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Chair

Mr. Mark Warawa

Standing Committee on Environment and Sustainable Development

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● (1105)

[*English*]

The Chair (Mr. Mark Warawa (Langley, CPC)): Good morning, colleagues.

We'll call the meeting to order. We have a very full agenda today.

For the first hour our witnesses are from the Government of Saskatchewan. We have Mr. Mark Wittrup and Mr. Al-Zabet.

Welcome. You have up to ten minutes.

Mr. Mark Wittrup (Assistant Deputy Minister, Environmental Protection and Audit Division, Ministry of Environment, Government of Saskatchewan): Thank you.

Chairperson, committee members, ladies and gentlemen, thank you for the opportunity to present this brief on behalf of the Province of Saskatchewan.

My name is Mark Wittrup, and I'm the assistant deputy minister, environmental protection and audit. I bring over 25 years of environmental assessment experience, using both the federal and provincial processes, from an industry and government perspective.

With me today is Dr. Tareq Al-Zabet, director, environmental assessment, who brings considerable environmental and resource management experience as well.

In the interest of time, my comments will be brief, highlighting important areas of our more detailed submission.

In Saskatchewan, environmental assessment is only used for projects that pose a high risk to the environment or public safety. We don't use lists of projects; rather, we have a rigorous process to determine whether a project qualifies as a development under the act, and therefore requires a full environmental assessment.

For those projects and activities that do not require an environmental assessment, the normal licensing and permitting processes, and ongoing monitoring and inspection, ensure that they will proceed in a manner protective of the environment.

Under this regime, a responsible proponent can receive the provincial environmental assessment approval in less than a year, allowing the proponent to proceed to licensing, which they can then stage to maximize project efficiency.

Saskatchewan has been an active participant in national discussions on the environmental assessment process. Fundamentally, Saskatchewan supports the principle of one project, one assessment, done in a timely manner, and encourages the committee to consider fundamental changes to CEAA to achieve this goal.

Overlapping requirements between the federal and provincial environmental assessment processes have created procedural and regulatory complexity for all stakeholders that adds significant delays and costs to some projects undertaken in the province. What we see are proponents going to great lengths to avoid triggering CEAA, even if that means doing a suboptimal project, not doing projects or improvements, gaming the system, or attempting project splitting.

While the Government of Canada has attempted to address some of the complexity and problems with CEAA, many problems remain. As a result of these problems, projects take substantially longer to approve than is reasonable, given the state of environmental knowledge. Business opportunities are lost or simply cancelled due to the real costs, time, and resources that CEAA and, importantly, its interpretation by federal authorities, creates. Governments of both levels spend more time and money than necessary on duplicative assessment efforts, and legal challenges under CEAA rarely hinge on technical aspects, or environmental outcomes of a project. Rather, the complexity of CEAA encourages procedural challenges.

The national maturation of environmental regulation over the last 20 years is such that the significant environmental regulatory differences between jurisdictions, which existed when CEAA was first contemplated, do not exist any longer. In fact, Saskatchewan has largely adopted federal standards in most areas of regulation. This maturation of environmental regulation within Canada presents some unique opportunities in the areas of environmental assessment equivalency, elimination of screening-level assessments, and some pragmatic housekeeping items. Saskatchewan believes that enormous efficiencies can be achieved, and the duplication of effort reduced, if CEAA acknowledges the provincial environmental assessment as equivalent to the federal environmental assessment for any CEAA assessment. That is, an environmental assessment done under the Saskatchewan legislation can be used to meet the federal requirements, and vice versa.

Saskatchewan believes its environmental assessment process easily covers the technical needs of the federal assessment by the use of rigorous and comprehensive EA requirements that ensure significant adverse effects are identified and mitigated; by addressing the same factors as set out in section 16 of CEAA; assessing cumulative impacts; providing opportunities for public input, and duty-to-consult requirements; and providing transparency of process and access to information through the ministry website.

We have little disagreement with the projects that qualify for a comprehensive study under CEAA, as these projects, for the most part, would qualify as developments under our act. CEAA's own work shows that most screening-level assessments don't have any significant environmental effects. With a robust provincial regulatory system in place, we believe federal screening-level assessments are unnecessary to ensure environmental protection within provincial boundaries, except for projects where the project proponent is a federal ministry or crown, or the project occurs on federal lands.

This recommendation would have a very low risk to the environment while eliminating significant areas of overlap and duplication. Screening-level triggers are also the area where some responsible authorities failed to make pragmatic decisions about what level of screening is required. There are many instances in Saskatchewan where responsible authority has required an environmental assessment that takes in excess of a year for minor CEAA law list triggers. Provincially, these were simple licensing and permitting matters.

Saskatchewan also recommends that any agreement it makes with CEAA should take legal precedence over any agreement negotiated between CEAA and another federal agency. Accordingly, Saskatchewan recommends that the act confirm the role played by CEAA in negotiating such agreements and add a provision to ensure that such agreements with the provinces bind and take precedence over any agreements entered into with other federal bodies, such as the CNSC or the NEB. This would ensure that all federal agencies are aligned with the federal environmental assessment process and that there would be consistency in all federal-provincial interactions.

The costs to business in missed opportunity have never been effectively studied, but they are likely very large, and there is no evidence that the excessive process added by CEAA provides any benefits to environmental protection, especially at the screening level.

To improve the situation, we recommend the following measures be considered in all aspects of the review: bring more predictability and consistency to the federal environmental assessment process by setting predictable and enforceable timelines; provide mechanisms to reward proponents with less process for good environmental and stewardship practices through the use of new technologies, process upgrades, refurbishment, and so forth—things that will improve environmental performance; and provide exclusions for the projects of substantially similar nature to a project described in the exclusion list regulations and/or projects that will not generate new or increased levels of environmental impacts—i.e., those within the current disturbance footprint of an existing operation—and can be managed by existing regulatory processes.

Saskatchewan supports a vision that would redefine federal and provincial responsibilities to endow Canada with a system based on a principle of one project, one assessment. Consistent with our move to a results-based regulatory framework, Saskatchewan recommends CEAA acknowledge provincial environmental assessments as equivalent to a federal environmental assessment for all projects on provincial lands; also on provincial lands, provide a blanket exclusion from all CEAA screening-level triggers, as these areas of environmental interest are fully covered by existing provincial mechanisms; consider bilateral agreements on environmental cooperation negotiated by CEAA as legally binding on all federal authorities; and introduce proactive and efficient measures that enhance predictability and consistency of the federal EA process and provide incentives for projects that will improve environmental performance.

Fundamentally, we believe that in this time of finite resources, both human and financial, and given the state of environmental knowledge and regulation, there is a unique opportunity to take some of the burden off the regulated community and promote responsible business development and innovation without having to compromise environmental protection.

Thank you.

● (1110)

The Chair: Thank you very much.

Our first questioner is Mr. Toet, for up to seven minutes.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): Thank you, Mr. Chair, and thank you, Mr. Wittrup, for your presentation.

First, you did talk, in your presentation, about the overlap. I note that in 2009, the Canadian Council of Ministers of the Environment recommended the addition of substitution provisions for managing federal-provincial overlap and duplication.

Would you like to see a situation such as that, whereby you have the substitution or equivalency included in the act, to be part of the act?

Mr. Mark Wittrup: Those provisions actually exist right now. The problem is that the substitution that is envisioned is really substituting the provincial process with the CEAA process, so there are no savings in terms of time or process involved in that discussion.

So we haven't gone that way because it doesn't really lead to an improvement in the process.

● (1115)

Mr. Lawrence Toet: If I understand you correctly, what you're saying is that you'd like to see the substitution be...that a provincial assessment would be a substitute for the federal assessment.

Mr. Mark Wittrup: It's the assessment itself, absent the process, that.... So we would undertake an environmental assessment through our process, and that could be used as a substitute for the federal environmental assessment if that were deemed.

And really, because we have equivalent...we look at the same things.

Mr. Lawrence Toet: Can you give an example of where an equivalent assessment in Saskatchewan would have been, in your mind, every bit as effective as the federal assessment?

Mr. Mark Wittrup: An example would be with the uranium mines in northern Saskatchewan. There are many instances where the provincial process would not have indicated that an environmental assessment was required, given that the facilities already existed and had management systems in place, licences, permits, and so forth. In addition, many of the projects that have gone into joint environmental assessments—some of them are uranium mines—would have taken substantially less time just using the provincial process.

Mr. Lawrence Toet: That kind of leads to my next question. In your presentation you said that most of your provincial assessments would be completed in less than a year.

Mr. Mark Wittrup: Correct.

Mr. Lawrence Toet: It sounds as if there would probably be some exceptions to that, based on your saying "most". What would your typical timeframe be with a federal assessment—a comparative assessment, the same project, the federal component of that? When you say less than a year provincially, what happens when a federal assessment kicks in?

