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Comité consultatif de l'environnement Kativik
Kativik Environmental Advisory Committee

KEAC Feedback and Recommendations
Regarding Draft Regulations Further to the Adoption of the *Act to Amend the Environment Quality Act to Modernize the Environmental Authorization Scheme and to Amend Other Legislative Provisions, in Particular to Reform the Governance of the Green Fund (2017, Chapter 4)*

**Presented to the MELCC regulatory working group on
the modernization of the environmental authorization scheme**

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1. Regulation respecting the Regulatory Scheme applying to Activities on the Basis of their Environmental Impact (Projet de règlement sur l'encadrement d'activités en fonction de leur impact sur l'environnement, REAFIE)

1.1. General feedback: Draft REAFIE

The Kativik Environmental Advisory Committee (KEAC) considers that the linking between the draft REAFIE and the environmental and social impact assessment and review procedure under Section 23 of the *James Bay and Northern Québec Agreement* (JBNQA) raises concerns for environmental and social protection in Nunavik. Specifically, following the authorization of a project subject to the assessment procedure under Section 23 of the JBNQA, certain activities that would have once been subject to authorization under section 22 of the *Environment Quality Act* will now, under the draft REAFIE, be eligible for declarations of compliance or exemptions. Given the distinct biophysical and social characteristics of the northern environment, this represents a significant change to the applicable regime.

1.1.1. Access to information regarding authorized activities

The KEAC understands that new digital processes for submitting authorization applications and declarations of compliance will facilitate the uploading of documents and information to the online public register of the Ministère de l'Environnement et de la Lutte contre les changements climatiques (environment and the fight against climate change, MELCC). However, to ensure that municipalities can quickly access the information and report any irregularities related to environmental standards, the information will need to be uploaded to the register in a timely manner. In addition, as a result of the numerous activities now qualifying for exemption, regional authorities will find themselves lacking information about certain activities in the region, specifically those that may take place in proximity to each other and lead to cumulative impacts.

1.1.2. Definition of municipality

The draft REAFIE creates obligations for the applicants for authorization and declarants towards municipalities concerned by the development of an activity (e.g. sections 63, 76 and 94). Pursuant to section 408 of the *Act respecting Northern Villages and the Kativik Regional Government*, the Kativik Regional Government (KRG) is considered a municipality under the *Environment Quality Act*. This detail may easily be overlooked by project proponents. To ensure that the KRG is clearly identified as a municipality, the KEAC strongly recommends that a definition of “municipality” be added to section 2 of the draft REAFIE. This will signal to applicants for authorization and declarants that they have obligations towards the KRG, e.g. the obligation to send the description of a contaminated soil treatment, transfer or storage project (section 94).

1.1.3. Wetlands and bodies of water in Nunavik

The KEAC recognizes that the draft REAFIE places additional and necessary emphasis on the presence of wetlands and bodies of water on or nearby activity sites. The protection of wetlands and bodies of water is a major concern for the KEAC as it is tied to the practice of subsistence activities, which is a guaranteed right of Inuit and Naskapi under the JBNQA and the *Northeastern Québec Agreement*. The issue of wetlands and bodies of water is particular in Nunavik because, although they are ubiquitous, they are not well studied or mapped. In sections 3 (subparagraph (4) of the first paragraph), 9 and 40 (subparagraph (5) of the first paragraph), the description of wetlands in Nunavik is in particular based on the *Guide d'identification des milieux humides du Nord du Québec par images satellites – Projet du Plan Nord*. A major problem with this guide is that it applies to the drainage basin of La Grande Rivière, which is situated in the spruce-lichen forest bioclimatic domain. This region, which is forested and has no permafrost, is not very representative of Nunavik. A characterization of permafrost-zone wetlands must be prepared and adapted to Nunavik, in particular because natural water drainage behaves differently in these environments, not to mention the considerable seasonal variation. By way of an example, project proponents will be unable to provide precise data on groundwater levels in sand pits or quarries as required in subparagraph (3) of the first paragraph of section 109 because such levels are difficult to determine in permafrost zones. As well, some provisions may be difficult to apply in Nunavik since there are so many wetlands and bodies of water north of the 55th parallel. This is true, for example, for the condition described in subparagraph (4) of the first paragraph of section 73, since wetlands or bodies of water are often less than 30 m away. Finally, climate change is exacerbating the sensitivity of wetlands and bodies of water, in particular by affecting natural water drainage and the thickness of the active permafrost layer.

