



**SUBMISSIONS BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION
TO THE IMPACT ASSESSMENT AGENCY OF CANADA REGARDING
*DISCUSSION PAPER ON THE PROPOSED PROJECT LIST***

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PART I - INTRODUCTION

These are the submissions of the Canadian Environmental Law Association (CELA) in relation to the *Discussion Paper on the Project List Review (2024) (Discussion Paper)* released by the Impact Assessment Agency of Canada (IAAC).¹

(a) Overview of CELA’s Comments on the Discussion Paper

The *Discussion Paper* describes potential changes to the entries and thresholds set out in the current project list regulation (SOR/2019-285) under the recently amended *Impact Assessment Act (IAA)*.

CELA has carefully reviewed the *Discussion Paper*, and we attended a recent webinar in which IAAC representatives explained the proposed changes to the project list regulation and summarized other regulatory initiatives. We have also considered the advice provided in 2023 to IAAC from the Technical Advisory Committee (TAC) in relation to the Project List review.² Based on our review of the *Discussion Paper*, CELA has a number of significant unresolved concerns about the regulatory changes being proposed at this time.

For the reasons described below, CELA concludes that the proposed changes to the project list regulation represents an unfortunate step backwards from the current (and highly deficient) list being used under the *IAA*. In our view, the proposed changes unjustifiably omit far too many projects from *IAA* requirements, even if one accepts the *IAA*’s new (and narrowed) definition of “adverse effects within federal jurisdiction.”³

In addition, CELA concludes that the changes entries/thresholds were not derived in an open, traceable, and evidence-based decision-making process. In our view, the proposed exemptions and threshold criteria for certain designated project types lack credibility or scientific justification, particularly since the potential for adverse effects is often location-specific rather than dependent on the simple metric of production output or length of linear infrastructure.

¹ [Discussion paper on the review of the Physical Activities Regulations | Impact Assessment Agency of Canada-Canada.ca \(letstalkimpactassessment.ca\)](https://www.letstalkimpactassessment.ca).

² [Summary of Advice to Agency on Project List Review \(open.canada.blob.core.windows.net\)](https://open.canada.ca/blob/core/windows.net).

³ *IAA*, section 2.

Accordingly, CELA's overall conclusion is that the regulatory proposals in the *Discussion Paper* are inadequate, unintelligible and unacceptable from a public interest perspective. Therefore, CELA recommends that IAAC should reconsider, revise and re-consult on more appropriate revisions to the Project List in an open, accessible, and transparent manner.

(b) CELA's Experience in Environmental Assessment

CELA is a public interest law group founded in 1970 for the purposes of using and enhancing environmental laws to protect the environment and safeguard human health. Funded as a specialty legal aid clinic, CELA lawyers represent low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental and public health issues.

For example, CELA has participated in various administrative and judicial proceedings under the IAA and its predecessors (e.g. *CEAA 2012*, *CEAA 1992*, and the *Environmental Assessment and Review Process Guidelines Order*). CELA also intervened in the constitutional reference on the IAA and project list regulation conducted by the Alberta Court of Appeal, and we participated in the subsequent appeal heard and decided by the Supreme Court of Canada in 2023.

On the basis of our decades-long experience in environmental assessment (EA) matters, CELA has carefully considered the *Discussion Paper* from the public interest perspective of our client communities, and through the lens of ensuring access to environmental justice.

PART II - THE PROPOSED PROJECT LIST CHANGES

(a) Legal Background: The Continuing Debate over Appropriate Assessment Triggers

For over 20 years, the application of *CEAA 1992* was triggered by the exercise of certain powers, duties, or functions (not a specific Project List), and an EA was required when a federal authority:⁴

- acted as the proponent of the project;
- made or authorized payments, loan guarantees, or other financial assistance that allows the project to proceed;
- sold, leased, or otherwise disposed of federal lands in order to enable a project to proceed; or
- issued a federal permit, license, or approval that was prescribed by the Law List regulation.⁵

In CELA's experience, these four triggers worked reasonably well to ensure that an appropriate level of assessment (e.g. screening, comprehensive study, or review panel) was carried out during the project's earliest planning stages, and before irrevocable decisions were made by federal authorities.⁶

Nevertheless, CELA acknowledges that *CEAA 1992* was not problem-free, and that there were notable instances where *CEAA 1992* requirements were ignored or misinterpreted by federal

⁴ *CEAA 1992*, section 5.

⁵ SOR/94-636.

