

## **REFORM OF ENVIRONMENTAL ASSESSMENT IN BRITISH COLUMBIA**

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### **ABSTRACT**

For the past year the Ministry of Environment, Lands and Parks has been leading the development of environmental assessment legislation for British Columbia. The major features of the proposed legislation that support the symposium theme -- "building confidence" -- will be outlined. These include:

- creation of a comprehensive process that will address impacts throughout the life cycle of the project and that will use follow-up programs to verify the accuracy of the assessment and mitigation measures,
- the ability to set time frames for public comments and government action
- formation of an Environmental Assessment Directorate to administer the process in a neutral and efficient manner,
- establishment of an Environmental Assessment Board to conduct public reviews of complex and contentious projects,
- access to information and opportunities for public involvement throughout the review process, and
- the ability to directly involve First Nations, the federal government and local governments in the review process.

## **OBJECTIVES**

During the past year, British Columbia has engaged in a program of policy development and public consultation to support the preparation of a single, legislated environmental assessment process for the province.

The government's proposals and the public response have highlighted the importance of the symposium theme of building confidence. The government has identified certainty, timeliness and efficiency as key policy objectives of a reformed approach to environmental assessment. The private sector has characterized these objectives as essential to maintaining an attractive business and investment climate in British Columbia.

This paper will examine the relationship between building confidence and British Columbia's proposals to strengthen the assessment of the environmental, economic, social and cultural effects of major development proposals.

### **REFORMING ENVIRONMENTAL ASSESSMENT IN BRITISH COLUMBIA A LEGISLATION DISCUSSION PAPER**

In March 1992, Reforming Environmental Assessment in British Columbia — A Legislation Discussion Paper was released by the Ministries of Environment, Lands and Parks and Energy, Mines and Petroleum Resources (Province of British Columbia, 1992). The discussion paper presented principles to guide the preparation of environmental assessment legislation and a series of recommendations on the design and application of a comprehensive assessment process.

Several of the principles proposed in the discussion paper clearly acknowledged the importance of creating an environmental assessment process that instills confidence. These included:

- clear accountability for decisions throughout the process;
- provision for independent and impartial review of projects;
- consistent application to projects with similar impact potential; and
- rigorous, timely and flexible environmental assessment procedures.

### **THE CONSULTATION PROCESS**

During April and May 1992, Dale Lovick, ML A for Nanaimo and Parliamentary Secretary to the Honourable John Cashore, Minister of Environment, Lands and Parks, led a consultation process to obtain public and stakeholder views on the discussion paper. Meetings and open houses were held in 13 communities: Prince George, Fort St. John, Surrey, Kamloops, Kelowna, Prince Rupert, Terrace, Smithers, Nelson, Cranbrook, Nanaimo, Victoria and Vancouver. Approximately 700 people participated in the regional meetings and open houses.

In addition to the regional sessions, meetings were held with key provincial stakeholder organizations. Finally, a workshop was held to consider the key issues arising out of the consultation process. Issues discussed were: application and administration of the environmental assessment process, project justification, aboriginal involvement, decision-making and participant assistance. Approximately 120 representatives from industry, environmental groups, labour, First Nations, local government, consulting and legal firms, universities, and the provincial and federal government participated in the workshop.

## **REFORMING ENVIRONMENTAL ASSESSMENT IN BRITISH COLUMBIA A REPORT ON THE CONSULTATION PROCESS**

In July 1992 Dale Lovick submitted his findings and recommendations on the development of new environmental assessment legislation in Reforming Environmental Assessment in British Columbia — A Report on the Consultation Process (Province of British Columbia, 1992a,). The report summarized the views of the public on the 45 proposals in the discussion paper and presented Lovick's conclusions and recommendations.

Lovick's conclusions reinforced the relationship between building confidence and the provision of a consistent, predictable approach to environmental assessment in British Columbia. He observed that the importance of this relationship emerged early in the consultation process and remained a dominant theme throughout.

