve as those terms are defined in subsection 2(1) of the *Canada National Parks Act*. (*parc national*)

navigable water has the same meaning as in section 2 of the *Canadian Navigable Waters Act*. (*eaux navigables*)

new right of way means land that is to be developed for an international electrical transmission line, a pipeline, as defined in section 2 of the *Canadian Energy Regulator Act*, a railway line or an all-season public highway, and that is not alongside and contiguous to an area of land that was developed for an electrical transmission line, oil and gas pipeline, railway line or all-season public highway. (*nouvelle emprise*)

nuclear substance has the same meaning as in section 2 of the *Nuclear Safety and Control Act*. (*substance nucléaire*)

offshore means, except in respect of an offshore area, anything that is located in

(a) an area referred to in paragraph 3(d) or (e) of the *Canada Oil and Gas Operations Act* in respect of which an authorization under that Act is required to conduct an activity that is related to the exploration and drilling for, or the production, conservation, processing or transportation of, oil or gas; or

(b) an area in respect of which an authorization under the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* is required to conduct an activity that is related to the exploration and drilling for, or the production, conservation, processing or transportation of, oil or gas. (*au large des côtes*)

offshore area has the same meaning as in section 2 of the *Canadian Energy Regulator Act*. (*zone extracôtière*)

oil and gas pipeline means a pipeline that is used, or is to be used, for the transmission of oil or gas alone or with any other commodity. (*pipeline d'hydrocarbures*)

park community has the same meaning as in subsection 2(1) of the *Canada National Parks Act*. (*collectivité*)

uranium mill has the meaning assigned by the definition mill in section 1 of the *Uranium Mines and Mills Regulations*. (*usine de concentration d'uranium*)

uranium mine has the meaning assigned by the definition mine in section 1 of the *Uranium Mines and Mills Regulations*. (*mine d'uranium*)

water body means any body of water, including a canal, a reservoir, an ocean and a wetland, up to the high-water mark, but does not include a sewage or waste treatment lagoon or a mine tailings pond. (*plan d'eau*)

Aircraft Group Number

(2) For the purpose of these Regulations, an Aircraft Group Number refers to the Aircraft Group Number set out in Transport Canada's publication, TP 312, 5th edition entitled *Aerodrome Standards and Recommended Practices*.

Physical activities — designated projects

2 (1) The physical activities that are set out in the schedule are designated for the purpose of the definition designated project in section 2 of the *Impact Assessment Act*.

Physical activities that may be excluded

(2) For the purpose of the definition designated project in section 2 of the *Impact Assessment Act*, the physical activities that may be designated by the Minister under paragraph 112(1)(a.2) of that Act are those referred to in section 34, 44 or 45 of the schedule.

Exception

(3) Subsections (1) and (2) do not apply to a physical activity that is a project, as defined in section 66 of the *Canadian Environmental Assessment Act, 2012*, if, before the coming

into force of the *Impact Assessment Act*, an authority, as defined in that section, has made a determination under section 67 of the *Canadian Environmental Assessment Act, 2012* or has indicated in writing that it has started to make its determination for the purpose of that section of whether or not the carrying out of the project is likely to cause significant adverse environmental effects.

Period for review of regulations

3 For the purpose of subsection 111(1) of the *Impact Assessment Act*, the period is five years after the day on which these Regulations come into force.

Project on federal lands or outside Canada

4 (1) If an authority has, before the coming into force of the *Impact Assessment Act*, indicated in writing that it has started to make its determination, for the purpose of section 67 or 68 of the *Canadian Environmental Assessment Act, 2012*, of whether or not the carrying out of a project is likely to cause significant adverse environmental effects, that determination is made under the *Canadian Environmental Assessment Act, 2012* as if that Act had not been repealed.

Non-application of sections 81 to 91 of the *Impact Assessment Act*

(2) If, before the coming into force of the *Impact Assessment Act*, an authority has made a determination under section 67 or 68 of the *Canadian Environmental Assessment Act, 2012* with respect to a project, sections 81 to 91 of the *Impact Assessment Act* do not apply to that project.

Definition of authority and project

(3) In this section, authority and project have the same meaning as in section 66 of the *Canadian Environmental Assessment Act, 2012*.

S.C. 2019, c. 28, s. 1

*__5__ These Regulations come into force on the day on which section 1 of *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, comes into force.

*[Note: Regulations in force August 28, 2019, *see* SI/2019-86.]

SCHEDULE

(Section 2)

Physical Activities

National Parks and Protected Areas

1 The construction, operation, decommissioning and abandonment in a wildlife area, as defined in section 2 of the *Wildlife Area Regulations*, a migratory bird sanctuary, as defined in subsection 2(1) of the *Migratory Bird Sanctuary Regulations* or a protected marine area established under subsection 4.1(1) of the *Canada Wildlife Act*, of one of the following:

(a) a new electrical generating facility or electrical transmission line;

(b) a new structure for the diversion of water, including a new dam, dyke or reservoir;

(c) a new oil or gas facility or oil and gas pipeline;

(d) a new mine or mill;

(e) a new industrial facility;

(f) a new canal or lock;

(g) a new marine terminal;

(h) a new railway line;

(i) a new public road or parkway that is intended for the passage of motor vehicles;

(j) a new aerodrome or runway;

(k) a new waste management facility;

(l) a new aquaculture facility.

2 The construction, in a national marine conservation area, of a new physical work if the construction is contrary to the management plan for that area tabled in or laid before each House of Parliament under subsection 9(1) of the *Canada National Marine Conservation Areas Act* or subsection 9(1) of the *Saguenay-St. Lawrence Marine Park Act*.

3 The disposal at sea, in a national marine conservation area, of waste or other matter as defined in subsection 122(1) of the *Canadian Environmental Protection Act, 1999* at a new disposal at sea site or a new part of an existing disposal at sea site.

4 The construction, operation, decommissioning and abandonment, in a national marine conservation area, of a new pipeline for carrying a substance other than water.

5 The construction, on land that is managed or administered by the Parks Canada Agency, of a new physical work, if the construction is

(a) contrary to the management plan for that land that is tabled in each House of Parliament under subsection 32(1) of the *Parks Canada Agency Act*, subsection 11(1) of the *Canada National Parks Act*, or subsection 9(1) of the *Rouge National Urban Park Act*, or to a similar plan for the land that is approved by the Minister responsible for the Parks Canada Agency; or

(b) contrary to one of the following guidelines that is published by the Parks Canada Agency and that applies to that land:

(i) the *Marmot Basin Ski Area Site Guidelines for Development and Use* dated February 2008,

(ii) the *Mt. Norquay Ski Area Site Guidelines for Development and Use* dated July 2011,

(iii) the *Lake Louise Ski Area Site Guidelines for Development and Use* dated July 2015,

(iv) the *Site Guidelines for Development and Use, Sunshine Village Ski Resort* dated December 14, 2018.

6 The construction, operation, decommissioning and abandonment, in a national park, of a new dam or structure for the diversion of water for the purpose of supplying water outside the park, of recreation or of electrical power generation.

7 The construction, operation, decommissioning and abandonment, in a national park, of a structure that is required to implement a new agreement made under paragraph 10(2)(b) of the *Canada National Parks Act*.

8 The expansion, in a national park, of the water supply capacity of a structure that was constructed to implement an agreement made under paragraph 10(2)(b) of the *Canada National Parks Act* by more than 20%.

9 The construction, operation, decommissioning and abandonment, in Yoho National Park of Canada, Kootenay National Park of Canada, Banff National Park of Canada or Jasper National Park of Canada, outside of a commercial ski area referred to in Schedule 5 to the *Canada National Parks Act* and of a park community, of a new commercial development that requires the disposal or occupation of land that was not previously disposed of for the purpose of a commercial development with the same or a similar purpose or occupied by such a commercial development, if that new commercial development has not been subject to strategic environmental assessment and public review as part of the park management plan tabled in each House of Parliament under subsection 11(1) of the *Canada National Parks Act*.

10 The expansion, in Yoho National Park of Canada, Kootenay National Park of Canada, Banff National Park of Canada or Jasper National Park of Canada, outside of a commercial ski area referred to in Schedule 5 to the *Canada National Parks Act* and of a park community, of an existing commercial development that requires the disposal or occupation of land that was not previously disposed of for the purpose of a commercial development with the same or a similar purpose or occupied by such a commercial development, if that existing commercial development has not been subject to strategic environmental assessment and public review as part of a park management plan tabled in each House of Parliament under subsection 11(1) of the *Canada National Parks Act*.

11 The construction, operation, decommissioning and abandonment, in a national park, of either of the following:

(a) a new railway line;

(b) a new public road or parkway that is intended for the passage of motor vehicles.

Defence

12 The low-level flying of military fixed-wing jet aircraft, for more than 150 days in a calendar year, as part of a training program, at an altitude below 330 m above ground level on a route or in an area that was not established before October 7, 1994 by or under the authority of the Minister of National Defence or the Chief of the Defence Staff as a route or area set aside for low-level flying training.

13 The construction and operation of a new military base or military station that is established for more than 12 consecutive months.

14 The expansion of an existing military base or military station, if the expansion would result in an increase in the area of the military base or military station of 50% or more.

15 The decommissioning and abandonment of an existing military base or military station.

16 The construction, operation, decommissioning and abandonment, outside an existing military base, of a new military training area, range or test establishment for training or weapons testing that is established for more than 12 consecutive months.

17 The testing of military weapons for more than five days in a calendar year in an area other than a training area, range or test establishment established before October 7, 1994 by or under the authority of the Minister of National Defence for the testing of weapons.

Mines and Metal Mills

18 The construction, operation, decommissioning and abandonment of one of the following:

(a) a new coal mine with a coal production capacity of 5 000 t/day or more;

(b) a new diamond mine with an ore production capacity of 5 000 t/day or more;

(c) a new metal mine, other than a rare earth element mine, placer mine or uranium mine, with an ore production capacity of 5 000 t/day or more;

(d) a new metal mill, other than a uranium mill, with an ore input capacity of 5 000 t/day or more;

(e) a new rare earth element mine with an ore production capacity of 2 500 t/day or more;

(f) a new stone quarry or sand or gravel pit with a production capacity of 3 500 000 t/year or more.

19 The expansion of an existing mine, mill, quarry or sand or gravel pit in one of the following circumstances:

(a) in the case of an existing coal mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total coal production capacity would be 5 000 t/day or more after the expansion;

(b) in the case of an existing diamond mine if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 5 000 t/day or more after the expansion;

(c) in the case of an existing metal mine, other than a rare earth element mine, placer mine or uranium mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 5 000 t/day or more after the expansion;

(d) in the case of an existing metal mill, other than a uranium mill, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore input capacity would be 5 000 t/day or more after the expansion;

(e) in the case of an existing rare earth element mine if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore

production capacity would be 2 500 t/day or more after the expansion;

(f) in the case of an existing stone quarry or sand or gravel pit if the expansion would result in an increase in the area of mining operations of 50% or more and the total production capacity would be 3 500 000 t/year or more after the expansion.

20 The construction, operation and decommissioning, outside the licensed boundaries of an existing uranium mine, of a new uranium mine with an ore production capacity of 2 500 t/day or more.

21 The expansion of an existing uranium mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 2500 t/day or more after the expansion.

22 The construction, operation and decommissioning, outside the licensed boundaries of an existing uranium mill, of a new uranium mill with an ore input capacity of 2 500 t/day or more.

23 The expansion of an existing uranium mill, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore input capacity would be 2 500 t/day or more after the expansion.

24 The construction, operation, decommissioning and abandonment of a new oil sands mine with a bitumen production capacity of 10 000 m^3/day or more.

25 The expansion of an existing oil sands mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total bitumen production capacity would be 10 000 m^3/day or more after the expansion.

Nuclear Facilities, Including Certain Storage and Long-term Management or Disposal Facilities

26 The construction, operation and decommissioning of one of the following:

(a) a new facility for the processing, reprocessing or separation of isotopes of uranium, thorium, or plutonium, with a production capacity of 100 t/year or more;

(b) a new facility for the manufacture of a product derived from uranium, thorium or plutonium, with a production capacity of 100 t/year or more;

(c) a new facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium.

27 The site preparation for, and the construction, operation and decommissioning of, one or more new nuclear fission or fusion reactors if

(a) that activity is located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 900 MWth; or

(b) that activity is not located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 200 MWth.

28 The construction and operation of either of the following:

(a) a new facility for the storage of irradiated nuclear fuel or nuclear waste, outside the licensed boundaries of an existing nuclear facility, as defined in section 2 of the *Nuclear Safety and Control Act*, other than a facility for the on-site storage of irradiated nuclear fuel or nuclear waste associated with one or more new fission or fusion reactors that have a combined thermal capacity of less than 200 MWth;

(b) a new facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste.

29 The expansion of an existing facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste, if the expansion would result in an increase in the area of the facility, at ground level, of 50% or more.

Oil, Gas and Other Fossil Fuels

30 The construction, operation, decommissioning and abandonment of a new fossil fuel-fired power generating facility with a production capacity of 200 MW or more.

31 The expansion of an existing fossil fuel-fired power generating facility, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more.

32 The construction, operation, decommissioning and abandonment of a new *in situ* oil sands extraction facility that has a bitumen production capacity of 2 000 m^3/day or more and that is

(a) not within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province; or

(b) within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province and that limit has been reached.

33 The expansion of an existing *in situ* oil sands extraction facility, if the expansion would result in an increase in bitumen production capacity of 50% or more and a total bitumen production capacity of 2 000 m^3/day or more, if the facility is

(a) not within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province; or

(b) within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province and that limit has been reached.

34 The drilling, testing and abandonment, in an area set out in one or more exploration licences issued in accordance with the *Canada Petroleum Resources Act*, the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, of offshore exploratory wells in the first drilling program, as defined in subsection 1(1) of the *Canada Oil and Gas Drilling and Production Regulations*, SOR/2009-315.

35 The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.

36 The decommissioning and abandonment of an existing offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas that is proposed to be disposed of or abandoned offshore or converted on site to another role.

37 The construction, operation, decommissioning and abandonment of one of the following:

(a) a new oil refinery, including a heavy oil upgrader, with an input capacity of 10 000 m^3/day or more;

(b) a new facility for the production of liquid petroleum products from coal with a production capacity of 2 000 m^3/day or more;

(c) a new sour gas processing facility with a sulphur inlet capacity of 2 000 t/day or more;

(d) a new facility for the liquefaction, storage or regasification of liquefied natural gas, with a liquefied natural gas processing capacity of 3 000 t/day or more or a liquefied natural gas storage capacity of 136 000 m^3 or more;

(e) a new petroleum storage facility with a storage capacity of 500 000 m^3 or more;

(f) a new natural gas liquids storage facility with a storage capacity of 100 000 m^3 or more.

38 The expansion of one of the following:

(a) an existing oil refinery, including a heavy oil upgrader, if the expansion would result in an increase in input capacity of 50% or more and a total input capacity of 10 000 m^3/day or more;

(b) an existing facility for the production of liquid petroleum products from coal, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 2 000 m^3/day or more;

(c) an existing sour gas processing facility, if the expansion would result in an increase in sulphur inlet capacity of 50% or more and a total sulphur inlet capacity of 2 000 t/day or more;

(d) an existing facility for the liquefaction, storage or regasification of liquefied natural gas, if the expansion would result in an increase in the liquefied natural gas processing or storage capacity of 50% or more and a total liquefied natural gas processing capacity of 3 000 t/day or more or a total liquefied natural gas storage capacity of 136 000 m^3 or more, as the case may be;

(e) an existing petroleum storage facility, if the expansion would result in an increase in storage capacity of 50% or more and a total storage capacity of 500 000 m^3 or more;

(f) an existing natural gas liquids storage facility, if the expansion would result in an increase in storage capacity of 50% or more and a total storage capacity of 100 000 m^3

or more.

Electrical Transmission Lines and Pipelines

39 The construction, operation, decommissioning and abandonment of either of the following:

(a) a new international electrical transmission line with a voltage of 345 kV or more that requires a total of 75 km or more of new right of way;

(b) a new interprovincial power line designated by an order under section 261 of the *Canadian Energy Regulator Act*.

40 The construction, operation, decommissioning and abandonment of a new offshore oil and gas pipeline, other than a flowline as defined in subsection 2(1) of the *Canada Oil and Gas Installations Regulations*.

41 The construction, operation, decommissioning and abandonment of a new pipeline, as defined in section 2 of the *Canadian Energy Regulator Act*, other than an offshore pipeline, that requires a total of 75 km or more of new right of way.

Renewable Energy

42 The construction, operation, decommissioning and abandonment of one of the following:

(a) a new hydroelectric generating facility with a production capacity of 200 MW or more;

(b) a new in-stream tidal power generating facility with a production capacity of 15 MW or more;

(c) a new tidal power generating facility that is not an in-stream tidal power generating facility.

43 The expansion of one of the following:

(a) an existing hydroelectric generating facility if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more;

(b) an existing in-stream tidal power generating facility, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 15 MW or more;

(c) an existing tidal power generating facility that is not an in-stream tidal power generating facility, if the expansion would result in an increase in production capacity of 50% or more.

44 The construction, operation, decommissioning and abandonment in an offshore area or in boundary water of a new wind power generating facility that has 10 or more wind turbines.

45 The expansion in an offshore area or in boundary water of an existing wind power generating facility, if the expansion would result in an increase in production capacity of

50% or more and a total number of wind turbines of 10 or more.

Transport

46 The construction, operation, decommissioning and abandonment of one of the following:

(a) a new aerodrome with a runway length of 1 000 m or more;

(b) a new aerodrome that is capable of serving aircraft of Aircraft Group Number IIIA or higher;

(c) a new runway at an existing aerodrome with a length of 1 000 m or more.

47 The operation of an existing runway

(a) that was not capable of serving aircraft of Aircraft Group Number IIIA and becomes capable of serving aircraft of Aircraft Group Number IIIA or higher; or

(b) that was capable of serving aircraft of an Aircraft Group Number IIIA or higher and becomes capable of serving aircraft of any higher Aircraft Group Number.

48 The construction, operation, decommissioning and abandonment of either of the following:

(a) a new international or interprovincial bridge or tunnel;

(b) a new bridge over the St. Lawrence Seaway.

49 The construction, operation, decommissioning and abandonment of either of the following:

(a) a new canal;

(b) a new lock or associated structure that controls water levels in navigable water.

50 The construction, operation, decommissioning and abandonment of a new permanent causeway with a continuous length of 400 m or more through navigable water.

51 The construction, operation, decommissioning and abandonment of a new all-season public highway that requires a total of 75 km or more of new right of way.

52 The construction, operation, decommissioning and abandonment of a new marine terminal designed to handle ships larger than 25 000 DWT.

53 The expansion of an existing marine terminal, if the expansion requires the construction of a new berth designed to handle ships larger than 25 000 DWT and, if the berth is not a permanent structure in the water, the construction of a new permanent structure in the water.

54 The construction, operation, decommissioning and abandonment of either of the following:

(a) a new railway line that is capable of carrying freight or of carrying passengers between cities and requires a total of 50 km or more of new right of way;

(b) a new railway yard with a total area of 50 ha or more.

55 The expansion of an existing railway yard, if the expansion would result in an increase of its total area by 50% or more and a total area of 50 ha or more.

Hazardous Waste

56 The construction, operation, decommissioning and abandonment of a new facility that is not more than 500 m from a natural water body and is used exclusively for the treatment, incineration, disposal or recycling of hazardous waste.

57 The expansion of an existing facility that is not more than 500 m from a natural water body and is used exclusively for the treatment, incineration, disposal or recycling of hazardous waste, if the expansion would result in an increase in hazardous waste input capacity of 50% or more.

Water Projects

58 The construction, operation, decommissioning and abandonment of a new dam or dyke on a natural water body, if the new dam or dyke would result in the creation of a reservoir with a surface area that would exceed the annual mean surface area of the natural water body by 1 500 ha or more.

59 The expansion of an existing dam or dyke on a natural water body, if the expansion would result in an increase in the surface area of the existing reservoir of 50% or more and an increase of 1 500 ha or more in the annual mean surface area of that reservoir.

60 The construction, operation, decommissioning and abandonment of a new structure for the diversion of 10 000 000 m^3/year or more of water from a natural water body into another natural water body.

61 The expansion of an existing structure for the diversion of water from a natural water body into another natural water body, if the expansion would result in an increase in diversion capacity of 50% or more and a total diversion capacity of 10 000 000 m^3/year or more.

2007 FC 300

T-165-07

Ferring Inc. (*Applicant*)

v.

The Minister of Health, Apotex Inc. and **Novopharm Limited** (*Respondents*)

T-2188-06

Sanofi-Aventis Canada Inc. (*Applicant*)

v.

The Minister of Health, the Attorney General of Canada and **Novopharm Inc.** (*Respondents*)

T-2189-06

Sanofi-Aventis Canada Inc. (*Applicant*)

v.

The Minister of Health, the Attorney General of Canada and **Apotex Inc.** (*Respondents*)

T-2196-06

Sanofi-Aventis Canada Inc. (*Applicant*)

v.

The Minister of Health, the Attorney General of Canada and **Apotex Inc.** (*Respondents*)

T-2220-06

Novopharm Limited (*Applicant*)

v.

The Minister of Health, the Attorney General of Canada and **Sanofi-Aventis Canada Inc.** (*Respondents*)

INDEXED AS: FERRING INC. v. CANADA (MINISTER OF HEALTH) (F.C.)

Federal Court, Hughes J.—Toronto, March 1, 2, 5, 6, 8, 9; Ottawa, March 20, 2007.

Patents — Practice — Judicial review of decisions issuing notices of compliance (NOCs) to Apotex Inc., Novopharm Limited (generic drugs manufacturers) despite patents listed on Patent Register by Ferring Inc., Sanofi-Aventis Canada Inc. (innovator drug companies), in all but one instance — Relevant Regulations, case law reviewed — Minister's policy for dealing with whether generic required to address listed patent consistent with S.C.C. decision in AstraZeneca Canada Inc. v. Canada (Minister of Health) — Generics not required to address Ferring's patents as those patents not listed against NOC extant at time of filing of abbreviated new drug submission by generics — Minister not required to inform Ferring of generics' pending NOC submissions — Novopharm required to address Sanofi-Aventis' non-HOPE (Heart Outcomes Prevention Evaluation patents as those patents

linked to NOC relevant to comparator drug — Ministers's decision issuing NOC to Apotex reasonable as consideration of product monographs falling within his discretion — Applications dismissed.

Administrative Law — Functus officio — Judicial review of decisions issuing notices of compliance (NOCs) to generic drug companies — Minister acting in purely administrative capacity, entitled to revisit circumstances from time to time (i.e. whether generics "second person[s]" for purposes of Patented Medicines (Notice of Compliance) Regulations) — Only when final step taken (i.e. issuance of NOC) does functus issue arise.

These were applications for judicial review of decisions by the Minister of Health issuing notices of compliance to Apotex Inc. and Novopharm Limited (the generics), notwithstanding patents listed on the Patent Register by Ferring Inc. and Sanofi-Aventis Canada Inc. (the innovators), in all but one instance.

At issue was the interpretation and application of the *Patented Medicines (Notice of Compliance) Regulations* (NOC Regulations) subsection 5(1), and in particular whether and when a "generic" becomes a "second person" as defined in the Regulations, section 2. The Minister's decision followed the release of the Supreme Court of Canada's decision in *AstraZeneca Canada Inc. v. Canada (Minister of Health)*, wherein it was held that a generic does not always need to address all of the listed patents.

Held, the applications should be dismissed.

After the release of the *AstraZeneca* decision, the Minister adopted a policy for dealing with whether a generic is required to address any particular listed patent. First, the date of filing of the abbreviated new drug submission (ANDS) by the generic should be used to determine which notices of compliance have been issued in respect of the comparator drug. All patents listed in respect of the relevant NOC as of the date on which the generic purchased the comparator drug must be addressed by the generic. Second, where further NOCs have been issued to the innovator after the date of purchase of the comparator drug, the Minister determines whether the generic has made use of changes made to the comparator drug since the original date of purchase. If the generic has made use of such changes, then all patents added to the patent list subsequent to the date of purchase that are pertinent to the changes the generic has taken advantage of must be addressed. This policy is consistent with the reasoning of the Supreme Court in *AstraZeneca* and the applicable provisions of the NOC Regulations. A few modifications to this policy were in order, but these changes did not affect the outcome of the Minister's decisions.

AstraZeneca says that section 7 (which directs that the Minister is not to issue an NOC before the latest of a set of enumerated circumstances) only applies where a generic is a "second person" as described in the NOC Regulations, paragraph 5(3)(*d*). In the cases at bar, the Minister held that the generic was such a person in only one instance. The innovators' argument that the Minister was *functus* and could not address or re-address the issue of whether the generics were, in fact, "second person[s]" was rejected. The doctrine of *functus officio* should not be applied rigorously in respect of every sort of administrative ruling. Here, the Minister was acting in a purely administrative capacity. He was entitled to visit and revisit circumstances from time to time as conditions changed and new issues arose. It is only when the final step is taken (i.e. the issuance of an NOC), that the issue of *functus* can arise.

As to Ferring's argument that the Minister should have required that each of the generics address two of its listed patents, the '833 and '335 patents, the Minister needed only to look at patents listed against the NOC extant at the time of the filing of the ANDS by the generics (or the purchase date of the comparator drugs), i.e. the NOC of September 14, 2000. The '833 and '335 patents were not added until the further NOC was granted to Ferring on November 21, 2005. They therefore did not need to be addressed by the generics. The decisions were not contrary to the principles of natural justice. The Minister was not required to inform Ferring of the generics' pending NOC submissions. Nor was the Minister required to afford Ferring an opportunity to be heard before making a decision as to whether the generics were "second person[s]", or to issue an NOC to them. Finally, Ferring did not have status to seek judicial review of the Minister's decision that Novopharm was not a "second person", as it only had a commercial interest in the matter.

The patents at issue in the cases involving Sanofi-Aventis concerned a drug marketed by it under the name "Altace." Specifically, these patents were the '387 and '549 patents (Heart Outcomes Prevention Evaluation or HOPE patents), and the '089 and '948 patents (non-HOPE patents). An NOC was issued to Apotex for old uses of "Altace" (not the HOPE or non-HOPE uses), whereas Novopharm was required to address the non-HOPE patents. The Minister's

rationale was consistent with the direction given by the Supreme Court in *AstraZeneca* with respect to patents that have been listed in respect of an NOC in existence at the time when the comparator drug was acquired. The Minister performed a patent specific analysis, linking the relevant patents to the relevant NOC as directed in *AstraZeneca*. Subsections 4(4) and 4(5) of the NOC Regulations allow patents to be listed against a previous NOC provided that the application for the patent was filed before that NOC application was filed and the patent is submitted for listing within 30 days of its issuance. Pursuant to *AstraZeneca*, a generic must address patents "linked to" the NOC that is relevant to the comparator drug. Here, the NOC relevant to the comparator drug was linked to the non-HOPE patents. That is why Novopharm had to address the non-HOPE patents, even though it did not seek approval for an NOC that would include such uses. As to the Minister's decision with respect to Apotex, it was reasonable in light of the evidence before him. The consideration of product monographs is a matter that falls within the Minister's expertise.

statutes and regulations judicially considered

Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the *Marrakesh Agreement Establishing the World Trade Organization*, signed in Marrakesh, Morocco, 15 April 1994, 1869 U.N.T.S. 299, Art. 41.

Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. 98-417, 98 Stat. 1585 (1984).

Federal Courts Act, R.S.C., 1985, c. F-7, ss. 1 (as am. by S.C. 2002, c. 8, s. 14), 18.1 (as enacted by S.C. 1990, c. 8, s. 5; 2002, c. 8, s. 27).

Food and Drug Regulations, C.R.C., c. 870, ss. C.08.001.1 "Canadian reference product" (as enacted by SOR/95-411, s. 3), "pharmaceutical equivalent" (as enacted *idem*), C.08.002(1)(*a*) (as am. *idem*, s. 4), C.08.002.1 (as enacted *idem*, s. 5), C.08.003(2) (as am. *idem*, s. 6), C.08.004.1 (as enacted *idem*, s. 6; SOR/2006-241, s. 1).

Food and Drugs Act, R.S.C., 1985, c. F-27.

Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco, 15 April 1994, 1867 U.N.T.S. 3.

Paris Convention for the Protection of Industrial Property, March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, 828 U.N.T.S. 305.

Patent Act, R.S.C., 1985, c. P-4, ss. 35(1) (as am. by R.S.C., 1985 (3rd Supp.), c. 33, s. 12), 55(1)(*b*) (as am. by S.C. 1993, c. 15, s. 48), 55.2(4) (as enacted by S.C. 1993, c. 2, s. 4; 2001, c. 10, s. 2).

Patent Cooperation Treaty, June 19, 1970, [1990] Can. T.S. No. 22.

Patent Rules, SOR/96-423, ss. 26 (as am. by SOR/2007-90, s. 4), 28.

Patented Medicines (Notice of Compliance) Regulations, SOR/93-133, ss. 2 "first person", "second person" (as am. by SOR/99-379, s. 1; 2006-242, s. 1), 3 (as am. by SOR/98-166, s. 2; 2006-242, s. 2), 4 (as am. by SOR/98-166, s. 3; 2006-242, s. 2; *erratum C. Gaz.* 2006.II.1874(E)), 5 (as am. by SOR/98-166, s. 4; 99-379, s. 2; 2006-242, s. 2; *erratum C. Gaz.* 2006.II.1874(E)), 6(1) (as am. *idem*, s. 3; *erratum C. Gaz.* 2006.II.1875(E)), (5)(*a*) (as am. by SOR/2006-242, s. 3), (5)(*b*) (as am. *idem*), 7 (as am. by SOR/98-166, s. 6; 2006-242, s. 4).

World Trade Organization Agreement Implementation Act, S.C. 1994, c. 47.

cases judicially considered

applied:

AstraZeneca Canada Inc. v. Canada (Minister of Health), [2006] 2 S.C.R. 560; (2006), 272 D.L.R. (4th) 577; 52 C.P.R. (4th) 145; 354 N.R. 88; 2006 SCC 49; *AstraZeneca Canada Inc. v. Canada (Minister of Health)* (2004), 36 C.P.R. (4th) 519; 263 F.T.R. 161; 2004 FC 1277; affd [2006] 1 F.C.R. 297; (2005), 254 D.L.R. (4th) 690; 40 C.P.R. (4th) 353; 336 N.R. 166; 2005 FCA 189 (as to standard of review); *Laboratories Servier v. Apotex Inc.*, 2006 FC 1493; *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1997] 1 S.C.R. 12; (1997), 142 D.L.R. (4th) 193; 43 Admin. L.R. (2d) 1; 31 C.C.L.T. (2d) 236; 206 N.R. 363; *Hoffmann-La Roche Ltd. v. Canada (Minister of National Health and Welfare)* (1999), 167 F.T.R. 111 (F.C.T.D.); *Aventis Pharma Inc. v. Canada (Minister of Health)* (2005), 45 C.P.R. (4th) 6; 2005 FC 1396.

considered:

Bristol-Myers Squibb Co. v. Canada (Attorney General), [2005] 1 S.C.R. 533; (2005), 253 D.L.R. (4th) 1; 39 C.P.R. (4th) 449; 334 N.R. 55; 2005 SCC 26; *Merck Frosst Canada Inc. v. Canada (Minister of National Health and Welfare)*, [1998] 2 S.C.R. 193; 161 D.L.R. (4th) 47; 80 C.P.R. (3d) 368; 227 N.R. 299; *AstraZeneca Canada Inc. v. Canada (Minister of Health)* (2004), 36 C.P.R. (4th) 519; 263 F.T.R. 161; 2004 FC 1277; affd [2006] 1 F.C.R. 297; (2005), 254 D.L.R. (4th) 690; 40 C.P.R. (4th) 353; 336 N.R. 166; 2005 FCA 189; *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848; (1989), 101 A.R. 321; 62 D.L.R. (4th) 577; [1989] 6 W.W.R. 521; 70 Alta. L.R. (2d) 193; 40 Admin. L.R. 128; 36 C.L.R. 1; 99 N.R. 277; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; (1999), 174 D.L.R. (4th) 193; 14 Admin. L.R. (3d) 173; 1 Imm. L.R. (3d) 1; 243 N.R. 22; *Rothmans of Pall Mall Canada Limited v. Minister of National Revenue (No. 1)*, [1976] 2 F.C. 500; (1976), 67 D.L.R. (3d) 505; [1976] C.T.C. 339; 10 N.R. 153 (C.A.); *Aventis Pharma Inc. v. Apotex Inc.* (2005), 43 C.P.R. (4th) 161; 278 F.T.R. 1; 2005 FC 1283; affd (2006), 265 D.L.R. (4th) 308; 46 C.P.R. (4th) 401; 349 N.R. 183; 2006 FCA 64.

referred to:

Bayer Inc. v. Canada (Attorney General) (1999), 87 C.P.R. (3d) 293; 243 N.R. 170 (F.C.A.); *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742; (1993), 18 Admin. L.R. (2d) 122; 52 C.P.R. (3d) 339; 162 N.R. 177 (C.A.); *Schering Canada Inc. v. Nu-Pharm Inc.* (1996), 68 C.P.R. (3d) 332; 114 F.T.R. 310 (F.C.T.D.); *Novopharm Ltd. v. Canada (Minister of National Health and Welfare)*, [1998] 3 F.C. 50; (1998), 78 C.P.R. (3d) 54; 149 F.T.R. 63 (T.D.); *Apotex Inc. v. Canada (Minister of National Health and Welfare)* (1999), 181 D.L.R. (4th) 404; 3 C.P.R. (4th) 1; 252 N.R. 72 (F.C.A.); *Warner-Lambert Canada Inc. v. Canada (Minister of Health)* (2000), 8 C.P.R. (4th) 302; 193 F.T.R. 117 (F.C.T.D.); *Saskatchewan Wheat Pool v. Canada (Canadian Grain Commission)* (2004), 260 F.T.R. 310; 2004 FC 1307; *Merck and Co., Inc. v. Brantford Chemicals Inc. et al.* (2005), 37 C.P.R. (4th) 481; 330 N.R. 186; 2005 FCA 48; *Monsanto Co. v. Canada (Commissioner of Patents)* (1999), 1 C.P.R. (4th) 500; 172 F.T.R. 210 (F.C.T.D.); *Apotex Inc. v. Canada (Governor in Council)*, 2007 FC 232.

APPLICATIONS for judicial review of decisions by the Minister of Health to issue notices of compliance to generic drug companies, notwithstanding patents listed on the Patent Register by innovator drug companies, in all but one instance. Applications dismissed.

appearances:

Patrick E. Kierans, *Orestes Pasparakis* and *Jason C. Markwell* for applicant in T-165-07.

Gunars A. Gaikis, *Yoon Kang*, *Nancy P. Pei* and *A. David Morrow* for Sanofi-Aventis Canada Inc., applicant in T-2188-06, T-2189-06 and T-2196-06, and respondent in T-2220-06.

Jonathan Stainsby and *Mark Edward Davis* for Novopharm Inc., applicant in T-2220-06, and respondent in T-2188-06.

Frederick B. Woyiwada for respondents Minister of Health and Attorney General of Canada in T-165-07, T-2188-06, T-2189-06, T-2196-06 and T-2220-06.

Harry B. Radomski, *Nando De Luca*, *Miles Hastie* and *Ben Hackett* for respondent Apotex Inc. in T-165-06, T-2189-06 and T-2196-06.

Jeffrey S. Leon, *Dino P. Clarizio* and *Trent Horne* for respondent Novopharm Limited in T-165-06.

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Deputy Attorney General of Canada for respondents Minister of Health and Attorney General of Canada in T-165-07, T-2188-06, T-2189-06, T-2196-06 and T-2220-06.

Goodmans LLP, Toronto, for respondent Apotex Inc. in T-165-06, T-2189-06 and T-2196-06.

Bennett Jones LLP, Toronto, for respondent Novopharm Limited in T-165-07.

The following are the reasons for judgment rendered in English by

[1] HUGHES J.: These reasons pertain to five separate applications for judicial review argued consecutively, all of which deal with actions taken by the Minister of Health following the release of the decision of the Supreme Court of Canada in *AstraZeneca Canada Inc. v. Canada (Minister of Health)*, [2006] 2 S.C.R. 560, on November 3, 2006 (*AstraZeneca*).

[2] The core subject-matter is the interpretation and application of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 as periodically amended (NOC Regulations [or Regulations]) and in particular, subsection 5(1) [as am. by SOR/98-166, s. 4; 99-379, s. 2; 2006-242, s. 2] of those Regulations. There is no doubt that the *AstraZeneca* decision had a profound effect on this subject. Influenced by that decision the Minister issued notices of compliance (NOC) to each of two generic drug companies, Apotex Inc. and Novopharm Limited, notwithstanding patents listed by innovator drug companies Ferring Inc. and Sanofi-Aventis Canada Inc. In one instance the Minister would not issue an NOC and required Novopharm to address two patents in the context of section 5 of the NOC Regulations. The result of the Minister's actions is that Ferring, Sanofi-Aventis and Novopharm have brought judicial review applications in this Court seeking relief including the quashing of the decisions made against their interests, and for directions to the Minister to take steps more favourable to their interests.

[3] For the reasons that follow, I find that all applications are to be dismissed, each party to bear its own costs.

History of the NOC Regulations

[4] The arcane nature of NOC proceedings makes it too easy to lose perspective as to the objectives of the NOC Regulations, their purpose and intent. The Supreme Court has offered guidance in this respect in three decisions, *AstraZeneca*, *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, [2005] 1 S.C.R. 533 (*Biolyse*), and *Merck Frosst Canada Inc. v. Canada (Minister of National Health and Welfare)*, [1998] 2 S.C.R. 193 (*Merck Frosst*). The Federal Court of Appeal and this Court have extensively dealt with cases under the NOC Regulations.

[5] It is useful to begin with the *Food and Drug Regulations*, C.R.C., c. 870, Part C, enacted under the provisions of the *Food and Drugs Act*, R.S.C., 1985, c. F-27. The objective of that Act is to bring safe and effective medicines to market so as to advance the nation's health; the law governing approval of new drugs is to ensure the safety and effectiveness of the new drugs before they can be put on the market (*AstraZeneca*, at paragraph 12).

[6] An innovator drug company seeking to bring a new drug to market in Canada incurs costs not only in the research and development leading to the drug, but in the trials and testing required by the Minister in order to satisfy him that the drug is safe and effective. There is no question that in almost every instance the cost, effort and time involved are considerable, although Canada is not the only country requiring government approval of this kind and much of this cost may be spread out over several countries.

[7] The innovator company will seek approval to sell its drug in Canada, called a notice of compliance (NOC), by filing with the Minister a new drug submission (NDS). Once an NOC has been obtained, the innovator will be required to make any supplemental filings by way of a supplemental new drug submission (S/NDS). Such supplemental filings may deal with a broad range of matters both administrative and technical such as name changes, merger of corporations, change in manufacturing circumstances and changes to the drug itself (*AstraZeneca*, at paragraph 19).

[8] The food and drugs legislation contemplates another body of drug companies often called generics. They seek to bring to the market in Canada what are called by the innovators "copy-cat" versions of approved drugs. The *Food and Drug Regulations* provide in section C.08.002.1 [as enacted by SOR/95-411, s. 5] that a generic may file what is called an abbreviated new drug submission (ANDS) in which the generic is only required to demonstrate that it proposes to bring to market in Canada a drug that is pharmaceutically equivalent (defined in section C.08.001.1 [as enacted *idem*, s. 3]) and bioequivalent (not defined) to the Canadian reference product. In so demonstrating, Parliament reasoned, the generic will have shown that its drug will be equally as safe and effective as the original (*AstraZeneca*, at paragraph 24). Thus, the generic will not have had to expend the considerable costs in research that the innovator was required to do (*Biolyse*, at paragraphs 6 and 7).

[9] The *Food and Drug Regulations* define a "Canadian reference product" in section C.08.001.1 as a drug in respect of which an NOC has been granted and is marketed in Canada; where the drug is no longer marketed or for any other reason, the Minister can approve as acceptable some other drug. In the *Ferring* proceeding before this Court the Minister found that a drug acquired by Novopharm in the United Kingdom was acceptable. In oral argument, Ferring's counsel raised some question as to the provenance of this drug, however, this issue was not raised as an issue in its memorandum of argument or in its notice of application and therefore was not properly before the Court. In any event, this kind of decision is one which clearly lies with the discretion of the Minister, not the Court.

[10] Section C.08.001.1 of the *Food and Drug Regulations* defines "pharmaceutical equivalent" as a new drug that, in comparison with another drug, contains identical amounts of the identical medicinal ingredients, in comparable dosage forms, but does not necessarily contain the same non-medicinal ingredients (sometimes called excipients).

[11] The *Food and Drug Regulations* do not define bioequivalence, however, all parties are agreed that in most instances this is a measure of how much of the medicinal ingredient is found in the bloodstream of a person measured over certain intervals after the medicine has been administered. If the "profile" thus obtained is identical, within appropriate limits, as between drugs that are compared, these drugs are said to be bioequivalent. In some cases, such a test is unnecessary, for instance where the drug is administered directly into the bloodstream by injection or intended for topical application only, such as eye drops.

[12] The *Food and Drug Regulations*, section C.08.004.1 [as enacted *idem*, s. 6] provide a delay such that prior to October 5, 2006, the Minister was prohibited from issuing an NOC to a generic in respect of certain types of drugs before five years after the innovator receives its NOC. After October 5, 2006 [as am. by SOR/2006-241, s. 1] the generic cannot apply for an NOC in respect of certain types of drugs until six years after the innovator received its NOC and the generic cannot get its NOC for at least two years after that.

[13] The Minister, upon receipt of an ANDS from a generic, is required only to examine the information provided by the generic as to the pharmaceutical equivalence and bioequivalence of its proposed drug to that of the innovator. There is no requirement that the Minister examine the data previously filed by the innovator in support of its NOC (*Bayer Inc. v. Canada (Attorney General)* (1999), 87 C.P.R. (3d) 293 (F.C.A.)). Once the Minister is satisfied as to pharmaceutical equivalence and bioequivalence the Minister has a duty to issue an NOC to the generic without delay (*Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742 (C.A.)).

[14] At this point consideration must turn to the NOC Regulations. These Regulations lie at the intersection of the *Food and Drugs Act* whose objective is to bring safe and effective drugs to the Canadian market, and the *Patent Act*, R.S.C., 1985, c. P-4 which seeks to award a temporary monopoly to innovators who disclose their invention to the public (*AstraZeneca*, at paragraph 12). It has been said that perhaps these Regulations were too hastily formulated and do not cover procedural problems which might well have been foreseen in this field of intensive competition (*Schering Canada Inc. v. Nu-Pharm Inc.* (1996), 68 C.P.R. (3d) 332 (F.C.T.D.)).

[15] The NOC Regulations were introduced in 1993. Prior to that time Canada had a compulsory licence scheme, whereby upon making certain showings, a person could obtain a compulsory licence from the Commissioner of Patents to work in Canada inventions covered by a patent directed to a food or medicine. Compulsory licences were dropped in 1993 and replaced by the NOC Regulations (*Biolyse*, at paragraphs 6-12). The Regulations are modelled rather imperfectly upon similar provisions in the United States under the *Hatch-Waxman Act*, Pub. L. 98-417, 98

Stat. 1585 (1984) codified as amended at 21 U.S.C.A. § 355 and 35 U.S.C.A. § 271(e) (1994), 180 A.L.R. Fed. 487 (officially cited as *Drug Price Competition and Patent Term Restoration Act of 1984*).

[16] The Supreme Court in *AstraZeneca* has taken great pains to remind us that the NOC Regulations were enacted pursuant to subsection 55.2(4) [as enacted by S.C. 1993, c. 2, s. 4; 2001, c. 10, s. 2] of the *Patent Act*, whose purpose was to permit early working of a patented invention by persons such as generic drug companies for the purpose of obtaining regulatory approval for their drugs so that they could enter the market at an appropriate time (*AstraZeneca*, at paragraphs 15, 16 and 38). As stated in *Biolyse*, at paragraph 50, Parliament recognized that early working provisions could be abused, and thus created a balance designed to strengthen the hand of patent owners against generic competitors.

[17] An earlier statement by the Supreme Court in *Merck Frosst*, at paragraph 30 that the purpose of the NOC Regulations was simply to prevent patent infringement by delaying the issuance of an NOC until such time as their implementation would not result in such infringement, must be tempered by what has been said by that Court in *Biolyse* and *AstraZeneca* cited above. As stated in *Biolyse*, at paragraph 53, it is not every use of a patented invention that will trigger the NOC Regulations.

[18] With the objects of the NOC Regulations in mind, the procedure established shows that the Minister and two other parties are from time to time engaged in the process. One party is identified as a "first person" who is defined in section 2 and subsection 4(1) [as am. by SOR/98-166, s. 3] of the Regulations as "[a] person who files or has filed a submission for, or has been issued, a notice of compliance". This person is sometimes called the "innovator" or "brand" drug company and, as provided in paragraph 4(2)(*c*) [as am. *idem*] of the Regulations can be the owner of a pertinent patent or a licensee thereof, or simply be a person who has the patent owner's consent to deal with the patent in respect of the Regulations.

[19] The other party is called a "second person" [as am. by SOR/99-379, s. 1] and is defined in section 2 of the Regulations with reference to subsection 5(1). This definition is the nub of the disputes now before this Court. It is repeated in full. This definition was changed by amendments effective October 5, 2006 [as am. by SOR/2006-242, s. 1] therefore the old and new versions are set out:

Old Version [as am. by SOR/99-379, s. 2]

5. (1) Where a person files or has filed a submission for a notice of compliance in respect of a drug and compares that drug with, or makes reference to, another drug for the purpose of demonstrating bioequivalence on the basis of pharmaceutical and, where applicable, bioavailability characteristics and that other drug has been marketed in Canada pursuant to a notice of compliance issued to a first person and in respect of which a patent list has been submitted, the person shall, in the submission, with respect to each patent on the register in respect of the other drug,

New Version [as am. by SOR/2006-242, s. 2; *erratum C. Gaz.* 2006.II.1874(E)]

5. (1) If a second person files a submission for a notice of compliance in respect of a drug and the submission directly or indirectly compares the drug with, or makes reference to, another drug marketed in Canada under a notice of compliance issued to a first person and in respect of which a patent list has been submitted, the second person shall, in the submission, with respect to each patent on the register in respect of the other drug,

[20] Sometimes a "second person" is simply referred to as a "generic," however one must be careful, particularly in the circumstances of these proceedings, not to interchange those words too readily. The issue here is whether and when a "generic" becomes a "second person" as defined in the NOC Regulations.

[21] At this point consideration is given to subsection 7(1) of the transitional provisions included in the October 5, 2006 amendments to the Regulations as that section purports to affect subsection 5(1). It states:

7. (1) Subsection 5(1) of the *Patented Medicines (Notice of Compliance) Regulations*, as enacted by section 2 of these Regulations, applies to a second person who has filed a submission referred to in subsection 5(1) prior to the coming into force of these Regulations and the date of filing of the submission is deemed to be the date of the coming into force of these Regulations.

[22] The full impact of the changes to subsection 5(1) brought about by the October 5, 2006 amendments does not need to be addressed here since the issue in these proceedings is whether or not the particular generic at issue was a "second person" in the circumstances of events occurring before October 5, 2006. If the generic was not a "second person" then subsection 5(1) was never engaged, thus the transitional provisions are of no effect. If the generic was a "second person" then it was such a person well before October 5, 2006 and would have had to take the steps provided for by that section well before that time in any event.

[23] The process devised by the NOC Regulations begins with subsection 3(1) [as am. by SOR/98-166, s. 2] (of the old Regulations, it is now subsection 3(2) [SOR/2006-242, s. 2], the wording is similar). That section provides for a register upon which patents may be listed by a "first person". That section imposes a duty on the Minister not only to maintain that list, but to determine what patents may go on the list and to remove patents that have been listed improperly. That is a particular duty imposed on the Minister (*Novopharm Ltd. v. Canada (Minister of National Health and Welfare)*, [1998] 3 F.C. 50 (T.D.), at paragraph 19). At this stage a generic has no role. A generic cannot compel the Minister to list or de-list a patent (*Apotex Inc. v. Canada (Minister of National Health and Welfare*) (1999), 181 D.L.R. (4th) 404 (F.C.A.)). Where an innovator challenges the Minister's decision in Court, a generic has not been allowed to intervene (*Warner-Lambert Canada Inc. v. Canada (Minister of Health*) (2000), 8 C.P.R. (4th) 302 (F.C.T.D.)). At this stage a listing does not affect any particular generic.

[24] The criteria as to whether a patent is to be listed or not are set out in section 4 of the Regulations. There are a number of criteria, the most important of which for purposes of this discussion is that the patent contains a claim for the medicine or use of the medicine for which the particular NOC was granted, paragraph 4(2)(*b*) [as am. by SOR/98-166, s. 3] of the pre-October 5, 2006 (post October 5, 2006, Regulations, subsection 4(2) [as am. by SOR/2006-242, s. 2] speaks of a medicinal ingredient or use of a medicinal ingredient—the distinction is not relevant here).

[25] There has been much jurisprudence discussing the nature and extent to which a link between the medicine or use provided for in the innovator's NOC must correspond to the innovation claimed in the patent sought to be listed. It need not be reviewed here. The important point to make is that there may be several NOCs respecting a drug and patents are listed as against a particular NOC.

[26] Once a patent is listed, the Minister places any application for an NOC sought by a generic in respect of the innovator's particular NOC corresponding to that list, on "patent hold." That is, the Minister will not further process the generic's application until the generic has successfully dealt with the listed patents in some way contemplated by the NOC Regulations, or those patents expire, or, as *AstraZeneca* points out, the generic can demonstrate that it is not a "second person" as described in the Regulations and thus does not need to address the patents at all.

[27] Previous to the decision of the Supreme Court in *AstraZeneca*, the practice has been that the generic would send to the listing party (the first party) a letter, usually called a notice of allegation (NOA). That notice would raise one or more of the grounds for allegation set out in section 5 of those Regulations. In brief, the grounds are:

1. the generic will wait until the patent expires;

2. the listing party was not the person entitled to list the patent;

3. the patent has expired;

4. the patent is not valid;

5. the patent will not be infringed.

[28] There is no specific provision in section 5 whereby a generic can allege, in its notice to the innovator, that the patent should not have been listed in the first place or that the generic is not required to address the patents listed at all.

[29] The innovator, upon receiving a notice of allegation can do nothing, in which case, after 45 days have expired, the Minister is free to grant an NOC to the generic. Doing nothing, or even losing proceedings subsequently

instituted does nothing to impair the innovator's ability to commence and pursue an ordinary patent infringement action. The innovator may, alternatively, choose to institute proceedings under the provisions of subsection 6(1) [as am. by SOR/2006-242, s. 3; *erratum C. Gaz.* 2006.II.1875(E)] of the NOC Regulations. Those proceedings may engage some or all of the listed patents and some or all of the allegations raised by the generic. It is the choice of the innovator at that point.

[30] While the Minister has a duty to issue an NOC promptly under the *Food and Drug Regulations*, section 7 [as am. by SOR/98-166, s. 6; 2006-242, s. 4] of the NOC Regulations requires the Minister to wait for up to 24 months before issuing such an NOC unless it is shown that the innovator has done nothing for 45 days or that the proceedings instituted by the innovator have been concluded in favour of the generic. This is a legislated stay, it is not imposed by the Court order, it is imposed by the Regulations. In *Merck Frosst* the Supreme Court of Canada, at paragraph 33, described such a stay as "draconian."

[31] Once proceedings are instituted, which in this Court is by way of a notice of application naming the Minister and generic as respondents, the generic may, under paragraph 6(5)(*a*) [as am. *idem*, s. 3] of the NOC Regulations move to strike the proceedings on the basis that an asserted patent should never have been listed in the first place. This is the first opportunity specifically given to the generic for doing so. Paragraph 6(5)(*b*) [mod., *idem*] permits the generic to move to strike the proceedings for abuse and the like.

[32] Thus it would appear that a generic must wait until proceedings are commenced before it can engage the issue as to whether the patent should have been listed at all having regard to the provisions of section 4 of the NOC Regulations. As discussed, the jurisprudence indicates that a generic cannot compel the Minister directly to de-list a patent nor intervene in proceedings respecting listings brought by the innovator.

[33] The *AstraZeneca* decision has brought a new dimension to this procedure. It has held that a generic need not address at all certain listed patents under certain circumstances.

Understanding *AstraZeneca*

[34] Before considering the meaning and effect of the decision of the Supreme Court of Canada in *AstraZeneca*, it is necessary to consider the processes involved in obtaining an NOC under the *Food and Drug Regulations* and the listing of patents under the NOC Regulations.

[35] Under the *Food and Drug Regulations* an innovator will, on seeking an NOC to market a new drug in Canada, file a great deal of information with the Minister respecting that drug's safety and effectiveness. In time, after much discussion, ministerial approval may be given and an NOC issued. That NOC is indexed under the trade-name for the drug; here in the case of Sanofi-Aventis, it is "Altace", and in the case of Ferring, it is "DDAVP". A file number is given to the submission for an NOC; however, that number can change in given circumstances. In considering the submissions the Minister refers to the subject as a "drug product" which, in accordance with the Minister's policy statements, is a term used to describe a collection of attributes concerning the drug itself, the uses for which the drug is approved and its packaging and labelling including a product monograph.

[36] The NOC that is issued will specify the manufacturer (not necessarily the actual maker but the source of the drug for the Canadian marketplace), the active ingredient(s), the trade-name, the permitted uses (indications) for the drug, dosage strength (e.g. 5 mg or 10 mg, etc.) and dosage form (e.g. tablets, capsules, parenteral, etc.) It is to be noted that what is not specified in the NOC itself are things like what are the non-medicinal ingredients (excipients), how the drug is actually made, or how the purity of the drug is tested.

[37] Labelling, which the Minister considers to include packaging, labels and the product monograph, is attached to the NOC. The product monograph is a document of a few score of pages, available to the public, including health professionals, that contains a great deal of technical information about the drug, specifications of the active ingredient(s), the excipients, instructions for use, precautions, certain test data and references to source material.

[38] From time to time changes are made to the drug labelling, conditions of manufacture, corporate structure of the manufacturer, uses approved for the drug and other matters. The Minister is to be kept advised as to these changes. Some changes are considered relatively trivial and the innovator simply gives notice of the change to the

Minister. Other changes are considered more important and the innovator must give notice to the Minister and receive approval before making them. The most important of these changes require that a new NOC be issued before the changes can be made. Subsection C.08.003(2) [as am. by SOR/95-411, s. 6] of the *Food and Drug Regulations* sets out these changes that require a new NOC. They are:

C.08.003. (1) . . . .

(2) The matters specified for the purposes of subsection (1), in relation to the new drug, are the following:

(*a*) the description of the new drug;

(*b*) the brand name of the new drug or the identifying name or code proposed for the new drug;

(*c*) the specifications of the ingredients of the new drug;

(*d*) the plant and equipment used in manufacturing, preparation and packaging the new drug;

(*e*) the method of manufacture and the controls used in manufacturing, preparation and packaging the new drug;

(*f*) the tests applied to control the potency, purity, stability and safety of the new drug;

(*g*) the labels used in connection with the new drug;

(*h*) the representations made with regard to the new drug respecting

(i) the recommended route of administration of the new drug,

[39] Some changes, such as change of name, have no effect on the drug itself. Other changes, such as changes to a method of manufacture, have potential to change the drug itself. Yet other changes, such as changes in use of the drug, do not affect the drug itself but serve to expand or vary the market for the drug. The Minister, in looking at such changes, may say that the "drug product" (i.e. drug plus use plus packaging) has changed, but the fact remains that the chemistry of the "drug" has not.

[40] A new NOC will issue when changes occur in the areas listed in subsection C.08.003(2) of the *Food and Drug Regulations* set out above. Where the change is one where the manufacturer has changed or corporate entity merged or the like has happened, the file number of the NOC may change. The new NOC will bear the date of issue and certain information such as changed indications, or changed labelling or product monograph. Each new NOC is considered to incorporate all previous NOCs issued for the drug, together with the new changes.

[41] Turning to the NOC Regulations, they permit an innovator or its nominee to list certain patents on a register kept by the Minister. Those are the patents that a "second person" must at a later time address. Subsection 4(3) [as am. by SOR/98-166, s. 3] of the Regulations states that the innovator must submit such a list at the time that it files a submission for an NOC. It is to be noted that any NOC submission that will serve to provide a vehicle for providing a patent list. Thus, a submission for a simple name change has been used to submit a new patent to be listed.