⁶ *CEAA 1992*, section 11.

authorities and proponents.⁷ However, CELA's overall conclusion is that the *CEAA 1992* regime was a vast improvement over the *EARPGO*, and placed federal EA requirements on a solid legislative foundation.

In 2012, however, the federal government decided to repeal *CEAA 1992* and replace it with *CEAA 2012*, which jettisoned the above-noted EA triggers in favour of a regulatory Projects List. At the time, CELA filed submissions which identified the serious shortcomings in *CEAA 2012*⁸ and numerous deficiencies in the underlying Project List,⁹ many of which have unfortunately been carried forward into the *IAA* Project List.

These and other concerns about the *CEAA 2012* regime were validated in 2017 by the current government's independent Expert Panel that reviewed and consulted upon the need to upgrade federal EA processes in order to regain public trust. Among other things, the Expert Panel concluded that new IA legislation was required in Canada in order to focus on sustainability considerations, particularly during project-level IAs.¹⁰

In addition, the Expert Panel recommended that the new assessment regime should contain a broad and inclusive approach to defining matters that engaged federal jurisdiction. For example, the Expert Panel recommended that federal IAs should be conducted:

... on a project, plan or policy that has clear links to the matters of federal interest. These federal interests include, at a minimum, federal lands, federal funding, and federal government as proponent, as well as:

- species at risk;
- fish;
- marine plants;
- migratory birds;
- Indigenous Peoples and lands;
- greenhouse gas emissions of national significance;
- watershed or airshed impacts crossing provincial or national boundaries;
- navigation and shipping;
- aeronautics;

⁷ See, for example, *MiningWatch Canada v. Canada (Fisheries and Oceans)*, [2010] 1 SCR 6.

⁸ See <https://www.cela.ca/sites/cela.ca/files/CELA%20Ltr%20to%20P.M.%20Harper%20-%20Bill%20C-38%20%28June%202012%29.pdf>.

⁹ See <https://www.cela.ca/sites/cela.ca/files/900DraftCEAARegs.pdf>.

¹⁰ Expert Panel Final Report (2017), pages 2 to 6.

- activities crossing provincial or national boundaries and works related to those activities;
or
- activities related to nuclear energy.

The careful consideration and incorporation of federal jurisdiction is the starting point from which to answer the question of when federal IA should apply (emphasis added).¹¹

Furthermore, the Expert Panel recommended a broad effects-based approach to triggering IA requirements:

The starting point for requiring a federal IA is to define “project” as a proposed physical activity that affects one or more matters of federal interest. Effects on federal interest should be the foremost factor when determining whether a federal IA is required...

A new Project List should be created that would include only projects that are likely to adversely impact matters of federal interest in a manner that is consequential for present and future generations. Projects on the new Project List would automatically require a federal project IA. For projects not on the new Project List, two other triggering mechanisms should be provided...

Compared to the current approach [under *CEAA 2012*], the proposed new approach will require more project IAs.¹²

However, despite the Expert Panel’s sound advice on using broadly framed IA triggers, the Government of Canada recently amended the *IAA* to include a narrow definition of “adverse effects within federal jurisdiction,” and adopted the same inadequate Project List mechanism under *CEAA 2012* for triggering assessment requirements. Moreover, IAAC’s currently proposed changes to the entries/thresholds in the project list regulation will undoubtedly result in fewer – not more – assessments under the *IAA*.

(b) The Questionable Criterion used to Amend the IAA Project List

As described above, the *IAA* perpetuated the narrow *CEAA 2012* approach of developing a regulatory list prescribing a relatively small number of project types that may trigger an IA under the Act. In particular, amended subsection 109(b) of the *IAA* empowers the federal Cabinet to pass regulations specifying physical activities (or classes of physical activities) as “designated projects” if they may “cause adverse effects within federal jurisdiction or direct or incidental adverse effects.”

As noted in CELA’s brief¹³ on the 2018 *Consultation Paper* on the project listing approach, section 109(b) and the sparse *IAA* definition of “designated project” do not contain any express statutory criteria to drive the project listing process. Therefore, it appears that even in the wake of last year’s

¹¹ Expert Panel Final Report (2017), page 18.

¹² *Ibid*, pages 56 to 57.

¹³ See <https://www.cela.ca/CELASubmissionsReProjectListingCriteria>.

Supreme Court ruling, the federal Cabinet enjoys considerable discretion to list environmentally significant activities as “designated projects” under the Act, provided that such projects may cause non-negligible adverse effects within federal jurisdiction.