Dr. Tareq Al-Zabet (Director, Environmental Assessment, Ministry of Environment, Government of Saskatchewan): If it's a joint review process, it could go to three or four years. The joint review is only an agreement on coordination, but they are completely separate processes. From our side, it could end within one year, while the federal one could take three to four years.

So there is a delay, because we can approve a project through EIA but still not get it approved by the federal agency. It could take two years there.

Mr. Lawrence Toet: So there's a time difference, but is there an outcome difference, or is it strictly a process difference that you're seeing between the provincial and federal?

Dr. Tareq Al-Zabet: I think it's purely a process difference. The outcomes are almost identical. There is no difference. Actually, we have side effects because of the delay. A lot of opportunities are missed.

Mr. Lawrence Toet: In your mind, where are the delays happening in the federal process? If you say you're coming to the same outcome within less than a year, what are the weaknesses that are causing this to become a three- or four-year process with the federal assessment?

Dr. Tareq Al-Zabet: The first one is the decision-making process in the federal agencies. You have 40 federal agencies, and CEAA is the coordinator of those 40 agencies. By the time that federal responsible authority triggers a reason for going to a screening process, it takes 90 days just to decide if they even want to screen the project or define whether it's an EIA or non-EIA. They have more stages. There are processes rather than outcomes, and it's a one-size-fits-all process. So whether it's a small project or big project, it goes through the same process.

For example, the Canadian Nuclear Commission takes three years just for a screening because they deal with screening as a full EIA. That's why it can sometimes take us three months or one year, and it takes them three years. So there are process and decision-making issues

Mr. Lawrence Toet: In your presentation you talked about companies not even doing projects because of the federal assessment. Are there many examples of that, or is it pretty limited?

You also touch a little on gaming the system. I wonder if you can expand on that a little.

Mr. Mark Wittrup: Just anecdotally in talking with companies and from my own experience, the discussion that goes on within these companies is whether or not it is worth embarking on a two- or three-year project for upgrades. Because of the time, amount, and the human resources required to move something through the CEAA process, companies often say that they decided not to do something because it just wasn't worth entering the approvals process. Time and money are important. So they just move on or leave things until they absolutely have to change something, and it becomes precipitous.

It's the same with gaming. The discussions go on. It's a screening, they'll say, but it might be better to have a comprehensive study, because at least the timelines are somewhat predictable. The problem with the screening is that there are no predictable timelines. So they try to move projects around. The gaming has to do with whether they can move it to an area where there are no triggers. As a result, they get suboptimal projects, or not the project they envisioned originally, and all because they don't want to enter the whole process.

● (1120)

Mr. Lawrence Toet: But you're—

The Chair: Mr. Toet, you have 10 seconds. Do you want to hold it there?

Mr. Lawrence Toet: I'll pass. You can't get much done in 10 seconds.

The Chair: Thank you.

Ms. Liu.

Ms. Laurin Liu (Rivière-des-Mille-Îles, NDP): Thanks for coming in today and for your thorough presentation. It was definitely informative.

We've been learning a lot in committee from different stakeholders. We've come to realize that EA should have some common ground. The EA should respond to the needs of industry as well as the concerns of the public.

We've been talking to a lot of industry about ways to improve EA so that it would help to promote innovation and business development. One thing we've been hearing a lot is that industry wants process certainty. I'm wondering if you could respond to whether or not inactive government presence can create process uncertainty in some cases.

Mr. Mark Wittrup: I'll speak to the Saskatchewan example. We've been able to work with the process in the province so that it gets a fulsome review. Yet we've brought the timelines down so that a full-sized potash mine, for instance, can get its environmental approvals within seven to ten months.

Now, that's a responsible proponent who has researched the issue—

Ms. Laurin Liu: Sorry, my question was more on the process of EA, whether or not an inactive government presence in EA can sometimes create process uncertainty. Have you ever seen that happen?

In Manitoba there was a case, the Wuskwatim projects, where some people were concerned that the government took a hands-off approach to EA. It meant that the process was uncertain. That was a concern expressed by those who were taking part in the EA. I was wondering if there were any cases in Saskatchewan where that was the case.

Mr. Mark Wittrup: No, I'm not familiar with any that occurred in Saskatchewan.

Ms. Laurin Liu: Thanks.

Something else I've been hearing about a lot is the idea of social license. Industry and proponents are looking for the social legitimacy that comes from EA, because EA allows the public to take part in the decision-making process through consultations. This is valuable in project development.

You know, I think an active government has a role in increasing social license in public hearings. Notably, government has the resources to increase the range of issues considered politically throughout public hearings. That takes resources that participants in public hearings simply don't have.

What are your thoughts on that?

Mr. Mark Wittrup: First of all, public consultations are a very important part of the whole environmental assessment. But I would argue that the environmental assessment process per se is only a small part of developing the social license. A big part of that responsibility rests with the proponents in their ongoing relationship with the stakeholders, which they build around any given project.

Government's role is to set the standards, make sure that the project can move forward without affecting the environment negatively, and establish the social discussion. The ongoing monitoring that goes on after that is also part of the process. Social license is actually a great big package of which EA provides only one small part. It is arguably a bit of a gatekeeper to the rest of the regulatory process.

Ms. Laurin Liu: So you wouldn't say that the process of public consultation embedded in EA is necessary for a social license?

Mr. Mark Wittrup: Oh, no, it's part of it. It's all part of the dynamic that goes on, and it's a very important one. In fact, I would argue that given the state of regulation right now, most projects in the country could be approved without consultation. The reason we have environmental assessment is to bring that dialogue to the table and find out what the other issues might be.

● (1125)

Ms. Laurin Liu: In the case of federal-provincial harmonized EA as well, each government manages its own public registry according to its own legislation, as you know, and CEAA includes a record of public contents related to EA. There's a public registry that includes a significant body of correspondence that takes place throughout an EA.

On the provincial level, do you see that kind of public registry existing?

Dr. Tareq Al-Zabet: I want to add first to the previous question.

One of the triggers within the Saskatchewan EA process is if the project triggers a public-wide concern, which is really an added value there, because some of the projects don't have that environmental impact but have wide public concern. So we get the community, the public, the aboriginal and Métis nations engaged up front, from the beginning. That could be one of the triggers.

On the other piece, everything in the EA process is transparent; it's on the website. From the start, from the point when we receive an application and we've decided that there will be an EA, everyone in the public is notified and we make sure that first nation communities and so on are also engaged. All of that process is transparent and on the website, accessible to everyone.

Ms. Laurin Liu: Is that available through the discretion of a regulator? How does that work?

Mr. Mark Wittrup: No, we don't censor.

Dr. Tareq Al-Zabet: It's an open website.

Ms. Laurin Liu: So correspondence throughout an EA would be made public in every instance, without fail?

Dr. Tareq Al-Zabet: Absolutely; yes, everything.

Mr. Mark Wittrup: The only exception would be if there were a very small technological item that needed to be kept secret for proprietary reasons, and that would be decided by the minister.

Ms. Laurin Liu: That would be discretionary.

Mr. Mark Wittrup: Absolutely, but only a very small component.

Ms. Laurin Liu: Interesting.

You also talk about taking measures to harmonize the EA process; however, the federal government, I believe, does have a particular role to play vis-à-vis the consultation with first nations. You mentioned that in your presentation, so I see that it's something that's very important to you as well. There's a concern with the EA process in Saskatchewan that first nations aren't able to participate, whether it be because of language barriers or a lack of resources, etc.

Do you think the federal government should play a role in consultation with first nations—for example, in providing resources?

The Chair: Unfortunately, time has expired, so I'll let the witness answer that in a future question.

Thank you.

Ms. Rempel, it's your time, for seven minutes.

Ms. Michelle Rempel (Calgary Centre-North, CPC): Thank you for coming out today.

You spoke quite a bit about potential advances that could be made by harmonizing or adding equivalency or substitution processes in the EA process. Earlier in our proceedings we heard testimony that this perhaps is not a desirable route, because the federal government is best positioned to look at issues that are within its jurisdiction and vice-versa.

Could you speak to the validity of that statement, from your experience? If there are issues involved there, how could we address them if we were looking at substitution or equivalency?

Dr. Tareq Al-Zabet: I think this is a good question. We had a joint agreement with the federal agency and there are some concerns on some issues. The first one is that although there is a joint agreement, in reality they are different processes. Every agency has its own process, completely separate from the others. We meet at certain points, but at the end of the day everyone has to meet their acts and regulations. So actually we're just coordinating two pieces together; there isn't one streamlined process. There is a lot of duplication there, and each party is still legally accountable for their acts.

The other piece is the duty to consult. It's repeated twice, because we have our duty to consult, while the federal agency has its own duty to consult. So the whole effort, the whole exercise, is done twice.

