

Federal Discussion Paper Released on Review of Environmental Regulatory Processes

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Government issues Discussion Paper on Review of Environmental Regulatory Processes

In keeping with its 2015 election platform, the Liberal government launched a comprehensive review in June 2016 of the following key pieces of environmental legislation: *Canadian Environmental Assessment Act, 2012* (CEAA, 2012), *Fisheries Act*, and *Navigation Protection Act*. At the same time, the government also commenced a review to modernize the National Energy Board (NEB).

As a first step, the federal government appointed two expert panels to review and make recommendations on CEAA, 2012 and the NEB respectively. Two parliamentary committees were also tasked with reviewing and making recommendations to improve the *Fisheries Act* and the *Navigation Protection Act*. Reports on each of the reviews were issued. Public consultation was undertaken and comments were provided, particularly with respect to the expert panel report on CEAA, 2012.

On June 29, 2017, federal government took the next step of issuing a discussion paper (at www.canada.ca/environmentalreviews) setting out the following five guiding principles underpinning proposed changes to the environmental statutes and the NEB:

1. Fair, predictable and transparent environmental assessment and regulatory processes that build on what works;
2. Participation of Indigenous peoples in all phases that advances the government's commitment to the United Nations Declaration on the Rights of Indigenous Peoples and reconciliation;
3. Inclusive and meaningful public engagement;
4. Timely, evidence-based decisions reflecting the best available science and Indigenous knowledge; and
5. One project – one assessment, with the scale of assessment aligned with the scale and potential impacts of the project.

In applying these five principles, the government is considering a new approach to environmental assessment for designated projects that includes:

Governance

- ◆ Establishing one government agency for guiding and conducting federal assessments and coordinating Crown consultations;
- ◆ For major energy transmission, nuclear and offshore oil and gas projects, the agency and life-cycle regulators (such as the National Energy Board and the Canadian Nuclear Safety Commission) would jointly conduct environmental assessments;
- ◆ Retaining decision making by the Minister(s) or Cabinet based on whether the project is in the public interest, to ensure accountable government;
- ◆ Requiring a new early planning phase led by proponents of projects with clear direction from the agency;
- ◆ Establishing advisory committees for Indigenous peoples, stakeholders and experts to provide advice to the Minister on issues related to environmental assessments;

What is Assessed

- ◆ Developing and updating a Project List to ensure that major projects having the greatest potential impacts in areas of federal jurisdiction are assessed;
- ◆ Maintaining the authority to designate for assessment a non-listed project that could have adverse impacts on areas of federal jurisdiction;
- ◆ Maintaining the flexibility to exclude designated projects from assessment under certain conditions based on clear criteria and a transparent process;

Parameters of Assessment

- ◆ Broadening the scope of assessment to include environmental, economic, social and health impacts to support holistic and integrated decision making;
- ◆ Applying consistent use of Gender-Based Analysis Plus in assessments to better understand the impacts on communities;
- ◆ Strengthening existing provisions that explicitly require assessment of impacts on Indigenous peoples;
- ◆ Considering both the positive and negative impacts of a project in the assessment process;
- ◆ Implementing peer reviews of science and evidence in the assessment phase;

Cooperation with Other Jurisdiction

- ◆ Developing cooperation agreements with provinces, territories and Indigenous governments to advance and support the objective of “one project – one assessment”;
- ◆ Allowing substitution of assessment processes with provinces and territories where there is alignment with federal standards;
- ◆ Developing new provisions to enable substitution with Indigenous governments;

- ◆ Ensuring that the process better recognises Indigenous jurisdiction, laws and practices;
- ◆ Increasing flexibility to allow the Government of Canada to defer to or harmonise with environmental assessment processes created pursuant to Indigenous Governments;

Timelines

- ◆ Maintaining legislated timelines to provide clarity and predictability;
- ◆ Providing flexibility by allowing ministerial approval of exceptions to timelines (e.g., alignment of assessments with other jurisdictions);

Compliance and Enforcement

- ◆ Maintaining authority for enforceable assessment conditions;
- ◆ Maintaining authority of National Energy Board, the Canadian Nuclear Safety Commission and the Offshore Petroleum Boards to integrate impact assessment conditions stemming from a joint assessment;
- ◆ Exploring a mechanism to amend project conditions to support the integration of adaptive management and technological advances;
- ◆ Developing inclusive monitoring and compliance activities so that life-cycle regulators and permitting departments work closely with Indigenous peoples, communities and landowners.

