

Modernizing Canada's Environmental Assessment System

Select Recommendations

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Notes on The Author

My experience with federal EA has largely been as a public interest advocate.

For example, as noted in my presentation to the EA Review panel on Dec 14th, I draw heavily on my experience with the federal Northern Gateway review. At that time, in addition to submitting technical information, colleagues and I endeavored to assist thousands of people to register and participate in the Joint Review Panel hearings.

Partially in response to those public engagement efforts, the former federal government labeled us and others as “radicals,” and proceeded to restrict public participation in, and the scope and timeline of federal reviews e.g. of the Kinder Morgan Trans Mountain expansion.

I also draw from my experience summarizing hearing transcripts for the Mackenzie Valley Pipeline Review.

Introduction

In my presentation to the EA panel on Dec 14th, and in the interest of time, I made one central recommendation: **incorporating a screening phase before projects proceed to a full technical review.**

In this brief written submission, I'll expand on that recommendation and outline select others, pertaining mostly to my experience with large, complex projects.

Recommendations

1. Allow people to engage as Cabinet itself engages

That is to say, broadly and expansively.

People get that the final approval/rejection decision often comes down to values, broader policy considerations like sustainability and current economic needs, regional differences and international commitments, alternatives to the project, etc.

So not surprisingly, that is the level at which most people also wish to engage, especially with large, complex projects.

If people are not empowered to engage at the level that Cabinet itself engages – i.e. the public is restricted to commenting on narrow, highly technical information – the process will feel disingenuous or “rigged.”

2. Broad, expansive engagement should be conducted early

Because that's when people expect it to occur.

And, if it's to have any meaningful impact on the proposal, that's when it *must* occur.

3. Integrate the concept of systemic risk

As described e.g. by Stella Swanson in her submission to the Panel, the concept of systemic risk goes a long way to explain the unraveling of traditional EA processes.

Broad, expansive, early engagement is most critical for projects that present systemic risk.

4. The basic question is one of risk tolerance

When Cabinet decides on a project, they are fundamentally making a risk tolerance decision.

As previously discussed, people want to engage as Cabinet itself engages, and so broad, expansive, early engagement should outline the general nature of the risks involved, along with the potential benefits, and then focus on these

types of basic questions:

- Is the type of activity being proposed acceptable to you?
- Are you willing to tolerate the risks?
- If you're not willing to tolerate the risks, how might the proposal be changed?

For example, before Enbridge or Kinder Morgan submitted any detailed technical information whatsoever, we knew enough about the nature of the risks involved for the public to be engaged on basic risk tolerance questions.

5. Risk tolerance = social license = informed consent

These three phrases have much in common.

Modernized EA should use them, because they are phrases/concepts that people expect to be engaged on.

E.g. as a private citizen I'll understand that my own consent is not, and cannot feasibly be made to be required for any given project to proceed, but I'd nonetheless like to be asked. Doing so makes the process feel genuine.

The issue of UNDRIP and the formal concept of free, prior and informed consent obviously has a special meaning and is more complex. I do not have the expertise to provide comment on this.

6. Use early engagement to formalize pathways to "No"

Because nobody – not the proponent or their investors, the public or their representatives – benefit from wasting a bunch of time and money on years of technical proceedings when it's obvious that the public have no/low tolerance for the types of risks involved.

"No" is also a form of certainty, and certainty makes it easier to do business.

Early engagement needs to incorporate efficient and formal "off ramps" for intolerable projects.

7. Early engagement = screening process

In my presentation on Dec 14th, and in submissions made by others, early engagement is suggested to amount to a screening process, to help determine whether a proposal should be allowed to proceed to more in-depth review,

and the nature of that review.

8. Adopt in principle, then take the time required

If modernized EA is to reflect recommendations 1-7, there are many details that will need to be worked out, including what kinds of projects will involve that broad, expansive public engagement, how that engagement will actually work, and how decisions will be made at the end of it.

I wish I had a crystal clear proposal for all of that.

The reality is, however, that it's a new and bold enough approach to require a good deal of further consideration, probably more than the EA Review Panel is able to give in the time allotted.

However, I think the Minister should be encouraged to adopt broad, expansive, early engagement (at the level Cabinet itself engages) in principle (for large, complex projects), and then take the time to figure out the details.

9. Federal EA should be re-named Federal Environmental Risk Governance

Because that's a more accurate description of what is actually going on.

We're not *just* assessing things, we're engaging the public in a broad, expansive, government-level discussion about whether certain types of risk are tolerable or not.

And if they are, how best to govern and manage that risk.

10. There needs to be a check on Cabinet's authority to approve

The current state of the global environment provides proof positive that elected officials often put short-term political interests ahead of long-term public interests, and don't provide a particularly effective check against activities that have led to significant, all-too-often persistent or permanent environmental harm.

Thus, I would argue we need *some* kind of check against the kind of short-term decision-making that imperils future generations.

I recommend federal EA should be empowered by legislation to reject proposals that are found to be associated with significant environmental

harm.

This would NOT be inconsistent with the principle of representative government because the enabling legislation would – of course – need to be passed by government, with future governments free to change it.

The point would be to increase public trust in the process by empowering those with a more disinterested perspective to take a precautionary approach when appropriate.