



ӅӃӃ ӄӃӃ ӄӃӃ ӄӃӃ ӄӃӃ ӄӃӃ
Comité consultatif de l'environnement Kativik
Kativik Environmental Advisory Committee

KEAC Position Paper
Green Paper on the Proposed Modernization of the
Authorization Regime under the *Environment Quality Act*

**Submitted to the National Assembly of Québec's
Committee on Transportation and the Environment**

September 4, 2015

TABLE OF CONTENTS

Introduction	1
Environmental and social impact assessment procedures north of the 55th parallel: urgently in need of an update	2
Policy 1: Ensure that the authorization regime considers climate change and adaptation strategies	3
Policy 2: Incorporate the principles of the <i>Sustainable Development Act</i> and strategic environmental assessment into the <i>Environment Quality Act</i>	4
Policy 3: Adjust the authorization regime according to environmental and social impacts without reducing the involvement of local communities	5
Policy 4: Make environmental information more accessible to northerners	6
Policy 5: Simplify analysis procedures and authorizations while ensuring they are in line with northern regimes and permit effective input from local communities	6
Policy 6: Limit authorization validity periods in light of climate change conditions	7
Policy 7: Ensure environmental fee equity between Northern and Southern Québec	7
Conclusion	8

Introduction

The Kativik Environmental Advisory Committee (KEAC) was established pursuant to Section 23 of the *James Bay and Northern Québec Agreement* (JBNQA). The KEAC is a consultative body to responsible governments in matters relating to environmental and social protection in Nunavik. As such, it is the official and preferred forum for the governments of Canada and Québec, the Kativik Regional Government (KRG) and the northern villages of Nunavik.

Nunavik occupies approximately 36%, or some 500 000 km², of Québec's land area. Its inhabitants, who are predominantly Inuit, are spread out among 14 northern villages. There are a number of industrial projects planned or operating in this immense region, particularly in the field of natural resource development. With the exception of large-scale projects implemented mainly by private developers, the KRG and the northern villages are the main applicants for environmental authorizations.



The KEAC has eagerly studied the Green Paper on modernizing the environmental authorization regime set forth in the *Environment Quality Act* (EQA), produced by the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (sustainable development, the environment and the fight against climate change, MDDELCC).

Given the significance of the issues involved, the KEAC is grateful for this opportunity to submit feedback before the EQA is amended. The environmental authorization regime has

not been extensively updated since the EQA was passed in 1972, nor was it amended when environmental impact and assessment procedures for Nunavik were adopted in 1978.

Several of the amendments proposed in the Green Paper do not directly involve the JBNQA regime applicable in Nunavik because the Green Paper expressly states that no changes are proposed for Chapter II of the EQA.¹ However, the other authorization regimes, notably under sections 22, 32 and 48 of the EQA, are applicable in Nunavik.

Before we present our comments on the Green Paper's proposed measures, we wish to make some preliminary remarks on the environmental and social impact assessment procedures in Nunavik.

Environmental and social impact assessment procedures north of the 55th parallel: urgently in need of an update

Specific environmental and social impact assessment procedures apply in Nunavik. These were created by under the JBNQA in 1975 and included in Chapter II of the EQA in 1978.²

The KEAC, the federal Environmental and Social Impact Review Panel and the Kativik Environmental Quality Commission (KEQC) were established shortly after the JBNQA's inception 35 years ago. Much has changed since: development activities have expanded and now have heavier impacts.

In their early days, the review panels assessed small local projects such as landing strips, drinking-water treatment and waste-disposal facilities. Today they examine large-scale mining projects and related infrastructure, which are expected to introduce extensive changes in Nunavik. One way to deal with this shift would be to provide the review panels created under the JBNQA with the resources they need to work with Inuit throughout each entire review process.

In 2009, the KEAC identified the means to strengthen the authorization regime in Nunavik in its *Position Paper on Strengthening the Environmental and Social Impact Assessment and Review Procedure in Nunavik*.³ Among other observations, the position paper notes the need to strengthen Inuit participation rights:

¹ Green Paper, p. 9, note 2.

