

Canadian Environmental Assessment Act, 2012

The Canadian Environmental Assessment Act was repealed with the last federal budget and entirely replaced with Canadian Environmental Assessment Act, 2012 (CEAA) effective July 6, 2012.

The new Act contains certain measures related to “responsible resource development”. Specifically:

- it establishes a new environmental assessment procedure;
- the Environment Minister has the authority to determine whether assessments for new resource developments are required under new regulations that test for “significant adverse environmental effects” (section 5 - effects are considerations but not EA triggers);
- the Canadian Environmental Assessment Agency, the Canadian Nuclear Safety Commission, the National Safety Commission, the National Energy Board or a review panel established by the Minister are to conduct assessments within 24 months, at which time, a decision statement is to be issued to the project proponent who is required to comply with the conditions specified;
- the federal government can delegate environmental assessments to other jurisdictions such as provinces, self government bodies/land claims agreement bodies, a government of a foreign state, or international organization of states; and can eliminate their own assessments if one has been made in another jurisdiction;
- Cabinet can now issue decisions on major pipelines instead of the National Energy Board;
- Cabinet can overrule decisions and a retroactive section sets the clock at July 2010 for existing development projects;
- “Environmental effects” under the new Canadian Environmental Assessment Act will be limited to effects on fish, aquatic species under the Species at Risk Act, migratory birds;
- fish habitat provisions protect fish of “commercial, aboriginal, and recreational” value;
- the Canadian Environmental Assessment Agency will have 45 days after receiving an application to decide if an assessment is required (aka “screening”);
- projects involving federal money do not require an environmental assessment;
- pipelines and power lines are exempt from the provisions of the Navigable Waters Protection Act (Canadian Oil and Gas Operations Act amendment);
- the Canadian Environmental Protection Act one-year limits to permits for disposing waste at sea can now be renewed four times;
- the Species at Risk Act now exempts the National Energy Board from imposing conditions to protect critical habitat on projects that it approves;
- reporting requirements under the Parks Canada Agency Act are reduced;
- Coasting Trade Act promotes seismic testing thereby allowing increased off-shore drilling;
- Canadian Nuclear Safety Commission, which is a licencing body and not an assessing body, is responsible for environmental assessments (Nuclear Safety Control Act amendment).

Source: www.hilltimes.com “Everything you ever wanted to know about Bill C-38, but were afraid to ask” by Bea Vongdouangchanh (June 25, 2012)

My Comments

So what does it all mean? It is hard to understand the implications. Don't feel bad. The three lawyers in the room, trying their best to explain the CEAA, were at a loss on many aspects of this new legislation. They noted that the Act has narrowed down scope while applying very broad concepts (such as "cumulative effects"), the consequence of which is unknown.

If Stephen Harper had pulled a bunch of corporate CEOs into a room and asked "How can I make life easy on you?" the result would have been this CEAA. (Rumour has it that is exactly what he did.)

First Impressions:

- Substantially more compressed process re: public comments and who can participate.
- Minister / Review Panel / Cabinet have power.
- Many variables and dependent on key players so each EA will be unique.
- There will be a whole lot of lobbying going on (primarily to avoid the EA process).
- Much time will be spent figuring out the new rules to the game.
- Entire process is fast with a 2 year time limit.
- Too late for EA if a shovel is in the ground/project is underway.

Take-A-Ways:

- Can influence process by writing to Minister.
- Since a new game is afoot, each EA will be unique so we can't say "it's a done deal".
- There are opportunities for success in the chaos.
- Limited public engagement in the formal process will likely generate action outside the process.
- Public needs to be vigilant – nothing is protecting us, our environment or our lifestyles.

Last night I realized that the Harper government has done Canadians a real disservice, not just in taking away environmental protections making it easier for resource exploitation, but by summarily shutting down legislation, concepts and discussion culminating from decades of negotiation. By trashing the building blocks of communication – the concepts and axioms behind EA "lingo" – everyone is back at square one. I now understand what was meant when, I believe it was David Suzuki who said, we have been put back 40 years.

Interesting Links

Feds Walk Away From EAs on Almost 500 Projects in BC

<http://www.vancouversun.com/technology/Federals+dump+environmental+assessments+almost+projects/7125419/story.html>

The Government of Canada Major Projects Management Office (www.mpmo-bggp.gc.ca)

Many thanks to Laura Bowman and Paula Boutis of Iler Campbell for their time and energy in explaining this legislation to lay-people, a frustrating process at best I am sure.