Options for Public Participation and Participant Assistance in Environmental Impact Assessment

A Report of the New Brunswick Environmental Network
EIA Working Group
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Introduction

The Department of Environment (DOE) has been revising the New Brunswick Environmental Impact Assessment (EIA) regulation since December 1993, when it released *Directions for Change*, a position paper outlining key principles upon which the new process will be based. The DOE accepted comments from the public on its paper, but due to uncertainties surrounding harmonization negotiations with the Federal and other provincial governments, two and a half years have lapsed without seeing a draft EIA regulation.

However, the DOE is currently working on a draft EIA regulation, and expects to hold a public workshop in November to discuss options for change with the public. Over the last three months, the NBEN EIA Working Group will distributed a draft options paper and consulted with NBEN member groups in order to learn from our collective experience with EIA in New Brunswick, what works and does not work. This NBEN paper sets outs options for renewal of the present EIA process, their pros and cons, and makes recommendations based on our consultations.

First, we will briefly describe the purpose and elements of the EIA process. Environmental impact assessment is a process whereby significant environmental impacts on the environment can be identified in the planning stages of a development project. The process benefits society by avoiding harmful and costly degradation of the environment.

Typically, an EIA process starts with a screening, at which time a decision is made whether to conduct a full EIA or not. If it is decided that the project cannot proceed without further assessment, the project is scoped. The purpose of scoping is to identify significant issues and eliminate insignificant ones. In New Brunswick, scoping occurs when the Guidelines are developed. The proponent then develops Terms of Reference which sets out the components of the EIA Report.

Once completed, the EIA report is reviewed by a government review committee. In many jurisdictions, the review committee may recommend that an independent panel review the EIA report, typically called a full EIA review. The NB EIA process does not at present allow for public hearings, which are very different from public meetings. Public hearings are presided over by an independent body, permit the public

to cross examine witnesses, and present evidence.

This discussion paper is restricted to the issue of the role of the public in the process just described. Public participation in environmental planning decisions is a characteristic of EIA systems in democratic countries. Gone are the days when such governments were elected and felt free to govern thereafter free of public "interference." Rather, the government holds ultimate responsibility but with the most careful public scrutiny.

Although our focus here is on public participation, other issues, like the types of projects subject to, and the content and scope of, EIA are equally important . The first obstacle to a good process is that some very environmentally harmful projects are simply not required to be registered to enter the EIA process. Examples include forest management plans, logging roads, and aquaculture.

A. SCREENING

Status Quo

The present EIA process begins with a screening during which the Minister reviews each registered undertaking and decides whether there is a significant environmental impact to require an EIA, and if not, what terms and conditions s/he will impose on the undertaking. There is no public involvement required in the screening, although the DOE voluntarily gives the names of projects being screened to the NBEN. The screening process of the federal Canadian Environmental Assessment Act (CEAA) makes notice and the opportunity to comment on screening reports an option, although not a legal requirement. In practice, projects being screened federally are listed on the internet.

Problems:

In NB many environmentally harmful projects get "screened out" without the public ever knowing of them.
Experience with the federal process indicates that where it is not a legal requirement to give notice and take comments, environmentally threatening projects are still being screened out.
The screening stage of 30 days is too short for the public to get notice and comment.
The threshold of "significant environmental impact" is too vague to hold the Minister accountable.
A recurrent theme expressed at the NEBEN meetings was that since the screening decision was highly discretionary, it often was made for reasons of political expediency rather than based on environmental considerations.

OPTIONS:
1. Notice and Comment (DOE's Recommendation)

The DOE has suggested that the public be notified and given the opportunity to comment during the registration and screening stages. Some support has been shown by industry, municipalities and other government departments for "early input" by the public. It is in the proponent interest to identify the likely problems early in order to keep the process running in an efficient timely manner.

Problems:
Without a legal requirement that the public's comments be taken into account, and an onus on the government to respond, the public cannot meaningfully participate.
Comments as to the need of the project, alternatives to the project, social and cultural impacts (including aboriginal aspects) of the project are given little weight.
The public is not effectively notified except through notices in the newspapers and the internet, and at shopping malls, grocery stores, university campuses and high schools; and through the use of informal independently facilitated workshops.

