

Federal Environmental Assessment Expert Panel Submission

Submitted by: Dean O’Gorman

Background

- Thank you for the opportunity to offer some perspectives, as someone that has worked inside the federal environmental assessment (EA) system at the Canadian Environmental Assessment Agency, as well as outside of it as a consultant at Barr Engineering and Environmental Science. I have also worked in the federal government at Environment Canada, primarily on climate change/greenhouse gases (GHGs). I am also a member of the Qalipu Mi’kmaq First Nation, from Newfoundland. I will not be speaking about any particular projects, or on behalf of any clients or my employer. My comments are only my own.
 - In general, I would argue that the federal EA system is reasonable and delivers professional, science-based reviews of proposed projects, and is not in need of a fundamental overhaul. Thus, I chose to focus my comments on a few technical suggestions which might help improve the federal EA process.
1. Two big improvements in the *Canadian Environmental Assessment Act, 2012* (CEAA2012) which should be maintained:
 - 1) Regulations Designating Physical Activities: The introduction of this regulation (the “project list”), was a significant improvement from the pre-CEAA2012 process of determining whether a project requires a federal EA by attempting to determine whether any of the ‘triggers’ would be met. There are examples (which federal officials should be able to share, if necessary) in which the older process contributed to uncertainty as to whether a particular project would require a federal EA, as well as uncertainty around the scope of the project to be reviewed, and led to timing challenges in attempts to harmonize federal and provincial review processes.
 - However, I would suggest that you may want to carefully review the current projects on the project list, both in terms of the project types captured as well as the thresholds listed, to determine whether you want to suggest any modifications (perhaps also comparing the federal project list to similar lists used by various provincial jurisdictions). The criterion, I would suggest, is whether there would be a beneficial federal contribution to reviewing any particular project type. Do projects not currently represented on the federal project list potentially impact areas of federal responsibility? Are projects on the current list adequately assessed under provincial systems, with little potential to impact areas of federal responsibility?
 - 2) Elimination of screening-level EAs: under the pre-CEAA2012 system, thousands of federal screening-level EAs per year were conducted for mostly “smaller-scale” projects (although some “larger-scale” projects were reviewed as screenings, which would now be captured under the project list regulation). You will likely receive submissions asking for these reviews to be reinstated. These screening-level EAs, however, almost always consumed time and resources that contributed very little, if anything, to better environmental outcomes. Such projects are better managed or reviewed in other ways than via the federal EA system, which should prioritize resources on projects with a potentially bigger impact.

That being said, my comments are not intended to address changes that were made to how projects were considered under the old *Navigable Waters Protection Act*, or the pre-2012 version of the *Fisheries Act*.

2. Climate change

- One issue upon which you have sought input is how to better incorporate climate change considerations into the federal EA process.
- As you know, there exists an old (2003) set of federal guidelines that provide guidance to proponents on how to address both GHG mitigation, as well as planning for climate change adaptation. These guidelines were developed by a federal-provincial working group, in a time when Canadian climate change policies were much less developed than today. It is probably fair to say that these guidelines are often not followed carefully by proponents, nor does the review process generally carefully assess how closely these guidelines have been followed in a proponent's Environmental Impact Statement for a new project.
- A revised and modernized set of guidelines on this issue, along with a commitment from the federal review process to promote their use and application, would be an important step to improving the treatment of both climate change mitigation and adaptation in the EA process.
- It is important to remember that since carbon molecules end up being globally mixed to produce anthropogenic climate change, the impact on the overall climate from any particular project will always be miniscule. Assessing significance of GHG emissions by comparisons to policy-driven reduction targets runs counter to the notion of significance. I would suggest that the correct way to determine whether a proponent has adequately considered and planned for GHG emissions reductions (climate change mitigation) in its project should be an assessment of the degree to which the project's eventual GHG emissions will be regulated and comply with a GHG regulatory/management regime. If such a system is in place, be it a provincial or federal GHG management system, and the project must eventually comply with it, then I would argue that the project's GHG emissions are compliant with aforementioned GHG reduction targets, and by definition the project's GHG emissions are not significant. The EA process can then usefully serve the role of asking a proponent to demonstrate that they have considered and planned for measures to improve energy efficiency and reduce GHG emissions once in operation, and secure commitments on this front.
- On the other hand, planning for adaptation to a changing climate is perhaps an area that can be better incorporated into the federal EA process. Of course, proponents are currently required to demonstrate the potential impacts of a changing climate on their project, and some level of analysis of potential changing climate is usually undertaken. But there has been an interesting research project that suggests the incorporation of climate change adaptation considerations into the EA process could be improved. Please see the paper which can be found at the web address indicated:
 - Rodgers, C., Eng, S., Sparling, E., Douglas, A., Auld, H., and Byers, P. (2014): Assessing the Treatment of Climate Change Impacts and Adaptation in Project-Level EAs in the Canadian Mining Sector, report submitted to Climate Change Impacts and Adaptation Division, Natural Resources Canada, 86p.

