



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale



Canadian Environmental Assessment Act, 2012

Newfoundland Environmental Industry Association
November 21, 2012

Canada 



Overview of Changes

CEAA 2003 EA Process

Driven by federal involvement in a project

Applies broadly to many project types and sizes

Responsibility is dispersed among departments

Some harmonization with provinces

No real ability to enforce EA or set conditions

Timelines not broadly applied



CEAA 2012

Driven by a project list and potential adverse environmental effects within areas of federal jurisdiction

Focussed on major projects with greater environmental risk

EA responsibility consolidated with CEA Agency (and NEB, CNSC)

Provincial harmonization still available

Provincial process substitution and equivalency are options

EA conditions are enforceable

Timelines apply to all EAs





Determining if an EA is Needed

- *Regulations Designating Physical Activities* (“project list”) identify types of projects that may be subject to a federal environmental assessment
- Minister of the Environment may designate a project not on list
- Proponents of designated projects must provide the Agency with a project description
 - Information requirements are set out in the *Prescribed Information for the Description of a Designated Project Regulations*



Examples of Designated Projects

- Oil refinery: input capacity $> 10,000 \text{ m}^3/\text{d}$
 - Metal or coal mine: ore production capacity $> 3,000 \text{ t/d}$
 - Offshore O&G production facility (some exemptions)
 - Marine terminal for vessels $> 25,000 \text{ DWT}$ (unless zoned)
 - Certain highways, railways and air transport facilities
- ❖ See *Regulations Designating Physical Activities* for the complete list and full text



Screening Step

- Agency has 45 days, including a 20-day public comment period, to decide whether to require an EA
 - Screening step must consider: description of the project, possibility of adverse environmental effects, comments received during the comment period, results of any relevant regional studies
- CNSC/NEB-regulated projects skip screening step and automatically require an EA



Environmental Effects

- Change that may be caused to fish and fish habitat, aquatic species or migratory birds
- Change that to the environment that would occur on federal lands or in a province other than the site of the project or outside Canada
- With respect to aboriginal peoples, an effect of any change to the environment on
 - health and socio-economic conditions
 - physical and cultural heritage,
 - current use of lands and resources for traditional purposes
 - elements of historical, archaeological, paleontological or architectural significance.
- Changes to the environment directly linked or necessarily incidental to federal decisions



Standard EA

- Conducted by either the Agency, CNSC or NEB
 - Federal authorities provide expert advice related to their mandate
- EAs by the Agency, including public comment on draft EA Report and the Minister's decision, must be completed within 365 days of government time from notice of commencement
- Minister may extend timelines to enable cooperation with another jurisdiction, or because of project-specific circumstances, for up to 3 months. GiC can approve further extensions.
- Consideration of factors similar to former comprehensive study
 - New – results of any regional studies
 - No longer need to consider capacity of renewable resources.



Standard EA

- Three opportunities for public participation:
 - During the screening process
 - During the environmental assessment; and
 - On the draft EA report

- Agency, CNSC and NEB must establish participant funding programs
 - Agency provides participant funding for all EAs that it conducts
 - Does not apply where Minister has approved substitution



EA by Review Panel

- Minister of the Environment has 60 days from notice of commencement to refer a project to a review panel

- Referral may be made if in the public interest; Minister must consider
 - potential significant adverse environmental effects,
 - public concerns related to those effects or
 - harmonization opportunities with another jurisdiction



EA by Review Panel

- Panel must hold hearings that provide opportunity for “interested parties” to participate
 - Interested parties” are those directly affected by the project or that have relevant information/expertise
 - Panel determines who is an ‘interested party’
- Supported by participant funding
- New authority for the Minister, after receiving the review panel’s report, to require the proponent to collect any information or undertake any studies that, in the opinion of the Minister, are necessary to make decisions



Review Panels - Timelines

- 24 month time limit from time of referral to Minister issuing EA decision statement

