



21 May 2019

Caroline Blais, Director  
Forest Products and Fisheries Act  
Environmental Protection Branch  
Environment Canada / Government of Canada

SENT VIA EMAIL

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Dear Ms. Blais,

Re: Proposed Alton natural gas storage cavern development activities Regulations

East Coast Environmental Law and the Ecology Action Centre wish to express concerns about the Forward Regulatory Plan that Environment and Climate Change Canada has developed with respect to its proposed “Alton natural gas storage cavern development activities Regulations.”

Environment and Climate Change Canada’s Notice of Intent for these regulations indicates that the proposed regulations will be published in the *Canada Gazette, Part I* in 2019. At present, the Forward Regulatory Plan for the regulations states that “consultations with Indigenous Groups, the public and the Province of Nova Scotia are ongoing and will continue throughout the regulatory development process.” We are not aware of any consultations with the public that have occurred already or are currently “ongoing”, and we are profoundly concerned by the apparent dearth of opportunities for public engagement in this matter.

In recent email correspondence with Lisa Mitchell, Executive Director of East Coast Environmental Law, you indicated that the public consultation period following the publication of the proposed regulations in the *Canada Gazette, Part I* would be the primary opportunity for public engagement in this matter. You also noted, however, that if we had information that we would like to bring to your attention, we could send it to this address. We appreciate that invitation and are making use of it. With an eye to section 5.1.3 of the Government of Canada’s *Cabinet Directive on Regulation*, which states that “[s]takeholders should be given the opportunity to provide comments to departments and agencies on their Forward Regulatory Plans, once published, to inform the government on whether the regulatory priorities reflect the issues they face”, we would like to take this opportunity to request that the Forward Regulatory

Plan for the proposed “Alton natural gas storage cavern development activities Regulations” (“Alton gas Regulations”) be revised to include:

- the provision of a high-level consultation document for interested parties before pre-publication in the *Canada Gazette, Part I*;
- the provision of a detailed consultation document for interested parties before pre-publication in the *Canada Gazette, Part I*;
- information sessions with interested parties before pre-publication in the *Canada Gazette, Part I*; and,
- a public comment period of at least 60 days or more following pre-publication in the *Canada Gazette, Part I*.

The Notice of Intent for the proposed “Alton natural gas storage cavern development activities Regulations” indicates clearly that these regulations will apply exclusively to development activities by Alton Natural Gas at the Alton Natural Gas Storage Project site. We understand that if these regulations are created, it will be the first time that an effluent regulation under the *Fisheries Act* has been created to enable a single project by a single industrial operator. We are aware that existing industry-wide effluent regulations under the Act have occasionally been amended to accommodate activities proposed by individual operators; however, the creation of standalone regulations that deal in their entirety with a site-specific project would set a remarkable precedent for regulation under the Act.

The brining activities that Alton Natural Gas proposes to conduct in the Sipekne’katik (Shubenacadie) River are undeniably controversial, and they have inspired repeated calls from multiple quarters for caution, care, and fair process. Mi’kmaq have raised concerns about the adequacy of the constitutionally-required consultation that the Government of Nova Scotia has facilitated, along with concerns that the proposed brining activities will harm the riverine ecosystem and violate Mi’kmaw Aboriginal and treaty rights. We share those concerns, and we urge Environment and Climate Change Canada to demonstrate respect for Mi’kmaw rights in whatever decisions it makes moving forward. Additionally, we know that other communities, individuals, and organizations throughout Nova Scotia wish to engage in this matter, and we believe that the processes that Environment and Climate Change Canada currently has in place for public engagement will offer restrictive opportunities to do so.

Environment and Climate Change Canada’s *Forward Regulatory Plan 2019 to 2021* identifies four ongoing regulatory initiatives under the *Fisheries Act* in addition to the proposed “Alton natural gas storage cavern development activities Regulations.” They are:

- proposed “Amendments to list water bodies on Schedule 2 of the Metal and Diamond Mining Effluent Regulations”;
- proposed “Coal Mining Effluent Regulations”;
- proposed “Regulations Amending the Deposit Out of the Normal Course of Events Notification Regulations”; and,
- proposed “Regulations Amending the Pulp and Paper Effluent Regulations.”

