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By email: Honourable Catherine McKenna, Minister of Environment and Climate Change
<Catherine.McKenna@parl.gc.ca>

August 7, 2018

Re. Request for Designation for Federal Environmental Assessment – Northern Pulp Effluent Treatment Facility

To the Honourable Catherine McKenna,

Prevent Cancer Now is writing to request the designation of the proposed Northern Pulp Mill renovations for a federal Regional Environmental Assessment. Although toxic air emissions are reported to have affected local residents for decades, we are writing specifically regarding the new Effluent Treatment Project proposal to close the Boat Harbour containment facility and to discharge 70-90 million litres per day of warm effluent, contaminated with toxic and persistent substances, via a new pipeline directly to the rich marine environment on the bed of the Northumberland Strait.

Prevent Cancer Now is a Canadian civil society organization that has been working towards the elimination of preventable contributors to cancer for more than 10 years. Its work is grounded in scientific research and efforts to raise evidence-based awareness through education, research and advocacy. Our work is well regarded for the rigour of research.

We are requesting a federal environmental assessment because assessment of this project is beyond the jurisdiction and capacity of the Nova Scotia government, while numerous statutes and regulations provide jurisdiction to the federal Minister of Environment and Climate Change. Moreover, the provincial government is further restricted in its capacity to dispassionately and fairly execute an environmental assessment, due to apparent obligations under conflicting agreements with the proponent.

Environmental Assessment (Impact Assessment)

The currently planned provincial Class I (most rapid) environmental assessment by the Nova Scotia Department of the Environment is wholly inadequate – it takes only 50 days, with 30 days for public input, and the final approval rests with the Minister of the Environment. In no way will this timeline permit fulsome consideration of the proposal.

The Nova Scotia government has a record of being permissive while lacking in oversight of environmentally significant projects. In his 2017 report, the Nova Scotia Auditor General found that between 2013-2016, the Nova Scotia government approved 98% of the projects presented for environmental assessment, and also highlighted weaknesses in monitoring and enforcement. The Auditor

General also disclosed the rapidly escalating cost estimates to clean up Northern Pulp’s contamination of Boat Harbour (Environmental Liability increased from \$12M to \$130M, between 2013 and 2017).^{1,2} Toxic effluents from pulp mills are listed on the Toxic Substances List – Schedule 1,³ under the *Canadian Environmental Protection Act, 1999 (CEPA, 1999)* for good reason. The current “stabilization” area (settling pond) for effluent, Boat Harbour remains contaminated with mercury, dioxins, furans, and cadmium.⁴ In two recent studies, Hoffman et al. reported elevated concentrations of volatile organic compounds⁵ and metalloid sediment concentrations that exceed Canadian freshwater and marine sediment quality guidelines.⁶ The newly proposed pipeline would carry millions of litres of warm contaminated effluent directly into the Northumberland Strait,⁷ impacting the ecosystem and fisheries of Nova Scotia, New Brunswick and Prince Edward Island. This effluent has established long- and far-reaching, costly impacts to human and environmental health, and to the public purse.

There is now an important opportunity for the federal government to conduct a thorough and balanced environmental assessment, including contributions from the affected communities in and beyond Nova Scotia. Several statutes and agreements indicate federal interest and jurisdiction in this matter. Physical activities of a mill and of waste disposal may be designated under the *Canadian Environmental Assessment Act, S.C. 2012 (CEAA, 2012)* Section 14(1) and the enormous public concern and outcry regarding the pipe to deliver toxic effluent to the Northumberland Strait provides further grounds for designation.

Criteria in the Canadian Council of Ministers of the Environment (CCME) Sub-agreement on Environmental Assessment provide further guidance as to federal jurisdiction.⁸ Section 5.6.4 lists criteria to determine the “best-situated” body to conduct the assessment, many of which indicate that this assessment is firmly in the federal jurisdiction:

5.6.4 (i) Scale, scope and nature of the environmental assessment

The proposal is to introduce CEPA-toxic contaminants (#38 on the Toxic Substances List - Schedule 1 of *CEPA, 1999* (the CEPA Toxic Substances list)⁹) into the Northumberland Strait, affecting fishing grounds of multiple provinces. The PEI Premier and Fisheries Minister have also requested a federal Environmental Assessment.

¹ Nova Scotia Auditor General. (2017). *Report of the Auditor General to the Nova Scotia House of Assembly*. November 1, 2017. https://oag-ns.ca/sites/default/files/publications/FullNov2017_1.pdf.

² Bradley, S. (2017). “Province’s monitoring of environmentally sensitive projects ‘troubling,’ AG says.” CBC News. November 1, 2017. <https://www.cbc.ca/news/canada/nova-scotia/auditor-general-environment-approvals-1.4381562>.

