Reference Bulletin

Mackenzie Valley Resource
Management Act
Amendments:
What's Different?

April 30, 2014

Mackenzie Valley
Review Board

Introduction

On March 25, 2014, Bill C-15 received royal assent. Called the *Northwest Territories Devolution Act,* part 4 of this legislation includes amendments to the *Mackenzie Valley resource Management Act* (the MVRMA, or the Act), some of which affect the Mackenzie Valley Environmental Impact Review Board (the Review Board) and its processes. This Reference Bulletin (bulletin) is intended to provide those involved in Review Board processes with a plain-language overview of these changes. It describes the changes that are most directly relevant to participants in Review Board processes, and lists other changes that relate to the Review Board. This bulletin is not an exhaustive summary of the MVRMA amendments. If there is any conflict between this bulletin and the Act, the Act supersedes. Similarly, if there is any conflict between existing Rules of Procedure, Guidelines produced under section 120, or Reference Bulletins, the Act supersedes. All references below refer to amended sections of the Act as written in Bill C-15.

Over time, the Review Board will provide additional practical guidance on how these amendments will be implemented in the Board's processes. This will occur in the form of revised EIA Guidelines, Rules of Procedure and Reference Bulletins on other specific subjects.

Coming into Force

Different parts of the amendments will come into force at different times:

1. Timelines and the delegation of authority came into force on royal assent of Bill C-15, and March 25, 2014.
2. By **April 2015** the authority to make regulations regarding cost recovery and Crown consultation is expected to come into force.
3. By **April 2016** the sections dealing with development certificates and pause periods are expected to come into force.

Section 253 of Bill C-15 provides additional details.

Timelines

In the past, Review Board environmental assessments (EAs) and environmental impact reviews (EIRs) adhered to timelines that were specified in workplans tailored to each specific assessment. The

amended MVRMA now sets out time limits for the Review Board and for the Responsible Ministers that will apply to all processes.[1] These are applicable now, and are shown in Table 1 below:

Process	Review Board Time[2]	Ministerial[3] Time[2]	Total Time[2]
EA, no hearing	9 months[4]	3 months[5]	12 months
EA with hearing	16 months[6]	5 months[7]	21 months
EIR	18 months[8]	6 months[9]	24 months

Table 1: Amended timelines for EAs and EIRs

These time limits do not include the time the developer spends providing information, collecting information or conducting a study with respect to the proposed development.[10] The Ministerial time set out in Table 1 includes any consult-to-modify processes or further consideration under par. 130(1)(b) and 135(1)(a).[11] The amendments do not include any time limits for decisions by the Tlicho Government.

If requested by the Review Board and approved by the Minister of AANDC, a Review Board or review panel time limit may be extended by up to two months.[12] On the Minister's recommendation, the Governor in Council can further extend time limits for the Board, review panel or the Minister beyond those two months, and may make such an extension multiple times.[13] Similar timelines and extensions apply to joint panels.[14] The Minister is able to extend the time limit for ministerial decisions by two months, and then may request further any number of further extensions from the Governor in Council.[15]

The Board is accountable for meeting its timelines and will make every reasonable effort to do so. If the Review Board or its review panels do not meet the timelines, they retain their authority and their decisions remain valid.[16]

When the Review Board orders an EIR, it has three months to set the terms of reference of the review panel.[17] This period may be extended similarly to the extensions described above.

