



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

Brief Submitted to the Standing Senate Committee on
Energy, the Environment and Natural Resources

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COMMENTS OF THE QUÉBEC MINING ASSOCIATION ON BILL C-69

INTRODUCTION

The Québec Mining Association (QMA) conducted a detailed analysis of 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. This brief provides the QMA's comments on Part 1 of the bill, which contains the Impact Assessment Act.

Founded in 1936, the QMA represents all metal- and mineral-producing mining companies and their facilities, metal processing companies, mining contractors and junior mining companies in Quebec. QMA membership is also open to suppliers, non-profit organizations, institutions, and mining industry partners. The QMA's mission is to promote, support and proactively develop a responsible, committed and innovative mining industry in Quebec.

The QMA considers it important for Quebec's mining companies to embrace the following values:

- be respectful,
- be transparent,
- be responsible, and
- support teamwork.

The mining industry takes sustainable development very seriously and has acquired tools to ensure that its operations are always carried on with respect for people and the environment and in support of Quebec's socio-economic development. One of the measures for doing this is the Towards Sustainable Mining (TSM) initiative, which is designed to gradually improve mining companies' environmental and social practices. The program aims to boost performance while ensuring that key mining risks are managed responsibly at mining companies' facilities. The QMA and its members signed on to the TSM initiative in 2014 and have an obligation to implement it.

In addition, the QMA decided in 2015 to develop a Sustainable Development Charter. Eager to adopt and deploy responsible practices that take economic, social, environmental and governance issues into account, the QMA's members identified six commitments they should pursue:

- 1. Adopt and employ ethical business practices**, by implementing rigorous governance processes and adopting policies and codes of conduct for the mining industry and its employees.

2. Be accountable for their activities and the potential impacts, by proactively managing risks and potential incidents associated with mining industry operations, and by planning and implementing diligent responses to mitigate their effects or remedy the situation.

3. Maintain open, ongoing relations with stakeholders, by being transparent and proactive, providing clear, relevant, adequate information about the mining industry's activities, and developing tools for inclusive dialogue.

4. Contribute actively to protecting the environment and biodiversity, by complying with existing regulations and supporting the introduction of practices to shrink the environmental footprint that go beyond legal requirements.

5. Coexist harmoniously with communities, by respecting local customs and cultures, adopting the necessary measures to maximize local benefits and minimizing the pollution and constraints associated with mining industry operations and facilities.

6. Ensure employee well-being and safety, by providing a safe working environment, competitive conditions of employment, and a respectful, equitable workplace that assists them in developing to their full potential.

GENERAL COMMENTS

First, the QMA would like to point out that it is difficult to identify the changes that have been made in the bill between readings. The reader has to refer to the committee report and the version from the previous reading, which is rather tedious. It would be useful to publish a document in tracking mode, showing the additions, deletions and changes, to make it easier to analyze the bill as it moves from reading to reading.

It is clear from reading the proposed Impact Assessment Act that several of the comments submitted by the QMA in May and August 2017 were not incorporated, which will hinder the mining industry's efforts to achieve its objectives, including adoption of a process that is

- simple,
- effective,
- predictable, and
- cooperative.

In its current form, the bill will slow down assessment processes, and the uncertainty it creates will discourage investors from choosing Quebec and Canada for mining projects. While some of the recommendations submitted by the QMA in the consultations – first in May 2017 on the *Final Report of the Expert Panel for the Review of Environmental*

Assessment Processes, and then in August 2017 on the *Discussion Paper on Environmental and Regulatory Review* – were accepted, the bill still contains many sources of uncertainty.

Mining companies operating in Quebec, and elsewhere in Canada, need predictability to pursue their development and attract investors. Clearly, to develop and maintain a strong mining industry, the government must take measures that will preserve or even enhance the industry's ability to attract investors, which is not the case with the bill in its current form.

While the QMA agrees with the federal government's initiative to reform the impact assessment process, it is troubled by the following elements in particular:

- the scope of the studies required for impact assessments,
- the lack of cooperation and coordination between certain jurisdictions,
- the excessive time limits, and
- the proposed transitional measures.

1. Elements of the impact assessment process – Existing and future cumulative effects

In reference to section 18(1.1), paragraph 22(1)(a)(ii) of the proposed Act indicates that the proponent may have to consider any cumulative effects that are likely to result from the project in combination with other past or future physical activities. It is important to understand that mines are established where economically viable deposits and mining rights are located, and that a project cannot be moved elsewhere.

It would be ludicrous to expect a project proponent to consider the effects that its project will have on future activities of other proponents, because in most cases, the proponent has no control over or knowledge of the commencement of future activities.

The QMA would also like to point out to the government that cumulative effects vary with the location and the nature of the activities being carried out. For example, a company that wants to operate upstream of another industrial activity on the same watershed will be in a better position than a company that locates downstream on the same watershed. The same applies to prevailing winds. Considering the cumulative effects is therefore not the best way to assess the environment's capacity to support a new mining operation, which cannot be moved elsewhere. In the QMA's view, cumulative effects should not be a factor in determining whether to approve a project, but rather in identifying additional mitigation measures to minimize a project's impacts.

The QMA further believes that the proponent should not have to cover the costs and assess the effects of other project proponents, and that that assessment can be made only by specialists who have all the necessary information, i.e., government experts.

Recommendation

The QMA recommends that cumulative effects not be a factor in determining whether to approve a project, but rather in identifying additional mitigation measures to minimize a project's impacts.

2. Cooperation and coordination with certain jurisdictions – Substitution

The QMA welcomes the federal government's decision to retain the substitution option for assessment processes (subsection 31(1)). The QMA would like to point out to the government that, to our knowledge, substitution has never been approved for any mining project in Quebec, even though the option exists in the current Act.