² For more information on the environmental and social impact assessment procedure in Nunavik, see Section 23 of the *James Bay and Northern Québec Agreement* and the KEAC's *Environmental and Social Impact Assessment and Review Procedure Guide*, April 2008, online at:

http://www.keac-ccek.ca/en/environmental-procedure/ANNEXES_Guide_e.pdf (French version accessed August 26, 2015, at http://www.keac-ccek.ca/procedures-environnementales/ANNEXES_Guide_f.pdf).

³ KEAC, *Position Paper on Strengthening the Environmental and Social Impact Assessment and Review Procedure in Nunavik*, April 2009, <http://www.keac-ccek.ca/documents/memoires-avis/avis-final>.

Regarding environmental assessment, access to information and public participation are internationally recognized rights in a growing number of countries. The limited legal guarantees offered to Inuit and the region's residents in these respects are a weakness in Nunavik's current assessment and review procedure.⁴

In the position paper, the KEAC makes specific recommendations on reviewing the schedules of Section 23 of the JBNQA, strengthening the rights of Inuit to participate in the assessment procedure and the decision-making process, and implementing a strategic environmental assessment procedure. However, none of the recommendations have been fully implemented.

Work is underway to review schedules 1 and 2 of Section 23 of the JBNQA, respectively setting forth the list of projects subject to or exempt from the assessment procedures. A working group comprised of representatives of the Québec government, the KRG, the Makivik Corporation and the KEQC was created in late 2013, but has made no tangible progress. In 2014, the *Parnasimautik Consultation Report* on the extensive consultations held in all Nunavik communities also underlined the importance of modernizing the environmental and social impact regime.⁵ The KEAC hopes that the review procedure proposed by the Green Paper will provide the opportunity to finally effect the modernization of the procedures north of the 55th parallel.

Policy 1: Ensure that the authorization regime considers climate change and adaptation strategies

The KEAC strongly supports the inclusion of the fight against climate change under the authorization regime. The KEAC feels that amendments to the EQA in that regard should also include issues related to adaptation to climate change. In fact, the KEAC explained its position in 2012 during the development of the *2013–2020 Government Strategy for Climate Change Adaptation* when it underlined the importance of taking the specific characteristics of northern environments into account in the drafting of the strategy.⁶

en_20091109162112.pdf (French version accessed on August 26, 2015, at http://www.keac-ccek.ca/documents/memoires-avis/avis-final-fr_20091109161939.pdf).

⁴ *Ibid.*, pp. 5-6.

⁵ *Parnasimautik Consultation Report*, online at http://www.parnasimautik.com/wp-content/uploads/2014/12/Parnasimautik-consultation-report-v2014_12_15-eng_vf.pdf (French version accessed on August 26, 2015 at <http://www.parnasimautik.com/wp-content/uploads/2015/03/Parnasimautik-consultation-rapport-fr.pdf>).

⁶ KEAC, *Letter about the draft government strategy on climate change adaptation 2013–2020 followed by recommendations concerning the future 2013–2020 action plan on climate change*, April 2012, available online at <http://www.keac-ccek.ca/documents/memoires-avis/2012-04.pdf> (French version accessed on August 26, 2015, at <http://www.keac-ccek.ca/documents/memoires-avis/avis-2012-04.pdf>).

Climate change is already affecting Northern Québec through permafrost melting, the settling of soil, changes in ice cover and the water balance, and storms. These changes impact northern buildings and industrial and transportation infrastructure.⁷ Indications all point to the amplification of this phenomenon over the coming years.⁸ In our opinion, the amendments to the authorization regime under the EQA must take this new reality into account.

Policy 2: Incorporate the principles of the *Sustainable Development Act* and strategic environmental assessment into the *Environment Quality Act*

The *Sustainable Development Act*⁹, unanimously passed in 2006, imposes “a new management framework within the Administration to ensure that powers and responsibilities are exercised in the pursuit of sustainable development” (section 1). The KEAC provided feedback during consultations for the Québec Sustainable Development Action Plan to highlight its concerns and share its view on the inclusion of sustainable development in the government’s activities.¹⁰ The KEAC emphasized at that time that the principles of the JBNQA, which guide the government institutions involved in developing and implementing government policies, programs and decisions, already represent a form of sustainable development principles.

