

CEAA Review 2010

Opportunity for Change

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February 5, 2010



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The High Park Group

- **The High Park Advocacy Group Inc. (HPG)** is a Canadian public affairs and policy consulting firm. With offices in Toronto and Ottawa, HPG provides research, government relations, communications, and advisory services for a range of corporate clients, including trade associations. HPG has significant depth in public policy issues; working with Canadian industry at several levels of government, we understand the complexity of public policy including regulatory environments, multi-jurisdictional concerns and contentious policy issues.



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CEAA: Why Change is Important

- **Project proponents are increasingly concerned about the ability of the current regime to deliver clear outcomes. This undermines competitiveness, and the very sustainability of our economy.**



Status of the Act

- Legislated review marking 7 years
- Review to be run by the Standing Committee on Environment and Sustainable Development
- Slated to start later this year
- Consultation mechanism will be part of committee process



What Concerns Project Proponents?

- Triggers:
 - Fed proponent, fed. funds, project requirements, fed. land, or inter-provincial / international impact
 - Law List trigger re: fed. permit, license, authorization
 - Inclusion list and Exclusion list
- Scoping (i.e. define what aspects of the project will be included in the federal environmental assessment)
- Tracking (i.e. determine the level of assessment: screening or comprehensive study, and then possible mediation or panel review)



What Concerns Project Proponents?

(cont...)

- Timeliness
- Duplication with other jurisdictions
 - Models for “One Project - One EA” Approach
 - Coordination / harmonization (each jurisdiction responsible for own process, but seek to coordinate)
 - Joint Process (single hybrid process created, with two decision-makers)
 - Delegation (provincial process used, with two decision-makers)
 - Substitution (EA process under CEAA substituted with another process, like NEB)



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Current Discussions Underway

- MPMO discourse on-going
- Multi-departmental discussion underway
- Clearly a plan for substitution in place for NEB and CNSC
- Timing and particulars to be determined



Problems on the Horizon

- It appears some process changes will occur that will be good, but still unclear what these will be
- Substantive change to *Triggers, Scoping, Tracking, and Timelines* will still be a challenge
- Lack of groundswell of engagement to effect change
- Push-back from those who will see any change as undermining the environment is potentially a problem



Implications of Red Chris

FACTS:

- ***Mining Watch Canada v. Canada (Fisheries and Oceans), 2010 SCC 2:*** “Red Chris” sought to develop a copper and gold open pit mine and mill in north-western British Columbia. Triggered a federal EA through DFO authorization to create a tailings impoundment area.
- Proposed project scoped to include mine and the mill, plus the tailings pond, and quantity of ore production required comprehensive study (as per *Comprehensive Study List Regs*)
- DFO subsequently sought to scope the project such that it excluded the mine and the mill, and as a result could proceed by way of screening
- Screening Report was released, concluding that the project is not likely to cause significant adverse environmental effects, and in May 2006, the project was allowed to proceed. Challenged by Mining Watch



Implications of Red Chris

ISSUE:

- Whether the EA track (screening or comp. assess) is determined by the project as proposed by a proponent or by the discretionary scoping decision of the RA

HELD:

- Tracking and RA scoping are distinct steps in the *CEAA process*
- EA track is determined by the project as proposed by the proponent
- Once the appropriate track is determined, RA has the discretion to determine the scope of the project for the purposes of assessment

IMPLICATIONS:

- RAs lose discretion – good and bad
- Incentive for proponent to scope very narrowly every time
- Demonstration of problems with legislation



Suggestions for SMA

- Get out early with a position, and make it as explicit as possible
- Find partners – don't try to do this alone – build a broad constituency
- Engage the province in support of your position



Thank You

Questions?



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