Most mining projects undergo both federal and provincial impact assessments. The impact assessment rules may vary between the two levels of government, as may the issues and decisions. Some QMA members have even received contradictory instructions from the two levels of government. With no conciliation process in place, the proponent sometimes has no choice but to play the role of mediator between the two levels of government, to the detriment of the project.

Consequently, the QMA recommends that substitution be used more often in order to shorten the already lengthy timelines for developing mining projects, simplify administrative processes, and prevent confusion due to the fact that federal and Quebec government requirements sometimes differ. The QMA would like the federal government to approve substitution for all new mining projects in Quebec to ensure that there is only one assessment per project.

The QMA is surprised to see that subsection 31(2) requires the Agency to post the substitution request and give the public 30 days to comment. In the QMA's opinion, this step is not necessary; the Minister has all the powers and information needed to decide whether to approve the substitution. This consultation on the substitution request will create further unnecessary delays. It also violates the principle of predictability. When determining whether to carry out a project, the proponent needs to know which approval process will apply. A piecemeal approach with consultations at every stage will only complicate matters and drive investors away to jurisdictions that have clear and predictable processes.

The QMA further believes that the Minister could approve substitution even if a project is referred to a review panel, since Quebec has a clear, comparable process – that of the Bureau d'audiences publiques sur l'environnement (BAPE) – for projects likely to have an impact on the local quality of life. The review requested by the Minister could be carried out by the BAPE.

Recommendations

Since the Minister has the necessary authority, the QMA recommends that subsections 31(1) and (2) be removed from the proposed Act and that no consultations be held.

The QMA recommends removing the exception under which substitution cannot be approved when the project's impact assessment has been referred to a review panel (paragraph 32(a)).

The QMA recommends that just one environmental assessment process be carried out for all mining projects in Quebec subject to the federal process, and that the federal government amend section 31 to automatically substitute the provincial assessment process for the federal process.

3. Time limits

The QMA considers the time limits in the assessment process excessive. First, under subsection 18(1), the government has 180 days after the project description is posted to send the proponent a notice of commencement of the impact assessment containing instructions for carrying out its study. Second, subsection 18(3) allows the Minister to extend this period by up to 90 days, and subsection 18(4) allows the Governor in Council to grant one or more extensions. In the QMA's view, allowing the Agency six months or even more to provide instructions for the environmental assessment while giving the proponent no more than three years (section 19) to complete the entire assessment makes no sense. How can a proponent conduct an economic and financial analysis of the project if it is impossible to predict when and under what circumstances the project can be carried out?

For example, if the project is not referred to a review panel, the Agency has 300 days after posting the notice to complete the impact assessment report and submit it to the Minister (subsection 28(2)). Under subsections 28(5) and (6), the Agency may be granted a 90-day extension, and under subsection 28(7), the Governor in Council may grant one or more extensions. The length of these extensions is not known at the outset and is unpredictable.

When the project is referred to a review panel, the panel has 600 days to submit the impact assessment report to the Minister (subsection 37(1)). Once again, under subsection 37(4), one or more extensions may be granted.

Lastly, although subsections 65(3) and (4) set time limits for the Minister and the Governor in Council, respectively, to issue a decision statement in response to the impact assessment report, extensions may again be granted under subsections 65(5) and (6).

Therefore, excluding the time that the project proponent needs to prepare the studies and information required by the Agency or the review panel (no more than three years),

the minimum time required by the Agency for a project that is not referred to a review panel would be 510 days, and the time required by a review panel to study a project would be 915 days. The QMA would like to point out that the proponent has no more than 1,095 days after receiving instructions to complete the environmental assessment.

Consequently, in the QMA's opinion, the time limits set for the Agency and the review panel are disproportionate compared with the time limits set for the proponent and should be shortened to facilitate project start-up during an acceptable financial timeline. For the mining sector, it is important to have impact assessments completed in a timely manner. Windows of opportunity are very small, and it is essential to be able to start a project when the market is favourable. Significant unforeseen delays can mean that the project never becomes a reality. The time limits in the proposed Act could deter mining companies and will make Quebec and Canada less attractive than other jurisdictions.

Recommendations

For a more efficient and predictable assessment process, the QMA recommends that the federal government revise all time limits to shorten the impact assessment process, and eliminate the extension(s) that may be granted to the Agency or review panel.

To avoid unduly increasing the time limits, the QMA would like it to be made clear that "days" means calendar days and not business days.

4. Transitional provisions

The proposed Impact Assessment Act includes a series of transitional provisions for projects whose screenings (sections 178 and 180), comprehensive studies (section 179) and environmental assessments (sections 181 to 183) began before the coming into force of the new Act. The QMA believes it is essential that projects currently being assessed, as well as any that commence their assessment process before the new Act is passed, be permitted to continue through the process without having to meet the requirements of the new Act, regardless of whether the project is at the beginning of the process or at the final stage. Since the process in the proposed Act is very different from the current one, projects that have not completed their assessment process must be allowed to proceed with it without having to go back and perform steps that were not in the legislation when the project notice was submitted to the Environmental Assessment Agency.

To grow, the mining industry needs clear, stable, predictable approval processes. Changing the rules of the game mid-project sends a negative message to investors who have chosen Canada as the place to invest. It is paramount that the processes or rules of the game not change once the project has begun, as investors based their decision to invest on the parameters in place at the beginning of the project.

Recommendation

The QMA recommends that the new provisions of the Impact Assessment Act apply only to projects submitted after the Act has been passed.

CONCLUSION

In summary, the proposed process could inhibit mining development in Quebec and the rest of Canada. The QMA therefore hopes that the Standing Senate Committee on Energy, the Environment and Natural Resources will take note of the detailed comments in this brief and make appropriate amendments to Bill C-69.