[42] Subsections 4(4) [as am. *idem*] and 4(5) [as am. *idem*] of the NOC Regulations, as they stood pre-October 5, 2006, also permitted patents that had not yet been issued to be added to the patent list provided that the patent had been applied for before the particular NOC submission had been filed and the patent is added within 30 days from its issuance. Since there can be many NOCs in respect of a drug, subsection 4(5) requires that where patents are added, the innovator must specify the particular NOC to which the patents are to apply.

[43] Another complexity must be added. Canada adheres to international conventions and treaties respecting patents, including the Paris Convention [*Paris Convention for the Protection of Industrial Property*, March 20, 1883, as revised, 828 U.N.T.S. 305] and the *Patent Cooperation Treaty* [June 19, 1970, [1990] Can. T.S. No. 22] (PCT). In accordance with the Paris Convention, a party may file a preliminary patent application in a member country and, within a year, file a more substantial application and, if there is identical subject-matter with the earlier application, a

"priority" can be claimed for that subject-matter, the effect of which would be to make certain public disclosures by third parties irrelevant for purposes of novelty or obviousness. The substantive patent application can be filed under the provisions of the PCT, which means that only one filing in one patent office takes place, usually in the United States, Europe or Japan. The applicant then receives a period of up to about three years in which it can file separate patent applications in all or whichever of the 130 or so member countries of the PCT it chooses. Canada is one such country. If an application is filed in a member country (called entering the national phase), the application is given an effective filing date of the original PCT filing. Thus, a third party will not know for up to three years whether a patent application has actually been filed in Canada but, when it is filed, the application is deemed to have been filed up to three years ago. For NOC purposes then, under subsection 4(4), a filing date of the patent application that precedes the NOC submission date can be deemed even though the actual filing date in Canada was later, the deemed filing date was earlier according to PCT obligations.

[44] Once the patent application is filed with the Canadian Patent Office, it is to be published within 18 months of its Canadian filing date. If that date is the deemed PCT filing date, then publications can be deemed to have occurred 18 months from the deemed filing date. As of the date of publication, actual or deemed, a conditional right to receive reasonable compensation arises which crystallizes only if a patent is actually granted with claims that are essentially identical to those of the published application (paragraph 55(1)(*b*) [as am. by S.C. 1993, c. 15, s. 48] of the *Patent Act*). A third person such as a generic could be liable for "infringement" if it sold a drug as claimed in the patent application at any time after the publication date but only if and when the patent issued with such a claim.

[45] A person applying for a patent in Canada can control, to a large measure, the speed with which a patent application proceeds through the Patent Office. An application will not be examined until the applicant requests it (*Patent Act*, subsection 35(1) [as am. by R.S.C., 1985 (3rd Supp.), c. 33, s. 12]). Responses to requests made by the examiner can be made quickly or slowly, extensions of time can be requested (*Patent Rules* [SOR/96-423], section 26 [as am. by SOR/2007-90, s. 4]) and early examinations can be requested (*Patent Rules*, section 28). Thus, a potential patent infringer may be left in doubt for a long time as to whether there will be a patent at all and if so, when and what it will claim. In the case of some of the Sanofi-Aventis patents at issue here, the evidence shows that it took some 10 years after the deemed Canadian application date before the patents were issued.

[46] This rather long narrative of the patent process was necessary since much of the argument about the *AstraZeneca* decision has to do with "early working" of a potential invention. As can be seen, there are many unknowns involved as to if and when a patent will issue and if and when it could be placed on a patent list under the NOC Regulations and, if so, as against which NOC. The issue has properly been defined as a "minefield" for a generic seeking to enter the market. The only truly relevant time for considering a patent is the date when it is listed against an NOC. Even then, as will be considered later, there may be a retroactive effect.

[47] Turning to the *AstraZeneca* decision, it is the third decision given by the Supreme Court of Canada dealing with the relatively narrow and arcane field of the NOC Regulations. That Court started with the case of *Merck Frosst* where, at paragraph 33 of its reasons, the statutory freeze imposed by those Regulations was described as "draconian":

There may be good policy reasons for the operation of the regulatory scheme in this fashion. However, it would be manifestly unjust to subject generic drug producers to such a draconian regime without at least permitting them to protect themselves and reduce the length of the presumptive injunction by initiating the NOC process as early as possible. As I have already said, this is not inconsistent with s. 6(2) of the Regulations, which provides only that the court shall make an order of prohibition "if it finds that none of those allegations is justified" a finding which can only be made, at the earliest, on the date of hearing. Thus, an application could properly be rejected by the Federal Court as premature if the allegation made in its support is not justified at that time. This is sufficient, in my view, to discourage inappropriately premature applications. On the other hand, to interpret the Regulations in the manner urged by the respondents would effectively be to require generic drug producers to satisfy all requirements in s. 5 and then to wait up to an additional 30 months before marketing the desired product. This cannot be what was intended by the Regulations.

[48] Eight years later the Supreme Court considered the NOC Regulations in *Biolyse*. In *Biolyse* the Court explained that the NOC Regulations were enacted so as to permit "early working" of a patent invention respecting a drug by permitting generics to obtain an NOC to enter the market when a patent expired and the permitted

stockpiling during the term of the patent (now no longer a permitted exemption). These provisions provided to the innovator companies remedies in addition to the usual remedies under the *Patent Act*. The Court said, at paragraphs 11 and 12 of *Biolyse*:

However, having agreed to respect the 20-year monopoly granted by patents, Parliament wished to facilitate the entry of competition immediately thereafter. It acted to eliminate the usual regulatory lag of two years or more after expiry of a patent for the generic manufacturer to do the work necessary to obtain a NOC. Parliament did so by introducing an exemption from the owner's patent rights under which the generic manufacturers could work the patented invention within the 20-year period ("the early working exception") to the extent necessary to obtain a NOC at the time the patent(s) expired (s. 55.2(1)) and to "stockpile" generic product towards the end of the 20-year period to await lawful market entry (s. 55.2(2)). In order to prevent abuse of the "early working" and "stockpiling" exceptions to patent protection, the government enacted the *NOC Regulations* that are at issue in this appeal.

The patent owner's remedies under the *NOC Regulations* are *in addition* to all of the usual remedies for patent infringement under the *Patent Act.*

[49] One year later, the Supreme Court again addressed the NOC Regulations in *AstraZeneca*. At paragraph 15 of its reasons the Court reiterated what it said in *Biolyse*, the Regulations are directed at preventing infringement by those who choose to take advantage of the "early working" provisions of paragraph 55.2(4)(*d*) of the *Patent Act*:

Recognizing that the "early working" and "stockpiling" exceptions could be abused, Parliament balanced creation of these exceptions with implementation of a summary procedure designed to strengthen the protection of patent owners against generic competitors *within* the 20-year patent period. The legislative solution is found in s. 55.2 of the *Patent Act* as follows:

55.2 (1) It is not an infringement of a patent for any person to make, construct, use or sell the patented invention solely for uses reasonably related to the development and submission of information required under any law of Canada, a province or a country other than Canada that regulates the manufacture, construction, use or sale of any product. [The "early working" exception.]

(2) It is not an infringement of a patent for any person who makes, constructs, uses or sells a patented invention in accordance with subsection (1) to make, construct or use the invention, during the applicable period provided for by the regulations, for the manufacture and storage of articles intended for sale after the date on which the term of the patent expires. [The "stockpiling" exception.]

(3) The Governor in Council may make regulations for the purposes of subsection (2), but any period provided for by the regulations must terminate immediately preceding the date on which the term of the patent expires.

(4) The Governor in Council may make such regulations as the Governor in Council considers necessary for preventing the infringement of a patent by any person who makes, constructs, uses or sells a patented invention in accordance with subsection (1) or (2) including, without limiting the generality of the foregoing, regulations

(*a*) respecting the conditions that must be fulfilled before a notice [e.g. of compliance] . . . may be issued . . .;

(*b*) respecting the earliest date on which a notice [e.g. of compliance] . . . may take effect . . .;

(*c*) governing the resolution of disputes between a patentee or former patentee and any person who applies for a notice [e.g. of compliance] . . . as to the date on which that notice . . . may be issued or take effect.

The grant of the regulation-making power in s. 55.2(4) is thus expressly limited to prevention of infringement by a person who takes advantage of the "early working" exception (s. 55.2(1)) or (until its repeal) the "stockpiling" exception (s. 55.2(2)).

[50] The Court set out the issue presented by the generic (Apotex) at paragraph 18. If the generic was not in the position to "early work" a patent, how could it be subject to the Regulations at all:

If, as Apotex says, it did not have the advantage of an "early working" of the after-listed 037 and 470 patents, because they came too late and were not incorporated in any product available to Apotex to copy, it is difficult to see in principle why in respect of *those* patents Apotex should be subject to the *NOC Regulations* regime, with a consequent further delay of two years, and perhaps longer. The Apotex submission has already been pending since April 27, 1993.

[51] The Court reviewed the provisions of subsection 4(5) of the NOC Regulations which permit a later issued patent to be based against a specific NOC. The linkage between the patent and a specific NOC was emphasized at paragraph 21:

I emphasize the words in s. 4(5) that in the case of patents added afterwards, "the first person must identify the submission to which the patent list or the amendment relates, including the date on which the submission was filed". In addition, s. 3(3) provides that "[n]o information submitted pursuant to section 4 shall be included on the register until after the issuance of the notice of compliance in respect of which the information was submitted." These provisions, it seems to me, provide an important key to understanding the scheme. Entry of the "Patent list" does not destroy the linkage between the patent and the submission(s) to which it relates, nor to the NOC to which the submission(s) are directed. Specific patents are associated with one or more NDS, ANDS or SNDS, which in turn (if approved) give rise to specific NOCs, which in turn approve a specific manufacturer's product, which a generic manufacturer may seek to copy. There is no linkage between the 037 and 470 patents and the submissions that lead to the *Losec 20* product copied by Apotex. Those after-acquired patents were listed in relation to a SNDS dated January 22, 1999 by AstraZeneca for a new medical use for *Losec 20* (treatment of *H. Pylori*), a use for which the Apotex product is *not* approved, and to an administrative SNDS submitted by AstraZeneca dated July 12, 2000, which submission has nothing at all to do with the technology incorporated in *Losec 20*.

[52] At paragraph 22, the Court recognized that several lists in respect of several NOCs could exist. The question was to identify which NOC, therefore which list, was pertinent to the product that the generic copied:

Thus understood, the s. 4(1) patent list in relation to a medication that goes through various stages of development may become over time a list of lists, or lists within a list. Section 4(5) ensures the Minister's ability to identify the precise patents relevant to the "early working" by a generic manufacturer of its copy-cat product. This identification is important having regard to the limited purposes for which the *NOC Regulations* are authorized by s. 55.2(4) of the *Patent Act.*

[53] The concluding sentence of paragraph 23 of the reasons reinforces the linkage of a particular patent list to a particular NOC:

It is not to be presumed that s. 4(5) of the *NOC Regulations* insisted on linking particular patents to particular submissions for no purpose.

[54] This linkage is important in considering what generation of the innovator's drug the generic wishes to copy. As stated by the Supreme Court, at the last sentence of paragraph 28 of its reasons:

If Apotex claims bioequivalence with *Losec 20* it is important to be precise about what generation of *Losec 20* is the comparator drug.

[55] This linkage was again emphasized in the last sentence of paragraph 34 of the reasons which quoted from the decision of the Federal Court of Appeal [[2006] 1 F.C.R. 297] in the case below:

However, as Noël J.A. also conceded, "it is the actual drug, from which samples can be taken and used for comparative purposes, that is relevant to the application of subsection 5(1) of the NOC Regulations" (para. 46 (emphasis added)).

[56] The Court then pointed out that the facts of the particular case before it led to the conclusion that there could have been only one drug that could have been used as a comparator, one that the innovator had discontinued marketing several years ago. This does not mean that the decision is only relevant to discontinued drugs. It simply means that, in that case, the comparator drug was easily identified. As stated in paragraph 37:

The whole obligation incurred by the generic manufacturer under the *NOC Regulations* is based on its "early working" of patents embodied in "another drug for the purpose of demonstrating bioequivalence". The only drug that fits the description is the version of *Losec 20* approved in the June 19, 1989 NOC.

[57] The Supreme Court then specifically addressed "The Broader Statutory Purpose" of the NOC Regulations at paragraphs 38 to 41 of its reasons. The last sentence of paragraph 39 clearly states that the generic only needs to address that cluster of patents listed as against the particular NOC pertinent to the generation of drug which it copied:

In my view, s. 5(1) of the *NOC Regulations* requires a patent-specific analysis, i.e. the generic manufacturer is only required to address the cluster of patents listed against submissions relevant to the NOC that gave rise to the comparator drug, in this case the 1989 version of *Losec 20.*

[58] In paragraph 40, the Court recognized that if a later NOC was issued and the generic made reference to it for a specific reason, that is, for purposes of demonstrating bioequivalence, then patents listed against the later NOC would also have to be addressed:

If AstraZeneca had brought to market a *Losec 20* product pursuant to the later NOCs and if Apotex had made reference to that modified product for the purpose of demonstrating bioequivalence, Apotex would have been required to file a notice of allegation with respect to the 037 and 470 patents.

[59] It is important to note that the Supreme Court was quite specific in paragraph 40 as to the reason for the reference, it was for demonstrating bioequivalence. Subsection 5(1) of the NOC Regulations are specific in stating that a person is only required to take steps to issue a notice of allegation to the innovator who has listed patents (thus becoming a "second person") if:

• that person has filed for an NOC;

• that person has compared reference or made reference to another drug;

• for the purposes of demonstrating bioequivalence;

• and that other drug has been marketed in Canada pursuant to an NOC; and

• there is a patent list pertinent to that NOC.

[60] These requirements are cumulative. Thus, if there is no comparison or reference for the purpose of bioequivalence, subsection 5(1) is not triggered.

[61] If subsection 5(1) is not triggered, then the generic is not a "second person" and is not required to file a notice of allegation. The NOC Regulations do not come into play. The Supreme Court said, at paragraph 41 of its reasons:

However, it is clear that AstraZeneca did not market any product pursuant to the subsequent NOCs and that the preconditions to any obligations of Apotex under s. 5(1) were therefore not triggered.

Was the Minister's Position Correct?

[62] There is no specific procedure in the NOC Regulations whereby a generic can inform the Minister or the Minister can inform the generic that certain patents, even if properly listed, need not be addressed having regard to the particular circumstances in which the generic finds itself. There is no specific procedure in the NOC Regulations obliging either the generic or the Minister to bring notice of those circumstances to the listing innovator or give it an opportunity to make submissions. Further, there is no specific provision requiring that the question as to whether the generic should address certain listed patents at all in its particular circumstances be raised or addressed in any proceedings instituted under section 6 of the NOC Regulations.

[63] As soon as the *AstraZeneca* decision was released in early November 2006, the Minister, with some

prompting from some generics, set about to devise a process for dealing with the question of setting a procedure for dealing with whether a generic is required to address any particular listed patent. This process is set out in affidavits of Anne Elizabeth Bowes, Associate Director of the Therapeutic Products Directorate (TPD) which is the branch of the Minister's department dealing with the NOC Regulations. This process involves only ANDS applications submitted by generics prior to the change in the NOC Regulations of October 5, 2006. Ms. Bowes explains that it involves two steps:

1. First, the date on which the generic has purchased the comparator drug is used to determine which notices of compliance have been issued in respect of that comparator drug. The position of the Minister is that all patents listed in respect of the relevant NOC as of that date must be addressed by the generic.

2. Second, where further NOCs have been issued to the innovator after the date of the purchase of the comparator drug, the Minister makes a determination as to whether the generic has made use of changes made to the comparator drug since the original date of purchase. If the generic has made use of such changes, then all patents added to the patent list subsequent to the date of purchase as are pertinent to the changes of which the generic has taken advantage must be addressed.

[64] The evidence shows that the Minister has regard to submissions made by the generic or its lawyers as to the date of purchase of the comparator drug and whether the generic has taken advantage of any subsequent NOCs issued to the innovator. As well, the Minister has regard to matters that are self-evident on the record of the ANDS application by the generic, such as the date upon which data respecting the comparator drug was filed so as to establish a latest date upon which such drug could have been purchased. The "default date" for establishing the purchase of the comparator drug, in the absence of other information, is taken to be the filing date of the ANDS.

[65] I find that the policy adopted by the Minister is consistent with the reasoning of the Supreme Court of Canada in *AstraZeneca* and the applicable provisions of the NOC Regulations and *Food and Drug Regulations*. If I were to modify the policy, I would do so in two respects. First, the date of purchase of the comparator drug is not a date that is required by the provisions of either Regulation to be recorded or submitted. It is a date, the existence of which is known only to the generic purchasing the drug. A better date would be the filing date of the ANDS by the generic as that is a date of record and is, logically, the last date upon which the comparator drug could have been obtained by the generic. Second, with respect to the second criteria, the changes made by the generic must be those as specified in subsection 5(1) of the NOC Regulations, namely, for purposes of bioequivalence. This would be consistent with *AstraZeneca*. These suggestions, even if they had been implemented by the Minister before arriving at the decisions he did, would not have changed the results of those decisions or this decision of the Court.

TRIPS

[66] Counsel for Ferring raised in oral argument, but not in that party's factum, an assertion that Canada's *Patent Act*, including the NOC Regulations, failed to comply with Canada's obligations under the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, 1869 U.N.T.S. 299 (TRIPS) a World Trade Organization Agreement to which Canada is a signatory. This Agreement was implemented into the laws of Canada by the *World Trade Organization Agreement Implementation Act*, S.C. 1994, c. 47 and appears at Annex 1C of the Agreement [*Marrakesh Agreement Establishing the World Trade Organization*, 1867 U.N.T.S. 3]. That Act prohibits any action claiming a right claimed to arise out of the TRIPS Agreement without the consent of the Attorney General of Canada. There has been no such consent in these proceedings.

[67] Article 41 of TRIPS obliges member countries such as Canada to ensure that there are effective enforcement procedures available to permit effective action to deter infringement of rights such as patent rights and to provide expeditious remedies. Ferring's counsel asserts that Canada's *Patent Act* and the NOC Regulations fall short of such obligations. I would be prepared to dispose of such argument summarily since it was not raised in Ferring's memorandum and was only raised in oral argument at the hearing. Such an argument would require proper evidence before it could be properly adjudicated upon. Simple assertions by counsel are insufficient.

[68] Justice Snider of this Court has rejected a similar argument recently in *Laboratoires Servier v. Apotex Inc.*, 2006 FC 1493, at paragraphs 76-79. I fully agree with her analysis and conclusion. Therefore, I reject the argument that the *Patent Act* and NOC Regulations do not comply with TRIPS. To the extent that counsel seeks to nuance this

agreement to state that somehow the NOC Regulations must be read in a manner so as to be aggressively interpreted in enforcing patent rights in light of TRIPS, I regret that argument. I have determined the legal effect of those Regulations in accordance with the ordinary principles established in Canadian law. TRIPS affords no particular bias.

Standard of Review of Minister's Decisions

[69] It is common ground between all parties that, in a judicial review proceeding such as this, a decision of the Minister that is based on a determination of law is to be reviewed upon a standard of correctness (*AstraZeneca*, at paragraph 25). Where the Minister's decision involves factual determinations and actions based on such determinations, his decisions are entitled to deference. Kelen J. of this Court reviewed extensively the degree of deference owed to the Minister in such circumstances in *AstraZeneca Canada Inc. v. Canada (Minister of Health)* (2004), 36 C.P.R. (4th) 519 (F.C.) and at paragraph 36 of his reasons concluded that the standard was that of reasonableness. That conclusion was affirmed by the Federal Court of Appeal at paragraph 2 of its reasons reported at [2006] 1 F.C.R. 297. In such circumstances, therefore, I will apply the standard of reasonableness, that is, the Minister's decision is entitled to deference; however, it must be understood that a somewhat probing examination of the basis for the decision should be undertaken.

Was the Minister *Functus?*

[70] Ferring and Sanofi-Aventis argue that, at some point in the process, the Minister had made decisions as to the status of the generics' applications, such that the Minister could not address or re-address the issue as to whether the generics were, in fact, "second person[s]" within the contemplation of the NOC Regulations.

[71] To consider this issue, the course of the decisions to be made by the Minister should be traced. First, under the *Food and Drug Regulations*, the Minister must examine an ANDS filed by a generic to determine if the drug is bioequivalent with the Canadian reference product (paragraph C.08.002.1(1)(*b*)). Then the Minister must, based on information provided by the generic, determine if the drug is safe and effective (subsection C.08.002.1(2)). After completing an examination of the application and being satisfied, the Minister shall issue an NOC (paragraph C.08.002(1)(*a*) [as am. by SOR/95-411, s. 4]). As previously discussed, the Minister has a duty to issue the NOC without delay (*Apotex Inc. v. Canada (Attorney General)*).

[72] However, at the point where the Minister would otherwise issue an NOC, the NOC Regulations intervene. Subsection 7(1) of the NOC Regulations directs that the Minister is not to issue an NOC before the latest of:

(a) (repealed) [SOR/98-166, s. 6];

(b) the day on which a "second person" complies with section 5, that is, sends to the innovator who has listed patents a notice of allegation;

(c) the date the patents expire;

(d) a notice of allegation has been sent, 45 days have expired, and the innovator has done nothing; and

(e) the innovator has taken legal proceedings and 24 months have expired.

[73] Subsequent subsections make provision for the settlement or withdrawal of legal action and expiry of relevant patents. If successful, the legal action prohibits the Minister from issuing an NOC until the relevant patents expire.

[74] Thus, where the Minister is at the point of issuing an NOC, he must have regard to relevant patents listed under the provisions of the NOC Regulations. If there are relevant patents, the Minister puts the application on "patent hold." Until the Supreme Court decision of *AstraZeneca*, the "patent hold" would remain until the transpiration of events under section 7 of the NOC Regulations.

[75] *AstraZeneca* has told us that section 7 only applies where a generic is a "second person" as provided for in paragraph 5(3)(*d*) [as am. by SOR/98-166, s. 4] of the NOC Regulations. As has happened in the cases presently

before this Court, the Minister has been persuaded that the relevant generic is not such a "second person" in all cases but one.

[76] The innovators say that the Minister is *functus* and cannot visit the issue as to whether a generic is a second person since there have been events which preclude that from happening. These events are one or more of:

1. The placing of the application on "patent hold" until section 7 plays out;

2. The sending of a notice of allegation by the generic to the innovator under subsection 5(1); or

3. The institution of proceedings in this Court by the innovator.

[77] Neither the *Food and Drug Regulations* nor the NOC Regulations make any provision for the Minister to act like a tribunal, or to hear evidence, or to consider submissions or to make rulings. The Minister is not acting in a judicial or quasi-judicial role unlike that which was considered, for instance, in *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848. In that case, the Supreme Court stated, at pages 861- 864, that the doctrine of *functus officio* which precludes a tribunal from reopening a decision once made, should not be applied rigorously in respect of every sort of administrative ruling.

[78] In the present case, the Minister is acting in a purely administrative capacity, he is processing an ANDS from its submission to the issuance of an NOC. From time to time, information is provided or sought and obtained and steps are taken by the Minister. The Minister is not acting as a tribunal at all (*Novopharm Ltd. v. Canada (Minister of National Health and Welfare)*, [1998] 3 F.C. 50 (T.D.), at paragraph 16 and *Saskatchewan Wheat Pool v. Canada (Canadian Grain Commission)* (2004), 260 F.T.R. 310 (F.C.), at paragraph 24). This role is a continuing one of the type considered by the Supreme Court of Canada in *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1997] 1 S.C.R. 12. The Minister, as explained by the Supreme Court in *Comeau's Sea Foods*, at paragraphs 39-51 of its reasons, is entitled to visit and revisit circumstances from time to time as conditions change and new issues arise. It is only when the final step is taken, in that case, the issuing of a fishing licence, that the issue of *functus* can arise. Here that final step is the issuance of an NOC.

[79] The process here is analogous to considerations given by the Commissioner of Patents under the *Patent Act*, as to whether he will entertain an application for a compulsory licence (*Merck and Co., Inc. v. Brantford Chemicals Inc. et al.* (2005), 37 C.P.R. (4th) 481 (F.C.A.)), or as to whether he will involve a person who is not the person applying for a patent at the point when the patent is allowed (*Monsanto Co. v. Canada (Commissioner of Patents)* (1999), 1 C.P.R. (4th) 500 (F.C.T.D.)). In such situations, the actions of the Commissioner, or here the Minister, cannot be of such finality that they cannot be revisited where appropriate.

[80] Even in circumstances where the final step has been taken such as a prohibition against the Minister from issuing an NOC by a court order, the matter has been revisited where the underlying patent has been held, in other proceedings, to be invalid (*Hoffmann-La Roche Ltd. v. Canada (Minister of National Health and Welfare)* (1999), 167 F.T.R 111 (F.C.T.D.), at paragraph 14).

[81] I find, therefore, that the Minister cannot be said to have been *functus* at any point in the process. The Minister is entitled, at a point where appropriate, to consider whether a generic is, in the circumstances of the case, a "second person" within the meaning of subsection 5(1) of the NOC Regulations.

[82] Does the fact that Court proceedings have been commenced under the provisions of subsection 6(1) of the NOC Regulations make any difference? Can the Minister consider the status of a generic as a "second person" or not, after such proceedings have been taken? Can the Minister issue an NOC once such proceedings have been taken on the basis that the generic is not, in fact, a "second person"?

[83] The NOC Regulations are a legislative scheme without which the Minister would be obliged to issue an NOC without delay. Section 7 imposes a legislative, not court-ordered, stay on the issuing of an NOC until the expiry of certain events, some of which contemplate court proceedings. The court proceedings would not take place at all if a generic were not a "second person". Until the Supreme Court handed down its decision in *AstraZeneca* in November 2006, the Minister and the generic were not sufficiently alert to the issues as to what constitutes a "second person".

[84] The Minister is charged with a duty to issue an NOC without delay. If the Minister is persuaded that a particular generic in particular circumstances is not caught by the NOC Regulations, then a proper exercise of his duty, notwithstanding Court proceedings, which owe their existence only to the NOC Regulations, is to issue the NOC. As Reed J. said in *Hoffmann-La Roche Ltd. v. Canada (Minister of National Health and Welfare)*, an order of the Court is not necessary for a Minister to issue an NOC where the patent underlying a prohibition order has been declared to be invalid. Similarly here, no order of the Court is necessary. The mere existence of court proceedings cannot prohibit the issuance of an NOC where the underlying basis for the court proceedings is a nullity.

The Specific Proceedings

Ferring—T-165-07

[85] Ferring is an innovator or "first party" that markets a drug in Canada originally under the name "Minirin" and subsequently "DDAVP". This drug is principally used to combat bedwetting. The first NOC for that drug was granted on March 18, 1993.

[86] Ferring challenges the decision of the Minister to issue NOCs to each of two generics, Apotex and Novopharm, on January 22, 2007. Ferring asserts that the Minister should have required that each of these generics address two patents listed by Ferring on the Register, the so-called ′833 and ′335 patents.

[87] A complete list of relevant events is attached as Schedule A. However, for purposes of the present analysis, as instructed by the Supreme Court in *AstraZeneca*, the following events are relevant:

• March 18, 1993 - First NOC issued to Ferring;

• September 19, 2000 - A further NOC issued to Ferring for a new indication for the drug Patent 1232 839 was listed against this NOC;

• April 20, 2004 - Novopharm acquires a comparator drug which is a United Kingdom version of "DDVAP" found acceptable by the Minister;

• October 19, 2004 - Apotex acquires a Canadian version of "DDVAP" as a comparator drug;

• December 14, 2004 – Novopharm files its ANDS with the Minister;

• February 16, 2005 – Patent 1232839 expires;

• September 6, 2005 – Apotex files its ANDS with the Minister;

• November 21, 2005 – A further NOC issued to Ferring respecting a new manufacturing process and slightly adjusted formulation;

• December 7, 2005 – The ′833 patent was added to the list respecting the November 21, 2005 NOC;

• February 8, 2006 – The ′335 patent was added to the list respecting the November 21, 2005 NOC;

• June 27-28, 2006 – Apotex sends a notice of allegation to Ferring respecting the ′335 and ′833 patents;

• August 11, 2006 – Ferring commences proceedings under subsection 6(1) of the NOC Regulations against Apotex;

• October 31, 2006 – Novopharm's application is put on "patent hold";

• November 3, 2006 – *AstraZeneca* decision is released;

• January 23, 2007 – The Minister issues NOC to each of Apotex and Novopharm.

[88] As can be seen, when each of Apotex and Novopharm purchased their comparator drugs and when each filed their ANDS, the NOC that was extant at the time was that of September 14, 2000. The ′833 and ′335 patents were not added until the further NOC was granted to Ferring on November 21, 2005. That further NOC could not have been used by either Apotex or Novopharm for purposes of bioequivalence since bioequivalence studies would have been filed with their ANDS which preceded November 21, 2005.

[89] Thus, in accordance with *AstraZeneca*, the Minister, in doing a patent specific analysis, needed to look only at patents listed against the NOC extant as of the filing of the ANDS by the generics (or purchase date of comparator drugs). The only relevant patent listed there was Canadian patent 1232839, which expired on February 16, 2005. Thus, no relevant patent remained in respect of any NOC relevant to the generics.

[90] The fact that Apotex had sent a notice of allegation and proceedings had been instituted by February is, as previously determined, irrelevant. Novopharm had never sent a notice of allegation and no proceedings had been commenced.

[91] I find that the Minister's decisions respecting Apotex and Novopharm were correct.

Duty of Fairness

[92] Ferring makes a further argument that the decisions of the Minister were made without warning to Ferring and giving it an opportunity to be heard. This, argues Ferring, is unfair and contrary to the principles of natural justice.

[93] The Minister submits that the decision is administrative in nature and there is nothing in the NOC Regulations or *Food and Drug Regulations* that obliges him to advise an innovator who has listed patents as to whether a generic is seeking an NOC or to afford the innovator a right to be heard before a decision is made.

[94] The parties refer to the Supreme Court of Canada decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraphs 21-28 for the purposes of considering what the duty of fairness might require in any particular circumstances. L'Heureux-Dubé J. said in the majority decision, at paragraph 21 of that decision, that the concept is eminently variable and depends on the particular circumstances in each case. In paragraph 23 she stated that the closer a procedure is to a judicial process, the more likely it would be that there would be procedural protection, such as that afforded a litigant. Second, the terms of the particular legislation must be considered. A third consideration is the importance to the individual affected. Fourth is the legitimate expectation of persons challenging the decision. Fifth is the choice of procedure afforded to the decision maker.

[95] In considering these criteria: first, the decision of the Minister to grant an NOC, including whether a generic is caught by subsection 5(1), is administrative in nature; second, the Regulations do not specify any form of notice or hearing being afforded to others; third, an innovator is affected by the decision in that it may lose an opportunity to institute proceedings under the NOC Regulations, thus losing an opportunity to gain a two-month stay, however, this is an exceptional remedy and cannot be considered to be available as of right; fourth, there is nothing in the Regulations such as would give an expectation to an innovator to be consulted and heard before an NOC is given to a generic other than to receive a notice of allegation if and when the generic is obliged as a "second person" under subsection 5(1) to send such a notice, otherwise all proceedings are confidential as between the generic and the Minister; fifth, there is no choice given to the Minister as to whether to engage the innovator or not.

[96] There is no history of the Minister notifying an innovator or affording it an opportunity to be heard during the process of granting an NOC to a generic. There is a reference, in the Federal Court reasons in the *AstraZeneca* case, at paragraphs 55 and 56, to communications between the Minister and the innovator. A review of the record in that case indicates that the Minister wrote to the innovator on January 13, 2004, without disclosing that there was a pending NOC submission from a generic. The Minister simply requested information as to whether the innovator's "Losec 20" capsules had been marketed in Canada since the date of its NOC on June 4, 1999. The innovator was not asked to make submissions of any kind as to the impact that the failure to market might have. There was no hearing of any kind conducted by the Minister; there was a simple request for information.

[97] The Minister was not required to inform Ferring as to a generic's pending NOC submission; in fact, that

submission is to remain confidential. Nor was the Minister required to afford Ferring an opportunity to be heard before making a decision as to whether the provisions of subsection 5(1) of the NOC Regulations applied to the generic, or to issue an NOC to the generic.

Status of Ferring to Seek Judicial Review

[98] Novopharm takes issue as to the status of Ferring to seek judicial review of the Minister's decision that Novopharm was not a "second person" as defined in subsection 5(1), whereby Novopharm received the NOC it sought without engaging the provisions of the NOC Regulations.

[99] Section 18.1 [as enacted by S.C. 1990, c. 8, s. 5; 2002, c. 8, s. 27] of the *Federal Courts Act*, R.S.C., 1985, c. F-7 [s. 1 (as am. *idem*, s. 14)] affords any person "directly affected" by a decision of a federal board, commission or other tribunal the right to seek judicial review of that decision. As discussed in respect of subsections 3(1) of the NOC Regulations, a generic is not afforded an opportunity to intervene in proceedings respecting the listing of a patent or to seek de-listing since, at that point, no particular generic can be seen to be "directly affected." This is consistent with the law expressed in *Rothmans of Pall Mall Canada Limited v. Minister of National Revenue (No. 1)*, [1976] 2 F.C. 500 (C.A.) that a person who is simply a member of a class generally affected by a decision, without more, has no status to seek judicial review (see also *Apotex Inc. v. Canada (Governor in Council)*, 2007 FC 232).

[100] It has been found that a mere economic interest is insufficient to support status to seek judicial review (*Aventis Pharma Inc. v. Canada (Minister of Health)* (2005), 45 C.P.R. (4th) 6 (F.C.), at paragraph 13). That decision was appealed but the appeal was not proceeded with. In that case, the innovator, Aventis, had apparently failed to list its patent in a timely fashion. The generic Novopharm was awarded an NOC by the Minister. Aventis sought judicial review of that decision. The Minister sought to strike out those portions of Aventis' application challenging the issuance of an NOC.

[101] The *Aventis* decision, particularly from paragraphs 9-19, indicates that Aventis first argued before a prothonotary of this Court that the Minister had, in issuing an NOC, acted unfairly in respect of his analysis as to safety and effectiveness. At the trial Court level Aventis shifted ground and argued that it had a *de facto* monopoly that was destroyed by the issuance of an NOC to a generic, thus it was a "person interested" in seeking judicial review of the decision to issue that NOC. It was held, at paragraph 13, that the fact that Aventis did not gain the opportunity to invoke the NOC proceedings was insufficient so as to afford it status to seek judicial review.

[102] I make the same finding here. As far as Novopharm is concerned, Ferring had no right to be given notice or an opportunity to be heard before the Minister made a determination that the generic, in its particular circumstances, did not have to engage the NOC Regulations. Ferring retains all of its NOCs and its patent listing, they are unaffected. Ferring retains the right to commence patent infringement proceedings. Ferring simply lost an opportunity to commence NOC proceedings in the Court, just as Aventis had no such right. This is merely a commercial interest.

[103] Therefore, I find that Ferring, in the circumstances, has no status to seek judicial review as against Novopharm. This is a further reason why Ferring's application will be dismissed as against Novopharm. Apotex did not raise this issue.

Sanofi-Aventis: General

[104] Sanofi-Aventis is an innovator or "first party" that markets a drug in Canada under the name "Altace" (ramipril). It has been directed toward treatment of hypertension. The first NOC for the drug was received by Sanofi-Aventis on October 8, 1993. Sanofi-Aventis subsequently was granted four Canadian patents, two described as the ′387 patent and the ′549 patent were directed toward treatment of patients with increased risk of cardiovascular event, these are the so-called HOPE [Heart Outcomes Prevention Evaluation] patents. It also received two other patents called ′089 and ′948 directed to other uses which have been called non-HOPE in these proceedings. Sanofi-Aventis has received an NOC that would permit it to market "Altace" for the HOPE indication but has not received such approval for the non-HOPE indications. Thus, it has four patents but can only market the product for the uses claimed in two of them.

[105] Two generics, Apotex and Novopharm, want to market their generic versions of “Altace” in Canada but only for old uses. They say that they do not want to market them for the HOPE or non-HOPE indications.

[106] The Minister issued an NOC to Apotex on December 12, 2006. However, the Minister maintained that Novopharm had to address the non-HOPE patents by way of notice of allegation under subsection 5(1) of the NOC Regulations. Sanofi-Aventis and Novopharm have applied for judicial review of these decisions. Those applications will now be dealt with specifically.

Sanofi-Aventis v. Novopharm—T-2188-06

Novopharm v. Sanofi-Aventis—T-2220-06

[107] These two proceedings are closely related and can be addressed together. Attached as Schedule B is a more complete listing of relevant events; however, the following are the most pertinent:

• October 8, 1993 – Sanofi-Aventis receives its first NOC respecting “Altace”;

• February 13, 2001 – Sanofi-Aventis receives a further NOC respecting “Altace” (submission 066094);

• June 22, 2001 – Novopharm purchases “Altace” for use as a comparator drug;

• December 24, 2001 – Novopharm files an ANDS for its generic version of “Altace”;

• October 14, 2003 – Novopharm’s submissions approved but put on “patent hold”;

• November 6, 2003 – Sanofi-Aventis granted a further NOC (submission 082094);

• November 10, 2003 – The ′089 patent (non-HOPE) added to patent list respecting NOC 066094;

• June 25, 2004 – the ′948 patent (non-HOPE) added to patent list respecting NOC 066094;

• March 17, 2005 – The ′549 patent (HOPE) added to patent list respecting NOC 082026;

• June 28, 2005 – ′387 patent (HOPE) added to patent list respecting NOC 082094;

• September 14, 2005 – Novopharm serves a notice of allegation on Sanofi-Aventis respecting the two HOPE and two non-HOPE patents;

• October 31, 2005 – Sanofi-Aventis commences NOC proceedings in the Court respecting all four patents;

• November 3, 2006 – *AstraZeneca* decision released;

• December 8, 2006 – The Minister advises Novopharm (copying Sanofi-Aventis) that Novopharm was no longer required to address the HOPE patents but was required to address the non-HOPE patents;

• December 15, 2006 – Sanofi-Aventis initiates judicial review proceedings T-2188-06 respecting the Minister’s decision that Novopharm did not have to address the HOPE patents;

• December 15, 2006 – Novopharm commences judicial review proceedings respecting the Minister’s decision that it did have to address the non-HOPE patents.

[108] Not relevant to this determination is an ANDS filed by Novopharm for a 1.25 mg version of its generic drug, nor is another patent, 1341206 which has been dealt with in other proceedings at the trial level and is awaiting a decision of the Federal Court of Appeal.

[109] The rationale for the Minister’s decision was set out in the last two pages of his letter of December 8, 2006

as follows:

Novopharm purchased the comparator drug, ALTACE, on June 22, 2001.

NOCs were issued to sanofi-aventis on October 8, 1993, October 30, 1994, June 5, 1996, December 31, 1996 and February 13, 2001 for the comparator drug in respect of submission numbers 08257, 24206, 043465, 033131 and 066094, respectively. The ′948 patent was added to the Patent register in respect of all of these submissions. The ′089 patent was added in respect of all the submissions except for 08257. As a result, both the ′948 and ′089 patents must be addressed under subsections 5(1) and 5(2) of the *PM(NOC) Regulations*.

After the date of purchase of the comparator drug, an NOC was issued to sanofi-aventis on November 6, 2003 in respect of submission number 082094. Both the ′549 and ′387 patents were added to the Patent Register in respect of this submission. Both patents, along with the ′948 and ′089 patents, are currently the subject of an ongoing application for an order of prohibition in T-1979-06. Since Novopharm's ANDS has been on patent hold since October 14, 2003, it has not made use of the changes made to the comparator drug as a result of submission 082094. Therefore, Novopharm does not have to address the ′549 and ′387 patents.

Note, however, that at this time, the TPD [Therapeutic Products Directorate] is unable to issue an NOC to Novopharm for the products noted above, as, in our view, we are bound by the 24 month stay imposed by the *PM(NOC) Regulations* in respect of the prohibition proceeding in T-1979-06. You will, therefore, be required to dispose of that proceeding prior to the issuance of an NOC.

[110] This rationale is consistent with the direction given by the Supreme Court in *AstraZeneca* with respect to patents that have been listed in respect of an NOC that was in existence at the time when the comparator drug was acquired (here it could equally have been the date Novopharm filed its ANDS as either date was after NOC 066094 and before NOC 082094). The Minister performed a patent specific analysis, linking the relevant patents to the relevant NOC as directed in *AstraZeneca*.

[111] Novopharm argues that it is irrational to require that it address the two non-HOPE patents since, it argues, they could not have "early worked" these patents. Novopharm argues that it has never sought approval from the Minister for an NOC that would include the non-HOPE uses. Second, it argues, Sanofi-Aventis itself never received an NOC for non-HOPE uses. Third, Novopharm argues that it obtained its reference product before the non-HOPE patents had issued. Fourth and fifth, Novopharm argues that AstraZeneca requires a technology-related examination of each patent and it did not adopt the technology. Sixth, Novopharm argues that since these patents are related to use and not a medicine itself, bioequivalence is not a factor, only clinical studies indicating patents, thus there is no bioequivalence.

[112] As to all of Novopharm's arguments, the last sentence of *AstraZeneca*, at paragraph 39 is pertinent:

In my view, s. 5(1) of the *NOC Regulations* requires a patent-specific analysis, i.e. the generic manufacturer is only required to address the cluster of patents listed against submissions relevant to the NOC that gave rise to the comparator drug, in this case the 1989 version of *Losec 20.*

[113] With this statement in mind, subsections 4(4) and 4(5) of the NOC Regulations pre-October 5, 2006 (the new Regulations contain similar provisions as subsections 4(5) and 4(6)) must be considered:

4. (1) . . . .

(4) A first person may, after the date of filing of a submission for a notice of compliance and within 30 days after the issuance of a patent that was issued on the basis of an application that has a filing date that precedes the date of filing of the submission, submit a patent list, or an amendment to an existing patent list, that includes the information referred to in subsection (2).

(5) When a first person submits a patent list or an amendment to an existing patent list in accordance with subsection (4), the first person must identify the submission to which the patent list or the amendment relates, including the date on which the submission was filed.

[114] These provisions allow patents to be listed against a previous NOC provided that the application for the patent was filed before that NOC application was filed and the patent is submitted for listing within 30 days of its issuance. As we have seen, some patent applications can linger in the Patent Office for 10 years or so which means that there is plenty of potential for listing newly issued patents against old NOCs.

[115] Time and again it has been said that the NOC Regulations are not a masterpiece of logic or draughtmanship. They say what they say.

[116] AstraZeneca tells us that a generic must address patents "linked to" the NOC that is relevant to the comparator drug. The fact that later issued patents can be listed in respect of that NOC is an artifact of the way the NOC Regulations are drafted.

[117] Novopharm had to address these patents, and did, in a notice of allegation. Sanofi-Aventis has instituted proceedings in respect of those allegations. The matter will have to be determined in this Court in accordance with the NOC Regulations.

Sanofi-Aventis v. Apotex—T-2189-06 and T-2196-06

[118] These are proceedings involving Sanofi-Aventis and another generic, Apotex. A more complete listing of events is set out in Schedule C; however, the following events are most pertinent:

• October 8, 1993 – Sanofi-Aventis receives its initial NOC for "Altace";

• October 2002 – Apotex purchases samples of Altace for use as a comparator drug;

• July 22, 2003 – Apotex files an ANDS for its generic version of "Altace";

• November 6, 2003 – Sanofi-Aventis receives a further NOC pursuant to its submission 082094;

• March 17, 2005 – The 2382549 (HOPE) patent was added to the list respecting NOC 082094;

• June 28, 2005 – The 2382387 (HOPE) patent was added to the list respecting NOC 082094;

• November 29, 2005 – Apotex serves Sanofi-Aventis with a notice of allegation respecting the two HOPE patents;

• January 17, 2006 – Sanofi-Aventis commences NOC proceedings in this Court respecting the two HOPE patents;

• October 2006 – Sanofi-Aventis revises its product monograph;

• November 3, 2006 – The *AstraZeneca* decision is released;

• December 8, 2006 – Apotex revises its draft product monograph to incorporate some but not all changes made by Sanofi-Aventis in its revised monograph;

• December 12, 2006 – The Minister issues an NOC to Apotex;

• December 14, 2006 – Apotex revises its product monograph to remove certain material.

[119] As can be seen, as of the date that Apotex acquired the comparator drug, October 2002, and as of the date it filed its ANDS, July 22, 2003, none of the HOPE or non-HOPE patents were on any patent list respecting any NOC issued to Sanofi-Aventis. Subsequently, the two non-HOPE patents ′089 and ′948 were added to an earlier NOC dated February 13, 2001 as a result of the retroactive provisions of subsections 4(5) and 4(6) of the NOC Regulations. Those patents are no longer at issue since Sanofi-Aventis proceedings in respect of them were dismissed. The remaining two patents, the HOPE patents ′549 and ′387, were added to an NOC dated November 6, 2003 which was subsequent to the filing by Apotex of its ANDS.

[120] Having regard to the *AstraZeneca* decision, the Minister, in his December 8, 2006 letter to Apotex, does not need to address the two HOPE patents since they were not listed in respect of any NOC in existence at the time Apotex filed its ANDS.

[121] The Minister further said in his letter of December 8, 2006 that since Court proceedings were still extant, those proceedings had to be terminated before an NOC issued. As I have found, he was not correct in this regard. In any event, the Minister changed his mind, and issued an NOC to Apotex on December 12, 2006. As I have found, the Minister was not *functus* and could issue that NOC.

[122] Sanofi-Aventis raises an issue concerning Apotex' product monograph. It says that as of December 12, 2006, when the NOC was issued, the product monograph which was attached to the NOC contained material copied from Sanofi-Aventis' monograph which could suggest that Apotex was encouraging the use of its product for the HOPE indications. This issue, says Sanofi-Aventis, means that the Minister should have left the matter for the Court to decide.

[123] The Minister's letter of December 13, 2006, to Apotex shows that he considered the product monograph. In discussing the two HOPE patents at the third page of that letter, he said:

Those patents were added in respect of Sanofi-Aventis S/ANDS number 082096 for a change to the product monograph for ALTACE. A comparison of the Sanofi-Aventis product monograph with the Apotex product monograph shows that Apotex has not incorporated the change.

From the Minister's letter of December 13, 2006 to Sanofi-Aventis' lawyer, it is clear that before issuing the NOC to Apotex, written and oral submissions were made by Sanofi-Aventis' counsel to the Minister and he considered them.

[124] The affidavit of Mr. Hems, Director of Regulatory Affairs for Apotex, sworn February 12, 2007, sets out the history of a succession of draft product monographs filed by Apotex with the Minister and how, in many respects, wording from Sanofi- Aventis' product monographs as they existed from time to time, was copied. As explained by Mr. Hems, at paragraphs 8-17 of his affidavit, typically the mono-graphs of a generic are not significantly different from that of the reference brand.

[125] Mr. Hems explains that language specific to HOPE indications had been in draft Apotex monographs since Apotex' initial filing of its ANDS. This language was copied from an earlier Sanofi-Aventis monograph of 2001, that is, from a monograph that predates the issuances of the HOPE patents and their addition to a later NOC, by about three years.

[126] In October 2003 Apotex added the phrase:

. . . and for the management of patients at increased risk of cardiovascular events.

to a section of the monograph dealing with action and clinical pharmacology (Mr. Hems calls this the "A and CP" language). That monograph of October 2003 also contained what Mr. Hems calls "plasma language" which is not associated with HOPE. It says:

Following a single administration of up to 5 mg of Ramipril, plasma concentrations of ramipril and ramiprilat increase in a manner that is greater than proportional to dose; after a single administration of 5 mg to 20 mg of ramipril the plasma concentrations for both are dose-proportional. The non-linear pharmacokinetics observed at the lower doses of ramipril can be explained by the saturable binding of ramiprilat to ACE.

[127] The December 12, 2006 monograph was attached to Apotex' NOC materials, the old HOPE language of 2001 as well as the October 2003 A and CP language and the plasma language. While irrelevant, Apotex removed the HOPE and A and CP language from a revised monograph submitted to the Minister on December 14, 2006. This, however, was after the issuance to Apotex of the NOC about which Sanofi-Aventis now makes an issue. Mr. Hems was cross-examined and his evidence was not impaired.

[128] The issue before this Court is whether the Minister's decision to issue the NOC was reasonable having

regard to the state of Apotex' NOC as of December 12, 2006. There is no doubt that the Minister had the monograph before him and had received whatever submissions Sanofi-Aventis wanted to make. There is no evidence as to the oral submissions of Sanofi-Aventis' counsel to the Minister, but there is in evidence counsel's letter to the Minister of December 11, 2006 where, particularly at pages 2-4, the monograph is addressed at length.

[129] The considerations given by the Minister to the monograph is set out at paragraphs 66 and 67 of the affidavit of Ann Bowes, previously referred to, sworn February 9, 2007. She says:

Both the ′549 and ′387 patents were added in respect of Sanofi's S/NDS 082094. As described above in paragraphs 43-49, the S/NDS was filed in order to, first, add wording to the "Action and Clinical Pharmacology" section, and second, make an addition to the "Management of Patients at Increased Risk of Cardiovascular Event" indication of the product monograph for ALTACE. While the first change was approved, the second was not. Furthermore, an examination of Apotex's approvable product monograph on patent hold, showed that Apotex did not incorporate this change. Apotex's draft product monograph is attached as Exhibit "P".

In any event, none of the changes that were introduced to Sanofi's product monograph as a result of S/NDS 082094 reflected a change to the drug product, ALTACE, such that Apotex would have to address the ′549 and ′387 patents.

[130] Ms. Bowes was cross-examined on her affidavit and nothing in the transcript changes what was said above or impairs it in any way.

[131] Apotex submitted the affidavit of Dr. Gordon Moe, a cardiologist, who provided an affidavit testifying that the plasma language had no relationship to the HOPE study or HOPE patents. He was cross-examined and this testimony was not impaired.

[132] Dr. Bernard Sherman, President of Apotex, provided an affidavit testifying that all HOPE language was removed from the product monograph just after the NOC was issued to avoid any suggestion of impropriety. Sanofi-Aventis apparently chose not to cross-examine Dr. Sherman.

[133] Sanofi-Aventis filed the affidavit of Laurent-Didier Jacobs, its vice-president of Medical Affairs. He traced some of the history of Sanofi-Aventis' and Apotex' product monographs but drew no conclusions. He was not cross-examined.

[134] Considering the decision of the Minister and the record before him as well as the evidence of the parties, it is clear that the Minister's decision as to the Apotex product monograph was reasonable. The Minister has expertise in these matters and consideration of product monographs is part of what the Minister is required to do. It cannot be said, for purposes of judicial review, that the decision should be set aside.

[135] Therefore, the decision of the Minister to grant an NOC to Apotex will not be set aside.

Conclusion and Costs

[136] As a result, I find that the Minister's decision in each case, was correct; therefore, each application for judicial review will be dismissed. Further, Ferring's application against Novopharm, as part of T-165-07, will be dismissed on a second ground, raised only by Novopharm, that Ferring lacked status to seek judicial review.

[137] As to costs, I will make no order. Each party will bear its own costs. These are the first opportunities any party has had to deal with the effects of the Supreme Court decision in *AstraZeneca* and no party should be penalized in costs for having taken or defended these proceedings.

SCHEDULE A

	CHRONOLOGY OF EVENTS T-165-07, *Ferring Inc. v. Apotex Inc. et al.*
1950's	Desmopressin discovered.

Feb. 16, 1988	CA 1232839 issued to Ferring for "DDAVP" tablet formulation.
1989	Ferring first markets "DDAVP" in Canada as nasal spray.
March 18, 1993	First NOCs issued to Ferring for 0.1 and 0.2 mg "DDAVP" desmopressin tablets (old formulation).
April 13, 1993	Ferring's CA 1232839 added to Patent Register.
1995	Ferring first markets "DDAVP" desmopressin tablets in Canada.
Sept 14, 2000	NOC issued to Ferring for "DDAVP" "new indication".
April 20, 2004 (alleged in Novopharm letter dated Dec 22, 2004 to the Minister)	Novopharm purchases U.K comparator drug ("DDAVP" Desmopressin tablets).
April 30, 2004	Ferring files ′833 patent application in Canada.
July 19, 2004	Ferring files ′335 patent application in Canada.
Oct. 19, 2004	Apotex acquires "DDAVP" product for bioequivalence studies.
November 2004	Apotex bioequivalence studies are completed.
November 11, 2004	′833 patent application published.
December 14, 2004	Novopharm files its ANDS for 0.1 and 0.2 mg Novo-Desmopressin tablets with Form V and agrees to wait until the expiry of the CA 1232839.
January 25, 2005	′335 patent application published.
February 16, 2005	Ferring's CA 1232839 expired.
February 24, 2005	Ferring's SNDS for change in manufacturing process & change in manufacturing process.
August 2, 2005	′833 patent issues to Ferring.
August 5, 2005	Ferring files Form IV's with the Minster in which ′833 patent was listed re: the "DDAVP" SNDS
September 6, 2005	Apotex files submissions for ANDS for Apo-Desmopressin tablets.
November 21, 2005	NOC issues to Ferring for change in manufacturing process (new formulation) (097275).
December 7, 2005	′833 added to patent Register "new formulation".
January 31, 2006	′335 patent issues to Ferring.
February 6, 2006	Ferring files Forms IV's with the Minister in which the ′335 patent was listed re: "DDAVP" SNDS.
February 8 2006	Ferring's ′335 added to Patent Register "new formulation."
May/June 2006	Ferring starts selling "DDAVP" tablets pursuant (new formulation) to second NOC and stops selling tablets pursuant to the first NOC.
May 2006	Apotex commences judicial review of Minister's decision to address ′833, ′335 Patents.
June 27, 28, 2006 (Ferring receives NOA's on June 30, 2006)	Apotex serves Ferring with two notices of allegation addressing ′335 and ′833 patents, respectively.
July 31, 2006	Apotex product monograph and ANDS complete.
August 2, 2006	Apotex ANDS on "patent hold".
August 11, 2006	Ferring files two notices of application subsection 6(1) in response Apotex' NOAs.
September 8, 2006	NOC issues to Ferring for new "DDAVP Melt", CA 2484724 is listed on Patent Register.
October 5, 2006	NOC Regulations are amended.
October 27, 2006	Novopharm product monograph and ANDS complete.
October 31, 2006	Novopharm ANDS on "patent hold."
November 3, 2006	S.C.C. releases *AstraZeneca*, [2006] 2 S.C.R. 560.
November 2006	Ferring starts selling "DDAVP Melt".
December 5, 2006	Ferring discontinues notice of application re: ′335 patent (′833 ongoing).
January 22, 2007	Minister's official advises all parties that it reconsidered the status of the ANDS; Apotex and Novopharm do not have to address the ′833, ′335 patents; NOC issue to Apotex and Novopharm.
January 29, 2007	This judicial review is commenced.

