

Talking Points- Federal EA Regulatory Review- Sudbury Nov 4 Panel Hearing

For: Anthony Laforge, Director of Lands and Resources, Magnetawan First Nation

From: Scott Mackay, MSc, RPP- Managing Partner

Slide 1- Title page

Slide 2- Magnetawan background info- consider also sharing brief experience of what federal EAs you have been engaged in within the last 10 years. (2-3 minutes)

Slide 3- Issues with CEAA 2012 (4 minutes)

- ✓ Statutory timelines are contrary to a meaningful consultation process.
 - The mandatory timelines for government in the Act are too short and inflexible
 - Indigenous peoples do not have time to review and respond effectively to EA reports
 - Does not allow for the clock to adjust to get through difficult issues.
- ✓ List-based vs. trigger-based screening process undermines indigenous interests and concerns.
 - In 2012, the process to decide whether an EA was required or not became based on a rigid and narrow list of project types
 - This does not allow indigenous people to have an influence on whether projects occurring in sensitive areas or with particular rights impacts are considered for an EA
- ✓ Consideration of indigenous traditional knowledge is optional and, in practice, very shallow or absent.
 - The Act only says that TK “may be considered” but does not require it be considered
 - The Agency has not established detailed guidance for the treatment and use of TK in EAs
- ✓ Indigenous communities do not have a meaningful role in final EA decision-making in their territories or within and around their reserve lands.
 - No final say in how the significance of impacts are defined
 - No role in Government Review Teams
 - No meaningful consultation by the Minister’s office at the point of a decision.
- ✓ There are no defined mechanisms by which an EA process can be delegated to a non-land claim based indigenous authority by substitution.
 - Only identified “jurisdictions” (e.g. Port Authorities) in the Act and authorities made by a Province apply
 - Does not account for new developments such as communities under the Land Code having their own EA laws.

Slide 4- Requested Changes (4 minutes)

- ✓ Provide mechanisms for indigenous communities to “stop the clock” on the EA process to ensure meaningful consultation.
 - Hopefully this is self explanatory
- ✓ Bring back regulatory triggers to federal legislation as a means of ensuring indigenous input on potential impacts can be incorporated into screening decisions.

- When the list of what requires an EA is more flexible and a more situation specific decision is made, indigenous communities have more chance to influence whether a project gets an EA.
- ✓ Make consideration of indigenous traditional knowledge mandatory, its collection and use appropriate, and ensure it is meaningfully integrated into all relevant aspects of the EA process.
 - Appropriate collection ensures it is done in a respectful way; appropriate use means there is informed consent for its use by the community
 - Meaningful integration means that for example traditional ecological knowledge is integrated into an ecology chapter of an effects assessment, not stuck into a standalone chapter on indigenous interests; it means that it is incorporated into how effects are determined to be significant or not, and it is applied to follow-up monitoring requirements.
- ✓ Ensure significantly affected indigenous communities have a role in EA Government Review Teams.
 - The Government Review Team is with reps of all the federal (and in some cases provincial) departments who review the EA on behalf of government- indigenous people should be in the room too.
- ✓ Ensure affected indigenous communities have a role in deciding criteria to assess the significance of residual effects.
 - Deciding whether effects are residual (still there after mitigation) and significant is a key part of making a final EA decision for government. Affected indigenous people should have a say in those criteria.
- ✓ Ensure affected indigenous communities are specifically consulted by the Minister's office or GIC (as applicable) before an EA approval decision is made.
 - Hopefully self explanatory
- ✓ Provide a mechanism for an indigenous organization or an operational community under the *First Nations Land Management Act* to undertake an EA by substitution
 - Hopefully self explanatory

Slide 5- We also support indigenous lawyer Phil Fontaine and his firm Ishkonigan in their approach calling for "Collaborative Consent" with indigenous peoples. To us in essence this approach means making land use and development decisions together, at every step of the way with government similar to the way it is done in Far North co-management areas.