2. Notice, Comment, and Response
The NB DOE's draft Clean Air Act requires notice of proposed amendments to air quality objectives to be given to the public, gives a period of 90 days for public comment, and requires that the Minister consider the public's comments. The requirement to consider public comments is progressive. However, the government can only be held accountable to the public if it is required to respond to public comments. An example of this accountability is seen in the Canadian Environmental Protection Act (CEPA) provision which requires the Minister to report on the progress of an investigation that is requested by a citizen.

Problem:
Even with a response from the Minister, at the end of the day, the decision is the Minister's to make and could be open to political pressure from the proponent.

3. Notice, Comment, Response and Objection with Criteria
To balance the political power of the proponent, the citizen could be given the right to file an objection within a limited period following a decision to "screen out" an undertaking. The objection would be filed with an independent Environmental Appeal Board (EApB), that considers whether a full EIA is in the public interest, or whether significant environmental impacts are threatened. The EApB's recommendations should be made public. Similar objections are possible under CEPA with regards to the federal Environment Minister toxicity assessment decisions.

To ensure accountability, and a measure of predictability, criteria should be established by regulation to guide the screening decision. The criteria would have to be fairly detailed - at least comparable to the Site Selection Guidelines for Sanitary Landfills (DOE, May 1993) - and should be in a regulation.

It was suggested at six out of the eight public meetings held during preparation of this paper that public meetings should take place at the screening stage. In recognition of the potentially large number of projects being screened, it was suggested that the body responsible for screening hold weekly public meetings to brief the public on all of the undertakings that had been registered that week, and hear initial feedback from the public.

The final screening decision, and conditions placed on any project that goes ahead without a full EIA should be made public.

Problem:
From the proponent's point of view, the ability of the public to object to a screening decision will extend the length and cost of the project. (However, the proponent would also have the right to appeal a screening decision).

4. Screened by an Independent Body; no Veto Power in Minister
An alternative option to address the problem that screening decisions are more political than environmental is to take the decision out of the hands of the Minister and give it to an independent body. Citizens at public consultations suggested different means of achieving independence to differing degrees:

a) a Committee of Experts comprised of experts independent of government and industry;
b) a Multistakeholder Review Committee comprised of representatives from all interested parties;
c) a Government Review Committee with greater authority.

Under the last scenario, a new department called the NB Environmental Assessment Agency could be comprised of existing skilled DOE staff in the Planning branch. The Committee would be the primary decision maker but would consult with the Minister of Environment.

Problems:
By taking the decision away from the Minister, the citizen loses his/her right of appeal or objection
An independent body may be accountable to no one.

Giving the Government Review Committee greater authority and a new Agency will not shift power significantly - the Federal Canadian Environmental Assessment Agency is a prime example. Making it separate from Environment Canada with no representative of its own in Cabinet has actually weakened the federal assessment process.

B. EIA REVIEW
Status Quo

Under the present process, once the Minister decides that a project requires a full EIA, notice is given to the public, a registry of undertakings is maintained at the NB DOE office, and a Review Committee (RC) to oversee the EIA is established. The RC is, as far as this author is aware, always made up of government officials, although the regulation permits anyone to be appointed to the Committee.

For each project, the Minister, in consultation with the Review Committee prepares Guidelines on the substance, scope and conduct of the environmental assessment. The public is given notice and invited to comment on draft Guidelines. The Minister is legally required to consider the public's comments.

The proponent's consultant then prepares Terms of Reference (ToR) which set out how the proponent will carry out the EIA in accordance with the Guidelines. When the EIA report is completed, the Minister and Review Committee reviews the report, accepts it, or asks for more information. The Minister then prepares a Summary of the EIA and the review Committee prepares a Review Statement. The EIA, Summary and Review Statement are then made available to the public. A public meeting is announced in the *Royal Gazette*, and "by other means as [the Minister] considers appropriate." Although, not legally required to be announced in newspapers and local venues, the NB DOE has generally done so. The public meeting is held no sooner than 30 days after the public is given access to the EIA documents.

