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The Future of Environmental Assessment
in Canada

The Ontario Public Interest Context

by

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Public interest groups such as CELA have always supported the concept of environmental assessment, and played a large part in determining the direction taken towards the development of the Environmental Assessment Act ("EAA"). However, the present implementation of the Act has not met the high expectations evident in 1975, when the Act was passed.

The broad purpose, as I see it, of environmental assessment is to have important decisions made within the context of a technical, environmental, social, and political planning process, not in a purely political forum.

Originally, the Ontario government committed itself to applying the Environmental Assessment Act to Crown projects first, then municipalities, and finally private sector projects. The first two sectors are operating under the Act, but there is no indication of speedy government action to include the private sector under the Act. Very few private

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sector projects have been designated. This leads to the conclusion that all environmentally significant projects are not being assessed under the Act. Rather, those proponents most politically accessible are being subjected to the EAA.

Exemptions

The philosophy of having all undertakings included under the Act unless exempted has been supported by CELA. However, the Act has come under attack for the number and type of exemptions given. The record as of July, 1983, shows exemptions of approximately 267 projects, including Darlington, South Cayuga and other major projects as well as minor ones which warrant exemption.

A potential breakthrough, however, may develop with the empowering of the Environmental Assessment Advisory Committee to review requests for both exemptions and designations. The terms of reference, which provide for advice only at the request of the Minister, have been criticized, but the allowance of public input into this process has caused some optimism.

Concept Assessments

Concept, or Plan Stage assessment, offers a staged resolution of issues but also introduces a major difficulty to be faced

by the EAA. Ontario Hydro has received approval for both its Southeastern and Southwestern transmission systems at the Plan Stage. Further hearings are required before the actual routes are chosen and the lines built, but a major planning hurdle appears to have been created by introducing a one way approval mechanism. We can assume that if the next set of hearings indicates that a line to Essa, which the Joint Board has approved at the Plan Stage, is not environmentally feasible then Hydro will be required to go back for the approval of another corridor.

There are several problems with concept assessments from the perspective of public interest groups and intervenors. These, discussed below, will require solution before the process is considered acceptable.

1. Lack of Immediacy, Substance and Detail

Despite notice requirements and attempts to receive public input from residents of broad geographic areas or sectors to be affected, participation has not been as broad and involved as it should be. For example, at the Plan Stage for Ontario Hydro's Southwestern transmission corridor potential parties did not receive and/or ~~accept notice because their definition of what comprised~~

Southwestern Ontario did not coincide with Hydro's definition. Thus, when the Route Stage notices were given, a new group of persons found they were affected but had had no opportunity to participate in the first process because they did not realize they were involved.

The rulings of the Joint Board under the Consolidated Hearings Act allow for reconsideration of issues determined at the Plan Stage, or at least a cumulative decision. The Joint Board recognized that its decision at this stage should not preclude any opportunity to take advantage of better alternatives which may be discovered at a later date.

It stated that in their decision at any phase of the hearing they will consider all evidence which has been previously introduced, and the Board may find it necessary to modify, alter or revoke conclusions which were reached at an earlier phase of the hearing*.

The Board, dealing with one of the first E.A. hearings

*June 18, 1982, Joint Board decision under the Consolidated Hearings Act, 1981, p. 4,5, Southwestern Ontario Plan Stage bulk electricity system undertaking by Ontario Hydro.

under the Consolidated Hearings Act, is keeping its options open. This will perhaps mitigate, to some extent, the problems created by the lack of an education program which would promote greater and more effective public involvement at the concept stage of the assessment.

However, Hydro may find that, with the involvement of a whole new group of people who wish to re-open the question of the "Bruce to London" versus "Bruce to Essa" corridor, it cannot escape a detailed consideration of routes within both corridors.

I question whether Hydro could not have completed its analysis in a way which would have made public involvement more worthwhile. For example, if they had assessed several but chosen two preferred corridors within the western part of the province, then assessed several routes within each corridor, choosing one or two, the issues to be determined would have been clearer to interested members of the public, Hydro's assessment would arguably have been comparable financially, and a more streamlined decision-making process would have resulted.

~~Instead, the complexity of the process, the remoteness of~~

the Plan Stage assessment from everyday life, the lack of public perception as to when intervenors should become involved, and the public's lack of trust in the government and Hydro has, I submit, created a bad precedent for environmental assessment in Ontario.

2. Funding

The disparity in resources of the various parties to the process has become evident in fact as well as prediction. Proponents, again using Ontario Hydro as an example, have legions of people preparing and presenting their position, while opponents or intervenors are working with scarce and insufficient resources. Within the process as it currently exists, these resources might be almost adequate when dealing with a later, more specific stage of a proposal, but generally cannot hope to compete on the large-scale issues such as the need for the particular project. The common attempt by proponents to establish that citizens are interested only when a project will be in their "back-yards" is aided by the inability of groups to marshal adequate resources before the battle becomes limited to a specific geographic area.

Class Environmental Assessments

The class environmental assessment concept arose out of the idea that projects judged to have minor impacts and which were likely to produce an administrative burden, should be assessed as a group, and that if specific projects under the Class warranted an individual assessment, they could be "bumped-up" to an individual assessment. Provincial and municipal roads projects are the major groups for which Class EAs have been approved. However, the Ministry of Natural Resources has produced a Class EA for solid waste disposal in unorganized territories, a Forest Management Class EA is now in the pre-submission consultation stage, and the Ministry of the Environment, in their "Blueprint for Waste Management" has suggested that a Class EA might be appropriate for small landfills in southern Ontario. The trend to Class EAs for these seemingly significant undertakings has aroused serious concerns among public interest environmental and conservation groups.

