A Submission to the Senate Standing Committee on Energy, the Environment & Natural Resources, re: Bill C-69

An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts

Prepared by the Saskatchewan Environmental Society

April 30, 2019

CONTACT INFORMATION
Taylor-Anne Yee, SES Board Member
306.261.2806
tayloranneyee@gmail.com
Executive Summary

The Saskatchewan Environmental Society (SES) urges the Senate to pass Bill C-69 with the following aspects that are currently part of the proposed bill:

1. The expanded list of factors to consider when considering or conducting an environmental assessment, including the more broadly defined concept of sustainability and Canada’s environmental obligations.
2. The removal of “interests persons”/leave requirement for the public, in addition to other efforts to increase public participation in the assessment process.
3. The requirement that the bases for decisions be made public.
4. The broader protections for waterways by requiring applications for works for bodies of water not listed in a schedule.

In addition, we make the following recommendations as amendments to the bill:

1. That the definition of “navigable waters” be broader.
2. That the bill outline factors that the Minister must consider before deeming works to be Minor.
3. That the bill include the projects List, rather than in the regulations.

Below, we explain each point in further detail.

Introduction

Please note that we are making these submissions in conjunction with our oral presentation, which we made at alternate hearings in Winnipeg on April 12, 2019. The reason we participated in alternate hearings in Winnipeg was because our request to speak at the hearings in Saskatoon was denied. While we were greatly disappointed in not being able to represent the public at the Saskatoon hearings, we thank the Senate for considering our written submissions.

The Canadian Environmental Assessment Act 2012 marked a major step backward in the environmental assessment regime in Canada. CEAA 2012 significantly weakened federal oversight over industrial projects. This was particularly true in Saskatchewan, where 638 environmental assessments were cancelled as a result. CEAA’s enactment also led to a loss of public trust in government and the environmental assessment process. Those of us who have recognized the importance of carefully assessing all projects in relation to their environmental impact have ever since advocated heavily for a stronger piece of legislation. Bill C-69 is not perfect but it is still our chance to make major improvements from CEAA 2012.

Discussion

1) Expanded set of factors

In addition, the inclusion of “sustainability” and its broad definition is a welcome change from CEAA 2012, which focused on “sustainable development”. In the bill, the definition of sustainability includes social, economic, and health-related aspects of not only current
generations, but future ones as well. As environmental harm can impact races, classes, and geographical locations differently (and often in disproportionate manners), making sure to consider the broader spectrum of effects is crucial for building a better and stronger world.

Similarly, including the requirement to consider how a project might impact Canada’s efforts to meet environmental obligations is a step in the right direction. Canada cannot make environmental commitments in a silo. Policies, legislation, and other government actions should fall in line with these obligations to help ensure that we indeed reach those goals. This is the kind of big-picture, interconnected operations that we applaud.

2) Public Participation

As CEAA 2012 deeply undermined the public’s trust in the government and environmental assessments, we are especially appreciative of Bill C-69’s emphasis on public participation.

There are many ways the government can help ensure the public is able to participate in the assessment process, such as removing the financial barriers to becoming involved. Another positive solution, which Bill C-69 contemplates, is by including more voices in the process. We commend the government for excluding “interested persons” as a definition, which had previously appeared in CEAA 2012. This was a narrow threshold definition that prevented many from participating in the assessment process. It only served as a politicized barrier to individuals and organizations from getting involved. As environmental harm is rarely confined to local space and potentially has widespread effects, allowing for a greater spectrum of participation is important in making sure voices are being heard. Coupled with the expanded factors to be considered -- that being economic, social, and health-related effects -- there is the potential for meaningful contributions from a wide diversity of relevant entities.

Some might think removing the leave requirement opens the process up to too many participants, but effective public engagement is important for building unity, cooperation, and satisfaction. If people feel like they were involved and had a chance to actually influence the process in a meaningful way, the more likely the outcome - whatever it may be - will be accepted.

We are simply asking for a fair, open, and inclusive assessment. For these reasons, we encourage the Senate to continue keeping “interested persons” out of Bill C-69 and remain focused on meaningful public participation.

