

Fall 2014



Report of the Commissioner of the Environment and Sustainable Development

CHAPTER 4

Implementation of the *Canadian Environmental
Assessment Act, 2012*



Office of the Auditor General of Canada

OAG

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CHAPTER 4

Implementation of the *Canadian Environmental Assessment Act, 2012*

Performance audit reports

This report presents the results of a performance audit conducted by the Office of the Auditor General of Canada under the authority of the *Auditor General Act*.

A performance audit is an independent, objective, and systematic assessment of how well government is managing its activities, responsibilities, and resources. Audit topics are selected based on their significance. While the Office may comment on policy implementation in a performance audit, it does not comment on the merits of a policy.

Performance audits are planned, performed, and reported in accordance with professional auditing standards and Office policies. They are conducted by qualified auditors who

- establish audit objectives and criteria for the assessment of performance,
- gather the evidence necessary to assess performance against the criteria,
- report both positive and negative findings,
- conclude against the established audit objectives, and
- make recommendations for improvement when there are significant differences between criteria and assessed performance.

Performance audits contribute to a public service that is ethical and effective and a government that is accountable to Parliament and Canadians.

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Introduction

Importance of environmental assessment

4.1 Environmental assessment is a planning tool that helps decision makers identify and understand potential adverse environmental effects from projects and take action to prevent or mitigate those effects. For decades, all levels of government in Canada have recognized the value of this tool, which has been formalized in legislation.

4.2 According to the Canadian Environmental Assessment Agency, an environmental assessment should be conducted as early as possible in the planning stage of a project. This is done so that the **proponent** can consider the analysis in the proposed plans, including incorporation of mitigation measures to address adverse environmental effects.

Proponent—A person or organization planning a project.

Environmental assessment can lead to many benefits:

- avoidance or minimization of adverse environmental effects,
- opportunities for public participation and Aboriginal consultation,
- increased protection of human health,
- reduced project costs and delays,
- reduced risks of environmental harm or disasters,
- increased government accountability and harmonization,
- lessened probability of transboundary environmental effects, and
- better-informed decisions that contribute to responsible development.

Canada's new federal environmental assessment process

4.3 The *Canadian Environmental Assessment Act, 2012* (CEAA 2012) establishes the legislative basis for federal environmental assessments. CEAA 2012 came into force in July 2012, replacing the former *Canadian Environmental Assessment Act*.

4.4 CEAA 2012 was introduced as part of the government's Responsible Resource Development plan, which aimed to make the review process for major projects more predictable and timely, reduce duplication among various levels of government, strengthen environmental protection, and enhance consultations with Aboriginal peoples. The intent of the new legislation was to focus on projects that have the greatest potential for significant adverse environmental effects in areas under federal jurisdiction.

4.5 Under CEAA 2012, the following federal organizations, referred to as “responsible authorities,” are responsible for conducting environmental assessments:

- the National Energy Board, for projects it regulates, such as international and interprovincial pipelines and international electrical transmission lines;
- the Canadian Nuclear Safety Commission, for projects it regulates, such as nuclear facilities and activities;
- the Canadian Environmental Assessment Agency, for all designated projects under CEAA 2012, except projects regulated by the National Energy Board and the Canadian Nuclear Safety Commission; and
- a federal authority if it has been prescribed by regulation or by order under the Act.

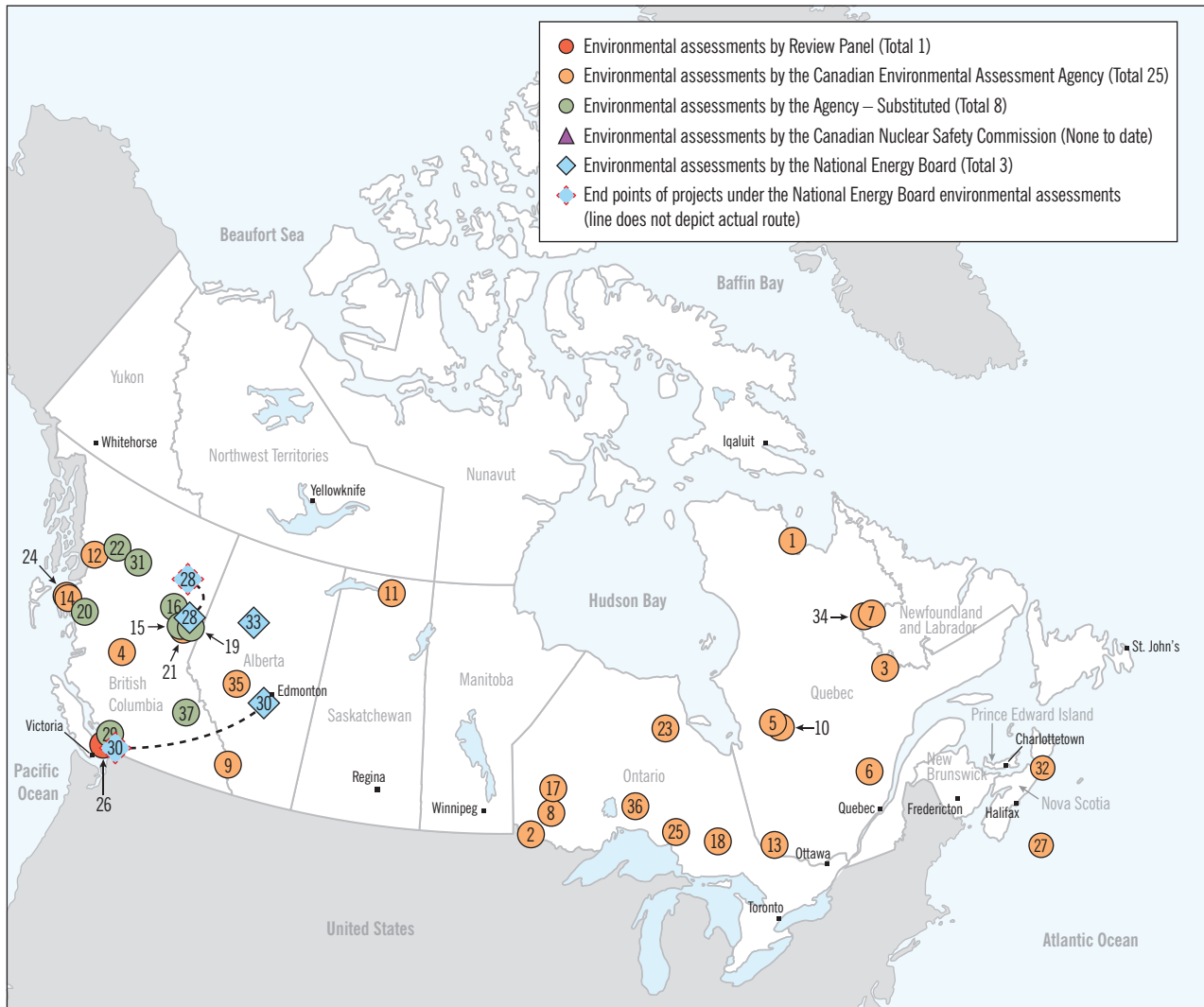
4.6 Under CEAA 2012, project categories are designated for environmental assessment by the *Regulations Designating Physical Activities*; the Minister of the Environment may also designate projects for environmental assessment. Thirty-seven new environmental assessments began under CEAA 2012: 34 by the Agency, 3 by the National Energy Board, and none by the Canadian Nuclear Safety Commission. (See Appendix A for the list of projects and Exhibit 4.1 for their location.)

4.7 The environmental assessment of a designated project must consider environmental effects within federal jurisdiction, including fish and fish habitat, aquatic species, and migratory birds, as well as any change that may occur on federal lands, in another province, or outside Canada. Additionally, the impact of environmental effects on Aboriginal peoples, including health and socio-economic conditions, physical and cultural heritage, structures of significance, and current use of lands for traditional purposes, must be considered in all assessments.

4.8 The responsible authorities must also take into account any additional change to the environment resulting from the exercise of a power, duty, or function of a federal authority that permits the carrying out of a given project—along with any effects on health and socio-economic conditions; physical and cultural heritage; or any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance, other than as they pertain to Aboriginal peoples.