The third piece is that even bilateral agreements between us and CEAA were overridden when CEAA, for example, decided to go with an agreement with other federal agencies. We were notified, but there wasn't really any coordination on how we were going to deal with the other agency there. So that was another issue.

The final one is that a bilateral agreement does not address transfers in the case of joint panels. That comes at the higher-level issues, when it gets complicated, a joint panel. That does not exist in their joint-review agreement. It's a process that is just coordinated; there isn't really one review process.

● (1130)

Ms. Michelle Rempel: I would just like to follow up on some of your comments on the agreement we have, the Canada-Saskatchewan agreement on environmental cooperation. In your view, how could we strengthen that, or how could we make it more effective? Could you maybe elaborate on some of those points you just made?

Dr. Tareq Al-Zabet: You know what? We thought of that—in 2012 we'll have to renew that agreement—but we were looking at the other exercises that were done with other provinces. The problem is that it's always going to be superficial or cosmetic, in a way, because due to the nature of the act, they cannot change things at their end, and neither can we. So it needs to change—

Ms. Michelle Rempel: In what regard?

Dr. Tareq Al-Zabet: There are different issues. There is the consultation process itself, the duty to consult. Screening at the provincial level is only 30 days. It takes 90 days, in the federal act, to provide a decision. We have a smaller decision-making circle. They have 40 federal agencies, and they're all bound to the act.

It's really tough to change things unless you change the act itself to make it more open to change or give more authority to the minister to go into agreements that override some of the provisions in the act. Other than that, it's just going to be good relationships and neighbourhood things, but nothing more.

Ms. Michelle Rempel: Mr. Wittrup, do you want to expand on that at all?

Mr. Mark Wittrup: To go back to your original question, with respect to screening-level assessments, they tend to be of a relatively minor nature. To be quite honest, some of the triggers, especially within an existing industrial site, are laughable.

Generally, though, on the screening level, I could see all of that, as we've recommended, be devolved to the province. It's in line with our results-based regulatory initiative, which applies the resources where the risk is. The risks are those projects identified correctly in the comprehensive study list.

The major projects have the potential to significantly affect the environment. They should get the full process and full scrutiny by the public, as well. But screening-level triggers, for the most part, are more than readily handled, tend not to be transboundary, and tend not to enter into any of those broader federal jurisdictions where the federal presence is necessary and welcome.

Ms. Michelle Rempel: You also said that when you're looking at the outcomes of separate CEAA reviews or provincial reviews, the outcomes are often the same. Could you expand on that and perhaps talk about percentages where you see that? If differences emerge, are what they look like and how they result consistent?

Dr. Tareq Al-Zabet: I think the problem is, again, a process issue. The outcomes are the same. Saskatchewan has been working on the EA processes for the last 10 years. We have exactly the same processes. As I said earlier with respect to the timing of the start, by the time it's triggered by CEAA, it has already been decided by us. I'm just going to give you—

Ms. Michelle Rempel: Sorry, are you saying you built your process to mirror CEAA, or...?

Dr. Tareq Al-Zabet: No, no, but the major steps in a technical EA are almost the same. By the time they trigger their EIA, or they decide if it's a screen or whatever, they have different timing.

For example, we do two consultation processes or two public consultations. It takes them three years. They have hearings systems. Again, it has nothing to do with CEAA sometimes. It has to do with the responsible authorities, the other federal agencies attached to CEAA. Every one of them has a different scope. DFO could take a month or 90 days. CNSC could take three years. It's really an open-ended kind of process on their side. Even if CEAA wanted to make this efficient, there are issues in the other agencies that are hinged to that process.

That's why it gets complicated. It's not one agency you're dealing with, actually.

● (1135)

Ms. Michelle Rempel: You also spoke to the “opportunity cost” discussion some of your proponents have made. In talking to them, what are some of the roadblocks you're hearing about as far as their making a decision to not put forward an environmental assessment?

The Chair: Unfortunately, Ms. Rempel, your time has expired. Seven minutes goes so fast.

Ms. Duncan, you have seven minutes.

Ms. Kirsty Duncan (Etobicoke North, Lib.): Thank you, Mr. Chair, and thank you to the witnesses for coming. We appreciate your time and effort.

I'd like to pick up on what my colleague Ms. Liu was asking about. Your brief recommends early consideration of the duty to consult aboriginal peoples.

I'd like to begin by asking whether aboriginal consultation is part of the Saskatchewan EA process. Or is it undertaken outside that process?

Mr. Mark Wittrup: The answer is yes, it is part of the process. In fact, it is part of any decision that we make that might impact on traditional rights in the province, so the answer is yes. We're currently in discussions with the CEAA in order to try to align those as closely as possible to see if there are any synergies.

Like the federal government, we don't have infinite resources to apply to the duty-to-consult issues, so we do delegate the nuts and bolts of consultation to the proponents. As part of that, we get them to complete part of their relationship building, then we come in later and finalize the duty-to-consult process.

To briefly touch upon the issue of resources through the first nations and Métis relations branch, we're working to fund capability in the province to technically look at, with the first nations and Métis, environmental assessments.

Ms. Kirsty Duncan: Okay.

Do you think aboriginal people should be consulted early in the process, or that the government should consider early on how best to efficiently and effectively fulfill its duty?

Dr. Tareq Al-Zabet: Basically, aboriginal and Métis communities are consulted earlier in the process than even the public. From the moment we decide that this is a project that is going to be a full EA project, they are notified by registered mail first.

For your information, we have what we call a wide government policy framework on duty to consult that has tier one to tier five, depending on the size of the project, and we ensure that they are informed from the beginning. We have a duty to meet with them depending on the level of impacts. That's even apart from the public consultation process.

We are heavily engaged in this, and it's actually one of the biggest pieces that takes most of the time for us, but we make sure they are on board and aware of the issues and they have full participation in the process.

Ms. Kirsty Duncan: Thank you.

Should this consultation be integrated at the federal level?

Mr. Mark Wittrup: Well, the duty's on the crown, and if it's integrated, it would make it more efficient, and certainly.... Yes.

Ms. Kirsty Duncan: So it's yes.

Mr. Mark Wittrup: Yes.

Ms. Kirsty Duncan: Thank you.

Should CEAA be amended to include an assessment of socio-economic factors?

Mr. Mark Wittrup: Fundamentally, in the Saskatchewan system, the answer is that social and economic factors can be considered as part of the environmental assessment process. That's part of our decision-making process. In the guideline process, we would identify any particular areas that needed to be examined.

Ms. Kirsty Duncan: But should CEAA be amended to include an assessment of socio-economic factors?

Mr. Mark Wittrup: My fear, again, is that it would generate more process rather than less process.

I think my answer would be couched in the fact that you have to understand, in the grand scheme of things, where environmental assessment, at least in our opinion, resides. It's not at a feasibility level in a project in order to determine whether the project will have significant adverse effects on the environment or public health and safety. Once that answer is no, all mitigations included, then it goes over to the more detailed licensing and permitting side of things, where all of the detailed information is. What I'm worried about is getting too much of the flow, in an expansive project, up front.

● (1140)

Ms. Kirsty Duncan: I'm trying to get a yes or no answer here. Should CEAA be amended to include an assessment of socio-economic factors?

Mr. Mark Wittrup: That answer, I would say, would be yes, because that would impact differently on project outcomes; and rather than having a strictly environmental view of it, yes.

Ms. Kirsty Duncan: Okay. So you think it should be included.

Would this require provincial EA processes to include a socio-economic analysis before they could be deemed equivalent?

Mr. Mark Wittrup: We already do.

Ms. Kirsty Duncan: The question I have to ask more broadly is would it also require provincial EA processes—not just in Saskatchewan—to include socio-economic analysis?

Mr. Mark Wittrup: What I'm trying to avoid is saying yes to a full socio-economic impact statement. What I would say yes to is the inclusion of socio-economic factors in the discussion.

That's where I would like to clarify that.

Ms. Kirsty Duncan: Okay. I appreciate that.

Would greater use of strategic environmental assessment enable a more efficient assessment of many projects?

Mr. Mark Wittrup: The answer in my books is no, because the strategic environmental assessment is really government's job to do. It shouldn't be placed on proponents.

Really, a strategic environmental assessment is the land use planning discussion within government, and that should be done in a more systematic way, and the results of that should inform whether a proponent can actually go and work in an area rather than being sort of an after-the-fact gatekeeper.

Ms. Kirsty Duncan: Should a strategic environmental assessment be done at the federal level?

Mr. Mark Wittrup: It depends on the jurisdiction. Every jurisdiction has different areas to look at, so there would be a role for strategic environmental assessment at the federal level, provided it's done by government and not by the proponent, and the same at the provincial level.

Ms. Kirsty Duncan: Thank you.

The Chair: Unfortunately, your time has expired. Thank you.

