

Summary of Discussions - September 23, 2004 Workshop on EIA Regulatory Change

Lord Beaverbrook Hotel, Fredericton

1.0 Session “A” Break-out Discussion Groups

1.1 Topic 1: EIA Process

Group 1

Location: Oromocto Room

Facilitator: Bernie Doucet

Note Taker: Dave Whyte

Group Members: Bill Powell (Grand Lake Meadows Conservation Committee), Marilyn Powell (Grand Lake Meadows Conservation Committee), Clint Stewart (Barrington Environmental), Charles Hickman (NB Power), *David Coon (Conservation Council of NB), **Emily McMillan (Sierra Club of Canada), Dave Keys (Atcon)

* Presenter

** Scribe

Items on which consensus was achieved:

- This group did not have time to conduct a detailed consensus building exercise. There is a lot of nuance and detail around each recommendation. Some general or “soft” consensus was reached on the following items subject to further discussion and refinement.
- Proponents of all projects covered by the EIA Regulation should be required to submit an environmental impact statement at the time of project registration (on the assumption that some of the less significant projects are dropped from the revised regulation).
- There should be some consistency regarding the issues looked at in an EIA from project to project, but at the same time, but there should also be a scoping exercise for each application since significance of issues may vary from project to project.
- The EIA Regulation should clearly articulate its purpose. This will guide future revisions.
- Sustainability should be an EIA criterion.

- There should be two Schedules (e.g. A and B). Schedule B would be for the projects that automatically require comprehensive EIA (including panel review). Schedule A would be for projects that require some scrutiny but not a comprehensive EIA process.
- A definition of “projects” should be included in the regulation (i.e. what types of modifications require registration?).
- Content of schedules should be reviewed every 5 years.
- There are a lot of gaps in land use planning in NB, therefore a lot of things get jammed into the EIA process. We need better land use planning in the province to address this issue. This would deal with a lot of the siting issues now addressed in EIA. We need land use plans in all regions of the Province.
- There should be public consultation early in the EA process. Government should be responsible for this. There should also be provision for public involvement at later stages of the EIA process; i.e. it should not just be at the initial stage of the EIA.
- If an issue is raised by the public, there should be written notification as to how it was addressed.
- There should be a way to address cumulative effects in EIA.
- Rezoning should happen simultaneously with EA process rather than in advance.
- Each step of the EIA process should be better defined and less open ended than it is at present so all players know what to expect.
- All projects that require a comprehensive EIA should go through a panel review.
- We need an EIA Commission to constitute the above Panels.
- For comprehensive EIAs there should be panel hearings with full disclosure of all evidence and decisions should be based on the evidence.
- There should be provision for strategic assessments of major policy initiatives.
- There is a role for Class EA in the Province of New Brunswick to help streamline the process for the non-comprehensive studies.
- There should be publication of a white paper for public consultation and/or a summary of likely recommendations to be circulated for more discussion.
- If there are two EIA processes (federal and provincial) there should be a single set of documentation that would be capable of satisfying both processes.

Non- consensus Items

- A potential red flag was raised regarding harmonization. Some wonder if harmonization would close off options for the public (e.g. ability to get federal government involved). Others want to avoid duplicate processes. It was agreed that if two processes remain there should be a single set of documentation that would be capable of satisfying both processes.
- There was concern and discussion about the level of documentation that would be required at the time of registration for those projects not requiring a comprehensive EIA. It is hard to discuss this item in absence of a discussion of what projects might be dropped from or included in the schedules. For example we are in agreement that all projects in the schedule should be required to submit an Environmental Impact Statement, but this recommendation is based on the assumption that the number of projects in the schedule would be pared down.

Topic 1: EIA Process (cont'd)

Group 2

Location: Petitcodiac Room

Facilitator: Dave Maguire

Note Taker: Sheila Goucher

Group Members: Randy Nason (Opponents to the Grand Lake Landfill Site), Bill Borland (J.D. Irving Limited), Gordon Dalzell (Citizens Coalition For Clean Air), **Mary Ann Coleman (NBEN), André Gallant (A.V. Cell), *Gordon Sheppard (Bennett Environmental), Jocelyn Gauvin (Kent Watersheds Coalition), Eric Arseneau (Petitcodiac Watershed Monitoring Group), Marilyn Borne Evans (DELG).

* Presenter

** Scribe

Items on which consensus was achieved

- The goals of the EIA process should reflect the goals of the Department: a healthy, and sustainable environment and strong communities.
- Criteria for assessment should be developed by regulators to meet the goals of the Department. These include the need for the project, project alternatives, scope of the project, full study vs. screened out. The criteria must be based on science or social values and must include predictability, public consultation, and the precautionary principle (there is scientific uncertainty).