4.9 Once an environmental assessment is complete, a decision is made as to whether the project is likely to cause significant adverse environmental effects. The Minister of the Environment makes that decision for any environmental assessment conducted by the Agency or by a review panel. Where it is conducted by the National Energy Board or the Canadian Nuclear Safety Commission, these authorities make the

Exhibit 4.1 Environmental assessments that began under CEAA 2012 on or after 6 July 2012



Numbers appearing on this map correspond to the projects listed in Appendix A.

This map does not include

- projects that were determined by Agency screening to not require an environmental assessment;
- environmental assessments that were terminated;
- environmental assessments that began under the former CEAA and continued under CEAA 2012 (for example, panel projects such as the Enbridge Northern Gateway Project); and
- projects under consideration for environmental assessment at the time of writing.

Source: Canadian Environmental Assessment Agency

decision (except for pipeline projects, where the National Energy Board makes a recommendation to the Governor in Council). If the project is found likely to cause significant adverse environmental effects, the Governor in Council then determines whether those effects are justified under the circumstances; if they are found to be justified, the project may be approved with conditions, including mitigation measures.

4.10 CEAA 2012 requires that an environmental assessment by the Agency be completed within 12 months and within 24 months when an assessment has been referred to a review panel—that is, a group of experts appointed by the Minister of the Environment to carry out the environmental assessment of a specific project. CEAA 2012 does not apply time limits to the National Energy Board or the Canadian Nuclear Safety Commission. Under the *National Energy Board Act*, the National Energy Board’s reviews of certain pipeline and power line projects must be completed within 15 months. The Canadian Nuclear Safety Commission has committed to completing environmental assessments within 24 months.

4.11 CEAA 2012 allows the environmental assessment processes of some other jurisdictions to be recognized as substitutes for or equivalents to the federal process, when the Agency is the responsible authority. Substitution and equivalency are not permitted when either the National Energy Board or the Canadian Nuclear Safety Commission is the responsible authority.

Mandates of the three responsible authorities

4.12 Canadian Environmental Assessment Agency. Before CEAA 2012, the Agency was mainly responsible for coordinating the process, for providing guidelines on the application of the Act, and, since 2010, for conducting comprehensive studies, a type of environmental assessment. Under CEAA 2012, the Agency is a responsible authority that carries out environmental assessments, and is responsible for monitoring and enforcement of conditions established under environmental assessments.

4.13 National Energy Board. The Board is the federal regulator of pipelines and energy development and trade, including oil and gas activities in some parts of Canada’s offshore. The National Energy Board regulates approximately 73,000 kilometres of pipelines. For simplicity, in this chapter, when using the word “Board,” we are referring to the organization as a whole, including both the Board members and National Energy Board staff.

4.14 Canadian Nuclear Safety Commission. The Commission regulates the development, production, and use of nuclear energy and the production, possession, and use of nuclear substances. Examples of projects regulated by the Canadian Nuclear Safety Commission under CEAA 2012 include new uranium mines or mills and new nuclear power plants, and major expansions to nuclear facilities. In this chapter, we include the Commission members and the staff when we refer to the Commission.

Focus of the audit

4.15 The audit examined three responsible authorities: the Canadian Environmental Assessment Agency, the National Energy Board, and the Canadian Nuclear Safety Commission, and whether they have put in place systems, practices, and procedures to support effective environmental assessments under the *Canadian Environmental Assessment Act, 2012*. This audit covers the period from July 2012 to July 2014. We did not include any other environmental activities conducted by the Board under the *National Energy Board Act* or work carried out by the Commission to assess environmental impacts before issuing a licence under the *Nuclear Safety and Control Act*.

4.16 CEAA 2012 is still in its early stages of implementation. As such, we focused on key aspects of the Act that are relevant at this stage; namely, processes for identifying projects requiring environmental assessment and processes for public and Aboriginal participation. We also looked at processes for implementing the substitution and equivalency provisions of the Act and some aspects of the cumulative effects assessment.

4.17 More details about the audit objectives, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations and Recommendations

4.18 The coming into force of the *Canadian Environmental Assessment Act, 2012* brought substantial changes in areas such as identifying which projects would be subject to environmental assessment, who would conduct them, and how they would be carried out. These changes require the responsible authorities to review and update their approaches and processes to implement the new Act.

Designating projects

4.19 The starting point of environmental assessment is to identify which projects will undergo an assessment. Under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), environmental

assessments are to be conducted for proposed projects that have been “designated,” either by regulation or by the Minister of the Environment. The Agency’s role is to provide recommendations to the Minister on the project categories to be included in the *Regulations Designating Physical Activities* and on projects to be designated on a case-by-case basis. The Agency also has the role of deciding which designated projects under its responsibility undergo environmental assessment.

4.20 Overall, we found that the Agency’s rationale for identification of projects for environmental assessment is unclear, specifically in making its recommendations to designate projects that may require an assessment, its process for supporting case-by-case designation of projects, and its screening process for determining which projects will undergo an assessment. As well, most of the Agency’s processes and the rationales on which recommendations are based are not made public. As the intent of the new legislation is to focus on projects that have the greatest potential for significant adverse environmental effects, it is important for the Agency to have a clear, transparent basis for identifying those projects.

The rationale to identify projects for environmental assessment is unclear

4.21 The *Regulations Designating Physical Activities* identify the project categories that may require an environmental assessment under CEAA 2012. The Regulations, which are commonly referred to as the “project list,” are the primary means of identifying which projects have the greatest potential to cause significant adverse environmental effects in areas of federal jurisdiction. The initial Regulations that came into force in July 2012 were largely based on the Comprehensive Study List from the previous legislation. The Regulations were amended in October 2013. We examined whether the Canadian Environmental Assessment Agency had established clear and transparent criteria and conducted the analysis necessary for recommending to the Minister which projects should undergo environmental assessments.

4.22 The Agency performed some analysis to develop its recommendations on which project categories should be listed. The Agency indicated that it considered the potential for significant adverse environmental effects, and other factors such as national consistency and alignment with provincial legislation. However, we found that in some cases, there was insufficient documentation to demonstrate how the factors were validated and weighed in the analysis, and how input from stakeholders and Aboriginal groups was used to inform the recommendations. The Agency also indicated that

Oil sand operations—There are two methods of mining bitumen from oil sands:

- surface mining, which is included on the project list for new mines or a mine expansion of over 50% for mines with a bitumen production capacity of 10,000 m³/day or more; and
- in situ oil sand drilling, which uses water pumped through a well to bring the bitumen to the surface—this type is not included on the project list. Approximately 80% of oil sands are recoverable through in situ production.

Threshold—A representation of scale or size of a project category on the project list, such as a metal mine with an ore production capacity of 3,000 tonnes per day or more or a hydroelectric generation facility with a production capacity of 200 megawatts or more.

there had been discussion of input and evidence before determining recommendations, but this is not documented in the files.

4.23 Some project categories, such as diamond mines and railway yards, were included in the amended Regulations, while others, such as wind turbines and in situ **oil sand operations**, were not. What is not always clear are the Agency's rationales to support its recommendations as to why some projects should be included and others are not. Such an understanding is important for transparency and predictability.

4.24 Under CEAA 2012, a project not included in the Regulations—for example, a project that is below **thresholds** for designation—can be designated by the Minister on a case-by-case basis if he or she is of the opinion that carrying out the project may cause adverse environmental effects or that public concerns warrant an environmental assessment. The Agency supports the Minister by making recommendations. The Agency has made recommendations on six projects to date, including for a wind farm in the Niagara region of Ontario and for a coal transfer facility in Surrey, British Columbia. We found that the Agency's process to prepare recommendations to the Minister for responding to public requests sets out the steps to be followed but does not articulate how public concerns and the potential for environmental effects are to be considered. We also noted that the Agency's process is not disclosed to the public.

4.25 Thorough analysis and public disclosure are cornerstones of effective and transparent regulatory processes and accountability in decision making. They also create confidence and predictability in the environmental assessment process. Greater clarity in identifying projects to undergo environmental assessment would allow Canadians to better understand why certain types of projects will be assessed and why other projects will not be assessed.

