

IMPROVING FEDERAL ENVIRONMENTAL ASSESSMENT PROCESSES

Adopted by the Canadian Chamber of Commerce – Sept. 2017

Issue

As it is currently structured, the *Canadian Environmental Assessment Act 2012* (CEAA) is creating considerable regulatory duplication and delays, which complicate the federal environmental assessment (EA) process and pose a risk to the attraction of new investment. However, many of the changes recently proposed by a government-appointed expert panel to reform the CEAA by 2018 threaten to exacerbate these issues and further hamper the ability of industry to navigate the EA process with reliability and predictability.

Background

The economic prosperity resulting from Canadian natural resource development – estimated at nearly one-fifth of the nation's GDP and 1.7 million jobs¹ -- is dependent on industry's ability to pursue new projects; for decades, these have been subject to environmental assessments (EAs) at the provincial/territorial level as well as at the federal level through the Canadian Environmental Assessment Act (CEAA). Coordination of assessments required at both levels has been problematic for most of this period, with the need for two separate and often duplicative processes resulting in considerable regulatory overlap, delays and uncertainty that have in many cases led to weakened project economics, fragmented consultations, and reduced business competitiveness.²³

CEAA 2012 reforms

In an attempt to address these challenges, the federal government introduced a series of changes to the CEAA in 2012 aimed at attempting to harmonize the provincial-federal regulatory overlap and shorten the duration of the overall process through the introduction of specific timelines. However, some elements of these reforms have instead had the opposite effect: since its implementation, the mining industry has seen a duplication of provincial processes, federal intrusion into provincial jurisdiction, and a deterioration in federal and provincial coordination and among federal government departments and agencies. Combined, these have resulted in "inefficient and costly impacts to project economics."⁴

The 2012 legislative amendments also exacerbated the growing delays associated with EAs.⁵ While the process introduced specific timelines, it also added various means to stop and extend timelines within the process itself, which have further complicated the federal processes' ability to align with provincial processes; in practice, this – along with a significant decline in federal scientific support for EAs⁶ -- has in fact lengthened the overall duration of federal EA processes.⁷

Expert panel recommendations 2017

It is against this backdrop that the Government of Canada is looking at further reforming the federal EA process via legislation likely to be introduced 2018, to be informed in part by the recommendations of an expert panel as released April 2017. As a whole, the recommendations suggest a significant overhaul of the system, and generally threaten to further complicate matters by encouraging greater intrusion into provincial/territorial jurisdiction by expanding the scope of effects to be considered, increasing the number of projects that would be subject to a federal EA, and introducing additional delays to the process.

¹ Natural Resources Canada, "10 Key Facts on Canada's Natural Resources", October 2016

² Mining Association of Canada, "MAC Submission to the Expert Panel of Environmental Assessment Processes," November 2016

³ Canadian Energy Pipeline Association, "Submission to the Expert Panel of Environmental Assessment Processes," December 2016

⁴ Mining Association of Canada, "Facts and Figures of the Canadian Mining Industry", 2016

⁵ Expert Panel: Review of Environmental Assessment Processes, "Building Common Ground: A New Vision for Impact Assessment in Canada", April 2017

⁶ Ibid.

⁷ Ibid.

These delays will be further increased through panel recommendations that urge rolling back a 2012 change to the EA review process that restricts public hearing participation to “interested parties,” a designation that applies to those who are directly affected by the proposed project or who have specific and relevant knowledge. This ensures that project-specific reviews are focused on the individual merits of said projects by the appropriate stakeholders, rather than enabling potentially tangential discussions of broader policy topics such as climate change or resource development in general by unaffected or obstructionist parties.

However, some of the panel’s recommendations stand to have a positive impact: in particular, the recommendation to create a public database of all data collected for EAs stands as an opportunity to improve public confidence in the process by providing greater transparency. This library of assessment data would also allow for successes and failures to be better understood amongst industry peers, thereby allowing for greater industry practices, and improve the use of EAs as effective planning tools.⁸

Additionally, the panel’s recommendation to improve Indigenous peoples’ capacity to participate in the process is crucial, given the fundamental importance of promoting good relationships and understanding between industry and Indigenous communities, and the need to ensure that the economic benefits of natural resource development are shared. Frequently inadequate funding or expertise to meaningfully participate in EA reviews have posed many barriers, however, resulting in many instances of limited involvement and a resulting lack of confidence in the process.⁹ Addressing these issues at the government level would appropriately reflect the Crown’s responsibilities within this process and would complement industry’s ongoing efforts to proactively develop meaningful, open, and effective relationships.

Related federal reforms

It's also important to consider the impact of additional reviews the federal government is also conducting on other legislation directly tied to EA projects in Canada: the *Fisheries Act*, the *Navigation Protection Act*, and the National Energy Board. Each set of reforms is being handled as a separate process with disparate sets of recommendations. Given the considerable overlap in the mandates of these panels, and the potential impact that each could have on the EA process, it is crucial that the federal government ensures that any efforts to introduce changes to any and all of these elements does not result in duplicative or contradictory regulation, and does not complicate industry’s ability to navigate the federal EA process.

Recommendations

That the federal government:

1. Develop a framework fully supporting a “one project, one assessment” approach, that recognizes equivalency when appropriate, for projects that trigger environmental assessment requirements at both the federal and provincial/territorial levels.
2. Respect provincial/territorial jurisdiction by maintaining the current scope of effects considered within federal environmental assessments, and preventing new federal environmental assessment requirements from being created for categories of projects already captured by provincial/territorial assessment requirements.
3. Improve timelines and reduce duplication for environmental assessments by:
 - a. enhancing coordination with provincial/territorial governments,
 - b. working with industry to identify potential efficiencies, and
 - c. adequately resourcing federal scientific support for provincial/territorial governments and federal departments as required throughout the process.

⁸ Enbridge, “Expert Panel Review of Environmental Assessment Processes”, December 2016

⁹ Expert Panel: Review of Environmental Assessment Processes, “Building Common Ground: A New Vision for Impact Assessment in Canada”, April 2017

4. Make all information generated during environmental assessments accessible to the public through an online library or registry, which should also provide information about post-assessment monitoring and enforcement.
5. Ensure Indigenous peoples have the capacity to participate in the environmental assessment project review process by enhancing funding for participation and by developing strategies to build longer-term capacity within communities.
6. Engage potentially impacted Indigenous communities as early in the process as possible and jointly determine desired outcomes for consultation and participation.
7. Retain the *Canadian Environmental Assessment Act* 2012 definition of “interested parties” of public hearing participants as being those directly affected by a given project or those with relevant information or expertise.
8. Coordinate efforts to reform the *Canadian Environmental Assessment Act* with ongoing efforts to reform the National Energy Board, *Fisheries Act*, and *Species at Risk Act* so as to ensure appropriate integration between the various reforms, avoid duplicate or conflicting regulatory changes, and prevent harm to Canada’s investment environment.

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