

The Honourable Catherine McKenna
Minister of Environment and Climate Change
Government of Canada
200 Sacre-Coeur Boulevard
Gatineau, QC K1A 0H3

Dear Minister McKenna,

Re: Bill C-69, the 'Project List' and the Strategic Assessment on Climate Change

We take seriously, as we know you and your government do, the warnings of the Intergovernmental Panel on Climate Change that dramatic and deep cuts in greenhouse gases are required to minimize catastrophic climate change. We are therefore concerned about the progression of Bill C-69 and the accompanying regulations.

When Bill C-69 was first announced, we supported the bill as an important step in the right direction towards strengthening Canada's broken environmental assessment framework. We were encouraged to see that it included consideration of a project's impact on Canada's climate commitments, allowed for meaningful public participation, promised greater transparency in decision-making and limited the role of industry-captured regulators. Thousands of Canadians participated in years of extensive consultations on Bill C-69 and worked together to shape a law reflecting a delicate compromise among industry, environmental, and Indigenous interests.

Since consultations began in 2016, in good faith, we have participated actively in the federal environmental law reform process to ensure that the impact assessment regime for energy and industrial projects are aligned with Canada's climate commitments.

Unfortunately, in the past few months we've begun to lose confidence that this new legislation, the "Project List" and the Strategic Assessment of Climate Change (SACC), will result in an improvement on the current environmental assessment framework or that they will align with Canada's climate commitments. In its current form the Project List is worse than the existing regulations. The SACC as currently proposed does not meet the standard of providing an effective decision-making framework for assessing exactly how an individual project will hinder or contribute to Canada's domestic and international climate commitments under the Paris Agreement. Given this context, if changes are not made to the above, we will have no choice but to withdraw our support from Bill C-69.

Bill C-69

Most of the amendments proposed by the Senate's Standing Committee on Energy, Environment, and Natural Resources threaten the integrity of Bill C-69. We hope that these amendments will be refused in the larger Senate before the bill is sent back to the House of

Commons. If this does not happen, it will be up to the House of Commons to ensure that these amendments are not approved.

Bill C-69 was already a significant compromise and there is no justification for its further weakening in favour of oil and gas industry interests. The following are examples of amendments that we are deeply concerned with. It is not an exhaustive list. We would welcome the opportunity to meet to discuss the amendments further.

- Restricting the consideration of climate to the results of the SACC. Given the current state of the proposed strategic assessment, this would effectively weaken and perhaps even nullify the requirement to assess climate change in project assessments.
- Limiting public participation by re-introducing a “directly affected” standing test. This test is one of the reasons that we have seen a high level of litigation and protests over the last several years, as Canadians were not given the opportunity to meaningfully participate and thus lost trust in the federal review process.
- Undoing changes that would have restricted the role of industry-captured regulators on impact assessment review panels. The amendments would allow regulators, including offshore boards, to both chair the review panels and represent a majority on these panels. The life-cycle regulators have demonstrated that they are not as well-equipped or -positioned to meaningfully engage the public or ensure rigorous, transparent and independent assessments as independent panels. Impact assessment is a planning process - it is distinct from regulatory functions, and these amendments would circumvent or defeat the intention of the Act to consolidate authority for assessments under the expert Agency.
- Adding more discretion to exempt potentially harmful activities from review if a regional assessment has been conducted, such as offshore oil and gas exploration drilling.
- Restricting the ability of people to go to court when the assessments fail to follow the law.
- Giving equal consideration to “investor confidence” alongside fostering sustainability, which prioritizes profit over the best outcomes for Canadians and the environment.
- Removing the requirement to consider a range of options for achieving sustainability.
- By recommending the elimination of phrases such as “future use” and “water flows”, Senators have said that only those waters currently used for active navigation are covered under the act and projects that inhibit navigation by altering water flows have been expressly removed from the Act - a deeply concerning move.

