



Ottawa finalizes EA regulations and shortens list of activities subject to federal assessment

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Ottawa has finalized the list of physical activities subject to the revamped Canadian Environmental Assessment Act, 2012. As anticipated, the federal government has significantly shortened the list of designated activities and raised the thresholds for a number of activities still subject to the Act. Amendments to the Regulations Designating Physical Activities (SOR/2013-186) were published in the Canada Gazette Part II on November 6, 2013. They came into force on October 24, 2013.

In drafting the amendments, the government's primary intention was to ensure that federal EA requirements would be focused on those major projects "that have the greatest potential for significant adverse environmental effects in areas of federal jurisdiction" (see "Ottawa rewrites list of projects subject to federal environmental assessment" in the June 2013 issue of our newsletter).

Some of the activities dropped from the regulations include groundwater extraction facilities, heavy oil and oil sands processing facilities, pipelines (other than offshore pipelines) and electrical transmission lines that are not regulated by the National Energy Board (NEB), potash mines and other industrial mineral mines, and a long list of industrial facilities (including pulp and paper mills, smelters, tanneries and chemical manufacturers).

Several activities have been added to the list, including diamond and apatite mines, railway yards, international and interprovincial bridges and tunnels, offshore exploratory wells, and expansions to oil sands mines. The capacity thresholds for rare earth mines and NEB-regulated pipelines have been lowered.

The Minister also has the authority to designate a specific project that includes physical activities not in the regulations. In the first year that *CEAA 2012* was in force, proponents initiated only 29 environmental assessments.

Final version contains several additional amendments

A number of environment groups had recommended that in-situ oil sands projects, offshore oil and gas exploration and seismic testing, electrical transmission lines, hydraulic fracturing operations and the transportation of radioactive wastes be added to the list of designated activities. There were also concerns about the thresholds set for certain activities. Meanwhile, industry representatives had called for the removal of stone quarries and gravel pits as well as higher thresholds for gas-fired generating stations. Based in part on these comments, the final list included a number of changes to the draft amendments posted in April of this year for public comment (see sidebar).

The amended regulations do not apply if an assessment of the project has already been commenced or completed by a provincial government or body, a body established under a land claims agreement or legislation that relates to the self-government for Aboriginal peoples, the Canadian Nuclear Safety Commission or the National Energy Board. The transition provision does not apply to the processes of other federal authorities.

Ottawa makes some final changes to designated EA activities

- ◆ the threshold for stone quarries and sand and gravel pits has been increased from a production capacity of 1 million tonnes per year to 3.5 million tonnes per year
- ◆ offshore exploratory drilling only applies to exploratory wells that are part of the first drilling program proposed in one or more exploration licence areas
- ◆ offshore oil or gas production facilities specify which types of facilities are covered (i.e., an offshore floating or fixed platform, vessel or artificial island that is used for the production of oil or gas)
- ◆ offshore pipelines exclude “flowlines” to ensure that the entry only covers major projects
- ◆ a number of editorial changes were made to conform with the terminology generally