SCHEDULE B

	CHRONOLOGY OF EVENTS T-2188-06 *Sanofi-Aventis v. Minister of Health and Novopharm* T-2220-06, *Novopharm Limited v. Minister of Health and Sanofi-Aventis*
August 11, 1989	*Sanofi-Aventis* ′089 priority application is filed.
August 10, 1990	*Sanofi-Aventis* filed the patent application for the ′089 patent (non-HOPE).
November 27, 1990	*Sanofi-Aventis* ′948 priority application is filed.
February 12, 1991	*Sanofi-Aventis* ′089 application is published.
November 26, 1991	*Sanofi-Aventis* filed the patent application for the ′948 patent. (non-HOPE).
May 28, 1992	*Sanofi-Aventis* ′948 application is published.
October 8, 1993	*Sanofi-Aventis* received its first notice of compliance for "Altace" 1.25 mg, 2.5 mg, 5 mg, and 10 mg capsules.
January, 1994	*Sanofi-Aventis* commences sales of "Altace".
September 30 1994	*Sanofi-Aventis* receives NOC for "Altace" capsules, 1.25 mg, 2.5, 5 mg 10 mg "Provides for a revised manufacturing process" (24206).
June 5, 1996	*Sanofi-Aventis* receives NOC for "Altace" capsules "Angiotensin converting enzyme inhibitor" (043465).
December 31, 1996	*Sanofi-Aventis* receives NOC for "Altace" 1.25, 2.5, 5, 10 mg "treatment following acute myocardial infarction" (033131).
August 22, 1999	*Sanofi-Aventis* ′387 priority application is filed.
August 30, 1999	*Sanofi-Aventis* ′549 priority application is filed.
April 2, 2000	*Sanofi-Aventis* filed an S/NDS, submission 066094, to approve a new indication for "Altace", namely the "management of patients at increased risk of cardiovascular events".
August 25, 2000	*Sanofi-Aventis* filed the patent (PCT) application for the ′387 patent. (HOPE indication).
August 30, 2000	*Sanofi-Aventis* filed the patent (PCT) application for the ′549 patent. (HOPE indication).
February 13, 2001	*Sanofi-Aventis* receives NOC for "Altace" SNDS, submission 066094. The "Indications and Clinical Use" section was updated to include the subsection "Management of Patients at Increased Risk of Cardiovascular Events".
March 8, 2001	′387, ′549 PCT applications are published.
May 8, 2001 **Sanofi-Aventis and Minister give purchase date as June 22, 2001	Novopharm purchases "Altace" (the "comparator drug") samples - it subsequently used for its bioequivalence studies.
December 24,2001 (date received by Minister December 27, 2001)	Novopharm files ANDS 075408 for Novo-ramipril 2.5 mg, 5 mg and 10 mg capsules. The ANDS included Form Vs, stating Novopharm would await expiry of the 3 patents then on the Register.
November 12, 2002	*Sanofi-Aventis* ′948 patent issues.
December 10, 2002	*Sanofi-Aventis* files its Form IVs to list the ′948 patent against the submissions 066094, 24206, 043465, 033131 and NDS 08257.
January 14, 2003	*Sanofi-Aventis* ′089 patent issues.
January 15, 2003	*Sanofi-Aventis* filed S/NDS 082094 for a further update to the "Altace" capsules Product Monograph. The S/NDS had two purposes (changes 1 and 2 or "Altace" 2003): (1) to update the "Action and Clinical Pharmacology" section to add new wording: "...and for the management of patients at increased risk of cardiovascular events" (2) to update the "Management of Patients at Increased Risk of Cardiovascular Event" indication in the product monograph, to further define the stroke patient population by specifying "fatal stroke". The proposed indication was as follows: "Altace" may be used to reduce the risk of myocardial infarction, stroke (including fatal stroke) or cardiovascular death in patients over 55 years.

February 14, 2003	*Sanofi-Aventis* files its Form IV's to list the ′089 patent against the submissions 066094, 24206, 043465, 033131
June 9, 2003	The Minister's officials, in respect of S/NDS for changes 1 and 2 (082094) (1) approved the proposed update to the "Action and Clinical Pharmacology" section of the product monograph to include the wording "and the management of patients at increased risk of cardiovascular events". (2) denied the proposed inclusion of "including fatal stroke" to the "Management of Patients at Increased Risk of Cardiovascular Events" indication, for two reasons: First, in the view of the Minister's experts, the HOPE study was not designed to evaluate the incidence of fatal stroke in patients at higher risk of cardiovascular events treated with ramipril. Second, the prevention of fatal stroke was considered to be a new indication, requiring new clinical data, and required an NDS.
October 14, 2003	Novopharm's ANDS 075408 for Novo-ramipril 2.5 mg, 5 mg and 10 mg capsules was found satisfactory and was placed on "patent hold."
November 6, 2003	Sanofi-Aventis was issued a NOC in respect of S/NDS 082094 to update the product monograph (for changes 1 and 2 but not "fatal stroke").
November 10, 2003	Sanofi-Aventis ′089 patent was added to the Register re: submission for 1994-2001 submissions 066094, 24206, 043465, 033131, which received NOCs.
June 25, 2004	Sanofi-Aventis ′948 patent was added to the Patent Register re: submissions for 1993-2001 for NOC submissions 066094, 24206, 043465, 033131 and NDS 08257.
March 15, 2005	Sanofi-Aventis ′549 patent issues, entitled "Use of inhibitors of the renin-angiotensin system in the prevention of cardiovascular events."
March 17, 2005	Sanofi-Aventis ′549 patent was added to the Register in respect of the S/NDS 082094 and the issued NOC updating the product monograph.
June 21, 2005	Sanofi-Aventis ′387 patent issues, entitled "Pharmaceutical formulations and use thereof in the prevention of stroke, diabetes and/or congestive heart failure."
June 28, 2005	Sanofi-Aventis ′387 patent was added to the Register in respect of the S/NDS 082094 and its NOC updating the product monograph.
August 26, 2005 (Minister's date August 30, 2005)	Novopharm filed S/ANDS for Novo-ramipril 1.25 mg capsules. The S/ANDS included a new Form V in respect of the ′206 patent and new Form Vs in respect of the ′089, ′948, ′549 and ′387 patents.
September 12, 2005	Novopharm served a notice of allegation [NOA] in respect of the ′206 patent
September 14, 2005 (Minister's date September 12, 2005)	Novopharm served an NOA in respect of the ′089, ′948, ′549 and ′387 patents (non-HOPE and HOPE patents). Novopharm attaches draft product monograph for Novo-ramipril dated August 26, 2005 which includes "Altace" change No. 2.
September 20, 2005	′206 patent is invalid for lack of sound prediction *Aventis Pharma Inc. v. Apotex Inc. et. al.* (2005), 43 C.P.R. (4th) 161 (F.C.); affd (2006), 265 D.L.R. (4th) 308 (F.C.A.) (February 13, 2006).
October 31, 2005	*Sanofi-Aventis* filed an application in the Federal Court in T-1965-05, under section 6 of the NOC Regulations, for an order prohibiting the Minister from issuing an NOC until expiry of the ′206 patent.
November 2, 2005	*Sanofi-Aventis* filed an application to the Federal Court in T-1979-05, under section 6 of the *NOC Regulations*, for an order prohibiting the Minister from issuing a NOC until expiry of the ′089, ′948, ′549 and ′387 patents – the use patents
May 29, 2006	*Sanofi-Aventis* receives an NOC for transfer of ownership.
August 3, 2006 (August 2, 2006 date by Minister)	Novopharm's S/ANDS 100859 for Novo-ramipril 1.25 mg capsules was found satisfactory and was placed on "patent hold."
September 25, 2006	*Sanofi-Aventis's* application in Court file No. T-1965-05 in respect of the ′206 patent was dismissed. (A notice of appeal was filed on September 29, 2006; the application in T-1979-05 remains pending.)
October 5, 2006	PM (NOC) Regulations are amended.
November 3, 2006	The Supreme Court of Canada released the *AstraZeneca* decision, [2006] S.C.R. 560.
November 6, 2006	Novopharm's counsel wrote to the Minister's officials, stating that in light of the

	AstraZeneca decision Novopharm was not required to address the ′089, ′948, ′549 and ′387 patents, and requesting the issuance of an NOC for Novo-ramipril. Further correspondence followed.
December 8, 2006	Novopharm and Sanofi-Aventis were informed that the Minister had reconsidered the patent hold status of Novopharm's ANDS for its 2.5 mg, 5 mg, and 10 mg capsules of Novo-ramipril: Novopharm would be required to address the ′089 and ′948 patents under subsections 5(1) and 5(2) of the *NOC Regulations*, but not the ′549 or ′387 patent.
December 12, 2006	Sanofi-Aventis initiated the application in T-2188-06 for judicial review of the Minister's decision of December 8, 2006, in respect of the ′549 and ′387 patents.
December 15, 2006	Novopharm initiated the application in T-2220-06 for judicial review of the Minister's decision of December 8, 2006, in respect of the ′089 and ′948 patents.
December 15, 2006	Novopharm withdrew its notice of allegation in respect of the ′549 and ′387 patents.

SCHEDULE C

	CHRONOLOGY OF EVENTS T-2189-06, T-2196-06, *Sanofi-Aventis v. Minister of Health and Apotex*
August 10, 1990	Sanofi-Aventis filed the patent application for the ′089 patent (non-HOPE).
November 26, 1991	Sanofi-Aventis filed the patent application for the ′948 patent. (non-HOPE).
October 8, 1993	Sanofi-Aventis received its first notice of compliance for "Altace" 1.25 mg, 2.5 mg, 5 mg, and 10 mg capsules.
October 8, 1993 (Oct 29, 2003 date of revision)	Sanofi-Aventis Product Monograph "Altace" ® (ramipril) capsules 1.25 mg, 2.5 mg, 5 and 10 mg "Pharmacologic Classification, Angiotensin Converting Enzyme Inhibitor, Action and Clinical Pharmacology"
October 24, 2003 – date of revision	Sanofi-Aventis Product Monograph "Altace" (ramipril capsules), 1.25, 2.5, 5, 10mg
January, 1994	Sanofi-Aventis commences sales of "Altace" .
August 22, 1999	Sanofi-Aventis ′387 priority application is filed (HOPE indication).
August 30, 1999	Sanofi-Aventis ′549 priority application is filed (HOPE indication).
April 2, 2000	Sanofi-Aventis filed an S/NDS, submission 066094, to approve a new indication for "Altace" namely the "management of patients at increased risk of cardiovascular events".
August 25, 2000	Sanofi-Aventis filed the patent (PCT) application for the ′387 patent. (HOPE indication).
August 30, 2000	Sanofi-Aventis filed the patent (PCT) application for the ′549 patent. (HOPE indication).
February 5, 2001 – date of revision (Oct 8, 1993, Dec 23, 1996)	Sanofi-Aventis product monograph "Altace" (ramipril) capsules 1.25 mg, 2.5, 5 mg, 10 mg "Pharmacologic Classification, Angiotensin Converting Enzyme Inhibitor, Action and Clinical Pharmacology"
February 13, 2001	Sanofi-Aventis received an notice of compliance for the S/NDS 066094, with the "Indications and Clinical Use" section updated to include the subsection "Management of Patients at Increased Risk of Cardiovascular Events".
March 8, 2001	′387, ′549 PCT applications are published.
October 2002	Apotex purchases "Altace" samples.
November 12, 2002	Sanofi-Aventis was granted the ′948 patent.
January 14, 2003	Sanofi-Aventis was granted the ′089 patent.
January 15, 2003	Sanofi-Aventis filed S/NDS 082094 for a further update to the "Altace" capsules product monograph. The S/NDS had two purposes (changes 1 and 2 or "Altace" 2003) (1) to update the "Action and Clinical Pharmacology" section to add new wording: "and for the management of patients at increased risk of cardiovascular events"; (2) to update the "Management of Patients at Increased Risk of Cardiovascular Event" indication in the product monograph, to further define the stroke patient population by specifying "fatal stroke." The proposed indication was as follows: "Altace" may be used to reduce the risk of myocardial infarction, stroke (including fatal stroke) or cardiovascular death in patients over 55 years."
June 9, 2003	The Minister's officials, in respect of S/NDS for changes 1 and 2 (082094)

	(1) approved the proposed update to the "Action and Clinical Pharmacology" section of the product monograph to include the wording "and the management of patients at increased risk of cardiovascular events"; (2) denied the proposed inclusion of "including fatal stroke" to the "Management of Patients at Increased Risk of Cardiovascular Events" indication, for two reasons: First, in the view of the Minister's experts, the HOPE study was not designed to evaluate the incidence of fatal stroke in patients at higher risk of cardiovascular events treated with ramipril. Second, the prevention of fatal stroke was considered to be a new indication, requiring new clinical data.
July 31,2003	Apotex files ANDS for Apo-ramipril based on comparative bioequivalence studies with "Altace"; July 25, 2003 draft Apo-ramipril Product Monograph includes HOPE indication.
November 6, 2003	Sanofi-Aventis was issued a NOC in respect of S/NDS 082094 (changes 1 and 2) ("2003 'Altace'") to update the product monograph. The associated product monograph differs from the "Altace" 2001 in two ways: "management of patients at increased risk of cardiovascular events; and inclusion of "plasma language."
November 10, 2003	Sanofi-Aventis' ′089 patent was added to the Register in respect of S/NDS 066094 and its NOC.
April 6, 2004	Apotex'product monograph updated to correspond to PM dated October 29, 2003, of "Altace" 2003.
April 20, 2004	Apotex' ANDS put on "patent hold"; draft Apo-ramipril product monograph includes HOPE indication and Change No. 2.
April 21, 2004	Apotex prepares Product monograph for APO-RAMIPRIL capsules 1.25 mg, 2.5 mg, 5 mg, and 10 mg "Therapeutic Classification: Angiotensin Converting Enzyme Inhibitor – Actions and Clinical Pharmacology."
June 25, 2004	Sanofi-Aventis' ′948 patent was added to the Patent Register in respect of S/NDS 066094 and its NOC.
March 15, 2005	Sanofi-Aventis ′549 patent issues, entitled "Use of inhibitors of the renin-angiotensin system in the prevention of cardiovascular events."
March 17, 2005	Sanofi-Aventis ′549 patent was added to the Register in respect of the S/NDS 082094 and its NOC (re: "Altace" 2003).
June 21, 2005	Sanofi-Aventis' ′387 patent issues, entitled "Pharmaceutical formulations and use thereof in the prevention of stroke, diabetes and/or congestive heart failure".
June 28, 2005	Sanofi-Aventis' ′387 patent was added to the Register in respect of the S/NDS 082094 and its NOC. (re: "Altace" 2003)
November 2, 2005	Sanofi-Aventis filed an application to the Federal Court in T-1979-05, under section 6 of the NOC Regulations, for an order prohibiting the Minister from issuing an NOC until expiry of the ′089, ′948, ′549 and ′387 patents – the use patents.
November 29, 2005	Apotex' notice of allegation re: HOPE Patents.
January 17, 2006	Sanofi-Aventis commences proceedings under Regulations (T-87-06) re: Nov 29, 2005 NOA.
October 2006	Sanofi-Aventis updates its "Altace" product monograph.
October 5, 2006	NOC Regulations are amended.
November 3, 2006	The Supreme Court of Canada released the *AstraZeneca* decision, [2006] 2 S.C.R. 560.
November 30 2006	Apotex commences series of requests for issuance of NOC in light of *AstraZeneca*.
December 8, 2006	Apotex product monograph updated to correspond to "Altace" product monograph. October 2006 product monograph.
December 8, 2006	Minister advises Apotex that it need not address patents but must dispose of T-87-06 before an NOC can issue.
December 8, 2006	Apotex submits further updated Apo-ramipril PM dated Dec 6, 2006; includes HOPE indication, reference to the "Altace" Oct 2006 PM and changes No. 1 and No. 2.
December 10-12, 2006	Sanofi-Aventis and Apotex request reconsideration of Dec 8, 2006 decision supported by written representations.
December 12, 2006	Minister advises Apotex that NOC can be issued following withdrawal of NOA.

	Minister issues NOC for Apo-ramilpril and sends it to Apotex, enclosing a PM. Apotex' PM dated Dec 12, 2006 includes HOPE indication, changes No. 1 and No. 2, and reference to comparative bioavailability studies. Sanofi-Aventis commences judicial review of Dec 8, 2006 decision (T-2189-06).
December 12, 2006	NOC issues to Apotex for Apo-ramipril.
December 13, 2006	Minister advises Sanofi-Aventis that an NOC has issued to Apotex Sanofi-Aventis commences T-2196-06.
December 14, 2006	Apotex removes all HOPE study language from the Apo-ramipril product monograph.

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Part II

OTTAWA, WEDNESDAY, NOVEMBER 6, 2013

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Partie II

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Registration
SOR/2013-186 October 24, 2013

CANADIAN ENVIRONMENTAL ASSESSMENT ACT, 2012

Regulations Amending the Regulations Designating Physical Activities

The Minister of the Environment, pursuant to paragraphs 84(*a*) and (*e*) of the *Canadian Environmental Assessment Act, 2012*[a], makes the annexed *Regulations Amending the Regulations Designating Physical Activities*.

Ottawa, October 24, 2013

LEONA AGLUKKAQ
Minister of the Environment

REGULATIONS AMENDING THE REGULATIONS DESIGNATING PHYSICAL ACTIVITIES

AMENDMENTS

1. (1) The definitions "abandonment", "airport", "Class IA nuclear facility", "Class IB nuclear facility", "decommissioning", "paper product", "pulp", "pulp and paper mill", "right of way", "waste management system" and "wetland" in section 1 of the *Regulations Designating Physical Activities*[1] are repealed.

(2) The definitions "marine terminal" and "water body" in section 1 of the Regulations are replaced by the following:

"marine terminal" means

(*a*) an area normally used for berthing ships and includes wharves, bulkheads, quays, piers, docks, submerged lands, and areas, structures and equipment that are

(i) connected with the movement of goods between ships and shore and their associated storage areas, including areas, structures and equipment used for the receiving, handling, holding, consolidating, loading or unloading of waterborne shipments, or

(ii) used for the receiving, holding, regrouping, embarkation or landing of waterborne passengers; and

(*b*) any area adjacent to the areas, structures and equipment referred to in paragraph (*a*) that is used for their maintenance.

"marine terminal" « *terminal maritime* »

"water body" means any water body, including a canal, a reservoir, an ocean and a wetland as that term is defined in *The Federal Policy on Wetland Conservation* published in 1991 by the Department of the Environment, up to the high-water mark, but

"water body" « *plan d'eau* »

[a] S.C. 2012, c. 19, s. 52
[1] SOR/2012-147

Enregistrement
DORS/2013-186 Le 24 octobre 2013

LOI CANADIENNE SUR L'ÉVALUATION ENVIRONNEMENTALE (2012)

Règlement modifiant le Règlement désignant les activités concrètes

En vertu des alinéas 84*a*) et *e*) de la *Loi canadienne sur l'évaluation environnementale (2012)*[a], la ministre de l'Environnement prend le *Règlement modifiant le Règlement désignant les activités concrètes*, ci-après.

Ottawa, le 24 octobre 2013

La ministre de l'Environnement
LEONA AGLUKKAQ

RÈGLEMENT MODIFIANT LE RÈGLEMENT DÉSIGNANT LES ACTIVITÉS CONCRÈTES

MODIFICATIONS

1. (1) Les définitions de « aéroport », « désaffectation », « emprise », « fabrique de pâtes et papiers », « fermeture », « installation nucléaire de catégorie IA », « installation nucléaire de catégorie IB », « pâte », « produit de papier », « système de gestion des déchets » et « terres humides », à l'article 1 du *Règlement désignant les activités concrètes*[1], sont abrogées.

(2) Les définitions de « plan d'eau » et « terminal maritime », à l'article 1 du même règlement, sont respectivement remplacées par ce qui suit :

« plan d'eau » Tout plan d'eau jusqu'à la laisse des hautes eaux. La présente définition vise notamment les canaux, les réservoirs et les océans, ainsi que les terres humides au sens de *La Politique fédérale sur la conservation des terres humides* publiée en 1991 par le ministère de l'Environnement, mais exclut les étangs de traitement des eaux usées ou des déchets et les étangs de résidus miniers.

« plan d'eau » "water body"

« terminal maritime »

a) Les lieux qui servent habituellement à l'accostage des navires, notamment les quais, les structures en rideaux de palplanches, les jetées, les docks et les terres submergées, ainsi que les aires, l'équipement et les structures :

(i) liés au mouvement des marchandises entre les navires et la terre ferme ainsi que les aires d'entreposage connexes, y compris les aires, l'équipement et les structures affectés à la réception, à la manutention, à la mise en attente, au regroupement et au chargement ou au déchargement de marchandises transportées par eau,

« terminal maritime » "marine terminal"

[a] L.C. 2012, ch. 19, art. 52
[1] DORS/2012-147

does not include a sewage or waste treatment lagoon or a mine tailings pond.

(3) Section 1 of the Regulations is amended by adding the following in alphabetical order:

"area of mine operations" « *aire d'exploitation minière* »

"area of mine operations" means the area at ground level occupied by any open pit or underground workings, mill complex or storage area for overburden, waste rock, tailings or ore.

"canal" « *canal* »

"canal" means an artificial waterway constructed for navigation.

"drilling program" « *programme de forage* »

"drilling program" has the same meaning as in subsection 1(1) of the *Canada Oil and Gas Drilling and Production Regulations*, SOR/2009-315.

"exploratory well" « *puits d'exploration* »

"exploratory well" has the same meaning as in subsection 101(1) of the *Canada Petroleum Resources Act*, but does not include a delineation well or development well as those terms are defined in that subsection.

"flowline" « *conduite d'écoulement* »

"flowline" has the same meaning as in subsection 2(1) of the *Canada Oil and Gas Installations Regulations*.

2. Section 4 of the Regulations is replaced by the following:

Activities – Agency

4. (1) The activities set out in items 1 to 30 of the schedule are linked to the Agency when they are not regulated under, or incidental to a physical activity that is regulated under, the *Nuclear Safety and Control Act*, the *National Energy Board Act* or the *Canada Oil and Gas Operations Act*.

Activities – Canadian Nuclear Safety Commission

(2) The activities set out in items 31 to 38 of the schedule are linked to the Canadian Nuclear Safety Commission when they are regulated under the *Nuclear Safety and Control Act*.

Activities – National Energy Board

(3) The activities set out in items 39 to 48 of the schedule are linked to the National Energy Board when they are regulated under the *National Energy Board Act* or the *Canada Oil and Gas Operations Act*.

3. The schedule to the Regulations is replaced by the schedule set out in the schedule to these Regulations.

TRANSITIONAL PROVISIONS

4. (1) The following definitions apply in this section.

"former Regulations" « *règlement antérieur* »

"former Regulations" means the *Regulations Designating Physical Activities* as they read immediately before the day on which these Regulations come into force.

(ii) affectés à la réception, à la mise en attente, au regroupement et à l'embarquement ou au débarquement de passagers transportés par eau;

b) les aires adjacentes aux lieux, aux aires, à l'équipement et aux structures visés à l'alinéa *a*) qui sont affectées à leur entretien.

(3) L'article 1 du même règlement est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« aire d'exploitation minière » "area of mine operations"

« aire d'exploitation minière » La surface occupée, au niveau du sol, par toute installation d'exploitation à ciel ouvert ou souterraine, tout complexe usinier ou toute aire d'entreposage des terrains de couverture, des stériles, des résidus miniers ou de minerai.

« canal » "canal"

« canal » Voie navigable artificielle construite pour la navigation.

« conduite d'écoulement » "flowline"

« conduite d'écoulement » S'entend au sens du paragraphe 2(1) du *Règlement sur les installations pétrolières et gazières au Canada*.

« programme de forage » "drilling program"

« programme de forage » S'entend au sens du paragraphe 1(1) du *Règlement sur le forage et la production de pétrole et de gaz au Canada*.

« puits d'exploration » "exploratory well"

« puits d'exploration » S'entend au sens du paragraphe 101(1) de la *Loi fédérale sur les hydrocarbures*. La présente définition exclut les puits de délimitation et les puits d'exploitation au sens de ce paragraphe.

2. L'article 4 du même règlement est remplacé par ce qui suit :

Activités liées à l'Agence

4. (1) Les activités prévues aux articles 1 à 30 de l'annexe sont liées à l'Agence lorsqu'elles ne sont pas régies par la *Loi sur la sûreté et la réglementation nucléaires*, la *Loi sur l'Office national de l'énergie* ou la *Loi sur les opérations pétrolières au Canada* ou accessoires à une activité concrète qui est régie par l'une ou l'autre de ces lois.

Activités liées à la Commission canadienne de sûreté nucléaire

(2) Les activités prévues aux articles 31 à 38 de l'annexe sont liées à la Commission canadienne de sûreté nucléaire lorsqu'elles sont régies par la *Loi sur la sûreté et la réglementation nucléaires*.

Activités liées à l'Office national de l'énergie

(3) Les activités prévues aux articles 39 à 48 de l'annexe sont liées à l'Office national de l'énergie lorsqu'elles sont régies par la *Loi sur l'Office national de l'énergie* ou la *Loi sur les opérations pétrolières au Canada*.

3. L'annexe du même règlement est remplacée par l'annexe figurant à l'annexe du présent règlement.

DISPOSITIONS TRANSITOIRES

4. (1) Les définitions qui suivent s'appliquent au présent article.

« ancienne loi » "former Act"

« ancienne loi » La *Loi canadienne sur l'évaluation environnementale*, chapitre 37 des Lois du Canada (1992).

« Loi » "Act"

« Loi » La *Loi canadienne sur l'évaluation environnementale (2012)*.

"former Act" « *ancienne loi* »

"former Act" means the *Canadian Environmental Assessment Act*, chapter 37 of the Statutes of Canada, 1992.

"Act" « *Loi* »

"Act" means the *Canadian Environmental Assessment Act, 2012*.

(2) The *Regulations Designating Physical Activities*, as amended by these Regulations, do not apply to a physical activity that was not designated under the former Regulations if, on the day on which these Regulations come into force, any of the following conditions apply:

(*a*) the carrying out of the physical activity, including any physical activity that is incidental to that physical activity, has begun and, as a result, the environment has been altered;

(*b*) a federal authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament, other than the Act, that could permit the physical activity to be carried out, in whole or in part;

(*c*) a jurisdiction described in any of paragraphs (*c*) to (*f*) of the definition "jurisdiction" in subsection 2(1) of the Act or the responsible authority set out in paragraph 15(*a*) or (*b*) of the Act has commenced or completed an assessment of the environmental effects of the physical activity; and

(*d*) the physical activity was a project, or was included in a project, for which the screening, commenced under the former Act before the day on which the Act came into force, was not subject to the requirement in subsection 124(1) of the Act to be continued and completed.

COMING INTO FORCE

5. These Regulations come into force on the day on which they are registered.

SCHEDULE
(Section 3)

SCHEDULE
(Sections 2 to 4)

PHYSICAL ACTIVITIES

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY

1. The construction, operation, decommissioning and abandonment, in a wildlife area or migratory bird sanctuary, of a new

(*a*) electrical generating facility or electrical transmission line;

(*b*) structure for the diversion of water, including a dam, dyke or reservoir;

(*c*) oil or gas facility or oil and gas pipeline;

(*d*) mine or mill;

(*e*) industrial facility;

(*f*) canal or lock;

(*g*) marine terminal;

« règlement antérieur » "*former Regulations*"

« règlement antérieur » S'entend du *Règlement désignant les activités concrètes*, dans sa version antérieure à l'entrée en vigueur du présent règlement.

(2) Le *Règlement désignant les activités concrètes*, dans sa version modifiée par le présent règlement, ne s'applique pas à l'activité concrète qui n'était pas désignée en vertu du règlement antérieur si, à la date d'entrée en vigueur du présent règlement, l'une ou plusieurs des conditions ci-après sont remplies :

(*a*) l'exercice de l'activité concrète, y compris de toute activité concrète qui lui est accessoire, a commencé et, de ce fait, l'environnement est modifié;

(*b*) une autorité fédérale a exercé des attributions qui lui sont conférées sous le régime d'une loi fédérale autre que la Loi et qui pourraient permettre l'exercice, en tout ou en partie, de l'activité concrète;

(*c*) une instance visée à l'un des alinéas *c*) à *f*) de la définition de « instance », au paragraphe 2(1) de la Loi, ou l'autorité responsable mentionnée aux alinéas 15*a*) ou *b*) de la Loi a commencé ou achevé une évaluation des effets environnementaux de l'activité concrète;

(*d*) l'activité concrète était un projet, ou était comprise dans un projet, dont l'examen préalable, commencé sous le régime de l'ancienne loi avant la date d'entrée en vigueur de la Loi, n'a pas été assujetti à l'exigence du paragraphe 124(1) de la Loi qu'il soit mené à terme.

ENTRÉE EN VIGUEUR

5. Le présent règlement entre en vigueur à la date de son enregistrement.

ANNEXE
(article 3)

ANNEXE
(articles 2 à 4)

ACTIVITÉS CONCRÈTES

AGENCE CANADIENNE D'ÉVALUATION ENVIRONNEMENTALE

1. La construction, l'exploitation, la désaffectation et la fermeture, dans une réserve d'espèces sauvages ou un refuge d'oiseaux migrateurs :

a) d'une nouvelle installation de production d'électricité ou d'une nouvelle ligne de transport d'électricité;

b) d'une nouvelle structure de dérivation des eaux, y compris d'un nouveau barrage, d'une nouvelle digue ou d'un nouveau réservoir;

c) d'une nouvelle installation pétrolière ou gazière ou d'un nouveau pipeline d'hydrocarbures;

(*h*) railway line or public highway;

(*i*) aerodrome or runway; or

(*j*) waste management facility.

2. The construction, operation, decommissioning and abandonment of

(*a*) a new fossil fuel-fired electrical generating facility with a production capacity of 200 MW or more;

(*b*) a new in-stream tidal power generating facility with a production capacity of 50 MW or more or a new tidal power generating facility, other than an in-stream tidal power generating facility, with a production capacity of 5 MW or more; or

(*c*) a new hydroelectric generating facility with a production capacity of 200 MW or more.

3. The expansion of

(*a*) an existing fossil fuel-fired electrical generating facility that would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more;

(*b*) an existing in-stream tidal power generating facility that would result in an increase in production capacity of 50% or more and a total production capacity of 50 MW or more or an existing tidal power generating facility, other than an in-stream tidal power generating facility, that would result in an increase in production capacity of 50% or more and a total production capacity of 5 MW or more; or

(*c*) an existing hydroelectric generating facility that would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more.

4. The construction, operation, decommissioning and abandonment of a new dam or dyke that would result in the creation of a reservoir with a surface area that would exceed the annual mean surface area of a natural water body by 1 500 ha or more.

5. The expansion of an existing dam or dyke that would result in an increase in the surface area of the existing reservoir of 50% or more and an increase of 1 500 ha or more in the annual mean surface area of the existing reservoir.

6. The construction, operation, decommissioning and abandonment of a new structure for the diversion of 10 000 000 m^3/year or more of water from a natural water body into another natural water body.

7. The expansion of an existing structure for the diversion of water from a natural water body into another natural water body that would result in an increase in diversion capacity of 50% or more and a total diversion capacity of 10 000 000 m^3/year or more.

8. The construction, operation, decommissioning and abandonment of a new oil sands mine with a bitumen production capacity of 10 000 m^3/day or more.

9. The expansion of an existing oil sands mine that would result in an increase in the area of mine operations of 50% or more and a total bitumen production capacity of 10 000 m^3/day or more.

d) d'une nouvelle mine ou usine;

e) d'une nouvelle installation industrielle;

f) d'un nouveau canal ou d'une nouvelle écluse;

g) d'un nouveau terminal maritime;

h) d'une nouvelle ligne de chemin de fer ou d'une nouvelle voie publique;

i) d'un nouvel aérodrome ou d'une nouvelle piste;

j) d'une nouvelle installation de gestion des déchets.

2. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'une nouvelle installation de production d'électricité alimentée par un combustible fossile d'une capacité de production de 200 MW ou plus;

b) d'une nouvelle installation de production d'énergie hydrolienne d'une capacité de production de 50 MW ou plus, ou de toute autre nouvelle installation de production d'énergie marémotrice d'une capacité de production de 5 MW ou plus;

c) d'une nouvelle installation hydroélectrique d'une capacité de production de 200 MW ou plus.

3. L'agrandissement :

a) d'une installation existante de production d'électricité alimentée par un combustible fossile qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 200 MW ou plus;

b) d'une installation existante de production d'énergie hydrolienne qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 50 MW ou plus, ou de toute autre installation existante de production d'énergie marémotrice qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 5 MW ou plus;

c) d'une installation hydroélectrique existante qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 200 MW ou plus.

4. La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau barrage ou d'une nouvelle digue qui entraîneraient la création d'un réservoir dont la superficie dépasserait de 1 500 ha ou plus la superficie moyenne annuelle du plan d'eau naturel.

5. L'agrandissement d'un barrage existant ou d'une digue existante qui entraînerait une augmentation de 50 % ou plus de la superficie du réservoir existant et de 1 500 ha ou plus de la superficie moyenne annuelle de ce réservoir.

6. La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle structure destinée à dériver 10 000 000 m^3/an ou plus d'eau d'un plan d'eau naturel dans un autre.

7. L'agrandissement d'une structure existante destinée à dériver l'eau d'un plan d'eau naturel dans un autre, qui entraînerait une augmentation de la capacité de dérivation de 50 % ou plus et une capacité de dérivation totale de 10 000 000 m^3/an ou plus.

8. La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle mine de sables bitumineux d'une capacité de production de bitume de 10 000 m^3/jour ou plus.

9. L'agrandissement d'une mine de sables bitumineux existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de bitume de 10 000 m^3/jour ou plus.

10. The drilling, testing and abandonment of offshore exploratory wells in the first drilling program in an area set out in one or more exploration licences issued in accordance with the *Canada-Newfoundland Atlantic Accord Implementation Act* or the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

11. The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.

12. The decommissioning and abandonment of an existing offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas that is proposed to be disposed of or abandoned offshore or converted on site to another role.

13. The construction, operation, decommissioning and abandonment of a new offshore oil and gas pipeline, other than a flowline.

14. The construction, operation, decommissioning and abandonment of a new

(*a*) oil refinery, including a heavy oil upgrader, with an input capacity of 10 000 m^3/day or more;

(*b*) facility for the production of liquid petroleum products from coal with a production capacity of 2 000 m^3/day or more;

(*c*) sour gas processing facility with a sulphur inlet capacity of 2 000 t/day or more;

(*d*) facility for the liquefaction, storage or regasification of liquefied natural gas, with a liquefied natural gas processing capacity of 3 000 t/day or more or a liquefied natural gas storage capacity of 55 000 t or more;

(*e*) petroleum storage facility with a storage capacity of 500 000 m^3 or more; or

(*f*) liquefied petroleum gas storage facility with a storage capacity of 100 000 m^3 or more.

15. The expansion of an existing

(*a*) oil refinery, including a heavy oil upgrader, that would result in an increase in input capacity of 50% or more and a total input capacity of 10 000 m^3/day or more;

(*b*) facility for the production of liquid petroleum products from coal that would result in an increase in production capacity of 50% or more and a total production capacity of 2 000 m^3/day or more;

(*c*) sour gas processing facility that would result in an increase in sulphur inlet capacity of 50% or more and a total sulphur inlet capacity of 2 000 t/day or more;

(*d*) facility for the liquefaction, storage or regasification of liquefied natural gas that would result in an increase in the liquefied natural gas processing or storage capacity of 50% or more and a total liquefied natural gas processing capacity of 3 000 t/day or more or a total liquefied natural gas storage capacity of 55 000 t or more, as the case may be;

(*e*) petroleum storage facility that would result in an increase in storage capacity of 50% or more and a total storage capacity of 500 000 m^3 or more; or

(*f*) liquefied petroleum gas storage facility that would result in an increase in storage capacity of 50% or more and a total storage capacity of 100 000 m^3 or more.

10. Le forage, la mise à l'essai et la fermeture de puits d'exploration au large des côtes faisant partie du premier programme de forage dans une zone visée par un ou plusieurs permis de prospection délivrés conformément à la *Loi de mise en œuvre de l'Accord atlantique Canada — Terre-Neuve* ou à la *Loi de mise en œuvre de l'Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers*.

11. La construction, la mise sur pied et l'exploitation d'une nouvelle plate-forme flottante ou fixe, d'un nouveau navire ou d'une nouvelle île artificielle au large des côtes utilisés pour la production de pétrole ou de gaz.

12. La désaffectation et la fermeture d'une plate-forme flottante ou fixe existante, d'un navire existant ou d'une île artificielle existante au large des côtes utilisés pour la production de pétrole ou de gaz, dans le cas où il est proposé d'en disposer ou de les fermer au large des côtes, ou d'en modifier la vocation sur place.

13. La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau pipeline d'hydrocarbures au large des côtes, autre qu'une conduite d'écoulement.

14. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'une nouvelle raffinerie de pétrole, y compris une usine de valorisation d'huile lourde, d'une capacité d'admission de 10 000 m^3/jour ou plus;

b) d'une nouvelle installation de production de produits pétroliers liquides, à partir du charbon, d'une capacité de production de 2 000 m^3/jour ou plus;

c) d'une nouvelle installation de traitement de gaz sulfureux d'une capacité d'admission de soufre de 2 000 t/jour ou plus;

d) d'une nouvelle installation de liquéfaction, de stockage ou de regazéification de gaz naturel liquéfié d'une capacité de traitement de gaz naturel liquéfié de 3 000 t/jour ou plus ou d'une capacité de stockage de gaz naturel liquéfié de 55 000 t ou plus;

e) d'une nouvelle installation de stockage de pétrole d'une capacité de stockage de 500 000 m^3 ou plus;

f) d'une nouvelle installation de stockage de gaz de pétrole liquéfié d'une capacité de stockage de 100 000 m^3 ou plus.

15. L'agrandissement :

a) d'une raffinerie de pétrole existante, y compris une usine de valorisation d'huile lourde, qui entraînerait une augmentation de la capacité d'admission de 50 % ou plus et une capacité d'admission totale de 10 000 m^3/jour ou plus;

b) d'une installation existante de production de produits pétroliers liquides, à partir du charbon, qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 2 000 m^3/jour ou plus;

c) d'une installation existante de traitement de gaz sulfureux qui entraînerait une augmentation de la capacité d'admission de soufre de 50 % ou plus et une capacité d'admission totale de soufre de 2 000 t/jour ou plus;

d) d'une installation existante de liquéfaction, de stockage ou de regazéification de gaz naturel liquéfié, qui entraînerait une augmentation de la capacité de traitement ou de stockage de gaz naturel liquéfié de 50 % ou plus et, selon le cas, une capacité de traitement totale de 3 000 t/jour ou plus ou une capacité de stockage totale de 55 000 t ou plus;

e) d'une installation existante de stockage de pétrole qui entraînerait une augmentation de la capacité de stockage de 50 % ou plus et une capacité de stockage totale de 500 000 m^3 ou plus;

16. The construction, operation, decommissioning and abandonment of a new

(*a*) metal mine, other than a rare earth element mine or gold mine, with an ore production capacity of 3 000 t/day or more;

(*b*) metal mill with an ore input capacity of 4 000 t/day or more;

(*c*) rare earth element mine or gold mine, other than a placer mine, with an ore production capacity of 600 t/day or more;

(*d*) coal mine with a coal production capacity of 3 000 t/day or more;

(*e*) diamond mine with an ore production capacity of 3 000 t/day or more;

(*f*) apatite mine with an ore production capacity of 3 000 t/day or more; or

(*g*) stone quarry or sand or gravel pit, with a production capacity of 3 500 000 t/year or more.

17. The expansion of an existing

(*a*) metal mine, other than a rare earth element mine or gold mine, that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 3 000 t/day or more;

(*b*) metal mill that would result in an increase in the area of mine operations of 50% or more and a total ore input capacity of 4 000 t/day or more;

(*c*) rare earth element mine or gold mine, other than a placer mine, that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 600 t/day or more;

(*d*) coal mine that would result in an increase in the area of mine operations of 50% or more and a total coal production capacity of 3 000 t/day or more;

(*e*) diamond mine that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 3 000 t/day or more;

(*f*) apatite mine that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 3 000 t/day or more; or

(*g*) stone quarry or sand or gravel pit that would result in an increase in the area of mine operations of 50% or more and a total production capacity of 3 500 000 t/year or more.

18. The construction and operation of a new military base or military station that is to be established for more than 12 consecutive months.

19. The construction, operation, decommissioning and abandonment outside an existing military base of a new military training area, range or test establishment for training or weapons testing that is to be established for more than 12 consecutive months.

20. The expansion of an existing military base or military station that would result in an increase in the area of the military base or military station of 50% or more.

f) d'une installation existante de stockage de gaz de pétrole liquéfié qui entraînerait une augmentation de la capacité de stockage de 50 % ou plus et une capacité de stockage totale de 100 000 m^3 ou plus.

16. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'une nouvelle mine métallifère, autre qu'une mine d'éléments des terres rares ou mine d'or, d'une capacité de production de minerai de 3 000 t/jour ou plus;

b) d'une nouvelle usine métallurgique d'une capacité d'admission de minerai de 4 000 t/jour ou plus;

c) d'une nouvelle mine d'éléments des terres rares ou d'une nouvelle mine d'or, autre qu'un placer, d'une capacité de production de minerai de 600 t/jour ou plus;

d) d'une nouvelle mine de charbon d'une capacité de production de charbon de 3 000 t/jour ou plus;

e) d'une nouvelle mine de diamants d'une capacité de production de minerai de 3 000 t/jour ou plus;

f) d'une nouvelle mine d'apatite d'une capacité de production de minerai de 3 000 t/jour ou plus;

g) d'une nouvelle carrière de pierre, de gravier ou de sable d'une capacité de production de 3 500 000 t/an ou plus.

17. L'agrandissement :

a) d'une mine métallifère existante, autre qu'une mine d'éléments des terres rares ou mine d'or, qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de minerai de 3 000 t/jour ou plus;

b) d'une usine métallurgique existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité d'admission totale de minerai de 4 000 t/jour ou plus;

c) d'une mine d'éléments des terres rares existante ou d'une mine d'or existante, autre qu'un placer, qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de minerai de 600 t/jour ou plus;

d) d'une mine de charbon existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de charbon de 3 000 t/jour ou plus;

e) d'une mine de diamants existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de minerai de 3 000 t/jour ou plus;

f) d'une mine d'apatite existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de minerai de 3 000 t/jour ou plus;

g) d'une carrière de pierre, de gravier ou de sable existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de 3 500 000 t/an ou plus.

18. La construction et l'exploitation d'une nouvelle base ou station militaire qui sera mise en place pour plus de douze mois consécutifs.

19. La construction, l'exploitation, la désaffectation et la fermeture, à l'extérieur d'une base militaire existante, d'un nouveau secteur d'entraînement, champ de tir ou centre d'essai et d'expérimentation militaire pour l'entraînement ou l'essai d'armes qui sera mis en place pour plus de douze mois consécutifs.

20. L'agrandissement d'une base ou station militaire existante qui entraînerait une augmentation de 50 % ou plus de la superficie de la base ou de la station.

21. The decommissioning and abandonment of an existing military base or military station.

22. The testing of military weapons for more than five days in a calendar year in an area other than the training areas, ranges and test establishments established before October 7, 1994 by or under the authority of the Minister of National Defence for the testing of weapons.

23. The low-level flying of military fixed-wing jet aircraft for more than 150 days in a calendar year as part of a training program at an altitude below 330 m above ground level on a route or in an area that was not established before October 7, 1994 by or under the authority of the Minister of National Defence or the Chief of the Defence Staff as a route or area set aside for low-level flying training.

24. The construction, operation, decommissioning and abandonment of a new

(*a*) canal or a lock or associated structure to control water levels in the canal;

(*b*) lock or associated structure to control water levels in existing navigable waterways; or

(*c*) marine terminal designed to handle ships larger than 25 000 DWT unless the terminal is located on lands that are routinely and have been historically used as a marine terminal or that are designated for such use in a land-use plan that has been the subject of public consultation.

25. The construction, operation, decommissioning and abandonment of a new

(*a*) railway line that requires a total of 32 km or more of new right of way;

(*b*) railway yard with seven or more yard tracks or a total track length of 20 km or more;

(*c*) all-season public highway that requires a total of 50 km or more of new right of way; or

(*d*) railway line designed for trains that have an average speed of 200 km/h or more.

26. The construction, operation, decommissioning and abandonment of a new

(*a*) aerodrome located within the built-up area of a city or town;

(*b*) airport, as defined in subsection 3(1) of the *Aeronautics Act*; or

(*c*) all-season runway with a length of 1 500 m or more.

27. The extension of an existing all-season runway by 1 500 m or more.

28. The construction, operation, decommissioning and abandonment of a new

(*a*) international or interprovincial bridge or tunnel; or

(*b*) bridge over the St. Lawrence Seaway.

21. La désaffectation et la fermeture d'une base ou station militaire existante.

22. L'essai d'armes militaires effectué pendant plus de cinq jours au cours d'une année civile dans toute zone, autre qu'un secteur d'entraînement, un champ de tir ou un centre d'essai et d'expérimentation établi pour la mise à l'essai d'armes avant le 7 octobre 1994 par le ministre de la Défense nationale ou sous son autorité.

23. Les vols à basse altitude d'avions à réaction militaires à voilure fixe, pour des programmes d'entraînement, lorsque les vols se déroulent à une altitude inférieure à 330 m au-dessus du niveau du sol sur des routes ou dans des zones qui n'ont pas été établies comme routes ou zones réservées à l'entraînement au vol à basse altitude, avant le 7 octobre 1994, par le ministre de la Défense nationale ou le chef d'état-major de la défense, ou sous leur autorité, lorsque les vols se déroulent pendant plus de cent cinquante jours au cours d'une année civile.

24. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'un nouveau canal, ou d'une nouvelle écluse ou structure connexe pour contrôler le niveau d'eau du canal;

b) d'une nouvelle écluse ou d'une nouvelle structure connexe pour contrôler le niveau d'eau dans des voies navigables existantes;

c) d'un nouveau terminal maritime conçu pour recevoir des navires de plus de 25 000 TPL, sauf s'il est situé sur des terres qui sont utilisées de façon courante comme terminal maritime et qui l'ont été par le passé ou que destine à une telle utilisation un plan d'utilisation des terres ayant fait l'objet de consultations publiques.

25. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'une nouvelle ligne de chemin de fer qui nécessite un total de 32 km ou plus de nouvelle emprise;

b) d'une nouvelle gare de triage qui comprend au moins sept voies de triage ou des voies dont la longueur totale est de 20 km ou plus;

c) d'une nouvelle voie publique utilisable en toute saison qui nécessite un total de 50 km ou plus de nouvelle emprise;

d) d'une nouvelle ligne de chemin de fer conçue pour des trains dont la vitesse moyenne est de 200 km/h ou plus.

26. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'un nouvel aérodrome situé à l'intérieur de la zone bâtie d'une ville;

b) d'un nouvel aéroport, au sens du paragraphe 3(1) de la *Loi sur l'aéronautique*;

c) d'une nouvelle piste utilisable en toute saison d'une longueur de 1 500 m ou plus.

27. Le prolongement de 1 500 m ou plus d'une piste utilisable en toute saison existante.

28. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'un nouveau pont ou tunnel international ou interprovincial;

b) d'un nouveau pont enjambant la Voie maritime du Saint-Laurent.

29. The construction, operation, decommissioning and abandonment of a new facility used exclusively for the treatment, incineration, disposal or recycling of hazardous waste.

30. The expansion of an existing facility used exclusively for the treatment, incineration, disposal or recycling of hazardous waste that would result in an increase in hazardous waste input capacity of 50% or more.

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31. The construction, operation and decommissioning of a new uranium mine or uranium mill on a site that is not within the licensed boundaries of an existing uranium mine or uranium mill.

32. The expansion of an existing uranium mine or uranium mill that would result in an increase in the area of mine operations of 50% or more.

33. The construction, operation and decommissioning of a new

(*a*) facility for the processing, reprocessing or separation of an isotope of uranium, thorium, or plutonium, with a production capacity of 100 t/year or more;

(*b*) facility for the manufacture of a product derived from uranium, thorium or plutonium, with a production capacity of 100 t/year or more; or

(*c*) facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium.

34. The expansion of an existing

(*a*) facility for the processing, reprocessing or separation of an isotope of uranium, thorium or plutonium that would result in an increase in production capacity of 50% or more and a total production capacity of 100 t/year or more;

(*b*) facility for the manufacture of a product derived from uranium, thorium or plutonium that would result in an increase in production capacity of 50% or more and a total production capacity of 100 t/year or more; or

(*c*) facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium, that would result in an increase in processing capacity of 50% or more.

35. The construction, operation and decommissioning of a new nuclear fission or fusion reactor.

36. The expansion of an existing nuclear fission or fusion reactor that would result in an increase in power output of 50% or more.

37. The construction and operation of a new

(*a*) facility for the storage of irradiated fuel or nuclear waste, on a site that is not within the licensed perimeter of an existing nuclear facility; or

(*b*) facility for the long-term management or disposal of irradiated fuel or nuclear waste.

29. La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle installation utilisée exclusivement pour le traitement, l'incinération, l'élimination ou le recyclage de déchets dangereux.

30. L'agrandissement d'une installation existante utilisée exclusivement pour le traitement, l'incinération, l'élimination ou le recyclage de déchets dangereux qui entraînerait une augmentation de la capacité d'admission de déchets dangereux de 50 % ou plus.

COMMISSION CANADIENNE DE SÛRETÉ NUCLÉAIRE

31. La construction, l'exploitation et le déclassement d'une nouvelle mine d'uranium ou d'une nouvelle usine de concentration d'uranium sur un site à l'extérieur des limites autorisées d'une mine d'uranium ou d'une usine de concentration d'uranium existante.

32. L'agrandissement d'une mine d'uranium existante ou d'une usine existante de concentration d'uranium qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus.

33. La construction, l'exploitation et le déclassement :

a) d'une nouvelle installation de traitement, de retraitement ou de séparation d'isotopes d'uranium, de thorium ou de plutonium, d'une capacité de production de 100 t/an ou plus;

b) d'une nouvelle installation de fabrication d'un produit dérivé de l'uranium, du thorium ou du plutonium, d'une capacité de production de 100 t/an ou plus;

c) d'une nouvelle installation de traitement ou d'utilisation d'une quantité supérieure à 10^{15} Bq par année civile de substances nucléaires d'une période radioactive supérieure à un an, autres que l'uranium, le thorium ou le plutonium.

34. L'agrandissement :

a) d'une installation existante de traitement, de retraitement ou de séparation d'isotopes d'uranium, de thorium ou de plutonium qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 100 t/an ou plus;

b) d'une installation existante de fabrication d'un produit dérivé de l'uranium, du thorium ou du plutonium qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 100 t/an ou plus;

c) d'une installation existante de traitement ou d'utilisation d'une quantité supérieure à 10^{15} Bq par année civile de substances nucléaires d'une période radioactive supérieure à un an, autres que l'uranium, le thorium ou le plutonium, qui entraînerait une augmentation de la capacité de traitement de 50 % ou plus.

35. La construction, l'exploitation et le déclassement d'un nouveau réacteur à fission ou à fusion nucléaires.

36. L'agrandissement d'un réacteur à fission ou à fusion nucléaires existant qui entraînerait une augmentation de la puissance de sortie de 50 % ou plus.

37. La construction et l'exploitation :

a) d'une nouvelle installation de stockage de combustibles nucléaires irradiés ou de déchets nucléaires, sur un site à l'extérieur du périmètre autorisé d'une installation nucléaire existante;

b) d'une nouvelle installation de gestion ou d'évacuation à long terme de combustible nucléaire irradié ou de déchets nucléaires.

38. The expansion of an existing facility for the long-term management or disposal of irradiated fuel or nuclear waste that would result in an increase in the area, at ground level, of the facility of 50% or more.

NATIONAL ENERGY BOARD

39. The construction, operation, decommissioning and abandonment of a new electrical transmission line with a voltage of 345 kV or more that requires a total of 75 km or more of new right of way.

40. The drilling, testing and abandonment of offshore exploratory wells in the first drilling program in an area set out in one or more exploration licences issued in accordance with the *Canada Petroleum Resources Act*.

41. The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.

42. The decommissioning and abandonment of an existing offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas that is proposed to be disposed of or abandoned offshore or converted on site to another role.

43. The construction, operation, decommissioning and abandonment of a new offshore pipeline, other than a flowline.

44. The construction, operation, decommissioning and abandonment of a new

(*a*) sour gas processing facility with a sulphur inlet capacity of 2 000 t/day or more; or

(*b*) petroleum storage facility with a storage capacity of 500 000 m^3 or more.

45. The expansion of an existing

(*a*) sour gas processing facility that would result in an increase in sulphur inlet capacity of 50% or more and a total sulphur inlet capacity of 2 000 t/day or more; or

(*b*) petroleum storage facility that would result in an increase in storage capacity of 50% or more and a total storage capacity of 500 000 m^3 or more.

46. The construction and operation of a new pipeline, other than an offshore pipeline, with a length of 40 km or more.

47. The decommissioning and abandonment of an existing pipeline, other than an offshore pipeline, if at least 40 km of pipe is removed from the ground.

48. The construction, operation, decommissioning and abandonment, in a wildlife area or migratory bird sanctuary, of

(*a*) a new electrical transmission line; or

(*b*) a new oil or gas facility or new pipeline.

38. L'agrandissement d'une installation existante de gestion ou d'évacuation à long terme de combustibles nucléaires irradiés ou de déchets nucléaires qui entraînerait une augmentation de 50 % ou plus de l'aire au niveau du sol occupée par l'installation.

OFFICE NATIONAL DE L'ÉNERGIE

39. La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle ligne de transport d'électricité d'une tension de 345 kV ou plus qui nécessite un total de 75 km ou plus de nouvelle emprise.

40. Le forage, la mise à l'essai et la fermeture de puits d'exploration au large des côtes faisant partie du premier programme de forage dans une zone visée par un ou plusieurs permis de prospection délivrés conformément à la *Loi fédérale sur les hydrocarbures*.

41. La construction, la mise sur pied et l'exploitation d'une nouvelle plate-forme flottante ou fixe, d'un nouveau navire ou d'une nouvelle île artificielle au large des côtes utilisés pour la production de pétrole ou de gaz.

42. La désaffectation et la fermeture d'une plate-forme flottante ou fixe existante, d'un navire existant ou d'une île artificielle existante au large des côtes utilisés pour la production de pétrole ou de gaz, dans le cas où il est proposé d'en disposer ou de les fermer au large des côtes, ou d'en modifier la vocation sur place.

43. La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau pipeline au large des côtes, autre qu'une conduite d'écoulement.

44. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'une nouvelle installation de traitement de gaz sulfureux d'une capacité d'admission de soufre de 2 000 t/jour ou plus;

b) d'une nouvelle installation de stockage de pétrole d'une capacité de stockage de 500 000 m^3 ou plus.

45. L'agrandissement :

a) d'une installation existante de traitement de gaz sulfureux qui entraînerait une augmentation de la capacité d'admission de soufre de 50 % ou plus et une capacité d'admission totale de soufre de 2 000 t/jour ou plus;

b) d'une installation existante de stockage de pétrole qui entraînerait une augmentation de la capacité de stockage de 50 % ou plus et une capacité de stockage totale de 500 000 m^3 ou plus.

46. La construction et l'exploitation d'un nouveau pipeline, autre qu'un pipeline au large des côtes, d'une longueur de 40 km ou plus.

47. La désaffectation et la fermeture d'un pipeline existant, autre qu'un pipeline au large des côtes, si au moins 40 km de tuyau sont retirés du sol.

48. La construction, l'exploitation, la désaffectation et la fermeture, dans une réserve d'espèces sauvages ou un refuge d'oiseaux migrateurs :

a) d'une nouvelle ligne de transport d'électricité;

b) d'une nouvelle installation pétrolière ou gazière ou d'un nouveau pipeline.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Background

The *Canadian Environmental Assessment Act, 2012* (CEAA 2012) came into force in July 2012 as part of the Government of Canada's Responsible Resource Development plan, the objectives of which are to achieve more predictable and timely project reviews, reduce duplication, strengthen environmental protection, and enhance consultation with Aboriginal groups.

The CEAA 2012 and its accompanying regulations provide the legislative framework for federal environmental assessment. Environmental assessments consider whether "designated projects" are likely to cause significant adverse environmental effects that fall within the legislative authority of Parliament or result from a federal decision about the project. Assessments are conducted by one of three responsible authorities: the Canadian Environmental Assessment Agency (the Agency), the Canadian Nuclear Safety Commission (CNSC) for projects that it regulates or the National Energy Board (NEB) for projects that it regulates. The CEAA 2012 requires that opportunities for public participation be provided during environmental assessments and that participant funding and a public registry, including an Internet site, be established.

Recognizing that responsibility for the environment is shared with other jurisdictions, cooperation with those jurisdictions is enabled under the CEAA 2012 through various mechanisms. These include carrying out cooperative assessments, establishing joint review panels, delegating the conduct of all or part of the federal environmental assessment, substituting the process of another jurisdiction for the federal process, and recognizing a provincial process as equivalent to the federal process for a specific project.

Environmental assessments under the CEAA 2012 are conducted of proposed projects that are "designated," either through regulation or by the Minister of the Environment. The *Regulations Designating Physical Activities* (the Regulations) prescribe the physical activities that constitute a "designated project" which may require an environmental assessment under the CEAA 2012. The physical activities are listed in a schedule to the Regulations, which is divided into three parts according to which federal authority — the Agency, the CNSC or the NEB — would be responsible for conducting an environmental assessment of a designated project that included that activity.

The schedule sets out the physical activities associated with the carrying out of projects (such as construction of a metal mine or of a hydroelectric generation facility). Each item in the schedule includes a description and in most cases a corresponding threshold (often production capacity), which serves as a representation of scale or size (such as a metal mine with an ore production capacity of 3 000 tonnes/day or more, or a hydroelectric generation facility with a production capacity of 200 megawatts or more) and thus represents the potential for significant adverse environmental effects. Project proposals that contain physical activities that are listed in the Regulations and that meet or exceed the threshold are designated projects.

