



Public Participation in Environmental Decision Making in Alberta: Part I

ELC Webinar
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About the ELC

- A charity operating since 1982
- Our mission: To ensure that laws, policies & legal processes protect the environment.
- 2 goals:
 - Good environmental law & policies
 - Effective public participation

Alberta **LAW**
FOUNDATION

What we can do for you

- Legal information & lawyer referrals
- Presentations
- Library
- Research & law reform



Overview – Part I

- Purpose of the *Guide*
- Jurisdiction
- Participation in approval and licencing decisions



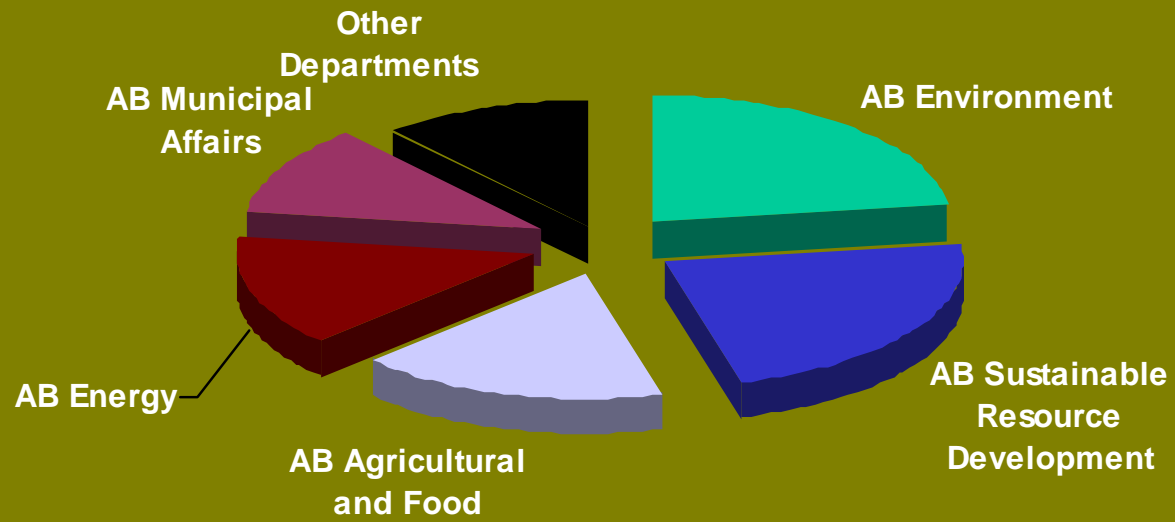
Purpose of the Guide

A Guide to Public Participation in Environmental Decision-making in Alberta

– <http://www.elc.ab.ca/pages/InformationResources/MaterialsAvailabletoDownload.aspx?id=879>

- Facilitate public participation
 - Informing decision-makers
 - Engaging communities and individuals
- Procedures
- Strategies
 - Standing
 - Effectiveness

Provincial jurisdiction



Alberta Environment's jurisdiction


- *Water Act*
- *Environmental Protection and Enhancement Act (EPEA)*
- Pollution
- Hazardous substances
- Pesticides
- Waste management
- Water diversions & allocations
- Drinking water
- Activities that impact aquatic environment
- Specified activities that impact land & air
- Reclamation & remediation
- Greenhouse gases

Alberta Environment's jurisdiction

- Frustrations
 - Zoning decisions
 - Oil & gas exploration
 - Parks & land protection
 - Agricultural activities
 - Species at risk (except as considered in environmental impact assessment)

- Cumulative impacts
 - No policy or regulatory framework effectively integrates an activity's impacts
 - Incremental approach – avoidance of saying "no"
 - Discretion exists