³ Environment Canada, Government of Canada. “Toxic Substances List - Schedule 1 of CEPA,” November 21, 2012. <http://www.sdinfo.gc.ca/lcpe-cepa/default.asp?lang=En&n=0DA2924D-1&wsdoc=4ABEFFC8-5BEC-B57A-F4BF-11069545E434>.

⁴ East Coast Environmental Law. (2014). *An Introduction to Environmental Rights for Prince Edward Island, New Brunswick and Nova Scotia*. Halifax: ECELAW.

https://www.ecelaw.ca/images/PDFs/Environmental_Rights_Primer.pdf

⁵ Hoffman et al. (2017). “Pilot study investigating ambient air toxics emissions near a Canadian kraft pulp and paper facility in Pictou County, Nova Scotia.” *Environ Sci Pollut Res Int*. <https://www.ncbi.nlm.nih.gov/pubmed/28712086>

⁶ Hoffman et al. (2017). “Spatiotemporal assessment (quarter century) of pulp mill metal(loid) contaminated sediment to inform remediation decisions.” *Environ Monit Assess*, 189(6). <https://www.ncbi.nlm.nih.gov/pubmed/28478542>

⁷ Baxter, Joan. (2018). “Uproar in Nova Scotia over plan to dump pulp effluent into Northumberland Strait.” *National Observer*. July 25, 2018.

⁸ Canadian Council of Ministers of the Environment (CCME). (2003) “Sub-Agreement on Environmental Assessment.” https://www.ccme.ca/files/Resources/harmonization/envtllassesssubagr_e.pdf. [accessed August 3, 2018]

⁹ Environment Canada Government of Canada. “Toxic Substances List - Schedule 1 of CEPA,” February 11, 2010. <http://www.sdinfo.gc.ca/lcpe-cepa/default.asp?lang=En&n=0DA2924D-1&wsdoc=4ABEFFC8-5BEC-B57A-F4BF-11069545E434>.

(ii) Capacity to take on the lead including resources

The federal government has greater resources and capacity than the government of Nova Scotia, and the federal government is not entangled with agreements detailed immediately below.

(iv) Effectiveness and efficiency

The Nova Scotia government is severely constrained in this matter, as detailed in an April 2015 letter from Northern Pulp to the Honourable Randy Delorey, then Minister of the Environment, listing seven agreements between Northern Pulp and the Nova Scotia government dating 1995 and later, and extending to the current day.¹⁰ These agreements provide access to water, indemnify the proponent against responsibility for adverse effects, and constrain the provincial government from restricting pollution. The results of this letter are evident in the province shouldering responsibility for Boat Harbour remediation; this former estuary is anticipated to be contaminated at levels exceeding the Sydney Tar Ponds.

(v) Scientific and technical expertise

The federal government has much greater capacity in science and technical expertise. Excellence in pulp and paper technology has been examined in the European Union,¹¹ and given the importance of pulp and paper to the Canadian economy this merits emulation in our national context.

(vi) Ability to address client or local needs

As discussed above, the government of Nova Scotia is constrained by long-standing agreements that impair its ability to address local and larger-scale needs.

(vii) Interprovincial, interterritorial or international considerations

This proposal to discharge 70-90 million litres daily of warm, contaminated water to the Northumberland Strait will impact multiple Atlantic provinces. This is clearly beyond the purview of a single provincial government, and within the jurisdiction of the federal government with regard to both the environment and fisheries, as well as safeguarding Indigenous Rights under the treaty rights established by treaties between the federal government and First Nations in Atlantic Canada, fiduciary duties contemplated by the *Constitution Act, 1867* and the *Constitution Act, 1982 (Charter of Rights and Freedoms)*. Canada's performance, alternatively polluting or protecting the environment and fish habitat, will be judged on the international stage and is anticipated to impact acceptability of Canadian seafood in international markets.

(viii) Existing regulatory regime

The brief, 50-day Environmental Assessment process proposed by the Nova Scotia government, with the decision resting with the provincial Minister of the Environment, cannot address in a fulsome manner the ongoing local human and environmental health implications, much less the inter-provincial issues of long-term fate of pollutants in the Northumberland Strait and marine life. The federal Minister of Environment and Climate Change, under the *CEAA, 2012* Regulations Designating Physical Activities, SOR/2012-147¹² may designate projects such as the Northern Pulp pipe under s. 29, "The construction, operation,

¹⁰ Terri Fraser, Technical Manager, Northern Pulp Nova Scotia Corporation. "Re: Industrial Approval No. 2011-076657-A01. Appeal Pursuant to Section 137 of the Environment Act," April 9, 2015.