- If the scientific research is not available to support a decision, then decision-makers should rely on the opinion of a recognized expert.
- There should more predictability in the process regarding timing and regarding specific process requirements.
- There is a need for a public education program to describe what an EIA is, so that the public will have a sufficient background to participate in the process.
- Responsibility for stakeholder identification, public consultation - consensus was reached but timing is an issue. Proponent is still responsible for public consultation but the public needs to have access to the government to voice their opinions. Two parts to this issue – Stakeholder identification and public consultation. General consensus that that there should be a regulatory requirement to consult with stakeholders.
- Class assessments are a good idea, realizing that there are site-specific cases for which a class approach may not work. If there is a good process in place, the Terms of Reference and guidelines are already established. Some classes may require public consultation.
- Compliance and follow-up - There should be a transparent system in place to ensure that recommendations and conditions are followed.

Non-consensus Items

- Intervener funding – Should the government fund stakeholders to be able to participate? Need a clear definition of what would be funded. A full day session is needed.
- Panel Hearing - Currently, all registered projects are reviewed by a “panel” (i.e. the Technical Review Committee(TRC)). Is there a need for an independent review? (i.e. independent of government) A panel that would be arm’s length from the TRC. If panel consisted of citizens, then we would move away from science-based goals of EIA. The panel idea would be good for larger projects – an independent panel would review the assessment completed by the TRC. If panels are to be used, the government should develop criteria as to when they would be used.

Topic 1: EIA Process (cont’d)

Group 3

Location: Restigouche Room

Facilitator: Paul Vanderlaan

Note Taker: Pierre Doucet

Group Members: *Louise Steward (Irving Oil Limited), Inuk Simard (Conservation Council Of New Brunswick), Joseph Harvey (Ducks Unlimited Canada), Tim Colwell (Marwood Ltd.), David Thompson (Friends of the Musquash), Ernie Basque (Tourbe Fafard), Ron Beaulieu (Fraser Papers), **Alison Howells, (NB Lung Association)

* Presenter

** Scribe

Items on which consensus was received:

- There should be predictability, clear timelines, clear expectations, consistency, and a level playing field between different types of proponents.
- The agencies that comprise the TRC should be identified, accessible (through the project manager), and actively participating in the review. Also, it should be indicated from which agency specific TRC comments are coming. (consensus in principle)
- There should be a Memorandum of Understanding (MOU) between the Project Assessment Branch and the TRC outlining the TRC's roles and responsibilities, and also ensuring their active participation in the reviews.
- A multi-tiered approach should be used for project reviews, and the level of review should be dependent on the level of impacts resulting from the project. This could also include some kind of class assessments. (consensus in principle, but not on details)
- There should be panel reviews for all projects that pose serious concerns. The panel would hold public meetings and make recommendations. (consensus in principle, but not on details)
- There should be a clear mechanism for conflict resolution for all kinds of different issues, between all kinds of different parties. (For example, between government and proponent, government and public, proponent and public, or even between different government agencies.)
- There should be harmonization between different jurisdictions (i.e. federal and provincial). The harmonized process should follow the process with the highest standards. (consensus in principle)
- There should be a clear definition of "sustainability" in the regulation.
- Comprehensive EIAs should go through a panel review for the public meetings.

- All projects on Schedule A (or a new set of schedules) should undergo an environmental assessment review.

Non-consensus Items:

- Intervener funding should be available to provide an equal opportunity for all to participate, and funding should be available for smaller proponents as well.
- There should be harmonization within DELG, so that an EIA determination would include all relevant approvals (i.e., one-stop shopping for proponents).
- The EIA registration document and all subsequent available information should be included in the Public Registry.
- An “Environmental Assessment Commission” should be established, and its members would be selected to form the panels for panel reviews.
- Related to a potential multi-tiered approach, projects should be assessed according to sustainability criteria. Also, there should be the potential for sign-off at a lower level than the Minister for projects at a level that would cause fewer impacts.
- Will the provincial government help to pay for certain EIAs, for example, projects on Crown Land, or “positive” projects?
- Should the provincial government consider charging fees for EIA reviews?
- The public notification of projects should be done as early as possible, and it should involve more than just the government website.

