



December 22, 2016

Ms. Johanne Gélinas
Chair of the Expert Panel

Dear Expert Panel Members:

Thank you for the opportunity to make this submission to the Expert Panel established by the Hon. Catherine McKenna, Minister of the Environment and Climate Change, to conduct a Review of the Environmental Assessment Processes under the *Canadian Environmental Assessment Act, 2012*.

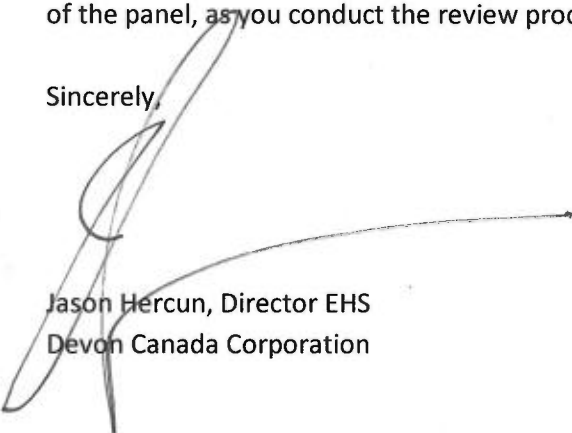
Devon Canada Corporation (Devon) is an experienced player in heavy oil, with more than 20 years of heavy oil production in Bonnyville, Alberta and in-situ (steam assisted gravity drainage) operations in the Athabasca region of northeastern Alberta. Devon has over 100,000 BOED of best-in-class production at our Jackfish operations.

Devon strives to deliver industry-leading results, starting with the health and safety of our employees and the communities where we live and work. We seek to set the standard as a good neighbor, a valued community partner, a caring environmental steward and a model employer.

Devon appreciates the Government of Canada's commitment to improving the transparency, efficiency and effectiveness of its environmental assessment framework. Devon is pleased to participate in this review and share with the Expert Panel Devon's views on these important issues.

Enclosed please find Devon's written submission to the review process. Please do not hesitate to contact me should you have questions, or if Devon can be of any further assistance to you and the rest of the panel, as you conduct the review process.

Sincerely,



Jason Hercun, Director EHS
Devon Canada Corporation

Submission to the Expert Panel Review of Environmental Assessment Processes in Canada

1. Executive Summary

Devon Canada Corporation (Devon) is an experienced player in heavy oil, including in-situ oil sands, in Alberta. Devon is a member of the Canadian Association of Petroleum Producers (CAPP) and respectfully provides this submission in support of, and in addition to, the submission provided by CAPP on behalf of all member companies.

To date, Devon's projects have not required application under the Canadian Environmental Assessment Act (CEAA); however, several were screened prior to implementation of *CEAA 2012*. Devon's views in this submission are based on support for a sustainable, transparent and effective environmental assessment (EA) process with emphasis on ensuring that Canada's federal regulatory regime provides regulatory certainty to allow Devon, and other proponents, to remain competitive in the global oil and gas market.

Devon is generally supportive of *CEAA 2012* and its focus on environmental components within federal jurisdiction. Overall, Devon would advocate for the provinces, in alignment with constitutional jurisdiction, to have exclusive EA review and decision making authority for resource development projects, such as in-situ projects, except where impacts from those projects fall within areas of federal jurisdiction. Devon recommends that this be accomplished through either exclusion of such projects from requirements under CEAA or application of equivalency. Devon is also a proponent of consultation being focused on those stakeholders that are potentially directly or adversely impacted in order to ensure that they are appropriately engaged in the project and the EA process. The following sections, which are aligned with the expert panel's six themes for input, present additional detail regarding Devon's recommendations relative to the federal EA process.

2. Environmental Assessment in Context

Devon supports the CEAA 2012 definition of environmental effects, which is focused on environmental components specifically within the authority of the federal government. Devon further supports a similar approach to the *Regulations Designating Physical Activities*, such that it includes only those activities most likely to impact areas of federal jurisdiction.

While Devon supports federal EAs for projects in areas of federal jurisdiction, we would further recommend additional implementation of substitution and/or equivalency as allowed for under CEAA 2012. Devon's perspective is that the provinces have jurisdiction over resource management decisions and are generally the best placed, given their skills, knowledge and context, to regulate and manage resource development EA's and to take accountability for decision making and follow up monitoring as required. Further clarification of these responsibilities, through enhancements to federal/provincial bi-lateral agreements, would enhance the federal project EA process and associated decision making as well as the transparency thereof.

