

## #19

# Frequently Asked Environmental Law Questions

## ENVIRONMENTAL ASSESSMENT

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**Q:**

**Can you explain the environmental assessment process in Alberta?**

**A:**

Environmental assessment is a planning tool with several purposes:

- to support the goals of environmental protection and sustainable development;
- to integrate environmental protection and economic decision making at the early stages of planning;
- to predict the environmental, social, economic and cultural consequences of a proposed activity, and to assess plans to mitigate any adverse impacts; and
- to involve the public, proponents and government in the review of proposed activities.

Federal legislation, provincial legislation or both may require environmental assessment of a proposed activity. Under both the federal and provincial legislation, a bureaucrat makes the ultimate decision regarding the acceptability of a proposed activity.

### Federal

The *Canadian Environmental Assessment Act* (“CEAA”) provides a process to assess the environmental effects of projects requiring federal action or decisions. A flowchart of this process is provided on page 4 of this answer.

CEAA is triggered where a federal authority:<sup>1</sup>

- is the proponent of the project;
- provides financial assistance to the project’s proponent;
- sells, leases or otherwise disposes of federal lands; or
- issues a permit or licence, grants an approval or takes any other action pursuant to a provision prescribed by the *Law List Regulations*.<sup>2</sup>

CEAA may also be triggered if a project has transboundary or international effects, or effects on federal lands.<sup>3</sup>

The application of CEAA is limited to “projects”.<sup>4</sup> A “project” is any proposed undertaking in relation to a physical work, or any proposed physical activity prescribed by the *Inclusion List Regulations*. Some types of projects are not subject to assessment under CEAA. These are listed in the *Exclusion List Regulations*.

There are four types of environmental assessment under CEAA – screening, comprehensive study, mediation, and panel review.

The majority of projects are subject only to screening.<sup>5</sup> Once the responsible federal authority has prepared the screening report, the project is either approved or rejected, or sent for further review by mediation or a review panel.

Those projects listed in the *Comprehensive Study Regulations* must either undergo comprehensive study or be directly referred for mediation or to a review panel. The Minister of the Environment considers the comprehensive study report and any comments made by the public. After this consideration, the project is referred back to the responsible federal authority for the final decision, or the project is referred for mediation or panel review.

If further assessment is required after the screening or the comprehensive study, the project is referred to mediation or panel review. The mediator or review panel prepares a report which is submitted to the Minister and the responsible authority, and which is made available to the public. The responsible authority then takes the appropriate action to allow the project to go ahead or to not go ahead.

All types of environmental assessment under CEAA must consider:<sup>6</sup>

- the environmental effects of the project, including cumulative effects;
- the significance of the effects;

- comments received from the public;
- technically and economically feasible mitigation measures; and
- any other relevant matter.

In addition, every comprehensive study, mediation and panel review must consider:<sup>7</sup>

- the purpose of the project;
- alternative means of carrying out the project that are technically and economically feasible;
- the need for and the requirements of any follow-up program in respect of the project; and
- the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the project.

#### CEAA Five-Year Review:

In 2000, CEAA underwent a statutory five-year review process. As a result, the federal Environment Minister tabled Bill C-19, *An Act to amend the Canadian Environmental Assessment Act*. If this Bill is passed, the CEAA process will change.

#### **Provincial**

In Alberta, the environmental assessment of activities is conducted under the *Environmental Protection and Enhancement Act* (“EPEA”). A flowchart describing this process is provided on page 5 of this answer.

With respect to environmental assessment, there are three categories of activities under EPEA: exempted, mandatory, and discretionary. The *Environmental Assessment (Mandatory and Exempted Activities) Regulation* designates several activities as being exempt from the preparation of an environmental assessment report. This regulation also designates those activities for which an environmental impact assessment report must be prepared.

All other activities may be subject to environmental assessment at the discretion of the Director. In exercising this discretion, the Director must consider:

- the location, size and nature of the activity;
- the complexity of the activity and the technology to be used;
- concerns expressed by the public and brought to the attention of the Director;
- the presence of similar activities in the same general area;
- other criteria listed by regulation; and
- other factors that the Director considers relevant.

The environmental assessment process can consist of up to three stages: initial review, screening, and environmental impact assessment.

Initial review begins with the proponent, a government department, local authorities or others informing Alberta Environment of a proposed activity. After initial review, the activity may be approved or sent for further assessment. Any person directly affected<sup>8</sup> by the proposed activity may submit a written statement of concern within 30 days of the notice that a proposed activity will be subject to further assessment.