We're going to begin now what would normally be a five-minute round. I'm going to go to four minutes, so we have enough time to change our witnesses at the end and start at 12 o'clock with new witnesses.

[*Translation*]

Ms. St-Denis, you have four minutes.

Ms. Lise St-Denis (Saint-Maurice—Champlain, NDP): In your view, the federal environmental assessment regime is not consistent given the many stakeholders in the many departments involved.

Would creating a single environmental agency endowed with administrative jurisdiction and a specialized tribunal provide the consistency needed to balance the diverging needs of the various federal departments and agencies? Would it limit the number of players involved in the environmental assessment process? In fact, one of our next witnesses, Meinhard Doelle, will be addressing that issue.

[*English*]

Mr. Mark Wittrup: In the province of Saskatchewan we've really done that. We have....

I'm sorry, my French would not be passable, I'm afraid.

In the province of Saskatchewan, we have a single point to look at environmental assessments, and we can make recommendations to go to the tribunal level. We think that having a single point source to do environmental assessments does bring a lot of consistency.

The issue, I think, is why screening-level assessments generate the same level of process for many projects as a comprehensive study. I think at the screening level especially, you could have a single clearing house, and I believe CEAA is already positioned to do that, where they would be able to say whether a project had any touch points in the rest of government, rather than having it go out and be reviewed all the way around.

That's where most of the process delays come, in this dissemination to many agencies. Usually it's only one or two or three that are actually involved; that tends to be the case.

I wouldn't see setting up an additional government agency or a tribunal as being necessary given what exists already.

● (1145)

Dr. Tareq Al-Zabet: Could I add something there, if the time permits?

The problem is besides that diversity of the federal agencies that are connected to CEAA as a coordinating body there, the concept of having to have a permit to go through a screening process is by itself destabilizing the whole EIA process.

Normally, if you build a house you go and get a permit. But if you want to build a house under the existing system, you have to go through a screening that would be triggered by any of the 40 federal agencies. So besides the diversity of the federal agencies, the whole concept of going through a screening process, which is a different system for EIA, that hinge to a permit is really by itself a disabling piece so that whatever you do, even if you add another agency, it's not going to go anywhere.

So it's really the act itself that needs to be modified to get this piece out of the system there.

[*Translation*]

Ms. Lise St-Denis: You talked about the maturation of provincial regulatory structures that deal with environmental assessment, and that is probably based on your own experience in Saskatchewan. In terms of the federal government acknowledging the provincial EA processes, should it try to harmonize the various provincial regulations in place across the country?

[*English*]

The Chair: You have five seconds.

Ms. Lise St-Denis: Okay: yes or no?

Mr. Mark Wittrup: No.

Voices: Oh, oh!

The Chair: Thank you.

Next we have Mrs. Ambler.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you.

My questions will refer to the current all-in approach versus a possible list approach. Would you agree that federal resources should be focused on larger projects that pose a higher risk to the environment than smaller projects do?

Mr. Mark Wittrup: The answer is yes. It's consistent with our results-based regulatory framework, in which you apply the resources where they're required. When we did the analysis on results-based regulation generally, we found that staggering resources were going to very minor permitting activities. It chewed up a lot of time.

It takes resources away from the things that need to be looked at.

Mrs. Stella Ambler: Basically, it would assure a more effective distribution of the resources, concentrating on places where the environmental outcomes are the real question.

Mr. Mark Wittrup: Correct.

Mrs. Stella Ambler: It wouldn't focus simply on the process.

Mr. Mark Wittrup: Correct.

Dr. Tareq Al-Zabet: Just to give you some statistics from CEAA that they mentioned in their presentation, roughly 95% of their screenings show that they are insignificant or minimal. So 95% of whatever you do there is really a permit issue.

Mrs. Stella Ambler: Right. I understand.

Some of the witnesses we've heard from in this study have suggested that there should be a new trigger for effects on federal jurisdiction combined with a project list. Would you recommend that, and can you suggest what a new trigger would be?

Mr. Mark Wittrup: As far as I know, we're the only province that's avoided generating a list of project triggers. We feel that our screening process, which employs six major points that would put a project into a full environmental assessment, allows for a very thorough and effective screening. We don't think much gets through that would require....

Mrs. Stella Ambler: Is one of your six criteria related to areas of provincial environmental significance?

Mr. Mark Wittrup: It includes federal as well.

Mrs. Stella Ambler: It includes federal.

Mr. Mark Wittrup: So SARA is an example.

Mrs. Stella Ambler: I see. Okay.

How could we ensure that a list approach would ensure environmental integrity? I think you can speak to this based on the fact that you have your list of criteria triggers, and still you feel that your process retains that environmental integrity. Can you suggest ways that we could do the same thing with a list-based approach?

Mr. Mark Wittrup: The discussion of what is risk-based gets into a difficult area. Everybody in this room will look at risk in a different manner. So the discussion of risk, to me, would be the right way to do a list. But how you divvy that up, I don't know. We find that having a set of criteria makes it easier. Maybe that's the answer: have a set of criteria to help develop the list, and then they talk to the risk factors that you're looking to protect, the outcomes you're looking to achieve.

● (1150)

Mrs. Stella Ambler: Thank you.

The Chair: Time has expired. Thank you.

Ms. Liu, four minutes.

Ms. Laurin Liu: I'd like to go back to my first questions. We know that a common concern in the EA processes in Saskatchewan is consultation with first nations. My colleague brought that up as well.

Do you think the federal government has a role in terms of funding—funding participation in terms of resources around consultation?

Mr. Mark Wittrup: I think anything that would build the capacity of first nations and Métis to be able to effectively review environmental assessments is a good thing. We see some of the first nations in Saskatchewan developing that expertise themselves, but we continually get the comment that there are not enough resources to review it. So through our first nations and Métis relations ministry, there is funding available for the tribal councils to hire people.

In fact, recently we extended one of our environmental assessments by an additional month because the Lac La Ronge Indian Band was able to bring somebody on staff. While the timing wasn't right for the original assessment, we've given them extra time to complete the assessment.

Ms. Laurin Liu: Great.

You also mentioned that shared decision-making is important for social license, among other things. At what parts of EA do you think consultation should take place? Should it take place at the scoping phase as well?

Mr. Mark Wittrup: We do have the ability to have public comment during the scoping phase. It is important.

Dr. Tareq Al-Zabet: It's by the act itself; it forces us to do the consultation. There are clear provisions we have to go through. We have to meet that provision, so it's a must in the EA process.

Ms. Laurin Liu: What should be the specific purpose of public consultation? Should it be simply a top-down information-sharing process, or should it be a process based on shared decision-making, precisely?

Dr. Tareq Al-Zabet: It's a full participation process. It's a 30-day review—

Ms. Laurin Liu: What should be the stated purpose of it?

Dr. Tareq Al-Zabet: —to see the issues, the concerns of the public.

As I said, one of the six triggers is if it raises—

Ms. Laurin Liu: So would it be just consultation and not shared decision-making, or would it be information-gathering?

Dr. Tareq Al-Zabet: It's information-gathering of concerns, because if the concerns are public-wide, they would be considered as a trigger to go through a full EIA.

Ms. Laurin Liu: Thanks.

The Chair: Have you finished? Okay.

Then the last four minutes will be for Mr. Lunney.

Mr. James Lunney (Nanaimo—Alberni, CPC): Thank you very much.

I want to draw the discussion around to amendments that took place in July 2010 with the Jobs and Economic Growth Act, that made some changes regarding a partially consolidated authority for the EA, making CEAA responsible for most comprehensive studies.

Have those amendments made it easier for project proponents in Saskatchewan to navigate the environmental assessments?

Dr. Tareq Al-Zabet: Frankly, no. I don't know if you want to know the reasons, but it is no.

CEAA still needs the 90 days to decide. The decision-making, even at the CEAA side, has two decision levels, one at CEAA and one by the responsible authority itself. By the new complexity that came when CEAA delegated more to CNSC and NEB, this became just...superficial, really, than having created something more efficient.

So the answer is no.

● (1155)

Mr. Mark Wittrup: To build on one of our recommendations, we're not sure that our agreement with CEAA holds when dealing with the CNSC or the NEB.

Mr. James Lunney: Regulatory authorities often complicate things with their own delays and separate agreements, as it were. Okay.

Currently it's a two-step process after a comprehensive study at the federal level: the federal minister makes an EA decision, then the responsible authority or authorities make their decisions. Further consolidation could occur by providing CEAA with more authority to deal with what are now larger screenings and providing the federal minister with more authority regarding major projects. In effect it would remove the two-step decision-making process after a comprehensive study.

Would this further consolidation make environmental assessments more predictable and straightforward, in your opinion?

Mr. Mark Wittrup: Personally, I'm all in favour of anything that removes unnecessary process steps. While it's nice to have a lot of sign-offs, they don't actually add anything to the environmental protection, which is the outcome that's being looked after.