1.1.4. KEAC involvement during the development of implementation tools

The KEAC would like to continue to be involved during the development of implementation tools under the draft RAEFIE, such as the preparation of guidelines and forms for proponents with projects in the region covered by Section 23 of the JBNQA. The KEAC expects that these tools will permit the proponents to understand that the northern environmental and social impact assessment and review procedure (Title II, *Environment Quality Act*) must be completed prior to submitting applications for a ministerial authorization, declaration of compliance or exemption.

1.2. Specific Feedback: Draft REAFIE

1.2.1. Part I, Title II – Scope and Particular Provisions

The details of the provisions applicable in Nunavik are set out in sections 47 and 48. The KEAC is of the opinion that these specific rules would be more obvious for project proponents if they were

stated earlier in the text, by adding a section in Part I, Title II entitled Scope and Particular Provisions. The wording of this section could be as follows: “This Regulation applies subject to the particular provisions applicable to the James Bay and Northern Québec region established by Title II of the Act”. As not all applicants for authorization and declarants are familiar with the specific requirements of the environmental and social impact assessment and review procedure north of the 55th parallel, this addition would allow them to become informed on consultation of the section of the regulation concerning its scope.

This comment regarding the scope is extremely important given the numerous differences that exist between the activities subject to the regime established under the JBNQA (steps to be carried out and conditions to be followed) and the rules proposed under the draft REAFIE. For example, subparagraph (5) of the first paragraph of section 50 of the draft REAFIE specifies that technical surveys conducted prior to a project are generally exempt. In Nunavik however, additional restrictions do apply for mining activities. Specifically, only air or ground reconnaissance, surveying, mapping and core sampling by drilling are permitted without the preparation of an impact statement under Schedule 1 of Section 23 of the JBNQA. Therefore, certain activities may be exempt in southern Québec but not north of the 55th parallel. The opposite may also be true.

Section 10 provides that applicants for authorization must submit their applications electronically. The KEAC recommends that these forms be available in English so that they may be more accessible to Inuit and Naskapi living in the region.

1.2.2. Part I, Title III – Information and Documents relating to an Activity

Section 13 provides that more supporting documents of an application for authorization or declaration of compliance will be made public, with a few exceptions. When traditional knowledge is contained in an application for authorization, the KEAC recommends that the permission of the custodians of this knowledge be obtained prior to it being made public.

Pursuant to section 16, an application for authorization must include information about the environmental characteristics affected by the project, so as to enable the MELCC to acquire knowledge about the biophysical realities of Nunavik. The KEAC is of the opinion that some terms used in subparagraph (2) of the second paragraph should be clarified in order to preclude major omissions. More specifically, the term “specific habitats” is too vague because, in a given area, a specific habitat may not necessarily be so year-round. As several wildlife species harvested by Inuit and Naskapi are migratory, a new activity could potentially affect the migratory paths or reproductive cycles of these species. Since access to these resources is a guaranteed right of Inuit and Naskapi, in particular on category II lands (paragraph 23.2.2, JBNQA), the KEAC recommends that the terms used should be clarified in order to denote wildlife species, even if the species is only present seasonally.

Pursuant to subparagraph (2) of the first paragraph of section 17, an application for authorization must describe the anticipated environmental impacts of the project. The KEAC has noted that requirements concerning impacts on the human environment (e.g. landscapes, access to and use of the area, traditional and subsistence activities, social impacts) and information about the presence and activities of Indigenous communities have been omitted. For example, the information required does not include mention of the presence of significant cultural sites, such as burial grounds, camps, subsistence hunting and fishing areas. In accordance with sustainable development and further to one of the objectives of Section 23 of the JBNQA which involves minimizing the negative impacts of development on the Indigenous people and the wildlife resources (paragraph 23.2.2, JBNQA), the KEAC considers that, in Nunavik, the analysis of projects subject to ministerial authorization must also consider elements of the human and social environments of Inuit and Naskapi, and not solely the biophysical environment. The KEAC therefore recommends that subparagraph (2) of the first paragraph of section 17 be reworked to include anticipated project impacts on the human environment.