The screening stage results in the preparation of a screening report by the Director. The contents of the screening report are set by the *Environmental Assessment Regulation*. This report must include:

- the location and purpose of the proposed activity;
- a list of sources of information used, and government departments and agencies consulted;
- a chronology of events in the screening process;
- a list of persons who filed statements of concern and issues raised by those statements;
- a description of existing and adjacent land uses;
- a description of human settlement in the area;
- an identification of the environmental issues associated with the proposed activity; and
- an identification of significant adverse effects that may result from the proposed activity.

The Director must give due consideration to all statements of concern submitted by the public. At this point, the activity may be approved or may be sent for further assessment.

The final stage is the preparation and review of an environmental impact assessment report. The contents of this report are set by the terms of reference prepared by the Director after public review of the draft terms of reference submitted by the activity’s proponent. In addition, the report must consider several factors, including:<sup>9</sup>

- a description of the environmental, social, economic and cultural impacts of the proposed activity;
- an analysis of the significance of these impacts;
- the plans that have been or will be developed to mitigate the negative impacts identified; and
- a consideration of alternatives to the proposed activity.

The environmental impact assessment report is submitted to the Director for review. The Director may require the proponent to publish the report.

Where applicable, the report is made available to either the EUB or the NRCB for use in its review process. Otherwise, the report is referred to the Minister of the Environment. At this point, the Minister may advise proponents that they may apply for an approval, make recommendations to other government departments or agencies dealing with the activity, or recommend to Cabinet that a proposed activity be reviewed by the NRCB.

### Canada-Alberta Harmonization

Both *CEAA* and *EPEA* contain provisions allowing the governments to enter into agreements with other jurisdictions affected by the proposed activity to coordinate environmental assessment processes.<sup>10</sup> To this end, the federal and Alberta governments have entered into the *Canada-Alberta Agreement for Environmental Assessment Cooperation*.

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<sup>1</sup> *CEAA*, section 5.

<sup>2</sup> Notably, the *Law List Regulations* prescribe certain provisions of the *Fisheries Act*, the *Navigable Waters Protection Act* and the *Migratory Birds Regulations* as *CEAA* triggers.

<sup>3</sup> *CEAA*, sections 46 to 48.

<sup>4</sup> *CEAA*, section 2.

<sup>5</sup> Over 99% of the environmental assessments conducted under *CEAA* have been screenings. See *Review of the Canadian Environmental Assessment Act: A Discussion Paper for Public Consultation* (Environment Canada, 1999).

<sup>6</sup> *CEAA*, section 16.

<sup>7</sup> *CEAA*, section 16.

<sup>8</sup> The issue of whether or not a party is "directly affected" by a proposed project can be contentious. There is a significant amount of case law considering this issue.

<sup>9</sup> *EPEA*, section 47.

<sup>10</sup> *CEAA*, section 40 and *EPEA*, section 55.