Mr. James Lunney: Okay.

I'd like to slip over to your remarks here. In the conclusion of your statement—I'll just quote part of it—you said:

> ...we believe that in this time of finite resources, both human and financial, and given the state of environmental knowledge, there is a unique opportunity to take some of the regulatory burden off the regulated community, and promote responsible business development and innovation without having to compromise environmental protection.

I appreciate the succinctness of that particular quote. My question comes out of the bullet just prior to that, your fourth bullet in recommendations, where you comment on “proactive and efficient measures that enhance the predictability and consistency of the federal EA process and provide incentives for projects that will improve environmental performance”. My question is about the second part of that. You say “and provide incentives for projects that will improve environmental performance”. Can you give us an example of what you're referring to?

Mr. Mark Wittrup: As an example, a mining operation in Saskatchewan was looking to replace an acid-generating plant with one that produced one-tenth of the emissions, a state-of-the-art plant. It got dragged into a CEA trigger because on an already disturbed site, it was going to disturb more than 100 square metres. It ended up in a significant environmental assessment process through its responsible authority, and the province ruled that it could simply go ahead under the normal licensing and permitting conditions.

There was a year's delay. They had a deteriorating plant. It delayed any environmental improvements in operation simply to go through a process, even though the regulator basically said that the devil—CEAA—made them do it. A lot of resources were involved in that and really delayed improvements to the environment.

The Chair: Time has expired. Thank you so much.

We are going to suspend for about four or five minutes and then begin our second half.

I want to thank the witnesses from the Saskatchewan government. You're welcome to stay on and listen to the second half.

Thank you.

● (Pause)

●

● (1200)

The Chair: We'll call the meeting back to order.

In the second half, we have two witnesses. From the Canadian Association of Oilwell Drilling Contractors we have Ms. Nancy Malone. As an individual, we have Dr. Doelle.

We will start with you, Ms. Malone. You have up to 10 minutes to present. Please proceed.

Ms. Nancy Malone (Vice-President, Operations, Canadian Association of Oilwell Drilling Contractors): Thank you.

Good afternoon, Mr. Chairman, and members of the committee.

My name is Nancy Malone, and I am the vice-president of operations for the Canadian Association of Oilwell Drilling Contractors, or the CAODC, as we like to call ourselves.

We want to thank the committee for the invitation to provide CAODC's perspective on the Canadian Environmental Assessment Act's statutory review.

But first, I would like to describe the makeup of our membership so you understand who I represent. CAODC represents virtually all of the drilling and service rig contractors in Canada. Our 42 land-based drilling contractors, two offshore drilling contractors, and 85 land-based service rig contractors own and operate 811 land-based drilling rigs, three offshore drilling rigs, and nearly 1,100 land-based service rigs.

Our members are located mostly in western Canada, but we are starting to work in central Canada and with some land-based activities in Atlantic Canada. As well, we work with the offshore drilling contractors in Newfoundland.

Drilling and service rig contractors are hired by oil and gas companies to provide the equipment and labour necessary to drill oil and gas wells. Oil and gas companies typically don't have the capacity to own the specialized equipment or to employ the skilled labour required to do this work.

At peak activity during our winter months, our members employ approximately 12,000 people through their crews. Due to the seasonality of our business, this number can fluctuate down to about 4,440 during the spring break-up months. In simpler terms, for every active rig, there are approximately 25 direct jobs and approximately 125 indirect jobs created.

Along with the seasonality of our business, the cyclicality sees our activity move through peaks and valleys based on the global commodity prices. For example, in 2009 during the global recession we drilled approximately 9,300 wells. By the end of this year, we should have that bumped back up to about 12,500 wells. But that's really not the peak of our business. Our peak was in 2006, when we drilled more than 23,000 wells, but this was due to strong natural gas prices at the time. Today we're operating more in an environment of strong oil prices and weak natural gas prices.

We're just one of the many service sectors that exist to support ongoing oil and gas exploration and development in Canada. The conventional oil and gas sector alone contributes $63 billion to the overall Canadian economy. We are proud of that contribution we make to Canada's overall financial well-being.

Unfortunately, as service providers in the services sector we don't have complete control over our own destiny. The health of our clients, the oil and gas-producing companies, dictates the level of our success each year. So we watch very carefully for the issues that may challenge our clients' ability to continue to invest in our country.

As a Canadian industry, we cannot control one of the biggest factors that contributes to our success or decline, and that's global commodity prices. Inside of our borders, however, we can work with local, provincial, and national stakeholders to ensure that our business can continue to operate efficiently through the ups and downs of the marketplace.

Included in that work is a goal to ensure that Canadian provincial and federal regulatory frameworks are consistent and efficient, and that they enable environmental and economic performance. A competitive regulatory regime benefits both the resource owner and the investor.

That's why I am here today to speak to you about CEAA and the opportunity this committee has to improve a necessary regulatory process, but also to strengthen Canada's position in the global market.

I'm speaking from the perspective of a group of companies that feel the immediate impact when their customers are delayed in pursuing their projects in any way.

Contrary to popular belief, the oil and gas industry is required to operate under a comprehensive regulatory framework. Our industry believes in the fundamental necessity of regulations. It establishes an equal playing field for all players. However, in recent years much of the regulatory structure has become unnecessarily complex with too much overlap between departments and provinces.

CAODC members encounter these complexities every day because of our multiple work sites in multiple jurisdictions. From safety to transportation, each jurisdiction has its own rules, which makes it challenging for our members to operate consistently across borders.

On a broader scale, our clients face similar hurdles with respect to planning for new projects, except in their case the timelines for receiving approvals are the biggest challenge. As a consequence, investment windows may pass because the regulatory process moves more slowly than market opportunities. These types of delays end up trickling down to our members and we lose work as a result.

In western Canada we've seen two initiatives that are working to eliminate some of these complexities by having government and industry stakeholders at the table. The Alberta regulatory enhancement project and the new west partnership agreement are two examples of where all stakeholders are moving towards the same goal, a strong but streamlined regulatory process.

● (1205)

Perhaps the most important output of this process has been the unprecedented inter- and intra-governmental coordination. Provincial and departmental counterparts are starting to communicate in ways we've never seen before, all to the benefit of the regulatory system. Not only are there cost savings, the system is moving toward tighter integration with fewer duplicate processes. Over the course of this statutory review, we would encourage you to examine and apply the types of practices that these two initiatives have undertaken.

The Government of Canada needs to signal to the rest of the world that it is serious about maintaining appropriate levels of regulation, but it is also responsive to changes in the larger business context. In our industry, Canada is known as one of the highest cost basins in the world to develop, partly because of our geology, and partly because of our exacting regulatory environment.

The latter piece is not a negative factor. Responsible operators and their shareholders are not scared of regulations, but they do take them into account when they're evaluating competing projects around the world. They have a solid understanding of both the provincial and federal regulations, as well as the politics that surround our industry in Canada.

The perfect example of this knowledge was demonstrated in 2007, when the Alberta government made disastrous changes to its royalty structure. Investment flew out of Alberta, some to be seen in Saskatchewan, but a lot to the United States and the rest of the world. Alberta, and by extension Canada, was branded as an unstable jurisdiction for business.

Many bridges have been rebuilt between the industry and the provincial government, as well as investors, since then. Investors, in particular, needed solid reassurances that our region's regulatory structure is responsive, but also reasonable in its scope. With this in mind, I would remind you that none of our members would disagree with the need for regulation. But they do become frustrated when federal regulations duplicate or unintentionally trump provincial regulations.

Provincial governments are likely the best source of expertise, information, and enforcement within our industry. As an example, I would use the ERCB, the Energy Resources and Conservation Board in Alberta. There is no need to layer repetitive regulations and assessments onto the industry.

In terms of regional sustainable development planning, our western provincial politicians are elected to make decisions on the policies and practices that will directly impact their constituents. They are knowledgeable around the diversity of economic, environmental, and social considerations that must be accounted for in creating public policy. This includes regional planning and development.

CAODC, along with the rest of the upstream industry, is supportive of sustainable development. However, we believe that good sustainable development practices must take into account the entire list of considerations that I mentioned.

We also believe that environmental assessments are not a tool to interfere with the legitimate role of provincial jurisdictions to make decisions around resource development or related policy decisions. An environmental assessment is a tool. It describes how a resource should be developed, and it identifies any major issues with respect to the environment. It's a tool to enable responsible development.

In summary, Canada has always been known for its abundant natural resources. Be it agriculture, forestry, mining, or petroleum products, we are a nation that has grown on its ability to harvest and sell its resources internationally. Currently we have a wonderful opportunity to become a global energy power. Part of this exercise will be to demonstrate to Canadian citizens, and to rest of the world, that our policies reflect a clear understanding of how to responsibly and sustainably develop our resources.