The public meeting is presided over by someone designated by the Minister. It could be someone who has not been part of the EIA process from the beginning. The meetings are generally a few hours long, at which members of the public have about 15 minutes each to ask questions or raise concerns. The public has 15 days following the meeting to make further written representations to the Minister.

The Minister makes a report and recommendations with respect to the project to Cabinet. The final decision about whether the project proceeds, proceeds with conditions, or does not proceed is made by Cabinet.

Problems:
The Review Committee, composed of government employees, is open to conflicts of interest when the proponent is a government department, can be subject to political pressure and therefore lacks public confidence.
The regulation is not specific on how the documents are to be given to the public, in some cases people have been asked to pay for copies of the EIA.
Announcement in the *Royal Gazette* is not enough to bring anything to the attention of the general public.
The Review Committee does not preside over the public meeting, nor is required to attend, yet it reviews the EIA and makes recommendations to the Minister.
Thirty days is generally not long enough for the public, as volunteers, to obtain, review, and seek advice from independent experts on the EIA documents.
The time available at a public meeting to raise concerns is not sufficient to even introduce the people and their concerns.
The public does not have the resources to probe and test the consultant's reports to their satisfaction.
The public does not feel that the concerns raised at the public meetings are taken seriously by decision makers in government.
The final decision is made by Cabinet where the Minister of the Environment is only one voice amongst other economic and development interests.

OPTIONS FOR WHO REVIEWS THE EIA:
1. Independent Review Committee
The EIA could be screened and reviewed by a Committee made up of persons not employed by government. The Committee would review the EIA, decide whether to hold a public hearing and make recommendations to the Minister, who would make the final decision regarding the project. This approach would best provide impartiality. However, we have not found a jurisdiction that employs a fully independent committee. If NB were to adopt a purely independent review committee it would be breaking new ground.

Problems:
It may be hard to locate enough independent experts in NB to form review committees for each and every project that is subject to the EIA process.
Probably unacceptable to government because of loss of control over the process.

2. Quasi-Independent Review Committee
In several jurisdictions, quasi-Independent bodies exist to review the EIA and make recommendations to the Minister. In BC, a Project Committee composed of representatives from the provincial and federal governments, First Nations peoples, municipalities in the vicinity of the project, and jurisdictions outside of BC in the area

of the project, reviews the EIA and makes recommendations to the Minister.

Several foreign jurisdictions include citizen representatives on the review committees. In India a Committee of Experts including scientists, ecologists, land use planners, social scientists, and NGO representatives as well as government representatives, reviews the EIA, decides whether a public hearing is required, and makes recommendations to government. The Indonesian process, which was designed using Canadian expertise and in co-operation with Canadian institutions, includes an NGO representative on its review committee.

Problem:
One or two citizen representatives may not have much power to affect decision making within the Committee, while giving the Committee an environmental or democratic appearance.

3. Public Advisory Committee
A Public Advisory Committee (PAC) comprised of individuals or group representatives interested in the outcome of the EIA process could be nominated by the community as soon as a project has been registered. The PAC would be able to review EIA documents and make recommendations to the Minister on such issues as whether to hold a public hearing, whether to approve the projects and when mitigation efforts are required. The PAC could issue a review statement of the EIA document to the public in addition to the government Review Committee's statement.

Public Advisory Committees are used in the BC EIA process. A US-Canadian joint public advisory committee provides recommendations and guidance to the Commission on Environmental Co-operation.

The PAC would not replace broader public participation through notice, comment, and responses, and oral representations at public meetings and hearings.

Problems:
The Committee would probably have to be reimbursed for time and expenses, and given some payment in order to do an adequate job.
Involvement on a PAC could tie up otherwise active environmentalists in meetings and consultations.
Such close connection to the process may result in those on the PAC "buying into" the process or project, such that they no longer represent the mainstream public's view.

