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Hon. George Heyman
Minister of Environment and Climate Change Strategy
Room 112 Parliament Building
Victoria, BC V8V 1X4

30 July 2018

Dear Minister Heyman:

The Canadian Energy Pipeline Association (CEPA) would like to thank the Ministry of Environment and Climate Change Strategy for the opportunity to provide comments on the Environmental Assessment Revitalization discussion paper. CEPA represents companies operating 117,000 km of transmission pipelines in Canada, transporting 97 per cent of the natural gas and onshore crude oil produced and used in the country.

CEPA and its members support a revitalized Environmental Assessment (EA) process that provides a balance of process and flexibility while meeting the needs of those who participate. This means striking an appropriate balance between (1) having a formal process that provides proponents and participants with a high degree of process certainty and transparency and (2) an informal approach which facilitates transparency and inclusiveness. CEPA believes there are several aspects of the current approach to environmental assessment that are especially effective in supporting collaborative outcomes, particularly the use of the EAO working groups. CEPA recommends the BC Government carefully weigh changes to the environmental assessment process that would undermine this balance.

In order to meet the above objectives, CEPA and its members recommend that specific attention be paid to the following areas of the revitalization initiative: Indigenous participation in the EA process; timelines; the reviewable projects regulations; and, decision making authority and criteria. CEPA's comments and recommendations in these areas are provided in detail below.

INDIGENOUS PARTICIPATION IN THE EA PROCESS

CEPA believes that it is the government's responsibility to consult with Indigenous communities as early as possible in the process to identify whether there are issues that cannot be addressed within a project review and require a separate Nation-to-Nation process. This would be an important step in advancing the government's broader goals regarding reconciliation and developing a renewed Nation-to-Nation relationship. However, individual project reviews are not the appropriate venue to address specific reconciliation objectives as reconciliation is a relationship and framework issue that should primarily be addressed by government.

CEPA asks the BC Government to consider how any process changes made to advance reconciliation would interact with a revitalized EA processes. For example, CEPA supports the government's aim to achieve consensus; however, consensus is not always possible. The discussion paper creates the perception that there could be multiple decision-makers over a project, each with their own 'veto'. It is not clear in the discussion paper who the final decision maker would be in individual project reviews. Although the discussion paper contemplates using a time-limited Alternative Dispute

Resolution (ADR) mechanism as a means to resolve situations where “consent is not secured” we believe that such a mechanism should not be relied upon to make decisions. This is particularly important for long, linear projects impacting numerous Indigenous groups who may not be in agreement.

Should this mechanism be used, any ADR process must:

- only be triggered in limited and clearly defined stages of the assessment process to prevent over-use and process delays;
- have clearly defined time limits within which the ADR must conclude;
- identify the ultimate decision-maker; and
- provide that a decision be rendered by the ultimate decision-maker even where consensus is not achieved by the conclusion of the ADR.

Project proponents, Indigenous communities and stakeholders all benefit from an effective and efficient EA process with roles and responsibilities clearly defined. Accordingly, it will be important to establish processes for linear projects with the potential to impact several different Indigenous nations in order to ensure regulatory certainty and efficiency in cases where interests or decisions conflict. Specifically, the se processes must:

- prevent duplication and conflicting requirements where there may be more than one decision-maker;
- ensure ‘one project, one assessment’ in situations where more than one Indigenous Nation wishes to conduct an Indigenous-led EA;
- establish clear and transparent jurisdiction, scope, timelines and process in order to provide the certainty that proponents require to invest in and plan projects; and
- develop processes or mechanisms to address differences between Indigenous knowledge and Western scientific information

TIMELINES

CEPA and its members support establishing clear, predictable and timely assessment processes. All stages should have timelines that are known in advance with limited ability to ‘pause’. The timelines suggested in the discussion paper are very concerning. The overall timeline has yet to be defined, but given the timelines for certain stages that have been suggested and the various stages (including ADR) which still must be accounted for, it appears the overall timeline would be unnecessarily lengthy.