In an effort to achieve consistency in the government’s commitments to sustainable development, the KEAC believes that the 16 principles of the *Sustainable Development Act* should be better represented in the EQA. To that end, a preamble could be added to the EQA as a reminder of the government’s commitment to these principles. The same should be done in Chapter II of the EQA. These additions would be consistent with the format of recent pieces of environmental legislation, which are headed by a preamble and interpretative provisions that refer to the principles of the *Sustainable Development Act*.¹¹

⁷ See especially Environment Canada and Initiatives des écosystèmes nordiques (northern ecosystems initiatives), *Les changements climatiques au Nunavik et au Nord du Québec : L'accès au territoire et aux ressources*, (climate change in Northern Québec and Nunavik: access to territory and resources) final report, March 2008, and the KRG, *Renforcement des capacités pour la gestion publique locale et la planification territoriale au Nunavik et sensibilisation face aux changements climatiques*, (capacity-building for local public management and land planning in Nunavik and climate change awareness, March 2013) online at: www.ouranos.ca/media/publication/283_RapportBarrettetGagnon2013.pdf, accessed August 26, 2014.

⁸ OURANOS, *Synthèse des connaissances sur les changements climatiques au Québec* (summary of knowledge on climate change in Québec), 2014, online at :

www.ouranos.ca/fr/synthese2014/doc/Sommaire.pdf, accessed August 26, 2014.

⁹ *Sustainable Development Act*, CQLR, c. D-8.1.1.

¹⁰ KEAC, *Position Paper on the Québec Sustainable Development Plan*, February 2005, p. 11, online at http://www.keac-ccek.ca/documents/memoires-avis/avis-developpement-durable_en.pdf (French version accessed August 26, 2015, at <http://www.keac-ccek.ca/documents/memoires-avis/avis-developpement-durable.pdf>).

¹¹ See Bill 70, *An Act to Amend the Mining Act*, 40th Legislature, 1st Session, Québec, 2013, and the *Act to Affirm the Collective Nature of Water Resources and Provide for Increased Water Resource Protection*, CQLR, c. C-6.2.

The KEAC is also in favour of formally including strategic environment assessment (SEA) under the EQA. To that end, special attention should be paid to the application and alignment of SEA with social and environmental assessment procedures applicable in Nunavik.

Policy 3: Adjust the authorization regime according to environmental and social impacts without reducing the involvement of local communities

The KEAC notes that the Québec government wishes to adopt an environmental authorization regime that more fully takes into consideration the risks associated with an activity. Although this is an interesting approach, the KEAC believes that the expression “risks” is not completely appropriate. The environmental authorization regime provided in Chapter II of the EQA and Section 23 of the JBNQA assesses social and environmental impacts, not risks. This approach, which is based on the magnitude of impacts, is consistent with the international instruments Canada has signed in regard to international assessments.¹²

The KEAC is concerned that the proposed amendments to the authorization regime would represent a step backward if the concept of environmental risk supplants that of environmental impacts. An activity may carry few environmental risks when it uses well-known construction and operation techniques, but could still have significant negative impacts on the environment and the people in the surrounding area.

The KEAC feels that adjusting requirements for authorizing an activity according to its environmental impacts is a promising avenue. This approach is well-founded and based on principles that can guide decisions about authorization procedures for specific projects, especially grey-zone projects (excluded from schedules 1 and 2).

The KEAC emphasizes that the northern authorization regime provides for grey-zone projects not expressly subject to or exempt from the procedure. Regarding such projects, the KEQC must determine whether the procedure is required. This mechanism could be applied to environmental authorization regime under the EQA.

Regarding an authorization regime based on declarations of conformity, we emphasize that the development of a list of so-called low-risk activities must take into consideration the environment in which the project will take place. Given the harsh climate conditions, northern environments are more prone to damage and impacts from certain projects than

¹² See the Rio Declaration, 1992, Principle 17; *World Charter for Nature*, 1982, Principe 11; *United Nations Framework Convention on Climate Change*, 1992, Art. 4 (1) f); *Convention on Biological Diversity*, 1992, Art. 14 (1); *Convention on Environmental Impact Assessment in a Transboundary Context*, 1991, Art. 2).

environments in southern Québec. For instance, heavy machinery operating in the tundra could cause long-term damage to that particularly fragile environment.

We deem input from local communities absolutely essential in identifying categories of “low-risk” activities in Nunavik that may fall under declarations of conformity.

