

Sadaka, Jennifer -JLT

From: McDonald, Derek [CEAA]
Sent: April 3, 2003 1:25 PM
To: 'Phil Zamora (E-mail)'
Cc: Chapman, Steve [CEAA]; McCauley, John [CEAA]
Subject: Your questions re: scope and referral during a CS

Hi Phil,

1. Referral during a Comprehensive Study

The Act is not entirely clear on this. Section 21 presents an either-or situation:

21. Where a project is described in the comprehensive study list, the responsible authority shall

(a) ensure that a comprehensive study is conducted, and a comprehensive study report is prepared and provided to the Minister and the Agency; or

(b) refer the project to the Minister for a referral to a mediator or a review panel in accordance with section 29.

Section 25 provides for discretion to refer to a panel (or mediator) at any time, but only in the context of a screening:

25. Subject to paragraphs 20(1)(b) and (c), where at any time a responsible authority is of the opinion that

(a) a project, taking into account the implementation of any mitigation measures that the responsible authority considers appropriate, may cause significant adverse environmental effects, or

(b) public concerns warrant a reference to a mediator or a review panel,

the responsible authority may request the Minister to refer the project to a mediator or a review panel in accordance with section 29.

I understand that S.25 has been interpreted to include comprehensive study. Agency training materials list six ways to refer a project, one of which is "at the request of an RA (S.25) at any time before the completion of a screening or comprehensive study".

So you're not 'locked out' of a panel once you start a Comp Study - a RA referral is still possible at any point during the conduct of the Comp Study (but presumably not after the CSR is submitted pursuant to Section 22 - it's then up to the Minister).

2. Scoping

Our conversation earlier this morning prompts these thoughts and advice. The Act (S.15) gives RAs the authority to establish the scope of project for a screening or CS. The Agency provides guidance with respect to exercising that authority in a reasonable manner, using principles such as proximity, interdependence and linkage. Project splitting is an oft-raised criticism in environmental assessment

and has been the root of several legal challenges. In this case, the Agency would have concerns (as would, I suspect, the public) with a move to scope in only the marine component. Aside from it being considered somewhat less than best practice, it would jeopardize the potential for a joint EA, and possibly make both levels of government look bad (e.g. why can't these guys get their acts together? (no pun intended)). Excluding the quarry also presumes that there are no navigable waters or fish habitat on the site, a question which has not yet been explored.

I encourage you to consult the Responsible Authority's Guide (available at http://www.ceaa-acee.gc.ca/0011/0001/index_e.htm), as well as the Agency's Operational Policy Statement "Establishing the Scope of the Environmental Assessment" (http://www.ceaa-acee.gc.ca/0011/0002/scoping_e.htm).

I'm not sure if this helps you, or makes matters worse, as you struggle to come up with a draft scope. But at least it gives you something to think about.

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