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

(Ce résumé ne fait pas partie du Règlement.)

Contexte

En juillet 2012, la *Loi canadienne sur l'évaluation environnementale (2012)* [LCEE 2012] est entrée en vigueur dans le cadre du plan de Développement responsable des ressources du Canada. Ce plan vise à réaliser des examens de projet de manière plus prévisible et en temps opportun, à réduire le double emploi, à renforcer la protection de l'environnement et à améliorer la consultation auprès des groupes autochtones.

La LCEE 2012 et ses règlements établissent le cadre législatif pour les évaluations environnementales fédérales. Les évaluations environnementales permettent de déterminer si les « projets désignés » sont susceptibles d'entraîner des effets environnementaux négatifs importants qui relèvent de l'autorité législative du Parlement ou s'ils découlent d'une décision fédérale concernant le projet. Les évaluations sont réalisées par l'une des trois autorités responsables : l'Agence canadienne d'évaluation environnementale (l'Agence), la Commission canadienne de sûreté nucléaire (CCSN) [pour les projets qu'elle réglemente] et l'Office national de l'énergie (ONE) [pour les projets qu'il réglemente]. Aux termes de la LCEE 2012, le public doit avoir la possibilité de participer aux évaluations environnementales, et un programme d'aide financière aux participants doit être établi, de même qu'un registre public comprenant un site Internet.

Comme la responsabilité en matière environnementale est partagée avec d'autres instances, la collaboration avec celles-ci est facilitée grâce à divers mécanismes prévus dans la LCEE 2012. Ces mécanismes permettent, notamment, de réaliser des évaluations coopératives, d'établir une commission d'examen conjoint, de déléguer en tout ou en partie l'évaluation environnementale fédérale, de substituer les processus d'une autre instance au processus d'évaluation fédéral et de reconnaître l'équivalence d'un processus provincial au processus fédéral pour un projet particulier.

En vertu de la LCEE 2012, les évaluations environnementales des projets sont réalisées pour des projets qui sont « désignés », soit par règlement ou par la ministre de l'Environnement. Le *Règlement désignant les activités concrètes* (le Règlement) prévoit les activités qui sont des activités concrètes et qui constituent un « projet désigné » pouvant faire l'objet d'une évaluation environnementale (EE) en vertu de la LCEE 2012. Les activités concrètes sont celles prévues à l'annexe du Règlement. Cette annexe comprend trois parties selon lesquelles une autorité fédérale, en l'occurrence, l'Agence, la CCSN ou l'ONE, serait chargée de réaliser l'évaluation environnementale d'un projet désigné qui inclurait une de ces activités.

Les activités concrètes prévues à l'annexe sont liées à la réalisation de projets (comme la construction d'une mine métallifère ou d'une centrale hydroélectrique). Chacun des éléments de l'annexe comprend une description et, dans la plupart des cas, un seuil (souvent la capacité de production), servant d'indication de l'échelle ou de la taille de chaque activité (par exemple une mine métallifère d'une capacité de production de minerai de 3 000 tonnes par jour ou plus, ou une centrale hydroélectrique d'une capacité de production de 200 mégawatts ou plus) et représentant ainsi le risque d'effets environnementaux négatifs importants. Les projets désignés sont les propositions de projets contenant des activités concrètes prévues dans le Règlement et pour lesquelles le seuil fixé est atteint ou dépassé.

The Regulations are intended to identify those physical activities with the greatest potential to cause significant adverse environmental effects in areas of federal jurisdiction. However, there may be occasional situations where a proposed physical activity that makes up a project does not match the categories listed or does not meet the threshold prescribed, but by virtue of its unique characteristics or its location may cause adverse environmental effects in areas of federal jurisdiction. In such cases, the CEAA 2012 provides the authority for the Minister of the Environment to designate the physical activity to be a designated project for the purposes of requiring an environmental assessment. This provision could also be used where the Minister is of the opinion that public concerns about those adverse environmental effects warrant the designation. This mechanism within the CEAA 2012 recognizes that project-specific circumstances may sometimes mean there is a greater risk of significant adverse environmental effects than is typical for projects of that type.

Designated projects that are regulated by the CNSC or by the NEB and projects that the Minister has designated must undergo an environmental assessment. However, when the Agency is the responsible authority for a designated project, it must determine whether or not an environmental assessment is required based on the specific project proposal.

In determining whether to require an environmental assessment of a designated project, the Agency considers a number of factors, including the description of the project provided by the proponent, the possibility that the carrying out of the project may cause adverse environmental effects, comments received from the public and, if applicable, the results of any relevant regional study. Under the CEAA 2012, the "environmental effects" of concern are those in areas of federal jurisdiction, which are defined as

- effects on fish and fish habitat, shellfish and their habitat, crustaceans and their habitat, marine animals and their habitat, marine plants, and migratory birds;
- effects on federal lands;
- effects that cross provincial or international boundaries;
- effects of any changes to the environment that affect Aboriginal peoples, such as their use of lands and resources for traditional purposes; and
- changes to the environment and certain effects of those changes resulting from federal decisions about the project.

Issue

The physical activities identified in the former Regulations did not appropriately reflect the major projects that have the greatest potential to cause significant adverse environmental effects in areas of federal jurisdiction. Some types of major projects that are considered to have a high potential for such effects were not covered by the Regulations. Conversely, some projects that were covered by the Regulations are considered to have a low potential for significant adverse environmental effects in areas of federal jurisdiction.

L'objectif du Règlement est de déterminer les activités concrètes les plus susceptibles d'entraîner des effets environnementaux négatifs importants dans les domaines de compétence fédérale. Toutefois, il se pourrait à l'occasion qu'une activité concrète constituant un projet ne corresponde pas aux catégories prévues ou n'atteigne pas le seuil établi, mais qui, par ses caractéristiques uniques ou son emplacement peut entraîner des effets environnementaux négatifs dans les domaines de compétence fédérale. Dans de tels cas, la LCEE 2012 confère à la ministre de l'Environnement le pouvoir de désigner l'activité concrète comme étant un projet désigné dans le but d'exiger une évaluation environnementale. Cette disposition peut également être utilisée si la ministre de l'Environnement estime que les préoccupations du public concernant les effets environnementaux négatifs potentiels justifient la désignation. Ce mécanisme que prévoit la LCEE 2012 reconnaît que des circonstances particulières liées à un projet peuvent parfois signifier un plus grand risque d'effets environnementaux négatifs importants que l'on rencontrerait habituellement avec ce type de projet.

Les projets désignés qui sont réglementés par la CCSN ou l'ONE et les projets désignés par la ministre doivent faire l'objet d'une évaluation environnementale. Cependant, dans les cas où l'Agence est l'autorité responsable d'un projet désigné, l'Agence doit déterminer si une évaluation environnementale est requise ou non en fonction de la proposition de projet particulière.

Pour déterminer si une évaluation environnementale d'un projet désigné est requise ou non, l'Agence tient compte d'un certain nombre d'éléments, notamment la description du projet fournie par le promoteur, la possibilité que la réalisation du projet entraîne des effets environnementaux négatifs, les commentaires formulés par le public et, le cas échéant, les conclusions de toute étude régionale pertinente. En vertu de la LCEE 2012, les « effets environnementaux » préoccupants sont ceux qui surviennent dans des domaines de compétence fédérale. Ces effets sont définis comme suit :

- Effets sur les poissons et l'habitat du poisson, les mollusques et leur habitat, les crustacés et leur habitat, les animaux marins et leur habitat, toute plante marine et les oiseaux migrateurs;
- Effets sur le territoire domanial;
- Effets qui dépassent les frontières provinciales ou internationales;
- Effets des changements causés à l'environnement qui touchent les peuples autochtones comme leur usage des terres et des ressources à des fins traditionnelles;
- Changements causés à l'environnement et certains effets de ces changements découlant des décisions fédérales prises relativement au projet.

Enjeux

Les activités concrètes qui étaient prévues dans le Règlement antérieur ne tenaient pas compte de manière adéquate des grands projets qui sont les plus susceptibles d'entraîner des effets environnementaux négatifs importants dans des domaines de compétence fédérale. Certains grands projets qui sont considérés comme étant plus susceptibles d'entraîner ces effets n'étaient pas couverts par le Règlement. Inversement, certains projets, qui étaient couverts par le Règlement, sont considérés comme n'ayant qu'un faible risque d'entraîner des effets environnementaux négatifs importants dans des domaines de compétence fédérale.

Objectives

The *Regulations Amending the Regulations Designating Physical Activities* have been made to ensure the Regulations appropriately reflect those major projects that have the greatest potential for significant adverse environmental effects in areas of federal jurisdiction. This will, in turn, ensure federal environmental assessment is focused on those projects and increase certainty and predictability for proponents and for Canadians. A second objective is to improve the clarity of the Regulations and their internal consistency.

Description

The physical activities listed in the schedule to the Regulations include a description and in most cases a "threshold" to ensure that only projects of at least a certain size are designated. The Regulations also include definitions to clarify key terms.

The approach of using thresholds is required to ensure the focus is on major projects. Thresholds related to the size of a facility, such as its production capacity, serve as an indicator of the scale of a project and its potential to cause significant adverse environmental effects. The use of thresholds, as opposed to trying to delineate the many diverse factors that may influence the potential for adverse effects, constitutes an approach that can be applied across different project types and throughout the country. Furthermore, it provides clear, predictable information about the application of the CEAA 2012 to a project. In this way, proponents know when they are required to submit a project description. Stakeholders also benefit in that they will know when a project description must be submitted to the Agency or, in the case of projects regulated by the NEB or CNSC, when an environmental assessment is required. Where a project does not include an activity that is designated in the Regulations and stakeholders are of the view that the project may cause adverse environmental effects in areas of federal jurisdiction, they can inform the Minister of the Environment, who can respond accordingly.

Schedule to the Regulations

The schedule to the Regulations has been replaced to include modifications as follows.

1. Entries that refer to the "construction, operation, decommissioning and abandonment," the "construction, operation and decommissioning," the "construction and operation," or the "construction, installation and operation" of a facility have been modified to clarify that they refer to a new facility. Items that refer to the "expansion," "extension," "decommissioning" or "decommissioning and abandonment" of a facility have been modified to clarify that they refer to an existing facility.
2. Additions have been made to cover the following types of projects: diamond mines, apatite mines, railway yards, international and interprovincial bridges and tunnels, bridges that cross the St. Lawrence Seaway, offshore exploratory wells in the first drilling program within exploration licence areas, and expansions to oil sands mines.
3. Deletions have been made to exclude the following types of projects: groundwater extraction facilities, heavy oil and oil sands processing facilities, pipelines (other than offshore pipelines) and electrical transmission lines that are not regulated by the NEB, potash mines and other industrial mineral mines

Objectifs

Le *Règlement modifiant le Règlement désignant les activités concrètes* a été pris afin de garantir que le Règlement renvoie de manière adéquate aux grands projets qui sont les plus susceptibles de causer des effets environnementaux négatifs importants dans des domaines de compétence fédérale, ce qui permettra de garantir que les évaluations environnementales fédérales sont axées sur ces projets et apportera plus de certitude et de prévisibilité aux promoteurs et aux Canadiens. Un second objectif est de rendre le Règlement plus clair et son contenu plus cohérent.

Description

Les activités concrètes prévues à l'annexe du Règlement comprennent une description et, dans la plupart des cas, un « seuil » pour garantir que seuls les projets qui atteignent une certaine envergure seront désignés. Le Règlement comprend également des définitions pour clarifier les termes clés.

La méthode axée sur l'utilisation de seuils dans le Règlement est nécessaire pour veiller à ce que l'accent soit mis sur les grands projets. Les seuils relatifs à la taille d'une installation, comme sa capacité de production, servent d'indicateur de l'envergure d'un projet et de la possibilité qu'elle entraîne des effets environnementaux négatifs importants. Plutôt que de tenter de définir les divers facteurs qui influent sur le risque d'effets négatifs, l'utilisation de seuils constitue une approche qui peut être appliquée à toutes les catégories de projet et dans tout le pays. En outre, cette méthode fournit des renseignements clairs et prévisibles sur l'application de la LCEE à un projet. De cette manière, les promoteurs savent quand ils sont tenus de présenter une description du projet. Les intervenants bénéficieront également de cette approche, car ils pourront savoir quand une description de projet doit être présentée à l'Agence, ou dans le cas des projets réglementés par l'ONE ou la CCSN, quand une évaluation environnementale est requise. Lorsqu'un projet ne comprend pas une activité désignée par le Règlement et que des intervenants sont d'avis que le projet pourrait avoir des effets négatifs dans des domaines de compétence fédérale, ils peuvent en informer la ministre de l'Environnement, qui pourra réagir en conséquence.

Annexe du Règlement

L'annexe du Règlement a été remplacée afin d'inclure les modifications suivantes :

1. Les inscriptions qui renvoient à « la construction, l'exploitation, la désaffectation et la fermeture », à « la construction, l'exploitation et la désaffectation » ou à « la construction et l'exploitation » d'une installation ont été modifiées de manière à préciser qu'elles renvoient à une nouvelle installation. Les inscriptions qui renvoient à « l'agrandissement », au « prolongement », à « la désaffectation » ou à « la désaffectation et la fermeture » d'une installation ont été modifiées pour préciser qu'elles renvoient à une installation existante.
2. Des inscriptions ont été ajoutées pour couvrir les types de projets suivants : mines de diamant et d'apatite, gares de triage, ponts et tunnels interprovinciaux et internationaux, ponts qui traversent la voie maritime du Saint-Laurent, les puits d'exploration au large des côtes faisant partie du premier programme de forage dans une zone d'un permis de prospection et l'agrandissement de mines de sables bitumineux.
3. Les inscriptions liées aux types de projets suivants ont été supprimées : installations d'extraction d'eau souterraine, installations de traitement d'huile lourde et de sables bitumineux,

(salt, graphite, gypsum, magnesite, limestone, clay, asbestos), and industrial facilities (pulp mills, pulp and paper mills, steel mills, metal smelters, leather tanneries, textile mills and facilities for the manufacture of chemicals, pharmaceuticals, pressure-treated wood, particleboard, plywood, chemical explosives, lead-acid batteries and respirable mineral fibres).

4. The entry for tidal power generating facilities has been amended to include a threshold of 50 megawatts for in-stream facilities. The current threshold of 5 megawatts has been retained for other types of tidal power generating facilities, such as tidal barrage facilities.
5. The entry for liquefied natural gas storage facilities has been modified to increase the threshold size by approximately 10%.
6. Rare earth element mines, which were covered by the general entry for metal mines, have been included in the same entry as gold mines, which have a lower ore production capacity threshold of 600 tonnes per day.
7. The separate entry for offshore metal mines has been deleted. This type of project is instead covered by the general entry for metal mines.
8. The entries for mine expansions have been modified to relate the size of the expansion to an increase in the area of disturbance rather than referring only to production capacity.
9. The entry for stone quarries and sand and gravel pits has been modified to increase the threshold size from 1 million tonnes per year to 3.5 million tonnes per year.
10. The entries for expansions, with the exception of dams and dykes, have been adjusted to use a consistent approach that specifies an increase of 50% or more in size and that the resulting facility must meet or exceed the threshold size for a new facility of that type.
11. The entry covering the expansion of dams and dykes has been modified to relate the resulting increase in the size of the associated reservoir to the size of the existing reservoir (i.e. the reservoir must increase by 50% or more and at least 1 500 ha).
12. The entry covering the expansion of facilities for the treatment, incineration, disposal or recycling of hazardous waste has been modified to relate the expansion size to the hazardous waste input capacity of the facility rather than the production capacity.
13. The entries related to offshore oil or gas production facilities have been modified to improve clarity by precisely identifying the types of facilities that are covered.
14. The entries for offshore pipelines have been modified to clarify that flowlines are not included.
15. The entries related to National Defence activities have been modified to remove expansions of existing buildings on a military base or station, to increase the threshold requirement for expansions of a military base or station, and to specify that the Regulations do not apply to activities of a temporary nature.
16. The entries for CNSC-regulated activities have been updated to reflect the CNSC's current licensing practices, to include the construction of all reactor types, and to provide clarification of terms.
17. The entry for NEB-regulated pipelines (other than offshore pipelines) has been modified to align with the NEB's regulatory process requirements under its legislation, by reducing the threshold from 75 km on a new right-of-way to 40 km of new pipe whether or not it is on a new right-of-way.

lignes de transport d'électricité et pipelines (à l'exception des pipelines situées au large des côtes) non réglementés par l'ONE, mines de potasse et autres mines de minerais industrielles (sel, graphite, gypse, magnésite, pierre à chaux, argile, amiante), installations industrielles (fabriques de pâtes ou de pâtes et papiers, aciéries, fonderies, tanneries, usines de textiles ainsi que les installations de fabrication de produits chimiques, de produits pharmaceutiques, de bois traité sous pression, de panneaux de particules, de contreplaqué, d'explosifs chimiques, d'accumulateurs au plomb et de fibres minérales inhalables).

4. L'inscription portant sur les installations de production d'énergie marémotrice a été modifiée pour inclure un seuil de 50 mégawatts pour les installations hydroliennes. Le seuil de 5 mégawatts est maintenu pour les autres types d'installations de production d'énergie marémotrice comme les barrages marémoteurs.
5. L'inscription portant sur les installations de stockage du gaz naturel liquéfié a été modifiée afin d'augmenter le seuil d'environ 10 %.
6. Les mines d'élément de terres rares, qui étaient couvertes par l'inscription générale sur les mines métallifères, ont été incluses dans la même inscription que les mines d'or dont le seuil de capacité déclencheur de 600 tonnes par jour est inférieur à celui des mines métallifères.
7. L'inscription propre aux mines métallifères situées au large des côtes a été supprimée. Ces types de projet seront couverts par l'inscription générale des mines métallifères.
8. Les inscriptions portant sur l'agrandissement des mines ont été modifiées afin de relier l'ampleur de l'agrandissement à une augmentation de l'aire perturbé plutôt que de référer uniquement à la capacité de production.
9. L'inscription portant sur les carrières de pierre, de gravier ou de sable a été modifiée pour augmenter le seuil de 1 million de tonnes à 3,5 millions de tonnes par an.
10. Les inscriptions portant sur les agrandissements, à l'exception des barrages et des digues, ont été modifiées afin d'utiliser une approche cohérente qui requiert que l'agrandissement entraîne une augmentation de 50 % ou plus de la taille de l'installation et que la taille de l'installation qui en résulte atteigne ou dépasse le seuil requis pour une nouvelle installation de ce type.
11. L'inscription portant sur l'agrandissement des barrages et des digues a été modifiée pour relier l'augmentation de la taille du réservoir associé à celle du réservoir existant (c'est-à-dire, le réservoir doit augmenter de 50 % ou plus et au moins de 1 500 ha).
12. L'inscription portant sur l'agrandissement des installations pour le traitement, l'incinération, l'élimination ou le recyclage de déchets dangereux a été modifiée pour relier l'ampleur de l'agrandissement à la capacité d'admission de déchets dangereux de l'installation plutôt que de référer à la capacité de production.
13. Les inscriptions portant sur les installations de production de pétrole ou de gaz situées au large des côtes ont été modifiées pour apporter plus de clarté en précisant quels types d'installations sont couverts.
14. Les inscriptions portant sur les pipelines au large des côtes ont été modifiées afin de clarifier que les conduites d'écoulement ne sont pas incluses.

15. Les inscriptions portant sur les activités du ministère de la Défense nationale ont été modifiées afin de supprimer les exigences relatives à l'agrandissement de bâtiments situés sur une base ou station militaire, d'augmenter le seuil relatif à l'agrandissement de bases ou stations militaires, et de préciser que le Règlement ne s'applique pas aux activités de nature temporaire.
16. Les inscriptions portant sur les activités réglementées par la CCSN ont été mises à jour pour tenir compte des pratiques actuelles de la CCSN en matière de délivrance de permis, pour y inclure la construction de tous les types de réacteurs et afin d'apporter des précisions sur certains termes.
17. Les inscriptions portant sur les activités réglementées par l'ONE (à l'exception des pipelines au large des côtes) ont été modifiées afin qu'elles correspondent aux exigences du processus réglementaire de l'ONE en vertu de leur législation, en réduisant le seuil des pipelines de 75 km sur une nouvelle emprise à un seuil de 40 km d'un nouveau pipeline peu importe si le pipeline est situé ou non sur une nouvelle emprise.

Definitions

The list of definitions has been modified as follows:

1. Addition of the following terms: area of mine operations, canal, drilling program, exploratory well, flowline.
2. Deletion of the following terms: abandonment, airport, Class IA nuclear facility, Class IB nuclear facility, decommissioning, paper product, pulp, pulp and paper mill, right of way, waste management system, wetland.
3. Revision of the following definitions: marine terminal, water body.

In addition, modifications have been made to improve the clarity and consistency of the wording throughout the Regulations.

The amendments include transitional provisions to cover situations that may arise related to projects that were not "designated projects" under the former Regulations, but which become "designated projects" as a result of the amendments. In this case, the new Regulations apply except if permits have already been issued by a federal authority, the carrying out of the project has already started, or an assessment under the process of another jurisdiction, or under the CNSC or NEB regulatory processes, is already underway. An assessment by another jurisdiction is one conducted by a provincial government, agency or body; a body established under a land claims agreement; or a body established under legislation related to Aboriginal self-government. In addition, the transitional provisions provide that the new Regulations do not apply in respect of any project that was subject to a "screening" type environmental assessment under the former Act which, as a result of the coming into force of CEAA 2012, was not required to be continued and completed.

Regulatory and non-regulatory options considered

Retaining the status quo was not a preferred option since some types of major projects that are considered to have a greater potential for significant adverse environmental effects in areas of federal interest were not covered in the former Regulations; conversely, some items in the former Regulations were associated with

Définitions

Les définitions ont été modifiées comme suit :

1. Ajouter les termes suivants : aire d'exploitation minière, canal, programme de forage, puits d'exploration, conduites d'écoulement.
2. Supprimer les termes suivants : aéroport, désaffectation, emprise, fabrique de pâtes et papiers, fermeture, installation nucléaire de catégorie IA, installation nucléaire de catégorie IB, pâte, produit de papier, emprise, système de gestion des déchets et terres humides.
3. Modifier les définitions suivantes : terminal maritime et plan d'eau.

Par ailleurs, des modifications ont été apportées afin de rendre le texte du Règlement plus clair et uniforme.

Les modifications comprennent des dispositions transitoires permettant de couvrir toute situation pouvant survenir liée à des projets qui n'étaient pas des « projets désignés » dans le Règlement antérieur, mais qui deviennent des « projets désignés » à la suite des modifications. Dans ce cas, le nouveau règlement s'applique sauf si des permis ont déjà été délivrés par une autorité fédérale, la mise en œuvre du projet a déjà commencé, ou encore si une évaluation en vertu du processus d'une autre instance, ou du processus réglementaire de l'ONE ou de la CCSN, est déjà en cours. Une évaluation par une autre instance est une évaluation menée par soit un gouvernement, une agence ou un organisme provinciaux, ou un organisme constitué aux termes d'un accord sur des revendications territoriales ou un organisme constitué par une loi relative à l'autonomie gouvernementale des Autochtones. Par ailleurs, les dispositions transitoires prévoient que le nouveau règlement ne s'applique pas à l'égard d'un projet qui était assujetti à une évaluation environnementale de type « examen préalable » en vertu de l'ancienne loi si, en raison de l'entrée en vigueur de la LCEE 2012, cet examen préalable n'a pas été mené à terme.

Options réglementaires et non réglementaires considérées

Maintenir le statu quo n'était pas une option privilégiée puisque certains types de grands projets qui sont considérés comme étant plus susceptibles de causer des effets environnementaux négatifs importants dans des domaines de compétence fédérale n'étaient pas couverts dans le règlement antérieur; d'un autre côté, certaines

projects that are considered to have a low potential for significant adverse effects regarding matters of federal jurisdiction.

In developing the amendments, consideration was given to a number of factors, such as the flexibility afforded under the CEAA 2012 for the Agency to screen out projects, the administrative burden associated with screening, the authority of the Minister to require that an environmental assessment be conducted of a project that is not described in the Regulations and certainty for the public and proponents about when an assessment will be done.

The aim was to reach a balance between, on the one hand, ensuring that proponents of projects with low or limited potential to adversely impact areas of federal jurisdiction are not unduly burdened with preparing project descriptions and that Agency resources are not unnecessarily used to consider and screen an overly broad pool of projects and, on the other hand, ensuring that the Minister's discretion to designate projects can be used in project-specific circumstances and not as a second standard means to require an environmental assessment of a project.

The approach that was taken achieves this balance. Where the Minister is considering designation of a project owing to its unique characteristics, the proponent will be required to provide the necessary information. This targeted approach will help minimize the regulatory burden compared to requiring a formal project description for all projects of that type. At the same time, the public and proponents of projects described in the Regulations will have a greater degree of certainty that an environmental assessment will be required because screening out by the Agency will be less likely.

Other approaches that relied too heavily on the Agency's discretionary authority to screen out projects or that relied too heavily on the Minister's discretionary authority to designate projects were rejected.

Regulations identifying the physical activities that comprise a "designated project" are essential to the functioning of the CEAA 2012. Consequently, non-regulatory options were not considered.

The amendments support the Government's Responsible Resource Development plan by ensuring the Regulations focus on those major projects with the greatest potential for significant adverse environmental effects on areas of federal jurisdiction.

"One-for-One" Rule

The "One-for-One" Rule does not apply since there is no change in administrative burden to business.

The Regulatory Impact Analysis Statement for the former Regulations, published in the *Canada Gazette*, Part II, on July 18, 2012, indicated that the Regulations triggered the "One-for-One" Rule. Subsequently, the Agency determined, in consultation with the Treasury Board of Canada Secretariat, that although the Regulations may have associated compliance costs they do not impose new administrative burden costs on business.

Any administrative burden that may be associated with the submission of a project description under the CEAA 2012 is related to

inscriptions dans le règlement antérieur se rapportaient à des projets qui sont considérés comme n'ayant qu'un faible risque d'entraîner des effets environnementaux négatifs importants dans des domaines de compétence fédérale.

Dans le cadre de l'élaboration des modifications, on a tenu compte d'un certain nombre d'éléments, tels que la flexibilité offerte par la LCEE 2012 qui permet à l'Agence d'exclure des projets, le fardeau administratif lié au processus d'examen préalable, le pouvoir conféré à la ministre d'exiger qu'une évaluation environnementale soit réalisée pour un projet qui n'est pas décrit dans le Règlement et la certitude pour le public et les promoteurs de savoir à quel moment une évaluation environnementale sera réalisée.

Le but était d'atteindre un équilibre entre, d'une part, veiller à ce qu'on n'impose pas aux promoteurs de projets qui sont moins susceptibles, ou peu probables, d'avoir un impact négatif dans des domaines de compétence fédérale, le fardeau de préparer des descriptions de projets et que les ressources de l'Agence ne soient pas utilisées inutilement afin d'examiner un trop grand nombre de projets et d'en éliminer et, d'autre part, veiller à ce que le pouvoir de la ministre de désigner des projets puisse être utilisé dans des circonstances particulières liées à un projet et non comme un autre moyen normal d'exiger une évaluation environnementale d'un projet.

L'approche suivie établit cet équilibre. Lorsque la ministre envisage la désignation d'un projet en raison de ses caractéristiques uniques, le promoteur sera tenu de fournir les informations nécessaires. Cette approche ciblée contribuera à réduire le fardeau réglementaire au lieu qu'une description formelle de projet soit exigée pour tous les projets de ce type. Parallèlement, le public et les promoteurs des projets prévus par le Règlement auront un plus grand degré de certitude quant à savoir si une évaluation environnementale sera requise ou non, car les chances que le projet soit exclu par l'Agence seront moins probables.

Les approches qui reposaient trop sur le pouvoir discrétionnaire accordé à l'Agence d'éliminer certains projets ou qui s'appuyaient trop sur le pouvoir discrétionnaire conféré à la ministre de désigner des projets ont été rejetées.

Un règlement qui définit les activités concrètes qui constituent un « projet désigné » est essentiel au fonctionnement de la LCEE 2012. Par conséquent, des options non réglementaires n'ont pas été envisagées.

Les modifications apportées au Règlement appuient le plan de Développement responsable des ressources du gouvernement en mettent l'accent sur les projets les plus susceptibles d'entraîner des effets environnementaux négatifs dans des domaines de compétence fédérale.

Règle du « un pour un »

La règle du « un pour un » ne s'applique pas puisqu'il n'y a pas de changement dans le fardeau administratif pour les entreprises.

Le Résumé de l'étude d'impact de la réglementation du règlement antérieur, publié dans la Partie II de la *Gazette du Canada*, le 18 juillet 2012, indiquait que le Règlement déclenchait la règle du « un pour un ». Par la suite, l'Agence, après avoir consulté le Secrétariat du Conseil du Trésor du Canada, a déterminé qu'en dépit du fait que des coûts de conformité peuvent être associés au Règlement, celui-ci n'impose aux entreprises aucun nouveau fardeau administratif.

Tout fardeau administratif qui peut être lié à la présentation d'une description de projet en vertu de la LCEE 2012 est afférent

the *Prescribed Information for the Description of a Designated Project Regulations*.

Small business lens

The small business lens does not apply to this proposal.

Consultation

1. Prior to the publication of the proposed *Regulations Amending the Regulations Designating Physical Activities* in the *Canada Gazette*, Part I

Following the coming into force of the CEAA 2012 on July 6, 2012, the Agency met with provinces and territories, industry groups, national Aboriginal organizations and environmental groups in relation to the new legislation and invited views on whether amendments to the Regulations should be made. By August 31, 2012, the Agency had received 45 individual submissions from stakeholder groups, as well as form letters from the public identifying issues of concern. The Agency did not receive any submissions from the national Aboriginal organizations.

Concerns were raised about the appropriate range of physical activities to include in the Regulations. Several industry associations were concerned about the inclusion of activities that had not required an environmental assessment under the former *Canadian Environmental Assessment Act*, which, in their view, indicated that these activities result in little or no impact on matters of federal jurisdiction. Some provinces indicated that the Regulations should only include activities where there is a clear federal interest, specifically transboundary projects, interprovincial and international projects, projects on federal land, projects with federal funding and projects of national significance (e.g. related to national security). On the other hand, environmental groups indicated that a broad and inclusive approach should be adopted to ensure all projects that may cause significant environmental effects, including cumulative effects, are at least subject to the screening process under the CEAA 2012 to determine if an environmental assessment is warranted.

In relation to the list of physical activities set out in the schedule to the Regulations, the main issues raised were

- adding new entries for diamond mines, offshore exploratory drilling, offshore seismic testing, bridges, and wind power facilities;
- revising, removing or retaining the existing entry for ground water withdrawal facilities;
- revising the existing entry for tidal power projects; and
- the appropriate treatment of oil sands projects (including *in situ* oil sands projects), industrial facilities, linear projects (pipelines, all-season public highways and electrical transmission lines), and expansions (particularly mine expansions).

Some comments from environmental groups also spoke to adding all mines (i.e. without reference to a threshold), aquaculture projects, transportation of radioactive waste, oil and gas hydraulic

au *Règlement sur les renseignements à inclure dans la description d'un projet désigné*.

Lentille des petites entreprises

La lentille des petites entreprises ne s'applique pas à ce règlement.

Consultation

1. Avant la publication du *Règlement modifiant le Règlement désignant les activités concrètes* dans la Partie I de la *Gazette du Canada*

Après l'entrée en vigueur de la LCEE 2012 le 6 juillet 2012, l'Agence s'est réunie avec les provinces et les territoires, les groupes industriels, les organisations nationales autochtones et les groupes environnementaux concernant la nouvelle législation et les a invités à donner leur opinion quant à la nécessité d'apporter des modifications au Règlement. Le 31 août 2012, l'Agence a reçu 45 observations écrites de groupes d'intervenants, ainsi que des lettres types envoyées par le grand public dans lesquelles des sujets de préoccupation ont été soulevés. L'Agence n'a reçu aucune observation écrite des organisations nationales autochtones.

Des préoccupations ont été soulevées quant à l'éventail des activités concrètes à inclure dans le Règlement. Plusieurs associations de l'industrie ont soulevé des préoccupations concernant l'inclusion des activités qui n'avaient pas déclenché une évaluation environnementale en vertu de la *Loi canadienne sur l'évaluation environnementale* antérieure. À leur avis, ceci indiquait que ces types d'activités entraînent peu ou aucun impact dans des domaines de compétence fédérale. Certaines provinces ont indiqué que le Règlement devrait comprendre uniquement les activités envers lesquelles il y a un intérêt fédéral manifeste, particulièrement les projets transfrontaliers, interprovinciaux et internationaux, les projets se déroulant sur le territoire domanial, les projets financés par le gouvernement fédéral et les projets d'importance nationale (par exemple liés à la sécurité nationale). D'autre part, les groupes environnementaux ont indiqué qu'il fallait adopter une approche large et inclusive afin que tous les projets pouvant entraîner des effets environnementaux importants, y compris des effets cumulatifs, soient au moins soumis au processus de l'examen préalable en vertu de la LCEE 2012 pour déterminer si une évaluation environnementale est justifiée.

En ce qui concerne la liste des activités concrètes prévues à l'annexe du Règlement, les principales questions soulevées portaient :

- sur l'ajout de nouvelles inscriptions pour inclure les mines de diamants, le forage exploratoire au large des côtes, les essais sismiques en mer, les ponts et les installations d'énergie éolienne;
- la modification, la suppression ou le maintien de l'inscription portant sur les installations d'extraction d'eau souterraine;
- la modification de l'inscription portant sur les projets d'énergie marémotrice;
- la façon appropriée de traiter les projets de sable bitumineux (y compris les projets de sable bitumineux *in situ*), les installations industrielles, les projets linéaires (pipelines, routes publiques en toutes saisons et lignes de transport d'électricité), et les inscriptions portant sur l'agrandissement de projet (particulièrement l'agrandissement des mines).

Certains commentaires des groupes environnementaux portaient sur l'ajout de toutes les mines (c'est-à-dire sans aucune référence à un seuil), des projets d'aquaculture, du transport de déchets

fracturing, and large-scale forestry operations, as well as to ensuring the inclusion of underwater power cables. Additional issues raised by some provinces included the appropriate treatment of fossil fuel-fired electrical generating facilities and potash mines.

Over 200 form letters were submitted by members of the public, environmental groups and Aboriginal groups expressing support for the addition of offshore oil and gas exploration projects and seismic testing.

In addition, the Agency received over 1 800 form letters from members of the public in support of adding an entry for the shipment of radioactive waste. The shipping of radioactive waste is subject to extensive review under the federal regulatory framework, including the *Nuclear Safety and Control Act* (NSCA). The regulatory process under the NSCA includes protection of human health and the environment, and provides opportunities for public participation and participant funding. All major projects that are regulated by the CNSC are covered in the amendments to the Regulations.

Concerns were also raised about the use of thresholds to capture only larger projects and how those thresholds are designed. Environmental groups expressed concern about situations of project splitting: proponents designing projects to be just under the threshold and using incremental expansions to avoid the requirement for an environmental assessment. They were also concerned about using thresholds related to the size of a project (e.g. production capacity) since, in their view, small-scale projects can have significant impacts if located in a sensitive area.

A number of stakeholders also expressed concern about the "life cycle" wording used in the Regulations (i.e. the "construction, operation, decommissioning and abandonment" of a facility) indicating that, in their view, the intent of this wording should be clarified.

2. Comments on the proposed *Regulations Amending the Regulations Designating Physical Activities*

The proposed *Regulations Amending the Regulations Designating Physical Activities* and the related Regulatory Impact Analysis Statement were publicly released on the Agency's Web site on April 12, 2013, and subsequently published in the *Canada Gazette*, Part I, on April 20 for a 30-day public comment period. The public comment period closed on May 20, 2013. The Agency received 51 submissions from interested stakeholders, Aboriginal groups, and members of the public.

In general, members of the public, environmental groups and Aboriginal groups expressed concern about the removal of any project type from the Regulations. They suggested that all entries be retained and that a number of other project types be added (e.g. aquaculture, offshore wind farms, oil sands projects, projects on federally protected lands). In addition, concerns were raised with proposed increases in the thresholds and with the use of thresholds in general, with some suggesting that all projects of certain types (e.g. mines) be included. Aboriginal groups raised concerns about the impacts on consultation if fewer environmental assessments are conducted. Various groups noted concern with the lack of detailed

radioactifs, de la fracturation hydraulique pour l'exploitation pétrolière et gazière, de l'exploitation forestière à grande échelle et des câbles d'énergie sous l'eau. D'autres questions ont été soulevées par certaines provinces concernant le traitement approprié des centrales électriques alimentées par des combustibles fossiles et des mines de potasse.

Les membres du public, les groupes environnementaux et les groupes autochtones ont envoyé plus de 200 lettres types dans lesquelles ils expriment leur soutien à l'ajout des projets d'exploration pétrolière et gazière au large des côtes et des essais sismiques en mer.

En outre, l'Agence a reçu plus de 1 800 lettres types des membres du public pour appuyer l'ajout d'une inscription sur le transport de déchets radioactifs. Le transport de déchets radioactifs est soumis à un examen approfondi dans le cadre de la réglementation fédérale, y compris la *Loi sur la sûreté et la réglementation nucléaires* (LSRN). Le processus réglementaire en vertu de la LSRN comprend la protection de la santé humaine et de l'environnement, et offre des possibilités de participation du public et d'aide financière aux participants. Tous les projets de grande envergure qui sont réglementés par la CCSN sont inclus dans les modifications au Règlement.

Des préoccupations ont également été soulevées quant à l'utilisation des seuils pour y inclure seulement les plus grands projets et sur la manière dont ces seuils sont conçus. Des groupes environnementaux ont soulevé des préoccupations à propos du fractionnement de projets, c'est-à-dire lorsque les promoteurs conçoivent leurs projets de manière à se trouver juste sous le seuil et recourent à des agrandissements graduels afin d'éviter de devoir effectuer une évaluation environnementale. Les groupes environnementaux étaient également préoccupés par le fait que les seuils soient liés à la taille d'un projet (par exemple la capacité de production) étant donné que, selon eux, les petits projets pourraient également avoir des impacts importants s'ils sont réalisés dans une zone sensible.

Un certain nombre d'intervenants ont également soulevé des préoccupations concernant la formulation relative au « cycle de vie » dans le Règlement (c'est-à-dire « la construction, l'exploitation, la désaffectation et la fermeture » d'une installation). Selon eux, l'objectif de cette formulation devrait être précisé.

2. Commentaires relatifs au *Règlement modifiant le Règlement désignant les activités concrètes* proposé

Le *Règlement modifiant le Règlement désignant les activités concrètes* proposé ainsi que le Résumé de l'étude d'impact de la réglementation ont été d'abord publiés sur le site Web de l'Agence le 12 avril 2013 et ensuite dans la Partie I de la *Gazette du Canada* le 20 avril pour une période de consultation publique de 30 jours. La période de consultation publique a pris fin le 20 mai 2013. L'Agence a reçu 51 observations écrites des intervenants intéressés, des groupes autochtones et des membres du public.

En général, les membres du public, les groupes environnementaux et les groupes autochtones ont exprimé leur inquiétude quant à l'élimination de tout type de projet du Règlement. Ils ont suggéré de conserver toutes les inscriptions et que plusieurs autres types de projet soient ajoutés (par exemple les projets d'aquaculture, de parcs éoliens situés au large des côtes, de sables bitumineux et des projets situés sur des terres protégées par le gouvernement fédéral). En outre, des préoccupations ont été exprimées concernant les augmentations de seuils proposées et l'utilisation de seuils en général. Certains ont suggéré que tous les projets d'un certain type (par exemple les mines) soient inclus. Les groupes autochtones ont

rationale in the Regulatory Impact Analysis Statement to support the proposed changes, and there were comments about the Government's overall direction with respect to environmental policy and legislative changes.

Industry indicated support for the proposed removals (e.g. industrial minerals, intra-provincial pipelines and electrical transmission lines). Some industry associations indicated that the proposed changes addressed their concerns. There were some further requests for removal of entries, in particular stone quarries and sand and gravel pits. With respect to tidal power projects, there was general support for the proposal to treat in-stream projects separately from other types of tidal power technologies; however, there were differing views regarding the appropriate threshold to use. Industry also expressed concern about fossil fuel-fired electrical generating facilities, indicating that a distinction should be made between the types of fossil fuels used, with a higher threshold for fuels such as natural gas compared to that for oil or coal.

In general, provinces were supportive of the proposed changes, though Ontario raised concerns about the removal of some types of projects, such as industrial facilities, and the potential for regulatory gaps where no federal environmental assessment will be required in that province (given that the provincial environmental assessment legislation does not generally apply to private sector proposals). Nova Scotia indicated support for the proposed change to the entry for tidal power projects, while Saskatchewan supported the removal of potash mines. Alberta and Ontario raised concern with the retention of the entry for sand and gravel quarries, while Ontario and Saskatchewan raised concern about the retention of all-season public highways.

Changes as a result of consultation

The Agency received comments from industry associations and companies regarding the continued inclusion of the entry related to stone quarries and sand and gravel pits. They expressed concern that many projects would be subject to CEAA 2012 that would not have been subject to an environmental assessment under the former Act, and pointed to the differences between these types of projects and other types of mines. Environmental groups supported the continued inclusion of this item, indicating that these types of projects use large land areas and can have hydrological and hydrogeological impacts, and thus have an impact on areas of federal jurisdiction. The entry for this type of project has been retained; however, the threshold has been increased from a production capacity of 1 million tonnes per year to 3.5 million tonnes per year. Unlike some other types of mines, these projects do not generate the waste rock or tailings that are often linked to potential adverse environmental effects in areas of federal jurisdiction, making a higher threshold appropriate.

soulevé des préoccupations quant aux impacts sur la consultation si moins d'évaluations environnementales sont réalisées. Divers groupes ont noté des préoccupations quant à l'absence d'une justification détaillée dans le Résumé de l'étude d'impact de la réglementation pour appuyer les modifications proposées. Il y avait également des commentaires sur l'orientation générale du gouvernement en ce qui concerne les politiques environnementales et les modifications législatives.

L'industrie s'est montrée favorable aux suppressions proposées (par exemple les minéraux industriels, les pipelines et les lignes de transport d'électricité intraprovinciaux). Certaines associations industrielles ont indiqué que les changements proposés répondaient à leurs préoccupations. Il y avait d'autres demandes de suppression d'inscriptions, en particulier les carrières de pierre, de gravier et de sable. En ce qui concerne les projets d'énergie marémotrice, il y avait un soutien général quant à la proposition de traiter les hydroliennes séparément des autres types de technologies d'énergie marémotrice; toutefois, il y avait divers points de vue quant au seuil approprié à utiliser. L'industrie a également exprimé des préoccupations concernant les installations de production d'électricité alimentées par un combustible fossile, indiquant qu'une distinction quant aux seuils entre les différents types de combustibles fossiles devrait être faite, avec un seuil plus élevé pour certains combustibles tels que le gaz naturel par rapport à celui du pétrole ou du charbon.

En général, les provinces étaient favorables aux modifications proposées, bien que l'Ontario ait soulevé des préoccupations au sujet de la suppression de certains types de projets (comme les installations industrielles) et au sujet des lacunes réglementaires potentielles dans le cas où aucune évaluation environnementale fédérale ne soit pas requise dans cette province (étant donné que la législation provinciale en matière d'évaluation environnementale ne s'applique généralement pas aux projets du secteur privé). La Nouvelle-Écosse appuie la modification proposée en ce qui concerne l'inscription des projets d'énergie marémotrice, tandis que la Saskatchewan a appuyé la suppression des mines de potasse. L'Alberta et l'Ontario ont soulevé des préoccupations relatives à la conservation de l'inscription des carrières de sable et de gravier, et l'Ontario et la Saskatchewan ont soulevé des préoccupations concernant la conservation des voies publiques utilisable en toutes saisons.

Modifications à la suite de la consultation

L'Agence a reçu des commentaires des associations industrielles et des entreprises au sujet de l'inclusion continue de l'inscription reliée aux carrières de pierre, de gravier et de sable. Ils craignent que plusieurs projets soient assujettis à la LCEE 2012 alors qu'ils n'auraient pas fait l'objet d'une évaluation environnementale en vertu de l'ancienne loi et ont souligné les différences entre ces types de projets et les autres types de mines. Les groupes environnementaux ont été favorables à l'inclusion continue de cette inscription, indiquant que ces types de projets utilisent de grandes superficies et peuvent avoir des impacts hydrologiques et hydrogéologiques, en conséquence, ces projets ont un impact dans les domaines de compétence fédérale. L'inscription de ce type de projet a été retenue; toutefois, le seuil relatif à la capacité de production a été porté de 1 million de tonnes à 3,5 millions de tonnes par an. Contrairement à d'autres types de mines, ces types de projets ne produisent pas des résidus miniers et des stériles, qui sont souvent liés aux risques d'effets environnementaux négatifs dans des domaines de compétence fédérale; par conséquent, un seuil plus élevé est approprié.

The entries in the Regulations related to offshore oil and gas development projects (offshore exploratory drilling, offshore production facilities, and offshore pipelines) as well as the definition of "offshore," received many comments, primarily from industry but also from provinces, the two Atlantic offshore boards (joint federal and provincial organizations), and an Aboriginal group. Comments noted that these entries were not clearly worded, which could result in confusion over which projects were subject to CEAA 2012, inconsistent application, and the inclusion of projects that have low potential for adverse environmental effects. In addition, comments indicated that the definition of "offshore" should be retained.

Modifications to the offshore oil and gas items were made to clarify what activities are and are not covered. The entries for offshore exploratory drilling were modified to clarify that they apply to those exploratory wells that are part of the first drilling program proposed in one or more exploration licence areas. The entries for offshore oil or gas production facilities were revised to clearly specify which types of facilities are covered (i.e. an offshore floating or fixed platform, vessel or artificial island that is used for the production of oil or gas). Clarification for the offshore pipeline entries was achieved by specifying that these entries do not include "flowlines," to ensure that they only cover major projects. The definition of "offshore" has been retained to ensure it is clear that "offshore" applies only to those areas in which activities are regulated under the *Canada Oil and Gas Operations Act*, the *Canada-Newfoundland Atlantic Accord Implementation Act* or the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

In response to comments from industry, the entry for railway yards was modified to refer to "yard tracks" rather than "sidings" to better reflect the terminology used in that sector. A comment was received from the nuclear industry indicating that the terminology in the entry related to facilities for the storage of nuclear waste should be the same as is used in the regulations that govern those facilities. As a result, the term "licensed boundaries" was replaced with "licensed perimeter." This modification does not change the scope of application of the item.

The transitional provision providing that the amended Regulations do not apply if an assessment of the project under another process is already underway was also modified to clarify its application. The provision applies when an assessment of the environmental effects has already been commenced or completed by a provincial government or body, a body established under a land claims agreements or legislation that relates to the self-government for Aboriginal peoples, the CNSC or the NEB. The provision does not apply to the processes of other federal authorities.

All the comments were taken into consideration in developing the revised schedule to focus on major projects that involve physical activities that have the greatest potential to result in

Les inscriptions dans le Règlement portant sur les projets de développement et d'exploration pétrolière et gazière au large des côtes (forage exploratoire, installation de production et pipeline au large des côtes) ainsi que la définition de « au large des côtes » ont suscité de nombreux commentaires, principalement de l'industrie, mais aussi des provinces, des deux offices des hydrocarbures extracôtiers de l'Atlantique (organisations fédérales et provinciales conjointes) et d'un groupe autochtone. Les commentaires ont indiqué que ces inscriptions n'étaient pas clairement formulées, ce qui pourrait entraîner une certaine confusion sur quels projets sont soumis à la LCEE 2012, une application irrégulière de ces inscriptions, et l'inclusion de projets qui ne sont pas susceptibles de causer des effets environnementaux importants. De plus, les commentaires ont indiqué que la définition de « au large des côtes » devait être conservée.

Des modifications ont été apportées aux inscriptions portant sur les projets de développement et d'exploration pétrolière et gazière au large des côtes afin de rendre plus claire quelles sont les activités qui sont ou ne sont pas comprises. Les inscriptions relatives au forage exploratoire au large des côtes ont été modifiées afin de clarifier qu'elles s'appliquent aux puits d'exploration qui font partie du premier programme de forage proposé dans une zone visée par un ou plusieurs permis de prospection. Les inscriptions relatives aux installations de production de pétrole ou de gaz situées au large des côtes ont été modifiées afin de préciser quels types d'installations sont visés (c'est-à-dire une plate-forme flottante ou fixe, un navire ou une île artificielle au large des côtes utilisé pour la production de pétrole ou de gaz). Les inscriptions portant sur les pipelines au large des côtes ont été clarifiées afin de s'assurer que seulement les grands projets soient couverts, en précisant que ces inscriptions ne comprennent pas les « conduites d'écoulement ». La définition du terme « au large des côtes » est retenue afin de clarifier que « au large des côtes » s'applique seulement aux zones dans lesquelles les activités sont réglementées par la *Loi sur les opérations pétrolières au Canada*, la *Loi de mise en œuvre de l'Accord atlantique Canada-Terre-Neuve* ou la *Loi de mise en œuvre de l'Accord Canada-Nouvelle-Écosse sur les hydrocarbures extracôtiers*.

En tenant compte des commentaires formulés par l'industrie, l'inscription portant sur les gares de triage a été modifiée pour faire référence à des « voies de triage » plutôt que des « voies d'évitement », puisqu'il s'agit de la terminologie couramment utilisée par l'industrie. Un commentaire a été reçu de l'industrie nucléaire, indiquant que la terminologie utilisée dans l'inscription reliée aux installations de stockage des déchets nucléaires doit être là même que celle utilisée dans le règlement qui régit ces installations. Ainsi, le terme « limites autorisées » a été remplacé par « périmètre autorisé ». Cette modification ne change pas le champ d'application de l'inscription.

La disposition transitoire qui prévoit que le règlement modifié ne s'applique pas si une évaluation d'un projet sous un autre processus a déjà été commencée a également été modifiée. La disposition s'applique lorsqu'une évaluation des effets environnementaux a déjà été commencée ou menée à terme par un gouvernement ou un organisme provincial, un organisme constitué aux termes d'un accord sur des revendications territoriales ou par une loi relative à l'autonomie gouvernementale des Autochtones, ou par l'ONE ou la CCSN. La disposition ne s'applique pas au processus des autres autorités fédérales.

Tous les commentaires ont été pris en compte lors de l'élaboration de l'annexe révisée en vue de mettre l'accent sur les grands projets qui contiennent les activités concrètes les plus susceptibles

significant adverse environmental effects in areas of federal jurisdiction. The rationale for the amendments to the Regulations is outlined in the following section.

Rationale

The main purpose of the amendments is to ensure the Regulations are aligned with the objectives of the CEAA 2012 in support of the Government's plan for Responsible Resource Development. Accordingly, the amendments to the Regulations ensure federal environmental assessment requirements are focussed on those major projects that have the greatest potential for significant adverse environmental effects in areas of federal jurisdiction. Physical activities that typically have minimal impacts on areas of federal jurisdiction have been removed.

The Regulations must be designed in consideration of the structure of the CEAA 2012. A key element of the CEAA 2012 is the Minister's authority to designate a project that includes physical activities not in the Regulations. This provision recognizes that there may be occasional situations where the specific instance of a physical activity has a unique impact on the environment. If the physical activity is expected to have the potential for significant adverse environmental effects on areas of federal jurisdiction in most situations, then the physical activity is included in the Regulations. However, if the physical activity is not expected to have the potential for significant adverse environmental effects, except in limited circumstances, then it has not been included. The Minister's authority to designate can be used, if warranted, in such circumstances. This approach allows the Government to protect the environment in those areas where attention is warranted. Should the Minister be designating physical activities associated with certain types of projects on a regular basis, the Minister can consider amendments to the Regulations in the future to include those activities.

In addition, the amendments ensure the Regulations are as clear and consistent as possible with respect to the descriptions of physical activities, the treatment of expansions, the application to the project life cycle and key terms.

In the first year that the CEAA 2012 was in force, 29 environmental assessments were commenced. It is not possible to predict with certainty the number of projects that will be subject to the CEAA 2012 in the future since project volumes are driven by economic conditions and other considerations that inform proponent decisions. However, taken together, the amendments are not expected to significantly affect the total number of projects that are subject to the CEAA 2012 annually. The impact of the amendments will be to shift the potential requirement for a federal environmental assessment from the proponents of those project types with physical activities that have been removed from the Regulations and on to the proponents of those projects with physical activities which have been added.

Implementation, enforcement and service standards

Under the CEAA 2012, unless either the Agency has determined that an environmental assessment is not required or a decision statement has been issued and the proponent is acting in accordance with the conditions of that decision statement, the proponent

de causer des effets environnementaux négatifs importants dans des domaines de compétence fédérale. La justification des modifications au Règlement est décrite dans la partie qui suit.

Justification

L'objectif principal des modifications est de faire en sorte que le Règlement réponde adéquatement aux objectifs de la LCEE 2012 à l'appui du plan gouvernemental de Développement responsable des ressources. Par conséquent, les modifications au Règlement assurent que les exigences fédérales en matière d'évaluation environnementale portent principalement sur les projets de grande envergure qui sont les plus susceptibles de causer des effets environnementaux négatifs importants dans les domaines de compétence fédérale. Les activités concrètes qui ordinairement ont peu d'impact dans des domaines de compétence fédérale ont été supprimées.

Le Règlement doit être élaboré en tenant compte de la structure de la LCEE 2012. Un élément clé de la LCEE 2012 est l'autorité conférée à la ministre de l'Environnement de désigner un projet qui contient des activités concrètes non prévues dans le Règlement. Cette disposition reconnaît qu'il peut y avoir certains cas où les circonstances particulières d'une activité concrète ont un impact unique sur l'environnement. Si une activité concrète est susceptible d'entraîner des effets environnementaux négatifs importants dans des domaines de compétence fédérale dans la plupart des situations, l'activité concrète est incluse dans le Règlement. Toutefois, si une activité concrète n'est pas susceptible d'entraîner des effets environnementaux négatifs importants, sauf dans des circonstances limitées, alors elle n'a pas été incluse. Le pouvoir de la ministre de la désigner peut être utilisé si les circonstances le justifient. Cette approche permet au gouvernement d'assurer la protection de l'environnement là où une attention plus soutenue est nécessaire. Dans le cas où la ministre doit régulièrement désigner des activités concrètes liées à certains types de projet, la ministre peut envisager de modifier le Règlement à une date ultérieure afin d'y ajouter ces activités concrètes.

Par ailleurs, les modifications permettent d'assurer que le Règlement est aussi clair et cohérent que possible quant à la description des activités concrètes, au traitement des agrandissements, à l'application du cycle de vie d'un projet et aux termes clés.

Dans la première année que la LCEE 2012 était en vigueur, 29 évaluations environnementales ont été commencées. Il n'est pas possible de prédire avec certitude le nombre de projets qui seront assujettis à la LCEE 2012 à l'avenir étant donné que le nombre de projets dépend des conditions économiques et d'autres considérations qui éclairent les décisions des promoteurs. Toutefois, l'ensemble des modifications ne devrait pas affecter de manière significative le nombre total de projets qui sont assujettis à la LCEE 2012 chaque année. L'impact des modifications sera de déplacer l'exigence éventuelle de la réalisation d'une évaluation environnementale fédérale des promoteurs des types de projets contenant les activités concrètes qui ont été supprimées du Règlement aux promoteurs de projets contenant des activités concrètes qui ont été ajoutées.

Mise en œuvre, application et normes de service

En vertu de la LCEE 2012, à moins que l'Agence ait déterminé qu'une évaluation environnementale n'est pas nécessaire ou qu'une déclaration de décision ait été émise et que le promoteur agisse conformément aux conditions énoncées dans cette déclaration, il

is prohibited from carrying out any part of a designated project that will result in

- effects on fish and fish habitat, shellfish and their habitat, crustaceans and their habitat, marine animals and their habitat, marine plants, and migratory birds;
- effects on federal lands;
- effects that cross provincial or international boundaries; and
- effects of any changes to the environment that affect Aboriginal peoples, such as their use of lands and resources for traditional purposes.

In addition, a federal authority is prohibited from issuing a permit or authorization for a designated project that requires an environmental assessment under the CEAA 2012 unless a decision statement has been issued for the project. The decision statement issued at the end of the environmental assessment includes enforceable conditions with which a proponent must comply. The CEAA 2012 includes enforcement provisions designed to ensure compliance with the requirements of the legislation.