4.26 Recommendation. To support future reviews of the *Regulations Designating Physical Activities*, the Canadian Environmental Assessment Agency should develop criteria to recommend changes to the Regulations. The Agency should also develop a clear process to support its recommendations for the case-by-case designation of projects. The Agency's criteria and processes should also be made public.

The Agency's response. Agreed. The Agency will more rigorously document its analysis that supports recommendations and decision-making processes. Future recommendations on the Regulations will continue to build on existing knowledge about the possibility of adverse

environmental effects that result from projects, through experience gained by administering CEAA 2012. Recommendations for future changes to the Regulations will also be based on analysis from the screening process and experience gained from designating projects.

With respect to the Agency's activities related to the case-by-case designation of projects, the Agency commits to increasing public information about the process and the types of considerations that are relevant to the analysis of potential designations.

It is not always clear how the Canadian Environmental Assessment Agency has reached its screening decisions

4.27 Designated projects under the responsibility of the National Energy Board or the Canadian Nuclear Safety Commission automatically require an environmental assessment. Designated projects under the responsibility of the Agency undergo a second step, or screening process, to decide whether the projects require an environmental assessment. We examined whether the Agency had established clear and transparent criteria and conducted the analysis necessary for making screening decisions on which projects would be required to undergo environmental assessments.

4.28 According to CEAA 2012, the Agency, in making its screening decisions, must consider whether adverse environmental effects may result from the project. There is no definition of adverse environmental effects in the Act. Further, the Act is silent on determining the significance of effects at the screening stage. Under the Act, the determination of the likelihood of significant adverse environmental effects is to be made at the environmental assessment stage. We found that the Agency, as set out in its guide for preparing a project description, might decide that an environmental assessment is not warranted if it anticipates that the project will have minor environmental effects that can be managed through other existing regulatory regimes. This means that the Agency may make a determination on the potential for significance of adverse environmental effects at the screening stage.

4.29 We found that, while the Agency has developed a step-by-step process along with specific timelines to assist in promoting consistent decision making, the process does not clearly outline how public concern and other types of input are taken into account. As such, it is not always clear how the Agency has considered the input it has received in reaching its decisions. Further, its process and the screening analysis are not readily available to the public.

4.30 Recommendation. The Canadian Environmental Assessment Agency should clearly outline and explain how, in its screening process, various criteria and inputs are considered to support its screening decisions. This information should also be made public.

The Agency's response. Agreed. The Agency will publish on its website a description of the screening process to clarify the considerations that inform this important step in the process.

Since the *Regulations Designating Physical Activities* reflect those major projects that have the greatest potential for significant adverse environmental effects in areas of federal jurisdiction, it is expected that the majority of designated projects will warrant an environmental assessment.

However, a determination that an environmental assessment under CEAA 2012 is not warranted could be made through the Agency's evidence-based approach to screening project descriptions. Through this process, the Agency draws on expertise from other federal government departments, a knowledge base from past environmental assessments, and comments from Aboriginal groups and the public on the project description. Due to the wide range of potential projects and unique circumstances for each project, it is not practical to specify a universal, one-size-fits-all approach that would apply to all projects.

The Agency is committed to making available the documentation it produces or collects for the purposes of conducting the screening process for each project. Documentation related to the screening phase for the projects will continue to be kept in the Canadian Environmental Assessment Registry Project File that is established for each project. This information will continue to be available to any member of the public upon request.

Public and Aboriginal participation

4.31 Under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), the responsible authorities must ensure that the public and Aboriginal peoples are provided the opportunity for meaningful public participation. We examined whether the responsible authorities had established mechanisms to allow for meaningful public participation and Aboriginal communication and cooperation as required by the Act.

4.32 Overall, we found that mechanisms such as guidance, processes, and some funding programs are in place to assist public participation in environmental assessment processes. We noted that the Canadian Environmental Assessment Agency's guidance to review panels does

not include any interpretation of interested parties. We also noted that some of its tools were not available to the public. We noted that the provisions of the *National Energy Board Act* differ from CEAA 2012 with respect to public participation and that guidance regarding participation needs to be established for offshore drilling projects. Aboriginal groups and other stakeholders interviewed and surveyed as part of the audit raised concerns over their capacity to participate in a meaningful manner. In the context of federal environmental assessments, the purpose of public participation is to ensure that those who must make decisions during and after the environmental assessment process are well informed, and that the public has had the opportunity to participate in a meaningful way.

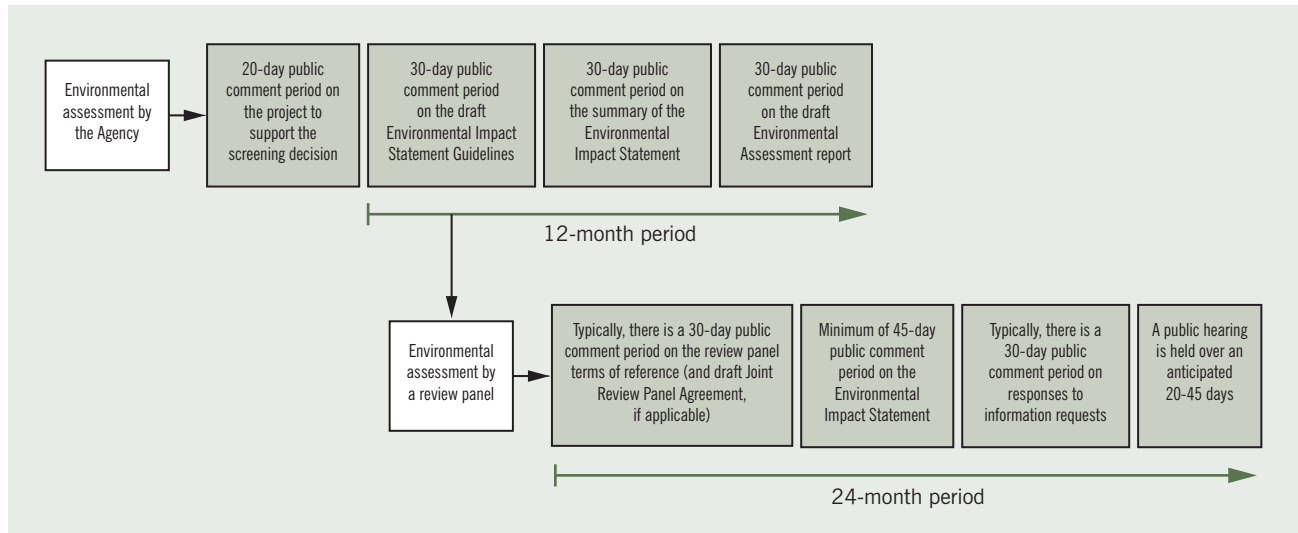
Mechanisms for public and Aboriginal participation are in place but there are gaps

4.33 The three responsible authorities have put in place systems and practices for public and Aboriginal participation in environmental assessment processes. We found, however, some gaps and issues in some of the practices, which we detail in the following findings.

Publication of the Agency's guidance would increase transparency

4.34 The Agency has planned out the stages of public participation (Exhibit 4.2) and developed tools and guides to assist it in conducting its public participation activities and reviewing public input. One of the Agency's objectives under CEAA 2012 is to engage with Aboriginal peoples on policy issues related to the Act. We found, except for activities conducted in the development of amendments to the *Regulations Designating Physical Activities*, that the Agency has not undertaken a systematic approach to engagement with Aboriginal peoples on policy issues.

4.35 We also found that some of the Agency's internal guidance has not been made public. Sharing such information is important in meeting some of the key elements—accessible information, shared knowledge, transparent results—of meaningful public participation. Guidance on Aboriginal consultation, environmental assessment by a review panel, and approaches to compliance enforcement are examples of the type of information that contribute to informing Aboriginal groups and stakeholders, as well as proponents. Much of this internal guidance is included in the Agency's Practitioner Guide, which is not publicly available. The guide explains each step of its environmental assessment process and provides information about the Agency's key determinations, such as screening decisions on whether a project will be subject to an environmental assessment.

Exhibit 4.2 The Agency has two types of processes for environmental assessments, both of which include opportunities for public participation

Note: The terms of reference set out the scope and limitations of a review panel's activities and the environmental assessment.