As contract service providers, CAODC and its members are not generally directly affected by the Canadian Environmental Assessment Act. However, our clients are, and therefore we take great interest in this issue. Our industry develops Canada's oil and gas resources in the most responsible manner possible with today's technology and practices, but we're always looking to improve, and we will.

When reviewing CEAA and its scope, the focus should be on continuing to deliver responsible environmental outcomes. But we also believe that the review process can become more streamlined and competitive in its regulatory view.

On behalf of CAODC and its members, I want to thank you again for this opportunity, and I look forward to any questions that you may have.

● (1210)

The Chair: Thank you, Ms. Malone.

Next is Professor Doelle for ten minutes.

Professor Meinhard Doelle (Schulich School of Law, Dalhousie University, As an Individual): Thank you very much.

I'd like to thank the committee for inviting me to appear on this important CEAA review.

Before I get into the substance, I have a few words about my perspective and experience with environmental assessments. I worked with the Canadian Environmental Assessment Agency during the development of the act and the regulations in 1992. I also worked with the Province of Nova Scotia on the development of its process. As a practising lawyer, I've advised proponents and intervenors on federal and provincial environmental assessments. I served on the regulatory advisory committee from 2002 until 2008. I also served as a panel member on the Lower Churchill joint review panel, from 2009 until 2011.

Throughout this period, I've taught, researched, and written about the Canadian environmental assessment process. I've looked at the act from a variety of perspectives, and I think those perspectives have informed my views on the act and how it might be improved.

In terms of general context, I would suggest that improvements to CEAA should be guided by three principles: efficiency, effectiveness, and fairness. My basic contention is that we should make every effort to pursue integrated improvements and to avoid changes to the process or the act that result in improvement in one area at the expense of the other two. I will try to highlight a few key issues in the time that I have, and then I'd be happy to take questions on those or others.

As a starting point, it seems to me that a fundamental issue this committee needs to consider in the development of the Canadian Environmental Assessment Act at this time is whether to give up on self-assessment. This has been an experiment that has been under way for 15 years, and I think the idea that we should encourage federal decision-makers to understand the broader environmental and social implications of the decisions we're being asked to make through a process such as CEAA was a laudable goal.

But I think it is fair to say that after 15 years this experience has had limited success. Either we need to find out why it hasn't worked and improve the self-assessment approach, or we should move away from it and consider the alternative, which is the idea of an independent agency that looks after the process and makes decisions. That fundamental choice has significant implications. I tried to outline some of those in my submission, but really that is a fundamental choice that guides much of the rest.

Short of a fundamental change, there are some modest improvements that I think have the potential to improve the efficiency, effectiveness and fairness of the federal process.

Number one, I think the act could start to look at the next step in terms of bringing strategic environmental assessments into the federal process. Strategic environmental assessments could be formally recognized in the act, the basic process could be set out, and we could take some initial steps to identify ways that strategic environmental assessments could be initiated. I don't think an initial step towards strategic environmental assessment can go all the way to identifying mandatory triggers, but there could be opportunities identified for starting strategic environmental assessments.

One of the reasons for suggesting this is that I think strategic environmental assessments offer the opportunity to deal with broader policy issues in a much more efficient, effective, and fair manner than is possible at the project level. Specific ideas about how to initiate strategic environmental assessments in this initial pilot stage would be something that I call an "off-ramp". If during a project assessment a broader policy issue is identified, you provide an opportunity for those participating in the project assessment to make a recommendation that the broader policy issue be addressed.

● (1215)

There are many examples of areas where a strategic environmental assessment would be worthwhile and would make follow-up project assessments much more effective, efficient, and fair. I'll just give you one example, and that is wind developments. But there are many others.

The third would be to proactively identify new industry sectors in need of a strategic environmental assessment. When I look at that from a Nova Scotia perspective, over the last decade there have been a number of new industries that have come to Nova Scotia, and each of them would have benefited from a strategic environmental assessment before individual project decisions were made. Examples include finfish aquaculture, LNG facilities, shale gas and fracking, and carbon capture and storage. Those are just examples of industries that have come along in Nova Scotia over the last decades that would have benefited from this.

By the way, we've done one strategic environmental assessment in Nova Scotia, and it was on tidal energy. I think it served the province very well. Unfortunately, the federal government did not actively participate in that process.

Some other changes that I would consider to be modest changes would be to continue the trend towards giving more responsibility to the Canadian Environmental Assessment Agency. That could go all the way towards establishing it as an independent decision-making body as opposed to a body that is just responsible for the process. So that's another area.

The third and final area in the category of modest adjustments that I want to quickly raise deals with monitoring and follow-up. I think we've gotten better at doing monitoring and follow-up, but we haven't really come to grips with how we ensure that the information that is gathered in the monitoring and follow-up process is actually effectively utilized, in two respects.

Number one, in terms of improving decision-making with respect to the project that was assessed and then went through the monitoring and follow-up program, where's the feedback to look at revising the conditions for approval or imposing obligations to respond to problems that are identified in the follow-up and monitoring process?

Secondly, and probably the bigger long-term gap, is that we haven't really figured out yet how to learn from the mistakes of past environmental assessments for future assessments. I'll give you the example of the Lower Churchill project . It was very difficult to get information about predictions and mitigation measures that were made for the many hydro projects that had been proposed before the Lower Churchill project. We really didn't have a good sense of to what extent the predictions that were made in our process and the mitigation measures that were being proposed had been proven successful and accurate as a result of previous environmental assessments.

In terms of more fundamental changes, I think the exercise of discretion is probably one of the critical ones. This, I would suggest, would need careful study. There are two components to this exercise of discretion issue. First of all, in a general way it is natural when you start a new process like a federal EA that you leave a fair amount of discretion, but over time, with experience, you have the ability to narrow the discretion. That's one thing. The other is that you have to reflect carefully on which entity, which decision-maker, is granted the discretion. Does the discretion rest appropriately with the responsible authorities? Should it rest with the Minister of the Environment? Should it rest with an independent agency?

● (1220)

Then, in terms of narrowing the discretion over time, as you gain experience, there are opportunities to now look at establishing criteria for some of the key decisions that are being made in the process, such as criteria for the process selection, criteria for the appropriate level of public engagement, criteria for scoping decisions, for significance, for justified in the circumstances.

I'll just mention—

The Chair: Professor Doelle, unfortunately your time has expired. We look forward to you answering some questions.

Prof. Meinhard Doelle: Okay. That would be great.

The Chair: To allow for committee business at the end, instead of a seven-minute round of questions it will be a six-minute round.

Mr. Sopuck, you have the first six minutes.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): Thank you very much.

Ms. Malone, could you comment on the opportunity costs of inefficient environmental assessment processes for your industry?

Ms. Nancy Malone: As I said, we are not directly responsible for the environmental assessments. However, in terms of the time and cost of putting them together, the less efficient the process is the more expensive it becomes.

I think in my remarks I referred to the window of opportunity with some of these international marketplaces. While Canada is an excellent place to invest, if they are looking at our processes and saying they're not certain of the outcome of an assessment or there's a lack of opportunity there, they would put that into the category of saying, "Well, that might not be an opportunity for us".

● (1225)

Mr. Robert Sopuck: The poster child for inefficient processes has been brought up at our hearings a number of times, and that's the 34-year process for the Mackenzie Valley pipeline. The tragedy of that particular one is that there are some 20-odd communities in that valley that will remain impoverished for the foreseeable future. So efficient environmental assessments are more than simply a bureaucratic nicety; they can be economic life or death for some communities and businesses.

Do you think that CEAA could be made more efficient and predictable without sacrificing environmental protection?

Ms. Nancy Malone: Absolutely. The scope of it needs to be very focused and kept tight in terms of harmonizing with what provinces have already done. Is CEAA the gap-filler or is it the overarching piece of business that needs to be taken care of? I don't think anyone believes that there would be a lesser regulatory framework. It simply needs to be more focused and efficient.

Mr. Robert Sopuck: Professor Doelle, you made a recommendation, if I heard it correctly, of giving more responsibility to CEAA and allowing it to become an independent decision-making body. Did I hear that correctly?

Prof. Meinhard Doelle: Yes, that's fair.

Mr. Robert Sopuck: I'm curious to know, then, where's the role for elected officials in this particular process? Don't you think the decision to allow development to go ahead should ultimately be in the hands of elected officials as opposed to unaccountable appointees who can't be talked to by the voters and electorate?

Prof. Meinhard Doelle: The decisions I'm talking about are not the final project decisions but process decisions—decisions about whether you go to a comprehensive study or panel review, decisions about what the scope of the assessment might be, decisions about the level of engagement.

I completely agree with you that the final project decisions should be made by an elected official.

Mr. Robert Sopuck: I'm very pleased to hear that. Too often in these hearings we've left out the role of elected officials. As someone who represents a specific constituency, we are more responsible to the citizens than just about anybody else, because they put us here.