Lastly, we disagree with the notion of a streamlined procedure for public or municipal projects because the identity of the proponent should not influence the applicable authorization regime. However, a preferential rate for public projects could be established for expenses incurred to submit a request for authorization.

Policy 4: Make environmental information more accessible to northerners

The KEAC supports greater transparency in decision making through access to and dissemination of documents and information relating to environmental authorizations. The current process for access to environmental information is intended to make a wide range of documents available to the public. However, the need to submit specific requests to obtain these documents limits the effectiveness of the right to information as enshrined in the EQA (sections 118.4 and 118.5) and the *Act respecting Access to Public Bodies and the Protection of Personal Information* (section 41.1).

Proactive dissemination of a wide range of information such as certificates of authorization and related documents, including environmental studies and requests for authorization, would no doubt reduce the administrative burden of processing information requests as well as shorten timetables. It is important to ensure that the proposed public registry for environmental authorizations and other information will include projects in Nunavik. As well, it should be ascertained that northerners will be able to access the information quickly and easily.

Policy 5: Simplify analysis procedures and authorizations while ensuring they are in line with northern regimes and permit effective input from local communities

The KEAC agrees that streamlining the environmental authorization regime is a well-founded objective, provided that environmental requirements are not relaxed in the process.

As a reminder, Section 23 of the JBNQA and Chapter II of the EQA provide for a special environmental and social impact assessment procedure in regard to Nunavik. Since the Green Paper proposes no amendments to these provisions, it would be important to ensure that the new authorization regime is solidly aligned with the northern regimes, which will remain unchanged under the procedure suggested by the Green Paper.

Lastly, the KEAC is concerned about lawmakers' intention to require proponents to submit only a declaration of conformity in the case of "low-risk" activities. This step would shut out municipalities and local communities from the procedure. In our view, it is essential that local communities be informed of projects proposed for their territory before the procedure begins, even if the projects are considered to be low risk.

Policy 6: Limit authorization validity periods in light of climate change conditions

The KEAC agrees that authorizations should have time limits. This point was clearly demonstrated in a recent case involving Cimenterie de Port-Daniel¹³, even though the event did not occur in Nunavik. More importantly, time limits on environmental authorizations are consistent with Policy 1, since climate change is already affecting the region, especially Québec's boreal environment. All indications point to exacerbation of these impacts over the coming years.¹⁴

The KEAC is also in favour of extending the administration's right of refusal in regard to proponents who have committed a serious infraction under a different authorization. The KEAC believes that this measure should also apply in the north.

Policy 7: Ensure environmental fee equity between northern and southern Québec

The KEAC is concerned about pricing under the environmental authorization regime. Although project proponents subject to the impact assessment and review procedure provided in Chapter I of the EQA are required to disburse up to \$100,000 depending on the scope of their project, fees are not required in Nunavik. The KEAC feels that lawmakers should take advantage of the overhaul of the EQA's authorization regime to correct this situation.

The introduction of a fee structure for processing requests and delivering authorizations for projects in northern regions would raise funds that could improve procedures in the north, especially by increasing funding for the KEAC. In light of the revised Plan Nord, which provides for many new industrial projects in Nunavik, the KEAC will require additional funding to carry out assessments of large-scale projects and ensure community involvement.

¹³ In this case, a certificate of authorization initially issued 20 years previously was reactivated for a new project phase but the environmental impact assessment and review procedure was not applicable at that time. The *Regulation respecting Environmental Impact Assessment and Review* now subjects that type of project to the assessment and review procedure.

¹⁴ OURANOS, see infra note 8.

Lastly, as mentioned under Policy 3, the KEAC is in favour of introducing preferential rates for municipal and public projects. However, we do not believe that the authorization regime should be relaxed for these projects.

Conclusion

The KEAC is a consultative body to responsible governments in matters relating to environmental and social protection in Nunavik. Hearings on the Green Paper provide an opportunity for the KEAC to point out that, under the JBNQA, specific rules on environmental authorization apply in Nunavik.

The KEAC hopes that its comments and suggestions will be incorporated in the draft bill that will be tabled shortly to implement the measures proposed in the Green Paper. We look forward to being actively involved in the parliamentary work associated with the draft bill.