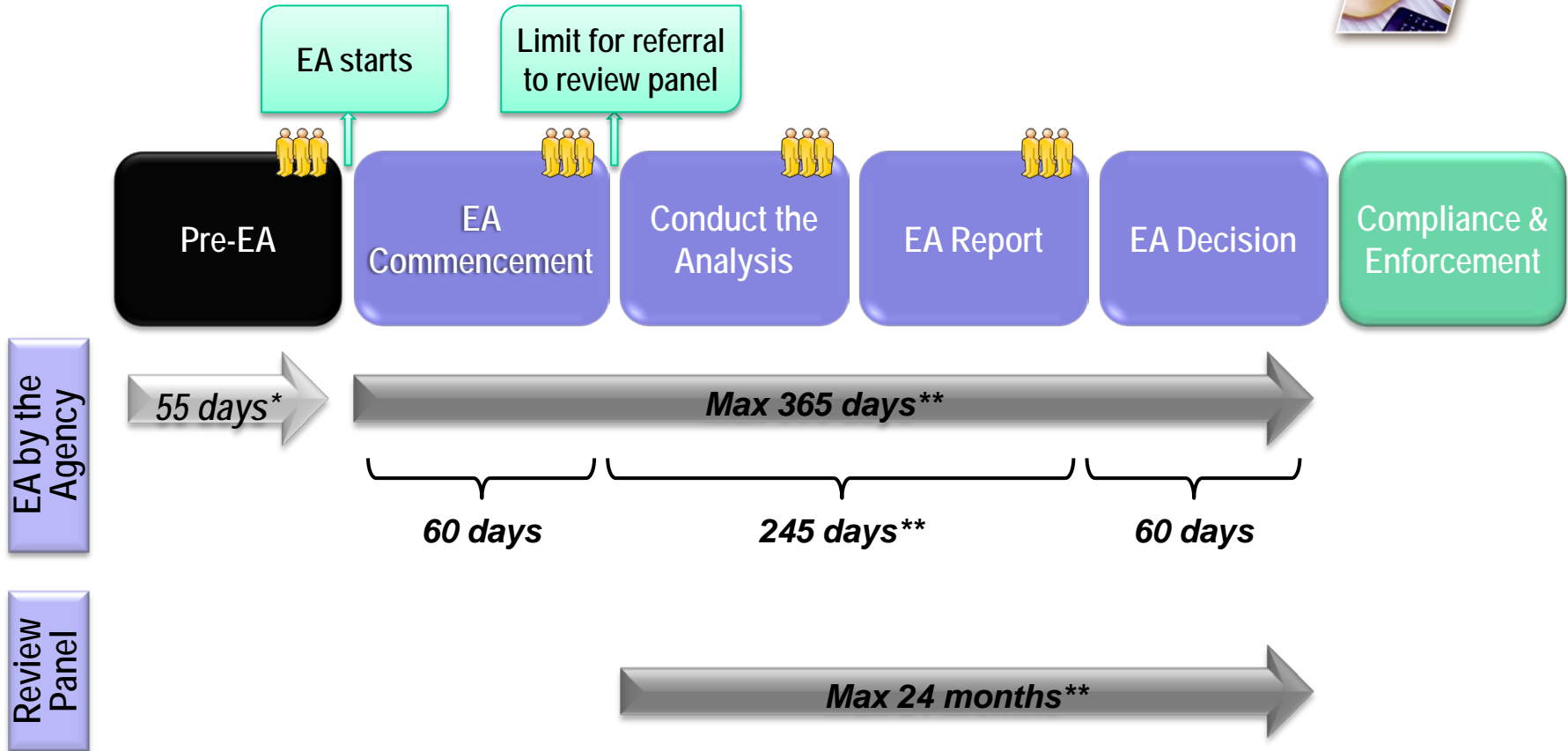
- Minister must set timelines for pre-panel, panel phase and post-panel phases within the 24 month time limit

- Minister may extend by 3 months, GiC can approve further extension

- Minister must terminate process if review panel exceeds timeline and may terminate if of opinion that the timeline will be exceeded
 - Agency would complete the EA



EA Processes & Timelines



* Includes 10 days to review project description and 45 days to determine whether an EA is required
 ** Government time only, federal clock may be stopped when the proponent is required to provide information



Aboriginal Consultation

- Crown has a legal duty to consult Aboriginal peoples about the potential impact of decisions associated with projects on their rights
- Agency integrates consultation into the environmental assessment process to the greatest extent possible
- Participant funding program will continue to be used to provide capacity funding to enable Aboriginal groups to engage in consultations



Federal-Provincial Mechanisms

- Tools from current Act are maintained – coordination, delegation and joint review panels
- Minister of the Environment must approve substitution upon request from a province, if satisfied that core requirements of Act and any additional conditions he/she sets will be met
- Minister may approve substitution for a class of projects
- Federal Minister retains an EA decision based on the provincial EA report