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[1] s. 128(2), subpar. 130(1.1)(4)
[2] Without extensions
[3] The same timing applies to the Designated Regulatory Authority, if applicable, under s.131
[4] s. 128(2)
[5] s. 130(4.01)
[6] s. 128(2.1)
[7] s. 130(4.08)
[8] s. 134(3)
[9] s. 136(1.1)
[10] ss. 128 (2.4); 130(4.06); 132(7); 134(1)(1.4); 136(1.5); 138(1)(1.2); 138(6); 141(5.3)
[11] s.136(1.4)
[12] ss. 130(4.03), 132(5), 134(4); 138(1)(1.1)
[13] ss. 130(4.04); 132(6); 134(5); 136(1.2); 138(1)(1.2)
[14] ss. 141; 143
[15] ss. 130(4.03), 130(4.04)
[16] s. 5.2(1)(f)
[17] s. 134(1.1)

Delegation of Authority

Under s. 3.17 of the *Northwest Territories Land and Resources Devolution Agreement*, and under subs. 4(1) of the amended MVRMA, the federal Minister has delegated certain powers, duties and functions to the Government of the Northwest Territories Minister of Lands, for developments with no part on federal lands. For these developments, the Minister of Lands will receive and distribute Report of EA and Report of EIA documents, and make final decisions for EAs and EIRs. The Minister of Lands is also able to provide extensions to timelines for EAs and review panels for these developments. This is in force now.

Pause period

Since 1998, the Review Board has had the authority to require an EA on a development on its own motion, even if it was not referred by a preliminary screening.[18] The amended Act explicitly establishes that a ten day period following preliminary screening decisions that do not require an EA.[19] This amendment is expected to come into force by April 2016. During this period, no authorizations can be issued. If the Review Board, on its own motion, decides to call up a proposed development to an EA, it will do so before the end of this ten day period. If the same development undergoes more than one preliminary screening, the pause period starts after the last day the Review Board receives a screening decision. This pause period means that developers that have not been referred to EA by a preliminary screening, or called up for an EA by the Board by the end of this pause period, can be certain that their development will not be called to an EA at a later time.

Development Certificates

The Review Board's mandate includes biophysical and socio-economic matters, and the Board is able to recommend measures to mitigate significant impacts, including socio-economic impacts. However, most regulatory instruments (permits, licences and authorizations) in the Mackenzie Valley deal directly with biophysical subjects only, such as land use and water quality. Before Bill C-15, the MVRMA did not include any regulatory instrument that captures measures to mitigate socio-economic impacts.

The amended MVRMA now includes new provisions, expected to come into force by April 2016, that will allow the Review Board to issue enforceable development certificates.[20] These will require compliance with approved measures, making all final measures enforceable, by prohibiting anyone from carrying out a development that has undergone an EA or EIR unless the developer complies with any development certificate that has been issued. The development certificates would be issued by the Review Board, and would include identical wording to the approved measures.[21,22]

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[18] s. 126(3)
[19] s. 125
[20] s. 131.3, s. 137.4
[21] s. 131.3(3); s.137.4(3)
[22] The Board has to issue a development certificate if the Minister accepts, refers back for further consideration, or modifies the EA decision of the Review Board or the EIR decision of an EIR review panel [s. 137.4(1)(a)]. The Board also has to issue a

Following Ministerial approval of an EA or EIR, the Review Board would have 30 days to issue the development certificate.[23] If necessary, the Minister could extend that period by 45 days.[24] The Board must provide copies of the development certificate to the Minister and to every affected First Nation, local government, regulatory authority and department.[25] A First Nation, local government, regulatory authority or department or agency of the federal or territorial government affected by a decision has to implement the conditions set out in the certificate to the extent of their authorities.[26]

The certificates will be valid for five years after they are issued. If work on the development has not started by then, the developer would be able to request a new EA, which would consider any previous EA or EIR.[27] With ministerial approval, the Review Board has the authority to amend the certificates without conducting a new EA. The amended Act describes when, how, and how long the Board can take to do this.[28]

Other amendments

There are several other amendments that relate to the Review Board:

