

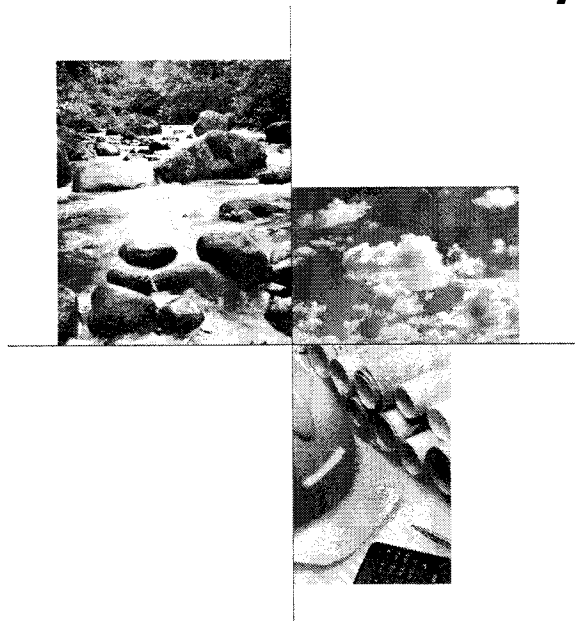


Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

C05333-001

Canadian Environmental Assessment Act (CEAA)



**Presentation to the joint
review panel for the Whites
Point Quarry and Marine
Terminal project**

November 15, 2004



Canada



Overview

- Key elements and roles under CEAA
- Canada-Nova Scotia Joint Review Panel Agreement





History of federal EA

- Cabinet directive (1974)
- Federal Environmental Assessment and Review Process Guidelines Order (EARPGO) (1984)
- CEAA (1995)
- CEAA amended (2003)





Renewed CEAA

- Not a complete rewrite of CEAA
- Changes were made to ensure:
 - a certain, predictable and timely process
 - high-quality environmental assessments
 - increase public participation
- No substantive changes to the panel review process
- However, as the Whites Point Quarry project was subject to CEAA before October 2003, the provisions of CEAA in force at the time apply





CEAA purposes

- Ensure that environmental effects of projects are considered as early as possible
- Avoid significant adverse environmental effects on outside jurisdictions
- Promote sustainable development
- Ensure public participation





Role of Agency

- Overall administrative responsibility for CEAA
- Promote high-quality EA through leadership, training, guidance and research
- Promote uniformity and harmonization of EA
- Ensure opportunity for public participation
- Support review panels
- Administer the participant funding program





Referral to federal review panel

- If there is uncertainty with respect to significance of environmental effects
- If there are likely significant adverse effects
- If public concern warrants it





Role of Minister of the Environment

- Establishes review panels and terms of reference
- Authorizes joint review agreements
- Appoints review panel members
- Appoints or approves appointment of chair for joint reviews and appoints at least one other member
- Receives panel report and makes it public





Role of responsible authorities

- Federal departments and agencies with decision-making authority related to a project – trigger CEAA
 - have defined role at beginning and end of panel review process
 - are encouraged to participate in review
 - can participate in various ways





Role of federal authorities

- Federal departments and agencies without a decision-making authority related to a project – do not trigger CEAA
 - can be called upon or may volunteer information as government experts
 - have a responsibility to not do anything to allow project to proceed while review panel is underway
 - have a responsibility to not allow project to proceed if negative assessment results, unless justified in circumstances

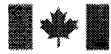




Public involvement

- Integration of public concerns and issues is a key added value of review panel's work
- Review process must provide equal and fair opportunity for all participants to:
 - have access to available information
 - present relevant information and views to panel
- Agency maintains a public registry of EA information
- Participant funding for review will be administered by Agency pursuant to its program





Participant funding

- In two phases:
 - Phase I announced Nov. 8
 - \$25,000 to take part in the review of EIS Guidelines
 - Application period closes Dec. 10
 - Phase II to be announced later
 - Up to \$75,000 for participation in hearings





