

Regulations Amending the Regulations Designating Physical Activities

Statutory authority

Canadian Environmental Assessment Act, 2012

Sponsoring agency

Canadian Environmental Assessment Agency

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 a new 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 if they 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 construction 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 MW or more). Project proposals that contain physical activities that are listed in the Regulations and that meet or exceed the threshold are designated projects.

The Regulations will focus on 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 is expected to cause environmental effects sufficient to warrant an environmental assessment. In such cases, the CEAA 2012 provides the Minister of the Environment with the authority 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 may warrant the designation.

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, for those designated projects for which the Agency is the responsible authority, the Agency 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, migratory birds, and federal lands;
- effects that cross provincial or international boundaries;
- changes to the environment that affect Aboriginal peoples, such as their use of lands and resources for traditional purposes; and
- changes to the environment that result from federal decisions about the project.

Issue

The physical activities identified in the current Regulations do not appropriately reflect the major projects that have the greatest potential to cause significant adverse environmental effects in areas of federal jurisdiction. Currently, some types of major projects that are considered to have a high potential for such effects are not covered by the Regulations. Conversely, some projects that are currently covered by the Regulations are considered to have a low potential for significant adverse environmental effects in areas of federal jurisdiction.

Objectives

Amendments are being proposed 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 captured. The Regulations also include definitions to clarify key terms.

Schedule to the Regulations

It is proposed that the schedule to the Regulations be replaced to include modifications as follows.

1. Additions would be 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, the first offshore exploratory wells in Exploration Licence areas, and expansions to oil sands mines.
2. Deletions would be made to exclude the following types of projects: groundwater extraction facilities, heavy oil and oil sands processing facilities, pipelines and electrical transmission lines not regulated by the NEB, potash mines and other industrial mineral mines (salt, graphite, gypsum, magnesite, limestone, clay, asbestos), and industrial facilities (pulp and paper mills, steel mills, metal smelters, leather tanneries, textile mills and facilities for the manufacture of chemicals, pharmaceuticals, pressure-treated wood, particle-board and plywood, chemical explosives, lead acid batteries and respirable mineral fibres).
3. The entry for tidal power generating facilities would be amended to include a threshold of 50 MW for in-stream facilities. The current threshold of 5 MW would be retained for other types of tidal power generating facilities, such as tidal barrage facilities.
 1. The entry for liquefied natural gas storage facilities would be modified to increase the threshold size by approximately 10%.
4. Rare earth element mines, which are currently covered by the general entry for metal mines, would be included in the same entry as gold mines, which have a lower ore production capacity threshold of 600 tonnes per day.

5. The separate entry for offshore metal mines would be deleted. This type of project would instead be covered by the general entry for metal mines.
6. The entries for mine expansions would be modified to relate the size of the expansion to an increase in the area of disturbance rather than referring only to production capacity.
7. The entries for all expansions would be adjusted to use a consistent approach that specifies an increase of 50% or more in the size of the facility and that the resulting facility must meet or exceed the threshold size for a new facility of that type.
8. The entries related to National Defence activities would be modified to remove expansions of existing buildings on a military base or station, increase the threshold requirement for expansions of a military base or station, and specify that the Regulations do not apply to activities of a temporary nature.
9. The CNSC-regulated activities would be updated to reflect the CNSC's current licensing practices, to include the construction of all reactor types, and to provide clarification for some activities.
10. The NEB-regulated activities related to pipelines would be modified to align with the NEB's regulatory process requirements under its legislation, notably by reducing the threshold for pipelines 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.

Definitions

It is proposed that the list of definitions be modified as follows.

1. Addition of the following terms: area of mine operations, canal, drilling program, exploratory well.
2. Deletion of the following terms: abandonment, airport, Class IA nuclear facility, Class IB nuclear facility, decommissioning, offshore, paper product, pulp, pulp and paper mill, right of way, waste management system, wetland.
3. Revision of the following terms: marine terminal, water body.

In addition, modifications are proposed to improve the clarity and consistency of the wording throughout the Regulations.

The proposed amendments include transition provisions to cover situations that may arise with the coming into force of the amended Regulations.

Regulatory and non-regulatory options considered

Retaining the status quo is 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 are not covered; conversely, some items in the Regulations are associated with projects that are considered to have a low potential for significant adverse effects regarding matters of federal jurisdiction.

In developing the proposed 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 on a project not listed in the Regulations and certainty for the public and proponents about when an assessment will be done.

The aim is 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 as a safety net and not as a second standard means to require an environmental assessment of a project.

The approach that is proposed achieves this balance. Where the Minister is considering designation of a project owing to its unique characteristics, the proponent would be required to provide the necessary information. This targeted approach would help minimize the regulatory burden relative to the situation where a formal project description would be required of all projects of that type. At the same time, the public and proponents of projects described in the Regulations would have a greater degree of certainty that an environmental assessment would be required because screening out by the Agency would 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. Given that regulations listing types of projects are essential to the functioning of the CEAA 2012, it was not possible to entertain non-regulatory options.