In CELA’s view, there is nothing in the preamble, purposes, or provisions of the *IAA* that compels the federal Cabinet to only designate a relatively small subset of the so-called “worst” projects that may adversely affect areas of federal interest.¹⁴ To the contrary, the *IAA*’s statutory commitments to sustainability, precaution, environmental protection, and reconciliation with Indigenous Peoples inevitably leads to the opposite conclusion, *viz.*, that a more inclusive and comprehensive approach to triggering IA requirements should be undertaken under the Act. Thus, CELA submits that the project-listing exercise under the *IAA* should not be undertaken in a manner that thwarts or frustrates the public interest purposes of the Act.

CELA’s additional comments on how this “worst” criterion is misapplied in the *Discussion Paper* are set out below. The net result is that the proposed changes to the Project List still exclude too many environmentally significant activities, and is too narrowly framed to capture the full range of projects that may adversely affect areas of federal jurisdiction.

In summary, CELA concludes that the *Discussion Paper*’s suggestion that IAs should only be required for projects having the “greatest potential” for adverse effects in areas of federal jurisdiction” is a normative statement that has no legislative basis in the *IAA*, and is clearly inconsistent with the recommendations of the federal government’s own Expert Panel.

Similarly, we note that the *Discussion Paper* purports to use “complex” as a further qualification on the type of adverse effect that may warrant the designation of a particular project.¹⁵ The word “complex” does not appear anywhere in subsection 109(b) or the definition of “adverse effect within federal jurisdiction.” Accordingly, there is no statutory basis for using “complex” as a lens or filter for assessing potential adverse effects within federal jurisdiction that may be caused by physical activities.

(c) The Discussion Paper Improperly Conflates IA with Regulatory Requirements

Aside from invoking the problematic “greatest potential” and “complex” criterion, the *Discussion Paper* applies an additional – and highly inappropriate – constraint on the project-listing exercise under the *IAA*.

In particular, the *Discussion Paper* intends to focus “resources where federal impact assessment will add value over other regulatory processes and as such reduces duplication.”¹⁶ In short, it appears that the default position in the *Discussion Paper* is that projects should only be subject to licensing requirements under the applicable regulatory regimes, unless an IA somehow adds undefined “added value.”

¹⁴ *Discussion Paper*, pages 8 and 10.

¹⁵ *Discussion Paper*, pages 8, 11, 39, and 40.

¹⁶ *Discussion Paper*, page 10.

However, a careful examination of the *IAA* reveals that no such Parliamentary intent is expressed in the purposes of the Act or anywhere else in the original or amended legislation. Similarly, this so-called “value-added” consideration was not explicitly mentioned in the initial 2018 *Consultation Paper* on the project-listing approach. Accordingly, if the “value-added” factor is now serving as a *de facto* condition precedent for designating projects under the *IAA*, then CELA strongly objects to this dubious and highly subjective approach.

More fundamentally, under the guise of “reducing duplication,”¹⁷ the *Discussion Paper* improperly conflates IA with regulatory requirements under federal or provincial law. This unfortunate merging of these two distinct processes permeates much of the *Discussion Paper*, and undoubtedly goes a long way in explaining the fundamental inadequacy of the proposed changes to the Project List.

In CELA’s view, IA is an environmental planning process that addresses projects’ larger policy, socio-economic, and sustainability implications, while regulatory processes are more narrowly focused on the technical acceptability of proposed facilities, equipment, or activities. As the Expert Panel correctly concluded, “regulation and assessment are two quite distinct functions that require different processes and expertise.”¹⁸ In short, IA is not synonymous with regulatory regimes, and these terms should not be used interchangeably in the *Discussion Paper*.

In addition, the *Discussion Paper* fails to provide any evidence or particulars that demonstrate why other regulatory regimes should be relied upon instead of the IA process for significant non-designated projects, including nuclear energy facilities that IAAC is now proposing to exempt from the *IAA*. For example, the *Discussion Paper* discloses no indicia, benchmarks, or analysis used by the Agency to evaluate the robustness of regulatory regimes, or to assess the efficacy, fairness, or credibility of federal lifecycle regulators.

On this latter point, CELA notes that the Expert Panel found on the evidence that there was widespread public distrust of lifecycle regulators for various reasons.¹⁹ There is nothing in the *Discussion Paper* that addresses or refutes the Panel’s critical findings. Nevertheless, the proposed changes outlined in the *Discussion Paper* appear to endorse such regulators as appropriate venues for the licensing of projects that, in CELA’s view, warrant IAs due to their environmental significance in areas of federal interest.

