

# Federal Government Proposes Changes to the Environmental Assessment Process



The Standing Committee on Environment and Sustainable Development (Committee) recently recommended changes to the federal environmental assessment process in a report on its review of the *Canadian Environmental Assessment Act*. The federal government wasted no time responding to these recommendations. On April 26, 2012, it proposed a complete overhaul of the assessment process in Bill C-38, the *Jobs, Growth and Long-term Prosperity Act*. Here's a look at the proposed changes.

## BILL C-38

Rather than make changes to the existing federal environmental assessment act, Division 1 of Part 3 of Bill C-38 proposes a new *Canadian Environmental Assessment Act, 2012*, (CEAA) which will establish a new federal environmental assessment regime to replace the existing one. (It also makes changes to the *CEPA*, *Fisheries Act*, *National Energy Board Act*, *Canada Oil and Gas Operations Act*, *Nuclear Safety and Control Act* and *Species at Risk Act*.) The new CEAA addresses the key areas of concern raised in the Committee's report:

**Improved timelines.** With an eye toward making federal environmental assessments more predictable and timely, Bill C-38:

- Replaces the current assessment structure with two basic kinds of reviews: standard environmental assessment or review panel;
- Sets specific timelines: 365 days for standard environmental assessments, 18 months for National Energy Board hearings and 24 months for panel reviews;
- Sets binding timelines for regulatory permitting processes under the *CEPA*, *Fisheries Act*, *Species at Risk Act*, *Navigable Waters Protection Act* and *Nuclear Safety and Control Act*; and
- Requires the Canadian Environmental Assessment Agency to make decisions as

to whether a project requires a federal environmental assessment within 45 days.

**Decreased duplication.** To reduce duplicative environmental assessments, the new law:

- Allows provincial environmental assessments that meet the new law's requirements to replace federal assessments;
- Enables equivalencies between *Fisheries Act* regulations and provincial regulations;
- Assigns responsibility for environmental assessments to three authorities: the Canadian Environmental Assessment Agency, National Energy Board and Canadian Nuclear Safety Commission; and
- Eliminates the requirement of joint review panels for projects regulated by the National Energy Board and the Canadian Nuclear Safety Commission.

**Improved environmental outcomes.** To ensure that assessments actually result in better protection of the environment, Bill C-38:

- Focuses on "designated projects" that represent a greater risk to the environment;
- Introduces enforceable environmental assessment decision statements and gives federal inspectors authority to examine whether the conditions of a decision statement are being met; and
- Imposes administrative monetary penalties for violations of the new *CEAA*, the *Nuclear Safety and Control Act* and the *National Energy Board Act*.

**More public and Aboriginal consultation.** The new *CEAA* is still intended to provide for and encourage public participation in environmental assessments but imposes limits on participation in major pipeline reviews under the *National Energy Board Act* and review panel environmental assessments. For these assessments, only an "interested party," that is, a person who's "directly affected" by a project or who has relevant information or expertise, may participate.

To address concerns about Aboriginal consultations, the new *CEAA* integrates such consultations more fully into the new environmental assessment processes, funds these consultations and establishes consultation protocols or agreements with Aboriginal groups.

## ANALYSIS

The changes proposed in Bill C-38 are intended to streamline and speed up the environmental assessment process for projects subject to federal review. And they accomplish this goal by providing time limits for certain review processes, more coordination between different government agencies and reduced duplication. But these improvements come with a price, namely increased enforcement and penalty provisions designed to punish project proponents who don't comply with the new rules. Of course, these changes have to be enacted first. We'll keep you posted on Bill C-38's progress.