



CANADIAN ENVIRONMENTAL ASSESSMENT ACT, 2012

Recommended Restorations and Additions

Kelsey Baker – 1460 Lockyer Rd., Roberts Creek, BC, 604-989-1647, kbaker@unbc.ca
Travis Reid – 2583 Courtenay st. Vancouver BC. – 778-872-7218 – Travis.Reid0103@gmail.com
Addison Reist – 4256 Lakeview Drive Cranbrook BC. – 250 – 489 – 9760 – acr88@hotmail.com
Matthew Waldie – 2043 Tanlee Cr, Saanichton BC, 778-890-0493, matthewwaldie@yahoo.ca

Current Concerns with CEAA 2012

The purpose of the *Canadian Environmental Assessment Act, 2012 (CEAA 2012)* is to implement a process that determines if a project will cause serious environmental harm, and more importantly, decide if these effects are justified given the benefits of the undertaking. Many professionals believe that *CEAA 2012* is a significant step backwards when compared to *CEAA 1999*, and is unprecedented considering the current international trends of new and ambitious environmental regulations (Doelle, 2012). *CEAA 2012* was implemented by the Conservative government to streamline the assessment process and stimulate economic growth, but this brand of deregulation came at a cost to the environment and to the public. The primary deficiencies of *CEAA 2012* are its leniency, limited scope, and inability to adequately consult the public; these shortcomings are brought about by several provisions which should be amended in order to guarantee the effectiveness of the Act in these areas and as a whole.

CEAA 2012 shifted most responsibility of environmental assessments (EAs) from the federal government to provincial and local governments, and it significantly lowered the scope and effectiveness of the assessment process in general. In fact, over 95% of EAs under *CEAA 1999* would have not been conducted had the current regulations been in place (Kirchoff, 2013). *CEAA 2012* is also considerably less predictable as it moves away from generic standards, and makes room for discretionary decisions by the Ministry of Environment (Gibson, 2012). This is mainly due to *CEAA 2012*'s focus on major projects. While this initially seems like a respectable policy because larger projects have the greatest impacts, *CEAA 2012* completely ignores the cumulative effects that occur as a result of multiple small projects. *CEAA 2012* also has a constrained list of activities which require environmental assessment. While the list is fairly comprehensive, the thresholds are high and some key differences are ignored such as the difference between open pit and in situ bitumen extraction, the latter of which has a considerably higher impact (Gibson, 2012). Undertakings not included on the list must be recommended by the Minister of Environment in order to receive an assessment.

Of the undertakings that do undergo an EA, the basis of the assessment is only on the effects registered in the official list of environmental components. The list completely ignores any effects on climate, which is an increasingly important issue in modern science and politics (Gibson, 2012). The Liberal Party supports this cause and has the current policy for environmental assessments: "we will also ensure that

environmental assessments include an analysis of upstream impacts and greenhouse gas emissions resulting from projects under review” (Liberal Party of Canada, 2015, p. 41).

CEAA 2012 also restricts the effective consultation of stakeholders and Aboriginal people in the assessment process. The new limited evaluation period (45 days overall, 20 days for public consultation) is often too brief of a period for all relevant parties to review the project details and contribute properly to the process (Gibson, 2012). This is made worse by the fact that EAs do not commence until the planning and design stage have been completed, making any recommendations by the government or the public more difficult to implement (Doelle, 2012). Another obstacle is that only those directly affected by the project or those with expertise may attend the consultation stage, shutting out the voice of the general public (Powell, n.d.a).

Recommended Provisions

Perhaps the most important provision that should be implemented is an expansion of the scope of the *CEAA* to encompass smaller projects. This will have a positive effect on stakeholders and Aboriginal people, allowing them to be consulted on a broader range of projects. Changes should also be made to the assessment timeline; the process should take place earlier in the development stage and the consultation period should be extended to ensure meaningful input from all relevant and impacted parties. Furthermore, the assessment should once again allow consultations from the general public, to assure that all viewpoints are acknowledged. These recommendations are supported by the current Liberal Party’s policy goals in regards to EAs, specifically to “provide ways for Canadians to express their views and opportunities for experts to meaningfully participate” (Liberal Party of Canada, 2015, p. 41).