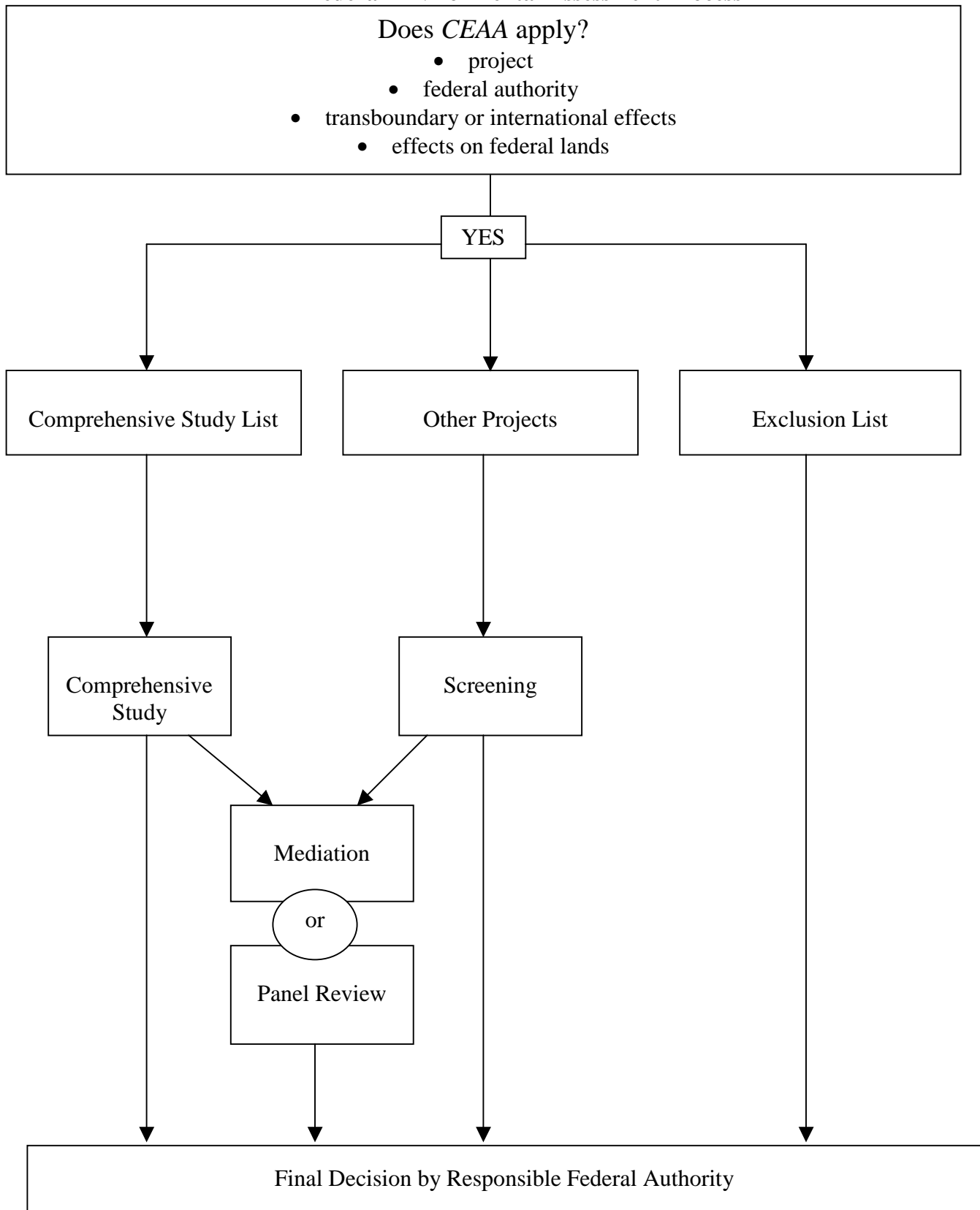
## Acknowledgements

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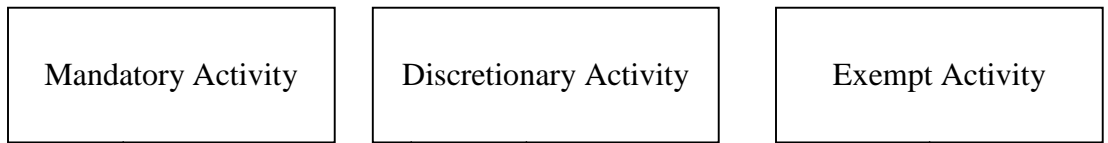
We also express appreciation to the Alberta Law Foundation who has provided ongoing financial support to the Environmental Law Centre since its incorporation in 1982.

## Federal Environmental Assessment Process

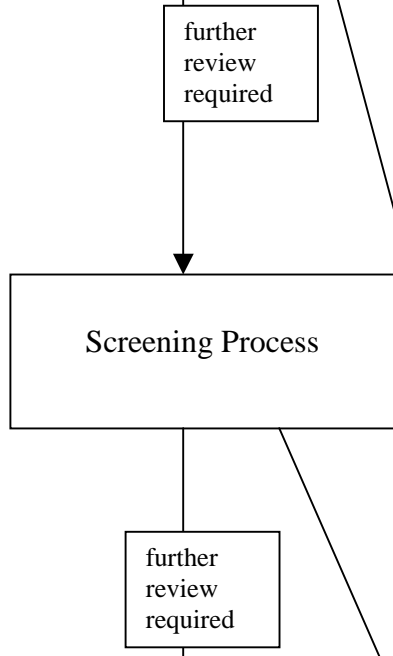


# Alberta's Environmental Assessment Process

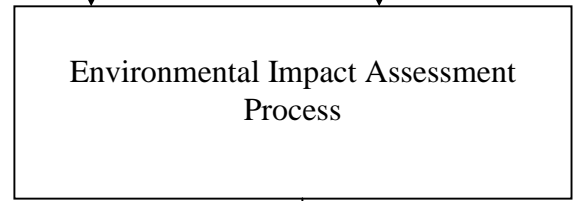
**Stage 1:  
Initial Review**



**Stage 2:  
Screening**



**Stage 3:  
Environmental Impact  
Assessment**



For further information, pursue the following:

### **Environmental Law Centre Library Resources:**

- THE 1995 ANNOTATED CANADIAN ENVIRONMENTAL ASSESSMENT ACT AND EARP (ENVIRONMENTAL ASSESSMENT REVIEW PROCESS) GUIDELINES ORDER / Northey, Rodney. -- Scarborough: Carswell, c1994.
- CANADA v. THE ENVIRONMENT: Federal Environmental Assessment 1984 - 1998 / Hazell, Stephen. -- Toronto: Canadian Environmental Defence Fund, [1999].
- CANADIAN ENVIRONMENTAL ASSESSMENT ACT: A PRIMER / Hanebury, Judith B. -- In Environmental Law: New Developments: [Papers from a seminar in Calgary and Edmonton on April 3, 4, 1995]. Edmonton: Legal Education Society of Alberta, [1995].
- CANADIAN ENVIRONMENTAL ASSESSMENT ACT: AN ANNOTATED GUIDE / Hobby, Beverly ... [et al.] -- Aurora, Ont.: Canada Law Book, c1997.
- THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT: TRAINING COMPENDIUM / Canadian Environmental Assessment Agency. -- Hull: Canadian Environmental Assessment Agency, [1995].
- CUMULATIVE EFFECTS ASSESSMENT: Current Practices and Future Options / Griffiths, Angela ... [et al.] -- [s.l.]: Macleod Institute for Environmental Analysis, 1998.
- NOT DIRECTLY AFFECTED: USING THE LAW TO CLOSE THE DOOR ON ENVIRONMENTALISTS / Sherman, Joan; Gismondi, Michael; Richardson, Mary. -- In Journal of Canadian Studies, V. 31, No.1 (Spring 1996), pp. 102-118.
- ON-GOING MONITORING PROGRAM OF THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT: Final Report / Hagler Bailly. -- Toronto: Hagler Bailly, 1999.
- REVIEW OF THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT: A Discussion Paper for Public Consultation / Canadian Environmental Assessment Agency. -- Ottawa: Canadian Environmental Assessment Agency, 1999.

### **Websites:**

- [http://www.ceaa.gc.ca/index\\_e.htm](http://www.ceaa.gc.ca/index_e.htm) This is the site of the Canadian Environmental Assessment Agency where you can find information on the agency and specific panels, access the legislation, check news releases, and locate publications on environmental assessment. Visit [http://www.ceaa.gc.ca/publications\\_e/pub\\_list\\_e.htm](http://www.ceaa.gc.ca/publications_e/pub_list_e.htm) specifically to locate publications on environmental assessment.
- <http://www.ccme.ca> This site presents priorities of the Canadian Council of Ministers of the Environment. There are links provided for the Harmonization Accord and the Sub-Agreement on Environmental Assessment.
- <http://www.gov.ab.ca/env/protenf/assessment> This site presents environmental assessment and evaluation information for Alberta Environment. It presents information on the environmental assessment process and on cumulative effects assessment in environmental impact assessment reports.
- [http://www.ec.gc.ca/envass\\_e.html](http://www.ec.gc.ca/envass_e.html) This is the environmental assessment page on Environment Canada's website. It provides access to a database of *Environmental Assessments Conducted by Environment Canada under the Canadian Environmental Assessment Act*, environmental assessment guidelines, and reports on the environmental assessment program.

## Contacts:

- Relevant legislation is available from the Queen's Printer Bookstore  
10611 - 98 Avenue  
Edmonton, AB T5K 2P7  
  
Phone 780-427-4952,  
Fax 780-452-0668  
E-mail [qp@gov.ab.ca](mailto:qp@gov.ab.ca)  
URL  
<http://www.gov.ab.ca/qp>
- Alberta Environment  
Environmental Assessment  
and Compliance Division  
  
Phone 780-427-5842
- Canadian Environmental  
Assessment Agency  
Edmonton Office  
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## Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a non-profit charitable organization operating in Alberta since 1982. The Society believes in making the law work to protect the environment and in support of this objective, provides services in environmental law education and assistance, environmental law reform, and environmental law research. The Society operates the Environmental Law Centre which is staffed by four full-time lawyers.

Funding is provided to the Society in part by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Society's objectives.



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The information provided is current to June 30, 2000. While every effort has been made to ensure the accuracy and timeliness of the information, the answer, of necessity, is of a general nature. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this publication.

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