For example, CELA draws no comfort from the *Discussion Paper*’s assurance that *IAA*-exempted nuclear energy projects “would still be subject to Environmental Protection Reviews by the CNSC [Canadian Nuclear Safety Commission] under the NSCA [*Nuclear Safety and Control Act*].”²⁰ In CELA’s view, leaving non-designated nuclear reactors to be solely evaluated and licensed by the CNSC under the *Nuclear Safety and Control Act* (rather than the *IAA*) greatly diminishes

¹⁷ *Discussion Paper*, pages 4, 5 and 10.

¹⁸ Expert Panel Final Report (2017), page 50.

¹⁹ *Ibid*, pages 49 to 51.

²⁰ *Discussion Paper*, page 18.

participatory rights, and results in less robust assessments of the direct, indirect and cumulative effects of nuclear projects.²¹

Furthermore, the CNSC’s regulatory mandate does not include more broadly framed environmental planning issues, and there is no equivalent purpose in the CNSC’s enabling statute that requires projects to foster sustainability, consider effects on environment, health and socio-economic conditions, or consider alternatives to the undertaking.²² While these considerations are mandatory factors under section 22 of the *IAA*, they are not requirements under the *Nuclear Safety and Control Act*.

(d) The 2019 Project List is an Improper Starting Point under the IAA

The *Discussion Paper* is predicated on the erroneous assumption that the original Project List regulation under the *IAA* provides an appropriate “baseline” for determining which activities should – or should no longer – be caught by the *IAA*.

For example, there is nothing in the amended *IAA* which dictates that the current Project List should be retained and merely “revised.” In our view, the enactment of the 2024 amendments to the *IAA* should have been accompanied by a fresh new look at the activities which warrant an IA, irrespective of whether they are caught (or not) by the 2019 project list regulation. It may well have been expedient for the federal government to start with the initial Project List under the *IAA*, but there is nothing inevitable or inherently beneficial in using the current list as the basis for the new Project List under the *IAA*. In our view, it would be far more preferable for the federal government to start with a clean slate in terms of developing suitable project entries/thresholds under the *IAA*, rather than simply continuing or tweaking the deficient approach embodied in the existing project list regulation.

This is because the current regulation still excludes a large number of environmentally significant projects that warrant an IA, as described below. Thus, the current regulation cannot serve as an acceptable substitute for the preferable “all-in-unless-excluded” approach previously utilized under *CEAA 1992*. Moreover, the current regulatory focus on “major projects” overlooks the fact that medium- and small-sized projects (or groups of smaller projects in the same geographic area and timeframe) can also create direct, indirect, and cumulative effects in areas of federal interest which are both adverse and significant. This same concern was raised by the TAC in its advice to IAAC:

- The TAC raised concerns with using “major projects” for the basis of the list, since these projects may not capture major effects under federal jurisdiction nor major effects from smaller projects (i.e. how big the effects and not how big the project is).²³

²¹ See <https://www.cela.ca/CELASubmissionsReProjectListingCriteria> and <https://www.cela.ca/sites/cela.ca/files/FederalEADiscPaper-CvrLtrandSubmission.pdf>.

²² The CNSC has publicly recognized that they do not consider socio-economic aspects in their review of projects: see Canadian Nuclear Safety Commission (2018) Transcript of Proceeding dated 28 June 2018.

²³ See footnote 2, *supra*, page 1.

Even if one accepts the dubious proposition that only “major” projects should be assessed under the *IAA*, it is clear that there are a number of large-scale facilities and activities (e.g., decommissioning of nuclear facilities, refurbishment/life extension of existing nuclear power plants, etc.) which were inexplicably omitted from the current project list regulation. In 2013 and 2019, CELA identified these significant omissions in the Project List, and strongly recommended that these activities should be included in the project list regulation. However, this recommendation has not been acted upon by the federal government to date.

CELA’s updated candidates for priority listing are reproduced below in Appendix A, and CELA submits that they should be included in the amended *IAA* regulation since they undeniably have considerable potential to affect areas of federal interest. CELA further submits that there are other currently non-listed activities (e.g. the construction, operation and dismantling of small modular reactors, or large-scale projects requiring permits under the amended *Fisheries Act*) which should also be designated under the *IAA* regulation.

(e) Absence of Evidence: The Misapplication of the Project Listing Criterion

Arguably, one of the most objectionable aspects of the *Discussion Paper* is its failure to provide any rational, technically sound, or science-based justification for the proposed revisions to the entries/thresholds in the Project List. Even if one accepts that the “greatest potential” and “complex” criterion (or the “value-added” factor) are appropriate tests for designation under the *IAA*, there is a dearth of detail in the high-level *Discussion Paper* to explain why certain projects satisfied (or did not satisfy) these tests, or why certain thresholds are slated for revision by the *Discussion Paper*.