1.2.3. Part II, Title I, Chapter I – Activities covered by an Environmental Impact Assessment and Review Procedure

Comparing sections 45 (procedure for southern Québec) and 47 (procedure for Nunavik) of the draft REAFIE, the KEAC noted that, pursuant to section 45, some activities will not be eligible for declarations of compliance, while equivalent provisions do not appear in section 47. Consequently, more ministerial authorizations will be required for projects under the procedure for southern Québec than for projects under the procedure for Nunavik. Even though the Kativik Environmental Quality Commission (KEQC) is able to regulate all aspects of a project through its decisions, the KEAC is of the opinion that similar projects situated in different regions of Québec will, as a result, be dealt with differently. In addition, since environmental monitoring is proportional to the number of ministerial authorizations, it may be expected that fewer inspections will be carried out in Nunavik, even though the number of inspections carried out in the region is already very low.

The practice of hunting, fishing and trapping activities is an exclusive right of Inuit and Naskapi on category II lands around the northern villages. The KEAC believes that special attention must be given to the protection of these areas.

In order to achieve improved control and adequate protection of the natural and social environments on Category II lands, the KEAC recommends the following provision be added after the second paragraph of section 47: “Notwithstanding the second paragraph and unless covered by a contrary decision pursuant to sections 159 and 195 of the Act, activities on category II lands are not eligible for a declaration of compliance and are not exempted activities”.

1.2.4. Part II, Title I, Chapter III – Generally Exempted Activities

The term “linear infrastructure” is broadly defined in section 3 as referring “to a road infrastructure, oil pipeline, gas pipeline, or a power transmission or distribution line or telecommunications line and its right of way”. Subparagraph (6)(d) of the first paragraph of section 50 stipulates that the laying out, maintenance and dismantling of linear infrastructure are generally exempt activities when not involving work in wetlands. The KEAC is of the opinion that the scope of this exemption is too broad given the environmental impacts of linear projects and should be limited. For example, a road can cut through an animal’s habitat or migratory path or a culturally important area for Inuit and Naskapi. In addition, the term “laying out” is ambiguous since it references a variety of activities. For example, it may be understood in the sense of “construction”. This term should be revised or defined so as to clarify and limit the scope.

1.2.5. Part II, Title II, Chapter III – Mining Activities

Subparagraph (5) of section 71 stipulates that a predictive noise study must be part of an application for ministerial authorization for a mining activity when a dwelling or public institution is located less than 1 km from a mine site. The KEAC is of the opinion that the term “mine site” should be defined so as to encompass all mining facilities that could potentially emit disturbing levels of sound, during exploration and exploitation phases, including workers camps, roads used by mine vehicles, as well as runways and helicopter landing pads. The KEAC recommends that the scope of these noise studies cover all the elements of this expanded definition of “mine site”.

1.2.6. Part II, Title II, Chapter IV – Hydrocarbons

Subparagraph (5) of section 75 stipulates that a predictive noise study must be part of an application for ministerial authorization for a hydrocarbon exploration, storage and production activity when a dwelling or public institution is located less than 1 km from a site. The KEAC recommends that the scope of these noise studies cover all facilities that could potentially emit disturbing levels of sound, including workers camps, roads used by mine vehicles, as well as runways and helicopter landing pads.

Section 76 stipulates that the applicant must inform and consult the public about hydrocarbon exploration work. In Nunavik, this type of project is first subject to the environmental and social impact assessment and review procedure. When a public consultation is conducted under this procedure, the applicant should not be required to repeat the consultation. A mechanism must therefore be provided to prevent the repetition of public consultations.

1.2.7. Part II, Title II, Chapter VII – Contaminated Soil Management

Section 94 is part of the subdivision entitled “Public consultation”. A careful reading demonstrates however that a public information process is in fact referred to. To comply with the title of subdivision, the KEAC recommends that the term “public information meeting” in subparagraph (3) of the second paragraph be replaced by “public consultation meeting”. In addition, when projects also involve KEQC hearings (procedure for Nunavik), a coordination mechanism must be provided to prevent the multiplication of public information and consultation sessions by different stakeholders, which can generate confusion in the concerned communities.

