

May 14, 2018

Patrick Beauchesne

Deputy Minister

Ministère du Développement durable, de l'Environnement

et de la Lutte contre les changements climatiques

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**SUBJECT: KEAC comments and recommendations regarding certain regulations arising from the adoption of the bill to amend the *Environment Quality Act***

Dear Sir:

On February 14, 2018, 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) published 24 draft regulations to implement the new *Environment Quality Act*. In the framework of this major reform, the KEAC would like to provide feedback on the *Regulation respecting Ministerial Authorizations and Declarations of Compliance in Environmental Matters* and on the *Regulation respecting Sand Pits and Quarries.*

***A- Regulation respecting Ministerial Authorizations and Declarations of Compliance in Environmental Matters***

The *Regulation respecting Ministerial Authorizations and Declarations of Compliance in Environmental Matters* contains provisions applicable to activities subject to ministerial authorizations pursuant to section 22 of the Act (Schedule I, Regulation), to activities eligible for declarations of compliance (Schedule II, Regulation), and to activities exempt from ministerial authorizations (Schedule III, Regulation). It specifies the activities contemplated under these three categories according to environmental risk.

The linkage between the regime created under the new Act, its related regulation and the environmental and social impact assessment and review procedure under Section 23 of the *James Bay and Northern Québec Agreement* (JBNQA) has sparked concerns regarding environmental protection in Nunavik.

Specifically, following the authorization of a project subject to the assessment procedure under Section 23 of the JBNQA, certain activities will no longer require authorization pursuant to section 22 of the Act but, rather, will be eligible for declarations of compliance or will be exempt. This represents a significant change in the regime applied in the north, given the region’s distinct biophysical and social characteristics. This situation will moreover limit the capacity of regional bodies to be informed of certain kinds of activities carried out in the region.

For its part, section 12 of Schedule I requires an authorization for outdoor used tire storage sites containing at least 2,000 tires. First, the Regulation should specify whether the provision applies to new or existing storage sites. In Nunavik, progress has been made in recent years with waste reduction, recycling and residual materials management. Notwithstanding, much more work remains to be done and RECYC-QUÉBEC provides no support to the northern villages. The accumulation of used tires in the communities is therefore difficult to avoid.

**Activities eligible for declarations of compliance and those exempt**

As part of a review of the list of activities eligible for declarations of conformity and the list of activities exempt from ministerial authorizations, the KEAC noted that some of the activities will have more significant impacts in Nunavik than in southern Québec. It believes that these activities should be more closely controlled by the MDDELCC. Given that Nunavik is a vast inhabited region, that the climate is much harsher, that there is permafrost, and that the communities are remote and far from urban centres, the KEAC is of the opinion that some activities, specifically those listed below, will have impacts that cannot be qualified as low or negligible and should therefore be subject to ministerial authorization in order to evaluate in advance their potential environmental impacts and ensure enhanced long-term management.

* Declaration of Compliance, Schedule II, Division III – Hazardous Materials

Section 13 – Storage of hazardous materials

In Nunavik, hazardous residual materials are normally sent to local landfills rather than being properly sorted and treated. Some southern businesses with activities in the region abandon their hazardous residual materials in the communities given the high costs involved in shipping these materials back south. This situation causes municipalities inconveniences. Unfortunately, they do not possess the resources to properly manage hazardous residual materials. The KEAC feels that stricter control is necessary to improve the management of these materials. Ministerial authorizations would therefore seem to be more appropriate than certificates of compliance.

* Declaration of Compliance, Schedule II, Division VII – Mining Activities

Section 19 – Drilling work in wetlands and bodies of water to explore for mineral substances

It is the opinion of the KEAC that any drilling work carried out in or near wetlands or bodies of water can have adverse effects due to the fragility of the environment, as well as the presence of spawning sites, camps or other important sites for Inuit and Naskapi activities. If drilling work is carried out in a habitat that is essential for the lifecycle of a wildlife species important to Inuit or Naskapi, such as salmon or arctic char, it could impact on their right to hunt and fish. Ministerial authorizations would permit better control of these activities.