CEPA is in the process of developing recommended timelines for each phase of the review and will be in a position to share this recommendation in the coming weeks.

REVIEWABLE PROJECT REGULATIONS

CEPA and its members support maintaining a reviewable projects list, as it adds certainty to the regulatory process. We support clear guidance that identifies the types of projects and activities that should be regulated and appropriate triggers and thresholds to ensure the right subset of projects in each category are entering the EA process. CEPA recommends that engagement on the Reviewable Projects Regulation should take place in conjunction with engagement on the EA legislation. Specific areas that should be considered when developing thresholds and triggers include:

- Proportionality: The regulatory requirements and process should be proportionate to the project type and scope. It would not be appropriate for all proposed projects to go through the EA process. We support maintaining the current triggers for entering the EA process (on the list, proponent request, Ministerial designation).
- Clarity: In order to provide certainty, the criteria for triggering the EA process must be clear and objective (not subjective or involving judgment or discretion).
- Best placed regulator: Federally-regulated projects should be expressly excluded from the Reviewable Projects Regulation; the review of such projects under the new enhanced federal processes with provincial permitting to follow is appropriate.
- Ministerial designation: To ensure predictability of process, Ministerial designations of projects not listed should be only be used in limited and narrowly defined circumstances. A request of Indigenous Nations or the public, on its own, should not be enough to trigger the EA process. The ability for an Indigenous Nation or the public to request that a project be designated as reviewable without clear criteria as to how these requests will be evaluated contributes to uncertainty.

DECISION CRITERIA AND AUTHORITY

CEPA and its members support the inclusion of decision-making criteria in legislation. This must also include clarity as to who is the ultimate decision maker and the specific roles of various stakeholders. CEPA believe that the decisions should be made by the appropriate regulatory body (BC EAO for provincially regulated projects). This is especially important when it comes to applying conditions, as overlapping/inconsistent conditions are in no one's interest.

CLOSING

CEPA has carefully reviewed the discussion paper and has offered some specific recommendations on the proposed design elements of a revitalized EA process (see appended chart). We believe some key elements could, if implemented thoughtfully and in a balanced manner, contribute to reducing the uncertainty and risk for major energy infrastructure projects.

Again, thank you for the opportunity to provide comments on the Environmental Assessment Revitalization discussion paper. CEPA and its members appreciate the consultation efforts your government and the EAO have taken to date and CEPA and its members are committed to continue to maintain a sustained and robust participation in the revitalization process.

Yours Sincerely,



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Appendix: CEPA comments/recommendation on design elements of a revitalized Environmental Assessment process

Topic	CEPA comments
<p>Building Blocks</p>	<p>The discussion paper states that “proponents should continue efforts to build early relationships with Indigenous nations, including by entering into project agreements”. While we are supportive of proponent efforts to establish early relationships, specific outcomes, such as project agreements, should not be mandated. In some cases, they are not completed until after certification, or not at all.</p> <p>CEPA supports the idea of exploring alternate models to ensure Indigenous groups have secure and timely funding for the EA process so long as that is done in a manner such that negotiations do not delay legislated timelines. We recommend the government explore the option of developing a fund and a fee structure for EAs that is administered by the government.</p>
<p>Early Engagement</p>	<p>CEPA and its members support an early engagement phase as long as the scope and timelines are reasonable, well-defined, and known up front to increase regulatory certainty. We also support broad engagement at this early stage such that the list of participants narrowed as the project moves through the regulatory process to participants that are more directly affected.</p> <p>We support the inclusion of clear and reasonable criteria for an early planning stage being outlined in the legislation. This includes:</p> <ul style="list-style-type: none"> • Timelines: The discussion paper does not propose a fixed timeframe for this phase. For instance, if there will be public comment periods, there should be specific timelines set out with an opportunity for the proponent to reply to these comments to ensure procedural fairness. • Issue scoping: A key proposed feature of this stage in the Discussion Paper is that it could help governments identify potential policy gaps that may need attention to support an EA. We support this distinction between policy issues and individual project reviews. Government policy should inform the assessment; however, policy issues should not be debated in the context of the individual project assessment, nor should assessments be delayed while policy is being determined. <p>Legislation should also enable the development of a filing manual or other guidance that clearly articulates the expectations, information requirements and timelines for each phase of a new EA review process.</p>