Would you agree, Professor Doelle, that in many cases environmental reviews have devolved into processes that talk about whether a project should proceed as opposed to how it should proceed? There's a major difference between the two, you would agree.

Prof. Meinhard Doelle: Yes, I mean.... First of all, I think the ideal process considers both. I think we should always ask whether a project should proceed, but we should also always ask how the project can be made the best project possible. I think we should be more clear about the criteria that we apply to that.

Most of the processes that I've been involved in, I would say, have been more focused on how the project proceeds and less focused on whether the project should proceed.

Mr. Robert Sopuck: Ms. Malone, perhaps this is not a fair question given that your members are clients of developers, but would you agree that when a project developer plans a project, they should take into account in the planning process all of the statutes, regulations, and environmental quality objectives that a given jurisdiction may have?

Ms. Nancy Malone: Do they take those into consideration?

Mr. Robert Sopuck: Yes.

Ms. Nancy Malone: Absolutely.

Mr. Robert Sopuck: So that's built in?

Ms. Nancy Malone: Yes.

Mr. Robert Sopuck: So I'd ask you the question, then, Ms. Malone, in terms of.... And I have a strange notion; I think we should look at environmental outcomes. I know a lot of people think it's all about process, but to me it's all about environmental outcomes like water quality and so on.

Given a focus on environmental outcomes, does the CEAA process provide any value added in terms of environmental outcomes, given that environmental outcomes are planned when the project is being designed?

Ms. Nancy Malone: Yes, it does allow for having the appropriate people asking the right questions in terms of looking at “Here's the process now, but let's look ahead”, but not.... Again, our members not being directly involved in those sorts of conversations, our presumption is that's being taken care of by these operators; their approvals wouldn't go forward if that hadn't been considered.

● (1230)

Mr. Robert Sopuck: Right, okay.

The Chair: Your time has expired. Thank you.

Next, Ms. Leslie, for six minutes.

Ms. Megan Leslie (Halifax, NDP): Thank you, Mr. Chair, and thank you for the fact that we're going to end a little early to discuss committee business concerning my motion that the minister appear at this committee.

Professor Doelle, we've heard quite a bit of discussion here at committee about all-in versus lists, and we have our federal environment minister going off saying that, you know, legislation is being drafted about streamlining large projects, because small projects actually don't pose the risk; it's large projects that pose the risk, so we need to have this list system versus all-in, but then at the same time we need to streamline the big projects. It makes me wonder why we're even doing a seven-year review if they're already drafting legislation.

But this is my question to you: would you be able to comment on the idea of all-in versus lists, and do you agree with this notion that large projects are the only projects that should have EA?

Prof. Meinhard Doelle: Dealing with the list issue first, this has been a big issue every time there's been a discussion about the act. It was a big issue during the original development of the act and the last review. Essentially, it's about how you deal with new types of projects that come along. The “all-in unless excluded” approach is the safer approach. It's the approach that says the kinds of projects we're forgetting about, that may come along after we develop this list, should be in until they've come to the attention of regulators, and then they can look at whether they should be excluded. I think this process has worked very well.

If you now move to a list, then you have to ask yourself how you ensure that important projects that should be subject to an environmental assessment don't fall through the cracks, either because we didn't think about them or because they came along afterwards. In my presentation I gave you a list of five or six different types of projects that have come along in Nova Scotia in the last decade. If someone had developed a list 10 years ago, none of those would have been on it.

That's on the list; what was the other?

Ms. Megan Leslie: A lot of the testimony we have is about eliminating, eliminating. So what about this notion that big projects are the issue, so we should focus on big projects and fast-track them?

Prof. Meinhard Doelle: In my view, this is where the question about self-assessment really is at the heart of this, to some extent, because the idea behind the screenings, in particular, is that we should encourage federal decision-makers to think about the environmental implications of the decisions they're about to make.

I think the problem with screenings isn't what's in the legislation, but the way they've been implemented. So you end up with screenings for small projects. It's not wrong to do a screening for a small project, but then, especially when they're non-government proponents, often they have to spend hundreds of thousands of dollars getting consultants to prepare thousands of pages of screening reports or environmental impact statements. I think that's the problem.

When you look at the legal requirements for screening in the act, all they really say is to think about the environmental implications of the decision you're about to make. If we get back to the core of that and the kinds of issues that are listed in the act, I think you can design a screening process that does that for small projects without being burdensome, without causing delay.

I agree that we are wasting a lot of resources on some screenings that are being done for small projects, but the answer in many cases is not to eliminate them from the assessment; it's to have an appropriate assessment designed for those projects.

Ms. Megan Leslie: Thanks.

My next question is about the written testimony that you submitted. You talked about inefficiency that serves no effectiveness or fairness purpose, but you say that the problem is that, throughout Canada, there are different procedures, different terminology, etc. One solution we've heard is to eliminate federal EA in some way and in some situations, if there's adequate provincial, etc.

I'm wondering if you agree with that, or if the solution is really just an arm's-length agency that can handle EA in the way you suggested.

● (1235)

Prof. Meinhard Doelle: An arm's-length agency in itself doesn't solve the problem. You then still have multiple jurisdictions that have different processes that will apply to a project. You have to take it a step further, and that is, there needs to be an effort to harmonize the processes and to look for opportunities to coordinate better between the various jurisdictions.

I'll just give you the example of transportation of dangerous goods. That's an area where we've done that very effectively. The provinces still exercise their jurisdiction over transportation of dangerous goods within their province, but they have coordinated the effort with the federal government, who has jurisdiction over interprovincial transportation. There are consistent labelling and rules on this.

That's the kind of thing I think we need on EA, but that's a major undertaking. In terms of looking for improved efficiency without compromising effectiveness and fairness—and actually improving in all three areas—that is the holy grail, I think.

Ms. Megan Leslie: Thank you.

The Chair: Thank you. Time has expired.

Mr. Toet, you have six minutes.

Mr. Lawrence Toet: Thank you, Mr. Chair.

Ms. Malone, you gave some statistics at the beginning of your presentation in regard to the number of wells that had been drilled. The number in 2010 is about half of what it was in 2006. You mentioned the really low number in 2009.

Has this strictly been an economic issue, or is there an aspect of the environmental assessment timelines that has also had an impact on this?

Ms. Nancy Malone: In 2009 it certainly was global. The recession was the big impact. Actually, what we are seeing in terms of the cut in well numbers is the fact that we spend a lot more time on each well now. That's due to the long reach—the horizontals and the directional drilling we do.

In 2006, with all of the strong natural gas prices, natural gas was very available at very shallow depths. It was quite easy to go drill a well. Some of our rigs could move quickly, and do two wells a day. It was just a function of what was in demand at the time, as natural gas was the in-demand product. Now, with the weaker prices, oil is in demand.

In Canada, we've retrieved all of the so-called easy resources. We still have a great abundance of resources, but they require more work—things like these long-reach wells, the fracked wells, and that sort of thing. It just takes more time. We'll never see 23,000 wells again. Honestly, we have the equipment to do it, but we definitely don't have the people, the skilled labour to do it. At the moment, we are struggling to make sure we have appropriate skilled labour on the rigs this winter, so that we can fulfill our commitments.

Mr. Lawrence Toet: Okay.

You also mentioned that the length of timelines was actually having an adverse effect on the ability of your clients to finalize some projects. Essentially, I got the impression that some projects were not going forward because they could not get them done in a timely fashion, and that their end clients could not fulfill their obligations. Is that effectively what has happened within the drilling?

Ms. Nancy Malone: We are typically conventional drilling and servicing, so that would be anything outside of oil sands. However, our members do have the ability to work the in situ work around Fort McMurray, and Lloydminster, and that sort of thing. If they are experiencing any delays in that, then yes, there is a window there to lose out on opportunity. A lot of that work can only take place in the first quarter of each year, even just in January and February, because, in order to access those regions, we need it to be frozen. You have a time window, and then, obviously, a sort of a market window that passes quickly.

Mr. Lawrence Toet: Are those windows being missed at times because of assessment timelines or are there other reasons for it?

Ms. Nancy Malone: I'm afraid I don't know. That would be a question for the operators. We just know that there are plans, we hear about them, and then they never truly come to fruition. What made that happen could have been lack of financing or it could have been assessment timelines.

● (1240)

Mr. Lawrence Toet: Okay.

This was touched on a little bit by Ms. Leslie, the all-in approach or the list approach. I don't know whether you have any feedback from your clients with regard to whether they have a preference to see a list approach or an "all-in unless" approach. Have you had any contact with them on that basis?

Ms. Nancy Malone: I have not, no. That would be the first I've heard federally of that idea.