At the time of the coming into force of the amendments, if a project description had been submitted or if an environmental assessment had commenced under the CEAA 2012 of a project involving a physical activity removed from the Regulations (and none that has been retained or added), the screening process or the environmental assessment was terminated because the project was no longer a "designated project." Other federal permitting and approvals processes continue to apply. If the project is located on federal lands, CEAA 2012 requires that before federal authorities make any decision that would allow the project to proceed, they must determine whether it is likely to cause significant adverse environmental effects.

For the reverse situation (cases where a project was not a "designated project" under the former Regulations but is a "designated project" as a result of the amendments), the new Regulations apply except if permits have already been issued by a federal authority, the carrying out of the project has already started, or an assessment under the process of another jurisdiction, or under the CNSC or NEB regulatory processes, is already underway. An assessment by another jurisdiction, in this case, is limited to one conducted by a provincial government, agency or body; a body established under a land claims agreement; or a body established under legislation related to Aboriginal self-government. This approach will prevent delays and duplication for projects that had been proceeding in good faith under the former Regulations. In addition, the transitional provisions provide that the new Regulations do not apply in respect of any project that was subject to a "screening" type environmental assessment under the former Act which, as a result of the coming into force of CEAA 2012, was not required to be continued and completed.

The Minister of the Environment can designate persons to enforce and verify compliance with the CEAA 2012. If a designated person believes that there is a contravention of the CEAA 2012, they may order the contravener to stop doing anything that is in non-compliance with the CEAA 2012 and to take measures that are necessary to comply with the Act or to mitigate the effects of non-compliance.

The Agency will promote and monitor compliance with the CEAA 2012 and its regulations. The responsible authorities will

est interdit à un promoteur de mettre en œuvre toute partie d'un projet désigné qui entraînera des effets :

- sur les poissons et l'habitat du poisson, les mollusques et leur habitat, les crustacés et leur habitat, les animaux marins et leur habitat, toute plante marine, et les oiseaux migrateurs;
- sur le territoire domanial;
- qui dépassent les frontières provinciales ou internationales;
- des changements causés à l'environnement qui affectent les peuples autochtones comme leur usage des terres et des ressources à des fins traditionnelles.

En outre, il est interdit à une autorité fédérale de délivrer un permis ou une autorisation pour un projet désigné qui nécessite une évaluation environnementale en vertu de la LCEE 2012, sauf si une déclaration a été émise pour le projet. La déclaration émise à l'issue de l'évaluation environnementale comprend des conditions exécutoires auxquelles le promoteur doit satisfaire. La LCEE 2012 comprend des dispositions de contrôle d'application de la Loi visant à assurer le respect des exigences de la législation.

Au moment de l'entrée en vigueur du règlement modifié, si une description de projet avait été soumise ou si une évaluation environnementale avait été commencée en vertu de la LCEE 2012 pour un projet désigné qui comprend une activité concrète retirée du Règlement (et aucune qui a été retenue ou ajoutée), le processus d'examen préalable ou l'évaluation environnementale, selon le cas, est arrêté, car le projet n'est plus considéré comme étant un « projet désigné ». Les autres processus de délivrance de permis et d'autorisations fédérales continuent de s'appliquer. Si le projet est situé sur un territoire domanial, la LCEE 2012 exige que les autorités fédérales déterminent si le projet est susceptible de causer des effets environnementaux négatifs importants avant de prendre toute décision qui permettrait la mise en œuvre du projet.

À l'inverse (dans le cas où un projet n'était pas « un projet désigné » en vertu du règlement antérieur, mais est un « projet désigné » à la suite des modifications), le nouveau règlement s'applique sauf si un permis ou une autorisation a déjà été délivré par une autorité fédérale, la mise en œuvre du projet a été entamée ou une évaluation dans le cadre d'un processus d'une autre instance, ou du processus réglementaire de l'ONE ou de la CCSN, est en cours. Une évaluation par une autre instance est, dans ce cas, limitée à une évaluation réalisée par un gouvernement, une agence ou un organisme provinciaux, un organisme constitué aux termes d'un accord sur des revendications territoriales ou un organisme constitué par une loi relative à l'autonomie gouvernementale des Autochtones. Cette approche permettra d'éviter les retards et les chevauchements pour les projets dont la mise en œuvre s'est poursuivie de bonne foi en vertu du règlement antérieur. Par ailleurs, les dispositions transitoires prévoient que le nouveau règlement ne s'applique pas à l'égard d'un projet qui était assujetti à une évaluation environnementale de type « examen préalable » en vertu de l'ancienne loi si, en raison de l'entrée en vigueur de la LCEE 2012, cet examen préalable n'a pas été mené à terme.

La ministre de l'Environnement peut désigner des personnes pour faire appliquer et vérifier la conformité à la LCEE 2012. Si une personne désignée estime qu'il y a violation de la LCEE 2012, elle peut ordonner au contrevenant de cesser de faire tout ce qui est non conforme à la LCEE 2012 et de prendre des mesures qui sont nécessaires pour se conformer à la Loi ou afin d'atténuer les effets de non-conformité.

L'Agence encouragera et surveillera l'application de la LCEE 2012 et de ses règlements. Les autorités responsables vont assurer

verify compliance with conditions in the decision statements of designated projects for which they are the responsible authority.

The Regulations will be reviewed periodically, in accordance with the Cabinet Directive on Regulatory Management, to ensure they remain consistent with government priorities.

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le respect des conditions énoncées dans la déclaration des projets désignés dont ils sont l'autorité responsable.

Le Règlement sera révisé périodiquement, conformément à la Directive du Cabinet sur la gestion de la réglementation, pour garantir qu'il demeure conforme aux priorités du gouvernement.

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Registration
SOR/2019-285 August 8, 2019

IMPACT ASSESSMENT ACT

P.C. 2019-1182 August 7, 2019

Her Excellency the Governor General in Council, on the recommendation of the Minister of the Environment, pursuant to sections 109 and 188 of the *Impact Assessment Act*[a], makes the annexed *Physical Activities Regulations*.

Physical Activities Regulations

Definitions

1 (1) The following definitions apply in these Regulations.

aerodrome has the same meaning as in subsection 3(1) of the *Aeronautics Act*. (*aérodrome*)

area of mining operations means the area at ground level occupied by any open-pit or underground workings, mill complex or storage area for overburden, waste rock, tailings or ore. (*aire d'exploitation minière*)

boundary water has the meaning assigned by the definition *boundary waters* in subsection 2(1) of the *Canada Water Act*. (*eaux limitrophes*)

canal means a waterway constructed for navigation. (*canal*)

Class IA nuclear facility has the same meaning as in section 1 of the *Class I Nuclear Facilities Regulations*. (*installation nucléaire de catégorie IA*)

disposal at sea means *disposal*, as defined in subsection 122(1) of the *Canadian Environmental Protection Act, 1999*, but does not include any omission that constitutes a disposal in paragraph (g) of the definition of that term. (*immersion*)

exploratory well has the same meaning as in subsection 101(1) of the *Canada Petroleum Resources Act*, but does not include a *delineation well* or *development well* as those terms are defined in that subsection. (*puits d'exploration*)

hazardous waste means anything referred to in any of paragraphs 1(1)(a) to (f) or 2(1)(a) to (f) of the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*, but does not include nuclear

[a] S.C. 2019, c. 28

Enregistrement
DORS/2019-285 Le 8 août 2019

LOI SUR L'ÉVALUATION D'IMPACT

C.P. 2019-1182 Le 7 août 2019

Sur recommandation de la ministre de l'Environnement et en vertu des articles 109 et 188 de la *Loi sur l'évaluation d'impact*[a], Son Excellence la Gouverneure générale en conseil prend le *Règlement sur les activités concrètes*, ci-après.

Règlement sur les activités concrètes

Définitions

1 (1) Les définitions qui suivent s'appliquent au présent règlement.

aérodrome S'entend au sens du paragraphe 3(1) de la *Loi sur l'aéronautique*. (*aerodrome*)

aire d'exploitation minière La surface occupée, au niveau du sol, par une installation d'exploitation à ciel ouvert ou souterraine, un complexe usinier ou une aire d'entreposage des terrains de couverture, des stériles, des résidus miniers ou de minerai. (*area of mine operations*)

aire marine nationale de conservation Toute *aire marine de conservation* ou *réserve*, au sens du paragraphe 2(1) de la *Loi sur les aires marines nationales de conservation du Canada*, ou le parc marin du Saguenay — Saint-Laurent créé en vertu de l'article 5 de la *Loi sur le parc marin du Saguenay — Saint-Laurent*. (*national marine conservation area*)

au large des côtes Qui se situe dans l'une ou l'autre des zones suivantes :

a) une zone visée aux alinéas 3d) ou e) de la *Loi sur les opérations pétrolières au Canada* et à l'égard de laquelle une autorisation est exigée aux termes de cette loi pour exercer une activité liée à la recherche, notamment par forage, à la production, à la rationalisation de l'exploitation, à la transformation ou au transport de pétrole ou de gaz;

b) une zone à l'égard de laquelle une autorisation est exigée, aux termes de la *Loi de mise en œuvre de l'Accord atlantique Canada — Terre-Neuve-et-Labrador* ou de la *Loi de mise en œuvre de l'Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers*, pour exercer une activité liée à la recherche, notamment par forage, à la production, à la rationalisation de

[a] L.C. 2019, ch. 28

substances, domestic waste water or anything collected from households in the course of regular municipal waste collection services. (*déchet dangereux*)

international electrical transmission line has the meaning assigned by the definition *international power line* in section 2 of the *Canadian Energy Regulator Act*. (*ligne internationale de transport d'électricité*)

marine terminal means a facility, including its areas, structures and equipment, that is used for berthing ships and that is

(a) related to the movement of goods between ships and shore; or

(b) used for the receiving, holding, regrouping, embarkation or landing of passengers transported by water. (*terminal maritime*)

national marine conservation area means a *marine conservation area* or a *reserve*, as those terms are defined in subsection 2(1) of the *Canada National Marine Conservation Areas Act*, or the Saguenay-St. Lawrence Marine Park established under section 5 of the *Saguenay-St. Lawrence Marine Park Act*. (*aire marine nationale de conservation*)

national park means a *park* or a *park reserve* as those terms are defined in subsection 2(1) of the *Canada National Parks Act*. (*parc national*)

navigable water has the same meaning as in section 2 of the *Canadian Navigable Waters Act*. (*eaux navigables*)

new right of way means land that is to be developed for an international electrical transmission line, a *pipeline*, as defined in section 2 of the *Canadian Energy Regulator Act*, a railway line or an all-season public highway, and that is not alongside and contiguous to an area of land that was developed for an electrical transmission line, oil and gas pipeline, railway line or all-season public highway. (*nouvelle emprise*)

nuclear substance has the same meaning as in section 2 of the *Nuclear Safety and Control Act*. (*substance nucléaire*)

offshore means, except in respect of an offshore area, anything that is located in

(a) an area referred to in paragraph 3(d) or (e) of the *Canada Oil and Gas Operations Act* in respect of which an authorization under that Act is required to conduct an activity that is related to the exploration and drilling for, or the production, conservation, processing or transportation of, oil or gas; or

(b) an area in respect of which an authorization under the *Canada–Newfoundland and Labrador Atlantic* l'exploitation, à la transformation ou au transport d'hydrocarbures. (*offshore*)

canal Voie navigable construite pour la navigation. (*canal*)

collectivité S'entend au sens du paragraphe 2(1) de la *Loi sur les parcs nationaux du Canada*. (*park community*)

déchet dangereux Toute chose visée à l'un des alinéas 1(1)a) à f) ou 2(1)a) à f) du *Règlement sur l'exportation et l'importation de déchets dangereux et de matières recyclables dangereuses*. La présente définition exclut les substances nucléaires et les eaux usées domestiques ainsi que toute matière enlevée dans le cours normal de l'enlèvement des ordures ménagères par les services municipaux. (*hazardous waste*)

eaux limitrophes S'entend au sens du paragraphe 2(1) de la *Loi sur les ressources en eau du Canada*. (*boundary water*)

eaux navigables S'entend au sens de l'article 2 de la *Loi sur les eaux navigables canadiennes*. (*navigable water*)

immersion S'entend au sens du paragraphe 122(1) de la *Loi canadienne sur la protection de l'environnement (1999)*, à l'exclusion de toute omission visée à l'alinéa g) de la définition de ce terme à ce paragraphe. (*disposal at sea*)

installation nucléaire de catégorie IA S'entend au sens de l'article 1 du *Règlement sur les installations nucléaires de catégorie I*. (*Class IA nuclear facility*)

ligne internationale de transport d'électricité S'entend au sens de l'article 2 de la *Loi sur la Régie canadienne de l'énergie*. (*international electrical transmission line*)

mine d'uranium S'entend au sens donné à *mine* à l'article 1 du *Règlement sur les mines et les usines de concentration d'uranium*. (*uranium mine*)

nouvelle emprise Terrain qui, d'une part, est destiné à être aménagé pour une ligne internationale de transport d'électricité, un *pipeline* au sens de l'article 2 de la *Loi sur la Régie canadienne de l'énergie*, une ligne de chemin de fer ou une voie publique utilisable en toute saison et qui, d'autre part, n'est ni situé le long d'un terrain aménagé pour une ligne de transport d'électricité, un pipeline d'hydrocarbures, une ligne de chemin de fer ou une voie publique utilisable en toute saison, ni contigu à un tel terrain. (*new right of way*)

parc national S'entend au sens donné à *parc* ou à *réserve*, au paragraphe 2(1) de la *Loi sur les parcs nationaux du Canada*. (*national park*)

Accord Implementation Act or the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* is required to conduct an activity that is related to the exploration and drilling for, or the production, conservation, processing or transportation of, oil or gas. (*au large des côtes*)

offshore area has the same meaning as in section 2 of the *Canadian Energy Regulator Act*. (*zone extracôtière*)

oil and gas pipeline means a pipeline that is used, or is to be used, for the transmission of oil or gas alone or with any other commodity. (*pipeline d'hydrocarbures*)

park community has the same meaning as in subsection 2(1) of the *Canada National Parks Act*. (*collectivité*)

uranium mill has the meaning assigned by the definition *mill* in section 1 of the *Uranium Mines and Mills Regulations*. (*usine de concentration d'uranium*)

uranium mine has the meaning assigned by the definition *mine* in section 1 of the *Uranium Mines and Mills Regulations*. (*mine d'uranium*)

water body means any body of water, including a canal, a reservoir, an ocean and a wetland, up to the high-water mark, but does not include a sewage or waste treatment lagoon or a mine tailings pond. (*plan d'eau*)

pipeline d'hydrocarbures Pipeline qui est utilisé ou destiné à être utilisé pour le transport d'hydrocarbures, seuls ou avec tout autre produit. (*oil and gas pipeline*)

plan d'eau S'entend de tout plan d'eau jusqu'à la laisse des hautes eaux et vise notamment les canaux, les réservoirs et les océans, ainsi que les terres humides, mais exclut les étangs de traitement des eaux usées ou des déchets et les étangs de résidus miniers. (*water body*)

puits d'exploration S'entend au sens du paragraphe 101(1) de la *Loi fédérale sur les hydrocarbures*, exception faite des *puits de délimitation* et des *puits d'exploitation* au sens de ce paragraphe. (*exploratory well*)

substance nucléaire S'entend au sens de l'article 2 de la *Loi sur la sûreté et la réglementation nucléaires*. (*nuclear substance*)

terminal maritime Installation, dont ses aires, structures et équipements, qui sert à l'accostage des navires et qui, selon le cas :

a) est liée au mouvement des marchandises entre les navires et la terre ferme;

b) est affectée à la réception, à la mise en attente, au regroupement et à l'embarquement ou au débarquement de passagers transportés par eau. (*marine terminal*)

usine de concentration d'uranium S'entend au sens donné à *usine de concentration* à l'article 1 du *Règlement sur les mines et les usines de concentration d'uranium*. (*uranium mill*)

zone extracôtière S'entend au sens de l'article 2 de la *Loi sur la Régie canadienne de l'énergie*. (*offshore area*)

Aircraft Group Number

(2) For the purpose of these Regulations, an Aircraft Group Number refers to the Aircraft Group Number set out in Transport Canada's publication, TP 312, 5th edition entitled *Aerodrome Standards and Recommended Practices*.

Numéros de groupes d'aéronefs

(2) Dans le présent règlement, les numéros de groupes d'aéronefs sont ceux visés dans la publication de Transports Canada TP 312, 5e édition, intitulée *Normes relatives aux aérodromes et pratiques recommandées*.

Physical activities — designated projects

2 (1) The physical activities that are set out in the schedule are designated for the purpose of the definition *designated project* in section 2 of the *Impact Assessment Act*.

Activités concrètes — projets désignés

2 (1) Les activités concrètes prévues à l'annexe sont désignées pour l'application de la définition de *projet désigné* à l'article 2 de la *Loi sur l'évaluation d'impact*.

Physical activities that may be excluded

(2) For the purpose of the definition *designated project* in section 2 of the *Impact Assessment Act*, the physical activities that may be designated by the Minister under paragraph 112(1)(a.2) of that Act are those referred to in section 34, 44 or 45 of the schedule.

Activités concrètes susceptibles d'être exclues

(2) Pour l'application de la définition de *projet désigné* à l'article 2 de la *Loi sur l'évaluation d'impact*, les activités concrètes qui peuvent être désignées par le ministre en vertu de l'alinéa 112(1)a.2) de cette loi sont celles prévues aux articles 34, 44 et 45 de l'annexe.

Exception

(3) Subsections (1) and (2) do not apply to a physical activity that is a *project*, as defined in section 66 of the *Canadian Environmental Assessment Act, 2012*, if, before the coming into force of the *Impact Assessment Act*, an *authority*, as defined in that section, has made a determination under section 67 of the *Canadian Environmental Assessment Act, 2012* or has indicated in writing that it has started to make its determination for the purpose of that section of whether or not the carrying out of the project is likely to cause significant adverse environmental effects.

Period for review of regulations

3 For the purpose of subsection 111(1) of the *Impact Assessment Act*, the period is five years after the day on which these Regulations come into force.

Project on federal lands or outside Canada

4 (1) If an authority has, before the coming into force of the *Impact Assessment Act*, indicated in writing that it has started to make its determination, for the purpose of section 67 or 68 of the *Canadian Environmental Assessment Act, 2012*, of whether or not the carrying out of a project is likely to cause significant adverse environmental effects, that determination is made under the *Canadian Environmental Assessment Act, 2012* as if that Act had not been repealed.

Non-application of sections 81 to 91 of the *Impact Assessment Act*

(2) If, before the coming into force of the *Impact Assessment Act*, an authority has made a determination under section 67 or 68 of the *Canadian Environmental Assessment Act, 2012* with respect to a project, sections 81 to 91 of the *Impact Assessment Act* do not apply to that project.

Definition of *authority* and *project*

(3) In this section, *authority* and *project* have the same meaning as in section 66 of the *Canadian Environmental Assessment Act, 2012*.

S.C. 2019, c. 28, s. 1

5 These Regulations come into force on the day on which section 1 of *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, comes into force.

Exception

(3) Les paragraphes (1) et (2) ne visent pas l'activité concrète qui est un *projet*, au sens de l'article 66 de la *Loi canadienne sur l'évaluation environnementale (2012)*, à l'égard duquel, avant l'entrée en vigueur de la *Loi sur l'évaluation d'impact*, une *autorité*, au sens de cet article, a pris une décision en vertu de l'article 67 de la *Loi canadienne sur l'évaluation environnementale (2012)* ou a indiqué par écrit qu'elle a commencé à évaluer, pour l'application de cet article, si la réalisation du projet est susceptible d'entraîner des effets environnementaux négatifs importants.

Délai de révision des règlements

3 Pour l'application du paragraphe 111(1) de la *Loi sur l'évaluation d'impact*, le délai est de cinq ans après la date d'entrée en vigueur du présent règlement.

Projet sur un territoire domanial ou à l'étranger

4 (1) Si, avant l'entrée en vigueur de la *Loi sur l'évaluation d'impact*, une autorité a indiqué par écrit qu'elle a commencé à évaluer, pour l'application des articles 67 ou 68 de la *Loi canadienne sur l'évaluation environnementale (2012)*, si la réalisation d'un projet est susceptible d'entraîner des effets environnementaux négatifs importants, sa décision à cet égard est prise en vertu de cette loi comme si celle-ci n'avait pas été abrogée.

Non-application des articles 81 à 91 de la *Loi sur l'évaluation d'impact*

(2) Si, avant l'entrée en vigueur de la *Loi sur l'évaluation d'impact*, une autorité a pris une décision à l'égard d'un projet, en vertu des articles 67 ou 68 de la *Loi canadienne sur l'évaluation environnementale (2012)*, les articles 81 à 91 de la *Loi sur l'évaluation d'impact* ne s'appliquent pas à ce projet.

Définitions de *autorité* et *projet*

(3) Au présent article, *autorité* et *projet* s'entendent au sens de l'article 66 de la *Loi canadienne sur l'évaluation environnementale (2012)*.

L.C. 2019, ch. 28, art. 1

5 Le présent règlement entre en vigueur à la date d'entrée en vigueur de l'article 1 de la *Loi édictant la Loi sur l'évaluation d'impact et la Loi sur la Régie canadienne de l'énergie, modifiant la Loi sur la protection de la navigation et apportant des modifications corrélatives à d'autres lois*.

SCHEDULE

(Section 2)

Physical Activities

National Parks and Protected Areas

1 The construction, operation, decommissioning and abandonment in a ***wildlife area***, as defined in section 2 of the *Wildlife Area Regulations*, a ***migratory bird sanctuary***, as defined in subsection 2(1) of the *Migratory Bird Sanctuary Regulations* or a protected marine area established under subsection 4.1(1) of the *Canada Wildlife Act*, of one of the following:

(a) a new electrical generating facility or electrical transmission line;

(b) a new structure for the diversion of water, including a new dam, dyke or reservoir;

(c) a new oil or gas facility or oil and gas pipeline;

(d) a new mine or mill;

(e) a new industrial facility;

(f) a new canal or lock;

(g) a new marine terminal;

(h) a new railway line;

(i) a new public road or parkway that is intended for the passage of motor vehicles;

(j) a new aerodrome or runway;

(k) a new waste management facility;

(l) a new aquaculture facility.

2 The construction, in a national marine conservation area, of a new physical work if the construction is contrary to the management plan for that area tabled in or laid before each House of Parliament under subsection 9(1) of the *Canada National Marine Conservation Areas Act* or subsection 9(1) of the *Saguenay-St. Lawrence Marine Park Act*.

3 The disposal at sea, in a national marine conservation area, of ***waste or other matter*** as defined in subsection 122(1) of the *Canadian Environmental Protection Act, 1999* at a new disposal at sea site or a new part of an existing disposal at sea site.

ANNEXE

(article 2)

Activités concrètes

Parcs nationaux et aires protégées

1 La construction, l'exploitation, la désaffectation et la fermeture, dans une ***réserve d'espèces sauvages*** au sens de l'article 2 du *Règlement sur les réserves d'espèces sauvages*, dans un ***refuge d'oiseaux migrateurs*** au sens du paragraphe 2(1) du *Règlement sur les refuges d'oiseaux migrateurs* ou dans une zone marine protégée constituée en vertu du paragraphe 4.1(1) de la *Loi sur les espèces sauvages du Canada*, selon le cas :

a) d'une nouvelle installation de production d'électricité ou d'une nouvelle ligne de transport d'électricité;

b) d'une nouvelle structure de dérivation des eaux, notamment d'un nouveau barrage, d'une nouvelle digue ou d'un nouveau réservoir;

c) d'une nouvelle installation pétrolière ou gazière ou d'un nouveau pipeline d'hydrocarbures;

d) d'une nouvelle mine ou usine;

e) d'une nouvelle installation industrielle;

f) d'un nouveau canal ou d'une nouvelle écluse;

g) d'un nouveau terminal maritime;

h) d'une nouvelle ligne de chemin de fer;

i) d'une nouvelle route ou promenade publique pour la circulation de véhicules motorisés;

j) d'un nouvel aérodrome ou d'une nouvelle piste;

k) d'une nouvelle installation de gestion des déchets;

l) d'une nouvelle installation d'aquaculture.

2 La construction, dans une aire marine nationale de conservation, d'un nouvel ouvrage lorsque cette construction est contraire au plan directeur déposé pour cette aire devant chaque chambre du Parlement en vertu du paragraphe 9(1) de la *Loi sur les aires marines nationales de conservation du Canada* ou en vertu du paragraphe 9(1) de la *Loi sur le parc marin du Saguenay — Saint-Laurent*.

3 L'immersion de ***déchets ou autres matières*** au sens du paragraphe 122(1) de la *Loi canadienne sur la protection de l'environnement (1999)* dans un nouveau lieu d'immersion ou dans une nouvelle partie d'un lieu d'immersion existant qui sont situés dans une aire marine nationale de conservation.

4 The construction, operation, decommissioning and abandonment, in a national marine conservation area, of a new pipeline for carrying a substance other than water.

5 The construction, on land that is managed or administered by the Parks Canada Agency, of a new physical work, if the construction is

(a) contrary to the management plan for that land that is tabled in each House of Parliament under subsection 32(1) of the *Parks Canada Agency Act*, subsection 11(1) of the *Canada National Parks Act*, or subsection 9(1) of the *Rouge National Urban Park Act*, or to a similar plan for the land that is approved by the Minister responsible for the Parks Canada Agency; or

(b) contrary to one of the following guidelines that is published by the Parks Canada Agency and that applies to that land:

(i) the *Marmot Basin Ski Area Site Guidelines for Development and Use* dated February 2008,

(ii) the *Mt. Norquay Ski Area Site Guidelines for Development and Use* dated July 2011,

(iii) the *Lake Louise Ski Area Site Guidelines for Development and Use* dated July 2015,

(iv) the *Site Guidelines for Development and Use, Sunshine Village Ski Resort* dated December 14, 2018.

6 The construction, operation, decommissioning and abandonment, in a national park, of a new dam or structure for the diversion of water for the purpose of supplying water outside the park, of recreation or of electrical power generation.

7 The construction, operation, decommissioning and abandonment, in a national park, of a structure that is required to implement a new agreement made under paragraph 10(2)(b) of the *Canada National Parks Act*.

8 The expansion, in a national park, of the water supply capacity of a structure that was constructed to implement an agreement made under paragraph 10(2)(b) of the *Canada National Parks Act* by more than 20%.

9 The construction, operation, decommissioning and abandonment, in Yoho National Park of Canada, Kootenay National Park of Canada, Banff National Park of Canada or Jasper National Park of Canada, outside of a

4 La construction, l'exploitation, la désaffectation et la fermeture, dans une aire marine nationale de conservation, d'un nouveau pipeline destiné au transport de substances autres que l'eau.

5 La construction, sur une terre administrée ou gérée par l'Agence Parcs Canada, d'un nouvel ouvrage lorsque cette construction est, selon le cas :

a) contraire au plan directeur qui a été déposé pour cette terre devant chaque chambre du Parlement au titre du paragraphe 32(1) de la *Loi sur l'Agence Parcs Canada*, du paragraphe 11(1) de la *Loi sur les parcs nationaux du Canada* ou du paragraphe 9(1) de la *Loi sur le parc urbain national de la Rouge* ou à un autre plan similaire qui a été approuvé pour cette terre par le ministre responsable de l'Agence Parcs Canada;

b) contraire à celles parmi les lignes directrices ci-après qui s'appliquent à cette terre qui ont été publiées par l'Agence Parcs Canada, à savoir :

(i) les *Lignes directrices pour l'aménagement et l'utilisation du territoire de la station de ski Marmot Basin* de février 2008,

(ii) les *Lignes directrices pour l'aménagement et l'utilisation du territoire de la station de ski Norquay* de juillet 2011,

(iii) les *Lignes directrices pour l'aménagement et l'utilisation du territoire de la station de ski Lake Louise* de juillet 2015,

(iv) les *Lignes directrices particulières pour l'aménagement et l'utilisation du territoire de la station de ski Sunshine Village* du 14 décembre 2018.

6 La construction, l'exploitation, la désaffectation et la fermeture, dans un parc national, d'un nouveau barrage ou d'une nouvelle structure de dérivation des eaux à des fins d'approvisionnement en eau hors du parc ou à des fins récréatives ou de production d'électricité.

7 La construction, l'exploitation, la désaffectation et la fermeture, dans un parc national, d'une structure requise pour la mise en œuvre d'un nouvel accord conclu en vertu de l'alinéa 10(2)b) de la *Loi sur les parcs nationaux du Canada*.

8 L'augmentation dans un parc national de plus de 20 % de la capacité d'approvisionnement en eau d'une structure construite pour mettre en œuvre un accord conclu en vertu de l'alinéa 10(2)b) de la *Loi sur les parcs nationaux du Canada*.

9 La construction, l'exploitation, la désaffectation et la fermeture d'un nouvel établissement commercial dans le parc national Yoho du Canada, le parc national Kootenay du Canada, le parc national Banff du Canada ou le parc

commercial ski area referred to in Schedule 5 to the *Canada National Parks Act* and of a park community, of a new commercial development that requires the disposal or occupation of land that was not previously disposed of for the purpose of a commercial development with the same or a similar purpose or occupied by such a commercial development, if that new commercial development has not been subject to strategic environmental assessment and public review as part of the park management plan tabled in each House of Parliament under subsection 11(1) of the *Canada National Parks Act*.

10 The expansion, in Yoho National Park of Canada, Kootenay National Park of Canada, Banff National Park of Canada or Jasper National Park of Canada, outside of a commercial ski area referred to in Schedule 5 to the *Canada National Parks Act* and of a park community, of an existing commercial development that requires the disposal or occupation of land that was not previously disposed of for the purpose of a commercial development with the same or a similar purpose or occupied by such a commercial development, if that existing commercial development has not been subject to strategic environmental assessment and public review as part of a park management plan tabled in each House of Parliament under subsection 11(1) of the *Canada National Parks Act*.

11 The construction, operation, decommissioning and abandonment, in a national park, of either of the following:

(a) a new railway line;

(b) a new public road or parkway that is intended for the passage of motor vehicles.

Defence

12 The low-level flying of military fixed-wing jet aircraft, for more than 150 days in a calendar year, as part of a training program, at an altitude below 330 m above ground level on a route or in an area that was not established before October 7, 1994 by or under the authority of the Minister of National Defence or the Chief of the Defence Staff as a route or area set aside for low-level flying training.

13 The construction and operation of a new military base or military station that is established for more than 12 consecutive months.

national Jasper du Canada, hors de toute station commerciale de ski mentionnée à l'annexe 5 de la *Loi sur les parcs nationaux du Canada* et de toute collectivité, lorsque le nouvel établissement commercial, d'une part, nécessite la disposition ou l'occupation de terres qui n'ont pas déjà fait l'objet d'une disposition pour un établissement commercial ayant la même vocation ou une vocation similaire ou n'ont pas été occupées par un tel établissement et, d'autre part, n'a pas fait l'objet d'une évaluation environnementale stratégique ni d'un examen public dans le cadre de l'établissement du plan directeur qui a été déposé devant chaque chambre du Parlement pour le parc en cause au titre du paragraphe 11(1) de la *Loi sur les parcs nationaux du Canada*.

10 L'agrandissement d'un établissement commercial existant, dans le parc national Yoho du Canada, le parc national Kootenay du Canada, le parc national Banff du Canada ou le parc national Jasper du Canada, hors de toute station commerciale de ski mentionnée à l'annexe 5 de la *Loi sur les parcs nationaux du Canada* et de toute collectivité, lorsque l'établissement commercial, d'une part, nécessite la disposition ou l'occupation de terres qui n'ont pas déjà fait l'objet d'une disposition pour un établissement commercial ayant la même vocation ou une vocation similaire ou n'ont pas été occupées par un tel établissement et, d'autre part, n'a pas fait l'objet d'une évaluation environnementale stratégique ni d'un examen public dans le cadre de l'établissement d'un plan directeur déposé devant chaque chambre du Parlement pour le parc en cause au titre du paragraphe 11(1) de la *Loi sur les parcs nationaux du Canada*.

11 La construction, l'exploitation, la désaffectation et la fermeture, dans un parc national, selon le cas :

a) d'une nouvelle ligne de chemin de fer;

b) d'une nouvelle route ou promenade publique pour la circulation de véhicules motorisés.

Défense

12 Les vols à basse altitude d'avions à réaction militaires à voilure fixe effectués, pendant plus de cent cinquante jours au cours d'une année civile, dans le cadre d'un programme d'entraînement à une altitude inférieure à 330 m au-dessus du niveau du sol sur des routes ou dans des zones qui n'ont pas été établies comme routes ou zones réservées à l'entraînement au vol à basse altitude, avant le 7 octobre 1994, par le ministre de la Défense nationale ou le chef d'état-major de la Défense, ou sous leur autorité.

13 La construction et l'exploitation d'une nouvelle base ou station militaire qui est mise en place pour plus de douze mois consécutifs.

14 The expansion of an existing military base or military station, if the expansion would result in an increase in the area of the military base or military station of 50% or more.

15 The decommissioning and abandonment of an existing military base or military station.

16 The construction, operation, decommissioning and abandonment, outside an existing military base, of a new military training area, range or test establishment for training or weapons testing that is established for more than 12 consecutive months.

17 The testing of military weapons for more than five days in a calendar year in an area other than a training area, range or test establishment established before October 7, 1994 by or under the authority of the Minister of National Defence for the testing of weapons.

Mines and Metal Mills

18 The construction, operation, decommissioning and abandonment of one of the following:

(a) a new coal mine with a coal production capacity of 5 000 t/day or more;

(b) a new diamond mine with an ore production capacity of 5 000 t/day or more;

(c) a new metal mine, other than a rare earth element mine, placer mine or uranium mine, with an ore production capacity of 5 000 t/day or more;

(d) a new metal mill, other than a uranium mill, with an ore input capacity of 5 000 t/day or more;

(e) a new rare earth element mine with an ore production capacity of 2 500 t/day or more;

(f) a new stone quarry or sand or gravel pit with a production capacity of 3 500 000 t/year or more.

19 The expansion of an existing mine, mill, quarry or sand or gravel pit in one of the following circumstances:

(a) in the case of an existing coal mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total coal production capacity would be 5 000 t/day or more after the expansion;

14 L'agrandissement d'une base ou station militaire existante qui entraînerait une augmentation de 50 % ou plus de la superficie de la base ou de la station.

15 La désaffectation et la fermeture d'une base ou station militaire existante.

16 La construction, l'exploitation, la désaffectation et la fermeture, à l'extérieur d'une base militaire existante, d'un nouveau secteur d'entraînement, champ de tir ou centre d'essai et d'expérimentation militaire pour l'entraînement ou l'essai d'armes qui est mis en place pour plus de douze mois consécutifs.

17 L'essai d'armes militaires effectué pendant plus de cinq jours au cours d'une année civile dans toute zone, autre qu'un secteur d'entraînement, un champ de tir ou un centre d'essai et d'expérimentation établi pour la mise à l'essai d'armes, avant le 7 octobre 1994, par le ministre de la Défense nationale ou sous son autorité.

Mines et usines métallurgiques

18 La construction, l'exploitation, la désaffectation et la fermeture, selon le cas :

a) d'une nouvelle mine de charbon d'une capacité de production de charbon de 5 000 t/jour ou plus;

b) d'une nouvelle mine de diamants d'une capacité de production de minerai de 5 000 t/jour ou plus;

c) d'une nouvelle mine métallifère, autre qu'une mine d'éléments des terres rares, un placer ou une mine d'uranium, d'une capacité de production de minerai de 5 000 t/jour ou plus;

d) d'une nouvelle usine métallurgique, autre qu'une usine de concentration d'uranium, d'une capacité d'admission de minerai de 5 000 t/jour ou plus;

e) d'une nouvelle mine d'éléments des terres rares d'une capacité de production de minerai de 2 500 t/jour ou plus;

f) d'une nouvelle carrière de pierre, de gravier ou de sable d'une capacité de production de 3 500 000 t/an ou plus.

19 L'agrandissement d'une mine, usine ou carrière visée ci-après, dans les cas suivants :

a) s'agissant d'une mine de charbon existante, l'agrandissement entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et la capacité de production totale de charbon de la mine, après l'agrandissement, serait de 5 000 t/jour ou plus;

(b) in the case of an existing diamond mine if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 5 000 t/day or more after the expansion;

(c) in the case of an existing metal mine, other than a rare earth element mine, placer mine or uranium mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 5 000 t/day or more after the expansion;

(d) in the case of an existing metal mill, other than a uranium mill, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore input capacity would be 5 000 t/day or more after the expansion;

(e) in the case of an existing rare earth element mine if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 2 500 t/day or more after the expansion;

(f) in the case of an existing stone quarry or sand or gravel pit if the expansion would result in an increase in the area of mining operations of 50% or more and the total production capacity would be 3 500 000 t/year or more after the expansion.

20 The construction, operation and decommissioning, outside the licensed boundaries of an existing uranium mine, of a new uranium mine with an ore production capacity of 2 500 t/day or more.

21 The expansion of an existing uranium mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 2500 t/day or more after the expansion.

22 The construction, operation and decommissioning, outside the licensed boundaries of an existing uranium mill, of a new uranium mill with an ore input capacity of 2 500 t/day or more.

23 The expansion of an existing uranium mill, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore input capacity would be 2 500 t/day or more after the expansion.

24 The construction, operation, decommissioning and abandonment of a new oil sands mine with a bitumen production capacity of 10 000 m^3/day or more.

b) s'agissant d'une mine de diamants existante, l'agrandissement entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et la capacité de production totale de minerai de la mine, après l'agrandissement, serait de 5 000 t/jour ou plus;

c) s'agissant d'une mine métallifère existante, autre qu'une mine d'éléments des terres rares, un placer ou une mine d'uranium, l'agrandissement entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et la capacité de production totale de minerai de la mine, après l'agrandissement, serait de 5 000 t/jour ou plus;

d) s'agissant d'une usine métallurgique existante, autre qu'une usine de concentration d'uranium, l'agrandissement entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et la capacité d'admission totale de minerai de l'usine, après l'agrandissement, serait de 5 000 t/jour ou plus;

e) s'agissant d'une mine d'éléments des terres rares existante, l'agrandissement entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et la capacité de production totale de minerai de la mine, après l'agrandissement, serait de 2 500 t/jour ou plus;

f) s'agissant d'une carrière de pierre, de gravier ou de sable existante, l'agrandissement entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et la capacité de production totale de la carrière, après l'agrandissement, serait de 3 500 000 t/an ou plus.

20 La construction, l'exploitation et le déclassement, à l'extérieur des limites autorisées d'une mine d'uranium existante, d'une nouvelle mine d'uranium d'une capacité de production de minerai de 2 500 t/jour ou plus.

21 L'agrandissement d'une mine d'uranium existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus, dans le cas où la capacité de production totale de minerai de la mine serait, après cet agrandissement, de 2 500 t/jour ou plus.

22 La construction, l'exploitation et le déclassement, à l'extérieur des limites autorisées d'une usine de concentration d'uranium existante, d'une nouvelle usine de concentration d'uranium d'une capacité d'admission de minerai de 2 500 t/jour ou plus.

23 L'agrandissement d'une usine existante de concentration d'uranium qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus, dans le cas où la capacité d'admission totale de minerai de l'usine serait, après l'agrandissement, de 2 500 t/jour ou plus.

24 La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle mine de sables bitumineux d'une capacité de production de bitume de 10 000 m^3/jour ou plus.

25 The expansion of an existing oil sands mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total bitumen production capacity would be 10 000 m^3/day or more after the expansion.

Nuclear Facilities, Including Certain Storage and Long-term Management or Disposal Facilities

26 The construction, operation and decommissioning of one of the following:

(a) a new facility for the processing, reprocessing or separation of isotopes of uranium, thorium, or plutonium, with a production capacity of 100 t/year or more;

(b) a new facility for the manufacture of a product derived from uranium, thorium or plutonium, with a production capacity of 100 t/year or more;

(c) a new facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium.

27 The site preparation for, and the construction, operation and decommissioning of, one or more new nuclear fission or fusion reactors if

(a) that activity is located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 900 MWth; or

(b) that activity is not located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 200 MWth.

28 The construction and operation of either of the following:

(a) a new facility for the storage of irradiated nuclear fuel or nuclear waste, outside the licensed boundaries of an existing *nuclear facility*, as defined in section 2 of the *Nuclear Safety and Control Act*, other than a facility for the on-site storage of irradiated nuclear fuel or nuclear waste associated with one or more new fission or fusion reactors that have a combined thermal capacity of less than 200 MWth;

(b) a new facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste.

25 L'agrandissement d'une mine de sables bitumineux existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus, dans le cas où la capacité de production totale de bitume de la mine serait, après l'agrandissement, de 10 000 m^3/jour ou plus.

Installations nucléaires, notamment certaines installations de stockage et certaines installations de gestion ou d'évacuation à long terme

26 La construction, l'exploitation et le déclassement, selon le cas :

a) d'une nouvelle installation de traitement, de retraitement ou de séparation d'isotopes d'uranium, de thorium ou de plutonium, d'une capacité de production de 100 t/an ou plus;

b) d'une nouvelle installation de fabrication d'un produit dérivé de l'uranium, du thorium ou du plutonium, d'une capacité de production de 100 t/an ou plus;

c) d'une nouvelle installation qui traite ou utilise, en une quantité supérieure à 10^{15} Bq par année civile, des substances nucléaires, autres que l'uranium, le thorium ou le plutonium, ayant une période radioactive supérieure à un an.

27 La préparation de l'emplacement, la construction, l'exploitation et le déclassement, selon le cas :

a) d'un ou de plusieurs nouveaux réacteurs à fission ou à fusion nucléaires d'une capacité thermique cumulée de plus de 900 MWth, dans les limites autorisées d'une installation nucléaire de catégorie IA existante;

b) d'un ou de plusieurs nouveaux réacteurs à fission ou à fusion nucléaires d'une capacité thermique cumulée de plus de 200 MWth, hors des limites autorisées d'une installation nucléaire de catégorie IA existante.

28 La construction et l'exploitation, selon le cas :

a) d'une nouvelle installation de stockage de combustibles nucléaires irradiés ou de déchets nucléaires, hors des limites autorisées d'une *installation nucléaire* — au sens de l'article 2 de la *Loi sur la sûreté et la réglementation nucléaires* — existante, autre qu'une installation de stockage sur place de combustibles nucléaires irradiés ou de déchets nucléaires associée à un ou plusieurs nouveaux réacteurs à fission ou à fusion nucléaires d'une capacité thermique cumulée de moins de 200 MWth;

b) d'une nouvelle installation de gestion ou d'évacuation à long terme de combustibles nucléaires irradiés ou de déchets nucléaires.

29 The expansion of an existing facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste, if the expansion would result in an increase in the area of the facility, at ground level, of 50% or more.

Oil, Gas and Other Fossil Fuels

30 The construction, operation, decommissioning and abandonment of a new fossil fuel-fired power generating facility with a production capacity of 200 MW or more.

31 The expansion of an existing fossil fuel-fired power generating facility, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more.

32 The construction, operation, decommissioning and abandonment of a new *in situ* oil sands extraction facility that has a bitumen production capacity of 2 000 m^3/day or more and that is

(a) not within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province; or

(b) within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province and that limit has been reached.

33 The expansion of an existing *in situ* oil sands extraction facility, if the expansion would result in an increase in bitumen production capacity of 50% or more and a total bitumen production capacity of 2 000 m^3/day or more, if the facility is

(a) not within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province; or

(b) within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province and that limit has been reached.

34 The drilling, testing and abandonment, in an area set out in one or more exploration licences issued in accordance with the *Canada Petroleum Resources Act*, the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, of offshore exploratory wells in the first *drilling program*, as

29 L'agrandissement d'une installation existante de gestion ou d'évacuation à long terme de combustibles nucléaires irradiés ou de déchets nucléaires qui entraînerait une augmentation de 50 % ou plus de l'aire au niveau du sol occupée par l'installation.

Pétrole, gaz et autres combustibles fossiles

30 La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle installation de production d'énergie alimentée par un combustible fossile d'une capacité de production de 200 MW ou plus.

31 L'agrandissement d'une installation existante de production d'énergie alimentée par un combustible fossile qui entraînerait une augmentation de la capacité de production de 50 % ou plus et porterait sa capacité de production totale à 200 MW ou plus.

32 La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle installation d'extraction *in situ* de sables bitumineux d'une capacité de production de bitume de 2 000 m^3/jour ou plus qui est, selon le cas :

a) ailleurs que dans une province où une limite des émissions de gaz à effet de serre pour les sites de sables bitumineux de la province est établie en vertu de la législation en vigueur de cette province;

b) dans une province où une telle limite ainsi établie a été atteinte.

33 L'agrandissement d'une installation d'extraction *in situ* existante de sables bitumineux qui entraînerait une augmentation de la capacité de production de bitume de 50 % ou plus et qui porterait la capacité de production totale de bitume à 2 000 m^3/jour ou plus, lorsque l'installation est, selon le cas :

a) ailleurs que dans une province où une limite des émissions de gaz à effet de serre pour les sites de sables bitumineux de la province est établie en vertu de la législation en vigueur de cette province;

b) dans une province où une telle limite ainsi établie a été atteinte.

34 Le forage, la mise à l'essai et la fermeture de puits d'exploration qui sont situés au large des côtes et qui font partie du premier *programme de forage* — au sens du paragraphe 1(1) du *Règlement sur le forage et la production de pétrole et de gaz au Canada*, DORS/2009-315, dans une zone visée par un ou plusieurs permis de prospection octroyés conformément à la *Loi fédérale sur*

defined in subsection 1(1) of the *Canada Oil and Gas Drilling and Production Regulations*, SOR/2009-315.

35 The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.

36 The decommissioning and abandonment of an existing offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas that is proposed to be disposed of or abandoned offshore or converted on site to another role.

37 The construction, operation, decommissioning and abandonment of one of the following:

(a) a new oil refinery, including a heavy oil upgrader, with an input capacity of 10 000 m^3/day or more;

(b) a new facility for the production of liquid petroleum products from coal with a production capacity of 2 000 m^3/day or more;

(c) a new sour gas processing facility with a sulphur inlet capacity of 2 000 t/day or more;

(d) a new facility for the liquefaction, storage or regasification of liquefied natural gas, with a liquefied natural gas processing capacity of 3 000 t/day or more or a liquefied natural gas storage capacity of 136 000 m^3 or more;

(e) a new petroleum storage facility with a storage capacity of 500 000 m^3 or more;

(f) a new natural gas liquids storage facility with a storage capacity of 100 000 m^3 or more.

38 The expansion of one of the following:

(a) an existing oil refinery, including a heavy oil upgrader, if the expansion would result in an increase in input capacity of 50% or more and a total input capacity of 10 000 m^3/day or more;

(b) an existing facility for the production of liquid petroleum products from coal, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 2 000 m^3/day or more;

les hydrocarbures, à la *Loi de mise en œuvre de l'Accord atlantique Canada — Terre-Neuve-et-Labrador* ou à la *Loi de mise en œuvre de l'Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers*.

35 La construction, la mise sur pied et l'exploitation d'une nouvelle plate-forme flottante ou fixe, d'un nouveau navire ou d'une nouvelle île artificielle qui sont situés au large des côtes et qui sont utilisés pour la production de pétrole ou de gaz.

36 La désaffectation et la fermeture d'une plate-forme flottante ou fixe existante, d'un navire existant ou d'une île artificielle existante qui sont au large des côtes et qui sont utilisés pour la production de pétrole ou de gaz, dans le cas où il est proposé d'en disposer ou de les fermer au large des côtes, ou d'en modifier la vocation sur place.

37 La construction, l'exploitation, la désaffectation et la fermeture, selon le cas :

a) d'une nouvelle raffinerie de pétrole, y compris une usine de valorisation d'huile lourde, d'une capacité d'admission de 10 000 m^3/jour ou plus;

b) d'une nouvelle installation de production de produits pétroliers liquides, à partir du charbon, d'une capacité de production de 2 000 m^3/jour ou plus;

c) d'une nouvelle installation de traitement de gaz sulfureux d'une capacité d'admission de soufre de 2 000 t/jour ou plus;

d) d'une nouvelle installation de liquéfaction, de stockage ou de regazéification de gaz naturel liquéfié d'une capacité de traitement de gaz naturel liquéfié de 3 000 t/jour ou plus ou d'une capacité de stockage de gaz naturel liquéfié de 136 000 m^3 ou plus;

e) d'une nouvelle installation de stockage de pétrole d'une capacité de stockage de 500 000 m^3 ou plus;

f) d'une nouvelle installation de stockage de liquides de gaz naturel d'une capacité de stockage de 100 000 m^3 ou plus.

38 L'agrandissement d'une raffinerie ou d'une installation ci-après qui, selon le cas :

a) s'agissant d'une raffinerie de pétrole existante, y compris une usine de valorisation d'huile lourde, entraînerait une augmentation de la capacité d'admission de 50 % ou plus et porterait sa capacité d'admission totale à 10 000 m^3/jour ou plus;

b) s'agissant d'une installation existante de production de produits pétroliers liquides, à partir du charbon, entraînerait une augmentation de la capacité de production de 50 % ou plus et porterait sa capacité de production totale à 2 000 m^3/jour ou plus;

(c) an existing sour gas processing facility, if the expansion would result in an increase in sulphur inlet capacity of 50% or more and a total sulphur inlet capacity of 2 000 t/day or more;

(d) an existing facility for the liquefaction, storage or regasification of liquefied natural gas, if the expansion would result in an increase in the liquefied natural gas processing or storage capacity of 50% or more and a total liquefied natural gas processing capacity of 3 000 t/day or more or a total liquefied natural gas storage capacity of 136 000 m^3 or more, as the case may be;

(e) an existing petroleum storage facility, if the expansion would result in an increase in storage capacity of 50% or more and a total storage capacity of 500 000 m^3 or more;

(f) an existing natural gas liquids storage facility, if the expansion would result in an increase in storage capacity of 50% or more and a total storage capacity of 100 000 m^3 or more.

Electrical Transmission Lines and Pipelines

39 The construction, operation, decommissioning and abandonment of either of the following:

(a) a new international electrical transmission line with a voltage of 345 kV or more that requires a total of 75 km or more of new right of way;

(b) a new interprovincial power line designated by an order under section 261 of the *Canadian Energy Regulator Act*.

40 The construction, operation, decommissioning and abandonment of a new offshore oil and gas pipeline, other than a *flowline* as defined in subsection 2(1) of the *Canada Oil and Gas Installations Regulations*.

41 The construction, operation, decommissioning and abandonment of a new *pipeline*, as defined in section 2 of the *Canadian Energy Regulator Act*, other than an offshore pipeline, that requires a total of 75 km or more of new right of way.

Renewable Energy

42 The construction, operation, decommissioning and abandonment of one of the following:

(a) a new hydroelectric generating facility with a production capacity of 200 MW or more;

c) s'agissant d'une installation existante de traitement de gaz sulfureux, entraînerait une augmentation de la capacité d'admission de soufre de 50 % ou plus et porterait sa capacité d'admission totale de soufre à 2 000 t/jour ou plus;

d) s'agissant d'une installation existante de liquéfaction, de stockage ou de regazéification de gaz naturel liquéfié, entraînerait une augmentation de la capacité de traitement ou de stockage de gaz naturel liquéfié de 50 % ou plus et porterait, selon le cas, sa capacité de traitement totale à 3 000 t/jour ou plus ou sa capacité de stockage totale à 136 000 m^3 ou plus;

e) s'agissant d'une installation existante de stockage de pétrole, entraînerait une augmentation de la capacité de stockage de 50 % ou plus et porterait sa capacité de stockage totale à 500 000 m^3 ou plus;

f) s'agissant d'une installation existante de stockage de liquides de gaz naturel, entraînerait une augmentation de la capacité de stockage de 50 % ou plus et porterait sa capacité de stockage totale à 100 000 m^3 ou plus.

Lignes de transport d'électricité et pipelines

39 La construction, l'exploitation, la désaffectation et la fermeture, selon le cas :

a) d'une nouvelle ligne internationale de transport d'électricité d'une tension de 345 kV ou plus qui nécessite une nouvelle emprise d'une longueur de 75 km ou plus;

b) d'une nouvelle ligne interprovinciale désignée par décret au titre de l'article 261 de la *Loi sur la Régie canadienne de l'énergie*.

40 La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau pipeline d'hydrocarbures qui est situé au large des côtes, autre qu'une *conduite d'écoulement* au sens du paragraphe 2(1) du *Règlement sur les installations pétrolières et gazières au Canada*.

41 La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau *pipeline* au sens de l'article 2 de la *Loi sur la Régie canadienne de l'énergie*, autre qu'un pipeline au large des côtes, qui nécessite une nouvelle emprise d'une longueur de 75 km ou plus.

Énergie renouvelable

42 La construction, l'exploitation, la désaffectation et la fermeture, selon le cas :

a) d'une nouvelle installation hydroélectrique;

(b) a new in-stream tidal power generating facility with a production capacity of 15 MW or more;

(c) a new tidal power generating facility that is not an in-stream tidal power generating facility.

43 The expansion of one of the following:

(a) an existing hydroelectric generating facility if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more;

(b) an existing in-stream tidal power generating facility, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 15 MW or more;

(c) an existing tidal power generating facility that is not an in-stream tidal power generating facility, if the expansion would result in an increase in production capacity of 50% or more.

44 The construction, operation, decommissioning and abandonment in an offshore area or in boundary water of a new wind power generating facility that has 10 or more wind turbines.

45 The expansion in an offshore area or in boundary water of an existing wind power generating facility, if the expansion would result in an increase in production capacity of 50% or more and a total number of wind turbines of 10 or more.

Transport

46 The construction, operation, decommissioning and abandonment of one of the following:

(a) a new aerodrome with a runway length of 1 000 m or more;

(b) a new aerodrome that is capable of serving aircraft of Aircraft Group Number IIIA or higher;

(c) a new runway at an existing aerodrome with a length of 1 000 m or more.

47 The operation of an existing runway

(a) that was not capable of serving aircraft of Aircraft Group Number IIIA and becomes capable of serving aircraft of Aircraft Group Number IIIA or higher; or

b) d'une nouvelle installation de production d'énergie hydrolienne d'une capacité de production de 15 MW ou plus;

c) d'une nouvelle installation de production d'énergie marémotrice autre qu'une installation de production d'énergie hydrolienne.

43 L'agrandissement d'une installation ci-après qui, selon le cas :

a) s'agissant d'une installation hydroélectrique existante, entraînerait une augmentation de la capacité de production de 50 % ou plus et porterait sa capacité de production totale à 200 MW ou plus;

b) s'agissant d'une installation existante de production d'énergie hydrolienne, entraînerait une augmentation de la capacité de production de 50 % ou plus et porterait sa capacité de production totale à 15 MW ou plus;

c) s'agissant d'une installation existante de production d'énergie marémotrice autre qu'une installation de production d'énergie hydrolienne, entraînerait une augmentation de la capacité de production de 50 % ou plus.

44 La construction, l'exploitation, la désaffectation et la fermeture, dans une zone extracôtière ou dans des eaux limitrophes, d'une nouvelle installation de production d'énergie éolienne qui comprend dix éoliennes ou plus.

45 L'agrandissement, dans une zone extracôtière ou dans des eaux limitrophes, d'une installation existante de production d'énergie éolienne qui entraînerait une augmentation de la capacité de production de 50 % ou plus et qui porterait le nombre d'éoliennes comprises dans l'installation à dix ou plus.

Transports

46 La construction, l'exploitation, la désaffectation et la fermeture, selon le cas :

a) d'un nouvel aérodrome doté d'une piste de 1 000 m ou plus;

b) d'un nouvel aérodrome capable de desservir des aéronefs appartenant à un numéro de groupe d'aéronefs IIIA ou plus;

c) d'une nouvelle piste d'un aérodrome existant d'une longueur de 1 000 m ou plus.

47 L'exploitation d'une piste existante, dans les cas suivants :

a) si la piste n'avait pas la capacité de desservir des aéronefs appartenant au numéro de groupe

(b) that was capable of serving aircraft of an Aircraft Group Number IIIA or higher and becomes capable of serving aircraft of any higher Aircraft Group Number.

d'aéronefs IIIA et qu'elle acquiert la capacité de desservir des aéronefs appartenant à un numéro de groupe d'aéronefs IIIA ou plus;

b) si la piste avait la capacité de desservir des aéronefs appartenant à un numéro de groupe d'aéronefs IIIA ou plus et qu'elle acquiert la capacité de desservir des aéronefs appartenant à un numéro de groupe d'aéronefs plus élevé.