4.36 Recommendation. The Canadian Environmental Assessment Agency should develop a systematic process for engaging with Aboriginal peoples on policy issues. The Agency should also make publicly available its detailed working guidance such as, but not limited to, guidance on Aboriginal consultation, environmental assessment by a review panel, and the basis on which screening decisions are determined. The guidance made available should inform Aboriginal groups and stakeholders, as well as proponents on how the Agency carries out its obligations under CEAA 2012.

The Agency's response. Agreed. Since the coming into force of CEAA 2012, the Agency has focused the majority of its resources on realigning its business processes to effectively fulfill its new role and responsibilities associated with the Responsible Resource Development initiative. In this context, much of the Agency's policy work (outside of the development of regulations) has focused on supporting implementation by providing advice and guidance on the interpretation of the legislation based on the original policy intent.

Over the longer term, the Agency will develop a systematic approach to engaging in consultation with Aboriginal peoples on policy issues related to CEAA 2012.

The Agency will make available to the public additional guidance information on how it carries out its obligations.

Interested parties—Under CEAA 2012, any persons who are directly affected by the carrying out of the designated project or have relevant information or expertise.

Guidance would assist review panels in deciding who can participate in hearings

4.37 CEAA 2012 provides a basis for public participation to be limited to **interested parties**. The interested party provisions of the Act apply to review panels, meaning they make the decision about who participates in public hearings and in what manner.

4.38 In the absence of guidance from the Agency on this topic, the review panel for the New Prosperity Gold-Copper Mine Project in the interior of British Columbia, which was the first to apply these provisions, developed its own approach, relying on case law to interpret the provisions of the Act. Guidance would promote consistency in the application of these provisions. We believe that the Agency is best positioned to provide this type of guidance.

4.39 Recommendation. The Canadian Environmental Assessment Agency should provide general guidance to review panels to assist them in determining who may participate in public hearings and in what capacity.

The Agency's response. Agreed. Subsection 2(2) of CEAA 2012 specifies that a review panel determines whether “a person is an interested party if, in its opinion, the person is directly affected by the carrying out of the designated project or if, in its opinion, the person has relevant information or expertise.”

Within this context, the Agency will consider options for providing information to the public and the review panels that strikes an appropriate balance between promoting transparency and respecting the legislative requirement that independent review panels determine who participates in environmental assessment processes.

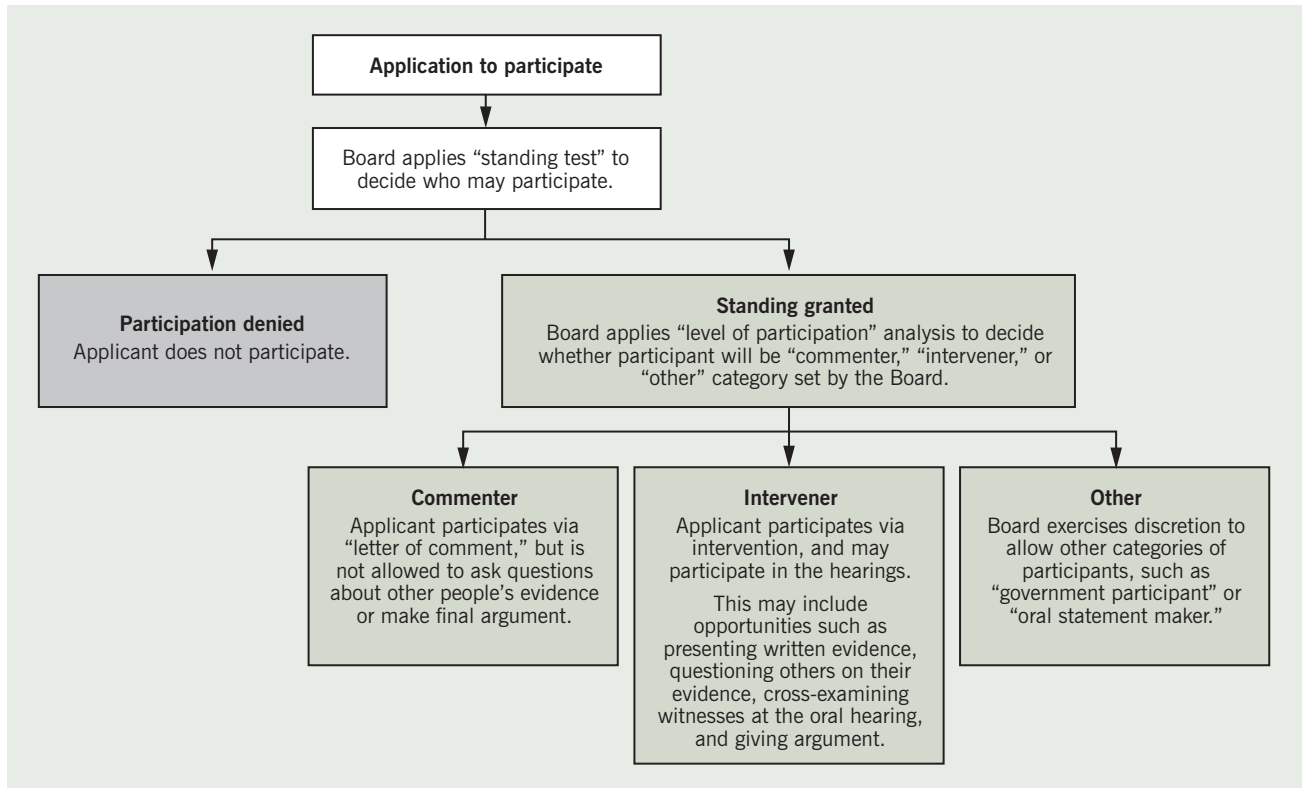
National Energy Board public participation guidance does not refer to CEAA 2012

4.40 The National Energy Board has in place a set of systems and practices for consultation with the public. For example, for each CEAA 2012 project it reviews, the Board puts in place a public engagement plan, which includes activities aimed to remove barriers to Aboriginal participation.

4.41 Once the formal environmental assessment process begins, the Board applies its new public participation framework (Exhibit 4.3). In applying this framework, the Board decides who may participate (called “standing”) and in what manner (called “level of participation”). For Board-regulated pipeline and power line projects designated under

CEAA 2012, participation is limited to interested parties. The same standing tests and determination of levels of participation that apply to the public are applied in the Aboriginal context; however, the Board told us that it takes into account the unique circumstances of Aboriginal groups.

Exhibit 4.3 The National Energy Board decides who participates in an environmental assessment process and in what manner



Source: Adapted from National Energy Board guidance.

4.42 We found that the National Energy Board developed its new participation framework internally. We also found that the Board's current guidance for participation is based on the *National Energy Board Act*, not CEAA 2012, and that key provisions that set out the standing test for public participation in the *National Energy Board Act* are narrower than those of CEAA 2012 (Exhibit 4.4). Although the Board told us it applies the standing test per CEAA 2012, the fact that its guidance does not refer to CEAA 2012 may be confusing for the public. This may diminish the public's ability to demonstrate to the Board that they should be allowed to participate. We noted that work is under way at the Board to put further guidance in place.

Exhibit 4.4 National Energy Board public participation guidance is not based on the *Canadian Environmental Assessment Act, 2012*

The National Energy Board's current guidance for participation is based on the *National Energy Board Act*, not the *Canadian Environmental Assessment Act, 2012*. There is inconsistency between the two acts:

- While CEAA 2012 indicates that the Board **must hear** from those who are directly affected by the project **or** those with relevant information or expertise, the *National Energy Board Act* indicates that the Board **must hear** from those who are directly affected by the project and **may hear** from those who have relevant information or expertise.

4.43 Recommendation. The National Energy Board should update its guidance to ensure consistency with the *Canadian Environmental Assessment Act, 2012*. This guidance should include clarity regarding criteria and decision making for its standing tests and levels of participation.

The Board's response. Agreed. The National Energy Board will update its public participation framework by March 2015.

The Board's public participation framework was issued soon after changes were made to the *National Energy Board Act*, in July 2012. The Board supports continual improvement and, in 2013, decided to clarify the distinction between standing and level of participation decisions and to set out the relevant factors that may be taken into account for level of participation. These improvements were planned for, and will be implemented.