The proposed approach would amend the Regulations to focus on projects with the greatest potential for significant adverse environmental effects on areas of federal jurisdiction. This approach is consistent with the Responsible Resource Development plan of the Government to ensure that only activities with the greatest potential to cause significant adverse impacts on areas of federal jurisdiction are included in the Regulations.

"One-for-One" Rule

The "One-for-One" Rule does not apply to these Regulations since there is no change in administrative costs to business.

The Regulatory Impact Analysis Statement for the current 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 has, in consultation with the Treasury Board of Canada Secretariat, determined 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 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

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 treating appropriately oil sands projects, including in situ oil sands projects; industrial facilities; linear projects such as 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 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. All new major physical activities that are regulated by the CNSC are included in the proposed amendments to the Regulations. These activities, as well as activities that are not listed in the proposed amendments, such as shipping of radioactive waste, are subject to extensive review of potential environmental impacts 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.

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.

The proposed amendments reflect the view that the physical activities to include should be those that have the greatest potential to cause significant adverse environmental effects in areas of federal jurisdiction.

The approach of using thresholds in the Regulations is required to ensure that 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 influence the potential for adverse effects, constitutes an approach that can be applied across project categories and throughout the country. Furthermore, it provides clear, predictable information about when a project is subject to the Act. In this way, proponents know when they are required to submit a project description. Stakeholders also benefit in that they too will know when a project description has to be submitted and when one is not required. Where it is not required and they are of the view that there may be adverse effects regarding matters of federal jurisdiction, they can inform the Minister, who can respond accordingly.

In those occasional situations where a project is proposed that does not include a physical activity that is covered by these Regulations, but which may warrant a federal environmental assessment because of its unique characteristics, the Minister of the Environment may use his power under the CEAA 2012 to require that an environmental assessment of that project be conducted. This mechanism within the CEAA 2012 provides a safety net that 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.

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.

To address this concern, it is proposed that the text be modified as follows.

- Items that refer to the "construction, operation, decommissioning and abandonment," the "construction, operation and decommissioning," or the "construction and operation" of a facility would be 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 would be modified to clarify that they refer to an existing facility.

These modifications are intended to clarify the intent of the legislative framework under the CEAA 2012 that the environmental assessment of a proposed new project considers the full life cycle of the project.

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 significant adverse environmental effects in areas of federal jurisdiction. The rationale for the proposal is outlined in the following section.

Rationale

The main purpose of the proposed 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 Regulations should focus federal environmental assessment requirements on those projects that have the greatest potential for significant adverse environmental effects in areas of federal jurisdiction. The Regulations should not include physical activities that have minimal impacts on areas of federal jurisdiction.

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 would be listed 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 the better approach is to leave it off the list and, if warranted, make use of the Minister's authority to designate. This flexible approach allows the Government to protect the environment precisely in those areas where attention is warranted.

Should the Minister be designating certain types of projects on a regular basis, the Minister would consider amendments to the Regulations in the future to include the types of physical activities in those projects.

In addition, the Regulations should be as clear as possible with respect to the descriptions of physical activities, the treatment of expansions, the application to the project life cycle and key terms.

Since the CEAA 2012 came into force, 17 environmental assessments have been 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 proposed 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 would be to shift the potential requirement for a federal environmental assessment from the proponents of those project types with physical activities which are proposed to be removed from the Regulations and on to the proponents of those projects with physical activities which are proposed to be 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 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, migratory birds, and federal lands;
- effects that cross provincial or international boundaries; and
- a change in the environment that affects 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 the amendments come into force, if a project description has been submitted or if an environmental assessment has commenced under the CEAA 2012 of a project captured by a physical activity removed from the Regulations, the screening process or the environmental assessment would terminate because the project would no longer be a "designated project." However, it is possible that the CEAA 2012 could still apply to these projects if the Minister of the Environment designates the project or if the project is located on federal lands. Other federal permitting and approvals processes would continue to apply.

For the reverse situation (cases where a project was not captured under the current Regulations but could become a "designated project" as a result of the amendments), the new Regulations would apply except if permits have already been issued by a federal authority, construction of the project has already started, or an assessment under the process of another jurisdiction is already underway. This approach would prevent delays and duplication for projects that had been proceeding in good faith under the current Regulations.

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 Agency will assume responsibility for conducting or administering environmental assessments for designated projects. Designated projects that are regulated by the National Energy Board or the Canadian Nuclear Safety Commission are subject to their respective compliance and enforcement regimes to ensure compliance with the conditions in the decision statement.

The Regulations will be reviewed periodically, in accordance with the Cabinet Directive on Regulatory Management, to ensure they remain consistent with government priorities.

Contact

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PROPOSED REGULATORY TEXT

Notice is given that the Minister of the Environment, pursuant to paragraphs 84(a) and (e) of the Canadian Environmental Assessment Act, 2012 ([see footnote a](#)), proposes to make the annexed Regulations Amending the Regulations Designating Physical Activities.

