Federal Court confirms amendment process for projects assessed under CEAA 2012

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Large-scale projects requiring environmental or impact assessments in Canada are not static: as projects commence and develop, their needs can shift, or plans change. A key question for project proponents is how those changes will impact existing environmental permits, and what the amendment process will look like. A recent Federal Court decision has provided important clarity, confirming that project amendments are to be assessed against the same standards applied in the original assessment.

In *Citizens for My Sea to Sky v. Canada (Environment and Climate Change)*, 2025 FC 1119, the Federal Court confirmed that where a project originally received its Federal Decision Statement (FDS) under the now-repealed *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19 (CEAA 2012), amendments to that project can be assessed against the narrower definition of "environmental effects" set out in s. 5 of CEAA 2012. Amendments do not need to be assessed in relation to the broader "effects within federal jurisdiction," defined in the current *Impact Assessment Act*, S.C. 2019, c. 28 (IAA).

Background

Woodfibre LNG, the proponent of a LNG facility in Squamish, B.C. (the Project) originally received the Project's FDS in March 2016. At that time, CEAA 2012 was still in force, and the FDS was issued pursuant to a substituted process under that Act. The Project also received authorizations from British Columbia's Environmental Assessment Office (EAO) and Squamish Nation.

In 2019, Woodfibre LNG applied for an amendment to its existing FDS, in order to add floating worker accommodations – known as a "floatel" – to the Project. Between the issuance of the original FDS and the amendment application, CEAA 2012 had been repealed and replaced by the IAA.

While the IAA clearly permits the minister to amend an FDS (see s. 68), the amendment provisions do not explicitly state how the amendment process should be conducted – including whether, for a project that originally received an FDS under CEAA 2012, the proposed changes should be assessed according to the narrower "environmental

effects" set out under s. 5 of CEAA 2012 or in line with the IAA's broader "effects within federal jurisdiction," instead.

The amendment application took time to proceed to a decision, in part due to delays associated with COVID-19. In Nov. 2023, the Impact Assessment Agency of Canada (the Agency) decided that no amendment to the existing FDS was necessary.

Judicial reviews

In reaching its decision, the Agency assessed the proposed amendments according to CEAA 2012's "environmental effects," that is, the same effects used to assess the Project when it was originally permitted back in 2016.

Two groups of applicants sought judicial review of the Agency's decision, in part on the basis that the Agency's consideration of CEAA 2012's "environmental effects" was unreasonable.

The Federal Court disagreed, and found that the Agency's decision was reasonable. While the applicants had argued that assessing amendments against the IAA's broader definition of effects would better achieve the purposes of the IAA, insofar as this would better prevent or mitigate adverse effects within federal jurisdiction and foster sustainability, the Court noted that these were not the only two purposes of the IAA. The IAA also has a purpose of ensuring its processes are "fair, predictable and efficient," and its transition provisions "evince[d] an intention that projects that began to be assessed under [CEAA 2012], prior to the coming into force of the [IAA], would not be subjected to the heightened requirements of the latter."

As well, the Agency's decision was not inconsistent with the text of the IAA. Section 68(2) of the IAA, which deals with amendment applications, prohibits the minister from amending the FDS in a way that would "increase the extent to which the effects **that are indicated in the report** with respect to the impact assessment of the designated project are adverse" (emphasis added). The bolded portion denotes a focus on effects already "indicated" in the project assessment. Where the project was assessed under CEAA 2012, it is reasonable to read this as referring to "environmental effects" as defined in s. 5 of CEAA 2012.

As the Court was engaged in reasonableness review, the Court did not engage in its own statutory interpretation analysis or decide the "correct" interpretation of the IAA's amendment provisions. However, the case is a clear signal that the Agency will act reasonably where it assesses amendment applications for projects decided under CEAA 2012 according to CEAA 2012's "environmental effects," that is, the same effects that the project was originally assessed for.

As the Agency's decision was reasonable, the Court dismissed both judicial reviews.

Significance

The Federal Court has clarified the amendment process for projects initially permitted under CEAA 2012, and made clear that the potential effects of a proposed amendment should be assessed against the "environmental effects" set out in s. 5 of CEAA 2012.

This avoids situations where projects were originally assessed against one set of standards, only to be assessed against another, broader set of standards on an amendment application. It also creates consistency and continuity for projects originally permitted under CEAA 2012, despite the overhaul in the legislation.

Contact us

We would be pleased to answer any questions you have on the Federal Court's decision, the amendment process for projects under the IAA and CEAA 2012, or the judicial review process generally. Simply reach out to the authors or key contacts below.

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