As stated by the Panel, the decision on whether to approve a project is a public interest decision, which needs to balance environmental, social and economic considerations. The EA process is an important consideration in this decision, but not the sole consideration. Devon recommends a continued focus on science-based decision making in the EA process, keeping in mind that EA is one of many components that

must be weighed when making project approval decisions. Technology selection is also a decision that must be science-based, balancing environmental and economic considerations, as well as considering what is technically feasible for commercial operations at the time of project application.

Finally, Devon is of the view that CEAA should not be used as a mechanism to introduce, or as a means to develop, policy. The EA process should focus on understanding the environmental effects of the project on areas of federal jurisdiction and ensuring that existing federal policies are consistently and appropriately incorporated into project planning.

3. Overarching Indigenous Considerations

3.1. UNDRIP Framework

Devon endorses UNDRIP as a framework for reconciliation in Canada, and supports the implementation of its principles in a manner consistent with the Canadian Constitution and law. Devon understands FPIC as an important set of principles to ensure protection of the rights of Indigenous Peoples through the process of meaningful engagement and consultation. Through meaningful, proponent-led, delegated consultation efforts that inform the mitigation of project-related impacts, decisions by Indigenous communities are made freely and without coercion in advance of regulatory project decisions, and are based on appropriate information about the project. EAs can help advance the principles of FPIC, but cannot do so in isolation. Devon recommends that the Government's commitment to FPIC not be implemented solely through future revisions to CEAA 2012. The implementation of UNDRIP in CEAA must be consistent with other broader, related efforts of government.

3.2. Inclusion of Indigenous Knowledge in EAs

Devon supports the inclusion of Traditional Knowledge (TK) in the EA process and has contributed significant resources to support research and promote inclusion of TK into project planning, assessment and regional cumulative effects management. While we have advanced our understanding, Devon support continued collaboration between governments, communities and industry to establish greater definition on TK best practices, particularly in areas of high development.

3.3. Consultation Harmonization

Devon is committed to meaningful consultation with indigenous communities from the inception of a project, during the EA process and throughout operations and closure. However, the requirements of consultation are often unclear and at times duplicative. The Government of Canada relies partly on proponent-led consultation, but also conducts its own consultation process. The boundaries of these two processes are often blurred. In addition, provincial governments have their own requirements. This leads to confusion on who needs to be consulted, at what level, how, when and by whom. To add to the confusion, it is unclear how consultation is determined to be adequate, especially federally. The Canadian Environmental Assessment Agency has been playing an important role as Crown Consultation Coordinator. However, greater delineation and harmonization of federal-provincial and proponent roles in consultation would be beneficial for all involved. Multiple government and proponent engagements on a given project application unnecessarily "tax" aboriginal communities' limited resources resulting in frustration and higher costs for all involved. Harmonization of consultation would allow proponents to implement the consultation process on behalf of all governments, with a single line ministry, such as the Alberta Aboriginal Consultation Office (ACO), tagged with the responsibility to determine consultation adequacy in a manner consistent with the Canadian Constitution and law.

3.4. Assessment of the Potential for Rights Infringement

It has been suggested that the federal EA review process used to evaluate the potential project impacts to habitat, wildlife, and vegetation could be applied to determine the potential impacts of a proposed development on aboriginal or treaty rights. It has also been suggested that the specific rights to be evaluated could be established by the regulator at the onset of the consultation process. Devon submits that this process is not appropriate nor is CEAA is the best suited agency for determining impacts on rights. As stated earlier, agencies or government departments whose expertise it is to determine consultation adequacy and to determine if a potential infringement of rights might occur, and if it is justified, should be tasked with this responsibility, not CEAA. Attempting to determine what rights may be affected in advance, through CEAA, will result in projects being faced with legal challenges before the consultation process can be undertaken. This will create unnecessary delays to projects, and will significantly impact investment in Canada due to impacts to regulatory certainty. Devon recommends that the responsibility for determining consultation adequacy be addressed through efforts to harmonize the consultation process; and, Devon would further recommend that a ministry or agency, such as the ACO, which has been specifically tasked with examining consultation, is the appropriate body to deal with decisions on the impact to rights, and consultation adequacy.

