



CEPA position: BC EA revitalization

BACKGROUND:

On March 7, 2018, the British Columbia (BC) Government announced the intent of reviewing the environmental assessment process with a view to revitalizing it. The objectives of this process are:

- Enhancing public confidence, transparency and meaningful participation;
- Advancing reconciliation with First Nations; and
- Protecting the environment while supporting sustainable economic development.

CEPA understands that the BC Government is currently drafting a discussion paper which will provide an opportunity for comments from different stakeholders and First Nations. At the same time, CEPA notes that the Federal Government is in the process of reviewing and modifying its own environmental assessment processes for reasons that overlap with those stated by the BC Government. CEPA has been an active participant in the federal process and has recommended a framework for environmental assessments that is consistent with the Government's objectives while providing industry with an appropriate degree of process certainty.

This document provides some early comments from the transmission pipeline sector regarding BC's current approach to environmental assessments as well as some comments on where the Federal Government's approach is not aligned or supportive of project development that may be helpful to the BC Government is its revitalization process.

CURRENT BC ENVIRONMENTAL ASSESSMENT PROCESS

BC's current approach to environmental assessments for pipeline projects is robust and rigorous. It provides a balance of process and flexibility while meeting the needs of those who participate. As a result, during the Federal Government's review of its environmental assessment process, CEPA noted on several occasions that BC's current approach was a useful model for consideration.

Compared to other jurisdictions in Canada with significant new pipeline developments, BC has struck an appropriate balance between (1) having a formal process that provides proponents with a higher degree of process certainty and (2) an informal approach which facilitates open communications and inclusiveness. The result is a more user-friendly process for all participants which is less confrontational. CEPA recommends the BC Government carefully weight changes to the environmental assessment process that would undermine this current balance.

In addition, there are several aspects of BC's current approach to environmental assessment that are especially effective in supporting collaborative outcomes, namely the use of Working Groups and assignment of certain consultation activities under Section 11.

Working Groups

One of the most beneficial aspects of the current environmental assessment process is the establishment of a "working group" which is comprised of those Indigenous groups deemed most potentially affected by the project (Schedule B) along with representatives from relevant provincial and federal agencies. The working group provides for active engagement of stakeholders throughout the process, including the development of application information requirements, review of adequacy of application, review and comment on the application and assessment report, and review of plans required to meet condition



compliance resulting from the application. The working group process includes collaborative meetings, information requests, and facilitated engagement between stakeholders, the regulator, the proponent and environmental consultants. Additionally, mandated timelines (180 day review period) helps to focus the assessment, proponent and working group. This process ensures that all those with a direct interest participate, issues are discussed and resolved, and there is a timeline that is adhered to.

Clear Assignment of Consultation Roles

A second beneficial aspect of the current environmental assessment process is the Section 11 Order, which clearly delegates the procedural aspects of consultation and identifies which Indigenous groups must be consulted with. It also differentiates between those Indigenous groups that are owed deeper consultation and which are owed notice. This formal step in the EAO process, along with Indigenous group and public consultation plans, ensures that all parties have a clear understanding of how they will be engaged throughout the process. From a practical perspective, this has allowed proponents to focus engagement efforts, including Traditional Knowledge and socioeconomic studies, that directly support the environmental assessment process. In addition, it has allowed proponents to ensure that capacity payments and benefits agreements are allocated in the most appropriate and effective manner.

COMMENTS ON REVITALIZATION OBJECTIVES:

Enhanced Public Confidence and meaningful participation

Proponents, Indigenous communities and relevant stakeholders all benefit from a degree of process certainty and procedural fairness. Regulatory review processes must balance the needs of varying participants and directly affected parties need a full and fair process for participating. As noted earlier, the BC environmental assessment process already has in place effective mechanisms for addressing these participants needs.

CEPA is not aware of any evidence that there is a lack of public confidence in the current process. In fact, the BC EAO process actually strikes a very good balance and ensures public confidence. Through letters of comment in the public consultation phases of the existing process, parties beyond those directly affected by projects have the opportunity to participate, either to address project specific matters or, often, to address broader public interests that may be outside of an individual project's scope. CEPA's view is that this strikes the appropriate balance where those most affected have greater opportunities to participate, while maintaining participation rights for those who have more general interest in a given project.