48 The construction, operation, decommissioning and abandonment of either of the following:

(a) a new international or interprovincial bridge or tunnel;

(b) a new bridge over the St. Lawrence Seaway.

48 La construction, l'exploitation, la désaffectation et la fermeture, selon le cas :

a) d'un nouveau pont ou tunnel international ou interprovincial;

b) d'un nouveau pont enjambant la Voie maritime du Saint-Laurent.

49 The construction, operation, decommissioning and abandonment of either of the following:

(a) a new canal;

(b) a new lock or associated structure that controls water levels in navigable water.

49 La construction, l'exploitation, la désaffectation et la fermeture, selon le cas :

a) d'un nouveau canal;

b) d'une nouvelle écluse ou d'une nouvelle structure connexe pour contrôler le niveau d'eau dans des eaux navigables.

50 The construction, operation, decommissioning and abandonment of a new permanent causeway with a continuous length of 400 m or more through navigable water.

50 La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle chaussée permanente continue d'une longueur de 400 m ou plus à travers des eaux navigables.

51 The construction, operation, decommissioning and abandonment of a new all-season public highway that requires a total of 75 km or more of new right of way.

51 La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle voie publique utilisable en toute saison qui nécessite une nouvelle emprise d'une longueur de 75 km.

52 The construction, operation, decommissioning and abandonment of a new marine terminal designed to handle ships larger than 25 000 DWT.

52 La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau terminal maritime conçu pour recevoir des navires de plus de 25 000 TPL.

53 The expansion of an existing marine terminal, if the expansion requires the construction of a new berth designed to handle ships larger than 25 000 DWT and, if the berth is not a permanent structure in the water, the construction of a new permanent structure in the water.

53 L'agrandissement d'un terminal maritime existant qui nécessite la construction d'un nouveau poste d'accostage conçu pour recevoir des navires de plus de 25 000 TPL et, si le poste d'accostage n'est pas une structure permanente dans l'eau, la construction d'une nouvelle structure permanente dans l'eau.

54 The construction, operation, decommissioning and abandonment of either of the following:

(a) a new railway line that is capable of carrying freight or of carrying passengers between cities and requires a total of 50 km or more of new right of way;

(b) a new railway yard with a total area of 50 ha or more.

54 La construction, l'exploitation, la désaffectation et la fermeture, selon le cas :

a) d'une nouvelle ligne de chemin de fer pouvant effectuer le transport de marchandises ou le transport ferroviaire interurbain de voyageurs qui nécessite un total de 50 km ou plus de nouvelle emprise;

b) d'une nouvelle gare de triage d'une superficie totale de 50 ha ou plus.

55 The expansion of an existing railway yard, if the expansion would result in an increase of its total area by 50% or more and a total area of 50 ha or more.

Hazardous Waste

56 The construction, operation, decommissioning and abandonment of a new facility that is not more than 500 m from a natural water body and is used exclusively for the treatment, incineration, disposal or recycling of hazardous waste.

57 The expansion of an existing facility that is not more than 500 m from a natural water body and is used exclusively for the treatment, incineration, disposal or recycling of hazardous waste, if the expansion would result in an increase in hazardous waste input capacity of 50% or more.

Water Projects

58 The construction, operation, decommissioning and abandonment of a new dam or dyke on a natural water body, if the new dam or dyke would result in the creation of a reservoir with a surface area that would exceed the annual mean surface area of the natural water body by 1 500 ha or more.

59 The expansion of an existing dam or dyke on a natural water body, if the expansion would result in an increase in the surface area of the existing reservoir of 50% or more and an increase of 1 500 ha or more in the annual mean surface area of that reservoir.

60 The construction, operation, decommissioning and abandonment of a new structure for the diversion of 10 000 000 m^3/year or more of water from a natural water body into another natural water body.

61 The expansion of an existing structure for the diversion of water from a natural water body into another natural water body, if the expansion would result in an increase in diversion capacity of 50% or more and a total diversion capacity of 10 000 000 m^3/year or more.

55 L'agrandissement d'une gare de triage existante qui entraînerait une augmentation de 50 % ou plus de la superficie totale de la gare et qui porterait sa superficie totale à 50 ha ou plus.

Déchets dangereux

56 La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle installation qui est située à 500 m ou moins d'un plan d'eau naturel et qui est utilisée exclusivement pour le traitement, l'incinération, l'élimination ou le recyclage de déchets dangereux.

57 L'agrandissement d'une installation existante qui est située à 500 m ou moins d'un plan d'eau naturel et qui est utilisée exclusivement pour le traitement, l'incinération, l'élimination ou le recyclage de déchets dangereux, dans le cas où cet agrandissement entraînerait une augmentation de la capacité d'admission de déchets dangereux de 50 % ou plus.

Aménagement hydraulique

58 La construction, l'exploitation, la désaffectation et la fermeture, dans un plan d'eau naturel, d'un nouveau barrage ou d'une nouvelle digue lorsque le nouveau barrage ou la nouvelle digue en cause entraînerait la création d'un réservoir d'une superficie dépassant de 1 500 ha ou plus la superficie moyenne annuelle du plan d'eau naturel.

59 L'agrandissement, dans un plan d'eau naturel, d'un barrage existant ou d'une digue existante qui entraînerait une augmentation de 50 % ou plus de la superficie du réservoir existant et de 1 500 ha ou plus de la superficie moyenne annuelle de ce réservoir.

60 La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle structure destinée à la dérivation de 10 000 000 m^3/an ou plus d'eau d'un plan d'eau naturel dans un autre.

61 L'agrandissement d'une structure existante destinée à la dérivation d'eau d'un plan d'eau naturel dans un autre, dans le cas où cet agrandissement entraînerait une augmentation de la capacité de dérivation de 50 % ou plus et porterait la capacité de dérivation totale à 10 000 000 m^3/an ou plus.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Executive summary

Issues: The new *Impact Assessment Act* (IAA) replaces the previous *Canadian Environmental Assessment Act, 2012* (CEAA 2012) in order to support public trust, protect the environment, advance reconciliation with Indigenous peoples, so that good projects get built and create jobs and economic opportunities for Canadians.

Under the IAA, federal impact assessments are done on designated projects, which are designated either by regulation (or by the Minister of Environment and Climate Change). The *Physical Activities Regulations* (commonly known as the Project List) is the regulation that designates those projects. It provides clarity and certainty as to which projects are subject to the IAA and is required to properly implement the federal impact assessment process. The Government committed to updating the Project List.

Description: The Project List prescribes the physical activities that constitute a "designated project" which may require an impact assessment under the IAA. It consists of a list of physical activities with, in some cases, associated size thresholds or exemption criteria, for both new projects and expansion of existing projects. Any individual project that matches the description of a physical activity set out in an entry on the Project List would be a designated project and may be subject to the impact assessment provisions of the IAA.

Rationale: The objective of the Project List is to identify those major projects with the greatest potential for adverse effects on areas of federal jurisdiction related to the environment, so that they can enter into the impact assessment process. The Project List was developed using a criteria-based approach, using the previous list under the CEAA 2012 as a starting point, in consultation with expert government departments. A Discussion Paper on the Proposed Project List was published for public consultation in May 2019. The changes to the Project List are not expected to significantly change the total number of projects that are subject to federal impact assessment annually compared to the number under the CEAA 2012. The Agency's analysis suggests there would likely be a small decrease in the number of projects that may be required to undergo federal impact assessment on an annual basis (up to five fewer projects per year).

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

(Le présent résumé ne fait pas partie du Règlement.)

Résumé

Enjeux : Le gouvernement a créé la nouvelle *Loi sur l'évaluation d'impact* (LEI), qui remplace la *Loi canadienne sur l'évaluation environnementale (2012)* [LCEE de 2012] précédente, dans le but de soutenir la confiance du public, de protéger l'environnement, de favoriser la réconciliation avec les peuples autochtones et de veiller à ce que de bons projets soient réalisés et qu'ils créent des emplois et offrent des possibilités économiques aux Canadiens.

En vertu de la LEI, les évaluations d'impact fédérales portent sur des projets désignés par un règlement ou par le ministre de l'Environnement et du Changement climatique. Le *Règlement sur les activités concrètes* (généralement appelé Liste des projets) est le règlement qui désigne ces projets. Indiquant avec clarté et certitude quels projets sont soumis à la LEI, il est nécessaire à la mise en œuvre adéquate du processus fédéral d'évaluation d'impact. Le gouvernement s'est engagé à mettre à jour la Liste des projets.

Description : La Liste des projets prescrit les activités concrètes qui constituent des « projets désignés » pouvant nécessiter une évaluation d'impact en vertu de la LEI. Elle consiste en une liste d'activités concrètes qui, dans certains cas, comporte les seuils de taille ou les critères d'exemption qui leur sont associés, tant pour les nouveaux projets que pour l'élargissement de projets existants. Tout projet individuel correspondant à la description d'une activité concrète figurant dans une entrée de la Liste des projets serait un projet désigné et pourrait être soumis aux dispositions sur l'évaluation d'impact de la LEI.

Justification : La Liste des projets a pour but de déterminer quels grands projets sont les plus susceptibles de causer des effets négatifs dans des domaines de compétence fédérale en ce qui concerne l'environnement, pour que ceux-ci soient pris en compte dans le processus d'évaluation d'impact. La Liste des projets a été élaborée selon une approche fondée sur des critères, à partir de la liste précédente établie en vertu de la LCEE de 2012, en consultation avec les autres ministères compétents. Un Document de travail sur la liste des projets proposée a été publié pour consultation publique en mai 2019. On ne s'attend pas à ce que les modifications à la Liste des projets changent sensiblement le nombre total de projets soumis annuellement à l'évaluation d'impact fédérale par rapport au nombre sous la LCEE de 2012. Selon l'analyse de l'Agence, il y aurait probablement une petite baisse du nombre de projets qui devraient faire l'objet, chaque année, d'une évaluation d'impact fédérale (jusqu'à cinq projets de moins par année).

Issues

The IAA replaces the CEAA 2012 and establishes an impact assessment process to serve as a project planning tool, which takes into consideration the whole range of environmental, health, social and economic effects of projects. The new regime shifts away from decisions based solely on the significance of adverse environmental effects and will focus instead on whether the adverse effects in areas of federal jurisdiction are in the public interest. The Project List is required for implementation of the IAA, as it prescribes projects that may be subject to the impact assessment provisions of the IAA.

Background

In the 2015 Speech from the Throne, the Government of Canada committed to introducing a new environmental assessment process. The government launched a comprehensive process in June 2016 to review existing laws and seek Canadians' input on how to improve environmental and regulatory processes. The review involved over 14 months of public, stakeholder and Indigenous consultations, expert panel reports and parliamentary studies and two parliamentary committees who heard from industry representatives, provincial and territorial authorities, Indigenous peoples, scientists, academics and the public from coast to coast.

As a result of the review, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts* (Bill C-69) received royal assent on June 21, 2019, with the IAA set to come into force on a date to be determined by the Governor in Council.

The new impact assessment process will be led by the Impact Assessment Agency of Canada (the Agency). Similar to the process under the CEAA 2012, impact assessments under the IAA are conducted for proposed physical activities that are "designated," either through regulation (i.e. the Project List) or by the Minister of the Environment and Climate Change. Under the IAA, the authority to make the regulation that designates physical activities is with the Governor in Council.

The Minister of Environment and Climate Change continues to have the power to designate projects not on the Project List if, in the Minister's opinion, the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or if public concern related to those effects warrants a designation.

Enjeux

La LEI remplace la LCEE de 2012 et établit un processus d'évaluation d'impact qui servira d'outil de planification qui prendra en compte l'ensemble des effets des projets sur l'environnement, la santé, la société et l'économie. Le nouveau régime d'évaluation d'impact s'éloignera des décisions fondées uniquement sur l'importance des effets et se concentrera plutôt sur la question de savoir si les effets négatifs dans les domaines de compétence fédérale repérés pour un projet sont dans l'intérêt du public. La Liste des projets est requise pour la mise en œuvre de la LEI, puisqu'elle prescrit les projets qui peuvent être soumis aux dispositions sur l'évaluation d'impact de la LEI.

Contexte

Dans le discours du Trône de 2015, le gouvernement du Canada s'est engagé à présenter un nouveau processus d'évaluation environnementale. En juin 2016, le gouvernement a lancé un processus complet pour examiner les lois actuelles et obtenir les commentaires des Canadiens sur la manière d'améliorer les processus environnementaux et réglementaires. L'examen a nécessité plus de 14 mois de consultations auprès du public, des intervenants et des Autochtones, des rapports de comités d'experts et des études parlementaires. En outre, deux comités parlementaires ont entendu le témoignage de représentants de l'industrie, des autorités provinciales et territoriales, des peuples autochtones, de scientifiques, d'universitaires et du public partout au pays.

À la suite de l'examen, la *Loi édictant la Loi sur l'évaluation d'impact et la Loi sur la Régie canadienne de l'énergie, modifiant la Loi sur la protection de la navigation et apportant des modifications corrélatives à d'autres lois* (projet de loi C-69) a reçu la sanction royale le 21 juin 2019. La LEI devrait entrer en vigueur à la date qui sera déterminée par la gouverneure en conseil.

Le nouveau processus d'évaluation d'impact relèvera de l'Agence canadienne d'évaluation d'impact (l'Agence). Semblable au processus réalisé en vertu de la LCEE de 2012, l'évaluation d'impact réalisée en vertu de la LEI vise les activités concrètes proposées qui sont « désignées », que ce soit par un règlement (c'est-à-dire la Liste des projets) ou par le ministre de l'Environnement et du Changement climatique. En vertu de la LEI, le pouvoir d'établir le règlement qui désigne les activités concrètes est détenu par le gouverneur en conseil.

Le ministre de l'Environnement et du Changement climatique continue d'avoir le pouvoir de désigner des projets ne figurant pas sur la Liste des projets si, à son avis, le projet peut avoir des effets négatifs dans un domaine de compétence fédérale ou des effets négatifs directs ou accessoires, ou si les préoccupations du public liées à ces effets justifient une désignation.

Projects that are not designated on the Project List will continue to be subject to other regulatory regimes, including assessment and oversight by provinces or territories or by a federal lifecycle regulator, where required.

Objective

The objective of the Project List is to capture those major projects with the greatest potential for adverse effects in areas of federal jurisdiction related to the environment, so that they can enter into the impact assessment process. The Project List also provides certainty and clarity to proponents as to which projects are subject to the IAA.

Description

The Project List prescribes the physical activities that constitute a "designated project" which may require an impact assessment under the IAA. It consists of a list of physical activities with, in some cases, associated size thresholds, including thresholds for both new and existing projects. Most entries contain thresholds in order to focus on those projects with the greatest potential for effects. To provide clarity, thresholds use metrics that are known during the planning phase (e.g. measures of size such as production capacity or project area).

Any individual project that matches the description of a project type and exceeds the established threshold set out in the Project List would be a designated project and would be subject to the IAA. As an example, based on the Project List entry included in the regulation, a new hydroelectricity-generating project with a planned production capacity of 300 MW would be a designated project, as it exceeds the 200 MW threshold.

Some project types may also have conditions that would exclude certain projects from being a designated project. For example, an offshore exploratory well proposed in an area with a completed regional assessment, and which meets the conditions for exemption set out by the Minister, would not be a designated project, and would not be subject to the IAA. These projects would not enter into the early planning phase.

Schedule to the Regulations

The Schedule to the Project List contains entries that describe the types of physical activities considered "designated projects" for the purpose of the IAA.

The previous Project List under the CEAA 2012 provided a starting point. The following section details the changes in the new Project List under IAA.

Les projets qui ne sont pas désignés sur la Liste des projets continueront d'être soumis aux autres régimes de réglementation, notamment à l'évaluation et à la surveillance de la part des provinces ou territoires ou d'un organisme fédéral de réglementation du cycle de vie, le cas échéant.

Objectif

La Liste des projets a pour but de saisir les grands projets qui sont les plus susceptibles de causer des effets négatifs dans des domaines de compétence fédérale en ce qui concerne l'environnement, pour que ceux-ci soient pris en compte dans le processus d'évaluation d'impact. La Liste des projets indique en outre aux promoteurs, avec clarté et certitude, quels projets sont soumis à la LEI.

Description

La Liste des projets prescrit les activités concrètes qui constituent des « projets désignés » pouvant nécessiter une évaluation d'impact en vertu de la LEI. Elle consiste en une liste d'activités concrètes qui, dans certains cas, comporte les seuils de taille qui leur sont associés, tant pour les nouveaux projets que pour l'élargissement de projets existants. La plupart des entrées contiennent des seuils permettant de déterminer quels projets sont les plus susceptibles de causer des effets. À des fins de clarté, les seuils utilisent des mesures qui sont connues dès la phase de planification (mesures de taille comme la capacité de production ou la zone du projet, par exemple).

Tout projet individuel correspondant à la description d'un type de projet et dépassant le seuil établi dans la Liste des projets serait un projet désigné et donc soumis à la LEI. À titre d'exemple, d'après l'entrée de la Liste des projets incluse dans le règlement, un nouveau projet hydroélectrique dont la capacité de production prévue est de 300 MW serait un projet désigné, puisqu'il dépasse le seuil de 200 MW.

Par ailleurs, certains types de projets peuvent comporter des conditions qui les empêchent d'être des projets désignés. À titre d'exemple, un puits d'exploration au large des côtes, proposé dans une zone où une évaluation régionale a été réalisée, et qui répond aux critères d'exemption définis par le ministre, ne serait pas un projet désigné et ne serait pas soumis à la LEI. Ces projets n'entameraient pas la phase de planification.

Annexe du règlement

L'annexe de la Liste des projets contient des entrées qui décrivent les types d'activités concrètes qui sont considérées comme des « projets désignés » aux termes de la LEI.

La précédente Liste des projets établie en vertu de la LCEE de 2012 a servi de point de départ. La section suivante présente les détails des modifications intégrées à la nouvelle Liste des projets établie en vertu de la LEI.

a. New project types added to the Project List

The following new project types were added based on their potential for adverse environmental effects in areas of federal jurisdiction and are now designated projects subject to the IAA.

- New wind power–generating facility with 10 or more wind turbines that is located in an offshore area (as defined under the *Canadian Energy Regulator Act*) or boundary waters (as defined under the *Canada Water Act*); or

  expansion of an existing wind power–generating facility that is located in an offshore area (as defined under the *Canadian Energy Regulator Act*) or boundary waters (as defined under the *Canada Water Act*) that would result in an increase in the number of turbines of 50% or more and a total of 10 or more wind turbines.

  However, there is an exemption for projects proposed in an area for which a regional assessment has been carried out when the Minister has identified the project type by separate regulation per paragraph 112(1)(a.2) of the IAA and the proposed project meets the conditions for exemption established by the Minister in those regulations. If these criteria are met, these projects would not be designated projects.

  As there is currently no regional assessment for offshore wind power projects, this exemption condition would only apply in the future, if and when, an appropriate regional assessment is completed.

- New *in situ* oil sands extraction facility (where bitumen is extracted in place rather than by mining) that has bitumen production capacity of 2 000 m^3 per day or more; or

  expansion of an existing *in situ* oil sands facility that would result in an increased production capacity of 50% or more and a total bitumen production capacity of 2 000 m^3 per day or more.

  However, there is an exemption for facilities in a province that has legislation in force to limit the amount of greenhouse gases released from oil sands sites, provided that provincial limit has not been reached.

- New permanent causeway that is 400 m in continuous length or more through navigable water (as defined in section 2 of the *Canadian Navigable Waters Act*).

- New entries for federal protected areas that expand both the types of protected areas, and the range of activities in them that are now subject to the IAA, in

a. Nouveaux types de projets ajoutés à la Liste des projets

Les nouveaux types de projets suivants ont été ajoutés selon les risques d'effets environnementaux négatifs dans des domaines de compétence fédérale et sont maintenant des projets désignés soumis à la LEI.

- Une nouvelle installation de production d'énergie éolienne comportant 10 turbines ou plus située dans une zone extracôtière (tel que définie par la *Loi sur la Régie canadienne de l'énergie* [LRCE]) ou dans des eaux limitrophes (telles que définies par la *Loi sur les ressources en eau du Canada*); ou

  l'agrandissement d'une installation existante de production d'énergie éolienne située dans une zone extracôtière (tel que défini par la LRCE) ou dans des eaux limitrophes (telles que définies par la *Loi sur les ressources en eau du Canada*) qui entraînerait une augmentation du nombre de turbines de 50 % ou plus et un total de 10 turbines éoliennes ou plus.

  Il y a toutefois une exemption pour les projets proposés dans une région qui a fait l'objet d'une évaluation régionale lorsque le ministre a déterminé le type de projet par règlement en vertu de l'alinéa 112(1)a.2) de la LEI et qu'ils sont conformes aux conditions d'exemption établies par le ministre dans ce règlement. Si ces critères sont satisfaits, ces projets ne seraient pas des projets désignés.

  Puisqu'il n'y a actuellement aucune évaluation régionale pour des projets d'énergie éolienne extracôtiers, ce critère d'exemption ne s'appliquerait que dans l'éventualité où une évaluation régionale appropriée serait réalisée.

- Une nouvelle installation d'extraction de sables bitumineux *in situ* (où le bitume est extrait sur place plutôt que par activité minière) d'une capacité de production de bitume de 2 000 m^3/jour ou plus; ou

  l'agrandissement d'une installation existante de sables bitumineux *in situ* qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de bitume de 2 000 m^3/jour ou plus.

  Il y a toutefois une exemption pour les installations situées dans une province où une loi limitant la quantité de gaz à effet de serre émis par les sites de sables bitumineux est en vigueur, dans la mesure où cette limite provinciale n'a pas été atteinte.

- Une nouvelle chaussée permanente d'une longueur continue de 400 m ou plus à travers des eaux navigables (telles que définies à l'article 2 de la *Loi sur les eaux navigables canadiennes*).

- Les nouvelles entrées pour les aires protégées fédérales qui élargissent à la fois les types d'aires protégées et l'éventail d'activités dans celles-ci qui sont maintenant

order to support their conservation objectives, including

- new physical work and specific activities in national parks or land administered or managed by the Parks Canada Agency, as described in the regulation;
- new physical work and specified activities in national marine conservation areas, as described in the regulation; and
- the previous entry for projects within a wildlife area (as defined in section 2 of the *Wildlife Area Regulations*) or a migratory bird sanctuary has been expanded to now include protected marine areas established under the *Canada Wildlife Act*. The list of new project types subject to the IAA if proposed in one of these protected areas or a migratory bird sanctuary now includes aquaculture facility.

b. Project types with changed descriptions

These project types continue to be designated projects under IAA, but the descriptions in the entries have been changed from what it was under the previous CEAA 2012 to better focus on projects with the greatest potential for adverse environmental effects in areas of federal jurisdiction.

- For electrical transmission lines, changes align the Project List with the definition of transmission lines under *Canadian Energy Regulator Act* to maintain the same treatment of these projects as under the CEAA 2012. Under the CEAA 2012, transmission lines were linked to the National Energy Board when they were "regulated under the *National Energy Board Act* or the *Canada Oil and Gas Operations Act*."

- The entry for new marine terminal designed to handle ships larger than 25 000 DWT no longer contains exemptions for when the terminal "is located on lands that are routinely and have been historically used as a marine terminal or that are designated for such use in a land-use plan that has been the subject of public consultation." Historical use may not be consistent with the proposed current use and there are no consistent requirements for land-use plans.

  A marine terminal expansion entry is also added to clarify what kinds of expansion to existing projects would require assessment, namely those that involve adding a new berth for ships larger than 25 000 DWT and that involves a new permanent structure in the water.

soumises à la LEI, dans le but d'appuyer leurs objectifs de conservation, notamment :

- Les nouveaux ouvrages et activités particuliers dans des parcs nationaux ou sur des terres qui sont administrées ou gérées par l'Agence Parcs Canada, comme le décrit le règlement.
- Les nouveaux ouvrages et activités particuliers dans des aires marines nationales de conservation, comme le décrit le règlement.
- L'entrée précédente pour les projets situés dans une réserve d'espèces sauvages (telle que définie à l'article 2 du *Règlement sur les réserves d'espèces sauvages*) ou dans un refuge d'oiseaux migrateurs a été actualisée et comprend maintenant les zones marines protégées établies en vertu de la *Loi sur les espèces sauvages du Canada*. La liste des nouveaux types de projets soumis à la LEI s'ils sont proposés dans l'une de ces aires protégées ou un refuge d'oiseaux migrateurs comprend maintenant les installations d'aquaculture.

b. Types de projets dont la description a changé

Ces types de projets continuent d'être des projets désignés en vertu de la LEI, mais la description figurant dans les entrées a été changée par rapport à ce qu'elle était en vertu de la précédente LCEE de 2012 afin de mieux cibler les projets les plus susceptibles de causer des effets environnementaux négatifs dans des domaines de compétence fédérale.

- En ce qui concerne les lignes de transport d'électricité, les modifications harmonisent la Liste des projets avec la définition de lignes de transport par la LRCE pour que ces projets soient traités de la même façon qu'en vertu de la LCEE de 2012. En vertu de la LCEE de 2012, les lignes de transport étaient liées à l'Office national de l'énergie lorsqu'elles étaient « régies par la *Loi sur l'Office national de l'énergie* ou la *Loi sur les opérations pétrolières au Canada* ».
- L'entrée pour un nouveau terminal maritime conçu pour recevoir des navires de plus de 25 000 TPL ne contient plus les exemptions si le terminal « est situé sur des terres qui sont utilisées de façon courante comme terminal maritime et qui l'ont été par le passé ou que destine à une telle utilisation un plan d'utilisation des terres ayant fait l'objet de consultations publiques ». L'utilisation historique ne cadre peut-être pas avec l'utilisation actuelle proposée et il n'y a aucune exigence constante pour les plans d'utilisation des terres.

  Une entrée sur l'agrandissement d'un terminal maritime a été ajoutée pour préciser quels types d'agrandissements aux projets existants exigeraient une évaluation, nommément ceux qui comprennent l'ajout d'un

- The entry for new railway yard now has a threshold based on total area (50 hectares or more) rather than on the length of track.

  An expansion entry was added to capture an expansion of an existing railway yard that would result in 50% increase in area or more and a total area of 50 hectares or more.

- The entry for new aerodrome is now focused on those designed to handle larger aircraft defined as a new

  (a) aerodrome with a runway length of 1 000 m or more;

  (b) aerodrome that is capable of serving larger aircraft (Aircraft Group Number IIIA or higher); or

  (c) runway with a length of 1 000 m or more at an existing aerodrome.

  An expansion entry was added for existing runways that are expanded to serve aircraft meeting certain characteristics (Aircraft Group Number IIIA or higher).

  This is a change from the previous entry, which captured all airports, aerodromes located in built-up areas of cities and towns and all-season runways of 1 500 m or more.

- The entry on liquefied petroleum gas storage facility is now focused on natural gas liquids.

- The entry on fossil fuel–fired electrical generating facility is now focused on any fossil fuel–fired power generating facility and would capture both facilities generating electricity and those generating mechanical power.

- For a new hazardous waste facility, only a facility proposed to be built within 500 m of a natural waterbody would be subject to the IAA. The expansion entry was similarly changed.

- For offshore exploratory wells, the focus remains on "the first drilling program in an area set out in one or more exploration licences issued" in accordance with
  - the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*,

nouveau poste d'accostage conçu pour des navires de plus de 25 000 TPL et nécessitant une nouvelle structure permanente dans l'eau.

- L'entrée pour une nouvelle gare de triage a maintenant un seuil basé sur la superficie totale (50 hectares ou plus) plutôt que sur la longueur de voie.

  Une entrée sur l'agrandissement d'une gare de triage a été ajoutée pour saisir l'agrandissement d'une gare de triage existante qui entraînerait une augmentation de la superficie de 50 % ou plus et une superficie totale de 50 hectares ou plus.

- L'entrée pour un nouvel aérodrome met maintenant l'accent sur ceux qui sont conçus pour de plus gros aéronefs, c'est-à-dire :

  a) les nouveaux aérodromes dotés d'une piste d'une longueur de 1 000 m ou plus;

  b) les nouveaux aérodromes capables de desservir des aéronefs appartenant à un numéro de groupe d'aéronefs IIIA ou supérieur;

  c) une nouvelle piste d'une longueur d'au moins 1 000 m dans un aérodrome existant.

  Une entrée pour l'agrandissement a été ajoutée pour des pistes existantes qui sont agrandies pour desservir des aéronefs qui répondent à certaines caractéristiques (groupe d'aéronefs IIIA ou supérieur).

  C'est un changement par rapport à l'entrée précédente qui saisissait tous les aéroports, les aérodromes situés à l'intérieur de la zone bâtie d'une ville et les pistes utilisables en toute saison dépassant 1 500 m.

- L'entrée sur les installations de stockage de gaz de pétrole liquéfié est maintenant centrée sur les liquides de gaz naturel.

- L'entrée sur les installations de production d'électricité alimentée par un combustible fossile est maintenant centrée sur les installations de production d'énergie alimentée par un combustible fossile et comprend les installations qui génèrent de l'électricité et celles qui génèrent de la puissance mécanique.

- En ce qui concerne une nouvelle installation pour déchets dangereux, seule une installation proposée à moins de 500 m d'un plan d'eau naturel serait soumise à la LEI. L'entrée pour l'agrandissement a été modifiée de la même façon.

- En ce qui concerne les puits d'exploration au large des côtes, l'accent reste mis sur « le premier programme de forage dans une zone visée par un ou plusieurs permis de prospection octroyés » conformément à :
  - la *Loi de mise en œuvre de l'Accord atlantique Canada — Terre-Neuve-et-Labrador*,

- the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, or
- the *Canada Petroleum Resources Act*.

However, there is an exemption for projects proposed in an area for which a regional assessment has been carried out when the Minister has identified the project type by separate regulation per paragraph 112(1)(a.2) of the IAA and the proposed project meets the conditions for exemption established by the Minister in those regulations. If these criteria are met, these projects would not be designated projects.

c. Project types with decreased threshold

For some project types, the description remains the same as under the CEAA 2012, but the size threshold above which they are considered to be designated projects was "decreased" under the IAA in recognition of uncertainty of the potential effects for these novel project types.

- The production capacity threshold for in-stream tidal power–generating facility was decreased from 50 MW to 15 MW. The same change was made in the corresponding expansion entry.
- The production capacity threshold of 5 MW for a tidal power–generating facility, other than an in-stream tidal power facility, was removed (i.e. any project regardless of size would be subject to the IAA). This would include, for example, tidal range technology that uses dams, lagoons and barrages to trap water. The same change was made in the corresponding expansion entry.

d. Project types with increased threshold

For some project types, the description remains the same as under the CEAA 2012, but the size threshold above which they are considered to be designated projects was "increased" under the IAA to better focus on major projects with the greatest potential for adverse environmental effects in areas of federal jurisdiction.

- The threshold for international or interprovincial pipelines, excluding offshore pipelines, was increased from 40 km of new pipe to 75 km of pipeline in new right of way.
- The threshold for all-season public highway was increased from 50 km to 75 km of new right of way.
- For rail, the focus was narrowed to address freight or intercity passenger railway line and the threshold was increased from 32 km to 50 km of new right of way.

- la *Loi de mise en œuvre de l'Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers*,
- la *Loi fédérale sur les hydrocarbures*.

Il y a toutefois une exemption pour les projets proposés dans une région qui a fait l'objet d'une évaluation régionale lorsque le ministre a déterminé le type de projet par règlement en vertu de l'alinéa 112(1)a.2) de la LEI et que les projets proposés sont conformes aux conditions d'exemption établies par le ministre dans ce règlement. Si ces critères sont satisfaits, ces projets ne seraient pas des projets désignés.

c. Types de projets dont le seuil a été abaissé

Pour certains types de projets, la description demeure la même que dans la LCEE de 2012, mais le seuil de taille au-delà duquel ils sont considérés comme projets désignés a été « abaissé » en vertu de la LEI pour tenir compte de l'incertitude des effets potentiels de ces nouveaux types de projets.

- Dans le cas d'une installation de production d'énergie hydrolienne, le seuil de la capacité de production est passé de 50 à 15 MW. Le même changement a été apporté dans l'entrée sur l'agrandissement correspondante.
- Pour toute autre installation de production d'énergie marémotrice, autre qu'une installation d'énergie hydrolienne, le seuil de capacité de production de 5 MW a été éliminé (autrement dit, tout projet, quelle que soit sa taille, serait soumis à la LEI). Cela inclurait par exemple la technologie de marnage qui fait appel à des barrages et à des lagons pour emprisonner l'eau. Le même changement a été apporté dans l'entrée sur l'agrandissement correspondante.

d. Types de projets dont le seuil a été augmenté

Pour certains types de projets, la description demeure la même que dans la LCEE de 2012, mais le seuil de taille au-delà duquel ils sont considérés comme projets désignés a été « augmenté » en vertu de la LEI, afin de mieux cibler les projets les plus susceptibles de causer des effets environnementaux négatifs dans des domaines de compétence fédérale.

- Dans le cas d'un pipeline international ou interprovincial d'hydrocarbures, autre qu'un pipeline au large des côtes, le seuil est passé de 40 km de nouveau pipeline à 75 km de pipeline dans une nouvelle emprise.
- En ce qui concerne une voie publique utilisable en toute saison, le seuil est passé de 50 à 75 km de nouvelle emprise.
- En ce qui a trait aux chemins de fer, on se limitera maintenant aux lignes de chemin de fer pouvant effectuer le transport de marchandises ou le transport ferroviaire interurbain de voyageurs et le seuil est passé de 32 à 50 km de nouvelle emprise.

- The threshold for all mining types, including metal mills, was increased to 5 000 t per day or more, with the exception of
  - rare earth element mines, uranium mines and uranium mills which had thresholds increased to 2 500 t per day, and
  - stone quarry or sand or gravel pits which maintained the existing threshold of 3 500 000 t per year.

  Gold mines are now treated the same as other metal mines (i.e. 5 000 t per day threshold), and no separate gold mine entry is needed.

- Nuclear fission or fusion reactor, or reactors, now have a threshold for cumulative thermal capacity of more than
  - 900 MWth, if on a site that is within the boundaries of an existing licensed Class IA nuclear facility, or
  - 200 MWth on a site that is not within the boundaries of an existing licensed Class IA nuclear facility.

  Previously all nuclear reactors would have been designated projects, regardless of size and location.

  In addition, the entry for a new facility for the storage of irradiated nuclear fuel or nuclear waste, which is not within a licensed, existing nuclear facility, was amended to exclude an on-site storage facility that is associated with new reactor(s) that have a combined capacity of less than 200 MWth.

e. Project Types removed from the Project List

The following project types under the CEAA 2012 are no longer included and are not designated projects under the IAA, as it was determined that they did not meet the threshold of projects with the greatest potential for effects in federal jurisdiction related to the environment.

- Decommissioning and abandonment of an existing pipeline, other than an offshore pipeline. These projects would continue to be regulated by the Canadian Energy Regulator and the effects associated with these phases would be assessed when a new pipeline project, that meets the threshold, is assessed.
- Railway line designed for trains that have an average speed of 200 km/h or more, as such projects are likely to be captured under the general railway line entry.
- New apatite mines and the expansion of existing apatite mines, as the effects of these mines are generally lower than those of other mining types.

- Tous les types d'exploitation minière, notamment les mines métallifères, ont vu leur seuil augmenter à 5 000 t/jour ou plus, à l'exception des :
  - mines d'éléments des terres rares, des mines d'uranium et des usines de concentration d'uranium qui ont vu leur seuil augmenter à 2 500 t/jour,
  - carrières de pierre, de gravier ou de sable, dont le seuil a été maintenu à 3 500 000 t/année.

  Les mines d'or sont maintenant traitées comme les autres mines de métaux (seuil de 5 000 t/jour), et aucune entrée séparée n'est nécessaire pour les mines d'or.

- Les réacteurs à fission ou à fusion nucléaire, ou réacteurs, ont maintenant un seuil pour une capacité thermique cumulative de plus de :
  - 900 MWth, si le réacteur est situé sur un site à l'intérieur des limites autorisées d'une installation nucléaire de catégorie IA existante,
  - 200 MWth, si le réacteur est situé sur un site à l'extérieur des limites autorisées d'une installation nucléaire de catégorie IA existante.

  Auparavant, tous les réacteurs auraient été des projets désignés, peu importe la taille et l'emplacement.

  En outre, l'entrée sur une nouvelle installation de stockage de combustibles nucléaires irradiés ou de déchets nucléaires, hors des limites autorisées d'une installation nucléaire, a été modifiée pour exclure les installations de stockage sur place associées à un ou à plusieurs nouveaux réacteurs d'une capacité thermique cumulée de moins de 200 MWth.

e. Types de projets retirés de la Liste des projets

Les types de projets suivants visés par la LCEE de 2012 ne sont plus inclus et ne sont pas des projets désignés en vertu de la LEI, puisqu'il a été déterminé qu'ils n'atteignaient plus le seuil des projets les plus susceptibles de causer des effets dans des domaines de compétence fédérale liés à l'environnement.

- Désaffectation et fermeture d'un pipeline existant, autre qu'un pipeline au large des côtes. Ces projets continueraient d'être régis par la Régie canadienne de l'énergie et les effets associés à ces étapes seraient évalués lorsqu'un nouveau projet de pipeline qui atteint le seuil serait évalué.
- Ligne de chemin de fer conçue pour des trains dont la vitesse moyenne est de 200 km/h ou plus, car ces projets sont susceptibles d'être évalués par l'entrée de la ligne de chemin de fer générale.
- Nouvelles mines d'apatite et agrandissement de mines d'apatite existantes, car les effets de ces mines sont généralement plus faibles que ceux d'autres types de mines.

- Expansion entries for facilities that process nuclear substances and for nuclear reactors. These projects would continue to be regulated by the Canadian Nuclear Safety Commission (CNSC), and the impact assessment process would add little value alongside their existing processes.

The remaining project types retained the same entry as under the CEAA 2012, although some had technical changes to the language used in the entry, including liquefied natural gas, dams and dykes, and canals and locks.

Changes to definitions

For some project types, associated definitions were changed to provide better clarity, including

- changes to the definition of new right of way to clarify that the intent is to address projects that are not alongside and contiguous to existing linear projects;
- changes to the definition of marine terminal to clarify the scope of its application to the marine terminal facility;
- the definition of hazardous waste does not include nuclear substances, domestic waste water or anything collected from households in the course of regular municipal waste collection services; and
- new definitions were added for boundary water, disposal at sea, international electrical transmission line, navigable water, national marine conservation area, national park, offshore area and park community, which cite the relevant Acts.

Transitional provisions

In addition to the transitional provisions included in the IAA, the regulation includes transitional provisions for projects on federal lands or outside Canada conducted under the CEAA 2012. These provisions would exclude these projects from the requirements of the IAA and see these reviews of these projects are continued and completed under the CEAA 2012 if, before the coming into force of the IAA, a federal authority has

- made a determination with respect to the project under section 67 or 68 of the CEAA 2012; or
- indicated in writing that it has commenced a review of the project in order to make such a determination.

Regulatory development

Consultation

Discussions on the Project List began during the government's review of the environmental assessment process,

- Entrées sur l'agrandissement des installations qui traitent des substances nucléaires et des réacteurs nucléaires. Ces projets continueraient d'être régis par la Commission canadienne de sûreté nucléaire (CCSN) et le processus d'évaluation d'impact n'apporterait pas de valeur supplémentaire à leur processus existant.

Les types de projets qui restent ont conservé la même entrée que dans la LCEE de 2012, même si le langage technique de certaines entrées a changé, notamment dans les cas suivants : gaz naturel liquéfié, barrages et digues, et canaux et écluses.

Modifications apportées aux définitions

Pour certains types de projets, les définitions qui leur sont associées ont été modifiées afin de les rendre plus claires, notamment :

- une modification apportée à la définition de nouvelle emprise pour indiquer clairement que l'intention est de traiter les projets qui ne sont pas situés le long d'un projet linéaire existant ni contigu à celui-ci;
- une modification apportée à la définition de terminal maritime pour clarifier la portée de son application à un terminal maritime;
- la définition de déchets dangereux exclut les substances nucléaires et les eaux usées domestiques ainsi que toute matière enlevée dans le cours normal de l'enlèvement des ordures ménagères par les services municipaux;
- de nouvelles définitions ont été ajoutées pour les eaux limitrophes, l'immersion, la ligne internationale de transport d'électricité, les eaux navigables, aire marine nationale de conservation, parc national, zone extracôtière et collectivité, qui citent les lois pertinentes.

Dispositions transitoires

Outre les dispositions transitoires de la LEI, le règlement prévoit des mesures transitoires pour les projets sur les terres domaniales ou à l'étranger en vertu de la LCEE de 2012. Ces dispositions excluent ces projets des exigences de la LEI et prévoient que l'évaluation de ces projets se poursuive en vertu de la LCEE de 2012, si avant l'entrée en vigueur de la LEI, une autorité fédérale a :

- pris une décision à l'égard du projet, en vertu des articles 67 ou 68 de la LCEE de 2012;
- indiqué par écrit qu'elle a commencé à évaluer le projet pour prendre une telle décision.

Élaboration de la réglementation

Consultation

Des discussions sur la Liste des projets ont commencé durant l'examen par le gouvernement du processus

through consultation with stakeholders, Indigenous groups and the expert panel review, which led to the development of the IAA.

A Consultation Paper on Approach to Revising the Project List was published and made available online for public comment between February 8 to June 1, 2018. The comment period was extended from 60 days to over three months in response to calls from stakeholders that additional time was needed to respond. An email was sent out to stakeholders, including over 1 000 Indigenous groups, advising them of the opportunity to provide feedback on the approach. In total, almost 100 submissions were received from industry; Indigenous groups; environmental, non-governmental organizations; provinces and territories; the United States Environmental Protection Agency (U.S. EPA); and individual Canadians. The consultation paper sought comments on the proposed approach to creating the new Project List. Many submissions, however, also provided comments on specific project types, including on whether or not they should be included on the Project List and recommendations on thresholds and exclusion criteria. The consultation paper also sought and received feedback on the frequency for future reviews of the Project List.

In addition, officials from the Agency and other government departments held approximately 100 meetings to discuss different aspects of the IAA, including the Project List, with industry (including representatives from at least 15 large companies and 10 industry associations), Indigenous organizations (at least 35), environmental organizations (15) and provincial and territorial officials. As well, sessions on the approach to revising the Project List were held with the Minister's Multi-Interest Advisory Committee (MIAC) that was established to provide advice on design and implementation of the IAA and consists of representatives from Indigenous communities; industry; environmental, non-governmental organizations, and with a network of environmental assessment practitioners from provinces and territories.

A public consultation on the Discussion Paper on the Proposed Project List was held from May 1 to May 31, 2019. As of June 7, 2019, the Agency had received 127 written submissions from Indigenous groups (34); industry (53); environmental, non-governmental organizations (20); provincial/territorial or municipal governments (6); and from individual Canadians (14). In addition, 32 meetings were held to directly engage on the proposed Project List.

d'évaluation environnementale qui a mené à l'élaboration de la LEI, par le biais de consultations auprès des intervenants, des peuples autochtones et du comité d'experts.

Un Document de consultation sur l'approche relative à la modification de la liste des projets a été publié pour recueillir les commentaires du public du 8 février au 1er juin 2018. La période de commentaires, qui devait durer 60 jours, a été prolongée, à plus de trois mois, en réponse à des demandes d'intervenants qui soutenaient que du temps supplémentaire était nécessaire pour répondre. Un courriel a été transmis aux intervenants, notamment à plus de 1 000 groupes autochtones, les informant qu'ils avaient l'occasion de fournir une rétroaction sur l'approche. En tout, près de 100 mémoires ont été transmis par l'industrie, des groupes autochtones, des organisations non gouvernementales de l'environnement, des provinces et territoires, l'Environmental Protection Agency (EPA) des États-Unis et des Canadiens. Le document de consultation a permis de solliciter des commentaires sur l'approche proposée pour la création de la nouvelle Liste des projets. De nombreux mémoires, toutefois, ont aussi fourni des commentaires sur des types de projets particuliers, notamment à savoir si ceux-ci devaient ou non figurer sur la Liste des projets, ainsi que des recommandations quant aux seuils et aux critères d'exclusion. Le document de consultation a en outre sollicité et recueilli des commentaires sur la fréquence des évaluations futures de la Liste des projets.

En outre, les représentants de l'Agence et d'autres ministères du gouvernement ont tenu environ 100 réunions afin de discuter des différents aspects de la LEI, y compris la Liste des projets, avec l'industrie (notamment des représentants d'au moins 15 grandes entreprises et de 10 associations de l'industrie), des organisations autochtones (au moins 35), des organisations environnementales (15) et des représentants provinciaux et territoriaux. De plus, des séances sur l'approche relative à la modification de la Liste des projets ont été tenues avec le Comité consultatif multilatéral (CCM) de la ministre. Ce comité a été créé pour formuler des conseils sur la conception et la mise en œuvre de la LEI. Il est constitué de représentants des collectivités autochtones, de l'industrie et d'organisations non gouvernementales de l'environnement, ainsi que d'un réseau de praticiens provinciaux et territoriaux de l'évaluation environnementale.

Une consultation publique sur le Document de travail sur la liste des projets proposée a eu lieu du 1er au 31 mai 2019. En date du 7 juin 2019, l'Agence avait reçu 127 présentations écrites de groupes autochtones (34); de l'industrie (53); d'organisations non gouvernementales de l'environnement (20); de gouvernements provinciaux, territoriaux ou municipaux (6); de Canadiens (14). En outre, 32 réunions ont été organisées pour assurer une interaction directe en ce qui concerne la Liste des projets proposée.

During the consultation, differing views were heard on the objective of and the approach to creating the Project List. Comments were also received on specific project types to include or exclude and at what thresholds.

Indigenous governments and communities expressed disappointment and felt that the proposed Project List did not sufficiently address the changes they had suggested. Many called for increased engagement and more direct involvement for Indigenous peoples in developing the regulation and for more time for them to review and comment on the regulatory proposal. They opposed the focus on major projects with the greatest potential for environmental effects and not considering potential effects on Indigenous communities, lands and rights. Many recommended that thresholds not be used, as any project, regardless of size, has the potential for effects and should at least undergo a review to see if a full impact assessment is warranted. There were also concerns expressed that thresholds could encourage project splitting to avoid being subject to the IAA. They were concerned that for non-designated projects, there may be a lack of opportunity for meaningful engagement with Indigenous peoples.

Project specific comments included

- Recommended lower thresholds, especially for mining, pipelines and nuclear, with many calling for no thresholds for any project, regardless of size.
- Opposed to any exemptions for *in situ* oil sands projects, including where there is a legislated hard cap on greenhouse gas (GHG) emissions.
- Opposed to any exemption for offshore exploratory wells, including where there is a regional assessment.
- Recommended a greenhouse gas emissions trigger that designates a project where project-related GHG emissions may affect Canada's ability to meet its international commitments to reduce GHG emissions.
- Recommended adding entries for any projects that may have effects on Indigenous rights or cultural areas, protected areas, or species at risk.

Environmental groups expressed disappointment with the proposed Project List and viewed it as too narrow and missing many project types with potential environmental effects. In the opinion of these groups, the approach should have considered a wider range of effects including effects on Indigenous communities and rights, and terrestrial species at risk. In general they called for lower

Au cours de la consultation, des points de vue divergents ont été entendus quant à l'objectif et à l'approche liés à la création de la Liste des projets. Des commentaires ont aussi été reçus sur les types de projets particuliers à inclure ou à exclure et selon quels seuils.

Les gouvernements et les collectivités autochtones ont fait part de leur déception et ont estimé que la Liste des projets proposée n'a pas suffisamment tenu compte des commentaires qu'ils avaient précédemment fournis. Beaucoup exigent une mobilisation accrue et une participation directe des peuples autochtones dans l'élaboration du règlement et demandent plus de temps pour pouvoir examiner et commenter le règlement proposé. Ils se sont opposés à ce que l'accent soit mis sur les grands projets les plus susceptibles de causer des effets environnementaux, sans tenir compte des effets potentiels sur les collectivités, les terres et les droits autochtones. Beaucoup ont recommandé que les seuils ne soient pas utilisés, puisque tout projet, quelle que soit sa taille, a potentiellement des effets et devrait au moins être soumis à un examen pour déterminer si une évaluation d'impact complète est justifiée. Ils ont par ailleurs formulé la crainte que les seuils favorisent le fractionnement des projets pour éviter que ceux-ci soient régis par la LEI. Ils ont également exprimé la crainte qu'il y ai un manque de mobilisation significative auprès des peuples autochtones en ce qui concerne les projets non désignés.

Commentaires sur des projets particuliers :

- recommandé des seuils plus bas, notamment pour l'exploitation minière, les pipelines et le nucléaire, beaucoup souhaitant la disparition des seuils pour tous les projets, quelle qu'en soit la taille.
- opposé aux exemptions accordées aux projets de sables bitumineux *in situ*, y compris lorsqu'il y a une loi qui impose des quotas absolus d'émissions de gaz à effet de serre (GES).
- opposé aux exemptions accordées aux projets de puits d'exploration au large des côtes; y compris lorsqu'il y a une évaluation régionale.
- recommandé un seuil minimal d'émissions de gaz à effet de serre qui désigne un projet dont les émissions de gaz à effet de serre peuvent affecter la capacité du Canada à respecter ses engagements internationaux en matière de réduction des émissions de GES.
- recommandé l'ajout d'entrées pour les projets qui ont des effets sur les droits ou les aires culturelles autochtones, les aires protégées ou les espèces en péril.

Les groupes environnementaux ont exprimé leur déception par rapport à la Liste des projets proposée et ont perçu celle-ci comme étant trop restreinte et excluant plusieurs types de projets ayant des effets environnementaux. De l'avis de ces groupes, l'approche aurait dû prendre en compte un plus vaste éventail d'effets, notamment les effets sur les collectivités et les droits autochtones et sur

thresholds, especially for mining, pipelines and nuclear. They also called for entries based on environmental effects (e.g. entry to capture all projects that emit greenhouse gases above a certain threshold) or to require all projects with significant federal involvement (e.g. regulation or funding) to be subject to the IAA. They also recommend addition of multiple new project types.

Project specific comments included

- Recommended lower thresholds for most entries, especially mining, nuclear and pipelines. It was noted that the treatment of tidal and wind energy projects was more stringent when compared to hydroelectric and fossil fuel projects, which they view as having much greater effects.
- Opposed to any exemptions for *in situ* oil sands projects, including where there is a legislated hard cap on greenhouse gas emissions.
- Opposed to any exemptions for offshore exploratory wells, including where there is a regional assessment.
- Recommended a GHG entry that would capture all projects that would emit beyond a set emissions threshold, and entries that would capture projects that impact protected areas or heritage sites.

Industry stakeholders were generally supportive of the approach to focus on projects with the greatest potential for adverse effects and on providing clarity when the IAA applies. Most recommended that projects already regulated by provinces or for which standard mitigations were already routinely used be excluded from the Project List. Some industry sectors, in particular, oil and gas and mining sectors, questioned the consistency of the application of the approach across project types, and perceived their industry as over-represented on the Project List. They generally called for increased thresholds (e.g. for pipelines, small modular reactors, tidal, wind) or to focus on only large or nationally significant projects. They also sought clarification or provided advice on definitions for terms used in the regulations.

Project specific comments included

- Stated there is no evidence to support a lower threshold for uranium and rare earth element mines compared to other metal mines.

les espèces terrestres en péril. De façon générale, ils demandent des seuils plus bas, surtout en ce qui concerne l'exploitation minière, les pipelines et le nucléaire. Ils ont également demandé des entrées fondées sur les effets environnementaux (par exemple pour saisir tous les projets qui émettent des gaz à effet de serre au-delà d'un certain seuil) ou pour exiger que tous les projets avec une participation fédérale importante (par exemple réglementation ou financement) soient soumis à la LEI. Ils ont en outre recommandé l'ajout de plusieurs nouveaux types de projets.

Commentaires sur des projets particuliers :

- recommandé des seuils plus bas pour la plupart des entrées, notamment en ce qui concerne l'exploitation minière, le nucléaire et les pipelines. Ils ont également remarqué le traitement comparativement plus strict réservé aux projets d'énergie marémotrice et éolienne par rapport aux projets hydroélectriques et aux projets reposant sur des combustibles fossiles, qui selon eux présentent des effets beaucoup plus prononcés.
- opposé aux exemptions accordées aux projets de sables bitumineux *in situ*, y compris lorsqu'il y a une loi qui impose des quotas absolus d'émissions de gaz à effet de serre.
- opposé aux exemptions accordées aux projets de puits d'exploration au large des côtes, y compris lorsqu'il y a une évaluation régionale.
- recommandé une entrée sur les émissions de gaz à effet de serre qui saisirait tous les projets dont les émissions dépasseraient un certain seuil et des entrées qui saisiraient les projets ayant des répercussions sur les aires protégées ou sur les sites patrimoniaux.

En général, les intervenants de l'industrie appuient l'approche qui met l'accent sur les projets les plus susceptibles de causer des effets négatifs et sur plus de clarté pour savoir quand la LEI est applicable. La majorité a recommandé que les projets déjà régis par les provinces ou pour lesquels on utilise déjà des atténuations standard soient exclus de la Liste des projets. Certains secteurs de l'industrie, notamment les secteurs des hydrocarbures et des mines, s'interrogent sur la cohérence de l'application de l'approche aux divers types de projets, et estiment que leur industrie est surreprésentée sur la Liste des projets. En général, ils demandent que les seuils soient plus élevés (pour les pipelines, les petits réacteurs modulaires, l'énergie marémotrice et l'énergie éolienne, par exemple) ou que l'accent soit mis uniquement sur les grands projets ou sur les projets d'importance nationale. Ils ont aussi demandé des éclaircissements ou offert des conseils sur les définitions des termes utilisés dans le règlement.

Commentaires sur des projets particuliers :

- signalé qu'il n'y avait aucune preuve à l'appui de l'abaissement du seuil pour les mines d'uranium et d'éléments des terres rares par rapport aux autres mines de métaux.

- Opposed to the inclusion of *in situ* oil sands projects, even with an exemption where there is a legislated hard cap on GHG emissions.
- Recommended removing natural gas-fired electricity, co-generation projects and upgraders (refineries) from the Project List.
- Recommended removing offshore exploratory wells and requested more information on how the exemption for regional assessments would work.

The final Project List represents those project types that were determined to have the greatest potential for adverse effects in areas of federal jurisdiction related to the environment, while also providing the required clarity as to when a project is subject to the IAA.

In some instances, the proposed Project List detailed in the discussion paper was changed in response to comments received during the consultation, in order to provide greater clarity and eliminate ambiguity, to avoid unintentionally capturing small projects with minimal effects (e.g. the entry for causeways and nuclear storage facilities), and to provide transitional measures for projects on federal lands that are now designated projects under the IAA or are undergoing a federal lands review under the CEAA 2012.

Exemption from prepublication

To meet the Government's objective to implement the new impact assessment process by summer 2019, an exemption from the regulatory policy requirement to publish draft regulations in the *Canada Gazette*, Part I, was granted by the Treasury Board. In lieu of publication in the *Canada Gazette*, Part I, a Discussion Paper on the Proposed Project List was published for public consultation from May 1 to May 31, 2019, in order to provide stakeholders with an opportunity to provide feedback on the regulatory details of the Project List.

Modern treaty obligations and Indigenous engagement and consultation

This Assessment of Modern Treaty Implications builds on the assessment completed for the *Impact Assessment Act* conducted in 2018. It concluded that there would be positive implications for modern treaties from the new impact assessment process resulting from tools to enable harmonization with treaty processes, better consultation processes, increased ability to identify and resolve issues, and a more consistent approach to impact assessments and opportunities for Indigenous involvement. This assessment,

- opposé à l'inclusion des projets de sables bitumineux *in situ*, même avec une exemption lorsqu'il y a une loi qui impose des quotas absolus d'émissions de gaz à effet de serre.
- recommandé le retrait des projets de production d'énergie alimentée par le gaz naturel, projets de cogénération d'électricité et des usines de valorisation (raffineries) de la Liste des projets.
- recommandé le retrait des puits d'exploration au large des côtes et demandé plus de détails sur la façon dont fonctionnerait l'exemption pour les évaluations régionales.