The Board will also update its framework to reference CEAA 2012. While the framework currently refers to only the *National Energy Board Act*, the Board applies it so that it is consistent with CEAA 2012. In all proceedings concerning a CEAA 2012 designated project, the Board has granted participation to all applicants that met the requirements of the standing test in CEAA 2012.

There is no public participation guidance in place for offshore drilling projects

4.44 The National Energy Board regulates oil and gas activities under the *Canada Oil and Gas Operations Act*. Some of these projects are also subject to CEAA 2012. We found that the Board has no public participation guidance for these types of projects.

4.45 The Board is still determining how its participation framework would apply for these projects, but has indicated that it could also apply a standing test similar to the one applied for pipeline and power line projects. However, CEAA 2012 requires the Board to ensure that

the “public” (not only interested parties) be provided with an opportunity to participate in the environmental assessment of these offshore projects. At the time of the audit, an environmental assessment process had not yet started for oil and gas activities under the *Canada Oil and Gas Operations Act*, but a project description has been filed with the Board for offshore oil and gas drilling in the Arctic.

4.46 Recommendation. The National Energy Board should put in place guidance on public participation for projects designated under the *Canadian Environmental Assessment Act, 2012* that are also regulated by the *Canada Oil and Gas Operations Act*. This should be developed and put in place before any offshore drilling applications are filed with the Board.

The Board’s response. Agreed. The Board will update guidance regarding public participation for designated projects that are regulated under the *Canada Oil and Gas Operations Act* by July 2015.

Following the coming into force of CEAA 2012, the Board gave priority to updating guidance for designated projects regulated under the *National Energy Board Act*, given the much greater number and frequency of applications for these projects. Now that the bulk of these updates are in place, the Board is developing guidance for designated projects under the *Canada Oil and Gas Operations Act*.

The guidance being developed for designated projects under the *Canada Oil and Gas Operations Act* could be impacted by proposed legislative changes that were recently introduced in Parliament. Bill C-22, the *Energy Safety and Security Act*, includes proposed amendments to the *Canada Oil and Gas Operations Act* and the *Canada Petroleum Resources Act* that would, among other things, enable the Board to conduct a public hearing under the *Canada Oil and Gas Operations Act* and clarify that the Board may establish a participant funding program for designated projects.

The Canadian Nuclear Safety Commission has updated its practices for public participation

4.47 The Canadian Nuclear Safety Commission makes decisions on major projects through a public hearing process. CEAA 2012 does not specify the nature of public participation to be provided by the Commission; this is left to the Commission’s discretion. We found that the Commission has developed criteria to determine the specific breadth and timing of public participation opportunities for each environmental assessment. The criteria include public and Aboriginal interest in the project, the Commission’s understanding of the

technology, and potential environmental effects. The Commission plans to assess each criterion and include a rationale to support its determination and to make this analysis publicly available. Depending on the determination, the Commission may provide varying levels of opportunities for public participation (Exhibit 4.5).

4.48 The Commission has proposed regulatory amendments that would allow it to apply the CEAA 2012 “interested party” provisions. The Commission stated that its proposed regulatory amendments are meant to limit interventions to stakeholders who have a direct interest in the matter (which corresponds to “directly affected” under CEAA 2012). It stated that this change would clarify a concept that is somewhat vague and too discretionary in its current rules for participation, which are more inclusive. A public comment period on these proposed amendments ended in May 2014.

Exhibit 4.5 The Canadian Nuclear Safety Commission provides varying levels of public participation opportunities for environmental assessments

Public participation level	Participation opportunities recommended	Examples of potential projects
Very low	<ul style="list-style-type: none"> Environmental assessment report: 30-day comment period Public hearing with written interventions on the report 	<ul style="list-style-type: none"> Expansion (over 50%) of existing processing or reprocessing facilities
Low	<ul style="list-style-type: none"> Environmental assessment report: 45-day comment period Public hearing with written interventions on the report 	<ul style="list-style-type: none"> Expansion (over 50%) of a nuclear power plant, mine, or mill
Moderate	<ul style="list-style-type: none"> Environmental assessment guidelines in an abridged hearing with written public interventions Environmental assessment report: 30- to 60-day comment period Potential information sessions and other outreach activities Public hearing with written and oral interventions on the report 	<ul style="list-style-type: none"> New processing, reprocessing, or separation facility
High	<ul style="list-style-type: none"> Environmental assessment guidelines: 30-day public comment period Environmental assessment guidelines in an abridged hearing with written public interventions Environmental assessment report: 60-day public comment period Potential information sessions and other outreach activities Public hearing with written and oral interventions on the report 	<ul style="list-style-type: none"> New nuclear power plant, uranium mine, or mill

Source: Adapted from Environmental Protection: Environmental Assessments Regulatory Document 2.9.1 – April 2014 (draft), Canadian Nuclear Safety Commission.

4.49 We found that the Commission documents its responses to comments received from the public and Aboriginal groups and makes them publicly available. All of this documentation is taken into consideration in decision making. This existing practice is included in the Commission's proposed approach to carrying out environmental assessments for projects designated under CEAA 2012. The Commission has also developed guidance and processes for Aboriginal engagement. The Commission also recommends that proponents conduct Aboriginal engagement activities at the project proposal stage. We found that the Commission is now planning to make these recommendations and other activities mandatory for proponents.

Some Aboriginal and stakeholder groups are concerned about their capacity to participate

4.50 In conducting our audit, we received input from many stakeholders and Aboriginal groups. Many of them raised concerns about their capacity to participate effectively in environmental assessment processes. Some Aboriginal groups indicated, for example, that they had little capacity in terms of staff, expertise, and funds to respond within the set timeframes, particularly when asked to respond to several requests at once. These factors may affect the meaningfulness of public and Aboriginal participation in the environmental assessment process.

4.51 Funding programs for public participation under CEAA 2012 provide a financial contribution to members of the public, non-profit organizations, and Aboriginal peoples to prepare for and participate in environmental assessments. The funding is a contribution; as such, it is not expected to cover all participants' costs or address capacity challenges.

4.52 We note that, since the introduction of CEAA 2012, the three responsible authorities have started reviewing and updating their practices, including developing new tools to meet the purposes and requirements of CEAA 2012. Although the participants' concerns about capacity are not attributable to any specific responsible authority, given the magnitude of the issue, we are concerned that there may be a risk that the stated public participation and Aboriginal cooperation and communication purposes of the legislation might not be met. In our opinion, the three responsible authorities are in a position to assess whether these purposes of the Act are met.

4.53 Recommendation. The Canadian Environmental Assessment Agency, the National Energy Board, and the Canadian Nuclear Safety Commission should assess whether their public and Aboriginal participation processes and time frames provide Aboriginal groups and the public with an opportunity to participate in a meaningful way and to ensure that their concerns are taken into consideration for reviewing projects that may affect them. Where necessary, measures to resolve issues related to these processes should be identified and implemented.

The responsible authorities' responses. Agreed. The Agency, Board, and Commission have implemented CEAA 2012 by continuing to promote and support meaningful participation by the public and Aboriginal groups in environmental assessments.

As continuous improvement organizations, the responsible authorities will assess their processes for public and Aboriginal participation to identify whether there is potential to improve opportunities for the public and Aboriginal groups to participate in a meaningful way. The assessments will take into account respective time limits and mandates of each of the responsible authorities. Measures to resolve any identified issues will be implemented, as appropriate.

Working with other jurisdictions

4.54 Under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), environmental assessment processes of other jurisdictions may be recognized as substitutes, or, for provinces only, as equivalents to the federal process. The only responsible authority that may apply the substitution provisions of the Act is the Canadian Environmental Assessment Agency. Substitution is not applicable when the Minister refers the environmental assessment process of a project to a review panel.

4.55 Under CEAA 2012, equivalency and substitution differ:

- Under the substitution provisions, the Minister of the Environment retains a determination as to the likelihood of significant adverse environmental effects, using the environmental assessment report received from the other jurisdiction.
- Under the equivalency provisions, the Minister may recommend to the Governor in Council that a designated project be exempt from the application of CEAA 2012. If exempted, the Minister no longer makes a determination on the likelihood of significant adverse environmental effects.