In the case of the Forest Management Class EA, the first, and most important step in the process, that of allocating land uses, has been determined without environmental assessment under a land-use planning process which provided for some ~~public input, but did not provide for public hearings at~~ which an arms-length adjudication could be made. This left

a very limited type of decision-making for the Class EA, that is, how to provide for sustained timber production.

This limited scope is further complicated by the fact that the EA document is largely process oriented, providing for public input into decision-making under the Crown Timber Act, rather than detail-oriented in terms of actual forest management. A further step after the EA, the provision of detailed manuals, will not be a part of the assessment either.

The concern arising from this example is that it may be an inappropriate subject for a class assessment. If the EAA is perceived as being incapable of dealing with this type of question on a class basis, the argument by proponents will be that the assessment of individual forest management units would be too large a task, therefore the idea of environmental assessment for this type of activity should be abandoned altogether. On the contrary, a land-use planning exercise specific to defined areas of Ontario would have provided broad decision-making which was sufficiently concrete to allow meaningful public participation.

What appears to have happened is that the political decision that all Crown land north of a certain point would be managed

for timber production by private companies, was made, leaving very limited questions to be dealt with under the EA. Even then, the limited questions appear problematic in terms of a Class EA.

It is predicted that Class EAs will continue to be problematic insofar as the government attempts to deal with major undertakings rather than minor ones.

The practice of completing Class EAs under the EAA has also been questioned. The Act contemplates the establishment of classes, but not assessments on a class basis. With increasing, inappropriate uses of the Class EA, public interest groups may find themselves forced to challenge this practice.

Government Commitment to the Process

In the past, criticism has been leveled at the Ontario government for exempting too many projects. Some awareness of that problem has been shown by the appointment of the Environmental Assessment Advisory Committee.

Meanwhile, the ranks of the civil servants administering the Act have been decreasing to the point where there are only 13 planners, including the Assistant Director and the Director, administering the Act on a full-time, in-house basis. Eight planners, most of them senior, have left or been transferred.

No senior planners remain.

Despite assurances from the new Minister of Environment approximately 1½ months ago, the staff component to my knowledge has not been increased.

Role of the EA Review Coordinator

During the Hydro Plan Stage hearings, the Joint Board suggested that the Review Coordinator should not evaluate whether or not an environmental assessment document fulfills the requirements of the Act, or whether the undertaking should be approved. This responsibility, it says, rests with the tribunal, or, where a public hearing is not required, with the Minister. The Review Coordinator may, however, prepare conclusions and recommendations for the approval and final decision of the Minister.

If this advice is followed, MOE expertise will be largely wasted. The EA branch staff are the only government officials who look at all aspects of the undertaking. The reviewing Ministries have specific, relatively narrow perspectives. Also, conclusions which would inevitably be drawn by Ministry staff will not be part of the public process. This is an inherent danger when those conclusions may be part of the Minister's final decision.

Cabinet Approvals

Under section 23 of the EAA the Minister, with the agreement of cabinet or designated Ministers, may vary the whole or any part of the Environmental Assessment Board's decision, substitute his decision, or require the Board to hold a new hearing. Also, under the Consolidated Hearings Act, 1981, section 13, the Cabinet may confirm, vary or rescind the decision or part of a decision of the Joint Board, substitute its decision or require a new hearing.

The involvement of cabinet in the process after the Environmental Assessment Board or the Joint Board has made a decision is a standard part of the administrative decision-making process in Ontario. However, the recent over-turning of the Joint Board's rejection of the County of Oxford's application for approvals of a landfill site (under the Environmental Protection Act and the Planning Act) has caused a loss of faith in the decision-making process. The cabinet decision came after an extensive and technical public hearing which lasted 59 days.

Citizens groups and municipalities will consider their involvement in the process worthless and will refuse to participate if ~~this over-riding power of the cabinet continues to be used in~~
this way.

An alternative has been developed in the process under which the liquid waste treatment facilities, incinerator, and secure landfill proposed by the Ontario Waste Management Corporation will be considered. This involves the ability of cabinet to over-turn a decision only if it is an approval. A rejection is considered final and cannot be appealed or altered by cabinet.

Conclusions

The Environmental Assessment Act process in Ontario is still undergoing growing pains. Despite 7 years of operation, many of the important and controversial projects have been either exempted or have just recently reached a stage of the process where public input is allowed.

Generally, however, the following problems are apparent and show no signs of disappearing in the near future:

1. Exemptions have harmed the credibility of the process and evidenced a lack of government commitment in the eyes of the public;
2. Concept assessments are too broad and nebulous to allow for meaningful public input, especially when a public education programme has not been carried out to inform people of the importance of this early stage of the decision-making and when funding is not available for

intervenors;

3. Concept assessments may not, as they are now carried out, result in time-saving and simplification of the process;
4. Class assessments are being used in apparently inappropriate situations, which may result in challenges to their validity under the EAA;
5. The Ontario government does not appear to be committed to properly staffing the Environmental Assessment Branch, despite declarations otherwise;
6. The Review Coordinator within the Ministry of the Environment may be largely emasculated because of Joint Board rulings and the government's own attitude;
7. Cabinet appeals threaten to bring the hearings process into such disrepute that citizens will refuse to participate.

This description of the problems with a relatively new planning process in Ontario should not be taken as defeatism or discouragement with the process. As the public becomes more aware of the importance of environmental assessment and more experienced with its application, improvements should follow. Meanwhile, I assume I am not alone in seeking from the provincial government some immediate solutions to the administrative problems identified, and longer-term improvements to the process itself.

