



# Environmental Assessment in Alberta

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Laura Bowman  
Staff Counsel  
Environmental Law Centre



## About the Environmental Law Centre

- legal information & lawyer referrals
  - **NO** client representation
- presentations & outreach
- publicly accessible library
- environmental search services
- research & law reform

## Environmental Assessment in AB

- Part 2 of the *Environmental Protection and Enhancement Act (EPEA)*
- Administered by Alberta Environment
- May be coordinated with a federal assessment under the *Canadian Environmental Assessment Act (CEAA)*

## How to find out if an EA is required?

- Part 2 of *EPEA* applies to “proposed activities” including:
  - Activities for which an initial approval or registration is required
  - Substantial changes or changes not covered by existing approvals or registrations.

### **Three possibilities for the “track” of the activity:**

- Is the activity a mandatory activity?
- Is the activity exempted by the regulation?
- The activity is not listed in the regulation

## Mandatory activities

Mandatory activities are listed in the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*.

= mandatory for proponent to submit a "EIA report" to the Director of ABENV

Then:

- Terms of reference (notice and comment)
- EIA report prepared by proponent
- Submitted to director (notice and comment)
- Director decides if complete

More detail on this later...

## Non-mandatory activities

Activity not listed in *Environmental Assessment (Mandatory and Exempted Activities) Regulation* but is a proposed activity requiring approval or registration.

= After an initial review, Director may “screen” the project. After screening, Director decides whether an EIA report is required.

- Might be a disclosure document to Director for initial review, public concerns to be considered.
- If screening, proponent must advertise in paper 1x
- “Directly affected” persons may comment (30 days)
- Decision on EIA report posted in registry if yes

## Exempted Activities

The activity is listed as exempted in the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*

No initial review

No screening

No EIA report

BUT – the Minister always has the discretion if in his or her opinion an EIA is “necessary because of the nature of a proposed activity”.



## The EIA process – where mandatory or required

### **Terms of Reference**

- proponent prepares, notice of draft must be published in newspaper 1x.
- reasonable time for comments, approval by director
- final notice published in paper 1x

### **Contents of EIA report**

- set out in s.49 of the Act
- include health, alternatives, monitoring, significance, baseline conditions, public consultation, waste issues, description of project.

Final report is notice in paper 1x

If Director determines it is complete – proceed to approvals OR

Minister may refer to cabinet for NRCB hearing



## Commenting on the EIA report

- You can always submit comments to the Minister or your MLA as a citizen.
- Formal “statements of concern” or comments are different.
- Terms of reference: no prescribed comment period, notice in newspaper at a minimum. Director required to give “due consideration” to comments.
- EIA report itself is subject to comment only where commenting on the authorization that comes afterwards or at NRCB hearing.
  - Director must give “notice” of a proposed authorization with some information. (*Activities Designation Regn*)
  - May provide statement of concern where directly affected within 30 days.

## Statements of Concern in EIA reports

- MUST be submitted to the Director of ABENV within the time set out in the approval notice or 30 days.
- Should indicate that it is a statement of concern about the project.
- Must indicate how you are directly affected.
- Submit an SOC at each stage where you see a notice, it counts at each stage separately.

## Statements of Concern – How to frame it

Test for “directly affected” applied by the Environmental Appeals Board:

The word “directly” requires an appellant to establish that a direct personal or private interest of an economic, environmental or other nature is likely to be impacted or caused proximately by the Approval in question.

There must be some interest other than the abstract interest of all Albertans in generalized goals of environmental protection.

The interest in question is stronger if it relates to one of the policies underlying the Act

## Statements of Concern and EIA

### **Do this:**

My property located adjacent to the site will be contaminated by materials discharged in the manner outlined in the project description. This will cause economic loss to me of \$1M. Attached are the reports of a real estate expert on the financial loss and liability and a contaminants expert explaining how the contaminants will affect the property. This is contrary to the policy to protect property from contamination.

### **Not this:**

This project will ruin my community. The birds will not sing, the sky will not be blue. Everyone's health will be impacted. People will die and it is all for madness and growth.

## Why provide a statement of concern?

*"This is Alberta, no one ever listens to me anyway..."*

- Preserve your ability to appeal the decision of the Director to issue the approval. ONLY people who submit a valid, timely SOC can appeal.
- EAB can reverse the decision of the Director
- Minister may by order reverse EAB decision
- Minister's decision is reviewable by the courts.
  - within the Minister's jurisdiction?
  - approval process comply with the Act?

### **Other reasons:**

- Improved project conditions often result
- It is often the only process that you have access to.

## Other issues

### **Terms of Reference are important**

- May include public consultation requirements
- Be involved early and often

### **Notice issues**

- Courts and EAB are often unforgiving to those who did not see notices, the onus is on you to read the local papers, use the registry and make contact! This includes AB gov't listservs, websites, electronic subscriptions, Aboriginal Community Link.

## Other issues

### Things to look out for in TOR and EIA report

- Is the alternative of “doing nothing” included?
- Are the mitigation measures adequate?
- Does the project description give enough detail, or is it vague and open ended?
- Is the description of local environment correct?
- Is the assessment honest and good faith, or does it make twists of logic?
- Is there a clear public consultation process? Is it reasonable? Was it followed?
- Are all the documents available?



## Other issues

When evaluating the TOR or EIA report, always keep in mind the purpose of EA process is environmental protection and sustainable development.

The purpose of the *EPEA* is protection of environment to protect ecosystems and human health, promote “responsible” economic growth. Future generations have available resources, mitigating impacts, environmental research, opportunities for public comment.... (s.2)

These are the policies of the Act, use them! Also use the policies and directives of other AB ministries and agencies to guide your review.

## Contact Information

Environmental Law Centre  
#800, 10025 106<sup>th</sup> Street  
Edmonton, AB T5J 1G4

**Toll free: 1-800-661-4238**

Phone: (780) 424-5099

Website: [www.elc.ab.ca](http://www.elc.ab.ca)

Laura Bowman [lbowman@elc.ab.ca](mailto:lbowman@elc.ab.ca)