4. Jury of Citizens
A suggestion was made by citizens at the NBEN meetings that a Jury be charged with

overseeing the entire EIA process. The Jury would be selected at random from the community closest to the proposed undertaking.

The Jurors would base their decision making on certain established principles of environmental law, similar to the principles in the draft Clean Air Act. The Jurors would hear the proponent and ask the proponent for more information, review the EIA report, request outside resource people to explain or verify technical details, solicit citizen input, and preside over public meetings or a hearing, and make the final decision to approve the project, and its conditions. All proceedings would be open to the public. The Jury would make a decision based on a 2/3 majority.

Problem:
Where a Jury makes the final decision, a citizen would lose the right to appeal a government decision.

OPTIONS FOR PUBLIC INVOLVEMENT:

1. Informal Workshops & Semi Formal Meeting

Participants at the NBEN public meetings favoured a combination of three types of public meetings: a) informational meetings, b) interactive workshops and c) semi-formal meetings.

In the early stages an informational meeting is required, that specifically includes youth and First Nations people from the community. While the EIA is being conducted, it is appropriate to hold workshops facilitated by a neutral person where members of the government review committee and the proponent are present. A feeling was expressed among the participants that the workshop should not be run by the consultants.

After the EIA Report is completed, participants are desirous of a more formal meeting than the present model. The public meetings could be better structured so as to give citizens more time to ask questions of consultants and government, receive answers, and present technical and non technical evidence. The government Review Committee should be available at the public meetings for questioning.

Without going to the Full Hearing model, participants want a certain amount of process. They favour the following rights:
a) to ask questions of the proponent, the review committee, and consultants under oath;
b) to present expert evidence;
c) to present written submissions that become part of the documents required to be considered in the final decision;
d) to have the meeting overseen by a person with the power to subpoena witnesses.

C. FULL EIA REVIEW
Status Quo

A full EIA review typically involves a public hearing before an independent body. There are no public hearings held in the NB EIA process, although NB citizens may have participated in public hearings held under the federal EIA process, on for instance, nuclear issues. Public meetings in the NB process are not before an independent body and do not give citizens any rights to cross examine experts, or introduce evidence. The meetings give the public no more than a brief opportunity to air their concerns.

However, a public hearing by an independent body is an option in EIA processes in most other provinces. The independent body is comprised of citizens and experts who are not employed by government. The body may be a standing institution like the Environmental Assessment Boards of Ontario, BC, Newfoundland or the Clean Environment Commission of Manitoba. Alternatively, an Inquiry Board may be assembled as needed, under the Inquiries Act as in Saskatchewan.

The NBDOE has indicated a willingness to establish an independent review body as a standing body rather than establishing Inquiry Boards on an ad hoc basis (option 1, below). A standing institution is preferable to the Inquiry model because the institution will be able to develop expertise and skills required to address environmental issues.

Environmental Assessment Boards are permitted to determine their own procedure with respect to evidence, examination of witnesses, filing of documents, adjournments, transcripts etc. However, the Board should be given certain powers in the EIA Regulation, including an enforceable power to summon any party to appear as a witness, and to order the witness to give evidence orally or in writing and to produce documents.

The most contentions issue regarding full EIA review, and that addressed in the various models below is when to conduct a public hearing.

OPTIONS:

1 Public Hearing for "Major" Undertakings (DOE's Recommendation)
The NB DOE has proposed that a public hearing by an Independent Review Body is appropriate for assessments of major undertakings generating significant public interest. It is unclear what is a major undertaking. Designation of an undertaking as "major" will be left to the discretion government decision makers. Also left to their

discretion is the question, how much public interest is significant enough to trigger a hearing.

We assume that the process for non-major undertakings will be similar to the status quo - a government Review Committee to administrate the process with one or two informal public meetings per project.

Problem:
Only a small percentage of projects are likely to fall under the category of "major"; the vast majority of projects will be conducted through a process similar to the existing EIA process.

2. Public Hearing when Requested by the Public
The best way to ensure that a public hearing take place whenever significant public concern exists would be to require a hearing whenever a significant number of people request that a hearing take place. In Ontario, any one person, who has already made a submission regarding an EIA, may request that a public hearing be held.

