
Introduction

Upon reading the Discussion Paper on Environmental Assessment in Canada Issued June 29, 2017, I remain unmoved from my position that this will simply institutionalize the delays and problems that the process says it is trying to fix. I am again reminded of something I was taught by Dan Perrins, A Senior Fellow with the Johnson-Shoyama School of Public Policy and former DM to the Premier of Saskatchewan, while having an orientation upon my appointment as Assistant Deputy Minister, Environmental Protection and Audit: Always be aware of the potential for unintended consequences in your actions as a public servant. While avoiding unintended consequences is generally a good rule of life, it is especially important for government due to the large number of people that may be affected. Government, in an attempt to do good, sometimes does the opposite. The road to hell is paved with good intentions. No good deed goes unpunished. You get the drift.

The good intentions are articulated in the five guiding principles:

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.

These are admirable in and of themselves, but as with anything, the devil is in the details, and there continue to be few of those in the discussion paper. Since much of the delay over the last few years are related to perceptions rather than a discussion of knowns, the distrust in each other’s positions has worsened, largely because the governments have abrogated their role as objective arbitrators. The failure has not been in the process, the failure has been in the government not standing up to its principles. In thermodynamics, reactions do not go as planned when bacteria is introduced; politics does the same to regulatory processes – you get a totally unpredictable outcome. Frankly, somebody has to play the adult and government has not done that, and that is why the system is broken. And more rules and processes are not going to solve this. Given their track record, government will always be accused of being in bed with someone, the question is whom. To paraphrase a former Prime Minister, the government has no business in the bedroom.

It is hard to believe that effective legislative changes can be made between the end of this comment period and the issuance of draft legislation unless they are largely drafted already. My sources say that this is the case, and that there will be little chance for comment when they come out in the fall. A hurried legislation will always create those unintended consequences, and in this case, the unintended consequences will be significant delays and quite possibly the type of stalemate that already exists for many projects, only institutionalized. Add to this the attendant costs and the negative impact to investment, and there is potential disaster for resource development in Canada.
Further, the Discussion Paper is shockingly light on details and appears to merely repackage much of the original report by the Expert Panel. Frankly, I would have expected more detail, and the lack of detail tells me that anyone contemplating projects in the near future is in for a long and ugly ride as the government tries to figure out what all of their golden words mean.

Canada is what it is because of its natural resources. They are the prime wealth generators, whether it be mining, farming, fishing, forestry or added value to these industries. That wealth props up the consumer economy that allows for the development of high tech skills and knowledge (also a natural resource) – it puts new money in motion. All of these pay taxes. Resources are also the wealth generator that allows us the luxury of being able to focus as a society on the environment and support the socially disadvantaged. Impact resource development and the Canadian economy are inextricably linked, and will suffer if resource development is not allowed to proceed. We have to look no further than the massive effect that low oil prices has had on the economy to see what happens when resource revenues decline.

Environmental protection and the economy are not mutually exclusive, despite the clarion calls of some, and great strides have been made over the last 40 years in that regard. It could be argued that there are now few projects that we cannot imagine the potential impacts, mitigations and monitoring. Arguably, environmental protection has become routine for the most part backed by a plethora of regulations and guidelines covering virtually every aspect of modern resource development. As the technical issues have been resolved, the social aspects have gained more importance, hence the current form of the Expert Panel’s recommendations and the resulting discussion paper. The problem with a higher social content is that there can be no real consensus as everyone has a viewpoint that they consider as valid as anyone else’s. An immutable baseline does not exist in this area as it does for the science/technical side of the discussion. Who will play the role of adult when the inevitable conflict arises?

If I read the discussion paper correctly, the EIA process will be proponent led with strong federal input under the aegis of a new federal EIA agency (or revamped CEAA?). Under the proposed process the agency would broker the Indigenous and stakeholder engagement and in doing so, plot the course and content of the EIA keeping in mind the five guiding principles. While the basic fundamentals appear good, as an EIA practitioner for over 30 years, I remain skeptical that they can be accommodated in a timely and reasonable manner. Further, the tone of the discussion paper, despite the veil of the guiding principles, maintains the proponent (and to a certain extent the government) as the ‘bad guy’ in this process. The proponent appears along for the ride with no certainty of fairness or success, and no ability to influence their destiny.