1.2 Schedule “A”

Group 1

Location: Petitcodiac Room

Facilitator: Joel Bragdon**

Note Taker: Serge Gagnon

Group Members: Andrew Galarnyk (Irving Oil Limited), Mike Phillips (NB Department of Transportation), Chantal St-Pierre (NB Power), Gordon Fairchild (Eastern Canada Soil and Water Conservation Centres), *Susan Farquharson (Eastern Charlotte Waterways Inc.), Lise Weismann (NB Environmental Industry Association), Krista Morrison (Conservation Council of NB)

* Presenter

** Scribe

Items on which consensus was achieved:

- Need to better define Schedule A – group by categories & subcategories.
- Need to define levels of assessment (e.g.: full EIA, screening review, class EA, panel review, existing legislation or approval process, etc.) and establish criteria for each level (and how they relate to specific types of projects).
- The process should allow discretion for “grey area projects” (i.e. to add new types of projects to the appropriate schedule) and to change level of assessment (i.e.; move a project from one schedule to another if circumstances warrant this).
- Need for better definitions of the list of undertakings, and of various terms such as modifications, levels of assessment, maintenance, scale, etc.
- Additions to Schedule A should be considered, including:
 - a. Aquaculture
 - b. Forestry
 - c. Fish Processing
 - d. Large-Scale Agriculture
 - e. Other types of features (e.g.: ESAs, cultural, etc.)
- Further discussion with stakeholders (NGO & Industry) is needed to further discuss this issue (possibly a workshop).

Non-consensus Items:

None provided

2.0 Session “B” Breakout Discussion Groups

2.1 Topic 1: Compliance and Follow-up

Group 1

Location: Oromocto Room

Facilitator: Bernie Doucet

Note Taker: Dave Whyte

Group Members: Marilyn Powell (Grand Lake Meadows Conservation Committee), Clint Stewart (Barrington Environmental), **Emily McMillan (Sierra Club of Canada), *Dave Keys (Atcon), Eric Arseneau (Petitcodiac Watershed Monitoring Group), Mike Phillips

New Brunswick Department of Transport), Chantal St. Pierre (NB Power), Andre Gallant (A.V. Cell), Inuk Simard (Conservation Council of New Brunswick), Lise Weiseman (NB Environmental Industry Association)

* Presenter

** Scribe

Items on which consensus was achieved:

- Government should oversee the follow-up and compliance monitoring.
- Any required monitoring should be done by an agreed upon party (Govt, proponent or a third party). It was suggested by some that the proponent should not be solely responsible for completing the monitoring.
- A list (table) of commitments made in the registration document should be prepared and submitted by the proponent at the time of registration.
- The Department should provide a template for the summary tables and status reports to ensure that there is a consistent format.
- Minister to complete inspections of approved projects on a regular basis.
- No construction in advance of EIA approval (needs to be a definition as to what constitutes “construction”).
- Penalties for non-compliance to be clearly defined (e.g. fines, restoration of damages, etc.).
- Citizens should have the power to request investigations if they believe there is non-compliance.
- Need full day session to talk about possible whistle blower protection legislation.
- There needs to be clarity and transparency regarding how conditions were arrived at.
- There needs to be a clearly defined process regarding how conditions can be changed after approval. Any such changes should be posted on the public registry.
- Industry needs feedback on monitoring reports that are submitted to Department.

Non-consensus Items

- How much information about monitoring results, compliance status, non-compliance etc should be placed on the public registry? What is the proper balance between public disclosure and a proponent’s right to privacy?

- Should the results of the Minister's regular inspections be posted to the public registry?

Group 2

There was no second group for this session.

2.2 Topic 2: Public Consultation

Group 1

Location: Restigouche Room

Facilitator: Paul Vanderlaan

Note Taker: Pierre Doucet

Group Members: Jocelyne Gauvin (Kent Watersheds Coalition/PCSDG), Joseph Harvey (Ducks Unlimited Canada), Tim Colwell (Marwood Ltd.), Gordon Fairchild (Eastern Canada Soil & Water Conservation Centres), David Thompson (Friends of the Musquash), Ernie Basque (Tourbe Fafard), Ron Beaulieu (Fraser Papers), * **Mary Ann Coleman, scribe and presenter (New Brunswick Environmental Network)

* Presenter

** Scribe

Items on which consensus was achieved:

- The public has to understand the process of EIAs. To achieve this, there should be a public education campaign on the topic.
- Public notification should be done as early as possible, so that all potential issues are raised as soon as possible. Also, it should consist of more than just the governmental website. There should be notices in the newspapers and posted in the community, and it should take place for all projects registered for EIA reviews.
- There should be different levels of consultation required for different levels of projects. (For example, a smaller project with minimal potential impacts would not require the same level of consultation as a major project with significant potential impacts.)
- Conversely, different types of projects that are at the same level (of impacts) should receive the same level of assessment.

- There should be panel hearings for projects that are considered to have significant environmental risks.
- Government should provide a response to public concerns that are raised.

