

## **Excerpts from the Standing Committee Hearings**

### **Syd Gershman, October 97**

Mr. Sid Gershberg (President, Canadian Environmental Assessment Agency): Thanks, Ian.

Mr. Chairman, ladies and gentlemen, as jurisdiction for environmental assessment is shared, the challenge and the objective in this subagreement is to ensure that we conduct an environmental assessment of the highest quality, without overlap and duplication.

Over the years, both levels of government have developed environmental assessment processes, and while they're similar in principle, these processes also have a number of differences. Consequently, some projects, generally the larger ones, are subject to both federal and provincial environmental assessment laws.

The proposed subagreement is really based on the concept that only one process should apply to each project, with one party serving in sort of a lead administrative role and the other with the full opportunity to participate co-operatively to ensure that the legal requirements of both of the processes are met.

The scope of the assessment and the broad analysis of the factors to be examined in an environmental assessment must meet the needs of both parties, or both jurisdictions. In this way, we can ensure that the harmonized process incorporating the requirements of each government will be of higher quality than a single process by one jurisdiction alone.

For example, the definition of environment, or environmental effects in the subagreement will be quite broad, because it will incorporate the legal requirements of each of the parties involved in the assessment, a sort of additive concept.

To ensure efficiency, the subagreement establishes a framework for the determination of a lead party responsible for the process aspects of the environmental assessment. The lead party, however, is required to ensure that the environmental assessment process generates the type and the quality of information needed to meet the legal requirements of each of the parties, as well as the conclusions on the environmental effects required for decisions by each of the parties.

The subagreement also creates a framework for public participation opportunities consistent with the policies and the legislation of each party. Participant funding to enable intervenors to participate in panel reviews will continue to be provided by any of the parties which requires it.

Following the completion of the assessment, each government will use the results to make a respective decision, that is from a federal perspective, whether to provide funding, to issue a permit, or an authorization, or to transfer land. There is no delegation of decision-making under the subagreement. Implementation of the subagreement will be based on a co-operative approach and will be done through bilateral agreements on a province-by-province basis.

The bilateral agreements will clarify respective requirements of procedures to be followed when both jurisdictions require an environmental assessment, but will not reduce any of the CEA, the Canadian Environmental Assessment requirement.

There is nothing in this subagreement which requires an amendment to the Canadian Environmental Assessment Act, or its implementation. The Canadian Environmental Assessment Act, which came into force in January 1995, already contains appropriate provisions to allow for harmonization with the provinces, as envisaged in this subagreement.

Thank you.

\*\*\*\*\* Mr. Rick Casson: If there is a variation in provincial standard are you saying now that there is not, that the provinces have all agreed to the same standard to bring that uniformity? Or will still some provinces have different regulations than others in certain areas?

Mr. Peter Gershberg: I wonder if I could respond to that in the context of for example the environment assessment that you mentioned. In my remarks I mentioned the additive process. Each province of course is different, and their legislation is different, as ours is. What we have agreed to do in the subagreement is take the definition of environment or the environmental standard, if you wish, and add the two together so that the legal requirements of both would have to be met. In some cases provinces have to do certain things.

In some cases the federal government has to do certain things. In this particular case we have agreed to meld the two so that all of the requirements in both jurisdictions would be looked at and analysed in the context of any given environmental assessment that is done really co-operatively. The whole idea is really to push a co-operative model. The whole thing really depends on a co-operative model and a co-operation, and sort of agreeing to a set of process steps in developing this environmental assessment.

I think the key thing in terms of efficiency is as one looks outward to the proponent, for example the private sector proponent who now has to deal with

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agreeing to a set of process steps in developing this environmental assessment.

I think the key thing in terms of efficiency is, as one looks outward to the proponent, for example, the private sector proponent, who now has to deal with two governments, two sets of legislation and two sets of processes, what we're trying to do is bring the two together and say rather than going to the province and here's the kind of standards you have to fill there and coming to us, here's the kind of standards you have to fill for us. Come together and say here's one set of things-they may be additive, but we'll tell you once and here's what you have to do. Follow these steps and you'll meet both our requirements. So it's really trying to be a bit more efficient and more of a single window approach to the project proponent.

[Français] \*\*\*\*\* Mrs. Karen Kraft Sloan: I wanted a clarification here, the witness from the Canadian Environmental Assessment Agency has said there would not be any amendment required under CEAA as a result of the sub-agreement on environmental assessment harmonization.

Mr. Peter Gershberg: That's right. Our view and that was

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amendments required under CEA as a result of the subagreement on environmental assessment harmonization.

Mr. Peter Gershberg: That's right. Our view-and that was true I think right through the negotiations of the subagreement-is that there's nothing in this subagreement that requires an amendment to the act.

Mrs. Karen Kraft Sloan: Thank you. \*\*\*\*\* Mr. Rick Laliberte: Just I guess another angle of question would be.... In terms of assessments, there as been intervener funding cuts, and I guess the anxiety of the ENGOs in this country, or aboriginal communities, or any community group out there, municipal governments, or local governments, what...due to cut-backs again you're not giving opportunity for people to create the issue of assessments, and two issues that came over the summer, of course, the Hamilton fire...how did the federal government remain or maintain its responsibility over issues like that, and also the Cheviat project, which seems to have been a shining example of harmonization, as referred to by our minister of environment this year, and where is the role going to go here? Are these pilot projects you're running? You know, the cut-backs, these are all impacts. It's the bottom line again.

The Chairman: Mr. Gershberg.

Mr. Sid Gershberg: On the question of intervener funding, there is intervener funding, what we call participant funding in the act, and it's been at a pretty steady level, about a million dollars a year, over the last four or five years.