4.56 The Act requires that before approving substitution, the Minister of the Environment must be satisfied that

- the substituted process will include the same factors as the federal process,
- the public will be given an opportunity to participate in the assessment,
- the public will have access to environmental assessment records to enable their meaningful participation, and
- a report will be submitted to the Agency and made public.

4.57 We examined whether the Agency had conducted analysis to ensure that conditions are in place to support the Minister in his or her response to requests for substitution and equivalency from other jurisdictions.

4.58 Overall, we found that the Agency has ensured that conditions were in place for substituting provincial environmental assessment processes for federal ones.

Conditions for substitution have been established

4.59 The Agency has entered into a memorandum of understanding with the Province of British Columbia as a framework for substitution arrangements and has sought input from the public and Aboriginal groups on substitution decisions. At the time of the audit, the Minister had approved substitution arrangements for eight environmental assessment processes in British Columbia and had included four additional conditions:

- involving federal experts,
- adhering to CEAA 2012 timelines,
- applying the procedural aspects of Aboriginal consultation, and
- making funding available to Aboriginal groups.

4.60 As mentioned in paragraph 4.56, one of the conditions for substitution is that the substituted process include the same factors as those required by CEAA 2012. We found that the Agency verified the presence or absence of these factors. For example, the Agency would verify that the assessment of cumulative effects would be included in the provincial process.

4.61 The Agency has not yet developed practices or identified conditions that would qualify another jurisdiction's process as

equivalent to that under CEAA 2012. The Agency is of the view that it wants to gain experience with substitution arrangements before considering requests for equivalency. British Columbia officials have expressed an interest in using the equivalency provisions of the Act.

Assessing cumulative effects

4.62 While the environmental effects of a single project may not be significant when assessed in isolation, the combined effects of multiple projects on water, air, land, and wildlife may have significant adverse environmental effects. The *Canadian Environmental Assessment Act, 2012* (CEAA 2012) requires that the environmental assessment of a designated project take into account any cumulative environmental effects. This includes effects that are likely to result from the designated project in combination with the environmental effects of other projects that have been or will be carried out. The significance of the environmental effects of a given project is determined by taking cumulative environmental effects into account.

4.63 In this audit, we examined whether the responsible authorities have put in place systems and practices to assess cumulative effects in their environmental assessment processes under CEAA 2012.

4.64 Overall, we found that each of the three responsible authorities have developed or are developing some guidance for assessing cumulative effects. The Canadian Environmental Assessment Agency's and Canadian Nuclear Safety Commission's technical guidance is still in draft, while the National Energy Board still needs to put in place guidance for offshore drilling projects. We also noted that CEAA 2012 has provisions for the carrying out of regional studies, an important step that, once completed, will help in understanding the effects of multiple projects (existing and future) in a given region.

Guidance on the assessment of cumulative effects is not yet finalized

4.65 We found that the Canadian Environmental Assessment Agency has updated its Operational Policy Statement: Assessing Cumulative Environmental Effects. This general guidance sets out the overall requirements and approach for the three responsible authorities. We noted that the Agency and the Canadian Nuclear Safety Commission have developed draft technical guidance on assessing cumulative effects.

4.66 We noted that the National Energy Board's Filing Manual refers to the Agency's Operational Policy Statement and contains guidance for assessing cumulative effects in its environmental assessment process. However, the Manual is not applicable to oil and gas projects

regulated under the *Canada Oil and Gas Operations Act* and designated under CEAA 2012.

4.67 Recommendation. The National Energy Board should further develop and update its cumulative effects guidance for projects regulated under the *Canada Oil and Gas Operations Act* and designated under the *Canadian Environmental Assessment Act, 2012*.

The Board's response. Agreed. The National Energy Board is committed to continual improvement and, as part of this commitment, frequently revises its guidance documents to better reflect its expectations of companies applying to operate and operating in the North.

Most recently, the Board had been focusing its efforts on guidance documents that address how companies are currently operating in the North. However, the Board recognizes the importance of having guidance in place for potential designated projects regulated under the *Canada Oil and Gas Operations Act*.

The Board is in the process of updating its cumulative effects guidance for designated projects regulated under the *Canada Oil and Gas Operations Act*. The Board will complete these updates by July 2015. The Board does not anticipate receiving an application for a designated project regulated under the *Canada Oil and Gas Operations Act* until after this time.

The Agency is exploring the potential for regional studies

4.68 CEAA 2012 contains provisions for conducting regional studies that consider effects of existing or future projects on a regional scale. This is an important aspect of the Act, as it is commonly understood that the environmental effects of individual projects need to be considered at a regional level in order to assess cumulative environmental change. The available literature also recognizes that evaluating project-specific environmental effects does not adequately address the effects of regional development, including the interaction of effects from multiple projects over time.

4.69 Although the Agency has not yet developed or adopted guidance for determining when a regional study may be conducted, we found that it has started exploring the possibilities and is evaluating the types of approaches that could be implemented. Assessing cumulative effects at the regional level would provide decision makers with information that could contribute to an understanding of the wider implications of development and environmental change.

Conclusion

4.70 We concluded that the three responsible authorities—the Canadian Environmental Assessment Agency, the National Energy Board, and the Canadian Nuclear Safety Commission—have conducted some analysis and have put in place and are putting in place systems and practices to implement requirements of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Specific accomplishments include

- implementation of practices and procedures to meet specific timeframes, and
- establishment of substitution arrangements with one province to reduce duplication of environmental assessment processes.

4.71 We recognize that CEAA 2012 is still in the early stages of implementation. We noted, however, two areas that are critical to address if the objectives of the Act are to be achieved:

- clarity and transparency around the basis on which projects are designated and screening decisions are made, and
- mechanisms to enhance the capacity of the public and Aboriginal peoples to have meaningful participation in environmental assessments.

4.72 The assessment of cumulative effects is a long-standing concern raised by this Office. We noted that the new legislation provides for regional studies to be conducted to evaluate the effects of projects in a specific region. This represents an opportunity to obtain valuable information to inform the assessment of cumulative effects that can contribute to this important component of the environmental assessment process.

4.73 Addressing the issues noted in this audit would improve existing practices, promote transparency and predictability in the federal environmental assessment process, and strengthen environmental protection.

About the Audit

The Office of the Auditor General's responsibility was to conduct an independent examination of whether responsible authorities have developed the systems and practices they need to apply the *Canadian Environmental Assessment Act, 2012* and to provide objective information, advice, and assurance to assist Parliament in its scrutiny of the government's management of resources and programs.

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set out by the Chartered Professional Accountants of Canada (CPA) in the CPA Canada Handbook—Assurance. While the Office adopts these standards as the minimum requirement for its audits, we also draw upon the standards and practices of other disciplines.

As part of our regular audit process, we obtained management's confirmation that the findings reported in this chapter are factually based.

Objective

The overall audit objective for this chapter was to determine whether the Canadian Environmental Assessment Agency (the Agency), the National Energy Board (the Board), and the Canadian Nuclear Safety Commission (the Commission) have conducted analysis and put in place systems, practices, and criteria to support effective environmental assessments in order to implement the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). We did not include any other environmental activities conducted by the Board under the *National Energy Board Act* or work carried out by the Commission to assess environmental impacts before issuing a licence under the *Nuclear Safety and Control Act*.

Scope and approach

We examined whether the Canadian Environmental Assessment Agency, the National Energy Board, and the Canadian Nuclear Safety Commission have put in place the systems and practices that are necessary to implement CEAA 2012.

We assessed the systems and practices for their ability to provide the information needed by the responsible authorities to assess whether the selected CEAA 2012 obligations were being met. Our examination included a combination of document reviews (including policies, reports, procedures, and working tools), detailed file reviews, analysis, and interviews with staff of the responsible authorities, both nationally and in regions. We conducted interviews with a broad range of stakeholders.

We conducted a survey on views of the public participation component of CEAA 2012 as part of the audit. We sent invitations electronically to people who had participated in the process from 2012 to 2014 for the scoped-in projects and who had provided email addresses to either the Agency or the Board as part of their participation. We also sent paper surveys to a random sample of people who had provided only postal addresses. We received a total of 926 completed surveys, a response rate of 16 percent.