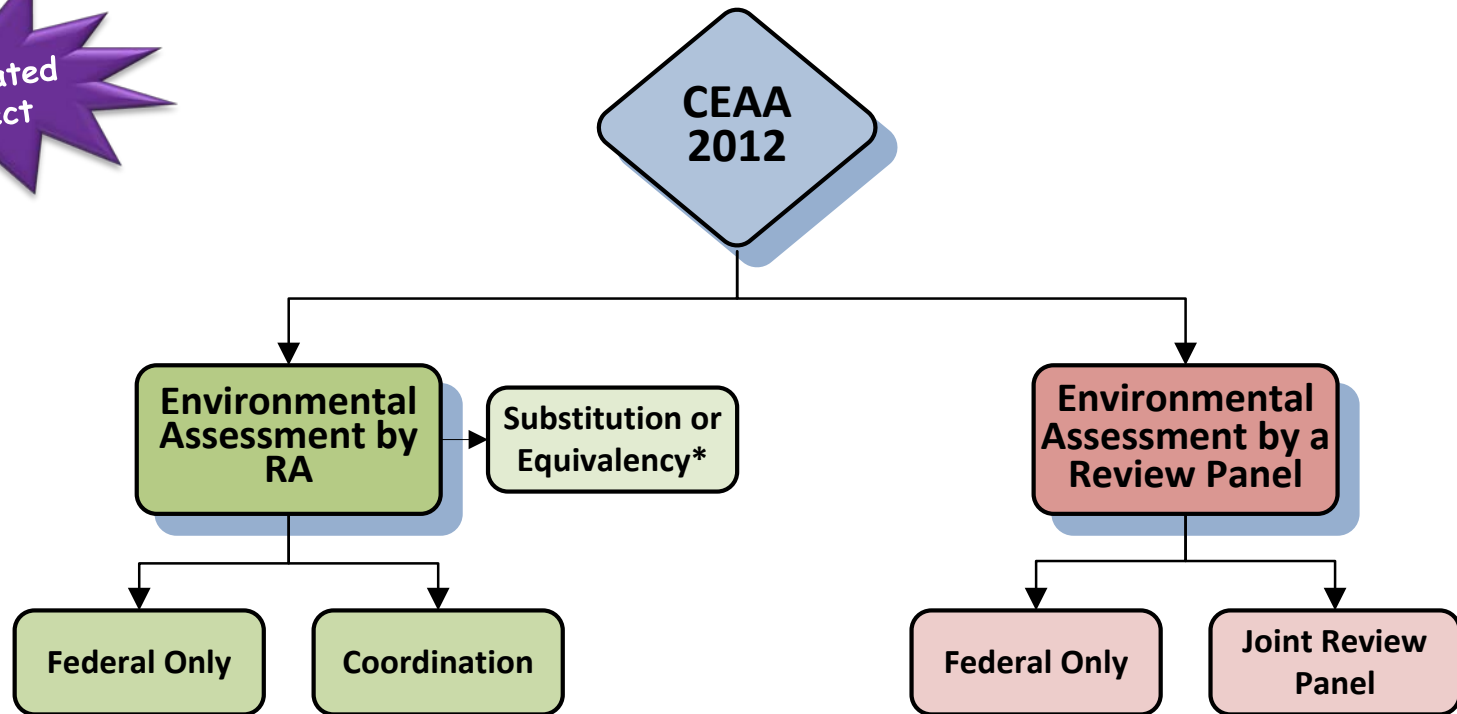


Federal-Provincial Mechanisms

- Substitution not available for projects assessed by the CNSC, NEB or when a project has been referred to a review panel
- Governor in Council may, on recommendation of Minister, exempt a project from application of the Act, including decision making, if there is an equivalent provincial assessment
 - Requirements for substitution must be met



Types of EA and Cooperative Mechanisms



***Substitution and equivalency do not apply to EAs conducted by NEB or CNSC, nor to EAs conducted by review panels**



Decision making

- Minister of the Environment issues a decision statement after an EA by the Agency or by a review panel
- CNSC responsible for decisions after its EAs. GiC makes s.52 (NEB Act) decisions for NEB.
- Decision statement must include conclusion on significance of adverse environmental effects and set out mitigation and follow-up requirements
 - Removes current automatic requirement for Cabinet-approved government response to review panels
 - Requires referral to Cabinet whenever environmental effects are significant (for both standard EAs and panels) for a determination as to whether the effects are justified



Enforcement

- Proponent prohibited from proceeding with a designated project that causes adverse environmental effects unless
 - Agency has determined no EA is required
 - Proponent complies with the conditions in a decision statement

- Minister designates officers to verify compliance – intent is to rely on existing capacity in federal departments (e.g. EC, DFO) not to establish Agency capacity
 - Fines range from \$100K to \$400K
 - Administrative monetary penalties may be set under regulations



Federal Stewardship

- Federal authorities must be satisfied that their actions with respect to non-designated projects on federal lands do not cause significant adverse environmental effects
- Federal authorities will employ best practices
- Federal authorities must report to Parliament annually on their activities
- Federally-funded projects outside Canada must meet the same standard



Transition

- Requirement to complete screenings ceased with repeal of former Act except for 16 projects designated by the Minister
- Comprehensive studies are to be completed under the former Act as if it had not been repealed
- Review panels come under CEAA, 2012 - Minister must set project specific time limits for each phase and for completion



The End

- Questions?