* Exemption, Schedule III, Division V – Wetlands and Bodies of Water

Section 27 – Bridge construction, road maintenance

As with mining activities, road infrastructure development and maintenance work could have adverse effects if carried out near spawning sites, calving grounds or important sites for Inuit or Naskapi, such as burial sites and hunting or fishing areas. As well, the sites of such activities may impact on access to the territory, tranquility, the supply of traditional foods and important cultural sites, which are determining factors in social impact assessment, that should be taken into account beforehand through ministerial authorizations.

**General Information and Documents**

Concerning the information and documents required for authorization applications to be considered admissible, the KEAC has noted the absence of requirements related to project impacts on human environments (ex. landscapes, access to the territory, social impacts) and information related to the presence of Aboriginal communities and traditional activities (section 7, Regulation). For example, the information required omits indications regarding the proximity of important cultural sites, such as burial sites, camps, subsistence hunting and fishing territories, and spawning sites. This is the case under section 38 concerning supplemental information and documents for mining activities. In line with sustainable development and pursuant to one objective of Section 23 of the JBNQA, which provides for minimizing the negative impact of development on the Aboriginal population and wildlife resources (paragraph 23.2.2, JBNQA), the KEAC considers that, in Nunavik, analysis of the projects subject to ministerial authorization must also contemplate the human and social environments of Inuit and Naskapi and not exclusively the biophysical environment.

The new regime introduces the principle of admissibility for projects subject to section 22 of the Act, i.e. applications must be complete before the MDDELCC will undertake analysis of any project. This requirement will likely improve the efficiency of departmental analysis. The KEAC believes that thought should be given to determining whether the same requirement could be applied for the environmental assessment procedure in the north since applications in these cases are first submitted to the MDDELCC.

***B- Regulation respecting Sand Pits and Quarries***

The *Regulation respecting Sand Pits and Quarries* applies to any pit or quarry operated for commercial or industrial purposes. The KEAC recognizes the efforts to establish a series of minimal distances, specifically those stipulated in sections 6 and following, between sand pits and quarries and neighbouring areas. Raw materials are increasingly rare in northern communities and natural deposits tend to be close to the surface and shallow. As Nunavik is not accessible by road or rail, it is impossible to ship raw materials from southern Québec. Municipalities are often forced to obtain these essential resources where they occur naturally. In this context, minimal distances can represent a considerable constraint. Compliance can be difficult in situations where the resource is not abundant or accessible.

As regards financial guarantees related to the re-development and restoration of pit and quarry sites, the KEAC is of the opinion that this requirement should not apply to borrow pits operated for community purposes by the northern villages north of the 55th parallel. It recommends that paragraph 3, section 26 be amended accordingly. The KEAC welcomes measures to ensure the restoration of sand pits and quarries at the end of their operation (sections 31 to 38). Although some restoration measures stipulated in section 35 are interesting for Nunavik, such as the revegetation of land stripped of its topsoil, the KEAC has noted that certain provisions may be difficult to implement. These include the provision “to create a self-sufficient natural ecosystem that is still growing 18 months after the closure of the quarry or sand pit” (subparagraph 2, paragraph 2, section 35). Given the very different climate and physical context in the north, vegetation takes longer to regenerate than in more southern parts of the province. The Regulation must therefore be amended to stipulate specific restoration measures for Nunavik.

**Conclusion**

Further to its analysis of the two above-mentioned regulations, the KEAC welcomes the reforms proposed by the government. It nonetheless remains essential to recall the primacy of Section 23 of the JBNQA and the importance granted to Inuit and Naskapi rights in the region, in particular the minimization of the negative impacts of development on Inuit and Naskapi, their traditional and subsistence activities, their economies and the wildlife upon which they depend (paragraph 23.2.2, JBNQA). The impacts of development projects implemented in Nunavik, including those subject to section 22 of the *Environment Quality Act*, should be subject to analysis of their impacts on the human environment in accordance with the JBNQA and not solely the biophysical environment as is currently the case by regulation.

The KEAC is also of the opinion that the criteria applied to determine activities eligible for declarations of compliance or exemptions are inadequate and do not take into account regional realities, which are very different than those in southern parts of the province. This statement also applies to sand pits and quarries.

Sincerely,



Alexandre-Guy Côté

Chairperson

KEAC