

Toward Sustainability: Reforming Federal Environmental Assessment

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Overview of Presentation

- Environmental Assessment: Some Basics
- The Challenge to CEAA
- CEAA Seven-year Review
- Toward Sustainability in EA
 - Avoiding catastrophes
 - Reducing GHG emissions
 - Toward sustainability assessment
- One Project, One (Federal) Approval

Environmental Assessment

– Some Basics

- Provides information on environmental effects so that better decisions can be made by proponents and governments
- Generates good will and social licence
- Legal entrenchment of EA needed:
 - Decision-making is biased toward short-term
 - Environmental effects usually are longer term
 - EA is always inconvenient
- Politicians will never give up right to make ecologically bad decisions

CEAA: Has it done any good?

Some successes . . .

- Thousands of good and bad projects improved through mitigation
- Occasionally, bad projects or features rejected (White's Point Basalt Quarry, Sydney Tar Ponds Incinerator)
- Proponents earn social licence to proceed from communities and civil society groups

. . .But significant shortcomings

- Bad projects often approved
- Follow-up on mitigation implementation weak
- Too little sweating of the big stuff (GHG emissions, catastrophe avoidance)
- Too much sweating of small stuff (legal requirements for small projects)
- Recent statutory and regulatory changes have created incoherent mess

The Challenge to Federal Environmental Assessment

- Conservative government would appear not to want any federal environmental assessment law
- Omnibus budget bills in 2009 and 2010 made important changes to CEAA that weakened federal EA dramatically
- Leaked Agency document (2009) revealed internal legislative proposal creating Ministerial discretion to establish an EA for *any* project

Changes to Federal Environmental Assessment Law 2009

- Amendments to the *Navigable Waters Protection Act* (eliminating many projects that impair navigation from federal EA)
- Amendments to Exclusion List Regulations under CEAA (excluding thousands of federal infrastructure projects from federal EA)
- Adaptation Regulations under CEAA (withdrawn in 2010 as result of Ecojustice/Sierra Club Canada litigation)

Changes to Federal Environmental Assessment Law 2010

- CEAA amendments:
 - Authorize Minister of Environment to scope large projects into smaller constituent elements (thus reversing Supreme Court decision in *Red Chris*)
 - Exempt a host of federal infrastructure projects
- Conduct of public panel reviews for pipeline and nuclear energy projects are delegated to National Energy Board and Canadian Nuclear Safety Commission, respectively, from Canadian Environmental Assessment Agency

CEAA Seven-year Review: The End of EA or a New Beginning?

- “... comprehensive review of the provisions and operation of CEAA shall be undertaken by Parliament”
- Standing Committee on Environment mandated to undertake Review by the House of Commons in June 2010
- Review delayed by federal election—now likely this autumn

Sweat the Big Stuff

- Achieve federal environmental priorities such as GHG emissions reduction
- Avoid catastrophes such as BP and Enbridge oil spills, Fukushima, Kolontar, and Ocean Ranger
- Contribute to sustainability, not just mitigate adverse environmental effects

Reduce GHG emissions

- Recent joint panel reviews (Kearl, Joslyn North) have not assessed GHG emissions seriously
- No tar sands or pipeline project, even 10 times bigger than Kearl (800,000 cars on the road) will significantly affect global climate
- Mackenzie Gas Project used sustainability assessment approach to ask how to green the pipeline by displacing downstream GHG emissions
- CEAA should target projects for panel review that have GHG emissions above prescribed level

Catastrophes Waiting to Happen



Suncor's Tar Island Tailings Dam

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Avoid Catastrophes

- CEAA requires assessment of the environmental effects of “malfunctions and accidents”
- Assessment of malfunctions and accidents usually doesn’t apply to worst-case scenario
- Worst-case scenario analysis required under Inuvialuit Final Agreement and strengthened in U.S. law after BP spill

Avoid Catastrophes

- Neither proponents nor governments want to talk about worst-case scenarios (“that will never happen”) (“just scare-mongering”)
- Mackenzie Gas Project Panel Review undertook such an analysis for Beaufort Sea, Mackenzie Delta
- Key success factor: multistakeholder session to identify possible worst-case scenarios, however improbable

Sustainability Assessment (EA 2.0)

- Focuses on economic, social and environmental sustainability, not just determining significance of adverse environmental effects
- Asks the question: Does this project advance our economy and society toward a desirable, durable future? and not just: How can this project be made less bad?
- Seeks to improve positive elements of a project as well as mitigate negative elements
- Asks questions about intergenerational as well as intragenerational equity

Sustainability Assessment (not just Environmental Assessment)

- Emerged as key approach in recent panel reviews (e.g., Mackenzie Gas Project)
- Embedded at least partially in federal laws implementing northern aboriginal claims agreements (*Yukon Environmental and Socio-economic Assessment Act, Mackenzie Valley Resource Management Act*).
- Gibson, R. et al. *Sustainability Assessment: Criteria and Processes* 2005, Earthscan.

Towards Sustainability in CEAA

- Focus on using EA as tool to achieve federal environmental priorities
- Require worst-case scenario analysis in panel reviews/comprehensive studies
- Require assessment of economic, social and environmental sustainability (not just significant adverse environmental effects)

But let's get real

- Current federal government likely to seek further watering down of CEAA
- Parliament is likely to pass such a law given the Conservative majority
- Federal EA laws not likely to be saved without support from other stakeholders, especially proponents

What do Proponents Want?

- One project, one assessment
- Certainty in federal permitting
- Proponents not sure if projects are in compliance with antique laws such as Fisheries Law, MBCA and complicated laws such as SARA and CEPA

One Project, One Approval?

- What if CEAA was reformed to provide for a single consolidated federal approval for projects that have received a federal EA?
- Agency would issue approval with terms and conditions recommended by DFO, EC
- Approval to replace other required federal permits, authorizations, licences for project
- Blanket immunity from federal enforcement action so long as terms and conditions met

A Consolidated Federal Environmental Approval?

- Canadian Environmental *Approval* Agency to take over functions currently provided by Major Projects Management Office
- CEAA would need to be amended but not other federal environmental laws
- Probably would only work for projects subject to panel reviews or comp studies
- Non-regulatory approach to be applied to screenings (via departmental sustainable development strategies?)

Conclusions

- Providing decision makers with good information about environmental effects of projects and policies is more critical than ever in the climate century
- Reform CEAA to address federal priorities, avoid catastrophes, advance sustainability
- Also consider CEAA reform to use EA as tool to consolidate federal environmental approvals

One Earth, One Chance



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