

Improving the Regulatory Review Process for the Development of Infrastructure

Canada's infrastructure is an economic enabler for its economy, allowing value-added sectors to develop, to create jobs, and to compete. Infrastructure includes highways, rail lines, marine ports, waterways, ferry services, bridges, airports, pipelines, telecommunications, and power generation and transmission facilities, to name a few. Currently, Canada's infrastructure is in need of major investment to improve Canadian business competitiveness and trade potential. However, the regulatory review process required prior to starting infrastructure projects can be unduly slow and unpredictable, impacting Canada's economic competitiveness and ability to attract much needed investment.

Regulatory review addresses a broad range of environmental, health and safety, socioeconomic, community, and First Nation issues to ensure that the concerns of all interested stakeholders are taken into account prior to starting infrastructure projects. Potential effects of a proposed project are identified and evaluated, providing the opportunity for the proposed project to be modified before design and construction starts. Through the process, potential projects are approved, modified or rejected should significant residual impacts be identified following mitigation measures.

In many cases, an infrastructure project will require the environmental assessment to be done by both the federal and provincial or territorial levels of government. Even a number of departments and agencies within a single level of government play different roles during the regulatory review process. Overlapping jurisdiction and duplicative and conflicting procedures make the regulatory review process longer than it has to be. Sometimes the need for new studies comes out of the woodwork once the assessment has already begun, pushing aside already agreed-upon timelines. In other cases, not enough government resources are available to do the assessment in an efficient manner.

Potential investors may be turned away due to the unpredictable process and business may not be able to make informed location and logistics decisions. For instance, according to a 2008 KPMG Competitive Alternatives report, transportation infrastructure is a major driver of location decisions made by manufacturers, representing 16 percent of location-sensitive costs. As a result, knowing where and when an infrastructure project will be complete are major drivers influencing organizational location decisions. We need to make sure that the regulatory review process is efficient, has a clear scope, reasonable timelines, and a process to deal with unforeseen circumstances and resource shortages.

All levels of the government have been working to make the regulatory review process more efficient. For example, the *Environmental Assessment and Cooperation Agreements* between the federal government and a number of provincial and territorial governments make sure that projects needing reviews under both federal and provincial environmental assessment legislations undergo a single, cooperative assessment, meeting the legal requirements of both governments while maintaining their existing roles. While this is a positive step in making the environmental assessment process more efficient, more needs to be done to remove duplication within the decision-making process. Recently, the Canadian Council of Ministers of the Environment (CCME 2009)

Environmental Task Group recommended a one project-one environmental assessment approach for projects requiring federal and provincial or territorial environmental assessments.

To bring greater certainty to the time involved to do the regulatory review process, all levels of government must reduce duplicative practices and put in place a joint-scoping process that establishes firm timelines and commits to them. Steps are already being taken. The federal government recently opened the Major Projects Management Office (MPMO) that provides a single window for the federal regulatory process for natural resources projects. The goal of the MPMO is to cut in half the regulatory review period. In addition, through legislative changes promised in Budget 2009, the federal government committed to speed up the review process by 12 months for major infrastructure projects.

In March 2009, the federal government announced that certain projects funded under the Building Canada Plan (including some solid waste, wastewater and water facilities as well as public transit, railways, highways and bridges) would be exempted from federal environmental assessment requirements until 2011. Where such facilities are located near federally-protected environmentally sensitive areas, only projects with (i) total costs of less than \$10 million (excluding land costs) and (ii) environmental mitigation measures in place to protect such areas will be eligible for the new exemption. The Canadian Chamber supports these new exemptions and would recommend extending them beyond 2011 and to any similar projects that are not funded by the Building Canada Plan.

Recommendations

That the federal government, in cooperation with its provincial and territorial counterparts:

1. Put in place a joint-scoping process that lays out detailed and reasonable timelines of all the studies, consultations, and assessments that need to be done as part of the regulatory review process.
2. Streamline and shorten the environmental assessment process ensuring that there are no redundancies in the environmental review process and put in place a single window for assessing infrastructure projects.
3. Make the necessary resources available to do the regulatory review process in a timely manner. In addition, put in place a program, in consultation with the private sector, where those who wish to pay on a cost recovery basis for faster service with clear service standards and guaranteed turnaround times are provided with that option.
4. Establish a formal process to deal with exemptions to the regulatory review process with only a Deputy Minister or Minister having the authority to change the environmental assessment process under exceptional and unforeseen circumstances.
5. Extend the March 2009 Building Canada Plan project exemptions beyond 2011 and to any similar projects not funded by Building Canada.