There is an issue, in terms of the funding, that as of next year, and we're looking at that now. But certainly no decisions have been taken with respect to that. It's a requirement of the act, and we expect that there will continue to be participant funding.

\*\*\*\*\* Mr. Clifford Lincoln: Could I ask Mr. Gershberg a couple of questions about environmental assessment and to confirm that I've read the subagreement right? The way I've read it a lead jurisdiction is decided on, whether it's territorial government, provincial government or the federal government. If the lead is not clearly established, each jurisdiction has got a time period to decide whether it is a responsible government, what kind of assessment will take place, whether there will be an assessment and there's a time period for the assessment to take place. Is that really what it-have I understood that right?

Mr. Peter Gershberg: There is talk in the subagreement about establishing time lines. It's one of the issues, if you wish, in terms of efficiency and single window.

The first thing that has to be decided is whether or not both parties-the federal government or the provincial government are indeed parties to a particular project assessment. In the majority of cases, that would not be the case. There will still continue to be many assessments, both at the federal and provincial levels, which are undertaken simply by either the provincial government or the federal government. So this agreement deals with those where there is a combination, where both governments are involved in a particular assessment.

In that case, there will be a period of time after project notification to in fact go through the process of deciding whether or not each party is a party to the assessment. It's not always clear at first glance. Sometimes you have to get further information about the project to know whether or not, for example, the Fisheries Act is triggered or an ocean-dumping permit is required.

Once that is established, however, there would be

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clear at first glance. Sometimes you have to get further information about the project to know whether or not, for example, the Fisheries Act is triggered or an ocean dumping permit is required. Once that is established however, the sub-agreement does call for a lead party to handle the administration, to be the sort of single window entrance, if you wish, for the project proponent and they will be working co-operatively with the other party, whether it's the federal or a provincial government, to establish the terms of reference and the sort of nature of the assessment that would be undertaken.

At that point, the two parties would work co-operatively to develop that assessment and then a decision would have to be taken. That assessment would then be used quite independently by both the federal government and the provincial governments for the actual decision on either providing funding or a permit that might be required or authorization or for any transfer of land. So the final decision making remains with the two jurisdictions independently.

Mr. Clifford Lincoln: Am I not right in saying that if there's one chapter of this harmonization agreement that has led to a lot of problems and questioning-one minister was very reluctant to get into it-is the fact that really, at the federal level, the Old Man Dam ## almost forced the federal government to get back into assessments? Since then, when we look at the large mining projects for instance, which involve land, natural resources of the provinces and federal jurisdictions on water and aboriginal issues and so forth, isn't it true that when you look at the key mining assessments that have come through recently, BHP, Voisey's Bay, Cheviot Mine and in B.C., Huckleberry, each one of them becomes a problem child? It seems that the mines and the big mining companies win and the environment loses.

Could I ask you a specific question about BHP because I took a special interest in that project? Is it true that right now BHP in the north, would involve the territorial government and the federal government, that in the case of BHP that there is no need of assessment for foraging and drying

up the lakes for the exploration purpose and that several lakes are involved now. I understand two of these lakes have died. My specific question is this: there was a court case involving BHP for toxic pollution of at least one lake, maybe two and somehow the case got dropped by the federal government. Is there a connection between this and the sort of compromise assessment report that came through? Do you know?

Mr. Sid Gershberg: I'm afraid in this case, sir, I can't answer the specifics of the this. It was an assessment that took place a couple of years ago. It was, frankly, before my time and the details that you're raising are not those that I'm familiar with. I can look into that and get back to you and the committee on that.

Mr. Clifford Lincoln: I would like that.

Why I was raising this example is that isn't it the case that when you get into, especially mining where the potential damage is huge to the environment-Voisey's Bay would be a good example, ## Cheviot Mine-that somehow it's so complicated and eventually the assessment seems to fall between the cracks, for instance, Cheviot that my friend raised, is a typical example now where somehow everybody closes their eyes. Is it your considered feeling that this is going to help the process or doesn't it make it even more complicated than before in regard to federal jurisdiction?

Mr. Sid Gershberg: I think there's been some history over the last number of years of trying, at the public review panels-the very, very large process, where I think it would be very difficult if there were, for example, two quite independent panels going off and taking a very long time looking at projects...I think it has been beneficial for all involved to try to involve those parties that are interested in the particular assessment.

In the case of Voisey's Bay for example-and I believe this is a

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looking at projects. I think it has been beneficial for all involved to try to involve those parties that are interested in the particular assessment. I the case of Voisey's Bay, for example, and this is I believe a first, the two aboriginal land claim groups are directly involved and are signatories to the Memorandum of Agreement.

Mr. Clifford Lincoln: Thank the Lord.

Mr. Sid Gershberg: Which also includes the federal and provincial governments and that will be, I think, a very comprehensive study of that particular project.

As you know, the company has been concerned because of the extensive guidelines that they've been given, the amount of work that's involved, the time frames and so on. Nonetheless, that is going forward and it will be a very comprehensive look at the potential environmental impacts of that project.

So, I think a harmonized process in this case can be of great benefit bringing together all of the parties that are directly involved in the environmental assessment.

The Chairman: Mr. Lincoln, followed by Mr. Laliberté and then the chair and then we'll conclude.

Mr. Clifford Lincoln: One last question, Mr. Gershberg, could you let us have reasons. I know you were not there at the time of BHP, but I'm very interested in the contrast between the BHP criteria for assessment and those that have been applied to Voisey's Bay which, I agree with you, are much more comprehensive because especially of the aboriginal involvement. Could you tell me who, for instance, the same criteria and the same norms and the same benchmarks were not applied in the case of BHP. I'd be very interested to know.