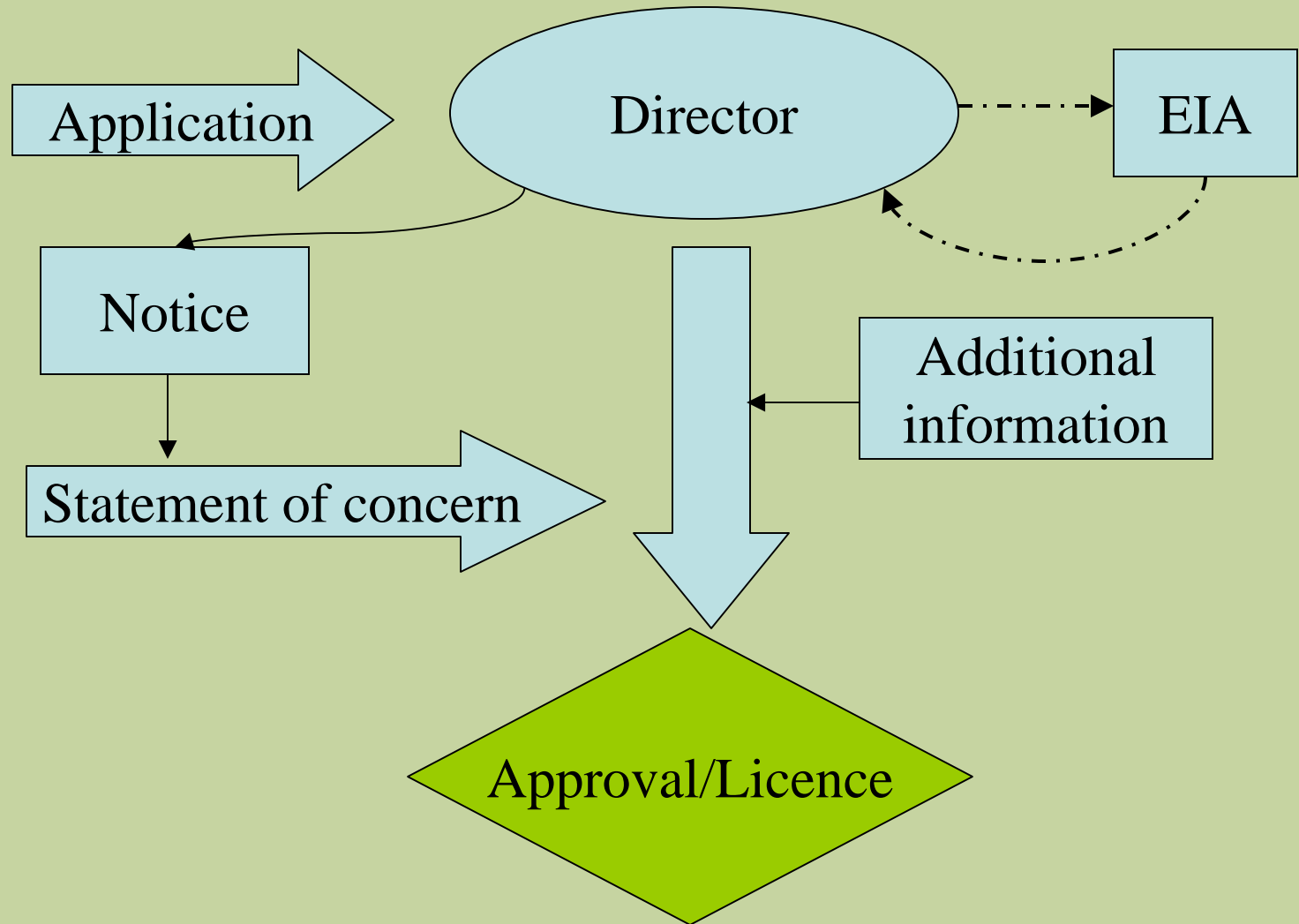
Types of authorizations and public participation

Authorization type	<i>Water Act</i>	<i>EPEA</i>
Approval		
Licence		
Registration		
Notice		
Certificates		

Legal vs. informal participation

- Formal (legal) process
 - Director's decision
 - Appeal to the Environmental Appeals Board
 - EIA
- Informal processes for participation
 - Community monitoring
 - Consultations and open houses
 - Informal communications
 - Advisory groups

The approval process



Information gathering

- Notice will indicate where application information is available
- Obtaining further information – ask the applicant
 - Refusal or failure to provide - go to Alberta Environment
 - General disclosure period - 30 days
 - Outline:
 - Steps taken
 - Applicant's failure to provide information
 - Reasons why information should be disclosed

