

I DIDN'T KNOW THAT



KEY DIFFERENCES ILLUMINATE ENVIRONMENTAL REVIEW IN CANADA AND THE UNITED STATES

As the world's largest trading relationship, regulations and rules in Canada and the United States often strongly mirror one another.

The two countries' environmental review regimes differ—not in goals, perhaps, but certainly in structure and process for projects such as mines, pipelines, and infrastructure.

At the federal level in Canada, the 2012 Canadian Environmental Assessment Act (the Act) states that projects designated by the Regulations Designating Physical Activities or those designated by the Minister of the Environment may be subject to a federal environmental assessment. The Canadian Nuclear Safety Commission, the National Energy Board, or the Canadian Environmental Assessment Agency are then responsible for reviewing projects, though the Minister of the Environment maintains the right to overrule any decisions. The Act uses timelines to encourage efficient decisions, it incorporates aboriginal consultation, and has increased oversight and enforcement mechanisms to ensure compliance with rulings and conditions.

Provincial review of a project may be deemed sufficient if provincial regulations meet the federal standard. The Act considers trans boundary effects and, if these are expected, then provincial substitution is not possible.

In the United States, the National Environmental Policy Act (NEPA) review system is more diffuse. Any federal, federally assisted, or federally licensed action must undergo NEPA review by any agency or party required by the proposed action. If a major project does not intersect federal jurisdiction, the NEPA does not come into play. There are no review deadlines in the United States, however the process is being streamlined and made more transparent through legislation like MAP-21. There is no delineation between federal and sub-federal projects as in Canada, nor are impacts outside of the United States assessed. The process is overseen by the White House's Council on Environmental Quality (CEQ) and the final decision to approve a project rests with the individual reviewing agencies.

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The National Environmental Policy Act (NEPA) is truly the grandfather of all major U.S. environmental laws. Although the statute does not mandate particular outcomes or decisions, it instills a “look before you leap” mentality before the federal government engages in major actions, including decisions to approve or permit private action. NEPA is perhaps the most copied of all U.S. environmental laws internationally.

—**Fred Wagner**, Principal, Beveridge & Diamond

Pipelines are regulated through the National Energy Board, which is a federal authority, which has exclusive, comprehensive, authority to license and regulate interprovincial and international pipelines in Canada...[since 2012] the NEB is no longer a quasi-judicial body, it makes recommendations to cabinet and cabinet has authority to approve a project or not approve a project as it sees fit.

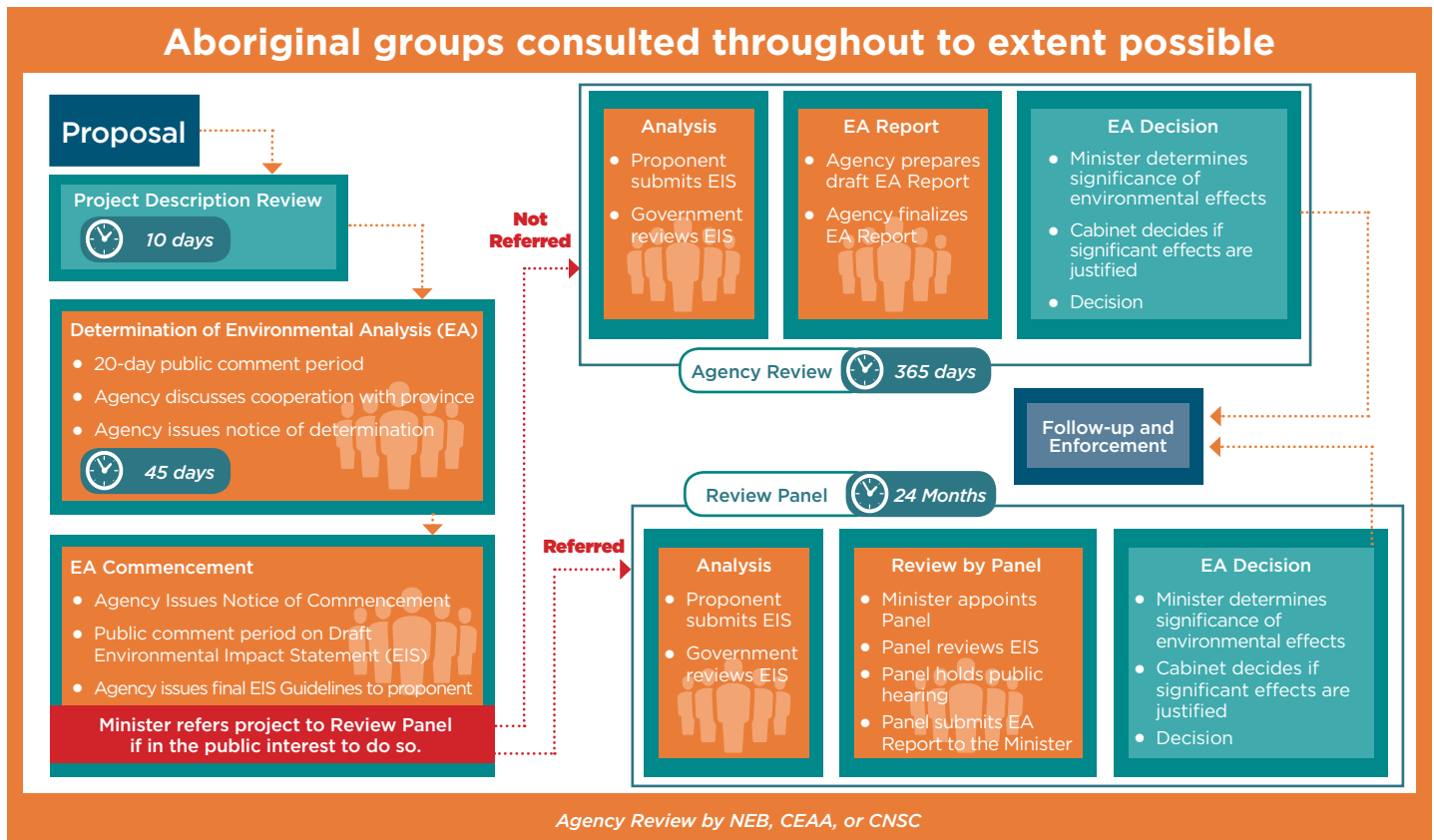
—**Stephen Hazell**, Director of Conservation and General Counsel, Nature Canada

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ENVIRONMENTAL REVIEW IN U.S. AND CANADA

Canada

Aboriginal groups consulted throughout to extent possible



United States