Non-consensus Items

- How does government decide at what point the public is opposed to a project? If people are opposed to a project, it means they have concerns that should be addressed.
- There are concerns about proponents being solely responsible for public consultation. Some believe that government should also be available to the public, and that government should receive public comments and respond to them with some kind of document. The proponent should not be allowed to filter the public's comments before presenting them to government, and that the government should be documenting the public response to a project.
- Others agree that government should be present at public consultation, but they do not think government should be solely responsible. They feel that proponents should still be responsible for their part of the public consultation process.
- Every government and TRC official should be clearly identified at public meetings.
- Industries raised their opinion that there can be a difference between public interest and serious environmental concerns.
- Some felt that there should be public consultation on the Terms of Reference for every project. Essentially, there should be public input into the scoping of the EIA review. They felt there should also be public consultation for the guidelines of the assessment and for the draft EIS.
- With comprehensive EIAs, the TRC's review of EISs should only be completed after the public consultation component. In other words, the public consultation on the EIS should take place before this document is finalized.
- Industrial competitiveness is a key element in the timing of public consultation. The release of proprietary information could be damaging to an industry, and so a certain amount of discretion is required.
- Participant (or intervener) funding should be available, not only for research, but also for such things as travel expenses, childcare, meals, etc.
- It should be noted that there was a distinct lack of consensus on who should ultimately be responsible for public consultation, but both sides agreed that government should have some responsibility in this area.

Topic 2: Public Consultation (cont'd)

Group 2

Location: Petitcodiac Room

Facilitator: Dave Maguire

Note Taker: Sheila Goucher

Group Members: David Coon (Conservation Council of NB), Bill Borland (JD Irving Limited), Gordon Dalzell (Citizens Coalition For Clean Air), Louise Steward (Irving Oil Limited), Gordon Sheppard (Bennett Environmental), * **Charles Hickman (NB Power), Marilyn Borne Evans (NB Department of Environment and Local Government)

* Presenter

** Scribe

Items on which consensus was achieved

- There should be a public registry of project information including a description of project, a list of projects and how to access other information on project. The Registry should indicate time frames for public consultation.

Non-consensus Items

- Local notification in newspaper. Government should be responsible for this? Proponent? Not everyone has access to web.
- Terms of Reference (TOR) – public should have input into TOR. But public has input into guidelines. Public needs an opportunity to decide whether or not the TOR represents the guidelines.
- Proponent provides project information to the community and government absorbs input from community.
- Participant funding? Full day session needed.

Appendix 1 – List of Attendees**Industry Representatives**

- | | | |
|-----|---------------------|--------------------------|
| 1. | Basque, Ernie | Tourbe Fafard |
| 2. | Beaulieu, Ron | Fraser Papers |
| 3. | Borland, Bill | J.D. Irving Limited |
| 4. | Colwell, Tim | Marwood Ltd. |
| 5. | Galarnyk, Andrew | Irving Oil Limited |
| 6. | Gallant, André | AV Cell |
| 7. | Harvey, Joseph | Ducks Unlimited Canada |
| 8. | Hickman, Charles | NB Power |
| 9. | Hollies, Dick | Business New Brunswick |
| 10. | Keys, David | Atcon |
| 11. | McIntyre, Bill | Bennett Environmental |
| 12. | Phillips, Mike | DOT |
| 13. | Sheppard, Gordon | Bennett Environmental |
| 14. | Slater, Bill | Westmorland Albert SWC |
| 15. | Steward, Louise | Irving Oil Limited |
| 16. | Stewart, Clint | Barrington Environmental |
| 17. | St. Pierre, Chantal | NB Power |

Appendix 1 (cont'd)**NGO Representatives**

1. Arseneau, Eric Petitcodiac Watershed Monitoring Group
2. Coleman, Mary Ann NBEN
3. Coon, David Conservation Council of NB
4. Craik, Neil Representing Fredericton Area Watershed Ass.
5. Dalzell, Gordon Citizens Coalition for Clean Air
6. Fairchild, Gordon Eastern Canada Soil & Water Conservation
Centres
7. Farquharson, Susan Eastern Charlotte Waterways Inc.
8. Gauvin, Jocelyne Kent Watersheds Coalition / PCSDG
9. Howells, Alison NB Lung Association
10. McMillan, Emily Sierra Club of Canada
11. Morrison, Krista Conservation Council of NB
12. Nason, Randy Opponents to the Grand Lake Landfill Site
13. Powell, Bill Grand Lake Meadows Conservation Committee
14. Powell, Marilyn Grand Lake Meadows Conservation Committee
15. Simard, Inuk Conservation Council of New Brunswick
16. Thompson, David Friends of the Musquash
17. Weismann, Lise NBEIA