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Readiness Gate	<p>CEPA and its members support the concept of a readiness gate stage, as it is one mechanism for providing an earlier indication of an ultimate go/no go decision. For this stage to be effective and efficient we believe the following should be considered:</p> <ul style="list-style-type: none"> • An offramp which allows the EAO to determine that the project would not need to go through the EA process should be incorporated into this stage (e.g. if there are no unresolved issues). • Clear scope and timelines should be included in legislation. The readiness stage is not the assessment in and of itself and must recognize the level of information available at this stage of project development. At this stage it is reasonable and expected that not all issues would be resolved as many issues are better addressed concurrently with the EA process. • Clear criteria to determine whether a project is ready to proceed to an EA should be included in the legislation and must be applied consistently to ensure predictability. • ADR, to achieve consent, should not be required at this stage.
Process Planning	<p>We support collaboratively developed assessment plans as they are beneficial for proponents in scoping and helps to provide regulatory certainty. However, the following needs to be taken into consideration when contemplating the design of this stage:</p> <ul style="list-style-type: none"> • Setting expectations: the likelihood of consistency is drastically decreased by the number of groups/individuals who could lead the EA. Mechanisms should be incorporated to delineate scope and responsibilities and reduce redundancies and inconsistencies. • Realistic Timelines: There should be strict timelines in place for this phase. The discussion paper proposal for six months is overly lengthy, and we believe six months is an adequate timeframe to complete both the early engagement and process planning stages. • Scope: Prior to undertaking project feasibility assessment work, which is needed in advance of any regulatory submission, proponents need to understand the timelines, likely in-service date, scope of studies, costs, test to meet, etc. This clear guidance must be known at the outset, not developed after an early planning phase. While an early planning phase might consider unique circumstances for a particular project, general rules and guidelines must be known in advance.
Special Roles in EA	<p>We support the involvement of the technical advisory group and local governments throughout the EA process. However, more detail is required about how their roles would change in the revised EA process from what is in place today.</p> <p>CEPA supports technical advisory groups that provide advice; however, proponents, Indigenous Nations and affected stakeholders all benefit from a degree of process certainty and procedural fairness. Regulatory review</p>

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	<p>processes must balance the needs of varying participants and directly affected parties need a full and fair process for participating.</p> <p>One of the most beneficial aspects of the current environmental assessment process is the establishment of a “working group” which is comprised of those Indigenous groups deemed most potentially affected by the project (Schedule B) along with representatives from relevant provincial and federal agencies. The working group provides for active engagement of stakeholders and Indigenous groups throughout the process, including the development of application information requirements, review of adequacy of application, review and comment on the application and assessment report, and review of plans required to meet condition compliance resulting from the application. The working group process includes collaborative meetings, information requests, and facilitated engagement between stakeholders, Indigenous groups, the regulator, the proponent and environmental consultants.</p> <p>Additionally, mandated timelines (the current 180-day review period) help to focus the assessment, proponent and working group. This process ensures are that all those with a direct interest participate, issues are discussed and resolved, and there is a timeline that is adhered to.</p>
Application development and review	<p>Although this stage may be intended to streamline the application process, caution needs to be exercised in ensuring that feedback and any additional requirements for more studies and data collection do not get layered on throughout this phase, as that could add more time and delays to the overall process. Furthermore, the development of an application may not easily lend itself to iterative review given the interdependencies between various components of an application. CEPA strongly encourages an approach that is flexible enough to allow a proponent to prepare a complete application based on the scoping and methodologies set out in a filing manual and refined through the early engagement and process planning phases, which is then made available for review.</p> <p>We support opportunities for public review and comment as a means of identifying and addressing issues early; however, each of these public review and comment periods adds time to the overall process. There is also potential for these comment periods to be misused in order to delay the process. Therefore, CEPA believes that a requirement should be built into this phase such that feedback is <i>considered</i>, not necessarily addressed and incorporated. The proponent must be able to determine if it would be feasible or advisable to incorporate the feedback (subject to the regulator’s approval).</p> <p>With respect to “independent studies and peer reviews” CEPA believes that guidance should be developed regarding criteria that would trigger these additional information requirements. Requiring all technical studies to be reviewed by independent experts from inside and outside of governments can create unnecessary delays. Experts can</p>

