

# Federal Environmental Assessment Dawn of A New CEAA

**Deborah H. Overholt**

Borden Ladner Gervais LLP  
1200 Waterfront Centre,  
Vancouver, B.C.  
604-640-4164

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# Bill C-38

- **Jobs, Growth, and Long-term Prosperity Act**
- **First Reading – April 26, 2012**
- **Third Reading – June 18, 2012**
- **In force – July 6, 2012**
- **Sweeping changes to federal environmental legislation**

# Environmental Assessment Changes

- **Repeals and replaces Canadian Environmental Assessment Act**
- **Federal Objectives**
  - Increased efficiency
  - Improved outcomes
- **Increased Efficiency**
  - Fewer federal EAs
  - Fewer responsible authorities
  - Fixed timelines
  - Focus on federal jurisdiction
  - Federal/provincial substitution

# Environmental Assessment Changes (cont'd)

- **Improved Outcomes**
  - Binding conditions in decision statement

# Projects Subject to Assessment

- **Old CEAA – any project with federal “trigger”**
- **New CEAA – “designated projects”**
  - Regulation
  - Discretion
- **Regulations Designating Physical Activities – July 6, 2012**
  - Largely based on previous Comprehensive Study List Regulations
- **Non-designated projects on Federal lands and international projects**
  - Formal EA not required, but federal authority must be satisfied project is not likely to cause significant adverse environmental effects

# Responsible Authority

- **Old CEAA – many**
- **New CEAA**
  - National Energy Board
  - Canadian Nuclear Safety Commission
  - CEA Agency
  - Others by regulation

# Process – Non-NEB/CNSC projects

- **Two types of EA**
  - Regular
  - Review Panel
- **Initial Screening – CEA Agency**
  - EA required?
- **Notice of Commencement**
- **Minister refers to review panel – 60 days from NOC**

# Environmental Effects

- **Focus on matters within federal jurisdiction**
  - Fish and fish habitat
  - Aquatic species defined in SARA
  - Migratory birds
  - Other specified components of environment
  - Federal lands
  - Aboriginal peoples
- **But note section 5(2) – effects linked to federal power, duty, function**



# Time Limits

- **Initial screening – 45 days**
- **Referral to review panel – 60 days from NOC**
- **Decision on regular EA – 365 days from NOC**
- **Review panel – Minister’s discretion up to 24 months**
- **Minister can extend for 3 months**
- **Cabinet – further extensions**
- **Excludes proponent study time**

# One Project/One Process

- **Substitution of provincial process**
  - Mandatory on provincial request if Minister of Environment considers provincial EA process “appropriate substitute”
  - Some limits on Minister’s discretion
- **Federal decision still required**
- **Exemption - Cabinet**

# Decision

- **Minister of Environment – Unlikely to cause significant adverse effects**
- **Cabinet – significant adverse effects are justified in the circumstances**
- **Decision statement and conditions**
- **Proponent must comply**

# Public Participation

- **Initial screening**
- **Draft assessment report**
- **Other Opportunities**
  - Section 24 – public invited to participate – scope?
- **Review panel**
  - Information available to the public
  - “Interested party” participation in hearings

# Transition

- **Screenings – designated projects – continue under former Act**
- **Screenings – non-designated - assessment ends unless Minister designates**
- **Comprehensive studies – continue under former Act – time limits**

# Transition (cont'd)

- **Review panels – continue under new Act**
- **New CEAA does not apply to designated projects:**
  - Initiated construction
  - Course of action decision
  - Exemption order - limited