1.2.8. Part II, Title II, Chapter VIII – Cemeteries, Crematoriums and Alkaline Hydrolysis Establishments

The second paragraph of section 101 stipulates that a hydrogeological study of the land must be carried out where the application for authorization concerns the laying out and operation of a cemetery. In Nunavik, due to permafrost, graves in some cemeteries are situated at a very shallow depth. The KEAC recommends that permafrost and seasonal variations in the water regime be considered in the analysis of the hydrogeological study in order to eliminate contamination risks.

1.2.9. Part II, Title III, Chapter III – Hazardous Materials and Biomedical Waste Management

At present, a selective collection system does not exist in Nunavik. Household, institutional, and commercial waste, whether recyclable, compostable or reusable, are not sorted at the time of collection or upon receipt at local landfills. It is therefore burned according to the requirements of the *Regulation Respecting the Landfilling and Incineration of Residual Materials*. Although a few recovery and recycling actions are implemented in some villages, the majority of hazardous materials, such as propane tanks, drums of “waste” fluid, and end-of-life vehicles, are simply placed in piles in the landfills. Some enterprises with activities in the region abandon their hazardous materials in or near communities because of the high cost of returning them to a treatment facility in the south. Municipalities are forced to deal with this situation, but do not have the capacity to properly manage hazardous materials. Furthermore, management of these materials in the north require adapting to difficult conditions and often times projects fail to meet all the requirements of the southern model reflected in many regulations. The KEAC believes that a stricter framework is needed to enhance hazardous material management.

1.2.10. Part III – Administrative and Penal Provisions

When the REAFIE enters into effect, the MELCC expects that the annual number of applications for ministerial authorization will drop by 27%. To ensure that this reduction does not compromise environmental requirements, the REAFIE is intended to make project proponents take

responsibility for environmental protection. According to the KEAC, the best way to ensure that project proponents assume their responsibilities in Nunavik is to enhance environmental monitoring and considerably increase the number of inspections. There is currently a considerable shortfall in inspections carried out in Nunavik. The KEAC has observed on many occasions a worrying level of complacency among project proponents about environmental protection.

In addition, the KEAC is of the opinion that the administrative penalties provided under the draft RAEFIE are not sufficiently high to deter project proponents from violating environmental regulations. The cost of solutions that meet environmental standards can rapidly become exorbitant north of the 55th parallel. Stiffer penalties would encourage project proponents to integrate proper practices for their activities. In summary, a drop in the number of applications for ministerial authorization without a substantial increase in environmental monitoring and the implementation of administrative penalties risks to exacerbate non-compliance with environmental regulations north of the 55th parallel.

Although the KEAC fully understands the importance of the draft regulation for the purpose of modernizing environmental authorizations in southern Québec, the draft regulation was not written with Nunavik in mind. The application of some provisions in Nunavik is questionable, given the specific characteristics of the applicable legal regime under the JBNQA and the biophysical and social environments in the north. Certain activities have broader adverse impacts in particular on wildlife and the social environment in Nunavik than in southern Québec. The draft RAEFIE should provide a stricter and clearer framework for these situations.

2. Draft Regulation respecting Activities in Wetlands, Bodies of Water and Sensitive Areas (Projet de règlement sur les activités dans des milieux humides, hydriques et sensibles, RAMHHS)

2.1. General feedback: Draft RAMHHS

The KEAC supports the objectives of the draft RAMHS to reform the legal framework applicable to wetlands and bodies of water in order to modernize the measures that ensure their conservation and maintain and enhance their ecological functions. In its February 2018 letter to the MELCC Minister, the KEAC noted that Nunavik water resources and wetlands have not fully benefitted from this modernization exercise, despite the fact that the region possesses unique and fragile aquatic ecosystems, an environment in which Inuit and Naskapi practice traditional subsistence hunting, fishing, trapping and gathering activities. As such, implementation of the draft RAMHHS in Nunavik will be extremely complex for project proponents and municipalities. The draft RAMHHS contains not even a single occurrence of the term “permafrost”, despite the fact that frozen soil plays a major role in the hydrology of northern areas and adverse effects on permafrost

conditions are a major issue in the context of climate change. Numerous site development constraints in the northern villages due to topography and permafrost thawing, plus the variable areas of wetlands and bodies of water, make it difficult to comply with the different distances prescribed in the draft RAMHHS. The complexity of measures applicable to wetlands and bodies of water and the lack of environmental monitoring in Nunavik are all factors that will make application of the RAMHHS in Nunavik more difficult. Project proponents with activities in the north may not follow the regulations in effect.