Advances reconciliation

CEPA and its member companies recognize and respect the legal and constitutional rights of Canada's Indigenous peoples and their unique cultures and traditions. CEPA member companies have invested significant time and resources to build and sustain positive relationships with many Indigenous groups that are near existing and proposed pipeline operations. These relationships and associated pipeline projects have provided significant and tangible benefits to many Indigenous communities through increased training, education, and employment, as well as procurement, construction, and other business opportunities.

CEPA believes that it is the government's responsibility to engage Indigenous communities as early as possible in the process in order to identify whether there are issues that cannot be addressed within a project review and require a separate Nation-to-Nation process. This would be an important step in advancing the government's broader goals of advancing reconciliation and developing a renewed Nation-to-Nation relationship. However, individual project reviews are not the appropriate venue to address



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specific reconciliation objectives as reconciliation is a relationship and framework issue to be addressed by government.

CEPA asks the BC Government to consider how any process changes made to further advance reconciliation would interact with current processes such that current processes are not disadvantaged due to broader reconciliation issues. Our member companies are committed to meaningful engagement with Indigenous groups who may be impacted by their respective pipeline projects. The pipeline industry works to avoid or minimize any impacts to Indigenous rights and interests and aims to obtain the support of affected Indigenous groups where possible. The combination of pipeline company engagement processes as well as the current BC environmental assessment consultation mechanisms have proven effective in balancing the needs of governments to respect Indigenous rights and interests with the need to ensure a degree of process certainty.

Protects the environment and supports sustainable development

The EAO currently has a generally accepted methodology that relies on a science based assessment of the five pillars of assessment. CEPA is concerned about a movement toward a sustainability based approach, as it is not clear that a consensus definition of sustainability has emerged. While other project-specific impacts such as biophysical, social, economic, health and safety are all fairly considered in the context of a project review, the environmental assessment process is not equipped to resolve broader public policy issues that are beyond the scope of a given project. Many interpretations of sustainability have imbedded within them, much broader policy questions that are often unresolved. These issues are not within the project proponent's ability to assess, create uncertainty that is unrelated to the project, and should be dealt with by mechanisms that are more suited, and accountable, to address complex public policy decisions. Broader public policy matters that are included in an environmental assessment and framed in sustainability language or otherwise, add risk and uncertainty to the regulatory process.

COMMENTS ON THE FEDERAL GOVERNMENTS PROPOSED IMPACT ASSESSMENT PROCESS

The Federal Government has recently introduced Bill C-69, a sweeping and fundamental change in how environmental assessments are done for projects under federal jurisdiction. CEPA had asked the federal government to address two key issues facing large-scale pipeline projects: (1) the introduction of broader issues beyond the scope of individual projects and beyond the ability of regulatory processes to deal with and (2) the significant financial risks borne by project proponents that result from multi-year regulatory processes with a political determination coming at the very end, after years of review. Bill C-69 has failed to address these concerns and, as a result, the industry has indicated that the newly proposed Impact Assessment process actually worsens the impact of the two factors CEPA sought to address. Further, despite legislated timelines which are significantly longer than under the current processes, the legislation leaves significant opportunities for further timing extensions.

Mandatory timelines have been helpful, particularly when compared to significant unnecessary delays that were experienced in other jurisdictions. It is important to ensure that reviews are conducted efficiently, and on a timely basis in order to provide greater certainty to project proponents. CEPA recommends that firm timelines remain in any revised environmental legislation/regulation. Having overall maximum timelines helps to manage the expectation of all participants in a project review and provides a degree of risk protection for proponents.

For investors to have confidence to make significant investments in infrastructure projects, they must have a clear understanding of the process to be followed, including the time required to secure the approvals to develop a project. For environmental assessments, this means the process and information requirements must be unambiguous and the process overall must be transparent. The potential



conditions imposed to mitigate potential effects must be based on science, fact and evidence and must take into consideration the practicality and economic viability of the conditions.

Bill C-69 includes opportunities for process substitution by other jurisdictions. Since BC was the only jurisdiction that previously exercised this right, CEPA would recommend that the BC Government consider how the proposed pre-requisites for substitution might most effectively be met without succumbing to the needless and unnecessary procedural quagmire that Bill C-69 will inevitably result in. Pursuing the opportunity for substitution is consistent with both the BC and Federal Government's desire for "one project – one review".

NEXT STEPS:

This note presents only an initial and high-level response to the BC Government's review of its environmental assessment process. CEPA looks forward to actively participating in further consultations on the environmental assessment revitalization process.