In addition, generic standards that are less reliant on ministerial judgement should be implemented, much like those in *CEAA 1995*. These standards should account for the cumulative effects of having multiple projects close by and be derived from current scientific knowledge as per the liberal policy that states, environmental assessments should “ensure that decisions are based on science, facts, and evidence, and serve the public’s interest” (Liberal Party of Canada, 2015, p.41). This will ensure predictable results that are less susceptible to influence from lobbyists and increase the overall quality of the assessment (Gibson, 2012). The new standards should also be expanded beyond their current scope, to encompass effects on the climate in order to combat climate change as described earlier in the Liberal Party’s policy.

These changes will ensure that the review's goals to "develop new, fair processes that are robust, incorporate scientific evidence, protect our environment, respect the rights of Indigenous peoples, and support economic growth" (Government of Canada, 2016b) are met as well as modernize the CEAA.

Equivalency Provisions

With regards to environmental assessments, equivalency agreements should not be implemented to allow federal governments to stand down in provinces that have provincial laws equivalent in effect. In the case of the New Prosperity Mine, both provincial and federal environmental assessments required different information from the Taseko Mines Ltd, and both went through different EA processes. As such, each EA, based on different information and processes, concluded two different verdicts: the provincial government approved and the federal government did not (Haddock, 2011; Robinson, 2014). This is a clear example of how important it is for two EAs to take place because each government is only concerned with environmental aspects that fall under their specific jurisdictions. Furthermore, when there are two separate processes involved, it helps that each process is utilized; this acts as an environmental safety net when considering environmental impacts.

Summary

The CEAA would be better equipped to effectively manage the current developments in Canada if the following provisions were made:

- Expand of the scope of the CEAA to encompass smaller projects
- Allow consultations from the general public
- Extend the development stage and the consultation period
- Start the assessment earlier in the project life
- Define generic standards that are less reliant on ministerial judgement
- Account for the cumulative effects of having multiple projects
- Encompass and evaluate effects on the climate

In regards to equivalency agreements, they should not be implemented in environmental assessment. Both federal and provincial assessments should be completed independently to insure that all effects, locally and nationally, are taken into account.

References

- Doelle, M. (2012). CEEA 2012: The end of federal EA as we know it? *24 Journal of Environmental Law and Practice* 1. <http://dx.doi.org/10.2139/ssrn.2104336>.
- Kirchhoff, D., Gardner, H., & Tsuji, L. (2013). The Canadian environmental assessment act, 2012 and associated policy: Implications for Aboriginal peoples. *The International Indigenous Policy Journal*, 4(3) . Retrieved from: <http://ir.lib.uwo.ca/iipj/vol4/iss3/1>.
- Liberal Party of Canada. (2015). A new plan for a strong middle class. *Federal Liberal Agency of Canada*. Retrieved from <https://www.lberals.ca/files/2015/10/New-plan-for-a-strong-middle-class.pdf>.
- Gibson, R. (2012). In full retreat: the Canadian government's new environmental assessment law undoes decades of progress. *Impact Assessment and Project Appraisal*, 30:3, 179-188, DOI: 10.1080/14615517.2012.72041.
- Haddock, M. (2011). Comparison of the British Columbia and Federal environmental assessments for the Prosperity Mine. *Northwest Institute for Bioregional Research*. Retrieved from http://northwestinstitute.ca/images/uploads/NWI_EAreport_July2011.pdf.
- Robinson, M. (2014, February 27). Feds reject Taseko's New Prosperity Mine over environmental concerns. *Vancouver Sun*. Retrieved from <http://www.vancouver.sun.com/news/Feds+reject+Taseko+Prosperity+Mine+over+environmental+concerns/9555588/story.html>.