Information gathering

- Information sources
 - Government (policies, guidelines, objectives, reports)
 - Applicant (monitoring data, EIA reports, past reports, modeling information)
 - Experts
 - NGOs

Public information

- Information in support of an application
- Reports or studies that are subject to an approval
- Monitoring data & processing information
- EIA information & background data
- Statements of concern
- Enforcement orders or other enforcement related documents

Barriers to information gathering

- Privilege
 - Solicitor-client
 - Litigation
 - Crown

- Confidentiality
 - Applicant can ask Alberta Environment not to disclose information
 - If granted, may need to consider freedom of information request (or judicial review)

- Investigations

Participating in the Director's decision

- Notice triggers timeline for filing a “statement of concern”
- Statement of concern must be filed by the date in the notice or
 - 30 days: *EPEA* approval and *Water Act* licence
 - 7 days: *Water Act* approval
- May have both dates to contend with – file two statements of concern

Statement of concern – what to include

- How does the proposed activity “directly affect” you?
 - Residency
 - Impacts on land, water, health or economic interest
 - Impacts on common law/regulatory right – e.g., riparian rights, water licence.
 - Not “directly affected” but relevant
 - Recreational impacts
 - Established environmental concern for an area
- What distinguishes the impacts on you?
- “Directly affected” status is central to participation
 - Piggy-backing participation

Statement of concern

- Your bottom line
 - Refusal - other “outside” strategies may be needed
 - Conditions – reasonable?
 - Who is the applicant?
 - What is their capacity?

- Justification of conditions or refusal
 - Probability of impacts
 - Likely degree of impacts
 - Causation
 - Expert evidence

Conditions on an approval or licence

Standards	Monitoring/reporting	Post activity
Operational limits (specific standards)	Timing and reporting requirements (incident and regular)	Specifics of reclamation standards
Storage/use/disposal of waste/contaminants	Sampling techniques to be used	Timeline for decommissioning
Continuous improvement requirements	Substances to be tracked	Amount of security (if legislatively required)
Emergency plans and management systems	Nature of monitoring (point source and ambient)	Post closure monitoring
Site requirements	Transparency & data availability	Conditions for re-entry and remediation

A little-known “secret”

- Before making a final decision, Director can circulate a proposed approval to:
 - Applicant
 - Anyone who filed a statement of concern
 - Anyone else Director considers appropriate
- Ask (in statement of concern & otherwise) for this opportunity
- Reference: *Approvals & Registrations Procedure Regulation, s. 8*
 - http://www.qp.alberta.ca/574.cfm?page=1993113.cfm&leg_type=Regs&isbncIn=0779706463

“Outside” strategy

- Political
 - MLAs
 - Municipal councilors
 - Premier/Ministers

- Media
 - Generating a compelling story
 - Adversarial
 - Build relationships
 - Accuracy

- Networking – community, groups (NGOs)

Participating as a group

- Benefits
 - Cost savings
 - Knowledge
 - Support
 - Unified voice

- Disadvantages
 - Issue dilution
 - Control
 - Perception of concerns

- Establish individual “directly affected” status

Director's decision

- Notice
- Timing
- Relation to appeals
 - Timing (again)
 - Need to have filed a statement of concern
- Costs of participation

Summing up – key points

- Limits of Alberta Environment's jurisdiction
- Type of authorization
- Gathering information
- Timing elements
- Importance of statements of concern
- Consider "outside" strategies

Upcoming webinars in this series

- Feb. 11
 - Part II: Appealing an approval or licence to the Environmental Appeals Board
- Feb. 18
 - Part III: Public participation in environmental impact assessments
- Feb. 25
 - Part IV: Going to court – judicial review

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<https://www.elc.ab.ca/pages/SupportELC/default.aspx>

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Questions?

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<http://www.elc.ab.ca/pages/home/Notification.aspx>.

To access these materials

Visit our website:

<http://www.elc.ab.ca>

to download the slides and a session recording.