On this point, we note that the TAC advised IAAC that:

- Transparency is very important in the review process. The Agency needs to narrow the gap between what they know in the analysis and what the public understands/is shown.
- The TAC expressed interest in learning more about the criteria behind the focus on projects with the greatest potential for effects under federal jurisdiction and the added value of the IA.
- The TAC advised that these criteria should be disclosed and defined for the public during consultations.²⁴

Nevertheless, it appears that IAAC did not act on this advice adequately or at all, and the *Discussion Paper*’s proposed revisions to the Project List entries/thresholds have not been developed in a clear, understandable, and transparent basis.

This problem is compounded by the *Discussion Paper*’s suggestion that the new proposals are based on “IAAC experience in implementing the *IAA*, including trends in requests for Ministerial designation under s. 9, and projects for which IAAC determined that a full impact assessment was

²⁴ See footnote 2, *supra*, page 1.

not required following the planning phase under s.16” as well as “expert advice of federal departments.”²⁵ In CELA’s view, these closed-door deliberations are anything but transparent, and the resulting Project List revisions have not been accompanied by any compelling evidence or analysis in the *Discussion Paper* to justify the proposed entries/thresholds.

Accordingly, it is our respectful submission that the *Discussion Paper* attempts to place a veneer of scientific rigour, certainty, and objectivity over the proposed revisions to Project List entries/thresholds. However, this veneer is easily pierced when the proposals are closely scrutinized for any evidence-based reasoning that substantiates IAAC’s claims about the project types that should be included in (or excluded from) the amended Project List. Thus, in the absence of any supporting evidence, it appears to CELA that the *Discussion Paper* essentially reflects subjective opinions masquerading as fact.

CELA also points out that for some project types (e.g., new nuclear reactors), the chance of an accident or malfunction may be relatively low, but the catastrophic consequences of a worst-case scenario (e.g. unplanned release of radioactive substances from a cascading multi-reactor accident such as the Fukushima disaster) means that it would be prudent to apply IA requirements to all new reactor projects. However, the *Discussion Paper* inappropriately proposes wide-ranging exclusions for many large and small reactor projects, as described below.

In these circumstances, CELA submits that there is no air of reality to the *Discussion Paper*’s claim that designated projects have the “greatest potential” to cause adverse effects within federal jurisdiction, or conversely, that non-designated projects are environmentally benign undertakings that pose low (or no) risk to the environment, health, or socio-economic conditions. In CELA’s view, the *Discussion Paper*’s assurances about project-related risks (or lack thereof) are unpersuasive and unacceptable. Put another way, assertions of IAAC expertise, or purported exercises of professional judgment by governmental staff, are no substitute for robust, transparent, and evidence-based decision-making about project entries/thresholds.

Since the scientific or evidentiary basis for the draft Project List is not provided in the *Discussion Paper*, CELA remains highly concerned that the proposed entries/thresholds simply reflect the value judgments of (or political directions received by) the federal officials in charge of revising the Project List under the *IAA*. Thus, CELA concludes that the proposed Project List is as non-transparent, problematic, and contentious as the original 2019 Project List that emerged under the *IAA*.

Accordingly, CELA requests that the underlying evidence or analysis prepared by or for IAAC for the purposes of the revising Project List should be posted on the IAAC website or otherwise disclosed to CELA and to any other member of the public who requests such information.

(f) *The Proposed Entries/Thresholds: Problematic Nuclear Energy Examples*

It is beyond the scope of these submissions to comment on all of the new or amended entries/thresholds proposed in the *Discussion Paper*. Suffice it to say that in CELA’s view, the

²⁵ *Discussion Paper*, page 11.

Discussion Paper's curious choices to include or exclude certain project types are puzzling, inconsistent, and unjustified by science or supporting analysis. On this point, CELA has reviewed the forthcoming submission by the Working Group of RCEN Environmental Planning and Assessment Caucus, and we hereby adopt and commend the Working Group's findings, conclusions, and recommendations regarding the proposed revisions to the Project List entries/thresholds.

Nevertheless, CELA is compelled to specifically object to the *Discussion Paper's* proposed IAA exemptions for small modular reactors (SMRs) and large-scale nuclear reactors. In CELA's view, the *Discussion Paper's* short and superficial review of nuclear energy activities²⁶ does not provide any persuasive reasons or technical analysis to justify these proposals. This is particularly true in light of the technological variability of proposed SMR types in terms of fuel (e.g., enriched or re-processed), coolant materials (e.g., water, liquid metal or molten salt), and waste characteristics.

