



Federal Government Releases Details of New Environmental Review Process Under CEAA, 2012

By [Julie Abouchar](#), Partner and Certified Environmental Law Specialist
and Nicole Petersen, Articling Student
© Willms & Shier Environmental Lawyers LLP

April 28, 2014

Aboriginal Affairs and Northern Development Canada (“AANDC”) has released details of its new Environmental Review Process (ERP) under the Canadian Environmental Assessment Act, 2012 (CEAA 2012). This process will apply to any person seeking to undertake lower-risk or less complex projects on First Nations reserve land that do not require an environmental assessment.

Background to the Environmental Review Process

The ERP was developed under Government of Canada’s policy of Responsible Resource Development. It is a streamlined, faster environmental review for lower-risk or less complex projects on reserve lands. Projects designated under CEAA 2012 will not be subject to an ERP, but will continue to follow the regular environmental assessment process.

AANDC has jurisdiction to issue permits, leases and funding on reserves. As a federal authority under CEAA 2012, AANDC must review these projects for their potential to cause significant adverse environmental effects prior to making any decision to approve a project.

Key Features of the Environmental Review Process

- ♦ **Project requirements** –to trigger an ERP, a project must
 - fall under the definition of “project” in section 66 of CEAA, 2012
 - not be a “designated project” within the meaning of the CEAA 2012 Regulations Designating Physical Activities
 - not be a matter of national security or a national emergency, and
 - require the involvement of AANDC, such as through an approval.
- ♦ **Process requirements** – proponents must fill out a project description form provided by AANDC.
- ♦ **Application of other Federal laws** – The ERP will apply in addition to other federal laws and permitting requirements, such as the *Fisheries Act*, *Species at Risk Act* and the *Canadian Environmental Protection Act, 1999*.

- ♦ **Information requirements** – To establish whether Aboriginal consultation is warranted, the ERP will require information about First Nations traditional, historical, archaeological and/or cultural use areas in the project area.
- ♦ **ERP considerations** – The ERP will consider off-reserve impacts, including compliance with provincial environmental legislation and the need to consult with other First Nations groups and non-indigenous communities. The ERP will consider impacts to flora and fauna, as well as water and soil impacts.

Conclusion

The ERP has already undergone a pilot phase. The program will undergo regular evaluation and changes may be made to increase the ERP's effectiveness as required.

Although the ERP applies to reserve lands, it appears from the description of the process available on AANDC's web site that consultation with the First Nation may not be warranted in some cases. It is difficult to envision a situation where a project on reserve would not affect the First Nation's use of land. It will be interesting to see how this process will work in practice.

*[Julie Abouchar](#) is a partner at *Willms & Shier Environmental Lawyers LLP* in Toronto and is certified as a Specialist in Environmental Law by The Law Society of Upper Canada. She can be reached at 416-862-4836 or by e-mail at jabouchar@willmsshier.com.*

The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.