However, the Minister would likely retain discretion to decide whether or not to hold the hearing. For example, in Ontario, the Minister has absolute discretion to refuse a hearing where s/he considers that the request is frivolous or vexations, would cause undue delay or is unnecessary. Discretion on the part of government decision makers is often necessary and can be used to favour the public interest. However, discretion can also be abused.

Problem:
The Minister's discretion could probably override any request.

3. Public Hearing when Certain Criteria Exist
The EIA regulation could establish some criteriaas guidance for when a public hearing should be held. The Federal process subjects undertakings to a panel review or mediation where a) it is uncertain whether a project, taking into account mitigation measures is likely to cause adverse effects, b) the project is likely to cause significant adverse environmental effects, or b) where enough public concern exists. The NB DOE may use similar criteria as the federal process. However, only 1% of the approximately 6,500 projects assessed annually by the Federal government actually go through a comprehensive study, panel review or mediation.

In Manitoba, a public hearing can be ordered when it is of general interest to or will affect a large number of citizens, or where significant public concerns are identified.

A decision by the Minister not to order a full public hearing ought to be subject to review by the public through a process such as the objection process outlined below.

Problem:
It will be hard to find criteria that are flexible enough to leave the government some discretion, yet firm enough to protect the public interest and the environment.

4. Public Hearing for Listed Projects
With all of the options listed above, the crucial decision about whether a project goes to a public hearing is left up to the Minister's discretion. The only way to make this an environmental instead of a political decision is to make a full public hearing mandatory for certain listed categories of projects, as was the case with the former federal EIA process.
Such a list would include the most environmentally destructive types of activities such as waste disposal projects/landfills, major highways, pipelines, logging operations, pulp and paper mills, nuclear facilities etc. Smaller scale projects would not be require to undergo a full public hearing, although they would still be reviewed by the review committee.

Along with the list of mandatory projects, the Minister would also be able to order a public hearing for projects not on the list but for which a substantial number of citizens showed concern.

Problem:
A list can still be subject to interpretation.

D. DISPUTE SETTLEMENT
Status Quo

What happens when a citizen believes that the EIA process has been conducted unfairly, or inadequately? A citizen may have genuine questions about the process or about the substance of the EIA, for example where improper consideration was given to the impact on wetlands. Under the present EIA process in New Brunswick, an approval holder may appeal where his/her application for an approval has been refused. However, the citizen has no appeal under the NB Clean Environment Act or the EIA Regulation, and no right to enforce environmental laws that are not being enforced by the NB DOE.

At present, in New Brunswick, the only route of appeal (provided the Minister stuck to the process) is to argue that the process was unfair, biased, or that the Minister used his/her discretion unreasonably. These actions are extremely difficult to win in NB

courts, where Judges are loath to interfere with government decision making.

OPTIONS:

1. Mediation at any Point in the Process (DOE's Recommendation)

The NB DOE has recommended in its *Directions for Change* paper that mediation may be used to resolve disputes identified during EIA screening or as an alternative to requiring a full EIA, or to deal with specific issues during an EIA.

Mediation is a voluntary process in which parties to a dispute attempt to resolve their differences with the assistance of a neutral third party (the mediator). A mediator has an advisory role only. S/he may offer suggestions but is not supposed to impose a solution on the parties.

The federal environmental assessment process incorporates mediation as an alternative to a full EIA hearing. CEAA permits mediation only if "interested parties" can be identified and are willing to go to mediation. Mediation is seen as a way to make the EIA process effective and efficient by the NB DOE, is favoured by industry, and has been used successfully in the US.

The voluntary nature of mediation is supposed to ensure that no party is forced into an agreement that is not in their favour. The aim is to achieve win-win solutions that allow development to go ahead, with the approval of a limited number of opposing interests. Where only a narrow group of people are interested, and a community wants a development project, the issue is simply how to compensate them for the damage that may occur, or how to mitigate adverse environmental effects. In these circumstance mediation can bring about the desired results. However, the majority of EIAs may not be amenable to mediation. Since its inception in the mid 70s, mediation has raised considerable political disagreement.