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	disagree on many things, and in areas where there is uncertainty or different interpretations, this could cause a stalemate.
Effects assessment and Recommendations	<p>In our experience, vastly different conditions may be proposed by the regulator and Indigenous groups. It will be difficult to achieve consensus/consent at this stage. This is particularly difficult when dealing with long linear projects where there are often multiple potentially affected Indigenous groups who may all have different interests. It may not be possible to achieve consent or consensus on every issue, nor is it currently the law/requirement in Canada to obtain consent except in certain circumstances. Although ADR may be beneficial in some areas, it cannot be a mechanism to obtain consent and a regulatory process before an experienced decision-maker is necessary.</p> <p>Other areas that require further consideration include:</p> <ul style="list-style-type: none"> • Timelines: The discussion paper proposes that this stage could take 100-200 days. This seems is a wide range of time and, given the amount of consultation and collaboration up to this point, should be shortened. • Precautionary Approach: There is a need to define what is meant by the “precautionary principle”, as many definitions of that principle exist and to ensure that it does not mean that no risk is acceptable (impacts may be justified in the circumstances). • Stakeholder comment: Where the discussion paper states that “the proponent, government agencies, Indigenous Nations and the public all have the opportunity to comment on the draft Assessment Report and draft Certificate Conditions, before it is finalized for decision makers” it should be made clear that proponents should have an opportunity to both comment and respond to other commenters.
Decision	<p>CEPA and its members support the inclusion of decision-making criteria in legislation. This must also include clarity as to who the ultimate decision maker is and the specific roles of various stakeholders. This is especially important when it comes to applying conditions, as overlapping/inconsistent conditions are in no one’s interest.</p> <p>The pipeline industry works to avoid or minimize any impacts to Indigenous rights and interests and aims to obtain the support of affected Indigenous groups where possible. However, individual project reviews are not the appropriate venue to address reconciliation objectives, as reconciliation is a relationship and framework issue that should primarily be addressed by government. Reconciliation matters should be identified up front in the process and excluded from the decision-making phase, which should be based on clearly defined criteria.</p>
Post Certificate	More information is required regarding what is contemplated for: preventative orders, increased court-imposed penalties and new tools for auditing the effectiveness of conditions. Additionally, CEPA and it members believe that more consideration and consultation is required in the following areas:

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	<ul style="list-style-type: none"> • Continued engagement: What is contemplated for “continued engagement of EA participants in compliance and enforcement?” What impact could this have on the execution of a project? Proponents require certainty that they can proceed with a project once approval is granted and conditions are met. • Indigenous programs: More discussion is required regarding Indigenous monitoring, compliance and enforcement programs (e.g. scope, roles, process and timelines). • Regulatory authority: CEPA and its members strongly support a ‘one-window’ approach, as reporting to multiple authorities may lead to confusion and difficulty in implementation, specifically regarding whose authority governs in the case of a conflict. Final authority must rest with one regulator.
Grandfathering	CEPA and its members support the stated intention that projects commenced under the existing regime should continue to be assessed in accordance with that regime. Further, amendments to or extensions of approvals completed under the existing regime should similarly be grandfathered.
Strategic and Regional Assessments	CEPA and its members support a means to address larger policy issues outside of specific-project assessments. Project assessments should not be delayed until such regional or strategic assessments are completed.