<http://northernpulp.ca/assets/Uploads/NorthernPulpAppealLetter.pdf>. [accessed August 3, 2018]

¹¹ Suhr, Michael, Gabriele Klein, Ioanna Kourti, Miguel Rodrigo Gonzalo, Germán Giner Santonja, Serge Roudier, Luis Delgado Sancho, and Institute for Prospective Technological Studies. *Best Available Techniques (BAT) Reference Document for the Production of Pulp, Paper and Board*. Luxembourg: Publications Office, 2015. <http://dx.publications.europa.eu/10.2791/370629>. [accessed August 3, 2018]

¹² Legislative Services Branch. "Regulations Designating Physical Activities," December 31, 2014. <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-147/page-3.html#h-1>.

decommissioning and abandonment of a new facility used exclusively for the treatment, incineration, disposal or recycling of hazardous waste.” The pipe is a new facility to dilute warm polluted water along the seabed in the cold Northumberland Strait. “Effluents from pulp mills using bleaching” are listed on *CEPA, 1999* Schedule 1 as a toxic substance.¹³

Other statutes that enable and require federal oversight on the Northern Pulp project include the:

- ***Department of Environment Act, 1985***¹⁴ that establishes broad powers, duties and functions of the Minister in s.4(1)(a) the preservation and enhancement of the quality of the natural environment, including water, air and soil quality, and (c) water;
- ***Fisheries Act, 2012*** is incorporated in the definition of “Environmental Effects” marginal note 5 (1) of *CEAA* “...the environmental effects that are to be taken into account in relation to an act or thing, a physical activity, a designated project or a project are (a) a change that may be caused to the following components of the environment that are within the legislative authority of Parliament: (i) fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act, ...*” The *Fisheries Act* also explicitly “prohibits deposition of deleterious substances. For context in the long history of the pulp mill, prior to the reforms under by the previous Harper government, we believe that the provisions and regulations under *CEAA, S.C. 1992* as amended, the *Fisheries Act* and the Department of Fisheries and Oceans (DFO) 1986 Habitat Protection policies established thereunder would have required the federal government to undertake an environmental assessment of the proposed project. While we applaud the amended *Fisheries Act* that was tabled in the House of Commons in February 2018, that requires pollution prevention and precautionary approaches and provides broad Ministerial powers to require mitigation and protections¹⁵, we are concerned that a failure on the part of the federal government to intervene in this case would be a black mark on the federal government’s record and your government’s current efforts to update the *Fisheries Act*;
- ***Canada Water Act, R.S.C. 1985***,¹⁶ that was developed partly to address an inter-provincial water contamination dispute over a pulp mill¹⁷, and addresses jurisdiction over shared waters; and
- Under the ***Oceans Act, 1996***,¹⁸ the federal government has the power establish marine protected areas (MPAs) and study areas. We applaud the federal government for its recent announcements to establish a number of the MPAs in Nova Scotia and elsewhere.¹⁹
- In addition, we would suggest the federal government has a responsibility to designate the project under the *CEAA, 2012* and other applicable legislation because of its responsibility and powers under the *Constitution Act, 1967* to maintain of peace, order and good governance (POGG) within

¹³ Environment Canada, Government of Canada. “Toxic Substances List - Schedule 1 of CEPA,” November 21, 2012. <http://www.sdinfo.gc.ca/lcpe-cepa/default.asp?lang=En&n=0DA2924D-1&wsdoc=4ABEFFC8-5BEC-B57A-F4BF-11069545E434>.

¹⁴ Government of Canada. Department of the Environment Act, R.S.C., 1985, c. E-10 § (1985). <http://laws-lois.justice.gc.ca/PDF/E-10.pdf>. [accessed August 5, 2018]

¹⁵ David McRobert and Burgandy Dunn, Trudeau Government Moves to Reverse Harper Government Changes to the Fisheries Act, February 22, 2018, Ontario Bar Association, Environmental Newsletter; https://www.academia.edu/36052109/Canadian_Federal_Government_Moves_to_Reverse_2012_Harper_Govt_Changes_to_the_Fisheries_Act

¹⁶ Government of Canada. Canada Water Act, R.S.C., 1985, c. C-11 § (1985). <http://laws-lois.justice.gc.ca/PDF/C-11.pdf>.

¹⁷ *Interprovincial Co-operatives Ltd. et al. v. R.*, [1976] 1 SCR 477; <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5932/index.do>

¹⁸ Government of Canada. Oceans Act, S.C. 1996, c. 31 § (2015). <http://laws-lois.justice.gc.ca/PDF/O-2.4.pdf>.

¹⁹ MPAs: Are Canada’s Oceans Really Protected?, Dalhousie University Blogs: Sustainability News April 10, 2018; <https://blogs.dal.ca/sustainabilitynews/2018/04/10/mpas-are-canadas-oceans-really-protected/>

the federation.²⁰ Similarly, the federal government should invoke its POGG jurisdiction to undertake a special environmental assessment or study of the project by passing an Order in Council as required.