We did not include implementation of the *National Energy Board Act* or the *Nuclear Safety and Control Act* in the audit.

Criteria

Criteria	Sources
<p>Overall objective: To determine whether the Canadian Environmental Assessment Agency (the Agency), the National Energy Board (the Board), and the Canadian Nuclear Safety Commission (the Commission) conducted analysis and put in place systems, practices, and criteria to support effective environmental assessments in order to implement the <i>Canadian Environmental Assessment Act, 2012</i> (CEAA 2012).</p>	
<p>The Agency, the Board, and the Commission have the expertise they need to establish, implement, and evaluate their systems and practices for the application of CEAA 2012.</p>	<ul style="list-style-type: none"> • Management Accountability Framework, Treasury Board of Canada Secretariat • <i>Canadian Environmental Assessment Act, 2012</i>
<p>The Agency has clearly defined its roles and responsibilities for the administration and implementation of CEAA 2012.</p>	<ul style="list-style-type: none"> • Management Accountability Framework, Treasury Board of Canada Secretariat • <i>Canadian Environmental Assessment Act, 2012</i> • Policy on Management, Resources and Results Structures, Treasury Board
<p>To determine whether the Agency has conducted analysis and put in place systems, practices, and criteria to decide which projects are to be assessed.</p>	
<p>The Agency has conducted the analysis necessary to support the development of the designated project list.</p>	<ul style="list-style-type: none"> • Cabinet Directive on Regulatory Management, Treasury Board
<p>The Agency has conducted the analysis necessary to establish systems, practices, and criteria for making decisions on which projects will undergo environmental assessment (screening in and screening out).</p>	<ul style="list-style-type: none"> • <i>Canadian Environmental Assessment Act, 2012</i>
<p>To determine whether the Agency, the Commission, and the Board, when applicable, have conducted analyses and put in place systems, practices, and criteria to decide whether to proceed with substitution, delegation, and equivalency arrangements with other jurisdictions under CEAA 2012.</p>	
<p>The Agency, the Commission, and the Board have conducted the analyses and put in place systems, practices, and criteria to decide whether delegation arrangements would be appropriate under CEAA 2012.</p>	<ul style="list-style-type: none"> • <i>Canadian Environmental Assessment Act, 2012</i>
<p>The Agency has conducted the analyses and put in place systems, practices, and criteria to decide whether substitution and equivalency arrangements would be appropriate under CEAA 2012.</p>	<ul style="list-style-type: none"> • <i>Canadian Environmental Assessment Act, 2012</i>
<p>To determine whether the Agency, the Commission, and the Board have conducted analyses and put in place systems, practices, and criteria for consultation with the public and for cooperation and communication with Aboriginal peoples under CEAA 2012.</p>	
<p>The Agency, the Commission, and the Board have conducted analyses and put in place systems, practices, and criteria for consultation with the public, consistent with CEAA 2012.</p>	<ul style="list-style-type: none"> • <i>Canadian Environmental Assessment Act, 2012</i> • Communications Policy of the Government of Canada (2006, updated 2012), Treasury Board
<p>The Agency, the Commission, and the Board have conducted analyses and put in place systems, practices, and criteria for cooperation and communication with Aboriginal peoples, consistent with CEAA 2012.</p>	<ul style="list-style-type: none"> • <i>Canadian Environmental Assessment Act, 2012</i> • Prescribed Information for the Description of a Designated Project Regulations (Note: these do not apply to the Board or the Commission) • Responsible Resource Development plan, Government of Canada

Criteria	Sources
To determine whether the Agency, the Commission, and the Board have conducted analyses and put in place systems, practices, and criteria to assess cumulative effects (one of the key factors to be included in the environmental assessments) under CEAA 2012.	
The Agency, the Commission, and the Board have conducted analyses and put in place systems, practices, and criteria to assess cumulative effects under CEAA 2012.	<ul style="list-style-type: none"> • <i>Canadian Environmental Assessment Act, 2012</i>

Management reviewed and accepted the suitability of the criteria used in the audit.

Period covered by the audit

This audit assessed practices in place during the period from July 2012 to July 2014. Audit work for this chapter was substantially completed on 31 July 2014.

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Appendix A Environmental assessments in progress under CEAA 2012, begun on or after 6 July 2012

	Project title	Responsible authority	Environmental assessment start date	Province
1.	Hopes Advance Iron Mining Project	Canadian Environmental Assessment Agency (CEAA)	11/10/2012	QC
2.	Rainy River Project	CEAA	19/10/2012	ON
3.	Fire Lake North Iron Ore Project	CEAA	16/11/2012	QC
4.	Blackwater Gold Project	CEAA	21/12/2012	BC
5.	Rose Mining Project	CEAA	27/12/2012	QC
6.	Niobec Mine Expansion Project	CEAA	02/01/2013	QC
7.	Joyce Lake Direct Shipping Iron Ore Project	CEAA	04/01/2013	NL
8.	Goliath Gold Project	CEAA	18/01/2013	ON
9.	Bingay Main Coal Project	CEAA	18/01/2013	BC
10.	Whabouchi Mining Project	CEAA	29/01/2013	QC
11.	Tazi Twé Hydroelectric Project	CEAA	01/03/2013	SK
12.	Brucejack Gold Mine Project	CEAA	26/03/2013	BC
13.	Kipawa Rare Earths Project	CEAA	02/04/2013	QC
14.	Pacific Northwest LNG Project	CEAA	08/04/2013	BC
15.	Sukunka Coal Mine Project	CEAA (substitution with BC)	15/04/2013	BC
16.	Carbon Creek Metallurgical Coal Mine Project	CEAA (substitution with BC)	15/04/2013	BC
17.	Griffith Iron Ore Redevelopment Project	CEAA	29/04/2013	ON
18.	Côté Gold Mine Project	CEAA	13/05/2013	ON
19.	Echo Hill Coal Mine Project	CEAA (substitution with BC)	17/05/2013	BC
20.	LNG Canada Export Terminal Project	CEAA (substitution with BC)	21/05/2013	BC
21.	Murray River Coal Project	CEAA	31/05/2013	BC
22.	Arctos Anthracite Project	CEAA (substitution with BC)	31/05/2013	BC
23.	Victor Diamond Mine Extension Project	CEAA	04/06/2013	ON

	Project title	Responsible authority	Environmental assessment start date	Province
24.	Prince Rupert LNG Project	CEAA	21/06/2013	BC
25.	Magino Gold Project	CEAA	03/09/2013	ON
26.	Roberts Bank Terminal 2 Project	CEAA (panel review)	08/11/2013	BC
27.	Shelburne Basin Venture Exploration Drilling Project	CEAA	17/01/2014	NS
28.	North Montney Project	National Energy Board (NEB)	21/01/2014	BC
29.	Woodfibre LNG Project	CEAA (substitution with BC)	03/02/2014	BC
30.	Trans Mountain Expansion Project	NEB	02/04/2014	AB BC
31.	Kemess Underground Project	CEAA (substitution with BC)	08/04/2014	BC
32.	Black Point Quarry Project	CEAA	28/04/2014	NS
33.	Wolverine River Lateral Loop (Carmon Creek Section)	NEB	01/05/2014	AB
34.	Howse Property Iron Mine Project	CEAA	03/06/2014	NL
35.	Highway 947 Extension Project	CEAA	05/06/2014	AB
36.	Hardrock Deposit Project	CEAA	13/06/2014	ON
37.	Ruddock Creek Mine Project	CEAA (substitution with BC)	15/07/2014	BC

The above list does not include

- projects that were determined by Agency screening to not require an environmental assessment,
- environmental assessments that were terminated, and
- environmental assessments that began under the former CEAA and continued under CEAA 2012 (such as the Enbridge Northern Gateway Project).

Source: Canadian Environmental Assessment Registry

Appendix B List of recommendations

The following is a list of recommendations found in Chapter 4. The number in front of the recommendation indicates the paragraph number where it appears in the chapter. The numbers in parentheses indicate the paragraph numbers where the topic is discussed.