Many industry representatives expressed frustration regarding changing requirements during the course of project reviews. The phrase "moving goalposts" was regularly used to characterize the uncertainty regarding the requirements of the current project review processes. During the regional portion of the consultation process one participant suggested that the solution to this uncertainty was "to cement the goalposts". Lovick observed that this phrase epitomized the primary message received during the consultation process (Province of British Columbia, 1992a, vii).

Lovick's recommendations were generally consistent with the policy direction and the design of the environmental assessment process outlined in the legislation discussion paper. However, Lovick did suggest refinements in a number of key areas. Perhaps the most noteworthy of these changes was his recommendation that the legislation require environmental assessment of a broad range of projects and activities, not just those projects currently assessed through the three existing project review processes. In addition, Lovick recommended that a neutral agency reporting to the Minister of Environment, Lands and Parks administer the environmental assessment process.

## **GOVERNMENT'S RESPONSE**

Since the release of Lovick's report, the results of the consultation process have been carefully analyzed. On March 8, 1993 the Ministers of Environment, Lands and Parks and Energy, Mines and Petroleum Resources provided an update on the development of the legislation (Cashore and Edwards, 1993).

The Ministers advise that the government has provided direction for the drafting of a comprehensive environmental assessment bill. As described in the Ministers' update, the major features of the legislation may include:

- application to a wide variety of major public and private sector projects defined in a regulation;
- an ability for the Minister of Environment, Lands and Parks to require the review of other projects;
- comprehensive assessment of the environmental, economic, social and cultural effects of major projects;
- the ability to establish timeframes for public comments and government action;
- the ability to recover a portion of the costs of reviewing projects and conducting independent public reviews;
- creation of an Environmental Assessment and Project Review Directorate to administer the process in an unbiased and efficient manner;
- responsibility for key decisions shared by the Minister of Environment, Lands and Parks and the minister responsible for the project;
- creation of an Environmental Assessment and Project Review Board to conduct independent public reviews of complex and contentious projects;
- decisions on approval or rejection of projects reviewed by the Board made by Cabinet;
- access to information through a project registry and opportunities for public involvement throughout the review process; and
- the ability to directly involve First Nations, the federal government and local governments in the review process.

The bill is intended for introduction during the 1993 Spring session of the legislature (Cashore and Edwards, 1993).

## **ENVIRONMENTAL ASSESSMENT AND BUILDING CONFIDENCE**

Although many of the proposed elements of the environmental assessment process will contribute to building confidence, the following features are central to this objective. They will be used to demonstrate how a reformed approach to environmental assessment can contribute to establishing a climate of certainty for the review of major projects in British Columbia.

## Comprehensive process

A major strength of the existing project review processes is that they have provided a framework for evaluating the overall acceptability of proposed developments. Provincial approval at the end of project reviews signifies that all policy issues have been resolved and that the technical issues that have been examined are believed to be manageable by available and practical technologies (Province of British Columbia, 1992, 5).

Participants in the consultation process strongly supported this "one-window" approach to obtaining provincial approval for a project. At the same time they emphasized that environmental assessment is being frustrated by the absence of land use policy and overall provincial policy on issues such as transportation, energy and economic development. Fundamental questions on the acceptability of development in a particular area are therefore being brought forward as part of the review of specific projects. This was identified as a source of considerable uncertainty and concern (Province of British Columbia, 1992a, 22).

Lovick observed that once in place, land use plans and provincial policy will narrow the range of issues that will have to be addressed as part of environmental assessment. He went on to observe that until these plans are in place, environmental assessment will continue to serve as a means of determining the overall acceptability of projects. To meet this need, Lovick recommended that the process remain broad in scope and address biophysical, social, economic and other related effects of development proposals (Province of British Columbia, 1992a, 23).

The proposed legislation will establish a comprehensive process to examine the environmental, economic, social, cultural and heritage effects of major development proposals. This will enable the government to make decisions based on a thorough understanding of the potential effects of major projects.

The process will address impacts throughout the life cycle of a project including construction, operation, decommissioning and abandonment. Follow-up programs will be used to verify the accuracy of the environmental assessment and the adequacy of mitigation measures.