Problems

The friendly atmosphere created by mediators can disarm and co-opt environmentalists.

The superior political and economic resources of pro-development interests can create power imbalances that allow pro-development interests to extract unfair concessions from environmentalists.

The mediation process itself tends to redefine environmental issues in a way that focuses on economic interests rather than values.

Mediation involves two or three parties, thus excluding other interested stakeholders.

Mediation does not give the citizen the right to appeal or object to a decision to approve a project.

2. Right of Objection / Appeal to an Environmental Appeal Board
Several jurisdictions have given citizens who have participated in the EIA or environmental approval process rights to object to the outcome of the process. In Alberta, a notice of objection is possible where a person is directly affected by the decision to grant an approval and that person has previously filed a statement of concern.

The appeal is heard by the Environmental Appeal Board of three individuals chosen for the appeal from a roster appointed by Cabinet. The members of the Board should have experience from government, industry and the environmental movement. The Board's decision is confirmed or varied by the Minister.

Under the Canadian Environmental Protection Act, any person may file a notice of objection following several actions by the Minister. When an objection is filed, the Minister may, and in some cases must, establish a board of review to consider the objection. The Board conducts an inquiry and makes recommendations to the Minister.

The Ontario Environmental Bill of Rights gives any two residents a right to request a review of existing policy, statute, regulation, or instrument on the basis that it is harming the environment.

Problems:
A review risks being restricted to procedural questions rather than substantive issues, unless the regulation permits substantive review specifically.
Unless a review is mandatory once an objection is received , the Minister may simply decide not conduct the review (as in Alberta).

3. Community wide Referenda
The suggestion was made at the NBEN meetings that referenda be used to resolve disputes between a proponent and environmental interests. It was suggested that a clear yes or no question be put to the community who would vote by secret ballot on the undertaking.

A referendum might be best used where an project is controversial and will effect a large number of citizens.

Problem:
Referenda can be costly and difficult to administer.

E. RESOURCES FOR PARTICIPATION

Status Quo

One of the problems with the effectiveness of environmental assessment in New Brunswick is the lack of funding to assist people to understand and evaluate complex scientific reports produced by the proponent and to hire people with expertise to assist them. Although the NB DOE prepares a summary of the EIA document, this is not a replacement for the EIA report itself. In order for part time, casual participants to effectively assess and raise questions about an EIA document, financial resources beyond the means of most individuals are required.

In the interest of fairness and democracy, the public should be able to participate as effectively as the proponent. This requires financial support from the government or the proponent. Examples of the provision of resources in various jurisdictions provide several options.

OPTIONS:

1. Participant Funding

Several jurisdictions have accepted that in order for the EIA process to be fully democratic, public interest participants must have funds to cover costs of travel, childcare, translation, networking activities such as meetings, workshops, conferences and newsletters, and independent research, independent experts and writers to prepare briefs.

The Intervenor Funding Project Act was established in Ontario in 1988 as a pilot project, renewed in 1991 during a period of massive cutbacks in government spending, but not renewed in 1996 by the Mike Harris government. Under this process, a group can apply for funding for expected costs and fees in order to appear at an EIA hearing.

The funds are distributed up front in order to assist the parties to prepare and participate in the hearing. The participant has complete discretion about how to spend the funds. Nonetheless, certain criteria must be met before participant funds are awarded. These criteria include: whether the participant represents a clearly ascertainable interest that should be represented at the hearing; whether the intervention should assist the board and contribute substantially to the hearing; whether the participant could afford to represent the interest adequately without funding and whether it made reasonable efforts to raise the money from other sources; whether the participant has a record of concern and interest in the issue; whether efforts have been made to form an umbrella group to deal with the issues the intervenor intends to address; and whether the participant has a clear proposal for the use of the funds and appropriate financial controls to prevent misuse of funds.

