May 30, 2007
NB Telegraph Journal

N.B.'S EIA PROCESS IS FLAWED

Janice Harvey

Here's some context for the negative reaction to federal Environment Minister John Baird's announcement that Ottawa would play a very minor role in the environmental review of Irving Oil's proposed new oil refinery in Saint John.

Until environmental impact assessment (EIA) legislation was enacted in the 1970s, industrial project approvals were inside jobs. Somewhere in the bowels of government, immersed in the political considerations of the day, proponent and politician signed off on economic projects without regard for environmental or human health impacts. Eventually, our air, lakes, rivers and estuaries became so polluted and fish stocks so decimated that governments had to respond to mounting public pressure. In the 1970s, environment departments were created and laws written, including EIA legislation.

The point of such legislation was twofold: a) to remove politics from the mix by ensuring an arms' length, objective assessment of all potential impacts, and b) to provide principled, equitable public participation in the review process to ensure all issues are addressed, and make final decisions more accountable to the public.

The New Brunswick EIA regulation under the Clean Environment Act never met that standard. Despite decades of lobbying to improve it, it remains subservient to a parochial, politicized approach to economic development that marginalizes both nature and people. First, setting aside the minister's discretion to exempt projects from review, there is no independent, objective review: to borrow a military term, the EIA is embedded in the politics of the project. Project politics reflect the relationship between politician and developer, generally well cultivated by easy access one to the other. The review is conducted by bureaucrats who are beholden to their minister and the government of the day. Whatever genuine concerns bureaucrats on the review committee may have, their job is to deliver a verdict to their minister that is consistent with the wishes of the government.

Second, public participation provisions are mere tokenism. Developer-led open houses and a public meeting presided over by the developer's consultant, where it is impossible to engage in meaningful examination of the project's impacts in the few minutes one is granted at the microphone, serve only to get people worked into an angry lather.

Alternatively, one can write down one's concerns and mail them to the bureaucratic black hole, from which emerges only a form letter stating one's correspondence has been received. Eventually, the government announces the project has been approved and under what parameters, the final verdict having been churned out of the political messaging machine. One never knows what the review committee really thinks.

This process dramatically fails the test of principled and equitable public participation, and has fuelled well-deserved cynicism on the part of citizens who have gone through it.

Federal EIAs can provide equally frustrating results at the lower order of review, that of project screening. However, the federal law does provide for a high level review that meets the test of objectivity, public participation and accountability. This is an assessment carried out by an independent panel of experts (not government employees) in various fields. While appointed by the federal environment minister,

panels over time have consisted of qualified professionals whose personal integrity resisted any political taint.

A panel holds rigorous public hearings where everyone plays by the same rules. The environmental impact report is painstakingly parsed, witnesses are subpoenaed and cross-examined, and contrary expert evidence submitted. Transcripts of the proceedings are produced.

At the end of the day, the panel issues a public report which weighs all the information, identifies issues and makes recommendations to the minister. With the panel report public, the minister is directly accountable to the public for how he/she responds in making the final decision.

No wonder concerned citizens want a federal panel review of the refinery: there is no comparison between the two processes.

The federal minister may order a panel review if a project is large scale, complex and environmentally sensitive. In the context of the 21st century climate crisis and high public concern, a $5-billion new producer of greenhouse gases meets that criteria. Other federal EIA triggers include potential impacts on federally protected endangered species (inner Bay of Fundy Atlantic salmon, Northern right whale), and the potential for cross-border impacts (both Nova Scotia and Maine are within the refinery airshed).

Federal Minister Baird has clear jurisdictional responsibilities here. Equally clear is Irving Oil's determination to avoid the objective rigour of a federal EIA panel. Round one goes to Irving Oil and its Ottawa lobbyists. It remains to be seen whether it was a knock-out punch.

Janice Harvey is a freelance writer and a long-time director of the Conservation Council of New Brunswick. She can be reached by e-mail at waweig@nbnet.nb.ca. Her column appears on Wednesday.