Review panels

- **Current:**
 - Eastmain-1-A and Rupert Diversion, Quebec
 - Mackenzie Gas Project, NWT
 - Highwood Storage and Diversion Plan, Alberta
- **Completed:**
 - Horizon: Oil Sands, Alberta
 - Jackpine: Oil Sands, Alberta
 - GSX Canada Pipeline: Natural Gas Pipeline, BC
 - Cheviot: Coal Mine, Alberta
 - Sable Gas: Offshore Oil Development and Pipeline, NS & NB
 - Voisey's Bay: Nickel Mine and Mill, NFLD
 - Express Pipeline: Oil Pipeline, Alberta
 - Terra Nova: Offshore Oil Development, NFLD





Chronology

- February 2003 - EA under CEAA initiated
- June 2003 - Minister of Fisheries and Oceans requests project be referred to panel
- August 2003 - Agency and NSDEL seek public comment on draft joint panel agreement





Chronology (con't)

- December 2003 – Proponent requests joint agreement not be finalized until ownership questions are resolved
- Sept 22, 2004 – Ownership clarified, Bilcon of Nova Scotia Corp. is new proponent
- Nov. 3, 2004 – Agreement finalized, panel members appointed
- Nov. 9-10, 2004 – Participant funding announced, draft EIS Guidelines released





Joint Panel Agreement

- Overall intent of Agreement is to ensure Whites Point Quarry and Marine Terminal project is evaluated according to the spirit and requirements of the CEAA and NSEA while avoiding unnecessary duplication, delays and confusion that could arise from separate environmental assessments





Agreement (con't)

- Panel to conduct its review in a manner that discharges the requirements set out in CEAA, Part IV of NSEA
- Panel has powers and duties of a panel set out in section 35 of CEAA





Agreement (con't)

- **Schedule:**
 - Minimum 45 days for comment on draft EIS Guidelines
 - Minimum 60-day comment period on EIS submitted by the proponent
 - Minimum 30-day notice provided prior to start of hearings
 - Maximum 90 days to produce panel report





Agreement (end)

- Administrative, technical, and procedural support for the Panel to be provided by secretariat established by the Agency and Environment and Labour





Role of joint review panel

- Is advisory and does not have decision-making powers
- Ensures impartiality, transparency, equity, objectivity and absence of conflict of interest
- Provided an independent assessment of project taking into account CEAA and the NSEA
- Determines whether information is complete
- Determines whether or not project, taking into account any mitigation measures, is likely to result in significant adverse effects





Federal response to report

- Upon receipt, responsible authorities prepare and submit proposed response to Cabinet for approval
- Cabinet may ask joint panel for clarifications
- Responsible authorities must take a course of action consistent with Cabinet's decision
- Work of joint panel is complete upon release of response



Presentation Notes

I would like to congratulate you on your appointments. Both the Minister of the Environment and the Minister of Environment and Labour place a great deal of importance on this joint review.

I am very pleased that we were able to find three people with such outstanding credentials to sit on this joint review panel

Both Bob [Fournier] and Gunter [Mueke] have sat joint reviews in the past and familiar with the challenges that lay ahead.

I also believe that Jill's [Grant] background in planning and resource development will be great value to the review, given many of the issues involved in this project.

Chris Daly and I plan to alternate this presentation this morning – I suspect that we shouldn't take more than 1.5 hours of your time.

I plan to provide a quick overview of the Canadian Environmental Act and the main elements of the Joint Panel Agreement that was signed on Nov. 3

Early origins of federal environmental assessment

- UN Stockholm Conference on Human Settlements (1972) -Canadian position identified study of environmental effects of projects as a high priority

Cabinet Policy

- Cabinet made a policy commitment to review the environmental effects of federal decisions (1974).
- Projects with significant effects forwarded to Environment Canada for review by assessment panel. Members were drawn from officials in Environment Canada and the initiating department.