4. Planning Environmental Assessment

4.1. Requirements for Assessment

Devon is fully supportive of the current federal EA process whereby focus is on evaluation of potential environmental impacts that are within federal jurisdiction. Devon also supports, and would recommend additional use of, the ability under CEAA for application of substitution or equivalency with the provincial process to minimize duplication in EAs.

As discussed previously, Devon supports the *CEAA 2012* definition of environmental effects, which is focused on environmental components specifically within the authority of the federal government. To this end, Devon recommends that the *Regulations Designating Physical Activities*, not be amended to include in-situ projects and that such projects only be subject to federal EA when specific areas of federal jurisdiction are potentially impacted. It is Devon's experience that in-situ projects are unlikely to impact areas of federal jurisdiction and that the current provincial regulatory regime related to in-situ projects, including comprehensive project environmental impact assessments, is well positioned to assess in-situ projects.

4.2. Assessments and Policy

It is Devon's recommendation that project-specific EA's not be used as a mechanism to address broader policy gaps. Project plans and project EA requirements and recommendations should comply with existing government policy. The EA may result in identification of policy gaps requiring the attention of policy makers to address, but should not serve as an alternate vehicle for making policy. Approvals and authorizations issued as an outcome of an EA review are not the appropriate vehicle for introducing new policy-level requirements.

4.3. Regional/Strategic EAs

Government-led planning tools add considerable value through consideration of broader-scale and policy issues such as cumulative environmental effects, human and ecosystem health, and economic

development at a broader scale than is possible or appropriate within a project-specific EA. One such example is the development and implementation of regional plans through the Alberta's *Land Stewardship Act*. A primary driver in developing these regional plans is to clarify provincial policy priorities regionally and to manage cumulative effects. The first of these regional plans was implemented in 2012 in Alberta's Lower Athabasca Region, where the majority of the province's oil sands production occurs. The Lower Athabasca Regional Plan (LARP), introduced cumulative environmental management frameworks for air, land and water which include management action triggers and regional limits. These regional plans are supported by rigorous government-led EA and modeling efforts which are informed by regional monitoring programs and incorporate public and Indigenous input.

Other government-led regional-scale tools, such as strategic or regional EA (SEA or REA), add value as a means to facilitate dialogue and regional land use planning and to identify valued biophysical, social and cultural components as well as reasonably foreseeable cumulative and regional/landscape impacts. For SEA/REA to be successful it is imperative to clearly define the intended application of the SEA/REA outcomes. In addition, it is very important that the SEA/REA temporal/spatial boundaries, scope of study and scenarios for examination are well defined or the SEA/REA is at risk of being unsuccessful in addressing the intended outcomes. In addition, the success of an SEA/REA can rely on selection of a government or EA practitioner that is well positioned to conduct the EA and seek, where appropriate, stakeholder inputs. From Devon's perspective, SEA/REAs can add significant value to the EA process if they are completed with clear outcomes, led and funded by regulators, and used as tools to inform decisions related to project-specific EAs. However, it is also important that a process involving SEA/REAs not act as a barrier or delay to approval for project-led EAs where SEA/REAs have not yet been implemented or completed.

5. Conduct of Environmental Assessment

5.1. Equivalency/Substitution

Reduction of duplication within environmental regulatory regimes is important for Devon. It is Devon's view that provinces and the appropriate provincial agencies should have exclusive EA decision making authority for resource development for all projects, except in the narrow circumstances where effects from the designated project fall within areas of federal jurisdiction, the project is on federal lands, or the project is a federal work or undertaking.

Devon would encourage pursuit of equivalency, whereby the Governor in Council may exempt the project from the application of CEAA when it can be demonstrated that the determination of environmental effects and mitigation measures can be met through application of an EA and approval process carried out by a designated authority such as a provincial agency. If executed appropriately, this approach can increase EA process transparency, particularly at a local and regional level, improve the effectiveness of consultation, and lead to clearer and more effective approval conditions for operations and monitoring.

Devon encourages the federal regulators, the provinces and the appropriate provincial/federal agencies to continue regulatory reforms through a substitution and/or equivalency model based on the principles of "best-placed regulator" and "single-window" approach. Doing so would allow for effectively placed review of EAs, more timely regulatory decisions, reduced regulatory duplication and improved regulatory competitiveness. Under *CEAA 2012* provisions currently allow for both equivalency and substitution, Devon would encourage the expert panel to retain these aspects of *CEAA 2012* and to examine

opportunities to further encourage use of equivalency and/or substitution to improve the EA process in Canada.