3) Greater Transparency

A third positive improvement from CEAA 2012 is that Bill C-69 promotes greater transparency, as expressed in the opening portions of the bill -- such as requiring that the basis for decisions be made public, including the scientific information and other data that was taken into account in the decision-making process. Making sure that the public has the ability to look into and monitor the assessment process helps Canadians feel included and invested, and confident that they can keep their government accountable.
4) Navigable Waters

We greatly commend the expansion of protection for our waterways. As CEAA 2012 prescribed to a stringent schedule-based assessment process, many waters were left without protection, particularly in Saskatchewan where only three bodies of water were listed on the schedule: the North Saskatchewan river, the South Saskatchewan river, and Lake Athabasca.

While Bill C-69 keeps the schedule as part of the process, there are still approval requirements for navigable waters that do not appear on the schedule. This effectively expands protection to a much broader range of bodies of water. This is a crucial change from CEAA 2012 that we encourage the Senators keep within the bill.

We also ask the Senators to consider the following improvements for the Act.

The expanded protection we mentioned above is undermined by the significant narrowing of the definition of “navigable waters”. It has gone from a short, general description in CEAA 2012 (“a canal and any other body of water created or altered as a result of the construction of any work”) to those bodies of water that have a “reasonable likelihood that it will be used by vessels”. Several other conditions must also be met for a body of water to fall under the definition. This greatly overlooks the need to protect waters that may be used for scientific or educational purposes, for example. The value of our waters do not depend solely on its ability to allow vessels to travel through them.

It is also a concern that the Minister can deem any work to be Minor, which therefore allows that project to bypass any assessments. This is especially worrisome if there are no guidelines for what a Minister should consider before deeming any work to be Minor. If the Minister has this power, the Act should include factors to consider, such as the cumulative impacts of works.

As such, navigable waters should be defined broadly and require that the Minister consider the environmental impacts of works. This is not only because our waters need protection due to their inherent value. Requiring that environmental impacts be considered in assessments recognizes that environmental harm does negatively affect our economy as well. Regardless, we welcome the expanded protections for waterways.

5) Projects List

A major issue with CEAA 2012 was the “designated projects” list. Likewise, with Bill C-69, the “designated projects” list is uncertain until the regulations are created. We cannot know the full implications of Bill C-69 before seeing the list. This is feedback all parties share, including industry. Therefore, the Projects List should be fully incorporated into the text of the bill, rather than the regulations.

In light of that, we express some concerns over what could or could not be on the list. Specifically, we want to draw the Senators’ attention to particular industrial projects, such as in-situ oil sands plants or nuclear projects, which could be excluded from the Projects List as a result of lobbying. Activities such as the decommissioning of nuclear reactors should always
be subject to environmental assessments under the act, as well as the construction of nuclear reactors, including Small Modular Nuclear Reactors (300 megawatts or less).

We urge the Senate to ensure that this does not happen. In-situ oil sands facilities have a very large greenhouse gas footprint and negatively impact groundwater and vulnerable species. Excluding them from review would also greatly undermine Canada’s ability to achieve its Paris Agreement targets. As a major theme within Bill C-69 is to consider a project’s effect on Canada’s ability to meet its goals, our recommendation better aligns Bill C-69 to its own stated purpose.

**Conclusion**

Once again we thank the Senate for taking the time to consider our submissions.

We can no longer afford short-term economic gain that have long-term environmental consequences. It is not right for us to benefit from unassessed or fast-tracked projects while leaving the next generation to deal with the fallout. We just hope that the necessary precautions are taken in environmental assessments -- that great effort is put into the beginning stages before the earth is even touched. Under CEAA 2012, we have already left marks on the environment that cannot be undone.

CEAA 2012 was a step backwards, but it’s not too late to regain the lost distance and start moving ahead again. Bill C-69 is not a leap forward, but it is a step that brings us closer to the kind of environmental assessment legislation needed.

The Senate has the chance to enact a piece of legislation that takes into consideration cumulative effects; the social, health, and gender-based impacts; that is centred on nation-nation engagements with Indigenous groups; that values public input, participation, and transparency; and that protects our waters.

All we ask is for some leadership and foresight to take this step forward and approve Bill C-69 with our amendments so that our earth and current and future generations are protected.