EARPGO

- *Environmental Assessment and Review Process Guidelines Order* (EARPGO - 1984)
- Codified largely unwritten and vague process arising out of 1974 Cabinet Policy
- Formally assigns Federal Environmental Assessment Review Office (FEARO) as responsible for administration of process

Canadian Environmental Assessment Act

- Originally introduced as Bill C-78 in 1990
- *Canadian Environmental Assessment Act* brought into force in January 1995

Renewing the *Canadian Environmental Assessment Act*

- In 1999, the Minister of the Environment launched a review of the provisions and operations of the *Canadian Environmental Assessment Act*. The Minister published a discussion paper, as well as a several background studies.
- Amended Act came into for October 2003

Although the amendments do not constitute a major rewrite of CEAA, they significantly strengthen and improve the process.

These changes are practical solutions to problems identified during the Five Year Review. The amendments have three main purposes:

- first, to make the process more certain, predictable and timely;
- second, to produce high-quality environmental assessments; and
- third, to allow for more meaningful public participation.

Cabinet recognized that improving the efficiency of the environmental assessment process requires an investment of new funding to support these legislative changes.

\$51.2 million in new funding was committed over five years (2003-04 to 2007-08) with \$8 million for each year afterwards.

We are confident that this investment will pay off over the long term for project proponents and government decision makers.

However, as the Whites Point Quarry project was subject to CEAA before October 2003, the “grandfathering” provision in the amended Act stipulate the that quarry project will fall under the provisions of CEAA in force before October 2003.

The Agency provides leadership and serves as a centre of expertise for federal environmental assessment. It is responsible for the overall administration of the federal environmental assessment process.

The Agency:

- Administers the Canadian Environmental Assessment Act.
- Encourages public participation, because protecting the environment is everyone's business.
- Advances the science and practice of environmental assessment through research and development.
- Promotes high-quality assessment through training and guidance.
- Provides administrative and advisory support for review panels, mediations, and comprehensive studies, and promotes the development of class screenings.
- Promotes the use of strategic environmental assessment as a key tool to support sustainable decision making.
- In the case of the Whites Point Quarry project, the Minister of Fisheries and Oceans referred the project to a review panel at the beginning of the comprehensive study process, pursuant to section 21. This occurred on June 29, 2003.

- During the review panel process, the Minister stays at arms length. He does not play a role in the actual conduct of the review.
- In the case of your appointments, Nova Scotia agreed that the federal Minister of the Environment was to appoint all three of you to the review panel. This can be found in article 3.2 of the Joint Panel Agreement.
- The Whites Point Quarry project requires two federal authorizations – one under the Fisheries Act (require s. 35(2) authorization) and another authorization under the *Navigable Waterways Protection Act*.
- As a result of the need for these two authorizations both Fisheries and Oceans Canada and Transport Canada are responsible authorities for the project.
- This is true even for federal authorities that do not have a trigger under CEEA
- Federal authorities for this project may include:

Environment Canada

Natural Resources Canada

Health Canada

Parks Canada

- Review panels are seen by the public as the highest ‘level’ of environmental assessment, in part because the panel is independent, and also because of the clear opportunities that the panel provides for public participation in the assessment process.
- The Participant Funding Program is also seen as a key component of the panel review process, but it is independent of the panel.
- A separate review committee will be established to review the applications for funding to participate in this review panel

In the joint panel agreement, the 7th recital outlines the intent of the establishment of the joint review panel

- A review panel has the power of summoning any person to appear as a witness before the panel
- A review panel has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and other things as is vested in a court of record.
- As you are aware, the comment period on the draft EIS guidelines started on November 10. This comment period closes on January 21 and you are expected to hold public meetings on the draft EIS Guidelines during this time.
- The Agency has had some discussions with the proponent regarding how long it will take to develop an EIS. The Agency believes it will take a minimum of 2 months for the proponent to develop the EIS.

- As a Panel, you are going to be very busy writing your report and you will not that the Joint Agreement stipulates that you must produce your report within 90 days of the close of hearings. You must also allow for time to have your report translated. Steve will speak to you about these requirements later today.

Again, Steve will speak to you about the role of the panel secretariat later today.

- On average, we expect a federal government response to your report within 60 days of its receipt