The federal EIA process provides for funding through the Participant Funding Program which is currently supported by money fro the Green Plan. Although this money will run out after March 31, 1997, the Act requires that participant funding be provided. The Canadian Environmental Assessment Agency is currently reviewing options for participant funding, including billing the proponent, and attribution of costs. Through cost attribution, the government decides who qualifies for participant funding and the proponent is required to pay the approved amount directly to the participant.

The Manitoba EIA process currently provides participant assistance on a cost attribution basis for the following expenses: legal and expert fees, salaries of persons employed to co-ordinate participation, travel and accommodation expenses, purchase of relevant materials, information collection and dissemination, accounting and auditing services, photocopying postage and stationery, telephone rental and charges, translation services, other related expenses as approved by the Minister.

Despite documented evidence that it leads to a better EIA process, participant funding is opposed by proponents and the NB DOE as it is perceived as "writing a blank cheque" and also perceived to create a more adversarial process.

Problems:
Negative perception in government of the intervenor funding program in Ontario. Concern in government that participant funding somehow makes the process more adversarial.

2. All Costs Reimbursed if Criteria are Met
The Canadian Radio and Telecommunications Commission (CRTC) permits reimbursement of costs and fees incurred by individuals and non profit groups in hearings for telecommunications licenses.

The costs award is carefully structured to balance the concerns of government/proponents with the need for a fair process. Only costs reasonably and necessarily incurred in order to participate are reimbursed. Costs of transcripts, lawyers and experts, preparing evidence, and disbursements (telephone, photocopies etc.) are reimbursed.

After the hearing, a participant makes an application of costs to the Commission. The Commission determines whether a costs award is to be made according to certain criteria, including whether the applicant can demonstrate to the CRTC that s/he has participated in a responsible way and has contributed to a better understanding of the

issues before the Commission. The Commission determines whether the applicant is entitled to costs and who, amongst the proponents, pays.

Interim Costs are awarded before the hearing where a participant can prove that s/he will participate in a responsible way, and will contribute to a better understanding of the issues.

3. Costs Reimbursed and Technical Expertise Supplied
In the BC EIA process, the Minister may pay all or part of the actual or anticipated costs of participating in a review, and provide access to technical expertise.

Problems:
Government provided experts may not be impartial.
Government provided experts may appear to be working for the government not for the public interest group.
This option was unacceptable to the vast majority at the NBEN public consultations.

4. Use of the Environmental Trust Fund
The suggestion was made at several NBEN meetings that the Environmental Trust Fund (ETF) could provide participant funding for projects where the government is the proponent. Where the project to be assessed is a private undertaking, it is felt that while advances could come from the ETF, these funds should be re-imbursed by the private proponent.

Problem:
If we believe that the provision of resources for EIA is a necessary to make the process fair and democratic, then we should have new and additional resources set aside for this purpose.

F. FOLLOW UP
Status Quo

Under the present process, the DOE monitors the Approvals through a) regular inspection, b) granting approvals that much be renewed every few years, and c) maintaining the power to suspend or revoke the Approval.

After the approval is granted, the primary relationship is between the government and the proponent. The public has no formal role.

Problems:
The public's formal role is over after the approval is granted, yet the community must

continue to live with a new development in their neighbourhood.
Community concerns about the project are likely to continue, and may increase during operation.
The EIA process may have worsened relations between the proponent and the community, yet the two become neighbours.
The public consultation process may have been dissatisfying for the participants engendering mistrust of the DOE and the EIA process.

OPTIONS:
1. Evaluation of the Public Consultation
An evaluation of the process by all of the participants - public included- should be incorporated into the final report. The strengths and weaknesses of the process should be considered and specific recommendations made for improving the consultation process.

Participants who withdrew, or who never took part, should also be canvassed as to their reasons for not participating. The results of this evaluation should be made public and incorporated into future consultations.

2. Community Environmental Committee
The community can have a role in implementation, monitoring the long term effects, mitigation damages. Along the way, injured parties may have to be compensated. These issues can be addressed through the establishment of a permanent Community Environmental Committee that is composed of community members alone. Alternatively the Committee could include representatives of the proponent as well.