Nevertheless, the *Discussion Paper* proposes that the current Project List should be amended to:

- exempt all single SMR proposals using previously licensed technologies when proposed on Class 1A licensed sites; and
- explore increasing thresholds or other basis for exempting multiple SMRs using previously licensed technologies when proposed on Class 1A licensed sites.²⁷

Alarming, the *Discussion Paper* goes on to suggest an even broader set of exemptions:

- removing all SMR as well as large-scale nuclear reactors using known technologies (e.g., a technology licensed by CNSC) when proposed on Class 1A licensed sites; and
- exempting or scoping down assessments of nuclear projects using known technologies when proposed on brownfield fossil fuel electricity generating sites.

CELA submits that all of the above-noted exemption proposals are unacceptable, unjustified, and unduly risky as they expose residents and communities to significant environmental and human health impacts without an accompanying rigorous and participatory assessment process. In our view, SMRs are unproven technologies which, when paired with existing facilities, or when posed in new locations, present risks of accident in additional scenarios, greater and more diverse emissions and risks to human health and the environment, create new types of long-lived waste, and even in some cases create proliferation risks. Despite their jargonistic reference as "SMRs or small modular reactors," these are not low risk or even well understood technologies.

Furthermore, since many of the current licensed sites have never undergone an environmental assessment for the existing facilities, it should not be presumed that their locations are appropriate for siting any reactors, let alone new or additional reactor technology.

More fundamentally, the proposed exemptions for single or multiple SMRs and large-scale nuclear reactors appear to be premised on the *Discussion Paper's* suggestion that nuclear energy projects

²⁶ *Discussion Paper*, pages 16 to 18.

²⁷ *Discussion Paper*, page 19.

represent “clean growth” that should be “advanced” so that Canada can “meet its objective of moving the electricity grid towards net-zero by 2035 and achieving a net-zero emissions economy by 2050.”²⁸ This proposition has not been substantiated within the *Discussion Paper* and is contradicted by the available evidence and the track record of the CNSC to date.

In our view, the claim that nuclear energy projects are “clean” (i.e., emissions-free) and integral to mitigating climate change has been thoroughly debunked by industry experts, academics, and civil society organizations.²⁹ To the contrary, nuclear reactors – including SMRs – have been accurately described as slowing our collective response to climate change and increasing risk of weapons proliferation, because they are costly, unproven, and dangerous distractions from the societal priority of expediting renewable energy sources, improving energy efficiency, and enhancing energy conservation.³⁰

The *Discussion Paper* also asserts that the CNSC’s regulatory regime and industry oversight under the *Nuclear Safety and Control Act* “are internationally peer-reviewed and well-respected.”³¹ Since CELA and other non-governmental organizations have long identified significant shortcomings in nuclear emergency planning and related matters,³² we do not share the *Discussion Paper*’s unduly optimistic view of the CNSC’s alleged regulatory prowess. We further note that the *Discussion Paper*’s endorsement of the CNSC stands in stark contrast to the critical findings of the Expert Panel in relation to the lack of public trust in lifecycle regulators (including the CNSC), as discussed above.

In summary, CELA maintains that creating open-ended exemptions for nuclear energy projects simply because they are misperceived as “clean growth,” or happen to involve licensed technologies or sites, may create unintended consequences or intractable problems (i.e., by incentivizing nuclear proponents to cram as many SMRs or large-scale reactors onto a licensed site without considering or complying with IAA safeguards). While impact assessment is intended to implement a precautionary “look before you leap” approach, the proposed technology- and site-based exemptions for nuclear energy projects amount to “leap without looking” approach under the IAA.

Accordingly, CELA submits that it is incumbent upon IAAC to reconsider and revise the nuclear entries/thresholds based on cogent and compelling evidence, rather than uncritical acceptance of the CNSC’s self-serving (and industry-friendly) views on its effectiveness in regulating matters under the *Nuclear Safety and Control Act*.

More specifically, CELA submits that the Project List should not be amended to include these ill-conceived exemptions for nuclear energy projects. To the contrary, the Project List should be expanded to include additional types of nuclear facilities and activities, as described below:

- the site preparation for, and the construction, operation, and decommissioning of:

²⁸ *Discussion Paper*, page 17.

²⁹ M.V. Ramana, (2024) *Nuclear is Not the Solution: The Folly of Atomic Power in the Age of Climate Change*.