## Predictability

A frequent discussion topic during the consultation process was the critical need to provide certainty through the predictable, timely review of projects. Lovick noted that the importance of establishing time frames for the environmental assessment process was a dominant theme during the consultation process. The observation in the discussion paper that time frames are required to ensure discipline in the process was strongly validated (Province of British Columbia, 1992a, 7).

The legislation will enable time frames to be established for the receipt of public comments on proposals and for government actions during the review process. Of equal importance, the proposed legislation will foster predictability by clearly identifying the responsibilities of project proponents and by specifying government accountability for administrative and project approval decisions.

Establishing a clearly defined process and specifying time frames for critical stages of the process will increase certainty for all participants by providing a means of predicting when key decision points in the process will be reached and defining who will be responsible for making the decisions required.

### Effective Administration

It was observed in the discussion paper that effective administration is essential to a fair and efficient environmental assessment process. The administration must perform four major functions:

- serve as a point of contact for project proponents
- coordinate government, proponent and public roles and responsibilities;
- synthesize the results of the environmental assessment into an integrated position; and
- recommend a course of action for consideration of the minister responsible for project approval.

Many participants in the consultation process reinforced the importance of consistent, fair, timely and balanced administration. This led Lovick to recommend that a neutral agency administer the environmental assessment process (Province of British Columbia, 1992a, 26).

Administration of the process will be the responsibility of an Environmental Assessment Directorate. As currently envisioned the Directorate will:

- coordinate the review process,
- establish project committees to ensure close linkages with government ministries, other jurisdictions, local and regional government and First Nations,
- oversee public involvement, and
- operate a Project Registry

Establishing a body whose exclusive mandate is process management will strongly contribute to the effective and efficient review of proposals. It will serve as a "one-window" contact for proponents and the public on the review of all projects subject to the legislation.

## Independent Public Reviews

A key principle enunciated in the discussion paper was that the legislation must provide for independent and impartial public review of projects (Province of British Columbia, 1992,12).

Lovick concluded that to ensure that the environmental assessment process is credible and accountable, the legislation should provide for the independent review of projects when warranted. For the majority of projects, the process will produce an adequate assessment without the need for independent review. For some projects, however, an independent process may be needed to verify and supplement existing information or to provide a forum for public discussion (Province of British Columbia, 1992a, 53).

An Environmental Assessment Board is proposed to conduct independent public reviews of complex and contentious projects. The Board is envisioned as a small, permanent body which will be supplemented with additional expertise as needed. It will conduct public reviews of projects and make recommendations to Cabinet. The Board will use mediation and other consensus-based approaches to narrow and resolve issues prior to conducting public hearings.

Establishing a permanent, independent body will enable the development of an ongoing source of expertise in the public review of the environmental, economic, social and cultural effects of major projects.

## Public Involvement

The discussion paper identified accessibility as one of the principles that must be reflected in an environmental assessment process to ensure that decisions are reached in a fair, effective and efficient manner. It was proposed that this would be achieved through providing the public with ready access to the process. This requires that clear and understandable information must be available to the public and meaningful opportunities for public involvement must be provided (Province of British Columbia, 1992,12).

Lovick concluded that providing access to information and meaningful opportunities for public involvement is essential to developing a more open, consultative approach to environmental assessment (Province of British Columbia, 1992a, 48).

To encourage participation of the public, the proposed legislation establishes that, as a general rule, project information is available to the public; facilitates access to information through a Project Registry; and creates opportunities for public involvement throughout the process.

## Interjurisdictional Coordination

It was proposed in the discussion paper that the environmental assessment process should include a provision for inter-jurisdictional cooperation to reduce duplication of effort and to address transboundary environmental impacts. In particular, participants emphasized the importance of coordinating the environmental assessment requirements of the federal and provincial governments (Province of British Columbia, 1992, 29).

Lovick concluded that British Columbia should develop practical working relationships with its neighbours, First Nations, the federal government and local government. These provisions should meet the requirements of the United Nations Convention on Environmental Impact Assessment in a Transboundary Context (Province of British Columbia, 1992a, 40).

The proposed legislation will provide for interjurisdictional coordination by enabling the direct participation of First Nations, the federal government and local governments in the review process.

