SMA
Saskatchewan
Mining Association

1500 - 2002 Victoria Avenue
Regina, SK S4P 0R7
P 306-757-9505
F 306-569-1085
E info@saskmining.ca
@saskminingassoc

July 19, 2016

Review of Environmental Assessment Processes
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor, Ottawa ON K1A 0H3
via e-mail: CEAA.EAReview-ExamenEE.ACEE@ceaa-acee.gc.ca

RE: CEAA Review of Environmental Assessment Processes – SMA Comments on the Draft Terms of Reference for the Expert Panel

Thank you for the opportunity to provide input into the environmental assessment review process. The Saskatchewan Mining Association (SMA) is the voice of the mining industry in Saskatchewan and has the role of liaison and consultant with government and public to ensure the safe, profitable and orderly development of the mineral resources of the province. Environmental protection and stewardship are important to the members of the SMA as shown by their commitment to environmental planning, monitoring, compliance and reclamation. Our members are also the largest industrial employers of Indigenous people in Canada.

On June 20, 2016 the Government of Canada released for comment the proposed Terms of Reference for an Expert Panel that will review the federal environmental assessment processes. It is understood that the Terms of Reference is a document that outlines the Expert Panel's mandate, timelines and procedures.

With respect to the Terms of Reference (TOR) the SMA would like to provide the following comments.

1. **Scope and Purpose of the Review**
   While it is understood that the scope and purpose of the review has been developed to take into consideration matters raised in the Minister's mandate letter and the mandate letter of the Minister of Indigenous and Northern Affairs, it is not clear whether the scope will take into consideration previous iterations of the Act, or if the current review is to be restricted to CEAA 2012.

   Should the scope be restricted to post-CEAA, 2012 there is the potential for valuable experience to be overlooked. A prime example is the former provisions for federal decisions to act as CEAA triggers.

   The reference in the TOR "to **restore** robust oversight and thorough environmental assessments…" gives the impression that the current Act is somehow deficient in these areas. The SMA would suggest that the TOR be revised as "to **ensure** robust oversight and thorough environmental assessments…" to provide a more unbiased frame of reference for the Expert Panel. It should be noted that since the implementation of CEAA 2012, mining projects have become the majority of CEAA projects under review.

In Saskatchewan there is a robust and thorough environmental assessment process that is carried out by Saskatchewan's Ministry of Environment and this ministry has a long history of providing appropriate oversight of environmental assessments (including mining assessments) within their jurisdiction.

Efforts should be made to ensure that there is no overlap/duplication of federal/provincial requirements recognizing that in certain instances there will be interest in a project by both federal and provincial governments. In these instances, there should be a mechanism, which ensures that there is only one assessment process for a single project (i.e. one project-one assessment). The SMA would recommend that in these instances, the provinces have responsibility for managing the assessment. This is in recognition that the provinces have jurisdiction over their respective natural resources and because they are in the best position to gauge the environmental, socio-economic, and cultural implications of the project being assessed.

With respect to "require project advocates to choose the best technologies available…" the SMA would strongly recommend that the requirement be for proponents to "consider alternative, available and appropriate technologies" rather than "best technology available". The rationale for this is that projects (and mining projects in particular) are very site specific including the geology, the type of ore, and the processes required to extract the mineral resource of interest. There must also be a recognition that there are economic considerations that are part of any business decision. These and a number of other considerations would dictate which technologies and/or processes would be the most appropriate.

Regardless of the scope of the Panel's review, environmental assessments must be risk-based, grounded in sound science, be evidence based and must recognize the site-specific nature of the projects being assessed.

2. Provincial Involvement

As noted above, provinces have jurisdiction over their resource development and they also have the duty to consult Indigenous Peoples when resource development projects are being considered. It is therefore disconcerting that there is only a passing mention to the provinces in the scope of the TOR and that they seem to have been omitted from the Multi-Interest Advisory Committee. The Saskatchewan Ministry of Environment, and other provincial agencies, have extensive environmental assessment review experience and carry out the bulk of the environmental assessments within their respective jurisdictions. Provinces should therefore be heavily involved in the federal assessment review process to ensure that overlap and duplication are prevented and to ensure that a thorough and efficient assessment process is developed.

In order to address this concern the SMA would strongly encourage the Agency to ensure that provincial agencies have representation on the Multi-Interest Advisory Committee, or some other appropriate mechanism, and that this commitment be clearly set out in the TOR. In this respect the SMA would support the nomination of a representative from Saskatchewan's Ministry of Environment for membership on the Multi-Interest Advisory Committee or as a member of an appropriate alternative review body.

3. Post-assessment Regulatory Requirements

The TOR indicates that "the Panel will consist of at least three members" and while it is understood that these three (or possibly more) individuals will form the Expert Panel, it is also understood that the depth and breadth of issues across Canada are extensive and to assume that a small group would have all of the requisite experience and knowledge (environmental, technical, legal, economic, cultural, etc.) necessary to make sound conclusions with respect to reworking the environmental assessment process is somewhat unfair to Panel members.

The SMA supports the TOR commitment to utilize expert advice where the Panel and Multi-Interest Advisory Committee members require additional assistance. In the spirit of this commitment it would be helpful for the Expert Panel to be made aware of the current legal realities as well as the regulatory (federal and provincial) requirements that exist across Canada. It must be made clear to the Panel that the environmental assessment process is not the only process in place (federally and/or provincially) to ensure that the environment is protected. There are numerous federal and provincial regulatory acts, regulations and their respective approvals, permits and authorizations, which also set out strict requirements for companies to meet in order to have an operational facility.

The SMA would suggest that membership on the Panel also take into consideration regional representation and would suggest that one representative from each of: British Columbia; Prairies; Central Canada; Eastern Canada; and Northern Canada be included.

4. Indigenous Engagement

The SMA recognizes the importance of engagement with Indigenous Peoples and fully supports efforts to ensure appropriate consultation takes place. Saskatchewan's mining sector is a leading industrial employer of Indigenous people in Canada and of purchasing goods and services from businesses owned and managed by Indigenous Peoples. The Environmental Assessment process must first and foremost be focused on the environmental aspects of a project, and should not be used as a forum to address issues related to the Crown's broader duty to consult or issues related to the fiduciary responsibilities of the Crown.

Thank you again for the opportunity to provide input into this important assessment of the environmental assessment review process.

Yours sincerely,

Pam Schwann
President

Enclosure
cc. Erika Ritchie (ADM Environmental Protection Division - Ministry of Environment)
SMA Environment Committee
Brad Sigurdson (SMA)