If these amendments are adopted, many of which are functional equivalents to the amendments that were put forth by the Canadian Association of Petroleum Producers and the Canadian Energy Pipeline Association, we will be no better off, and in some ways worse off, than with our current laws.

Regulations Designating Physical Activities (Project List)

As presented in the draft regulations released earlier this month, the Project List is another missed opportunity for aligning environmental review processes with Canada's climate targets.

We have been calling for - and the original discussion paper on the regulations proposed - the Project List to include a greenhouse gas trigger to ensure that high carbon projects are federally assessed. We are extremely disappointed that this is not proposed for inclusion. The proposed regulations would exempt high carbon projects, like in situ mining, pipelines, offshore oil and gas exploratory drilling and fracking, from federal review. For virtually every activity with impacts on the environment -- pipelines, mines, nuclear reactors, highways -- the proposed project list would be weakened compared to the current list. The discussion paper proposes higher "thresholds" for the size of a project (longer pipelines, bigger mines, etc.) for it to require review -- meaning more projects could be built without assessment. Only renewable energy projects would face tighter thresholds.

Strategic Assessment of Climate Change

In order to be useful, a strategic assessment of climate change must provide a decision-making framework for assessing exactly how an individual project will hinder or contribute to Canada's domestic and international climate commitments under the Paris Agreement. As it currently stands, the proposed SACC does not meet that standard. It does not provide a framework for contextualizing an individual project's GHG emissions against domestic and international climate commitments. An additional concern is that despite recommendations that SACC be undertaken by an independent expert panel, it is being proposed as an in-house ECCC process.

We are also very concerned that as presented in the most recent discussion paper, the SACC unnecessarily and inappropriately constrains the scope of project-level assessments, particularly by excluding downstream effects from analysis. This constricted approach to quantifying greenhouse gas emissions severely undermines the purpose and value of any assessment to determine whether a project is compatible with Canada's climate commitments. If Canada is serious about meeting its domestic and international commitments and doing its fair share to achieve the Paris agreement, then it must acknowledge the lifecycle emissions of energy and industrial projects that operate within Canada.

Furthermore, there is precedent in the energy project review process for considering downstream and lifecycle emissions. In August 2017, the National Energy Board (NEB) panel reviewing the Energy East pipeline ruled that it would consider downstream and lifecycle emissions. In the era of climate change, there is no good reason for the impact assessment and project review process to break with this precedent set by the NEB. Jurisdictions around the world are beginning to consider lifecycle emissions in their assessment of energy and industrial

projects and courts increasingly require such considerations. If Canada is to be a climate leader, it should do the same.

We hope that the government will not bow to pressures to weaken environmental legislation. However, if the amendments are approved by the full Senate and then by the House of Commons, and if both the Project List and the SACC proceed as proposed, we will have no choice but to withdraw our support from Bill C-69.

Sincerely

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Angela Bischoff, Director, Ontario Clean Air Alliance

François Geoffroy, La Planète s'invite au Parlement

Rita Bijons & Paul Mero, Co-Chairs, Green 13

Cathy Orlando, Citizens' Climate Lobby Canada

Lyn Adamson, Co-Chair, ClimateFast

Janis Alton, Co-Chair, Canadian Voice of Women for Peace

Arlene Kwasniak (Individual), Professor Emerita of Law, Canadian Institute of Resources Law, University of Calgary

Pat Moss, Friends of Wild Salmon Coalition

Amy Schnurr, Executive Director, BurlingtonGreen Environmental Association

Frances Deverell, The Canadian Unitarians For Social Justice



- Cc. The Right Honourable Justin Trudeau, P.C., M.P. Prime Minister
 The Honourable Marc Garneau, Minister of Transport
 The Honourable Amarjeet Sohi, Minister of Natural Resources
 The Honourable Jonathan Wilkinson, Minister of Fisheries, Oceans and the Canadian Coast Guard
 The Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations