

Environmental Assessment: A Workshop

Sponsored by:
Northwest Institute
West Coast Environmental Law

Agenda

1. Introductions and go-round
2. Purpose of EA
3. CEAA
4. BCEAA and Canada-BC Agreement for EA Cooperation
5. Front Line Experiences in BC EA
6. CEAA 7-Year Review (2010)
7. Closing thoughts and go-round

Introductions & Go-Round Workshop & Participant Goals

What do you hope to get out of today?

Why are you here?



Purpose of EA

What is EA?

What does it hope to achieve?

Why should we care?

Purpose of EA

- Early – before decisions are made
- Understanding of issues and concerns
 - location, timing, traditional, recreational and other uses, impacts, etc
- Identification of concerns and better alternatives
- Receive and consider public input
- Build support for project and improve project
- Avoid and mitigate impacts
- Increase sustainability

Good EA (p. 10 Guide)

- Open, accountable and independent
- Done early, before decisions made – and address need and alternatives at this stage
- Apply to every undertaking that may have significance
- Broad definition of environment (environmental, social, economic, cultural)
- Public involved – significantly and effectively
- Result in a binding decision
- Efficient and integrated with other planning processes

Benefits of Effective EA

- *To government* – better decision-making, benefiting from public and expert input
- *To the project proponent* – avoid surprises, allow more accurate estimation of costs, learn potential improvements
- *To society* – net social, economic and ecological benefit – avoid paying a huge debt (financial, cultural, ecologic) later for short-term economic benefit

CEAA

- Canadian Environmental Assessment Act
 - Inclusion List Regulations
 - Exclusion List Regulations
 - Comprehensive Study List Regulations
 - Law List Regulations
 - Effective March 12, 2009 two new regs that apply to Building Canada Plan -funded infrastructure projects
 - Addition to Exclusion List Regs
 - New “Adaptation” Regs

Overview of CEAA

- Some good things
- Players
- Process and types of assessment
- Triggers
- Participation opportunities



Some good things....

- The purpose/preamble and some interpretive stuff
 - Early assessment
 - Public participation
 - Precautionary principle
- Certain level of specificity (factors to consider, process, participant funding, Registry)
- “All in unless out” approach

Players – federal EA

1. Government
 - CEA Agency
 - Responsible Authority (RA) – diffuse responsibility and “self-assessment”
 - Minister of Environment
 - Federal Environmental Assessment Coordinator (FEAC)
 - Major Projects Management Office (MPMO)
2. The proponent
3. The private sector – consultants, experts etc.
4. The public
5. First Nations

EA Process versus Regulatory Decision



CEAA – Types of assessment

- Self-directed assessment
 - Screening
 - Comprehensive study
- Independent assessment
 - Panel review
 - Mediation
 - Hybrid processes

Factors to be considered (s. 16)

- The environmental effects of the proposed project and their significance, including cumulative effects
- Measures that are technically and economically feasible that would mitigate any significant environmental effects of the project
- Public comments received in accordance with the Act and regulations
- Any other factors relevant to the assessment, possibly including a description of project need and alternatives

Factors – comp studies, mediations, panel reviews

- The purpose of the project
- Alternative means of carrying it out
- The need for and requirements of any follow-up program
- The capacity of renewable resources to be significantly affected by the project to meet the needs of present and future generations

When does CEAA apply?

- When there is a **project** (as defined in Act) or the activity is on the Inclusion List;

....and “project” means...

Project

- Section 2 “project means...
- In relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work; or
- Any proposed physical activity not relating to a physical work that is prescribed...pursuant to regulations [Inclusion List]

- When the **project is not excluded** by the Act or the Exclusion List; AND
- When there is a **federal authority who exercises duties, powers or functions related to the project** (a “trigger” – as proponent, financial, land admin, or regulatory approval or action)

Trigger – section 5

- Is the proponent
- Provides financial assistance – makes or authorizes payment, loans money or guarantees a loan to enable the project to proceed
- Has administration of the land and leases it or otherwise disposes of it, for purpose of enabling the project;
- Must issue a permit, licence or other approval, or take some other action to enable a project, where the regulatory provision is included in the Law List Regulations
- Additionally – Minister can require an EA if project likely to have provincial or international transboundary effects

Exclusion List Regulation

- Exempted from EA requirements
- Deemed likely to have no or insignificant adverse environmental effects
- Generally** have been projects where acceptable to say insignificant
 - **new regulation breaks this approach
(....more on this later)

Pathways for Public Participation

- Registry
- Screenings
- Comprehensive studies
 - Participant funding
- Review panels
 - Participant funding
- Procedural assistance, review/understanding of evidence, expert opinion, legal assistance



Public participation - key elements

- Public notification of key steps and decisions
- Provision for meaningful input into procedural decisions, including selection of panel members, terms of reference, determination of scope of EA
- Participation in both self-directed and independent assessments
- Provision for participation including funding
- Readily accessible info
- Provision for access to experts (i.e. funding)
- Publication of reasoning supporting decisions

CEAA Registry – section 55

- Internet site
- Project files
- Act requirements: see pp. 22-23 Guide
 - Notices
 - Records
 - Important procedural steps
 - Reports
 - Decisions

Public participation in screenings

- *Occurs at the discretion* of the RA – where the RA considers PP is appropriate, or where required by regulation
- Significant public concern at the screening level can lead to a panel review – so important to express concern
- Class screening report: public must be given the opportunity to comment prior to a report is declared a class screening report
- Note Guidance material for PP in screenings

Public participation in comprehensive studies

- Important role for public in a comp study
- Public must be consulted on the proposed scope of the project for the purposes of the EA, the factors proposed to be considered in its assessment, the proposed scope of the factors, and the “ability of the comprehensive study to address issues relating to the project.”
- RA must report to the Minister on the matters subject to public consultation – so important to be involved
- RA must also recommend whether to continue as comp study or refer to mediator or review panel

Public participation in panel reviews

(The most extensive opportunity for public involvement)

1. Terms of ref for panel – Minister and RA
2. Appointment of panel.
3. **Scoping meetings
4. Guidelines for preparation of EIS
5. EIS (proponent responds to questions) - **public comment on adequacy
6. Once EIS deemed adequate
7. **Public hearing to receive views and opinions on proposal
8. Panel report with recommendations to Minister and RA
9. Minister's decision and **opportunity to comment

Participant funding

- Funding is provided to assist participation in comprehensive studies, mediation and panel reviews
- See Funding Guide for what to cover in your app
- Available to community groups, individuals, voluntary groups and non-profit organizations
- Comp study – funding available after tracking (i.e. n/a for scoping)
- Panel review – funding available for scoping, for reviewing the EIS, for preparing for and participating in panel hearings



Overview of BCEAA

- How the Act works:
- Project Registry
- Reviewable Projects Regulation
- Public Participation Policy Regulation
- Opportunities for public input
- First Nations consultation

BCEAA

- Environmental Assessment Act (2002)
 - Concurrent Approval Regulation
 - Prescribed Time Limits Regulation
 - Public Consultation Policy Regulation
 - Reviewable Projects Regulation



Key features

- Environmental Assessment Office – central agency approach
- List approach to purview ◊ major projects – Reviewable Projects Regulation
- Info through Electronic project information centre (e-PIC)
- *Bad* - Discretion – whether to review, assessment scope, what procedure, methods
- If reviewable, need certificate

Key stages

- “Pre-application” stage
 - Proponent submits project description
 - Determination if reviewable
 - Terms of reference for assessment dev’d by proponent
 - Public comment on draft ToR
 - EAO finalizes ToR
- “Application review” stage
 - Proponent submits application in accordance with ToR
 - EAO accepts application or requires further info
 - Public comment on application
 - EAO assessment report
 - ED etc refers report, accompanied by recommendations and reasons, to Ministers (incl Minister of Environment) for a decision

What makes a project reviewable

- **Reviewable projects regulation** (+ ED discretion)
- **Ministerial designation** (Minister satisfied that the project may have a significant adverse environmental, economic, social, heritage or health effect, and that the designation is in the public interest + believes not substantially started)
- **Proponent Opt-In** (+ ED discretion)

Reviewable Projects Regulation

- Industrial projects: chemical manufacturing, primary metal and forest product industries
- Energy projects: power plants, electric transmission lines, natural gas processing or storage plants and transmission pipelines
- Mine projects: coal and mineral mines, sand and gravel pits, placer mineral mines, construction stone and industrial mineral quarries and off-shore mines
- Water management projects: water diversions, dams, dykes, groundwater extraction

Reviewable Projects Regulation

- Waste management projects: special waste facilities, local government solid and liquid waste management facilities
- Food processing projects: meat and meat products manufacturing and fish processing
- Transportation projects: large public highway and railway, large ferry terminal and marine ports
- Tourist destination resorts: large golf marine, and ski hill destination resorts

Table 1 – What’s Assessed under the old and new acts?

Type of Project	Must be Assessed under the Old Act if	May be Assessed under the New Act if
New Coal Mine	Production capacity of over 100 000 tonnes/year	Production capacity of over 250 000 tonnes/year
New Mineral Mine	Production capacity of over 25,000 tonnes/year	Production capacity of over 75,000 tonnes/year
Modification of Sawmill ²	Waste Increases by 10 percent	Waste Increases by 30 percent
Modification of Pulp/paper mill ²	Waste Increases by 10 percent	Waste Increases by 30 percent
Expansion of Coal or Mineral Mine ²	Expansion of surface area that can be disturbed by 250 hectares or over 35 percent of original mine site	Expansion of surface area that can be disturbed by 750 hectares or over 50% of original mine site
Coal, Natural Gas or Oil Fired Power Plant or Hydro-Electric Dam	Capacity of over 20 megawatts	Capacity of over 50 megawatts
Hazardous Waste Treatment Facility	Treatment Capacity of over 50,000 kg per day	Treatment Capacity of over 100,000 kg per day
Short term hazardous waste storage	over 5,000 tonnes of hazardous waste stored in piles or 10,000 tonnes stored in containers	Not Required

Discretion of BCEAO [ED]

- ◇ determine need for assessment (s. 10)
- ◇ determine scope, procedures and methods of assessment (s. 11)
- ◇ not able to order a commission, hearing panel or assessment by anyone independent of EAO (s. 12)
- ◇ duration and effect of certificate

Ministerial Discretion

- If ED refers a project to Minister under section 10(1), Minister has discretion re: scope, procedures and methods, including discretion to order a commission, hearing panel or independent assessment
- Decision on EA re: Certificate (together with other relevant minister)
 - Issue certificate
 - Refuse to issue certificate
 - Order that further assessment be carried out

Duration and Effect of Certificate

- Valid for life of project
- Must substantially start the project within 5 years of Certificate issuance
- But can apply for a 5-year extension

BCEAA - public participation

“The executive director, in making an order under section 11 of the Act [determine assessment process]..., must take into account the general policies respecting public consultation set out in this regulation and ensure they are reflected in the assessment.”

-Section 3, Public Consultation Policy
Regulation

Public Participation

- General policy – but at discretion of ED of EAO
 - Public meetings, open houses, other forums arranged by proponent or EAO
 - Project information centre (e-PIC)
 - No participant funding
- Review draft terms of reference
- Review application and comment

A Note on BCEAO Policy

- *“All submissions received prior to the deadline for receipt of submissions will be considered. EAO encourages submissions that identify an issue or concern or otherwise contribute to a better understanding of the potential effects of a project, rather than merely adopting a position for or against a project.” -EAO Policy - Public Comments*
- Won't publish duplicates; privacy law restrictions; etc.....

First Nations - the Duty to Consult and Accommodate

- Nothing in either Act that speaks to how this will be done
- Case law (Haida, Dene Tha) suggests this needs to be early and should not only be at project level but should also be at higher, strategic level where these have potential impacts on rights and title
- Should be distinct from public and stakeholder processes

Federal Government

- CEAA Agency now appointed to take the lead role for federal
- Didn't seem to be early consultation on how they were unrolling that process.....

First Nations Consultation (BC govt summary)

“Key strategies for [ensuring Crown’s duties to First Nations are discharged and that First Nations are engaged in EA] include:

- ensuring early communication and consultation with all First Nations potentially affected by a proposed project;
- providing First Nations with capacity funding;
- supporting the First Nations Environmental Assessment Technical Working Group; and
- acknowledging that First Nations have rights regarding consultation and accommodation that are different from other participants in the environmental assessment process.”