In Saskatchewan right now there's an extensive review of their environmental code going on, and that's certainly a thought that's being put forward, to provide a very structured set of processes that people can follow. But from their perspective, they're looking at being able to focus on the larger projects. They want to have a process in place for the smaller ones to follow, and I guess you could consider that a self-assessment or self-guiding process, but they're looking to focus on some of the larger projects in Saskatchewan.

In terms of oil and gas and more broadly, no, we've not had any conversations on that.

Mr. Lawrence Toet: I have a question for Professor Doelle.

Under CEAA currently, you were talking about some of the small capture projects and some of the concerns with those. Are you familiar with one of the projects, an expansion of a maple syrup operation that required a federal environmental assessment because it was funded by the Atlantic Canada Opportunities Agency? Are you aware of this particular project?

Prof. Meinhard Doelle: I'm not familiar with the particular project, no.

Mr. Lawrence Toet: If a maple syrup bush is being expanded, do you feel it should be subject to an environmental assessment under CEAA? In your opinion, is that the type of project that would fall into the "all-in unless" approach?

Prof. Meinhard Doelle: I'm sorry, what is being expanded?

Mr. Lawrence Toet: It's a maple syrup bush operation.

Prof. Meinhard Doelle: Right. I don't know enough about it. It doesn't strike me as a high priority, but I'd want to know a bit more about it.

If the general point is that we are spending more time and resources on smaller projects, then we should be relative to the amount of effort we're putting into larger projects. There is a case to be made for that, and I'm all for spending the resources we have wisely.

My main point was that we should not necessarily look at this as all or nothing. There are ways of doing effective screenings without putting a lot of time and money into them.

The Chair: Thank you.

The time has expired.

You have the last six minutes, Ms. Duncan.

Ms. Kirsty Duncan: Thank you, Mr. Chair.

I'd like to begin with Ms. Malone. You've mentioned, as others have, that there is duplication in the system. Has your group ever done a review of the various legislation at the different levels of government to see where the actual duplication is?

Ms. Nancy Malone: I guess from the perspective of our members we have done that through the four western provinces. There is considerable duplication, but it's also just a lack of harmonization.

A very simple example of that is that each western province requires each of our crew members to have a different first aid ticket, so our guys each have four first aid tickets. It's just little things like that, all the way up to weight restrictions on our equipment when we move across border, how the equipment is configured in terms of the number of axles and that sort of thing. For our immediate purposes, we encounter that every time we cross a provincial border.

Ms. Kirsty Duncan: That's helpful. No one has actually ever given us that detail.

Now, you're not required to do this, but would you be willing to table...with the committee so they could actually see where the duplication is occurring?

The Chair: Order: whenever a request like this is made, it's strictly voluntary.

Ms. Kirsty Duncan: Yes, that's what I was trying to say, Mr. Chair, that she's not required to do it.

You're not required to do it, but you're the first person who has actually given us examples of this. It's there if you want—or to provide more examples.

Ms. Nancy Malone: We could certainly look at putting something together.

Ms. Kirsty Duncan: That would be really helpful.

Ms. Nancy Malone: It probably wouldn't be directly relevant to environmental assessment, though.

Ms. Kirsty Duncan: But that's what we need—something directly relevant to environmental assessment.

● (1245)

Ms. Nancy Malone: No, we wouldn't have that, because we're contractors. The operating companies would be purchasing the leased land, doing assessments of what is there, what needs to be preserved, what needs to be watched and captured, that sort of thing. When we arrive with our equipment on site and have pre-job meetings, we are told—

Ms. Kirsty Duncan: So you are not talking about something directly related to environmental assessment. Okay. That's what we're interested in.

Ms. Nancy Malone: We see it in our day-to-day operations, but I'm sure the operators would know about the environmental assessment stuff.

Ms. Kirsty Duncan: Thank you, Ms. Malone.

Professor Doelle, you talked a lot about strategic environmental assessment. You talked about having it formally recognized. Would you like to see it have a statutory basis?

Prof. Meinhard Doelle: Yes, I would. I think if we're going to start learning about how strategic environmental assessments can help us at the project level, we have to bring it into the legislation. I say that in part because of my experience in Nova Scotia, where we did a strategic environmental assessment of tidal energy. It was an ad hoc process and that made it much more difficult to feed into project decisions afterwards. Part of the benefit of doing it was lost because it wasn't done under a legislative process.

Ms. Kirsty Duncan: Do you think it should be done at the federal level?

Prof. Meinhard Doelle: Ideally, you do it wherever you are trying to conserve policies, plans, and programs. In some cases, the ideal scenario would be a joint strategic environmental assessment involving multiple jurisdictions. In other cases, if there is exclusive federal jurisdiction over an issue, then it makes sense to do it "federal only". If there's exclusive provincial jurisdiction, it makes sense to do it at the provincial level only.

Ms. Kirsty Duncan: You talked about including how the process is initiated. If strategic environmental assessments were included in the legislation, do you have ideas about how the process should be initiated?

Prof. Meinhard Doelle: First, if there is a policy gap identified in a project assessment, I think there should be an opportunity to recommend in the final project report, the EA report, that a strategic environmental assessment be done. We should think about a mechanism to get from that recommendation to actually making decisions about whether to initiate this.

Second, whenever you get a new type of project, there should be an automatic consideration of whether there should be a strategic environmental assessment done. The first time we had an LNG facility proposed in Canada, someone should have thought about whether this should warrant a strategic environmental assessment. There's a tremendous amount of benefit to be gained for future project assessments in such cases.

There are other ideas, but those are two key ones.

Ms. Kirsty Duncan: Can you give us a few more of those ideas? I think it's important to have some of these in the final report. What is your wish list?

Prof. Meinhard Doelle: The wish list would also include looking at whether there are certain policies that are out of date and should be reviewed. There ought to be a process that recognizes major changes that would require a strategic environmental assessment.

You can do a strategic environmental assessment on a regional basis. If there is all of a sudden a lot of development in an area, that may warrant doing a strategic environmental assessment on a regional basis. If all of a sudden there is all kinds of economic activity in one area and you're concerned about competing uses, this could also trigger the need for a strategic environmental assessment.

My basic suggestion is that it should be discretionary in the first instance. You identify the opportunity and then you make someone responsible for considering whether a strategic environmental assessment is appropriate. If it is, then you go ahead with it.

The Chair: Unfortunately, time has expired. Thank you.

This ends today's study, a review of CEAA. My thanks to the witnesses for being with us.

Ms. Malone and Professor Doelle, we have much appreciated your participation.

We will now move to dealing with a motion. We had a notice of motion from Ms. Leslie.

Ms. Leslie, the floor is yours.

● (1250)

Ms. Megan Leslie: Thank you.

I would like to move the following motion, and I think everybody—

Ms. Michelle Rempel: On a point of order, don't we discuss committee scheduling in camera?

Mrs. Stella Ambler: I'd like to make a motion to go in camera, Mr. Chair.

The Chair: We've received a motion to go in camera to deal with the motion.

Ms. Megan Leslie: Mr. Chair, with all due respect, this isn't about scheduling. It is very common practice to have this kind of discussion in public. I accept the motion to go in camera—I'd asked for a vote on it—but I hope we can resolve it otherwise.

The Chair: We had a motion, and Ms. Leslie had the floor. We've had a point of order.

Your point of order is noted, but Ms. Leslie still has the floor. Until she has given up the floor, she has this opportunity to make her motion.

If we want to have a subsequent motion that we go in camera, I would entertain that, but at this point, Ms. Leslie has the floor.

Ms. Megan Leslie: Thank you.

I believe people have copies of my motion in front of them. Certainly it was sent via e-mail. I move as follows:

> That the Committee invite the Minister of the Environment to appear before the Committee, no later than on Tuesday, November 29, 2011, to discuss the Supplementary Estimates (B) 2011-12; that the Minister's opening statement not exceed ten (10) minutes; and that the Minister's appearance be televised.

That is the motion as it was circulated. I put forward this motion because it's standard to have the minister appear to be questioned about supplementary estimates.

I would also note that on December 10, all committees need to send the estimates, as voted on, back to the House. So we do have a time restriction here. Hopefully this will be something the minister can do, since we do deal with estimates on a regular basis. He knows that committee is on Tuesdays and Thursdays, so hopefully this will work out.

The Chair: Thank you, Ms. Leslie.

Ms. Ambler, you now have the floor.

Mrs. Stella Ambler: Can I put forward a motion to go in camera at this point?

The Chair: You can.

Mrs. Stella Ambler: Okay. Then I'd like to do that.

The Chair: So what you're doing is amending the motion, that this be dealt with in...?

It's a dilatory motion, which is non-debatable, and therefore we'll call the question.

Ms. Megan Leslie: Mr. Chair, could I ask that it be a recorded vote?

The Chair: That would be fine.

(Motion agreed to: yeas 6; nays 5)

The Chair: So we will move in camera.

[*Proceedings continue in camera*]

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