2.2. Specific Feedback: Draft RAMHHS

2.2.1. Chapter I – General

Subparagraph (9) of the first paragraph of section 5 defines a road as “an infrastructure constructed for the purpose of an agricultural activity or forest management activity or for access to a lot”. In Nunavik, the movements of heavy equipment on the tundra are not regulated. These movements, which often involve mineral exploration and mining, scar the tundra permanently. The KEAC recommends that the definition of “road” be expanded to expressly include mining roads. The wording of an expanded definition could be: “A road is infrastructure constructed for the purpose of an agricultural, mining or forest management activity or for access to a lot”.

2.2.2. Chapter VI – Special Standards Applicable to Wetlands

Section 31 provides that motor vehicle races, rallies and competitions are prohibited in wetlands. In Nunavik, snowmobile races and rallies are common activities. Snowmobile and all-terrain vehicle trails crisscross the territory. Since wetlands are both ubiquitous and poorly mapped, section 31 will have an overbroad impact on the traditional activities of the communities of Nunavik.

Section 32 stipulates that the construction of roads and highways may only be carried out more than 30 m from open peatland. This type of wetland is prevalent in Nunavik. As stated above, the construction of new roads is often related to mining-sector activities and this trend could grow in the future. The inclusion of mining roads in the definition of “road” in section 5 would ensure enhanced protection for open peatland in Nunavik.

2.2.3. Chapter VII – Special Standards Applicable to Certain Sensitive Areas

The first paragraph of section 35 prohibits motor vehicle races, rallies and competitions on dunes, beaches and offshore bars. As stated above, snowmobile races and rallies are common activities in Nunavik. In the region, it would be difficult to completely avoid dunes, beaches and offshore bars due to the prevalence of these features and topographical constraints in the territory.

The second paragraph of section 35 prohibits the movement of motor vehicles on dunes. Trails on the Îles-de-la-Madeleine (subparagraph (1)) and movements required to carry out work (subparagraph (2)) are exemptions under this paragraph. Some northern villages and traditional areas used for the practice of subsistence activities are characterized by dunes. The KEAC is of the opinion that a third subparagraph must be added to the second paragraph of section 35 to exempt movements for the purpose of traditional and subsistence activities in the north by Inuit and Naskapi.

2.2.4. Chapter VIII – Monetary Administrative Penalties

Section 39 provides monetary administrative penalties of between \$1,500 to \$7,500 if a wetland or body of water is not restored. The KEAC is of the opinion that this amount is too low to serve as a deterrent in Nunavik, where the cost of restoration work of wetlands and bodies of water is very high. As well, penalties will need to go hand-in-hand with a substantial increase in environmental monitoring and inspections to ensure adequate protection of wetlands and bodies of water in Nunavik. Without increased monitoring, it is possible that several provisions of the draft RAMHHS will not be followed in Nunavik. For example, section 8 stipulates that, where ruts are formed by the movement of machinery, the areas affected must be restored to their original condition. For its part, section 12 stipulates the conditions applicable to restoration work at the end of any intervention in wetlands and bodies of water. The KEAC has doubts that the provisions contained in sections 8 and 12 will be followed, unless increased inspections go along with implementation of the RAMHHS.

3. Conclusion

The KEAC is an advisory body to responsible governments on matters related to environmental and the social protection in Nunavik. This consultation on the draft regulations resulting from the adoption of the *Act to Amend the Environment Quality Act* is an opportunity for the KEAC to reiterate that the region located north of the 55th parallel is facing significant environmental and social protection challenges.

The KEAC believes that a better link between the REAFIE and the environmental and social impact assessment and review processes provided for in Chapter 23 of the JBNQA would promote greater compliance with environmental regulations in Nunavik. Compliance with regulations would also be favoured if the RAMHHS considered the particularities of wetlands and bodies of water and land occupancy north of the 55th parallel.

The KEAC hopes that the comments and suggestions made in this document will be examined during the completion of this regulatory project. It is with great interest that the KEAC observe and participate, if invited to do so, in the development of implementation tools for these regulations.