-BCEAO Service Plan 2009-2011

Canada-BC Agreement

- Signed in 2004 and renewed in 2008
- Says they respect each other's constitutional responsibilities and shared resp for environment
- Agreement to do “cooperative EA” – “cooperate through the Lead Party's assessment process, to meet the legal environmental assessment requirements of both Parties through a single environmental assessment.”
- Lead Party – BC, unless federal lands
- Other processes to facilitate the process:
 - FEAC and BCEAO are contacts, notify each other of EAs
- Project work plan to be developed
- Joint review panel – ToR, agree to discuss report before deciding

Operational procedures agreement – December 2008

- References trying to better integrate into a single process...language is more “our”
- Specifically commit “...to identify within the next 6 months at least one project in relation to which the delegation mechanism established under section 17 of CEAA could be used on a pilot basis....”
- And same re: BCEAA section 27 – re: integration of requirements of BCEAA into the federal EA process....
- Better coordination of review panel/non-review panel
- Better communication re: meeting constitutional and common law duties to consult and accommodate Aboriginal peoples

Front Line Experiences in BC



Upcoming: 7 Year Review...or some other review process?

- CEAA stipulates there must be a Parliamentary Review of the Act by October 30, 2010
- Last time – 5 Year review –was a Ministerial Review (process commenced December 1999 and new Bill passed June 2003)
- Government has signaled it plans to review the Act

New Regulations March 2009

- Designed to speed infrastructure projects
- Regulations rushed through....no consultation, contrary to government policy on process for devt of regs
- Exclusion List expansion and sea-change in approach to what is deemed “insignificant”; new “Adaptation” regulations
- Predicted will eliminate some 2000 EAs
- Substituting provincial process
- Less rigorous EA – essentially a screening

Themes to expect in a review

- Substitution and streamlining
- Reduction in the number of EAs
- List approach (versus trigger approach)
- Modifying other legislation to limit EA (e.g. NWPA)
- Monetary value as a threshold
- No or limited consultation (with First Nations constitutional implications)

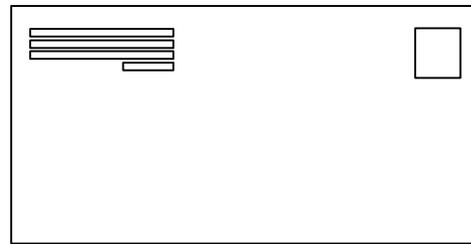
ENGO Issues

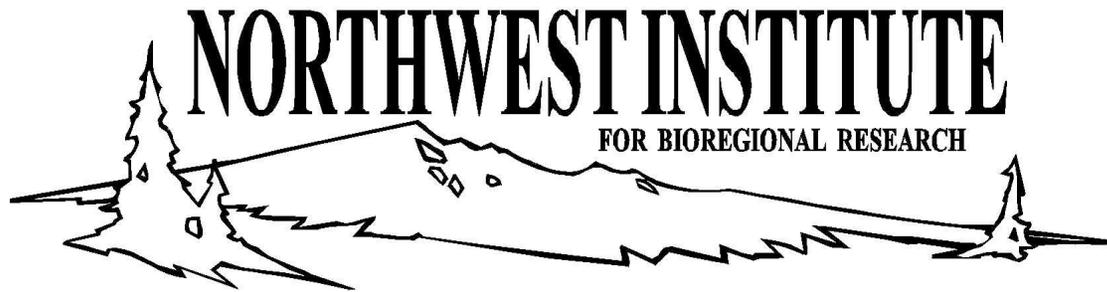
- Scoping/Project Splitting/Application of section
- Harmonization
- Streamlining
- Major Projects Management Office
- Defending the Value of Screening Level Assessments
- Ministerial Involvement in Preparation of Panel EIS Guidelines
- Meaningful Public Participation
- Participant Funding

Ways to Contribute to 7 Year Review

- Letters to MPs
- Phone calls to MPs
- Written submissions
- Participate in any consultations
- Attend Parliamentary Committee Hearings
- Join the Google discussion group

**Effective
EA** reaps
benefits
and has
value!





THANKS for participating!