[http://www.climateontario.ca/doc/p_ECCC/A_Review_of_Mining_Sector_Environmental_Assessments_OCCIAR_RSI.pdf]

3. Review panels

- There is a lack of clarity on when a project warrants a referral to a review panel, as opposed to being assessed via a standard EA. Both project proponents and interested stakeholders suffer from this lack of clarity.
- It would be a worthwhile exercise for the government to take steps to reduce this lack of clarity, by providing some well thought out guidance on which projects are likely to warrant referral to a review panel.

4. Potential for more collaborative mechanisms aimed at better project design

- In principle, a key objective of environmental assessment is to act as a planning tool, to help achieve better project design from an environmental perspective. It is worth considering whether there could be process mechanisms introduced that would improve collaboration to produce better project design and environmental outcomes.
- As an example, I have observed frustrations with the current process as often consisting of too many information requests (sometimes of questionable relevance or usefulness) from expert reviewers about a submitted Environmental Impact Statement (EIS) – information which often could have been better addressed in the early stages of a project application, while planning the studies that inform an EIS.
- Similarly, there are sometimes challenges for First Nations to effectively engage at a technical level early in project review stages, due to lack of capacity.
- One possible approach to address this would be for the review process to take a little more time on the front end, to foster collaboration between a proponent (and its consultants) and the expert federal reviewers who will eventually be reviewing the EIS, as well as key stakeholder and First Nations communities. For example, this could be done via a formal requirement for working groups to be established at the beginning stages of a project application, to refine and provide more details to the EIS Terms of Reference. The goal could be to improve the scoping of the studies that are done in the planning stage, and thus potentially produce a more efficient and relevant process for information requests after the EIS has been submitted – particularly if the reviewers were then committed to the scope of issues upon which they could ask information requests once the EIS is later submitted. Transparency in such a process should prevent the appearance or reality of regulatory capture.

5. Federal capacity

- Given the importance of delivering sound and timely reviews for projects in the federal EA system, the federal government should invest in improving the staffing capacity within the federal system to support these reviews. This includes both correcting the cutbacks to federal scientific expertise that occurred in the last decade, as well as making a commitment to support more training and mentoring within the system for officials that participate in the review process.
- The need for adequate staffing levels of federal experts speaks for itself.
- In terms of training, aside from support for traditional training and educational programs for government experts, the Interchange Canada program could support the temporary assignment of government officials that will be involved in review processes to work for a

time in the private sector, with project proponents or consulting firms. Seeing the review process from “both sides”, so to speak, provides valuable perspective on the process as a whole, and would likely result in more efficient and effective review processes – both in terms of governments reviewers better understanding the pressures that project proponents face, and for project proponents to better understand the types of pressures that regulators and reviewers face. You may want to recommend to the federal government that it explicitly launch an initiative to help federal experts secure such opportunities for Interchange assignments, working with companies in industry sectors that are regularly subject to the federal EA process.

Thank you for the opportunity to share my comments, and I wish you well in your efforts.