Interested persons may make representations concerning the proposed Regulations within 30 days after the date of publication of this notice. All such representations must cite the Canada Gazette, Part I, and the date of publication of this notice, and be addressed to John McCauley, Director, Legislative and Regulatory Affairs, Canadian Environmental Assessment Agency, 160 Elgin Street, 22nd Floor, Ottawa, Ontario K1A 0H3 (tel.: 613-948-1785; fax: 613-957-0897; email: Regulations@ceaa-acee.gc.ca).

Ottawa, April 5, 2013

PETER KENT
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", "offshore", "paper product", "pulp", "pulp and paper mill", "right of way", "waste management system" and "wetland" in section 1 of the Regulations Designating Physical Activities ([see footnote 1](#)) are repealed.

(2) The definitions "marine terminal" and "water body" in section 1 of the Regulations are replaced by the following:

“marine terminal”
« terminal maritime »

“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.

“water body”
« plan d’eau »

“water body” means any water body, including a canal, a reservoir, an ocean and a wetland as that term is defined in the 1991 Federal Policy on Wetland Conservation established by the Department of the Environment, up to the high-water mark, but 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” in relation to a mine, means the area at ground level occupied by any open pit or underground mine workings, mill complex or storage area for 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 subsection 101(1) of that Act.

2. Section 4 of the Regulations is replaced by the following:

Activities linked to 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 linked to 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 linked to National Energy Board

(3) The activities set out in items 39 to 47 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 PROVISION

4. (1) In this section, “former Regulations” means the Regulations Designating Physical Activities as they read immediately before the day on which these Regulations come into force.

(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 Canadian Environmental Assessment Act, 2012, that could permit the physical activity to be carried out, in whole or in part; and
- (c) a jurisdiction that has powers, duties or functions in relation to the assessment of the environmental effects of the physical activity has commenced that assessment.

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;
- (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 other new 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 an

- (a) 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) 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 other existing 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) 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 reservoir of 50% or more and a total surface area of the reservoir that exceeds the annual mean surface area of a natural water body by 1 500 ha or more.

6. The construction, operation, decommissioning and abandonment of a new structure for the diversion of 10 000 000 m³/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 that would result in an increase in diversion capacity of 50% or more and a total diversion capacity of 10 000 000 m³/year or more from a natural water body into another natural water body.

8. The construction, operation, decommissioning and abandonment of a new oil sands mine with a bitumen production capacity of 10 000 m³/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 m³/day or more.

10. The drilling, testing, completion, suspension and abandonment of

- (a) a first exploratory well in the area set out in an exploration licence issued in accordance with the Canada-Newfoundland Atlantic Accord Implementation Act or the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act; or
- (b) exploratory wells in a drilling program in the adjoining areas that are set out in a grouping of 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 facility for the production of oil or gas.

12. The decommissioning and abandonment of an existing offshore facility for the production of oil or gas that is to be disposed of or abandoned offshore or converted on site to another role.

13. The construction, operation, decommissioning and abandonment of a new

- (a) oil refinery, including a heavy oil upgrader, with an input capacity of 10 000 m³/day or more;
- (b) facility for the production of liquid petroleum products from coal with a production capacity of 2 000 m³/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 m³ or more; or
- (f) liquefied petroleum gas storage facility with a storage capacity of 100 000 m³ or more.

14. 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 m³/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 m³/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 m³ 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 m³ or more.

15. The construction, operation, decommissioning and abandonment of a new offshore oil and gas pipeline.

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 1 000 000 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 1 000 000 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.

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 by or under the authority of the Minister of National Defence for the testing of weapons before October 7, 1994.

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 is not established 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 before October 7, 1994.

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 sidings or more 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.
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 production 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 boundaries of an existing nuclear facility; or
- (b) facility for the long-term management or disposal of irradiated fuel or nuclear waste.

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.

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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, completion, suspension and abandonment of

- (a) a first exploratory well in the area set out in an exploration licence issued in accordance with the Canada Petroleum Resources Act; or
- (b) exploratory wells in a drilling program in adjoining areas that are set out in a grouping of exploration licences issued in accordance with the Canada Petroleum Resources Act.

41. The construction, installation and operation of a new offshore facility for the production of oil or gas.

42. The decommissioning and abandonment of an existing offshore facility for the production of oil or gas that is to be disposed of or abandoned offshore or converted on site to another role.

43. 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 m³ or more.

44. 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 m³ or more.

45. The construction and operation of a new

- (a) pipeline with a length of 40 km or more; or
- (b) offshore pipeline.

46. The abandonment of an existing pipeline if at least 40 km of pipe is removed from the ground.

47. The construction, operation, decommissioning and abandonment, in a wildlife area or migratory bird sanctuary, of a

- (a) new electrical transmission line; or
- (b) new oil or gas facility or new pipeline.

[16-1-0]

- [Footnote a](#)
S.C. 2012, c. 19, s. 52
- [Footnote 1](#)
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