### **FEDERAL/PROVINCIAL COORDINATION**

The importance of coordinating the environmental assessment requirements of the federal and provincial governments was a concern that was raised throughout the consultation process. During the past two years British Columbia has worked through the Canadian Council of Ministers of the Environment (CCME) to "harmonize" the respective environmental assessment requirements. The key objectives of this initiative have been to avoid duplication in the administration of environmental assessment requirements and to encourage the review of development proposals in an efficient and timely manner.

In 1990 CCME established a task group to work towards a level playing field for environmental assessment across Canada. The task group adopted a two-stage approach to pursuing this objective. The first stage was the development of a series of cooperative principles. Through these principles, the federal, provincial and territorial environment ministers agreed that environmental assessment processes should contain a number of standard provisions.

Several of these provisions directly relate to building confidence. For example, it was agreed that assessment processes should:

- be cost effective, provide for a minimum of uncertainty and duplication and encourage cooperative action
- incorporate the following elements to ensure consistent and effective environmental assessment across the country:
  - accessible information, consistent terminology and opportunities for public involvement and participant assistance



- the assessment should address public concerns, biophysical and socioeconomic effects, project justification, alternatives, cumulative impacts, follow-up programs, and mitigation measures.
  - the proponent pays for the assessment, mitigation and follow-up programs
  - the process should provide sufficient information to allow decision-makers to approve, modify or reject the project
  - issues should be defined early in the process in consultation with the public and other jurisdictions
- be consistently applied to minimize variations across the country
- provide for early consultation with other jurisdictions to determine the extent and scope of their involvement in the process
- provide for delegation of process administration or joint processes,
- define the scope of the assessment and the timing of the process
- facilitate cooperative, single window approach to public involvement

The provinces lobbied for "equivalency" under the Canadian Environmental Assessment Act. This approach would have allowed a provincial process that was deemed "equivalent" to satisfy federal environmental assessment requirements. However, the federal government rejected equivalency in favour of expanded opportunities for cooperation in screening and joint processes.

There are a variety of models across Canada for environmental assessment. To accommodate these different approaches, it was determined that bilateral agreements between the federal government and each of the provinces and territories would best ensure implementation of the cooperative principles. To provide a common basis for each agreement the task group developed a framework agreement. The remainder of each agreement would reflect the individual characteristics of that jurisdiction's environmental assessment process. British Columbia intends to begin negotiation of a bilateral agreement on environmental assessment with the federal government this year.

These agreements will ensure efficient reviews of proposed projects while satisfying the needs of federal and provincial legislation. The key points in the bilateral framework agreement that are of interest to the mining industry are:

- the parties agree to :
  - notify each other as early as possible of projects potentially subject to their respective environmental assessment processes;
  - specify the interests of each party for each project to be assessed;
  - determine the extent of involvement of each party; and
  - provide for process coordination.
- the extent of involvement of each party will be agreed upon early in the process and can range from information sharing to joint panel reviews.

- there will be agreed to timeframes for the process.
- each party will identify a single point of contact for its process.
- there will be a single sign-off from each party, i.e. if a project is screened, there will be a single, coordinated response from that government
- there will be project-specific agreements for joint panel reviews

## **CONCLUSION**

New environmental assessment legislation will have a significant affect on building and maintaining investor and developer confidence in British Columbia as an attractive location for major projects. Through the legislation development process, many of the prerequisites for establishing this confidence have been identified by the resource development community. The mining industry in particular, voiced strong opinions regarding the need for a clear, efficient and predictable process that will facilitate, rather than obstruct, development of British Columbia's mining potential.

These perspectives have been carefully taken into account in the process leading to new environmental assessment legislation. Many of the proposed features of the legislation will contribute to the efficient and effective review of major projects. The government has committed to providing an opportunity for public and stakeholder comments on the environmental assessment bill once it is introduced in the legislature. Additional opportunities for input will be provided during the development of regulations for subjects such as the types of projects the act will apply to and the timeframes that will be established for the various stages of the process.

## **REFERENCES**

Cashore, J. and Edwards, A. 8 March 1993 Letter to participants in the reform of environmental assessment.

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