La Liste des projets définitive représente les types de projets déterminés comme plus susceptibles de causer des effets négatifs dans des domaines de compétence fédérale liés à l'environnement, tout en fournissant les critères nécessaires qui permettent d'établir clairement quand un projet est régi par la LEI.

Dans certains cas, la Liste des projets proposée dans le document de travail a été modifiée en réponse aux commentaires reçus pendant la consultation afin de fournir plus de clarté et d'éliminer toute ambiguïté, pour éviter de saisir des petits projets dont les effets sont limités (par exemple l'entrée sur les chaussées et les installations de stockage nucléaires), et pour prévoir des mesures transitoires pour les projets sur les terres domaniales ou à l'étranger qui sont maintenant des projets désignés en vertu de la LEI ou qui font l'objet d'une évaluation en vertu de la LCEE de 2012.

Exemption de publication préalable

Pour atteindre l'objectif gouvernemental de mise en œuvre du nouveau processus d'évaluation d'impact d'ici l'été 2019, une exemption concernant l'exigence de politique réglementaire de publier un projet de réglementation dans la Partie I de la *Gazette du Canada* a été accordée par le Conseil du Trésor. Au lieu d'une publication dans la Partie I de la *Gazette du Canada*, un Document de travail sur la liste des projets proposée a été publié pour consultation publique entre le 1er et le 31 mai 2019 afin de fournir l'occasion aux intervenants de faire part de leurs commentaires sur les détails réglementaires de la Liste des projets.

Obligations relatives aux traités modernes et consultation et mobilisation des Autochtones

Cette évaluation des répercussions des traités modernes s'appuie sur l'évaluation réalisée en 2018 en vue de la *Loi sur l'évaluation d'impact*. Elle a conclu que ce nouveau processus d'évaluation d'impact aurait des répercussions positives pour les traités modernes, en raison des outils servant à assurer l'harmonisation avec les processus relatifs aux traités, de meilleurs processus de consultation, d'une capacité accrue de déterminer et de résoudre les problèmes, d'une approche plus uniforme en matière

however, noted that revisions to the Project List may have implications for alignment between application of the IAA and treaty processes.

There are currently 30 modern treaties and self-government arrangements across the country, of which several have provisions related to environmental, impact or development assessment. Of note, the application of federal environmental assessment legislation is very limited for over half of the treaties, especially in the territories. These treaties were reviewed to determine if the Project List implicated any treaty obligations as a result of differences or overlap with treaties that have their own project list.

The Agency also individually notified each modern treaty and self-governing group of the consultation on the Discussion Paper on the Proposed Project List and offered to meet with them, if interested. Submissions were received from seven groups: the Nunatsiavut Government, the Nisga'a Lisims Government, the Makivik Corporation, the James Bay Cree Advisory Committee on the Environment, the Inuvialuit Game Council, Naskapi Nation of Kawawachikamach, and the First Nations of Maa-Nulth Treaty Society.

Concerns raised by these modern treaty and self-governing groups included the following:

- Regulations should not impede the implementation of modern treaties and decisions should be made such that they are in compliance with any applicable provisions of modern treaties.
- There should be a mechanism to request or require the federal impact assessment when a project is located or impacting on traditional territory, or where there is a potential for effects on treaty rights.
- Failure to designate projects that may take place on traditional territory may limit the opportunity for engagement with Indigenous communities and for collaboration between the federal and Indigenous governments.

The assessment did not identify any modern treaty obligations related directly to the Project List. Any potential implications from differences in lists will be addressed by the federal IAA under which the Project List will be implemented, as follows:

(a) Where there are parallel assessments under the IAA and modern treaties, there are tools for harmonization

d'évaluation d'impact et d'un nombre supérieur d'occasions de participation des Autochtones. Cette évaluation, cependant, a indiqué que les révisions apportées à la Liste des projets peuvent avoir des répercussions sur l'harmonisation entre l'application de la LCEE de 2012 et les processus liés aux traités.

Présentement, on compte 30 traités modernes et ententes d'autonomie gouvernementale à l'échelle du pays. De ce nombre, plusieurs ont des dispositions concernant l'évaluation environnementale, d'impact ou du développement. Il faut souligner que l'application de la législation fédérale en matière d'évaluation environnementale est très limitée pour plus de la moitié des traités, surtout dans les territoires. Ces traités ont été examinés pour déterminer si la Liste des projets a des répercussions sur des obligations issues de traités, en raison de différences ou de chevauchement avec des traités qui ont leur propre liste de projets.

En outre, l'Agence a informé individuellement chaque groupe autonome et signataire de traités modernes de la tenue d'une consultation sur le Document de travail sur la liste des projets proposée, et a proposé de les rencontrer s'ils le souhaitaient. Des mémoires ont été transmis par sept groupes : le gouvernement du Nunatsiavut, le gouvernement Nisga'a Lisims, la Société Makivik, le Comité consultatif pour l'environnement de la Baie-James, le Conseil Inuvialuit de gestion du gibier, la Nation Naskapi de Kawawachikamach et les Premières Nations du Traité Maa-nulth.

Parmi les préoccupations formulées par ces groupes autonomes et signataires de traités modernes, il y avait les suivantes :

- Le règlement ne doit pas entraver la mise en œuvre des traités modernes et les décisions doivent être prises de façon à se conformer à toutes les dispositions applicables des traités modernes.
- Il devrait y avoir un mécanisme pour demander ou exiger l'évaluation d'impact fédérale lorsqu'un projet est situé sur un territoire traditionnel ou qu'il a un impact sur celui-ci, ou encore lorsqu'il y a un risque d'effets sur les droits issus de traités.
- L'incapacité à désigner des projets qui peuvent avoir lieu sur un territoire traditionnel peut limiter l'occasion d'une mobilisation des collectivités autochtones et d'une collaboration entre les gouvernements fédéral et autochtones.

L'évaluation n'a relevé aucune obligation issue de traités modernes liée directement à la Liste des projets. Toutes les répercussions possibles provenant des différences dans les listes seront traitées par la LEI fédérale en vertu de laquelle la Liste des projets sera mise en œuvre :

a) Lorsqu'il y a des évaluations parallèles en vertu de la LEI et des traités modernes, il y a des outils

and cooperation with Indigenous jurisdictions under the *Information and Management of Time Limits Regulations*.

(b) For designated projects, where treaty partners may believe assessments should be required to address treaty obligations and impacts, they will have the opportunity in early planning to consult on the need for an assessment.

(c) For non-designated projects, where treaty partners may believe assessments should be required to address treaty obligations or impacts, they will have the ability to request that the project be designated by the Minister. The IAA provides the Minister with the authority to designate projects if, in the Minister's opinion, the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or if public concerns related to those effects warrant a designation.

The IAA also includes a general clause, which would ensure that any existing treaty rights would not be affected by the introduction of the new legislation and supporting regulations and policy.

For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of the Indigenous peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

The Act also provides for the possibility to have it not apply in respect of physical activities to be carried out wholly within lands described in Schedule 2 (certain lands that are subject to a Land Claim Agreement which may be added in future to Schedule 2 by the Governor in Council). This would allow Canada, in consultation with treaty partners, to declare the Act non-applicable in treaty territories, for example in cases of significant duplication of processes.

In addition, under section 109 of the IAA, the "Governor in Council may make regulations [...] (d) varying or excluding any requirement set out in this Act or the regulations as it applies to physical activities to be carried out

(i) on reserves, surrendered lands or other lands that are vested in Her Majesty and subject to the *Indian Act*,

(ii) on lands covered by land claim agreements referred to in section 35 of the *Constitution Act, 1982*."

d'harmonisation et de collaboration avec les autorités autochtones en vertu du *Règlement sur les renseignements et la gestion des délais*.

b) Pour les projets désignés, là où les partenaires des traités estiment que des évaluations peuvent être nécessaires pour tenir compte des répercussions et des obligations issues des traités, ils auront l'occasion dans la phase de planification de faire des consultations sur la nécessité d'une évaluation.

c) Pour les projets non désignés, là où les partenaires des traités estiment que des évaluations peuvent être nécessaires pour tenir compte des répercussions et des obligations issues des traités, ils auront la possibilité de demander à ce que le projet soit désigné par le ministre. La LEI accorde au ministre le pouvoir de désigner des projets si, de l'avis du ministre, le projet peut avoir des effets négatifs dans un domaine de compétence fédérale ou des effets négatifs directs ou accessoires, ou si les préoccupations du public liées à ces effets justifient une désignation.

La LEI comprend aussi une disposition générale qui veillerait à ce que tous les droits issus de traités existants ne soient pas touchés par l'adoption de la nouvelle législation et du règlement et de la politique connexes :

Il est entendu que la présente loi ne porte pas atteinte à la protection des droits des peuples autochtones du Canada découlant de leur reconnaissance et de leur confirmation au titre de l'article 35 de la *Loi constitutionnelle de 1982*.

La Loi offre aussi la possibilité qu'elle ne soit pas applicable en ce qui concerne les activités concrètes à exécuter en entier sur les terres décrites dans l'annexe 2 (certaines terres visées par un accord sur des revendications territoriales qui peuvent être ajoutées plus tard à l'annexe 2 par le Gouverneur en conseil). Cela permettrait au Canada, en consultation avec les partenaires des traités, de déclarer la Loi non applicable sur les territoires visés par les traités, par exemple dans les cas d'un double emploi significatif des processus.

En outre, en vertu de l'article 109 de la LEI, le « gouverneur en conseil peut, par règlement [...] d) modifier ou exclure toute exigence prévue par la présente loi ou les règlements quant à son application aux activités concrètes :

(i) devant être exercées dans les réserves, terres cédées ou autres terres dévolues à Sa Majesté et assujetties à la *Loi sur les Indiens*,

(ii) devant être exercées dans les terres visées par tout accord sur des revendications territoriales visé à l'article 35 de la *Loi constitutionnelle de 1982* ».

Instrument choice

A regulation is needed to provide clarity and certainty as to which projects are subject to the IAA and to properly implement the federal impact assessment process. Without the regulation, only projects designated by the Minister would undergo federal impact assessment if, in the Minister's opinion, the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or if public concerns related to those effects warrant a designation.

Regulatory analysis

Costs and benefits

These regulations do not impose any direct costs on proponents. The regulations provide clarity and certainty to proponents as to which projects are subject to the IAA and may be required to undergo an impact assessment. There are no direct requirements imposed by the regulations, aside from directing projects of certain scale and size towards the impact assessment regime.

A designated project would enter into the early planning phase, which provides up to 180 days to determine whether or not an impact assessment is required and, if so, to support early engagement and assessment planning. Proponents are required to submit an initial project description at the outset of the planning phase, and a detailed project description along with a response to issues raised during early engagement. The Agency will then determine whether or not an assessment is required, relatively early in the planning phase. If the Agency determines that an impact assessment of the project is necessary, it will provide notice of the additional deliverables that are needed to conduct the impact assessment.

The *Information and Management of Time Limits Regulations* prescribe the information requirements for proponents during early planning and the impact assessment process, and the products the Agency would be required to deliver to proponents and to make public. Therefore, the costs to proponents or the Agency following on from designation under the Project List are associated with the requirements in the IAA or in the *Information and Management of Time Limits Regulations*. The costs and benefits associated with the *Information and Management of Time Limits Regulations* have been assessed in the Regulatory Impact Analysis Statement of these Regulations.

It is not possible to predict with certainty the number of projects that will be subject to the IAA in the future, as new resource or other development projects are driven by economic conditions and other considerations that inform proponent decisions. The changes to the Project List are not expected to significantly change the total number of projects that are subject to federal impact assessment annually compared to the current situation under the

Choix de l'instrument

Un règlement est requis pour indiquer avec clarté et certitude quels projets sont soumis à la LEI et pour mettre en œuvre de façon adéquate le processus fédéral d'évaluation d'impact. Sans ce règlement, seuls les projets désignés par le ministre seraient visés par une évaluation d'impact fédérale si, à son avis, le projet peut avoir des effets négatifs dans un domaine de compétence fédérale ou des effets négatifs directs ou accessoires, ou si les préoccupations du public liées à ces effets justifient une désignation.

Analyse de la réglementation

Coûts et avantages

Ce règlement n'impose aucun coût direct aux promoteurs. Il indique aux promoteurs, avec clarté et certitude, quels projets sont soumis à la LEI et peuvent nécessiter une évaluation d'impact. Il n'impose aucune exigence directe, à part celle de placer les projets d'une certaine échelle et d'une certaine taille sous le régime d'évaluation d'impact.

Un projet désigné ferait l'objet de la phase de planification qui offre jusqu'à 180 jours pour déterminer si une évaluation d'impact est requise et, le cas échéant, pour appuyer la planification de l'évaluation et la mobilisation en amont. Les promoteurs doivent soumettre une description de projet initiale au début de la phase de planification et une description de projet détaillée ainsi qu'une réponse aux questions soulevées lors de la mobilisation en amont. L'Agence décidera si une évaluation est requise relativement tôt à la phase de planification. Si l'Agence détermine qu'une évaluation d'impact du projet est nécessaire, elle indiquera les livrables supplémentaires requis pour la réalisation de l'évaluation d'impact.

Le *Règlement sur les renseignements et la gestion des délais* prescrit les informations que devraient fournir les promoteurs lors de la phase de planification et du processus d'évaluation d'impact, et les produits que l'Agence devrait livrer aux promoteurs et rendre publics. Ainsi, les coûts pour les promoteurs ou pour l'Agence à la suite d'une désignation pour la Liste des projets sont associés avec les exigences de la LEI ou du *Règlement sur les renseignements et la gestion des délais*. Les coûts et avantages associés au *Règlement sur les renseignements et la gestion des délais* ont été évalués dans le résumé de l'étude d'impact de la réglementation pour ce règlement.

Il n'est pas possible de prévoir avec certitude le nombre de projets qui seront régis par la LEI à l'avenir, puisque les nouveaux projets de ressources ou autres projets de développement sont tributaires de la conjoncture économique et d'autres facteurs qui guident les décisions des promoteurs. On ne s'attend pas à ce que les modifications à la Liste des projets changent sensiblement le nombre total de projets soumis annuellement à l'évaluation d'impact

CEAA 2012. Based on information available, the Agency's analysis suggests that there would likely be a small decrease in the number of projects that would be required to undergo federal impact assessment on an annual basis (up to five fewer projects per year). As a result, changes to the Project List, in and of itself, are not expected to increase overall costs.

Small business lens

Small business impacts are not anticipated as the projects identified in these regulations are large in scale and small businesses are unlikely to undertake a project that meets any of the project types described in the Regulation.

"One-for-One" Rule

The "One-for-One" Rule does not apply. The regulation will replace an existing one and will have no impact on administrative burden costs.

Regulatory cooperation and alignment

This regulation is not part of a proposal related to a work plan or commitment under a formal regulatory cooperation forum.

Impact assessment is one part of a larger regulatory landscape for addressing environmental effects, working alongside other regulatory processes at all levels of government, with complementary roles. Projects may be governed by provincial or territorial regulatory regimes that address environmental impacts along the life of the project or may undergo an environmental assessment at the provincial or territorial level. Projects are also subject to federal regulations or general prohibitions under, for example the *Fisheries Act*, the *Migratory Birds Convention Act, 1994*, the *Species at Risk Act* or the *Canadian Environmental Protection Act, 1999*. Federal lifecycle regulators, such as the Canadian Nuclear Safety Commission (CNSC), the Canada-Nova Scotia Offshore Petroleum Board and the Canada-Newfoundland & Labrador Offshore Petroleum Board or the Canadian Energy Regulator play a key role in assessing and authorizing nuclear, offshore oil and gas, and energy projects. Within this landscape, impact assessment provides a comprehensive and rigorous framework through which to review the projects with the greatest potential impacts.

fédérale par rapport à la situation actuelle en vertu de la LCEE de 2012. Selon l'analyse de l'Agence fondée sur les informations disponibles, il y aurait probablement une petite baisse du nombre de projets qui devraient faire l'objet, chaque année, d'une évaluation d'impact fédérale (jusqu'à cinq projets de moins par année). Ainsi, on ne s'attend pas à ce que les modifications à la Liste des projets augmentent en soi les coûts totaux.

Lentille des petites entreprises

On ne prévoit aucune répercussion sur les petites entreprises puisque les projets énoncés dans ce règlement sont à grande échelle et il est peu probable qu'une petite entreprise mette en œuvre un projet correspondant à l'un des types de projets décrits dans le règlement.

Règle du « un pour un »

La règle du « un pour un » ne s'applique pas. Le règlement en remplacera un qui existe déjà et n'aura aucune répercussion sur les coûts du fardeau administratif.

Coopération et harmonisation en matière de réglementation

Ce règlement ne fait pas partie d'une proposition associée à un plan de travail ou à un engagement dans le cadre d'un forum officiel de coopération en matière de réglementation.

L'évaluation d'impact fait partie d'un paysage réglementaire plus vaste pour tenir compte des effets environnementaux. Elle est utilisée avec d'autres processus réglementaires à tous les ordres de gouvernement, avec des rôles complémentaires. Les projets peuvent être visés par des régimes de réglementation provinciaux ou territoriaux qui tiennent compte des impacts environnementaux tout au long du cycle de vie du projet ou peuvent faire l'objet d'une évaluation environnementale provinciale ou territoriale. Les projets sont aussi visés par des règlements fédéraux ou des interdictions générales en vertu, par exemple, de la *Loi sur les pêches*, de la *Loi de 1994 sur la convention concernant les oiseaux migrateurs*, de la *Loi sur les espèces en péril* et de la *Loi canadienne sur la protection de l'environnement (1999)*. Les organismes fédéraux de réglementation du cycle de vie, comme la Commission canadienne de sûreté nucléaire (CCSN), l'Office Canada-Nouvelle-Écosse des hydrocarbures extracôtiers et l'Office Canada-Terre-Neuve-et-Labrador des hydrocarbures extracôtiers ou la Régie canadienne de l'énergie jouent un rôle clé dans l'évaluation et l'autorisation des projets énergétiques, des projets nucléaires et des projets d'exploitation extracôtière du pétrole et du gaz. Dans ce paysage, l'évaluation d'impact propose un cadre exhaustif et rigoureux pour examiner les projets les plus susceptibles de causer des impacts.

The approach to developing the regulations recognized the role of impact assessment in the context of Canada's mature regulatory framework. For consideration for the Project List, a project type must have the greatest potential for adverse environmental effects in one or more areas of federal jurisdiction. For project types that met this criterion, existing provincial regulatory regimes were considered when determining thresholds to focus on major projects where federal impact assessment would add the most value.

The IAA also provides for close cooperation with provinces and Indigenous governing bodies to support the objective of "one project, one assessment," through the delegation of any part of an impact assessment, the joint establishment of a review panel or the substitution of another process for the impact assessment.

The IAA also allows for projects that require an impact assessment in both Canada and the United States to establish cooperation agreements to assess projects jointly. If a project is designated in Canada, but does not require a federal assessment in the United States and has potential for transboundary impacts, the Impact Assessment Agency has established procedures for the notification of, and consultation with, the United States on potential transboundary effects.

Projects that are not designated on the Project List will continue to be subject to other regulatory instruments and regimes, including assessment and oversight by a federal lifecycle regulator or provincial regulator, where required. Regardless of which jurisdiction leads on project reviews, the federal government would retain authorities in areas of federal jurisdiction.

Strategic environmental assessment

A strategic environmental assessment was conducted on the overall IAA. The results of this analysis indicated that the overall proposal will have a positive effect on the environment that is a result of strong federal impact assessment and regulatory processes. The objective of the Project List is to identify those projects with the greatest potential for adverse environmental effects in areas of federal jurisdiction, so those projects can undergo federal impact assessment to identify and mitigate environmental effects.

Gender-based analysis plus

The gender-based analysis plus (GBA+) that was conducted on the IAA as a whole found that the IAA is

L'approche adoptée pour élaborer le règlement a tenu compte du rôle de l'évaluation d'impact dans le contexte du cadre réglementaire bien développé du Canada. Aux fins de considération pour la Liste des projets, un type de projet doit être le plus susceptible d'avoir des effets environnementaux négatifs dans un domaine ou plusieurs domaines de compétence fédérale. Pour les types de projets correspondant à ces critères, on a pris en compte les régimes provinciaux de réglementation en place dans la détermination des seuils de façon à mettre l'accent sur les grands projets pour lesquels une évaluation d'impact fédérale ajouterait le plus de valeur.

La LEI prévoit aussi la collaboration étroite avec les provinces et les corps dirigeants autochtones, afin de soutenir l'objectif qui est de réaliser « un projet, une évaluation », au moyen de la délégation de tout ou partie d'une évaluation d'impact, de la constitution conjointe d'une commission ou de la substitution d'un autre processus à l'évaluation d'impact.

La LEI permet aussi aux projets qui nécessitent une évaluation d'impact au Canada et aux États-Unis d'établir des ententes de collaboration pour évaluer conjointement les projets. Si un projet est désigné au Canada, mais n'exige pas d'évaluation fédérale aux États-Unis, et pouvait avoir des impacts transfrontaliers, l'Agence d'évaluation d'impact a établi des procédures pour informer les États-Unis des effets transfrontaliers potentiels et les consulter à ce sujet.

Les projets non désignés sur la Liste des projets continueront d'être soumis aux autres instruments et régimes de réglementation, notamment à l'évaluation et à la surveillance de la part d'un organisme fédéral de réglementation du cycle de vie ou d'un organisme de réglementation provincial, le cas échéant. Indépendamment de l'instance qui mène les examens de projet, le gouvernement fédéral conserverait des pouvoirs dans les domaines de compétence fédérale.

Évaluation environnementale stratégique

Une évaluation environnementale stratégique a été réalisée en ce qui concerne la LEI dans son ensemble. Selon les résultats de cette analyse, la proposition aura, dans son ensemble, un effet positif sur l'environnement, en raison de processus fédéraux d'évaluation d'impact et réglementaires solides. La Liste des projets a pour but de déterminer quels projets sont les plus susceptibles de causer des effets environnementaux négatifs dans des domaines de compétence fédérale, de façon à ce que ces projets puissent faire l'objet d'une évaluation d'impact fédérale dans le but de cerner et d'atténuer les effets environnementaux.

Analyse comparative entre les sexes plus

L'analyse comparative entre les sexes plus (ACS+) concernant la LEI a conclu que, dans l'ensemble, la LEI devrait

expected to have important positive effects on women, Indigenous peoples, and other vulnerable groups resulting from strengthened federal impact assessment processes. It is anticipated that the broadened approach to impact assessment that considers economic, health, gender and social effects will ensure that projects are considered in a holistic manner that recognizes the multiple pillars of sustainability and promotes sustainable development. Most importantly, the broadened approach to impact assessment also includes a GBA+ assessment for each project. The early engagement and planning phase will provide a forum for stakeholders, Indigenous groups, and the general public to identify environmental, social, health, gender, and economic concerns from the outset of a project. Multiple measures would enable increased participation for the public and Indigenous groups.

avoir des effets positifs importants sur les femmes, les peuples autochtones et d'autres groupes vulnérables, en raison du renforcement des processus fédéraux d'évaluation d'impact. On prévoit que l'approche élargie en matière d'évaluation d'impact qui tient compte des effets économiques et sociaux, des effets sur la santé et des effets sur le genre ou le sexe permettra de veiller à ce que les projets soient évalués d'une manière globale qui reconnaît les multiples piliers de la durabilité et fait la promotion du développement durable. Surtout, cette approche élargie comprend aussi une ACS+ pour chaque projet. La mobilisation et la phase de planification serviront de forum pour permettre aux intervenants, aux groupes autochtones et au public en général de faire état, dès le début d'un projet, de leurs préoccupations environnementales, sociales, économiques et en matière de santé et de sexe ou de genre. De multiples mesures permettraient une participation accrue du public et des groupes autochtones.

Implementation, compliance and enforcement, and service standards

Implementation

This regulation comes into effect on the date that the *Impact Assessment Act* comes into force.

Transitional provisions included in the IAA will govern how projects that had already started under the CEAA 2012 will be addressed under the IAA. Additional transitional provisions to address projects on federal lands, as described above, have been added to this regulation.

Compliance and enforcement

The IAA prohibits a proponent of a designated project from carrying out any activity associated with a designated project unless it meets the conditions established in section 7 of the Act.

The Agency is responsible for promoting, monitoring and facilitating compliance with the IAA and any decision statement issued by the Minister of the Environment. Where projects are also regulated by lifecycle regulators (Canadian Energy Regulator, Canadian Nuclear Safety Commission and offshore boards), there are mechanisms in the Act to provide for compliance and enforcement by these bodies for matters within their mandates.

The Agency raises awareness of the IAA requirements by offering education and training opportunities, doing outreach, and providing information. Engagement was conducted on the new Project List Regulations, which included groups that may be subject to the new regulations. The Agency also has an engagement strategy in place to promote the coming into force of the IAA.

Mise en œuvre, conformité et application, et normes de service

Mise en œuvre

Ce règlement prend effet à la date d'entrée en vigueur de la *Loi sur l'évaluation d'impact*.

Les dispositions transitoires de la LEI régiront la manière dont les projets déjà commencés en vertu de la LCEE de 2012 seront traités en vertu de la LEI. Des dispositions transitoires portant sur les projets situés sur le territoire domanial, décrites ci-dessus, ont été ajoutées au présent règlement.

Conformité et application

La LEI interdit à tout promoteur d'un projet désigné de réaliser une activité associée à un projet désigné, sauf si elle respecte les conditions établies à l'article 7 de la Loi.

L'Agence est responsable de la promotion, de la surveillance et de la facilitation du respect de la LEI et des déclarations de décision provenant du ministre de l'Environnement. Lorsque les projets sont également réglementés par les organismes de réglementation du cycle de vie (Régie canadienne de l'énergie, Commission canadienne de sûreté nucléaire et offices extracôtiers), la Loi prévoit des mécanismes de conformité et d'application de la loi par ces organismes pour les questions relevant de leur mandat.

L'Agence sensibilise aux exigences de la LEI en proposant des possibilités d'information et de formation, en assurant une mobilisation et en fournissant de l'information. Une consultation a été tenue au sujet du nouveau règlement relatif à la Liste des projets, qui comprenait des groupes qui pourraient être assujettis au nouveau règlement. L'Agence dispose aussi d'une stratégie de mobilisation

Compliance promotion is also a part of the Agency's day-to-day business. This includes sharing information about the IAA during meetings with proponents, federal departments and agencies, provinces, territories, Indigenous governments and Indigenous peoples, industry, environmental groups and other interested parties.

Given the circumstances and subject to the enforcement officer's discretion, the following instruments are available to respond to alleged violations of the IAA:

- notice of non-compliance;
- orders;
- injunctions; and
- prosecutions.

If prosecution of an alleged offence of the IAA leads to an accused person pleading guilty or being found guilty at the conclusion of their trial, fines are the only penalty provided for in the IAA.

Service standards

There are no service standards associated with this Regulation. A designated project would be subject to timelines established in the IAA.

Contact

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pour promouvoir l'entrée en vigueur de la LEI. La promotion de la conformité fait aussi partie des activités quotidiennes de l'Agence. Cela comprend le partage de renseignements au sujet de la LEI lors des réunions avec les promoteurs, les ministères et organismes fédéraux, les provinces, les territoires, les gouvernements et peuples autochtones, l'industrie, les groupes environnementaux et d'autres parties intéressées.

En fonction de la situation et à la discrétion de l'agent de l'autorité, les instruments suivants sont offerts en cas d'infraction alléguée à la LEI :

- avis de non-conformité;
- ordre;
- injonction;
- poursuite.

S'il y a poursuite en cas d'infraction alléguée à la LEI et si l'accusé plaide coupable ou est jugé coupable à la fin du procès, l'amende est la seule sanction prévue par la LEI.

Normes de service

Il n'y a aucune norme de service associée au présent règlement. Un projet désigné serait soumis aux échéanciers établis dans la LEI.

Personne-ressource

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Government of Canada / Gouvernement du Canada

Operational Guide: Designating a Project under the *Impact Assessment Act*

⚠ This document is for information purposes only. It is not a substitute for the *Impact Assessment Act* or its regulations. In the event of an inconsistency between this document and the *Impact Assessment Act* or its regulations, the *Impact Assessment Act* or its regulations, as the case may be, would prevail.

Purpose

This document describes the process for considering whether to designate a project **not identified** in the *Physical Activities Regulations*, also known as the Project List, under the *Impact Assessment Act* (the Act). [1]

Authority under the *Impact Assessment Act*

There are two ways of being identified as a 'designated project' under the Act. The first is being identified in the Project List, and the second is through Ministerial designation. The Project List includes project types for which a federal impact assessment would add incremental value, over and above other federal regulatory oversight mechanisms (e.g., authorizations, licences and permits). Project types included on the Project List were determined to have the greatest potential for adverse and complex effects in areas of

federal jurisdiction related to the environment and are called “designated projects”.

The Act also includes a discretionary authority that enables the Minister of Environment and Climate Change (the Minister) to designate a proposed project that is not on the Project List, if by virtue of its characteristics (e.g., the project is a new or unique type of project) or location (e.g., the project is proposed in an environmentally or otherwise sensitive location) the carrying out of the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation. [2]

Under subsection 9(1) of the Act, the Minister may, upon request or on his or her own initiative, designate a project that is not on the Project List. Upon receiving a request to designate a project that is not on the Project List, the Minister will issue a response with reasons within 90 days after the day on which the request is received. [3]

Subsection 9(7) of the Act prohibits designation of a project if the project has substantially begun or a federal authority has made a decision under another Act of Parliament that permits the project to be carried out.

Process for Designation Requests

The Impact Assessment Agency of Canada (the Agency) advises and assists the Minister on the use of the power to designate a project under the Act. If designated, the proponent of the project will be required to submit an initial project description, thereby triggering the commencement of the Planning Phase.

A designation request may come from the public, an Indigenous community,

a non-governmental organization, a federal authority, the Agency, another jurisdiction, or the project proponent.

The Annex sets out instructions on preparing a designation request. Information provided by any party would be considered to be on the public record and may be posted to the Canadian Impact Assessment Registry Internet site. [4]

A request to designate a project must be sent to the Minister at *ec.ministre-minister.ec@canada.ca*. Please also send a copy of the request to the Agency at *ceaa.information.acee@canada.ca*.

Following receipt of a request to designate a project, the Agency will acknowledge receipt of the request and review the request to determine the completeness of the information provided. If necessary, the Agency will contact the requester for additional information. The Agency will also notify the proponent that a designation request was received.

Upon receiving a request, the Agency will prepare a recommendation for the Minister that will be informed by science, Indigenous and community knowledge, input from the proponent, and consultations with other jurisdictions, as applicable. The recommendation would consider whether the carrying out of the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, and public concerns related to such effects. In addition, the recommendation would consider the potential impacts of the project on the rights of the Indigenous peoples of Canada – including Indigenous women – recognized and affirmed by section 35 of the *Constitution Act, 1982* (section 35 rights) as well as any relevant regional or strategic assessments. [5] To inform the recommendation, the Agency may seek information from the proponent, solicit advice from federal departments, consult with provinces, other jurisdictions and

potentially affected Indigenous groups, and seek further input from the requester and any other person or entity. [6] In seeking information, the Agency will not undertake a formal comment period.

In developing a recommendation for the Minister, the Agency may also take into account a number of relevant factors including whether or not:

- the project or its expansion(s) is near a threshold set in the Project List;
- standard design features and mitigation would address the anticipated adverse effects;
- the project involves new technology or is a new type of activity;
- the potential adverse effects can be adequately managed through other existing legislative or regulatory mechanisms;
- an assessment of environmental effects would be carried out by another jurisdiction;
- the project may cause adverse environmental effects because of its location and environmental setting, or because of a change in use on previously developed lands;
- there are proposals for multiple activities within the same region that may be a source of cumulative effects;
- there are potential effects across international borders;
- the potential greenhouse gas emissions associated with the project may hinder the Government of Canada's ability to meet its commitments in respect of climate change, including in the context of Canada's 2030 emissions targets and forecasts; and
- a response to a prior request to designate the project has been rendered, including a response under the *Canadian Environmental Assessment Act, 2012*.

Once the Minister makes a determination, the Minister will provide a response, including reasons for the determination, to the requester and will

notify the proponent. The Minister's response will be posted on the online Canadian Impact Assessment Registry.

If the Minister decides to designate the project, a ministerial order will be posted on the online Canadian Impact Assessment Registry. Once the project is designated, the prohibition in section 7 of the Act will apply to the proponent of the designated project. [7] Similarly, the prohibition in section 8 of the Act will apply to federal authorities. [8]

Annex: Preparing a Designation Request

To ensure that the designation request process proceeds efficiently, the Agency asks that your written request include:

- Your contact details, including full name, address, email address and telephone number;
- A statement in which you explain that you are making a request for the Minister to designate a project;
- A description of the project that is the subject of the request, including project name, proponent name and address (or other contact information), project location, descriptive information about the project, and links to any relevant documentation, to the extent that this information is available;
- An explanation of why you think the project should be designated, including your views on the potential adverse effects that the project may cause (see guiding questions below); and
- Details about how you became aware of the project (e.g., specify the newspaper article, public advertisement, public event, time and location of observation, etc.)

To structure your rationale as to why a project should be designated, please

provide yes or no answers (if yes, please explain) to the following questions:

1. Is the project near a threshold set in the Project List?
2. Is the project near or in an environmentally or otherwise sensitive location?
3. Does the project involve new technology or a new type of activity?
4. Does the project have the potential to cause adverse effects that are of concern to you and fall within federal jurisdiction? Effects that fall with federal jurisdiction include:
    - effects on fish and fish habitat;
    - effects on aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*;
    - effects on migratory birds;
    - changes to the environment on federal lands;
    - changes to the environment that occur in a province or territory other than the one where the project is taking place;
    - changes to the environment that occur outside of Canada;
    - changes to the environment that could affect the Indigenous peoples of Canada;
    - any change occurring to the health, social or economic conditions of the Indigenous peoples of Canada; and
    - changes to components of the environment, health, social or economic matters set out in Schedule 3 of the Act.
5. Does the project have the potential to cause adverse effects that are directly related or incidental to a federal authority either (i) making a decision that would permit the carrying out, in whole or in part, of the project or (ii) providing financial assistance for the purpose of enabling the project to be carried out, in whole or in part?
6. Does the project have the potential to cause adverse impacts on the

section 35 rights of the Indigenous peoples of Canada?

Footnotes

1 Section 9 of the Act refers to the designation of a physical activity; the term ‘project’ is used throughout this document as a colloquial alternative.

2 The various types of effects within federal jurisdiction are listed in Question 4 in the Annex at the end of this guide. Direct or incidental effects refer to effects that are directly linked or necessarily incidental to a federal authority’s exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity or designated project, or to a federal authority’s provision of financial assistance to a person for the purpose of enabling that activity or project to be carried out, in whole or in part.

3 The Impact Assessment Agency of Canada (the Agency) may suspend the time limit to respond to the request, according to subsection 9(5) of the Act. If the time limit is suspended, the Agency will post on the Canadian Impact Assessment Registry Internet site a notice that sets out the reasons for the suspension.

4 Personal information received by the Agency would be redacted before being posted to the online Canadian Impact Assessment Registry.

5 Subsection 9(2) of the Act specifies that the Minister may consider adverse impacts that a physical activity may have on the rights of the Indigenous peoples of Canada – including Indigenous women – recognized and affirmed by section 35 of the *Constitution Act, 1982* as well as any relevant assessment referred to in section 92, 93 or 95 of the Act.

6 Subsection 9(3) of the Act grants power to the Agency to require any person or entity to provide information with respect to any physical activity that can be designated under the Act.

7 The proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause effects within federal jurisdiction, unless the Agency determined no impact assessment is required and posted the decision on the online Canadian Impact Assessment Registry; the proponent complies with the conditions included in the decision statement that is issued to the proponent and is not expired or revoked; or the Agency permits the proponent to do that act or thing, subject to conditions set by the Agency, for the purpose of collecting information or details for the impact assessment process.

8 A federal authority must not make any decision under another Act of Parliament that permits the project to be carried out, in whole or in part, unless the Agency determines no impact assessment is required or where an impact assessment is required, the decision statement issued to the proponent sets out that the effects indicated in the Agency's impact assessment report are within the public interest.

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HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Environment and Sustainable Development

ENVI • NUMBER 110 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, May 3, 2018

Chair

Mrs. Deborah Schulte

Standing Committee on Environment and Sustainable Development

Thursday, May 3, 2018

● (1105)

[*English*]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): I'm going to bring the meeting to order, if I could, please.

Before I introduce the minister and her panel, I just want to let the committee know that I'm very appreciative that the minister has come back. This will be the second time she is in front of the committee on this bill, Bill C-69, and that's unusual. She's being generous.

I want to make sure the committee appreciates that it is unusual for a minister to come back on one bill. The reason she is back in front of us is that there were issues raised about the need to ask her specific questions relevant to the testimony we heard over the last couple of weeks on Bill C-69, and possibly some amendments may be brought forward. We have seen many. I think we have several hundred to look at.

I usually am very generous, but today I'm going to be very strict. I want to make sure we stay on target with the questions on Bill C-69, because that's what she's here for.

To get started, I'd like to introduce, obviously, the minister.

Thank you very much for coming back in front of us.

We have Jonathan Wilkinson, MP, North Vancouver, and the parliamentary secretary. We have Ron Hallman, president, Canadian Environmental Assessment Agency; and Stephen Lucas, deputy minister, Department of the Environment.

I welcome you, and I give you the floor.

Thank you.

[*Translation*]

Hon. Catherine McKenna (Minister of Environment and Climate Change): Thank you, Madam Chair.

I would also like to thank the members of the committee.

[*English*]

Thank you to our amazing chair and also to the members of the committee. I really do appreciate all the hard work you do on this committee.

Of course I'm thrilled to be here with Jonathan Wilkinson, who, as you all know, is my parliamentary secretary; Stephen Lucas, who is the deputy minister of Environment and Climate Change; and Ron Hallman, president of the Canadian Environmental Assessment Agency.

I want to thank you again for the invitation to return to talk about Bill C-69. I know we all care greatly about how we do environmental assessments and about making sure we rebuild trust in them.

Before I start, I want to recognize that we're on the traditional territory of the Algonquin and Anishinabe peoples. In my job, it is extremely important that we partner with indigenous peoples—our first nations, our Métis, and Inuit peoples—who care greatly about our land, our waters, and our air. I think you will see that reflected in Bill C-69.

[*Translation*]

First of all, I really appreciate the hard work of all the committee members.

Reviewing a bill that is of interest to so many Canadians is not a small undertaking. I also want to reiterate the values that guided our work in getting to this point and share with you some perspectives from Canadians since my last appearance.

[*English*]

The legislation we introduced earlier this year aims to restore public trust in how the federal government makes decisions about major projects, like mines, pipelines, and hydro dams.

These better rules are designed to protect our environment, improve investor confidence, strengthen our economy, and create good middle-class jobs. They will also make the Canadian energy and resource sectors more competitive. With these better rules, we are working to build on Canada's strong economic growth and historic job numbers.

The Government of Canada is committed to ensuring that Canada's major projects are developed in a way that is informed by rigorous science, evidence, and indigenous knowledge. They must also be consistent with Canada's climate plan, protect our rich natural environment, respect the rights of indigenous peoples, and support our economy.

Our priority remains to effectively advance both Canada's economic progress and our environmental responsibilities. These values are at the core of Bill C-69.

[*Translation*]

Ultimately, we want to restore the trust of Canadians in how major projects are reviewed. There will not always be unanimous views on the outcome of a project decision, but if the process and foundation on which those decisions are made is stronger, trust in the outcomes will be as well.

[*English*]

Bill C-69 was informed by the views and inputs of Canadians. For over 14 months we heard from Canadians from coast to coast to coast on the best ways to improve current environmental and regulatory processes.

I'm very proud of the balanced perspective we were able to achieve in the bill. I'm hoping that this balance also guides you in your work as you review the many submissions you've received and the testimony of witnesses who have appeared before you, each with a different perspective on what will work and where improvements are needed.

Since the bill was introduced in February I've also continued engaging with stakeholders, provinces, indigenous peoples, environmental groups, and citizens from across the country at every opportunity. I wanted to hear the views of those of you directly affected by the bill and explain how the new process would work.

As you know, not all elements of the new system are detailed in legislation. Regulations and policies are required to support and operationalize the legislation. We are currently consulting Canadians on the project list and information and time management regulations. I encourage all Canadians, from indigenous peoples to industry to environmental groups, to provide their input to inform these regulations.

I'd now like to share some of the views I have heard.

Overwhelmingly, Canadians want us to restore public trust in the way the federal government makes decisions about major projects such as mines, pipelines, and hydro dams. When it comes to resource development, you can't get very far if people don't trust the rules and the way governments make decisions. The same goes for companies. They need to know what's expected of them from the start and that the process will be predictable, timely, and evidence-based.

That's why our top priority, with the changes we're proposing, is to increase transparency and rebuild trust.

To rebuild this trust, we are creating better rules. The bill incorporates a number of transparency measures, from making more information available to the public to specifying factors to be considered in decision-making to clearly communicating the reasons behind decisions. Canadians and stakeholders have noted the importance of public participation and accessible, transparent information. This bill helps everyone understand and participate more fully in the process.

● (1110)

[*Translation*]

Stakeholders have told us that rebuilding trust requires clarity about what will be considered in assessments and in making decisions.

Bill C-69 restores robust oversight and thorough impact assessments that take into consideration not only the negative environmental effects of a project, but also the environmental, economic, health and social impacts.

Impact assessments will also consider how projects are consistent with our environmental obligations and climate change commitments, including with the Paris Agreement. A big part of this is better understanding the broader environment outside of individual project reviews. Some stakeholders were wondering if the government will ever conduct strategic or regional assessments, given this is possible under current legislation.

We will soon launch a public engagement process on our first-ever strategic assessment on climate change, which will provide guidance on how to consider greenhouse gas emissions in individual project reviews.

We also heard from companies that they are looking for more clarity and certainty about the process.

[*English*]

The proposed legislation provides a clear, timely process so that project proponents know what's expected of them and when. A predictable and timely process is key to getting good projects built and encouraging investment in Canada.

I also heard that companies need to know how the transition to the new system will work. Industry associations and companies with projects in the system would like clear rules and indications of which assessments currently under way would continue under former legislation and which would be subject to the new impact assessment act.

Legislated timelines will also provide regulatory certainty and ensure that the process is both faster and more efficient. We've heard from industry, indigenous peoples, and environmental groups that it's important that there is enough time to carefully consider science, evidence, and indigenous traditional knowledge. That's why this bill provides a predictable, time-bound process, from early planning through to the decision, to ensure that companies know what to expect and when, and that they are not held up in an impact assessment process.

With a goal of one project, one review, we will coordinate with provinces, territories, and indigenous jurisdictions to reduce red tape for companies and avoid duplication of efforts in reviewing proposed projects. The new impact assessment agency of Canada will work with other bodies, such as the Canadian energy regulator, the Canadian Nuclear Safety Commission, and the offshore boards to conduct reviews that will integrate both the impact assessment process and regulatory review requirements.

The new legislation also provides the offshore boards with a greater role in project reviews, which is consistent with other life-cycle regulators.

● (1115)

[*Translation*]

I also heard from many indigenous organizations that it is important that their rights are recognized and respected, and that we work in partnership from the outset.

This is exactly what Bill C-69 will accomplish.

[*English*]

I want to highlight that the bill makes it mandatory to consider indigenous knowledge, when provided, alongside science and other evidence. It also provides protection of that knowledge to build the trust needed to share such information. We will also increase the funding available to support indigenous participation and capacity development related to assessing and monitoring the impacts of projects.

Another significant advancement under this bill will be that indigenous jurisdictions will have greater opportunities to exercise powers and duties under the new impact assessment act. My discussions with indigenous peoples have confirmed to me how important this is, as is our commitment to the United Nations Declaration on the Rights of Indigenous Peoples.

[*Translation*]

I look forward to the end result of this committee's work to consider ways to strengthen the bill even further. Better rules will restore confidence that good projects can move forward in a responsible, timely and transparent way, while also protecting our environment and building a stronger economy for Canadians.

[*English*]

Thank you again for inviting me, and for the important work you are doing.

The Chair: Thank you very much, Minister.

Before I go to questions, I want to recognize some new faces around the table. I would like to welcome MP Sylvie Boucher. We have Ms. May and Madame Pauzé. Welcome back. We have James Maloney, chair of the natural resources committee; Kim Rudd, parliamentary secretary to Jim Carr; and Sean Fraser. We have lots of new faces at the table.

We will start with James Maloney, please, for the first question.

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): Thank you, Chair. Thank you for allowing me to be here and for giving me time.

I'm sharing my time with Mr. Fraser, so I'll try to get right to the point.

Minister, thank you again for being here today. As the chair has pointed out, I'm here as chair of natural resources because of the importance that the proposed changes in Bill C-69 have to stakeholders.

In my capacity sitting on that committee, we hear from stakeholders on a regular basis. I meet with them regularly. These are stakeholders, NGOs, organizations, and one of the issues that comes up time and time again is this issue of restoring trust and certainty, which you talked about. Timelines, predictability, and schedules on these projects have been major stumbling blocks, and have led to a lack of confidence. They are very interested in Bill C-69 for that reason.

I know you have consulted with the stakeholders along the way. We've heard from many of them after the bill came out in this committee.

I am wondering if you could shed some more light on the background and how you see Bill C-69 addressing these concerns and restoring that trust.

Hon. Catherine McKenna: Thank you very much.

Thank you for your hard work on the natural resources committee.

It's important that we rebuild trust, and included in that is providing certainty to proponents. We know we need to make sure we're making decisions based on good science, on evidence, and on traditional knowledge. We also know that we need to provide certainty to proponents about how the system works.

In terms of the timelines, which I think is a really important point—I have heard the comment that providing certainty on timelines is important—we've done two things. One, on the front end, we've said we need better early planning and engagement, because if you can address concerns and problems, hear from communities and from indigenous peoples, you can work with provinces to align timelines with them. We have the principle of one project, one review, and if you can figure out the permitting process, you will get to a better spot when you get into the system. Early planning and engagement create more efficiency on the back end.

Two, our bill proposes stricter timeline management and fewer stops of the legislative clock. I think it's important to point out that we're shortening legislated timelines for the impact assessment phase for agency-led assessments from 365 to 300 days. Timelines for panel-led assessments would be reduced from 720 days to 600 days, which is from 24 to 20 months. The timelines for non-designated projects reviewed by life-cycle regulators would be reduced from 450 to 300 days.

Let me emphasize that the reason we are able to do that is that a lot of the hard work and engagement will be done on the front end, which will lead to more certainty and structured timelines on the back end so that we can get to better decisions.

Thank you.

● (1120)

Mr. Sean Fraser (Central Nova, Lib.): Thank you very much, Minister.

It's a natural segue from Mr. Maloney's questions to the topic I'd like to hit on.

As a starting point, in my view, we have to determine what level of environmental protection our laws are going to provide before we get into what projects are going to be approved. While we're putting in timelines and rules that ensure investor certainty, I also want to flag that this bill is very important in building public confidence in our environmental laws. Can you tell me how this bill is going to enhance public confidence so that Canadians know that while these projects that grow our economy get off the ground, our environmental laws are not going to be compromised?

Hon. Catherine McKenna: Thank you very much, because obviously that's a critical point. The whole reason we're doing this is that it was a commitment made by our government to Canadians that we would rebuild the trust in the system that was sorely lost under the previous government. There was a sense that decisions were not being made based on science and evidence, but on politics. There wasn't proper consultation with communities, nor engagement with indigenous peoples, which didn't help get projects going ahead.

In our new system, the proposed system, the idea is that you make decisions based on science and indigenous knowledge and facts. That's critically important. We are committed to evidence-based decision-making, so you need to have that as part of it. We've also put forward that only a single agency would do environmental assessment. It would be the impact assessment agency of Canada. We think this is much better because that will make sure a clear process is followed all the time. It will also help with efficiency.

We believe there needs to be earlier public engagement as well as partnership with indigenous people. The early engagement process is critically important. We've moved to a sustainability task, so we're looking at how we can look at a variety of factors, not just environmental factors but factors that would look at the impact on indigenous peoples and also the economic benefits of a project and the health impacts. We think that is how you can rebuild Canadians' trust, how you can show you're listening to Canadians, and how you can provide better certainty for proponents.

In the end we also want to make sure, when we make decisions, that there's transparency, so we will now have reasons for decisions. Previously, a press release would announce the decision, and we believe that Canadians are entitled to understand on what basis the government would make sometimes quite challenging decisions, and what science, evidence, and knowledge they were based on.

Mr. Sean Fraser: Madam Chair, is there any time remaining?

The Chair: No.

Mr. Sean Fraser: Okay. Thank you very much.

The Chair: You had seconds, but I don't think it's worth starting another question round.

Mr. Fast.

Hon. Ed Fast (Abbotsford, CPC): Thank you very much.

Minister, welcome back to our committee.

I want to focus on proposed subsection 22(1) of the bill, which reads, “The impact assessment of a designated project must take into account the following factors”. Here's one of the factors: “the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change”.

Minister, would you agree with me that one of those commitments is the targets we set in the Paris Agreement, yes or no?

Hon. Catherine McKenna: Thank you very much.

We've been clear that when we do environmental assessments, we need to be taking into account our climate change plan and our commitments.

Hon. Ed Fast: Okay. Thank you.

Hon. Catherine McKenna: I would indicate that the Conservatives have also supported the Paris Agreement. That's a good step.

● (1125)

Hon. Ed Fast: We have. Thank you for putting that on the record.

Would you agree with me that the success of the different tools you're using under the pan-Canadian framework on climate change will drive how close we get to our Paris targets?

Hon. Catherine McKenna: I'm not entirely sure I understand the question. Do we have a plan so that we can do what everyone in Parliament voted for, which was to meet our international commitments? The answer to that is yes.

Hon. Ed Fast: All right. One of those tools that you're using is a national carbon price. Is that correct?

The Chair: I'm going to interrupt. I know you brought it specifically to the act that we're studying. However, we are delving into not the act but we are delving into the pan-Canadian framework, not the bill.

Hon. Ed Fast: We're talking about the pan-Canadian framework on climate change that the government brought forward.

The Chair: Can you relate that back to the bill?

Hon. Ed Fast: The minister has already indicated that there are a number of tools she is using under that framework to allow Canada to meet its Paris emissions targets. The section I quoted says that a project will be evaluated taking into account the impacts that the project will have on our Paris Agreement targets and other commitments.

The Chair: I understand that and I appreciate that, but you were delving into actually—

Hon. Ed Fast: I am going to be delving into the carbon tax. This government has not been transparent about what the carbon tax means for Canadians. The carbon tax is an essential element of the pan-Canadian framework on climate change. In fact, her officials have said it's a foundational element of that plan.

The Chair: I don't deny that it's an essential element, but it's not an essential element in studying this bill. That's what I'm trying to give us the air time to do, to ask the minister questions specific to the bill that we're studying today.

I know we have a great relationship and I know that we have good respect. I would just like you to make sure that we're delving into the aspects of the bill that's on the table today.

Hon. Ed Fast: You just said we're not talking about the bill, that we're talking about the pan-Canadian framework on climate change. Now you're back to saying we're talking about the bill.

The Chair: No, we're talking about the bill.

Hon. Ed Fast: Well, you said something else just a couple of seconds ago, and I'm talking about the bill as well.

I have referenced the section of the bill that says every single project is going to have to be evaluated in terms of the impact the project will have on the climate change targets that Canada has committed to, and the degree to which a project will move forward will be driven by the fact that the tools that are being used are either successful or not. One of the foundational tools within that plan is a carbon tax.

Madam Chair, if you're going to shut me down when this is completely relevant to the pan-Canadian framework on climate change and the legislation that we have before us, and impacts the likelihood of whether a project will proceed or not, then this cover-up is getting worse than Canadians imagine.

We've asked question after question of this government about what impact the carbon tax will have on emissions in Canada and how much it will cost Canadians. Now you're telling me that you cannot allow me to have questions—

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Madam Chair, on a point of order, can we just allow the minister to please answer the question? Thank you.

Hon. Ed Fast: Thank you.

The Chair: Go ahead.

Hon. Ed Fast: My question is that in regard to the section I referenced, which requires every project to be evaluated in terms of the impact it will have on our climate change plan, if your carbon tax is not as successful as you suggest it is, would you agree that it may be less likely that projects in the future will not be approved because the rest of the tools in your plan are not achieving their desired goal?

Hon. Catherine McKenna: Obviously, your question isn't directly on point to Bill C-69. However, I want to then commend—

Hon. Ed Fast: Actually, it is.

Hon. Catherine McKenna: —your party for supporting action on climate change and our international obligations. Therefore, you should support the fact that we need to look at this legislation and we need to look at projects in the context of our international commitments, which you support.

There will be an opportunity for Canadians to weigh in on the strategic assessment of climate change. We've committed to doing a strategic assessment. It's an opportunity to provide clarity to proponents, to stakeholders, and to the agencies as to how climate change will be considered in project assessments. Once again, given that—

● (1130)

Hon. Ed Fast: Minister, that wasn't my question.

Hon. Catherine McKenna: —the Conservative Party has supported our international commitments, I'm very pleased—

Hon. Ed Fast: Mine was a yes-or-no question.

Mr. Mike Bossio: Chair, I have a point of order.

Hon. Ed Fast: You're running out my time.

Mr. Mike Bossio: Once again, can you please allow the minister to answer the question? Thank you.

Hon. Ed Fast: Madam Chair, the time that's allocated to me, which I believe is—

The Chair: You have the full time, and I have not denied any time.

Hon. Ed Fast: This is my time. I allow the minister to answer the questions, but when she's running out the time I have available to ask her my questions, then I will be objecting and interrupting.

The Chair: Okay. I was—

Mr. Mike Bossio: On a point of order, Chair. Can we please allow the minister to answer the question? Thank you.

The Chair: Just hold on a minute, if you don't mind. I am the chair. I was generous, but I also want the questions to be specific to Bill C-69, and I made that point clear at the beginning of the meeting.

I was asked by a colleague to give the minister a chance to answer it. I'm actually still ruling it out of order because it is not specific to Bill C-69. It's specific to the pan-Canadian framework, and that's not what we're discussing here today.

Hon. Ed Fast: Actually, it is.

The Chair: We're discussing the bill.

Hon. Ed Fast: I've pointed to the exact piece of legislation, which —

The Chair: You are making a connection.

Hon. Ed Fast: —actually incorporates reference to the broader plan and the impact the different tools will have.

The Chair: I'm not going to debate it. I understand you're making the connection, but this opportunity was for the minister to explore the bill in front of us today. I understand you're making a connection in saying that it has a relation to the decisions being made for Canada, but that is not the bill.

Hon. Ed Fast: Yes, it is the bill.

The Chair: Let's give the minister one last chance to wrap it up.

Hon. Ed Fast: She has already.

The Chair: Let's finish it. Let's finish with the minister.

Hon. Ed Fast: She's running out my time, Madam Chair.

The Chair: She isn't. I haven't taken your time. It's still stopped. We're going to start it now to see if she'd like to give a specific answer, and then we'll move on to the next question.

Hon. Catherine McKenna: I'd just like to again confirm that, because the Conservative Party of Canada has supported meeting our international obligations under the Paris Agreement, I would assume that the party would also support the Government of Canada's ability to meet its environmental obligations and support that the commitments in respect to climate change be considered in any project review.

The Chair: Okay. Next question.

Hon. Ed Fast: Directly to the point, Minister, I have in my hands a report produced by your department that claims that your carbon tax will reduce GHG emissions by 90 million tonnes by 2030. What gives you any assurance that you will achieve 90 megatonnes of emissions?

The Chair: I'm sorry. I hate to keep doing this, but I'm going to have to interrupt again. That is not what we're discussing today at committee. I want you to have your full time. You asked to have the minister back so that we could ask questions specifically on this bill. That is not on this bill.

Hon. Ed Fast: It is on this bill.

The Chair: You have related it—

Hon. Ed Fast: Madam Chair, I disagree with you. In fact, this is just another attempt to cover up—

The Chair: I've made the decision. I don't want to take your questions away.

Hon. Ed Fast: —the carbon tax.

The Chair: Do you have another question that's on the bill? Sorry, Ed, I really want to give you your question time, but that is not a question on this bill. You're making a connection, but I am ruling that it is not on the bill.

Hon. Ed Fast: It's directly related to whether a project that is going to be evaluated under this bill is going to be approved. If the carbon tax doesn't work, the likelihood of a project being rejected dramatically increases.

The Chair: Ed, I've made a ruling on that question. Would you like to ask another question that's related specifically to the bill?

