

Mining and Natural Resources Law

July 31, 2012

New Environmental Regulations Now In Force

On July 18, 2012, certain regulations under the new *Canadian Environmental Assessment Act, 2012* (the “CEAA 2012”) became effective resulting in substantial streamlining of the federal environmental review process. These regulations relate to: (i) the scope of projects subject to the CEAA 2012, (ii) the prescribed information required for submission, and (iii) costs eligible for recovery from the proponent. This update provides an overview of the application of the new regulations and the CEAA 2012 to the mining industry.

i. *Regulations Designating Physical Activities*

Under the previous regime, broader criteria cast a wider net, capturing within the environmental assessment (“EA”) process projects of varying size and varying potential environmental impact. The application of the new criteria has resulted in the cancellation of environmental screenings for thousands of projects.

These new regulations set out activities that result in a project becoming a “Designated Project”, being projects that the federal government believes have a significant potential to cause adverse environmental effects. Designated Projects will be subject to the CEAA 2012 requirements. The activities caught under the new regulations are commonly associated with large projects. Small and routine projects, which were previously often subject to a screening-type EA are no longer captured by the federal legislation (although may still be covered under provincial legislation).

Activities relating to the mining industry that are classified as “Designated Projects” include the construction, operation, decommissioning or abandonment of:

- a metal mine or coal mine with a production capacity of 3,000 tonnes per day or more;
- a metal mill with an input capacity of 4,000 tonnes per day or more;
- a metal mine of any capacity that is located off-shore or on the ocean bed;
- a gold mine with a production capacity of 600 tonnes per day or more;
- a potash mine with a production capacity of 1,000,000 tonnes per year or more;
- an asbestos mine of any capacity;
- the expansion of an existing metal mine, metal mill, gold mine, coal mine or potash mine by a production capacity of 50%, so long as the overall total is greater than the above-stated minimums; or
- a salt mine, underground salt mine, gypsum mine, graphite mine, magnesite mine, limestone mine, clay mine, stone quarry, gravel pit or sand pit at various production capacities.

ii. *Prescribed Information for the Description of a Designated Project Regulations*

The CEAA 2012 requires that the proponent of a Designated Project submit a Project Description to the Canadian Environmental Assessment Agency (the “Agency”). Previously, submitting a Project Description was voluntary.

Upon receipt of a proper Project Description, the Agency must post notice of the Project Description on its website and has 45 days, including a 20-day public comment period, to determine whether a federal EA is required. The CEAA 2012 and the new regulations do not describe what would occur if the Agency does not make a decision within the 45 day review period. While this gap creates some uncertainty, the mandated timelines are welcome.

The CEAA 2012 prohibits a proponent of a Designated Project from undertaking any action in furtherance of its project if the action would cause an “environmental effect”. The prohibition continues until the Agency decides that an EA is not required, or, if an EA is required, until a decision has been reached on

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the EA.

As a result, we recommend that those considering a project submit their Project Descriptions as early in the planning process as possible

ii. *Cost Recovery Regulations*

The Cost Recovery Regulations allow the Agency to recover the government's costs for EA projects that are assessed by a review panel. The types of costs that can be recovered include:

- costs that the Agency incurs for services provided by a third party; and
- costs associated with the carrying out of the responsibilities of the Agency and the members of a review panel.

To discuss these regulations, please contact any member of our Mining and Natural Resources Group or one of the Environmental Law Group members listed below:

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