³⁰ *Ibid*; See also Primer: Small Modular Nuclear Reactors (SMRs) - Canadian Environmental Law Association (cela.ca); M. V. Ramana, *Nuclear is Not the Solution*, (2024) Verso Press.

³¹ *Ibid*.

³² See <https://www.cela.ca/test-emergency-planning-around-canadian-nuclear-plants>.

- one or more new nuclear fission or fusion reactors, including advanced reactors, small modular reactors (SMRs), very small modular reactors (vSMR), and micro modular reactors (MMR).
- facilities for heavy water production
- facilities for uranium enrichment or tritium removal
- the proposed refurbishment, expansion, or life extension of an existing nuclear generating station;
- the decommissioning or dismantling of any Class 1A or Class 1B nuclear facilities;
- the import, export, intra-provincial transport or interprovincial transport of low-, intermediate- or high-level radioactive wastes from a Class IA or IB nuclear facility to any other public or private facility for storage, processing, recycling or disposal purposes;
- the construction, operation and decommissioning of any of the following:
 - a new facility for the processing, reprocessing or separation of isotopes of uranium, thorium, or plutonium;
 - new facility for the manufacture of a product derived from uranium, thorium or plutonium;
 - a new facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium
- the construction, operation and decommissioning of either of the following:
 - a new or expanded facility for the storage of irradiated nuclear fuel or nuclear waste, outside the licensed boundaries of an existing nuclear facility, as defined in section 2 of the *Nuclear Safety and Control Act*, including a facility for the on-site storage of irradiated nuclear fuel or nuclear waste associated with one or more new fission or fusion reactors;
 - a new or expanded facility for the management or disposal of irradiated nuclear fuel or nuclear waste; and
- the expansion of an existing facility for the management or disposal of irradiated nuclear fuel or nuclear waste, including waste generated by the operation, refurbishment or decommissioning of nuclear facilities and waste arising from all components of the nuclear fuel chain.

(g) The Need for Meaningful Public Review of the Project List Regulation

The *Discussion Paper* correctly commits to the periodic review of the new Project List under the *IAA* in order to determine if further additions, deletions, or adjustments should be made.³³ However, the *Discussion Paper* proposes that such reviews would only be carried out once every five years. No rationale has been provided in the *Discussion Paper* to substantiate this timeframe, and no qualitative or quantitative benchmarks are provided in the *Discussion Paper* to help determine the effectiveness of the project list regulation once it is under review.

Given the novelty of certain aspects of the amended *IAA* regime, the central importance of the Project List to the overall IA process, and the existence of new and emerging environmental

³³ *Discussion Paper*, page 16.

technology (especially in the energy sector), CELA submits that the periodic regulatory review should proceed every three to four years.

In addition, the new *IAA* regulation should enable any person to formally apply to the Minister and Cabinet for proposed additions or revisions to the Project List between scheduled formal reviews. This mechanism would be in addition to the Ministerial to designate non-listed projects pursuant to s.9 of the *IAA*. The federal government should be required to decide public applications to amend the regulation, with reasons, within 90 days of receipt. If regulatory changes are to be undertaken as a result of an application, then public consultation, issuance of a Regulatory Impact Analysis Statement, and publication in the *Canada Gazette* should occur in due course.

CELA further submits that the periodic regulatory review should not be an internal “closed door” evaluation by the Minister, IAAC, or other federal officials. Instead, in accordance with the *IAA*’s commitment to meaningful public engagement, the review process should be open, participatory, and accountable. Among other things, timely public notices and appropriate comment opportunities (including webinars, workshops and public meetings across Canada) should be provided within the review process.

PART III - CONCLUSIONS

For the foregoing reasons, CELA submits that the proposed revisions to the project list regulation are unsupportable, unacceptable, and unjustified. We therefore recommend that the proposed revisions should be withdrawn by IAAC, and that renewed public and Indigenous consultations on a proper, inclusive, and scientifically defensible Project List should be undertaken forthwith.

In CELA’s view, the updated and expanded Project List must ensure that all environmentally significant activities which may adversely affect matters within federal jurisdiction are designated by regulation under the *IAA*. Where there is uncertainty regarding the nature, extent, frequency, mitigation, or significance of “adverse effects” associated with a particular activity, then, in accordance with the precautionary principle, the activity should be prescribed by the *IAA* regulation.

This prudent and inclusive approach to revising the Project List does not necessarily mean that an IA will be conducted in every instance where a listed activity is being proposed by a public or private proponent. As noted above, the *IAA* empowers IAAC to conduct a case-by-case screening of specific proposed projects in order to determine if, in fact, an IA should be required. Thus, it remains open to IAAC to dispense with an IA for a designated project.

CELA submits that from the public interest perspective, there is no downside in broadening the scope and reach of the *IAA* Project List to at least preserve the option of requiring an IA where necessary or desirable. In CELA’s view, the upfront inclusion of a greater range of activities in the *IAA* regulation would provide more certainty and predictability to both proponents and the public alike, as opposed to leaving certain activities off the list and leaving it to the Minister’s discretion to fill the gaps by making future case-specific orders that designate specific non-listed projects under section 9 of the *IAA*.

We trust that CELA's comments on the *Discussion Paper* will be taken into account as IAAC considers next steps in relation to revising the project list regulation under the *IAA*.

Please contact the undersigned if IAAC has any questions arising from this submission.



Richard D. Lindgren
CELA Counsel

September 26, 2024

APPENDIX A
CELA'S RECOMMENDED REVISIONS FOR EXPANDING
THE IAA PROJECT LIST

CELA's primary position is that the current *IAA* Project List is an inappropriate starting point for designating projects under the Act due to various gaps, shortcomings, and problems with the original list. In our view, the mandatory review of the Project List entries/thresholds should consist of a robust, participatory, and evidence-based exercise that takes a fresh look at a wide range of activities that warrant designation due to their potential non-negligible adverse effects within federal jurisdiction.

In the alternative, if the current *IAA* Project List is utilized as the basis for proposed revisions, then CELA submits that in addition to including and/or revising the entries/thresholds presently found in the Project List, priority should be given to prescribing the following activities as designated projects under the *IAA*.

- the site preparation for, and the construction, operation, and decommissioning of:
 - one or more new nuclear fission or fusion reactors, including advanced reactors, small modular reactors (SMRs), very small modular reactors (vSMR), and micro modular reactors (MMR).
 - facilities for heavy water production
 - facilities for uranium enrichment or tritium removal
- the proposed refurbishment, expansion, or life extension of an existing nuclear generating station;
- the decommissioning or dismantling of any Class 1A or Class 1B nuclear facilities;
- the import, export, intra-provincial transport or interprovincial transport of low-, intermediate- or high-level radioactive wastes from a Class IA or IB nuclear facility to any other public or private facility for storage, processing, recycling or disposal purposes;
- the construction, operation and decommissioning of any of the following:
 - a new facility for the processing, reprocessing or separation of isotopes of uranium, thorium, or plutonium;
 - new facility for the manufacture of a product derived from uranium, thorium or plutonium;
 - a new facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium
- the construction, operation and decommissioning of either of the following:
 - a new or expanded facility for the storage of irradiated nuclear fuel or nuclear waste, outside the licensed boundaries of an existing nuclear facility, as defined in section 2 of the *Nuclear Safety and Control Act*, including a facility for the on-site

- storage of irradiated nuclear fuel or nuclear waste associated with one or more new fission or fusion reactors;
 - a new or expanded facility for the management or disposal of irradiated nuclear fuel or nuclear waste;
- the expansion of an existing facility for the management or disposal of irradiated nuclear fuel or nuclear waste, including waste generated by the operation, refurbishment or decommissioning of nuclear facilities and waste arising from all components of the nuclear fuel chain.
- constructing, operating, modifying, or decommissioning an ethanol fuel production facility;
- constructing, operating, modifying, or decommissioning oil or gas development projects involving the following technologies:
 - (i) hydraulic fracturing (fracking);
 - (ii) exploratory drilling or seismic surveys for off-shore oil or gas deposits; and
 - (iii) steam-assisted gravity drainage oil sands projects.
- constructing, operating, modifying or decommissioning marine or freshwater aquaculture facilities;
- all physical activities prescribed by the previous *Inclusion List Regulations* (SOR/94-637);
- major works requiring permits under the amended *Fisheries Act* and *Canadian Energy Regulator Act*;
- constructing, operating, modifying or decommissioning facilities for carbon capture, storage, or sequestration;
- constructing, operating, modifying or decommissioning buildings, visitor facilities or infrastructure within protected federal lands (i.e. National Parks, National Park Reserves, National Marine Conservation Areas, National Wildlife Areas, Marine National Wildlife Areas, Marine Protected Areas, Migratory Bird Sanctuaries, etc.), such as:
 - (i) building new roads or rail lines, or widening/extending existing roads or rail lines; or
 - (ii) building or expanding golf courses, ski resorts, ski trails, or ancillary facilities.