Hon. Ed Fast: I am going to ask a question related to the bill about proposed paragraph 22(1)(i) that expressly addresses the requirement that projects considered under this legislation—

The Chair: Ed, I don't want to take your question time away.

Hon. Ed Fast: —be evaluated in terms of the climate change plan the minister has brought forward, and part of that climate change plan is a carbon tax.

Canadians have a right to know what the impact on them is and whether it reduces emissions, Madam Chair.

The Chair: You've made your point.

Hon. Ed Fast: Then rule me out of order so you're on the record.

The Chair: I'm ruling the question out of order. I'm on the record that this question does not relate directly to what we're studying, which is Bill C-69.

I will move on to another member, although I don't want to do that. Do you have another question before I move on?

Hon. Ed Fast: Listen, I am insisting that I have a right to ask the minister the questions that are relevant to Canadians, that Canadians are interested in, and that have to do directly with this.

The Chair: Are you challenging the chair?

Hon. Ed Fast: Listen, you have a majority on this committee. Challenging the chair will simply result in the same outcome.

The Chair: Ed, I've given you a lot of time to put your point forward.

Hon. Ed Fast: I know you have. I have respect for you, Madam Chair.

The Chair: I have respect for you, which is why I'm giving the time.

Hon. Ed Fast: I will now cede my speaking time, because it's very clear that this committee and its chair are suppressing the information that Canadians need to know about the carbon tax and its impact on them.

The Chair: Are you ceding it? Thank you very much.

I'm going to give the time to Ms. Duncan, please.

● (1135)

Ms. Linda Duncan (Edmonton Strathcona, NDP): Thank you very much. It's nice to see the minister and her officials back. I look forward to the second hour of being able to spend more time with the officials as well.

I'm presuming, Madam Minister, that you've been well briefed on the extensive and significant concerns raised about this bill that people have welcomed. Finally, the government has come forward with an amended three bills in one, in this 800-clause bill. My understanding is that we've received almost 450 amendments. That's only the tip of the iceberg. Regrettably, so far, the members of the committee have only actually seen one half of the briefs that have been submitted, mainly because this review has been so fast-tracked.

We will have 450 amendments to review in the next four meetings, maximum. That means that we regrettably won't be able to consider a great many of the amendments that industry, NGOs, and indigenous, Métis, and Inuit communities put forward. I would encourage the minister to consider the briefs that have been put forward if we are not able to raise their concerns in our process.

Madam Minister, you have again repeated here—and I appreciate that—your government's commitment to the UNDRIP. The request that I am putting to you is the same request that I put forward in this committee to amend the Federal Sustainable Development Act and was not accepted.

Are you willing to amend your bill to specifically reference the UNDRIP as requested by first nation, Métis, and Inuit people appearing before this committee?

Hon. Catherine McKenna: Thank you very much, and thank you very much for all your hard work. I know you care greatly about this.

Just to your previous point, there have been submissions from indigenous peoples, from industry, from environmentalists. We take them all very seriously. I've been personally engaged in discussions but also in reviews with them, and I have great faith in the committee.

We have committed to a renewed nation-to-nation relationship based on respect, co-operation, and partnership rooted in the principles of the UN Declaration on the Rights of Indigenous Peoples. I would confirm that this bill reflects the commitment that we have upfront recognition of indigenous rights, mandatory consideration of rights and culture, and provisions for arrangements with indigenous groups to exercise powers and duties under the legislation. There is a focus on aiming to secure free, prior, and informed consent through processes based on mutual respect and dialogue.

I've spent a lot of time meeting with indigenous peoples, meeting with communities.

Ms. Linda Duncan: Minister, if I could interrupt, I'm well aware of what is provided in the bill.

My question is very specific. Are you willing to accept an amendment to this bill to specifically reference the UNDRIP, yes or no?

Hon. Catherine McKenna: We are happy to consider any amendments.

Ms. Linda Duncan: Okay.

A lot of concern has been expressed about the discretionary nature of this bill. Nobody knows yet what will be on the project list, and many have expressed concern, including industry, that we don't yet know what will be covered by this bill.

You've brought forward the same discretionary power that existed in the Harper assessment bill. That is where, if you're informed of significant potential impacts to health or environment, you have a discretion. Are you willing to consider changing that provision and making it mandatory, when information comes to your attention that there may be potential significant impacts to health or environment, that you would require a federal assessment?

Hon. Catherine McKenna: Just to start, you mentioned that proponents are concerned. Proponents are weighing in quite strongly —there's a project list, a paper that's under consultation—as are indigenous people, as are environmentalists.

We know we need to be able to rebuild trust in environmental assessments. We need to hear from communities. We need to work in partnership with indigenous peoples. That's why we've rebuilt the process through the early assessment.

We've also—

Ms. Linda Duncan: With all due respect, Madam Minister, that's not my question. I'm not asking about the right of people to participate.

I'm asking if you are willing to consider an amendment that would make it a mandatory duty, not a discretionary option, to trigger a federal assessment if you become aware of potential significant impacts to health or the environment.

Hon. Catherine McKenna: We have made the decision that we believe we should review major projects based on a project list. There's a long discussion going on right now. Many folks are weighing in. There is always the ministerial discretion. I think the consultation, the project list, is really important so that we can figure out how we review major projects with the potential for adverse environmental impacts that are clearly within federal jurisdiction.

● (1140)

Ms. Linda Duncan: I'm taking that as a no.

In terms of Bill C-69—and this is regrettable—my party did make the request that the bill be split. We note there are two representatives of the natural resources committee here. We don't have that option, because we have only one member on the committee. We had hoped that the navigation would go to the transport committee, that the new CER would go to natural resources, and the assessment bill here. But you are responsible, as I understand, for the full bill.

Right now the bill exempts the CER commissioners who would join a review panel from considering climate impacts. Are you willing to consider amending the bill so that those members will also have to consider climate impacts when they're reviewing a project?

Hon. Catherine McKenna: We're certainly committed to, as we review projects, the need to understand the climate impacts of projects, and we are looking at amendments.

The Chair: Great.

Mr. Bossio.

Mr. Mike Bossio: Thank you, Chair, and thank you, Minister, for being here once again to discuss this very important bill.

As you know, I have a long history as a community activist fighting against a mega-dump expansion that threatened my community's water supply, and I've been through environmental assessments on a number of occasions. I want to ensure, as you do, that public participation in the process is strong and meaningful. I have put forward several amendments this week to strengthen public participation by ensuring the words “meaningful public participation” are added to the bill.

Is this something you would support? Can you comment on how this would strengthen the regulations that will follow?

Hon. Catherine McKenna: We believe that public participation is critical. Unfortunately, under the previous government that was sometimes unnecessarily curtailed or prevented. We are happy to consider amendments that would make it stronger, for example, the words “meaningful public participation”. The only way you're going to make good decisions on projects is if you listen to the people who will be impacted by them. We need to do that. That is our commitment to rebuilding trust, and I think that's a critical part of this.

Mr. Mike Bossio: Thank you.

Also, Minister, the environmental appeals tribunal process in Ontario was a crucial tool for my community to oppose the mega-dump expansion. I know first-hand how important this additional body can be to ensuring we get things right.

This week I put forward an amendment to Bill C-69 to establish a Canadian assessment appeal tribunal. Is this something that you would support, and can you please give me your rationale?

Hon. Catherine McKenna: We have heard from some groups that are supportive of this approach, and a number of other groups that aren't. In terms of the folks who have expressed concerns, I think it's the idea that it provides uncertainty. It increases the complexity and the unpredictability with timelines. As we say, we need to find the proper balance, the proper approach, and we have, obviously, a number of different stakeholders.

We have made it much clearer how the process will be conducted in terms of doing assessments, including early engagement. We've been clear about the factors that would be considered in assessments and in decision-making and that we have to provide transparency around the decisions. We believe it also provides for meaningful opportunities for participation by indigenous peoples, stakeholders, environmentalists, and the public. We believe this, in combination with other provisions in the bill, provides sufficient safeguards without the additional expense and regulatory uncertainty and the additional timelines that would result from a separate tribunal.

Mr. Mike Bossio: I have three indigenous nations represented within my riding—the Mohawks of the Bay of Quinte, the Algonquin, and the Métis. As you know, traditional knowledge is a keystone that guides indigenous communities in looking forward seven generations.

Can you comment on the importance of the consideration of indigenous knowledge within the impact assessment process?

Hon. Catherine McKenna: When Minister Carr and I announced the interim principles that would govern environmental assessments, we were clear at that early stage that indigenous knowledge was key, that it wasn't a nice-to-have; it was a must-have. Of course, we need protections around the intellectual property associated with indigenous knowledge, but also to allow an understanding of how decisions were made should they incorporate indigenous knowledge. That is a key part of this legislation and I know it's extremely important for indigenous peoples. They have made that clear.

Mr. Mike Bossio: I've put forward a number of amendments in this specific area. I hope we can be assured that you will take those into consideration.

● (1145)

Hon. Catherine McKenna: We're happy to consider amendments. Thank you.

Mr. Mike Bossio: I'd be happy to pass the rest of my time over to Elizabeth May.

The Chair: You have two minutes.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Madam Minister, as you know, I'm disappointed by C-69, but I have hopes, and all the hopes I have for the bill being repaired have to do with the degree.... You prefaced your remarks often by saying what we heard in consultations before the bill for first reading, but I hope that you've heard a lot of the witnesses who have come before this committee with really big concerns that this bill will not rebuild trust. It's not all about transparency and consultation. It's often about whether the bill will work. I just want to focus on one piece, because I hope you heard from the expert panel that was convened that did really great work.

One of the things they mentioned was that environmental assessment—or impact assessment, if we will—of projects under federal jurisdiction is not just about major projects. Smaller projects can have really negative environmental impacts not caught by provincial EAs. I could mention a couple of projects. I will mention one right now. It was a shocker. It was the jet fuel line built in the Vancouver International Airport that Minister Garneau didn't know about that got signed off by the port authority, which wasn't the sort of thing that we might have thought of in a project review.

A project-by-project list can miss things. The only way to make sure we don't miss things is to cast the net wider, as we used to, and then make sure we're not wasting a lot of time on deep-dive reviews of things that don't need them. Small projects, though, can have a big impact.

I'm wondering if you're open to amendments that will allow us to have environmental assessment legislation, impact assessment legislation, that really rebuilds trust by going back to the pre-Harper days, which we had from 1976 until 2012, of assessing every project under federal jurisdiction.

The Chair: You have about 10 seconds.

Hon. Catherine McKenna: I think that we focus on how we make sure that we're considering projects with major impacts. We have provisions for projects on federal lands. Also, there's the ability for citizens to raise issues and then the minister to designate projects.

The Chair: Thank you very much.

Mr. Sopuck, go ahead.

Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC): Thank you.

One of the things I noticed, Minister, when you gave your list of interest groups and people you consult with, you talked about indigenous communities, environmentalists, the various levels of government. You've never, ever mention municipalities, rural communities, or agricultural communities. It's as if those people simply do not exist to this government.

I mention this over and over again in committee and over and over again these groups are always excluded. I'm really getting tired of it. Also, in terms of traditional knowledge, I represent a large, rural constituency with farmers, ranchers, hunters, trappers, and so on. They, too, possess a high level of traditional knowledge, and I would hope that their traditional knowledge is given equal weight.

You mentioned in your opening remarks about competitiveness. I've never heard so much nonsense. This government has made Canada's economy completely uncompetitive. The Canadian Energy Pipeline Association said that if the goal was to curtail oil and gas production and to have no more pipelines built, this legislation may have hit the mark.

I know it's uncomfortable for some to hear this, but our resource economy is beginning to collapse. This is the truth. Foreign direct investment is down to $31.5 billion in 2017, down 56% since we were in office, which totals $71.5 billion. This is relevant, Madam Chair, because the minister talked about competitiveness right off the bat.

Mr. Robert Sopuck: John Ivison in a recent column wrote that the slow bleeding of corporate Canada was about to get under way and only the finance minister could stop it.

How can you sit there and say you're making Canada more competitive when people who are actually economic practitioners and investors are fleeing Canada in droves?

Hon. Catherine McKenna: I'm not entirely sure of the question, but of course I care greatly about farmers and ranchers and small communities. That is why we are trying to rebuild trust for everyone in our system, which was sorely lost under the previous Conservative government, where decisions didn't take into account what communities had to say, what indigenous peoples had to say, and where decisions were made on a political basis, and projects, as a result, became polarized and did not go ahead.

Let me be clear, we are actually trying to get to a better spot, because we believe that we can do this. We believe that the environment and the economy go together, that we can rebuild trust by making decisions based on science, evidence, and indigenous knowledge, taking into account the real impacts of climate change and how projects fit within our climate plan, and also providing certainty for proponents.

As I expressed very clearly, we believe that by engaging on the front end you can have shorter timelines on the back end, which was something that proponents had very clearly expressed to us. I've had numerous meetings with proponents, with indigenous peoples, with environmentalists, with Canadians, with provinces.

● (1150)

Mr. Robert Sopuck: But not with municipalities. Here we go again.

Hon. Catherine McKenna: Municipalities have also weighed in.

Mr. Robert Sopuck: Why didn't you say so?

Hon. Catherine McKenna: I'm happy to name every single person that we've engaged with if you would like, but we're going to run out of time.

We believe that it is important that we include community knowledge. That is reflected in the legislation, at proposed paragraph 22(1)(m), “community knowledge provided with respect to the designated project”. We want to be more competitive. We want to attract investment, and that is exactly what we're doing with this legislation.

Polarizing and dividing Canadians, not making decisions based on evidence and facts, and not including indigenous peoples or community knowledge are ways to ensure that projects don't go ahead.

Mr. Robert Sopuck: That is pure nonsense.

Given the criticism you had of our government's environmental record, which, by the way, was exemplary, I'd like you to name one quantified environmental indicator that got worse under our government, one quantified environmental indicator related to the environment itself, not some stuff about consultation or any of that kind of stuff.

Hon. Catherine McKenna: I could go on. Once again, I think I'll probably run out of time. But I think—

Mr. Robert Sopuck: An indicator.

Hon. Catherine McKenna: —that you could say almost all indicators went down—

Mr. Robert Sopuck: Name one. Name one.

Hon. Catherine McKenna: —under the previous Harper government.

Mr. Robert Sopuck: Name one.

The Chair: Let her answer.

Hon. Catherine McKenna: And, you know what? Canadians voted—

Mr. Robert Sopuck: I want a number.

Hon. Catherine McKenna: —because they wanted a government that was committed to the environment.

Mr. Robert Sopuck: Give me a number.

Hon. Catherine McKenna: They wanted a government that was going to believe in climate change—

Mr. Robert Sopuck: No numbers, okay.

Hon. Catherine McKenna: —and have a real approach to climate change. They wanted a government that would ensure clear air and clean water, and that is exactly what we're doing.

The Chair: Bob, you still have one minute.

Mr. Robert Sopuck: Good.

I want to go back to competitiveness. What is it about CEOs like Steve Williams from Suncor? The Royal Bank pointed out that capital is fleeing at an incredible rate. One of the big reasons is that these project processes.... I happened to cut my teeth as a biologist on the Mackenzie Valley pipeline. There are communities in the western Arctic that are impoverished because that pipeline wasn't built due to an environmental process that ran amok and actually killed investment, and this is exactly what your government is doing.

Thank you, Madam Chair.

The Chair: Okay.

Hon. Catherine McKenna: We've clearly taken in competitiveness concerns. We believe we are getting to a better spot where we will rebuild trust. We will engage properly with indigenous peoples and with communities. We will have stricter timelines. We will make decisions based on evidence and knowledge, and we will ensure that good projects go out of their way to protect the environment, which will lead to competitiveness. We understand the importance of attracting investment. I was very pleased to see Amazon make a decision just the other day. We have historic economic growth rates —the highest in the G7 right now—and the lowest unemployment rates, while under the previous government, it was actually the reverse. Our economy was in decline, and we weren't—

Mr. Robert Sopuck: Amazon moved in because of the carbon tax...?

Hon. Catherine McKenna: —tackling climate change and we weren't growing the economy.

The Chair: Okay. Thank you very much.

Who's up?

Mr. Amos.

Mr. William Amos (Pontiac, Lib.): Thank you, Chair.

Thank you, Minister, and Parliamentary Secretary, and our civil servants. We appreciate this very much.

I have three issues I want to address today. One has already been raised by my colleague Ms. Duncan around the issue of incorporation of climate considerations. I intend to bring an amendment to seek to lock down more firm climate considerations at all stages, but particularly through the panel reporting.

I wonder if you could indicate whether you will you be open to these amendments. The testimony that came across from witnesses was fairly clear that we really need to do a better job of that. I wonder if you could comment.

Hon. Catherine McKenna: We certainly agree that we need to be considering climate change when we make decisions on projects. Once again, all parties supported the Paris Agreement and meeting our goals under the Paris Agreement, which I thought was extremely helpful. So clearly, there should be support across parties for doing this. Proposed sections 22 and 63 talk about considering the climate impacts.

Also, we are going to be issuing a discussion paper shortly on doing a strategic assessment on climate change. It's really important. We want to provide clarity to proponents, to stakeholders, to the agency, and to Canadians as to how climate change and Canada's climate plan will be considered in project assessments.

● (1155)

Mr. William Amos: Another issue that came up frequently in the written testimony, which we obviously take just as seriously as the oral testimony, was the issue of the incorporation of the UN Declaration on the Rights of Indigenous Peoples. I have many constituents in the riding of Pontiac who belong to the Algonquin nation, and they have communicated to me the same thing, that they expect this bill to be reflective of our government's commitment to UNDRIP, to Bill C-262, which is presently being evaluated by another committee. I intend to bring amendments that would seek the incorporation of UNDRIP into this bill.

What is your reaction to those requests?

Hon. Catherine McKenna: As I've been clear, we're committed to a renewed nation-to-nation relationship that's based on rights, respect, co-operation, and partnership. We believe that's also incorporated into this bill, but we are also willing to consider that as well.

Mr. William Amos: Thank you.

My last question deals with the role of regulatory bodies, particularly entities such as the Canadian Nuclear Safety Commission and the offshore petroleum boards. We heard testimony from a significant number of stakeholders bringing into question not only the weight of their participation, the number of members that could be included in a panel, but also concerns about the potential for them to predominate on panels, and particularly their potential role in a chair position.

I intend to bring amendments on this issue because I think it's a matter that goes to public trust. For better or for worse, there have been questions raised about those entities. I wonder if you could speak to that issue and to whether or not you'd be open to reducing the role of those bodies in the context of review panels.

Hon. Catherine McKenna: We did hear concerns about regulatory bodies, and that's why we made the determination that we should have an impact assessment agency that would be leading major projects, designated projects. We think that's critically important.

However, we know we do need to be working with life-cycle regulators. They have a role to play. They bring expertise and particular knowledge. We think we have the right balance, and that the lead once again is the impact assessment agency. There's one agency that will be doing this, which is different than is the case.... We do still believe that life-cycle regulators and their expertise are important in how we make decisions.

Mr. William Amos: Thank you.

The Chair: You have another minute.

Mr. William Amos: Madam Chair, I don't have any more questions. I'll hand the time to Madam May if she has another one.

Ms. Elizabeth May: Thank you so much.

With your permission, Madam Minister, I want to pursue this notion of expertise. I'll be brief. We have very little time. These are life-cycle regulators. That's a fairly recent new buzzword to describe them. I have extensive experience with the Canada-Nova Scotia Offshore Petroleum Board. They have expertise in approving offshore oil and gas. That is their mandate. It is a mandate in legislation that created them. They cannot be seen as having expertise that's valuable for this process. I'm going to ask again if you could name the kind of expertise you think is valuable to this process that comes from those regulators, because I can't think of a damn thing.

Hon. Catherine McKenna: Thank you very much.

First of all, let's step back. We said that the impact assessment agency is the agency that will lead all reviews. Remember we've talked about one project, one review. We need to provide some efficiency, we want to make sure that we're able to monitor the project, and we have conditions that are going to be relevant and are going to apply throughout any project that's approved. That's why we do think it is important that they have a role to provide expertise in that.

Ms. Elizabeth May: What are you saying—

The Chair: We're out of time, and we need to be careful about our language around the committee.

An hon. member: Hear, hear!

The Chair: I know when we get excited we tend to....

Ms. Elizabeth May: Is “a damn thing” unparliamentary?

Some hon. members: Oh, oh!

The Chair: I still think that's probably not really what we want to be saying.

I want to thank the minister very much for coming back and giving us that chance to delve in a bit deeper on the work that we've been doing over the past couple of weeks. It's a big bill, a tough initiative and issue. There's a lot of finding the right balance, and we have many amendments that have come forward that we'll be working on next week and the week after as we delve through the clauses.

Thank you again.

● (1200)

Hon. Catherine McKenna: Once again I want to thank the members of the committee. Look, we're all in this together. We believe that we need to rebuild the trust of Canadians and we need to attract investment. I think this is the opportunity to get it right, so thank you for your hard work.

The Chair: Thank you.

I'm going to suspend to bring the departments up. Thank you.

● (1200)

(Pause)

● (1205)

The Chair: I'll resume.

Thank you very much to all the departments that have come to join us this afternoon until 1 p.m. to answer the questions we have. Again, I'd like the questions to be specific to the bill and maybe any amendments that people have brought forward. That would be helpful.

I also want to remind people—because I'm not sure everybody's aware—that the bill has been updated, so the page numbers are different. As we go into clause-by-clause next week, be aware that you should get a new version of the bill because the pages and the bill don't match anymore from the preliminary version that we had. Thank you for that.

I just want to introduce, from the Department of Natural Resources, Jeff Labonté, assistant deputy minister, major projects management office; and Terence Hubbard, director general, petroleum resources branch. We have, from the Canadian Environmental Assessment Agency, Christine Loth-Bown, vice-president, policy development sector; and Brent Parker, director, legislative and regulatory affairs division. From the Department of Transport we have Catherine Higgens, assistant deputy minister, programs; and Nancy Harris, executive director, regulatory stewardship and aboriginal affairs.

Thanks to all of you for being here. I understand that you're not making statements; we're just going to go straight into questions.

We'll start with Mr. Fisher, who did not get a chance as a result of the last session.

● (1210)

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): That's right, I didn't get a chance because I think Mr. Fast took all my time in the last session.

The Chair: I was very generous.

Mr. Darren Fisher: Thanks, Madam Chair.

Thanks, folks, for being here today. I will ask you some of the questions that I had organized for the minister. With Bill C-69,—and I'm talking about science—the proponents are in charge of doing their own science. What checks and balances will we have in place through the bill to ensure that we're working with actual, good science?

I'm looking at nobody in particular, just whoever feels they want to take that on.

Ms. Christine Loth-Bown (Vice-President, Policy Development Sector, Canadian Environmental Assessment Agency): I can start, and then my colleagues can chime in.

As the minister noted in her remarks, Bill C-69 is premised on ensuring that decisions that are taken under the legislation are evidence-based. Throughout the assessment process, we have a number of different factors and opportunities to ensure that takes place. In proposed section 22 we outline all the factors that need to be assessed in an impact assessment, and through early planning, we'll work with a proponent to develop impact statement guidelines. Those would be the guidelines that would outline the scientific studies and the issues that they need to address through the impact statement.

Throughout that early planning process we also have the opportunity to engage with others—the public stakeholders and indigenous groups—to ensure that those impact statement guidelines are comprehensive and tailored to the specific project. Then, within the legislation and the proposed amendments there's also the opportunity to do peer review of science on a case-by-case basis, should that be warranted—that may be for some projects but not for others—so that there could be a peer review of the science and evidence. Then of course there's the transparency of all the decisions and the rationale for those decisions.

Mr. Darren Fisher: The rationale for those decisions, is that going to be public?

Ms. Christine Loth-Bown: Yes, the rationale for the minister's decisions will be public, and that is a significant change from the current CEAA 2012 legislation.

Mr. Darren Fisher: How will the public get that information? How will you disseminate that information to the public?

Ms. Christine Loth-Bown: Included in the changes are also changes to the registry. Currently, the Canadian Environmental Assessment Agency has an online registry system. There are about 80 different components within the draft legislation that propose transparency elements to increase the amount of documentation and information that's available to the public on the registry site.

Mr. Darren Fisher: What does the bill mean for federal lands, for instance, ports? Will expansions to ports require an assessment?

Ms. Christine Loth-Bown: There are federal land provisions within the legislation, specifically, and those have been enhanced since the current legislation. With respect to federal lands, there are increased requirements for specific criteria to be looked at by all federal authorities when conducting assessments. There's also an increased transparency for federal lands and federal authorities conducting assessments. They need to notify and post that when they are conducting an assessment or review, so that everyone is aware. They need to also post the rationale for their decisions.

In addition to that, the minister indicated that we are out right now consulting on a paper that looks at what the criteria would be for the establishment of the project list. Within that consultation, we are also looking at whether projects on federal lands need to go onto the project list. That will be part of that conversation as well.

Mr. Darren Fisher: Thank you.

Can you tell me how a collaborative approach would work between the agency, the CER, and the Canadian Nuclear Safety Commission?

Ms. Christine Loth-Bown: Within the legislation, those are the proposed sections starting in the forties: 43 and 46. They're known as integrated reviews.

What we want to do through integrated reviews is to ensure that one assessment process can meet the requirements of the impact assessment legislation and the requirements of life-cycle regulators, such as the Canadian energy regulator, as proposed in the legislation, and the Canadian Nuclear Safety Commission.

The lead agency would be the impact assessment agency, but they would be working in co-operation with a life-cycle regulator, such as the CER or the Canadian Nuclear Safety Commission. That's to ensure that we are able to benefit from the knowledge and experience of those life-cycle regulators. It's important to note that they are the regulators over the life cycle of the project. They continue that relationship after an impact assessment has been conducted.

The Minister of Environment and Climate Change, though, will appoint the panel members. At least one of those panel members is to come from a roster that would be recommended by the commissioner or the president of the CER or the Canadian Nuclear Safety Commission.

● (1215)

Mr. Darren Fisher: How will we test projects for climate impact?

Ms. Christine Loth-Bown: As the minister noted, there are two sections within the legislation that specifically look at Canada's climate commitments and obligations: proposed subsection 22(1) and then proposed section 63, in the decision-making.

It's important to note that climate commitments and environmental obligations are looked at as to whether they contribute to or hinder a project. That's an important notation, just like the socio-economic and all the analysis we're going to do. This proposed legislation does propose to look at both positives and negatives and take that into the entire assessment.

As the minister noted, Environment and Climate Change Canada will soon be launching a strategic environmental assessment on climate. That will give us guidance on climate impacts on a project basis.

Mr. Darren Fisher: Thank you very much.

The Chair: Mr. Fast.

Hon. Ed Fast: Thank you very much.

My question is going to be directed to both Mr. Hubbard and Mr. Labonté. If you are unable to answer and someone else on the panel has the answer, please feel free.

You heard some discussion earlier, as we were asking questions of the minister, about free, prior, and informed consent, which is a standard that first nations are asking to be incorporated. Right now in Canada, the standard is “duty to consult”, which the courts have shaped over the years. It's something we understand reasonably well.

In your view, does the process established by the new impact assessment act sufficiently discharge the crown's duty to consult and accommodate aboriginal peoples?

Mr. Terence Hubbard (Director General, Petroleum Resources Branch, Department of Natural Resources): One of the core drivers of the changes proposed to the Canadian energy regulator is to implement some of these principles the government has committed to on reconciliation with indigenous peoples. That includes strengthening our approach to consultations with first nation communities.

Built right into the provisions of the legislation is clarity on how the regulator will consider impacts on indigenous rights, and how it will consider and protect traditional indigenous knowledge. It will include requirements for representation on the new corporate board of governors overseeing the regulator, as well as within the commissioners who would hear individual projects' indigenous representation.

Yes, as we develop the legislative framework, we have built these principles and considerations into it.

Hon. Ed Fast: Earlier, Ms. Duncan asked the minister whether she was prepared to incorporate UNDRIP fully into the legislation. The response was that she's prepared to consider it. Then, I believe Mr. Amos asked the question again. She responded that she is prepared to consider it.

I'm assuming, since she's already indicated that she is prepared to consider incorporating elements of UNDRIP into the legislation, that you would have turned your minds to what that might mean. We've had first nations before us, and some of them have said they don't believe UNDRIP represents a veto. There are others who say it is a veto. Have you done any legal analysis on what it would mean for projects that have to undergo this new impact assessment process?

Mr. Terence Hubbard: The government has been clear on its intent to utilize these consultation processes and this legislative process to support the implementation of these commitments. That includes aiming to achieve consensus and consent in the development of these projects. Building in a more inclusive approach and deeper consultations will help facilitate those objectives.

Hon. Ed Fast: That doesn't answer my question, of course. If you can't answer it, perhaps someone else on the panel can answer it.

Has any analysis been done on FPIC to determine whether it actually could be interpreted by the courts to mean an absolute veto on the part of first nations?

● (1220)

Ms. Christine Loth-Bown: As Terry has noted, what we've tried to do with the proposed legislation is to put the principles of free, prior, and informed consent, and having mutual respect and dialogue, threaded throughout the legislation. There are a number of aspects of the draft legislation that speak to the UNDRIP principles. There's a recognition of rights right up front within the legislation.

There is also, within the early planning, the development of an indigenous consultation plan, done jointly with indigenous peoples, to ensure that the manner in which they are consulted throughout the process is consistent with how they would like to be consulted. It clearly identifies up front who needs to be consulted and how they would like to be consulted.

As my colleague has noted, throughout the decision-making phase, impacts on rights are also a key component of the entire assessment and decision-making process.

Hon. Ed Fast: That addresses for the most part the consultation element of it, but I'm going to get back to the actual portion that could be construed as a decision-making right, which could be incorporated into the act if in fact Ms. Duncan has her way and UNDRIP and FPIC are incorporated into the legislation.

I'm hearing none of you say that free, prior, and informed consent is fully baked into the current version of the bill. I'm not suggesting it should be, but obviously the minister is considering it because she said right here at the table that she was prepared to consider it.

Given that fact, and given that this should come as no surprise to any of you, has any legal analysis been done on whether fully incorporating FPIC into this legislation would represent a veto right for first nations?

Ms. Christine Loth-Bown: As I've indicated, the current legislation as drafted tries to embody the principles of free, prior, and informed consent based on mutual dialogue and respect. That has been the theme that has gone through the legislation.

Hon. Ed Fast: Has there been any legal analysis?

Ms. Christine Loth-Bown: The minister has indicated openness to amendments. We look forward to continuing that dialogue in supporting the minister and the government—

Hon. Ed Fast: I take it the answer is no.

The Chair: Time is up.

Ms. Duncan.

Ms. Linda Duncan: Thank you to the officials for being here. I note we have nobody from the Department of the Environment.

My first question is to you, Mr. Parker, because you hold a very important position, actually drafting the legislation and regulations. I admire that. I've had similar jobs myself.

Who did you take your marching orders from, or was it the CEAA office that actually drafted the first part of this bill? Who was actually leading the drafting, and who was making the final decisions on what provisions went in or didn't go in?

Mr. Brent Parker (Director, Legislative and Regulatory Affairs Division, Canadian Environmental Assessment Agency): I'll start with where we began, with the consultation—

Ms. Linda Duncan: I actually want to know the tail end. I want to know who had the authority in the end to say this is the final bill, part one of this act.

Mr. Brent Parker: The way in which the drafting takes place typically, which is the way it took place on this bill, is that drafting instructions are provided. They are, of course, approved by cabinet, and they guide the legislative drafters, who are housed within the Department of Justice. They take instruction from the policy leads, which would be us. My team, the drafters, and I were the ones spending time in the drafting room over the course of this past year, working on the drafting based on the instructions that were laid out.

Ms. Linda Duncan: We don't have Justice here.

Can I ask, was the starting point the Harper 2012 CEAA or was it the before the Harper evisceration of that act?

Mr. Brent Parker: The starting point was effectively the conversation that began about a year and a half ago.

Ms. Linda Duncan: So you started at zero.

Mr. Brent Parker: Yes.

Ms. Linda Duncan: You did not start with the existing bill.

● (1225)

Mr. Brent Parker: We started with the launch of the expert panel, which essentially was the beginning of this process.

Ms. Linda Duncan: It's okay. I don't think I'm going to get a clear answer.

There's a lot of concern expressed in testimony to us about how vague the extension of the public right is. That was the main reason for the lack of public trust in the federal assessment process, that erosion of the public's and indigenous peoples' right to participate. All that it says in the bill is the agency must ensure that the public has an opportunity to participate. There have been suggestions that we could add in adjectives like “reasonable” or “effective”.

Why was there no provision, and do you think that the department will be open to a provision to require regulations where there's consultation on what the specified rights are, the right to cross-examine, the right to table evidence, and so forth, because right now there essentially is no guaranteed right?

Ms. Christine Loth-Bown: In terms of public participation within the proposed legislation, an important component actually is in the early planning phase where there are outputs of the early planning phase.

Ms. Linda Duncan: You're not answering my question. I'm talking about specific rights. The reason why there was such a hue and cry about the Harper evisceration of this bill was that people were being denied the right to participate effectively in the reviews, and what they had been looking for in this legislation was that they would be specifically guaranteed the right they previously had, to table evidence, to cross-examine. I'm not worried about each part. Yes, the right should be in every part of the process, but why is there no specific right and do you think that there is some opening in the ministry that they will, in fact, strengthen this bill to actually guaranty specific rights to participate?

Ms. Christine Loth-Bown: I can't answer as to why specifically something's not in there, but I can indicate what is in there. What is in there is no longer the interested party test. Right there, that has been removed so there's no longer—

Ms. Linda Duncan: True.

Ms. Christine Loth-Bown: —a requirement for individuals to be identified as interested parties, thereby opening up the level of participation. Also, within the purpose statement of the act, there is a clear statement there—

Ms. Linda Duncan: The purpose statement is not really binding.

Ms. Christine Loth-Bown: —with respect to meaningful participation within the process, as well as the development of a public participation plan in the early planning process.

There are a number of points with respect to public participation.

Ms. Linda Duncan: Okay, I'm not getting an answer to my question. I have very little time left and I have some specific questions for the Department of Transport officials.

There has been deep concern expressed that there is no linkage between part 1 and part 3 of the bill and that there is no requirement to consider navigation in these environmental assessments. That concern was also expressed by indigenous intervenors who said that in many cases they need access to marshes and so forth that could be dewatered by projects, and there's no requirement to consider those.

Is there a reason why there is no linkage between the two parts or the bill?

Ms. Catherine Higgens (Assistant Deputy Minister, Programs, Department of Transport): Perhaps I could spend a moment to talk about the linkages that do exist within the bill, the first one being that in the early planning stages the regulatory experts from the Department of Transport will form part of that phase and will be informing the regulatory plan and informing the early planning discussions on the projects that come through. Navigation will very much be part of the expertise that's provided. We will be doing that expertise throughout the impact assessment process. There was clearly a link from the very beginning.

Ms. Linda Duncan: You still have an obligation to consider navigation—

The Chair: Hang on. Sorry, we're out of time, so I'm just going to give her a little bit of time to finish what she was saying.

Ms. Catherine Higgens: I would just conclude by saying that at the back end of the process, there would not, for example, be an approval issued under the navigation legislation for a project that was on the project list and was requiring an impact assessment. That impact assessment would need to be completed before any approvals could be issued under the navigation legislation.

The Chair: Thank you very much for that detail.

Mr. Amos.

Mr. William Amos: Thank you, Chair, and my thanks to our hard-working civil servants. I appreciate that this is a challenging session.

I wanted to give Mr. Labonté the opportunity to respond to the last question that Ms. May asked. I thought, with respect, Ms. May, that it was an unfair criticism. I do think there is value in having offshore petroleum boards, or the Canadian Nuclear Safety Commission, or any other such regulatory body involved in these assessments.

My critique of the bill as proposed is that it potentially overweights their participation, and I think it should be dialed back a little. I don't think they should be in a chair position, and I think we should be certain that there's no majority membership on a panel.

I'd like to give Mr. Labonté the opportunity to address the question of what a regulatory body such as an offshore petroleum board, or the Canadian Nuclear Safety Commission, actually brings to an environmental assessment panel process.

● (1230)

Mr. Jeff Labonté (Assistant Deputy Minister, Major Projects Management Office, Department of Natural Resources): That's certainly a good question to explore a bit further. My colleague Terry Hubbard can join me in filling in the answer.

From a regulatory point of view, whether it's the CNSC or the offshore boards, there are a significant number of safety, technical, engineering, design, construction, and operational components that are material to the assessment of a project. This is why the integrated nature of the assessments allows these things to be part of the equation. At the same time, in doing one project, one review, there are in many instances legal requirements that must be met in order for the regulatory decision to happen. We need to ensure that we have the ability as a government to set the policy direction needed to ensure that those things get looked at.

For example, the offshore boards look at things like occupational health and safety. They look at technical standards for the engineering of drilling equipment, the certification of the equipment that's done globally, the ties to international commitments, the things related to the particular handling of the materials, and how the technical equipment is used and managed on site. There are a number of safety-related components, and there are significant safety regulations that the offshore boards are responsible for on the operational side of a project, should it ever get to that point. If it's a project that's looking at the exploratory side, similarly there are safety requirements there.

These are typically things that happen in the regulatory capacity. They are not things that the impact assessment agency is looking at, when it's looking at the project. Bringing these things together allows for a better decision on the particular project.

Terry can fill in a bit more.

Mr. Terence Hubbard: The only thing I'd add to Jeff's response is that we're talking about major projects. When we're talking about major projects, it's important that we're able to bring together all of the capacity and expertise that we have, to be able to review these projects and move them forward in the most responsible way possible. That means bringing forward the expertise that we have, whether it's with the regulator, the impact assessment agency, or any of our other federal regulators that have an interest or a role in these projects. It's important to be able to access all of that information when we're making our decisions on these projects.

Mr. William Amos: I think you've answered this question already, but I want to get clarification. Would you say that a review panel without the relevant regulator would be an incomplete panel that would not serve the public interest? In other words, would such a panel be a disservice to the public interest? I ask this because we've had witnesses suggest that they should not be involved at all, that there should be a black-and-white separation.

Mr. Jeff Labonté: That's a tough question, but let me give you a quick answer. An impact assessment with an integrated review with a life-cycle regulator ensures a consistency for both the public and those participating in the process, whether it's a mining project, an offshore project, or a nuclear project. It provides clarity in the roles of the different participants.

Regulatory decisions still need to be made. They are legally required under the Canadian Nuclear Safety and Control Act. The nuclear regulator is independent of the government and has to make a decision about the safety of the project. That decision is best made when it's informed by an integrated assessment rather than by a separate decision that might follow and might require that there be duplicative processes or processes that go on beyond and might ask for repeat testimony or repeat information requirements, when all of it could occur through the integrated assessment and then allow the regulator to make the decision it needs to make.

In nuclear, for example, there are international protocols that would require us to behave that way. In the offshore, there are relationships with two other governments that have to be managed because of the joint management we have with Nova Scotia and with Newfoundland and Labrador. In the case of the energy regulator, recommendations are made at the same time to the GIC to make the determination.

I think it's fair to say that if they were separate you would not be able to make all of the required decisions on a project.

● (1235)

Mr. William Amos: No significant reforms have been suggested for the Canadian energy regulator, the Nuclear Safety Commission. Why?

Mr. Jeff Labonté: When the government launched its regulatory review, it looked at reviewing the impact assessment agency, the Environmental Assessment Agency, and the energy regulator. It certainly looked at the components around the environmental assessment and its move to move it to one agency, which would then remove the Nuclear Safety Commission as the agency that makes the environmental assessment determination.

Mr. William Amos: Thank you.

The Chair: Mr. Sopuck.

Mr. Robert Sopuck: I'm going to focus on jobs and competitiveness. I want to quote the Canadian building trades union regarding this bill, when they say that:

> ...Bill C-69 misses the mark in many material aspects. This piece of legislation has an enormous impact on our 500,000 members, as well as an enormous spectrum of Canadians who are engaged in natural resource extraction, processing, distribution, and consumptive industries. It is too important to be left to chance or to uncertain and unpredictable results.

The conclusion of a legal opinion by Osler and company is that:

> ...the proposed legislation suffers from the same problem that we have been observing in project regulatory processes for some time. These reviews are becoming forums where all manner of social and environmental issues are expected to be addressed, even when they are beyond the ability of any single project proponent to mitigate.

When you were drafting this legislation, did you for a minute think about the effect on workers, working families, the employment sector?

I'm going to stop referring to it as “industry”. I'm going to call it the employment sector.

Did you ever stop to think about the effect on those sectors of our society?

Ms. Christine Loth-Bown: As the minister noted in her opening remarks, one of the goals is to ensure that we are getting good projects to market. The process that has been designed through the proposed legislation aims to ensure this by bringing regulatory certainty to the process through assessments by one agency, but working in close collaboration with regulators, whether they be regulators such as Transport Canada or a life-cycle regulator, so that you can have that certainty of process in assessment.

We've also looked at the reduction of the timelines in order to ensure.... We heard a considerable amount of feedback throughout the last 14 months that the process takes too long and that we need to reduce the time. We have reduced the timeline, as was noted, from 365 days to 300 days and from 720 days for panels down to 600, to ensure that we can do these in a more efficient, effective way. It is important to note as well that the decision-making process needs to be done in a timely fashion. This proposed legislation also puts in a legislated time frame for the decision process.

Throughout the proposed legislation there are a number of points at which we are trying to ensure regulatory certainty so that Canada can continue to be competitive.

Mr. Robert Sopuck: All I heard there were aspirations. There's an old saying that starts, “If wishes were horses”. You said, this is where we want to be and where we want to go.

That's all well and good, but the project proponents and organizations who came before us strongly disagree with that assertion. I go back to the Canadian Energy Pipeline Association, which said that Canada has a toxic regulatory environment and that they do not view this particular bill as having fixed it. The evidence is very clear in terms of investments, which are leading Canada from $71 billion under the Harper government to $31 billion under the Trudeau government. Clearly, things have changed.

I'd like to talk now about the Navigable Waters Protection Act. Specifically, the issue is the definition of what a navigable water is. You can say what you want about the act and write about it, but the nub of the issue is what is a navigable water.

When we changed the Navigable Waters Protection Act to the Navigation Protection Act, it was because there were too many egregious examples of waterways that were clearly navigable for perhaps a day a year but considered navigable waters.

A specific example that I mentioned in testimony earlier was about a little municipality of mine. A culvert blew out because of a spring freshet. This little gully flowed for maybe two weeks a year, but of course the Canadian Coast Guard came in and said to my little municipality, you have to replace the culvert with a bridge.

Of course, there were houses on the other side, so there are public safety and first responder issues that the Coast Guard was completely oblivious to. The cost for the bridge was $750,000, and the total budget of the small municipality was $1 million. It was clearly ridiculous.

I read the definition of what a navigable water is. It is water, it says, “that is used or where there is a reasonable likelihood that it will be used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes”.

This means that you've gone back to the old definition, whereby if it can float a canoe for three or four days, all of a sudden it becomes a navigable water. Of course, under the old act, the effect on municipalities, both in terms of public safety and of cost, was extremely significant.

Do those of you from Department of Transport share my concerns?

Ms. Higgens.

● (1240)

Ms. Catherine Higgens: This is a really important element of the new Canadian navigable waters legislation. I'm happy to explain.

There are two components to the new definition. One, as you've mentioned, is the use for travel or transportation, including for the exercise of indigenous rights, but also for recreational as well as commercial purposes.

The second element is that there be public access, so it protects the public right to navigation where there is public access to a waterway. That would mean there is public access, there's more than one shore owner or riparian owner, or the crown is the sole owner of the shore.

Mr. Robert Sopuck: Does this apply to temporary waterways?

Ms. Catherine Higgens: Temporary waterways such as ditches and irrigation channels are not intended to be captured by the definition, because they would not be for the purposes of travel.

Mr. Robert Sopuck: What about natural ravines that flow for a week per year?

Ms. Catherine Higgens: There would need to be a test of reasonable likelihood of use for travel and transportation or exercise of indigenous rights. If it's a minor ditch or crevice that fills with water temporarily, that would not, in my opinion, fall under that definition. This is not the canoe test. It's not as restrictive as it was under the MPA. It's in the middle, but with some clear guidance to industry and to municipalities.

Mr. Robert Sopuck: I appreciate the answer. Thank you.

The Chair: Thank you.

I let that go on, because I think it's important that we have that clarification.

Mr. Bossio.

Mr. Mike Bossio: Thank you, Chair.

Thank you all very much for being here once again on this very important bill.

As I've mentioned a number of times, I have been through environmental assessments and terms of reference at the provincial level with the Province of Ontario. It was my experience in going through those that the proponent has an incredible amount of power, in a sense, on defining what evidence or science is going to be used. I want to follow up on where Mr. Fisher was going earlier.

It's very much proponent driven. In the mining experience, they decide how it will be studied, what will be reported, how reports are presented, or whether they're even presented at all. Once again, if they don't like the findings, nobody knew the report was even done.

How does Bill C-69 ensure that this is not going to be a purely proponent-driven process when it comes to the science and evidence?

Ms. Christine Loth-Bown: There are a number of ways. First off, proposed section 22 of the legislation, which lays out the factors that need to be undertaken in an impact assessment, is an expanded section that looks at health, social, and economic factors as well as community knowledge and indigenous knowledge and impact. It's a broader suite of things that need to be looked at in an assessment.

Then on a project-by-project basis, the agency will work with a proponent in the early planning phase to look at those factors and establish tailored impact statement guidelines for them to fill out. Throughout the early planning process, we will also be working with others, indigenous groups, stakeholders, and the Canadian public, to find out what issues need to be brought to bear within the assessment process, and those will be factored into the tailored impact statement guidelines that the proponent will receive.

There's quite a process that includes a multitude of individuals, including our partners at the federal level, to help define what the scope of the assessment will be and the reports that are needed to be provided. It's not just the proponent determining those. There are many factors that play into determining that scope.

Once this scope has been set and the proponent is filling in the information and the reports that are needed to conduct the assessment, those are then evaluated by federal experts. We turn often to our partners in Environment and Climate Change Canada, Fisheries and Oceans Canada, Transport, or NRCan, and their science sections to review those. Those reports and the analysis by those federal expert departments will now be posted on the registry.

In the past, there was some information posted on the registry. The proposed legislation proposes to post more of the proponent's science on the registry, but also the analytics of our federal partners who have helped us to assess that science.

● (1245)

Mr. Mike Bossio: The agency itself, or whoever's reviewing this, will actually have the strength of regulatory oversight to ensure that it's not just the proponent's science that will be a part of this. The agency's demands will also be met, and every report generated by the proponent will be disclosed. There's no ability for them to, as I said, not like the results of a particular report and just not share those with the agency or anyone else.

Ms. Christine Loth-Bown: Yes, that's correct. There are increased provisions for transparency, for posting all the science. There's also a legislated requirement for federal expert departments to weigh in and analyze scientific information, and for their analysis to be posted as well.

Mr. Mike Bossio: It has also been my experience in going through this process that many times as you're meeting the public participation requirements it's just a box-checking process: “Okay, yes, yes, we met with them. We told them what it was about. We heard what they had to say.” There was really no meaningful participation on behalf of the public.

I asked the minister this question, and she stated that, yes, we need to ensure that we have meaningful participation. But how is that being captured now, in this bill? When I look at it now, it looks like it's just a box-checking exercise.

Ms. Christine Loth-Bown: Meaningful participation starts in the early planning. One of the key outputs of the early planning phase is a public participation plan as well as an indigenous engagement and consultation plan.

I noted earlier that we'll be doing that with indigenous groups. We'll also be doing that with the public to find out who wants to be consulted, who's interested, and who has issues that they want brought to bear. The agency will be playing a role in terms of drafting those issues and providing those back to the proponent. There's a step in the legislation requiring us to do that. At the end of the early planning phase, there will be a defined public participation plan that will outline who wants to participate and how they would like to be participated with.

So that's important throughout there, and—

Mr. Mike Bossio: Can hearings be a part of that plan? Can cross-examination and all the rest of it be a part of that early planning phase?

Ms. Christine Loth-Bown: The early planning phase is not the assessment process. The assessment process actually starts after the early planning phase.

I think it's important to note that the legislation doesn't define what public participation tools need to be used. It's enabling, so it's enabling meaningful public participation. We will be working to develop policy and guidelines that will define a plethora of public participation tools that can be used throughout the process.

The Chair: Okay. I let that go on a bit, because I think it was an important clarification.

Madame Boucher.

Mrs. Sylvie Boucher (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, CPC): Hi. I will ask my questions in French, which is my first language.

[*Translation*]

Good morning, and thank you, everyone.

I would first like to say that I'm replacing a colleague today. I am interested in the topic we're discussing today, but it is outside of my comfort zone. I normally sit on the Standing Committee on Official Languages, where members work hand in hand, and where we have the right to ask any questions we may have.

I was left wanting more, and I'll tell you why. It concerns the agency's impact assessment. Paragraph 22(1)(s) of the proposed bill mentions “the intersection of sex and gender with other identity factors”. Both you and the minister talked a lot about indigenous peoples.

Do you take gender-based analysis into account when drafting such a major bill?

If so, what impact will this bill have on women and children? We talked a lot about indigenous peoples.

I also have another question. I'll ask both of my questions, and then the witnesses can answer them however they want.

Could Bill C-69 be an obstacle to the economic development of certain remote areas, for example, regions that aren't populated by indigenous peoples, given all the analyses you will conduct? In my region, there are few indigenous communities, if any.

● (1250)

Ms. Christine Loth-Bown: We have taken women and children into account in the bill. When evaluating projects, we believe that it is very important to examine the impact they will have on everyone. From time to time, we realize that there can be a social impact on the communities. Gender identity is one example of an issue we're studying.

If a number of people come to work on a project, we need to house them, which means renting houses, apartments and other accommodation. This can have an impact on women and children, because of the potentially higher rent.

Mrs. Sylvie Boucher: More specifically, you talked a lot with indigenous peoples. You consulted with them.

Ms. Christine Loth-Bown: Yes.

Mrs. Sylvie Boucher: What I want to know is whether you consulted with women.

We're talking more and more about gender-based analysis. Women should therefore be part and parcel of a bill this important. Have you consulted with them?

Ms. Christine Loth-Bown: We talked to both women and men during our consultations.

As the minister explained, our consultation had a number of steps. At each step, we heard Canadians expressing comments and a diversity of points of view. We have taken all of these comments into consideration in our analysis.

Mrs. Sylvie Boucher: Okay.

Have there been any comments on the potential obstacle to certain regions' economic development?

Ms. Christine Loth-Bown: The aim of the legislation is not to impede economic development, but to implement an assessment system that could help it.

[*English*]

The Chair: Mr. Fast.

Hon. Ed Fast: Thank you.

I have one quick question.

The proposed impact assessment act and also the Canadian energy regulator act have transitional provisions. The Mining Association of Canada has expressed real concerns that there's an inconsistency between those transitional provisions. They would like to have the same transitional provisions apply. They're really concerned that under the new regime, projects that are already under way will have to go back to the beginning rather than completing the process under the old regime.

You've taken that into account, I assume.

Ms. Christine Loth-Bown: Yes.

Hon. Ed Fast: I'd like to hear your views on whether the government is open to making those transitional provisions consistent across both acts.

Ms. Christine Loth-Bown: I'll start and then my colleague, Brent Parker, will continue.

We have heard the comments that the Mining Association has brought forward.

It's important to note the interim principle the government put in place in January 2016, such that no project would go back to the starting line. That important principle is continued throughout the thread of the proposed legislation.

Brent can speak to some of the specifics around transition.

Mr. Brent Parker: Obviously, people have gone through the transitional provisions. There are a lot of transitional provisions for agency-led assessments in comparison to either substituted processes or those that are currently led by the other responsible authorities. We've heard that concern.

In terms of the way in which they were structured for the agency, there are three components to it. There are those projects under the former act, not CEAA 2012, but 1992. There are only a few of those projects now in the system but the plan with the transition provisions as they currently exist is that those projects would essentially terminate at the coming into force. Those that are now under CEAA 2012 would transition across to the new act if they haven't commenced or if the environmental impact statement information has not been provided and is in conformity with the guidelines. There's a point there where stakeholders have asked for certainty about whether there can be a different point in time for that. The way they're structured now is that this is the milestone for the transition.

I can't speak to what amendments might come forward. Based on what the minister has said today, I know that there's an openness to considering amendments. At this point, we have these provisions and we can discuss them from here.

● (1255)

Hon. Ed Fast: Thank you.

The Chair: I didn't want to have to cut you off but we're definitely wanting to make sure that the last questioner gets a chance.

Mr. Aldag, go ahead.

Mr. John Aldag (Cloverdale—Langley City, Lib.): We're going to turn our last slot over to Elizabeth. If Elizabeth wants to share it with Madame Pauzé, she will have that opportunity.

Ms. Elizabeth May: How much time do I have?

The Chair: You have four minutes, two each.

Ms. Elizabeth May: Thank you for your generosity.

I want to get back to Will's point and I think we're also having a conversation among ourselves and bringing you in. My anger—I apologize for anger—but I've dealt with the Canada-Nova Scotia Offshore Petroleum Board extensively in my previous role at the Sierra Club of Canada, and working in the Maritimes to try to protect the Gulf of St. Lawrence. As recently as, I think it was 2010, the Canada-Nova Scotia Offshore Petroleum Board permitted seismic testing in the Gulf of St. Lawrence during the time the right whales were in transit. I mentioned this in my preamble to the minister, but I also know that the Canada-Nova Scotia Offshore Petroleum Board and the Canada-Newfoundland and Labrador Offshore Petroleum Board, through both their enabling legislation and their own accords, which give rise to the legislation between the provinces and the feds, include a mandate to expand offshore oil and gas.

As a specific question related to those agencies, that's where I have not seen them having any expertise—to your point that they know about safety. I'll go back to Jeff or any member of the panel. We have expertise about the Fisheries Act and protecting fisheries that comes from DFO scientists, but no one is suggesting there must be someone from DFO on a panel, though obviously, you are going to consult them. We have expertise from Transport Canada. No one is saying you have to have a Coast Guard person on the panel.

Regulating energy regulators and inserting them into environmental assessment happened in C-38 in spring of 2012. The expert panel that prepared the report for this government said we don't need them there. We never had them before. We don't need them now. In light of that, if anyone on the panel wants to make a case that these specific energy regulators have a role on a panel that is somehow superior to that of all the other expertise that's held in all the other departments that you will be consulting, can you try to explain why they are treated differently, except that Stephen Harper is winning this round?

Mr. Jeff Labonté: Go ahead.

The Chair: You have one minute.

Mr. Terence Hubbard: Maybe I'll begin with a couple of quick points on this. We alluded to earlier that, as we move forward, the requirements of both the impact assessment act, as well as the acts that govern the development of either the offshore, nuclear, or Canadian energy infrastructure within Canada both have to be met. It's akin to a mining project, where the impact assessment act, as well as provincial regulations and laws would need to be met. We're trying to develop and advance a single process where we can satisfy the requirements of both pieces of legislation within one process. That's why we're aiming to bring these pieces together within one process. At the same time, we're looking to leverage the expertise of both organizations to ensure the best outcomes from these regulatory processes.

The Chair: Okay. Thank you very much.

Madam Pauzé, you have three minutes.

[*Translation*]

Ms. Monique Pauzé (Repentigny, GPQ): Thank you very much, Madam Chair.

I would like to return to clause 63 of the bill.

The Centre québécois du droit de l'environnement warned us about this clause, if I may put it that way. The centre proposed an amendment that would ensure that the process complies with provincial law and municipal regulations.

Have you studied this amendment? If so, where are you at with it?

● (1300)

[*English*]

The Chair: Just before you start, I have to get unanimous consent, from those on the committee, that we can continue for just a few minutes, as bells have started. Do we have unanimous consent to continue for a few minutes?

Ms. Linda Duncan: No. I have another meeting at 1:00, as I said at the beginning of the meeting.

The Chair: I wasn't pushing it past 1:00. I was going to 1:00 and we're not at 1:00 yet, so it's over there but it's not—

Ms. Linda Duncan: I have to get to Centre Block by 1:00.

The Chair: Thank you.

[*Translation*]

Ms. Christine Loth-Bown: This morning, I believe, the minister said she was open to the idea of studying future amendments.

Ms. Monique Pauzé: Thank you.

[*English*]

The Chair: Did you...?

Ms. Monique Pauzé: I'm done.

The Chair: Okay. Thank you very much.

I just want to thank all of you very much for being here with us. After we heard from all of the witnesses and saw the amendments that were coming forward, we did very much want this chance to question you in detail, so thank you very much for giving us that opportunity.

I will now end the meeting. Thank you.