The federal government is also seeking to modernize the National Energy Board with the goal of rebuilding trust in Canada's life-cycle energy regulator. To do this, a number of changes to the National Energy Board Act are being considered including:

- ◆ Delivering timely and credible energy information to Canadians;
- ◆ In determining public interest to explicitly include environment, safety, social and health considerations;
- ◆ Regulating renewable energy projects and associated power lines in offshore areas under federal jurisdiction;
- ◆ Creating a corporate-style executive board to lead and provide strategic direction to the organization;
- ◆ Creating separate Hearing Commissioners to review projects and provide regulatory authorizations;
- ◆ Enhancing the diversity of the Board and Hearing Commissioners;
- ◆ Increasing public participation opportunities in technical hearings;
- ◆ Building capacity for Indigenous peoples participation in review processes;
- ◆ Increasing Indigenous representation among Board and Hearing Commissioners and requiring expertise in Indigenous knowledge;

- ◆ Expanding the role of Indigenous peoples in the monitoring of pipeline and other energy infrastructure from construction to decommissioning.

The federal government is also committed to restoring protections lost in 2012 as a result of changes to the *Navigation Protection Act* (NPA). To this end, it is considering:

- ◆ Improving the process for adding navigable waters to the Schedule, including developing clear criteria and a more accessible and transparent process;
- ◆ Developing a complaint mechanism for works on unscheduled navigable waters to provide a means to address concerns respecting the public right of navigation;
- ◆ Working with Indigenous peoples to obtain and incorporate Indigenous knowledge in decision making;
- ◆ Providing easy, on-line access to information about projects.

Finally, the discussion paper sets out legislative, regulatory, policy and program changes that the government is considering with to the *Fisheries Act*:

- ◆ Enhancing the participation of Indigenous peoples in the conservation and protection of fish and fish habitats;
- ◆ Incorporating Indigenous knowledge into decision making;
- ◆ Supporting early and broad engagement in planning and management activities;
- ◆ Identifying important fish habitats and taking account of these areas in decision making;
- ◆ Incorporating modern resource management and planning principles such as cumulative effects, the precautionary approach and ecosystem-based management;
- ◆ Prohibiting the harmful alteration, disruption or destruction of fish habitat without approval;
- ◆ Enhancing enforcement powers;
- ◆ Building capacity and developing expertise to protect fish and fish habitat;
- ◆ Providing timely access to information about projects and activities impacting fish and fish habitat.

The federal government is seeking the views of Canadians on proposed changes to the foregoing environmental legislation and to the National Energy Board. Comments can be provided on or before August 28, 2017 to: www.canada.ca/environmentalreviews.

It is expected that legislative changes will be introduced in the late fall of 2017 or early in 2018. It is also clear that the changes will involve the following elements:

- ◆ Partnering with Indigenous peoples in the economic development of their territories;
- ◆ Greater Indigenous participation on assessment boards and panels, through co-development, economic participation and monitoring;
- ◆ Better cooperation with other jurisdictions;

- ◆ More transparency regarding provision of information;
- ◆ Increasing public participation;
- ◆ More emphasis on cumulative effects in the context of regional and strategic environmental assessments;
- ◆ Incorporation of science and Indigenous knowledge into assessments and decision making;
- ◆ Building more capacity and expertise in government to effectively meet legislative obligations.

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