With respect to international and national environmental and social commitments made by the Government of Canada (e.g., GHG emission management), Devon supports a harmonized provincial/federal approach. Similar to how other federal requirements are regulated (e.g., ambient air quality standards), Devon is supportive of the provinces and territories regulating in a manner that is consistent with federal standards.

5.2. Responsibility for Assessment

Devon is supportive of an EA process that considers all relevant potential project effects and that identifies appropriate mitigation and monitoring approaches to manage those effects. It is Devon's view that the project proponent is best placed to ensure that the EA associated with their project is prepared in a manner that is comprehensive and in accordance with all applicable regulatory requirements.

As discussed previously, Devon would recommend that the proponent be responsible for working with local stakeholders, including Indigenous communities, who may be potentially affected by resource development, to ensure that they understand the project and are provided with the opportunity to engage with the proponent relative to aspects such as project design, EA completion, and mitigation and monitoring programs. Devon fully endorses transparency during the conduct of an EA and further supports working with regulators to ensure that project information is publicly available.

5.3. EA Process Recommendations

All stakeholders, including the public, proponents, governments, and Indigenous groups benefit from a consistent, predictable and timely EA review process. Devon is supportive of maintaining or introducing changes to the federal EA process that increase regulatory certainty, which in turn will help to ensure that Canada is competitive globally. EA elements that support regulatory certainty and that should be maintained or introduced include:

- Implementation of Clear Regulatory Timelines – Legislated timelines increase the predictability and consistency of the EA process in Canada. Also, understanding when a process will begin, when there will be opportunities to participate, and when the process will end allows stakeholders to adequately plan their participation in the EA process.
- Application of an environmental effects definition and scope restricted to areas of federal jurisdiction – Focusing the EA to areas of federal jurisdiction helps to reduce overlap and duplication with existing provincial processes. In addition, by focusing on areas of federal jurisdiction in federal EAs other areas for review are assessed by the best-placed regulator, being the regulator with the most relevant knowledge, context and resources.
- Implementation of an EA process focused on environmental effects – The federal EA process should focus on understanding the environmental effects of the proposed project on areas of federal jurisdiction and ensuring that existing federal policies are consistently and appropriately incorporated into project planning. As stated previously, EAs should not be used as a tool to effect changes that are better suited to implementation through policy, nor should lack of policy on a particular aspect delay a decision relative to a project EA.

6. Decision and Follow-Up

Decision making for federal EAs should be science-based and apolitical and as such, decisions should balance environmental, social and economic factors. As discussed, Devon would advocate for provinces to have exclusive decision making authority for all resource development projects, except in the narrow circumstances where effects from the project fall within areas of federal jurisdiction, the project is on federal lands, or the project is a federal work or undertaking on federal lands. Where a federal EA decision is required, application of equivalency with provincial processes is recommended, thereby allowing for delivery of a single decision/approval by the best-placed regulator and improving consistency and efficiency through the consolidation of compliance conditions.

7. Public Involvement

Devon is committed to working with local stakeholders, including indigenous communities, who may be potentially affected by resource development. Devon supports early engagement on project design and is committed to engaging indigenous stakeholders in traditional knowledge data collection. As project applications and EAs are filed, Devon supports transparency in both government and public processes and would advocate to work with governments to ensure that project information and public feedback are publicly available and easily accessible.

It remains critical for the EA process to distinguish between impacted parties and interested parties, and consider this in the process. The existing process allows for the public and impacted stakeholders to participate. It is Devon's experience, that bringing decision making to the local level (focused on those most likely to be affected by projects) helps build public trust in the EA process. As such, Devon recommends that CEAA focus on engaging with potentially impacted parties while allowing access to information to any interested parties in order to improve overall transparency and confidence in the process.

For Devon, engagement with local and potentially impacted individuals and groups is very important to continued operations in an area. Ongoing reporting provides an opportunity for dialogue with communities on project performance, monitoring outcomes, effectiveness of mitigations and opportunities for improvement.

Overall, Devon recognizes that EA processes provide important ways for those who may be impacted by new projects and those with special expertise to express their views on natural resource development. Devon supports the dedicated, designated periods for public consultation built into the existing federal EA process, which provide transparency and certainty for proponents, stakeholders and the public.