- Regulations will be created to clarify roles and responsibilities for Aboriginal consultation
- The amendments will allow the federal minister to recover costs for EAs and EIRs [s. 142.01]. Regulations will provide details of how this will be administered.
- The Board has kept a public registry available in person and online. The amendments make this a formal requirement, and describe related details [s. 142.1].
- The Minister will be able to establish committees to conduct studies that examine the effects of existing or future physical activities in regions of the Mackenzie Valley. Results are intended to inform land use planning, regulatory processes and EA decisions. [s. 144]. The Review Board is required to consider the results of any such study [s. 144.8]
- The Minister is now able to provide binding policy direction to the Review Board or an EIR panel [s. 142.2(1)[. This policy direction will not be specific to any particular EA or EIR before the Board [s. 142.2(2)].
- Up to this point, a variety of federal ministers have had decision-making roles for EAs and EIRs. With the exception of the delegated authority described earlier, the MVRMA Part 5 decision making duties and powers of all federal ministers now will belong to the Minister of Aboriginal Affairs and Northern Development under the amended Act [s. 111.1].

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development certificate if a panel recommends rejection but the Minister, Tlicho Government of designated regulatory authority do not accept that rejection [s. 137.4(1)(b)].

[23] For EAs that conclude no significant impacts, and 10 days after the Minister confirms receipt of the Report of EA, the Board is required to issue a development certificate within 20 days[s.131.3(1)(a); 131.3(4)(a)]. The Board must also issue a development certificate within 30 days if the Minister adopts the Board's measures from an EA, with or without modifications, unless the Tlicho Government or Designated Regulatory Authority reject the recommendation [s.131.3(1); 131.3(4)(b)].

[24] s.131.3(5)

[25] s.131.3(6)

[26] ss. 130(5); 136(2); 137.5

[27] s.142.23

[28] S. 142.21

- The federal minister is now able to authorize a member of the Review Board or a review panel to continue to serve on a specific EA or EIR after their term expires if necessary to complete that EA or EIR, if the Chairperson requests it at least two months before the member's term expires [ss.112.1(1); 112.1(2)]. If the request is not rejected, after two months it is deemed accepted even if the Minister does not respond [s. 112(3)].
- The Review Board is required to consider, and may rely on, previous EAs or EIRs of the same development [s. 115(2)]
- After receiving a Report of EA from the Review Board, the Minister may decide to refer the proposal for a joint review under CEAA 2012 if it finds it in the national interest to do so [subs. 130(1)(c)].
- If the Board orders an EIR, the Minister must notify the Board within three or five months (depending on whether or not the EA included hearings) if the Minister is *not* referring the proposal for a joint review under CEAA 2012 [s. 130(4.07)]. If this happens for a development which the Review Board determines is proposed partly in Wekeezhii, or might have an impact on Wekeezhii, the Board will enter into an agreement with the Minister of the Environment to jointly establish a joint review panel under CEAA 2012 [s. 138.1(1)].
- Review panels are required to give copies of their reports to the Gwich'in or Sahtu First nation, respectively, if any part of the development is on their lands [s.134(7)].
- CEAA 2012 does not apply in the Mackenzie Valley in the same way that CEAA did not apply [s. 116].
- No development can be carried out unless the developer receives notice that it is exempt, manifestly insignificant (for government projects), is not referred by a preliminary screening, or (for a project that underwent an EA) is carried out in accordance with conditions included in the development certificate [s. 117.1(1)]. Certain exceptions are identified [s. 117.1(2)].
- Designated regulatory authorities and the Tlicho Government are required to provide the Review Board with their decisions after receiving the Review Board's Report of EA [ss. 131(1.7); 131.1(4)].
- If the Minister decides, after considering a Report of EA, to send the proposal to a joint review by the Review Board and CEAA (under CEAA 2012), the Review Board has three months to reach agreement establishing its panel and process, under subsection 41(2) of CEAA 2012 [s. 138(3)]. Extensions may be made in a manner similar to that described above for EAs and EIRs [ss. 138(4); 138(5)]. For transboundary projects, even if the Review Board does not reach agreement within the time limits, it is still required to conduct an EIR of the development [s. 140(2.5)].