



# GOVERNMENT OF CANADA POLICY IMPLICATIONS TO THE EA PROCESS

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On January 27, 2016, the government of Canada announced interim guidelines in an effort to “restore confidence” in the environmental assessment (EA) process. These guidelines will apply to proposed projects assessed by the National Energy Board (NEB) and Canadian Environmental Assessment Agency (CEAA), and mark the beginning of what is likely to be a series of changes by the Liberal government based on a suite of campaign promises, some of which have the potential to impact Aboriginal and public consultation on new resource development projects. In addition to an immediate review of *Canadian Environmental Assessment Act, 2012 (CEAA, 2012)*, other Liberal campaign commitments include:

- Adopting recommendations of the Truth and Reconciliation Commission, starting with the implementation of United Nations Declaration on the Rights of Indigenous Peoples.
- Working with Indigenous communities on a nation-to-nation basis.
- Establishment of a federal claims process that recognizes Métis self-government and resolves outstanding claims.

Many Aboriginal groups have criticized existing EA principles and the Crown's lack of enforcement over delegating procedural aspects of EA consultation to project proponents, citing their communities are consulted too late and after the decision-making process. In response to this, the Liberal governments' review of *CEAA, 2012*, will be undertaken in partnership with Aboriginal groups. The government of Canada released new principles that will guide the EA process in the interim. They are:

- No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant responsible authorities and Northern regulatory boards.
- Decisions will be based on science, traditional knowledge of Indigenous peoples and other relevant evidence.
- The views of the public and affected communities will be sought and considered.
- Indigenous peoples will be meaningfully consulted, and where appropriate, impacts on their rights and interests will be accommodated.
- Direct and upstream greenhouse gas emissions linked to projects under review will be assessed.

The announcement mandated extensions to the federal review of two petroleum pipeline proposals. Both the Trans Mountain Expansion Project and Energy East Pipeline Project will be subject to immediate steps to ensure consistency with the above noted principles.

#### **What does this mean for proponents?**

No project currently in the EA process will be required to start over, however direct and upstream greenhouse gas emissions must be assessed going forward. Indigenous peoples will also be more fully engaged in reviewing and monitoring, and the EA process will have greater transparency. The principles are just that, and besides the above mentioned projects, the government of Canada has not made it clear how these changes will impact other ongoing or new projects.

It appears as though the government of Canada will take a more active, hands-on role in Aboriginal consultation during and after the EA process. The government may not delegate consultation to the proponent in the same manner they previously have. Proponents may see earlier and more direct involvement from Aboriginal groups in the EA process, even on projects that do not require a CEAA review. As has been the case for one LNG facility project, Aboriginal-led environmental assessments could become an expectation that needs to be managed by proponents as part of good relationship management with Aboriginal groups. It is hard to guess the exact outcome of the government of Canada's new principles, but it is a safe bet to suggest the level of proponent engagement with Aboriginal groups on environmental reviews, whether regulated or not, will only increase. The Liberal government has not announced a timeline for the complete review of *CEAA, 2012*.