Recommendation	Response
Designating projects	
<p>4.26 To support future reviews of the <i>Regulations Designating Physical Activities</i>, the Canadian Environmental Assessment Agency should develop criteria to recommend changes to the Regulations. The Agency should also develop a clear process to support its recommendations for the case-by-case designation of projects. The Agency’s criteria and processes should also be made public. (4.21–4.25)</p>	<p>The Agency’s response. Agreed. The Agency will more rigorously document its analysis that supports recommendations and decision-making processes. Future recommendations on the Regulations will continue to build on existing knowledge about the possibility of adverse environmental effects that result from projects, through experience gained by administering CEAA 2012. Recommendations for future changes to the Regulations will also be based on analysis from the screening process and experience gained from designating projects.</p> <p>With respect to the Agency’s activities related to the case-by-case designation of projects, the Agency commits to increasing public information about the process and the types of considerations that are relevant to the analysis of potential designations.</p>
<p>4.30 The Canadian Environmental Assessment Agency should clearly outline and explain how, in its screening process, various criteria and inputs are considered to support its screening decisions. This information should also be made public. (4.27–4.29)</p>	<p>The Agency’s response. Agreed. The Agency will publish on its website a description of the screening process to clarify the considerations that inform this important step in the process.</p> <p>Since the <i>Regulations Designating Physical Activities</i> reflect those major projects that have the greatest potential for significant adverse environmental effects in areas of federal jurisdiction, it is expected that the majority of designated projects will warrant an environmental assessment.</p> <p>However, a determination that an environmental assessment under CEAA 2012 is not warranted could be made through the Agency’s evidence-based approach to screening project descriptions. Through this process, the Agency draws on expertise from other federal government departments, a knowledge base from past environmental assessments, and comments from Aboriginal groups and the public on the project description. Due to the wide range of potential projects and unique circumstances for each project, it is not practical to specify a universal, one-size-fits-all approach that would apply to all projects.</p>

Recommendation	Response
	<p>The Agency is committed to making available the documentation it produces or collects for the purposes of conducting the screening process for each project. Documentation related to the screening phase for the projects will continue to be kept in the Canadian Environmental Assessment Registry Project File that is established for each project. This information will continue to be available to any member of the public upon request.</p>
<p>Public and Aboriginal participation</p>	
<p>4.36 The Canadian Environmental Assessment Agency should develop a systematic process for engaging with Aboriginal peoples on policy issues. The Agency should also make publicly available its detailed working guidance such as, but not limited to, guidance on Aboriginal consultation, environmental assessment by a review panel, and the basis on which screening decisions are determined. The guidance made available should inform Aboriginal groups and stakeholders, as well as proponents on how the Agency carries out its obligations under CEAA 2012. (4.34–4.35)</p>	<p>The Agency’s response. Agreed. Since the coming into force of CEAA 2012, the Agency has focused the majority of its resources on realigning its business processes to effectively fulfill its new role and responsibilities associated with the Responsible Resource Development initiative. In this context, much of the Agency’s policy work (outside of the development of regulations) has focused on supporting implementation by providing advice and guidance on the interpretation of the legislation based on the original policy intent.</p> <p>Over the longer term, the Agency will develop a systematic approach to engaging in consultation with Aboriginal peoples on policy issues related to CEAA 2012.</p> <p>The Agency will make available to the public additional guidance information on how it carries out its obligations.</p>
<p>4.39 The Canadian Environmental Assessment Agency should provide general guidance to review panels to assist them in determining who may participate in public hearings and in what capacity. (4.37–4.38)</p>	<p>The Agency’s response. Agreed. Subsection 2(2) of CEAA 2012 specifies that a review panel determines whether “a person is an interested party if, in its opinion, the person is directly affected by the carrying out of the designated project or if, in its opinion, the person has relevant information or expertise.”</p> <p>Within this context, the Agency will consider options for providing information to the public and the review panels that strikes an appropriate balance between promoting transparency and respecting the legislative requirement that independent review panels determine who participates in environmental assessment processes.</p>

Recommendation	Response
<p>4.43 The National Energy Board should update its guidance to ensure consistency with the <i>Canadian Environmental Assessment Act, 2012</i>. This guidance should include clarity regarding criteria and decision making for its standing tests and levels of participation. (4.40–4.42)</p>	<p>The Board’s response. Agreed. The National Energy Board will update its public participation framework by March 2015.</p> <p>The Board’s public participation framework was issued soon after changes were made to the <i>National Energy Board Act</i>, in July 2012. The Board supports continual improvement and, in 2013, decided to clarify the distinction between standing and level of participation decisions and to set out the relevant factors that may be taken into account for level of participation. These improvements were planned for, and will be implemented.</p> <p>The Board will also update its framework to reference CEAA 2012. While the framework currently refers to only the <i>National Energy Board Act</i>, the Board applies it so that it is consistent with CEAA 2012. In all proceedings concerning a CEAA 2012 designated project, the Board has granted participation to all applicants that met the requirements of the standing test in CEAA 2012.</p>
<p>4.46 The National Energy Board should put in place guidance on public participation for projects designated under the <i>Canadian Environmental Assessment Act, 2012</i> that are also regulated by the <i>Canada Oil and Gas Operations Act</i>. This should be developed and put in place before any offshore drilling applications are filed with the Board. (4.44–4.45)</p>	<p>The Board’s response. Agreed. The Board will update guidance regarding public participation for designated projects that are regulated under the <i>Canada Oil and Gas Operations Act</i> by July 2015.</p> <p>Following the coming into force of CEAA 2012, the Board gave priority to updating guidance for designated projects regulated under the <i>National Energy Board Act</i>, given the much greater number and frequency of applications for these projects. Now that the bulk of these updates are in place, the Board is developing guidance for designated projects under the <i>Canada Oil and Gas Operations Act</i>.</p> <p>The guidance being developed for designated projects under the <i>Canada Oil and Gas Operations Act</i> could be impacted by proposed legislative changes that were recently introduced in Parliament. Bill C-22, the <i>Energy Safety and Security Act</i>, includes proposed amendments to the <i>Canada Oil and Gas Operations Act</i> and the <i>Canada Petroleum Resources Act</i> that would, among other things, enable the Board to conduct a public hearing under the <i>Canada Oil and Gas Operations Act</i> and clarify that the Board may establish a participant funding program for designated projects.</p>

Recommendation	Response
<p>4.53 The Canadian Environmental Assessment Agency, the National Energy Board, and the Canadian Nuclear Safety Commission should assess whether their public and Aboriginal participation processes and time frames provide Aboriginal groups and the public with an opportunity to participate in a meaningful way and to ensure that their concerns are taken into consideration for reviewing projects that may affect them. Where necessary, measures to resolve issues related to these processes should be identified and implemented. (4.50–4.52)</p>	<p>The responsible authorities’ responses. Agreed. The Agency, Board, and Commission have implemented CEAA 2012 by continuing to promote and support meaningful participation by the public and Aboriginal groups in environmental assessments.</p> <p>As continuous improvement organizations, the responsible authorities will assess their processes for public and Aboriginal participation to identify whether there is potential to improve opportunities for the public and Aboriginal groups to participate in a meaningful way. The assessments will take into account respective time limits and mandates of each of the responsible authorities. Measures to resolve any identified issues will be implemented, as appropriate.</p>
<p>Assessing cumulative effects</p>	
<p>4.67 The National Energy Board should further develop and update its cumulative effects guidance for projects regulated under the <i>Canada Oil and Gas Operations Act</i> and designated under the <i>Canadian Environmental Assessment Act, 2012</i>. (4.62–4.66)</p>	<p>The Board’s response. Agreed. The National Energy Board is committed to continual improvement and, as part of this commitment, frequently revises its guidance documents to better reflect its expectations of companies applying to operate and operating in the North.</p> <p>Most recently, the Board had been focusing its efforts on guidance documents that address how companies are currently operating in the North. However, the Board recognizes the importance of having guidance in place for potential designated projects regulated under the <i>Canada Oil and Gas Operations Act</i>.</p> <p>The Board is in the process of updating its cumulative effects guidance for designated projects regulated under the <i>Canada Oil and Gas Operations Act</i>. The Board will complete these updates by July 2015. The Board does not anticipate receiving an application for a designated project regulated under the <i>Canada Oil and Gas Operations Act</i> until after this time.</p>