We also applaud your commitment to ongoing review and the current transition to the *Canadian Environmental Impact Assessment Act (CEIA)*. Not only would the Northern Pulp effluent treatment and disposal pipe proposal suitably be designated under *CEAA, 2012*, the case is strengthened for designation of the Northern Pulp Effluent Treatment Facility for Environmental/Impact Assessment according to the comprehensive review of the regulations under *CEAA, 2012*.

Health implications for Fishers and Indigenous Peoples, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

For generations, members of the Pictou Landing First Nation and surrounding communities have been exposed to airborne and waterborne toxic substances from the Northern Pulp mill, as well as potential contamination of foods. The long history of pollution from the Northern Pulp operation since the Mill was opened in 1967 and operated by previous owners, is of significant concern to *Prevent Cancer Now* in part because of impacts on the health of these local communities. *Prevent Cancer Now* believes that this is a classic case of environmental racism in Nova Scotia, where polluting industries and other environmental hazards are disproportionately located in Indigenous communities, Black communities and those of the working poor.²¹

Every effort should be made to minimize further pollution of maritime waters. Marine food sources in Atlantic Canada are already carrying significant toxic pollution, that is already impacting health of these populations who rely upon fish as a food source, as illustrated in a study by Sarkar *et al.* demonstrating correlations between pollutants (in this case flame retardant) levels in cod, in people, and resulting impacts on thyroid function.²²

The numerous pollutants in effluent from mills producing bleached pulp affect biology at fundamental levels including cellular signalling, and interactions among the numerous adverse chemicals in waters and foods in Atlantic Canada merit study. Greatly enhanced pollution prevention from the Great Lakes to the farthest reaches of maritime provinces is long overdue.

To assess current status and to follow progress, research to collect and analyse data on environmental contaminants, in order to build Canadian Environmental Health Information Infrastructure, would facilitate development of knowledge and hence actions to improve human and ecological health. This offers potential improved population health and productivity, as well as savings in morbidity (particularly serious, prevalent chronic diseases that according to the Public Health Agency of Canada and clinician-researchers are

²⁰ Eugene Forsey, *How Canadians Govern Themselves*, First published in 1980, 7th edition, (2010). Her Majesty the Queen in Right of Canada;
https://web.archive.org/web/20120331024514/http://www.parl.gc.ca/about/parliament/senatoreugeneforsey/book/assets/pdf/How_Canadians_Govern_Themselves7.pdf

²¹ Hoffman et al (2015). "Assessment of public perception and environmental compliance at a pulp and paper facility: a Canadian case study." *Environ Monit Assess*, 187(12). <https://www.ncbi.nlm.nih.gov/pubmed/26590146>.

²² Sarkar, Atanu, John C. Knight, Nicole A. Babichuk, and Shree Mulay. "Skewed Distribution of Hypothyroidism in the Coastal Communities of Newfoundland, Canada." *Environment International* 83 (October 1, 2015): 171–75.
<https://doi.org/10.1016/j.envint.2015.05.017>.

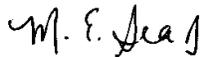
escalating rapidly in younger and younger Canadians), mortality, suffering and health care dollars. Health care costs in Canada are increasing more rapidly than GDP.²³

The Parliament of Canada recently confirmed its fiduciary obligations to First Nations as legislation supporting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was passed on to the Senate.²⁴ Compliance with UNDRIP normally requires Free, Prior and Informed Consent (FPIC) with major projects that affect Indigenous Peoples, their lands, their foods and communities; however, consultations to date suggest that most Indigenous Peoples who live in the Pictou County region, or who fish in local waters are opposed to the project. Indeed, hundreds of Indigenous Peoples, together with more than one thousand other local fishers and residents, participated in recent protests about the proposed changes. The data and analysis to form the basis of FPIC is lacking for Indigenous Peoples, and indeed for any potentially affected party living in the region or fishing in the Northumberland Strait.

In conclusion, we stand with Friends of Northumberland Strait, organizations of fishermen, tourism associations, First Nations, politicians and citizens in objecting to the current proposal and requesting federal oversight, environmental assessment, a systematic examination of health effects of past operation of the mill and the proposal's implication for human health, compliance with UNDRIP as well as protection of fish, fish habitat and other wildlife in the County and region.

We look forward to your response.

Sincerely,



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²³ Canadian Institute for Health Information (CIHI). "National Health Expenditure Trends, 1975 to 2016," 2016. <https://www.cihi.ca/en/national-health-expenditure-trends>.

²⁴ "Private Member's Bill C-262 (42-1) - Third Reading - United Nations Declaration on the Rights of Indigenous Peoples Act - Parliament of Canada." Accessed August 6, 2018. <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-262/third-reading>.

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