I have always been a proponent of engaging Indigenous and stakeholder groups early as they are the key to project success throughout the life of the project. Benefits should go to local communities to the extent practicable and proponents should be respectful of their neighbours and the environment in which they work. These are foundational thoughts: relationships and respect. Unfortunately, many companies (and to be fair, stakeholders too) rely on the money fix or the cost of doing business, and in doing so adversely affect the relationships and respect. Can the direction in the discussion paper solidify the relationships and respect? Unlikely, as it sounds more like it will be a series of shotgun marriages, and nobody will be happy with the results.

The Expert Panel and the discussion paper also intimates that a project that successfully navigates the additional process will essentially bring zero risk to the environment and public health and safety. We
know that is not true as there is no such thing as zero risk. The goal, through proper mitigations and monitoring should be to keep impacts as low as possible. In the nuclear world, the ALARA principle has some merit as it allows for the discussion of economic and social conditions in deciding what is achievable and what is reasonable. A similar model would serve the federal EIA process well.

So, how will the process maintain a focus on the reasonable and the possible without allowing a slide down the slippery slope to a potential Armageddon as a project outcome that many opponents will espouse? Who brings reason to the process? Who prevents project micromanaging? And again, who is the adult in this process? The art of change in regulations will be in how these questions are answered.

There are some positives that come out of this if the regulations are properly written. The concept of having the dialogue start early while the project is still formative is a good one, and recommended by all governments and regulatory agencies currently. The problem is that not all proponents are good at or believe in this, and not all stakeholders are good at engaging, despite plenty of notice, until the eleventh hour – there are few mechanisms or expectations in the current process to make this happen early. If properly planned, this could be done in parallel with and compliment the baseline process. If this is to work, there need to be responsibilities placed on all participants. For instance:

1) Government has to be timely and effective if they are to play the matchmaker role in consultation and engagement. Unfortunately, there are never any consequences for government delays, and nobody will take responsibility if delays occur. Just saying from experience.

2) Indigenous groups and all other stakeholders need to be responsive within the process with real feedback mechanisms for project dialogue, and any regulations need to set standards of duty. Capacity might be an issue, but the proponent should not have to pay for that, that would simply be a good investment on behalf of the government.

3) Proponents too have to be responsive, but it is less important because when they are on the clock as the federal process counts proponent time as dead time in their calculation of the project timelines. That said: It is too easy to keep throwing questions or additional requirements at a proponent in order to ‘buy time’. There needs to be a separation of must have and nice to have information or there will be no end to the process. This is where the upfront scoping could be beneficial.

Many of us who work in or with the resource industries noted that the changes to the EIA processes made under the Harper government were largely pragmatic and did not actually lessen overall environmental protection. While the emphasis on stakeholder participation was muted to a degree, it was still present for those actually interested in participating.

The current standard after submission of a Project Proposal is two years of government time. Any changes to the EIA process should adhere to these timelines all-in. To fail to do this will drive money and investment away as the EIA process will be seen as capricious and arbitrary rather than timely and predictable. Timeliness and predictability of process should be the rewards for a proponent that participates fully in the process. In a world where everyone wants more sticks, a few carrots would be welcome.

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Mark Wittrup, M.Sc., P.Eng., P.Geo., CMC has more than 30 years’ environmental management experience in complex industrial, nuclear and resource projects globally. He is a proven leader with experience in senior executive positions in both the private and public sectors. Major projects include the successful licensing of the McArthur River uranium mine, and the executive lead for major Saskatchewan government initiatives, including the provincial move to a results-based regulatory framework (Environmental Code) and environmental assessment reform. Mr. Wittrup’s work in resource industries includes over 25 years providing leadership on the environmental aspects of resource extraction, most particularly environmental assessment and regulatory affairs, and has included significant experience in corporate governance, enterprise risk management, management systems, occupational health and safety, and audit. While Assistant Deputy Minister, Environmental Protection, and Environmental Assessment Commissioner for Saskatchewan, he was executive lead for environmental assessment reform and the move to the Result-Based Regulatory system, including the Environmental Code. During this time, he championed federal environmental assessment reform, appearing before the parliamentary Standing Committee on the Environment to present on this topic. He also supported provincial efforts to bring a practical outcome to Environment Canada's proposed woodland caribou management program under SARA. Mark was a member of the Mackenzie River Basin Agreement negotiating team for Saskatchewan. Mr. Wittrup serves as a senior consultant to project teams providing strategic advice, regulatory and environmental risk management, and technical review.