Strikingly, the Forward Regulatory Plans for each of these four initiatives either record or anticipate greater opportunities for public consultation than those contemplated by the Plan for the proposed “Alton natural gas storage cavern development activities Regulations.”

Two salient examples are the Plans for the proposed “Coal Mining Effluent Regulations” and “Regulations Amending the Pulp and Paper Effluent Regulations.” The Plan for the proposed “Coal Mining Effluent Regulations” indicates that consultations with “relevant stakeholders” were held in 2017 and 2018, while teleconferences providing updates to stakeholders were held in 2018 and 2019. Publication of the proposed regulations in the *Canada Gazette, Part I* is anticipated in 2020, meaning that a targeted consultation period roughly three years long will have occurred before the proposed regulations are published. The Plan for the proposed “Regulations Amending the Pulp and Paper Effluent Regulations” indicates that both a high-level consultation document and a detailed consultation document were provided to “interested parties”, and the Plan also indicates that information sessions have already occurred, while others are anticipated in the near future.

We also note that among the public comment periods that are anticipated by the *Forward Regulatory Plan 2019 to 2021*, the proposed “Alton natural gas storage cavern development activities Regulations” have the shortest anticipated period. The Forward Regulatory Plans for the proposed “Coal Mining Effluent Regulations”, “Regulations Amending the Deposit Out of the Normal Course of Events Notification Regulations”, and “Regulations Amending the Pulp and Paper Effluent Regulations” all indicate that Environment and Climate Change Canada intends to provide a 60-day comment period after the proposed regulations are published in the *Canada Gazette, Part I*. By contrast, the Plan for the proposed “Alton natural gas storage cavern development activities Regulations” indicates that Environment and Climate Change Canada intends to provide a 30-day comment period after the proposed regulations are Gazetted.

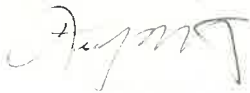
The anticipated public comment period for the proposed “Alton natural gas storage cavern development activities Regulations” is significantly shorter than the comment periods anticipated for the other regulatory initiatives named above. We recognize that section 5.4.1 of the *Cabinet Directive on Regulation* indicates that the standard comment period following publication in the *Canada Gazette, Part I* is 30 days; however, we find it striking that all of the other comment periods that are anticipated in the *Forward Regulatory Plan 2019 to 2021* are twice the length of that standard. This suggests that the proposed “Alton natural gas storage cavern development activities Regulations” are being assigned the minimum public comment period required, in stark contrast to other regulatory initiatives that are being undertaken contemporaneously.

The brining activities that Alton Natural Gas proposes to conduct in the Sipekne’katik River are controversial, and, to date, the public has had limited opportunities to engage in the relevant regulatory processes. It has been more than ten years since Nova Scotia’s Minister of Environment and Labour issued an environmental assessment approval for the undertaking with which the brining activities are associated, and the website of Nova Scotia Environment records that the narrow window for public comments during that environmental assessment process was open from November 23, 2007 to December 6, 2007. In our view, Environment and Climate Change Canada should not rely on a dated and restrained record of public commentary on the

proposed activities, but should instead institute a more robust process that will reap the benefits of timely public input today.

Environment and Climate Change Canada proposes to create precedent-setting regulations to enable Alton Natural Gas's proposed brining activities, and, at present, its Forward Regulatory Plan suggests that it will do so while offering minimal opportunities for public engagement in the process. The action that Environment and Climate Change Canada proposes to take is extraordinary, and the result of this regulatory planning process will impact all Nova Scotians. We urge Environment and Climate Change Canada to amend its Forward Regulatory Plan for the proposed "Alton natural gas storage cavern development activities Regulations" so as to incorporate greater opportunities for public engagement in this matter.

Sincerely,



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