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Indigenous Laws and Perspectives in Environmental Assessments

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Provincial Environmental Assessment Process

☐ Legislative Overview

- The Environmental Assessment Act (the “EAA”)

☐ The Project

- Reviewable Project Regulation

Review of the Environmental Assessment Act

☐ The History

- The EAA provides a mechanism for reviewing major impacts to assess their potential impacts.
- The assessment process also ensures that the issues and concerns of the public, First Nations, communities and government agencies are considered
- The current version has been in force since 2010.

☐ Reviewable Projects Regulation 370/2002

- A “reviewable project” means a project that is within a category of projects prescribed under section 5 or that is designated by the minister under section 6 or the executive director under section 7, and includes:
 - (a) the facilities at the main site of the project
 - (b) any off-site facilities related to the project that the executive director or the minister may designate, and
 - (c) any activities related to the project that the executive director or the minister must designate

Review of the Environmental Assessment Act

Table 6 – Mine Projects

Column 1	Column 2	Column 3
<u>Project Category</u>	<u>New Project</u>	<u>Modification of Existing Project</u>
1. Coal Mines – SIC code 063	Criteria: 1. A new mine facility that, during operation, will have a production capacity of $\geq 250,000$ tonnes/year of clean coal or raw coal or a combination of both clean coal and raw coal.	Criteria: 1. Modification of an existing mine facility that meets Threshold E.
2. Mineral Mines	2. A new mine facility that, during operations, will have a production capacity of $\geq 75,000$ tonnes/year of mineral ore.	2. Modification of an existing mine facility that meets Threshold E.
3. Placer Mineral Mines	3. A new mine facility that, during operations, will have a production capacity of $\geq 500,000$ tonnes/year of pay-dirt.	3. Modification of an existing pit facility that meets Threshold F.

☐ S.6 Minister's Power to Designate if:

- The minister is satisfied that the project may have a significant adverse environmental, economic, social, heritage or health effect and that the designation is in the public interest
- The minister believes on reasonable grounds that the project is not substantially started at the time of designation

☐ Canadian Environmental Assessment Act

- Federal Overlap

From Application to Project Approval

☐ Scope

- “Project” means any
 - a) activity that has or may have adverse effects, or
 - b) construction, operation, modification, dismantling or abandonment of a physical work

☐ Section 10: Determining the need for assessment

- The Executive Director by order may
 - a) refer a reviewable project to the minister for a determination under s. 14,
 - b) if the reviewable project will not have a significant adverse environmental, economic, social, heritage or health effect, may determine that an environmental assessment certificate is not required
 - c) if the reviewable project may have a significant adverse environmental, economic, social, heritage or health effect, may determine that an environmental assessment is required

From Application to Project Approval

☐ **Section 11: Executive director determines assessment, scope, procedure and methods**

- It can be just a comprehensive study or if it is a review panel hearing, the minister can decide the scope of the assessment not the director, can be conducted by a commission, by a hearing panel or by any other method or procedure
- **S.11(2)(a):** the facilities at the main site of the reviewable project, any of its off-site facilities and any activities related to the reviewable project, which facilities and activities comprise the reviewable project for the purposes of the assessment
- **S.11(2)(b):** the potential effects to be considered in the assessment, including potential cumulative environmental effects

☐ **Section 17: Decision on application for environmental assessment certificate**

- The Minister on receipt of a referral (including an assessment report, reasons for recommendations) can consider any other matter relevant for the public interest and then issue and EA certificate, refuse to issue the EA certificate or order that further assessment be carried out

☐ **What is not included in the Scope**

Timelines

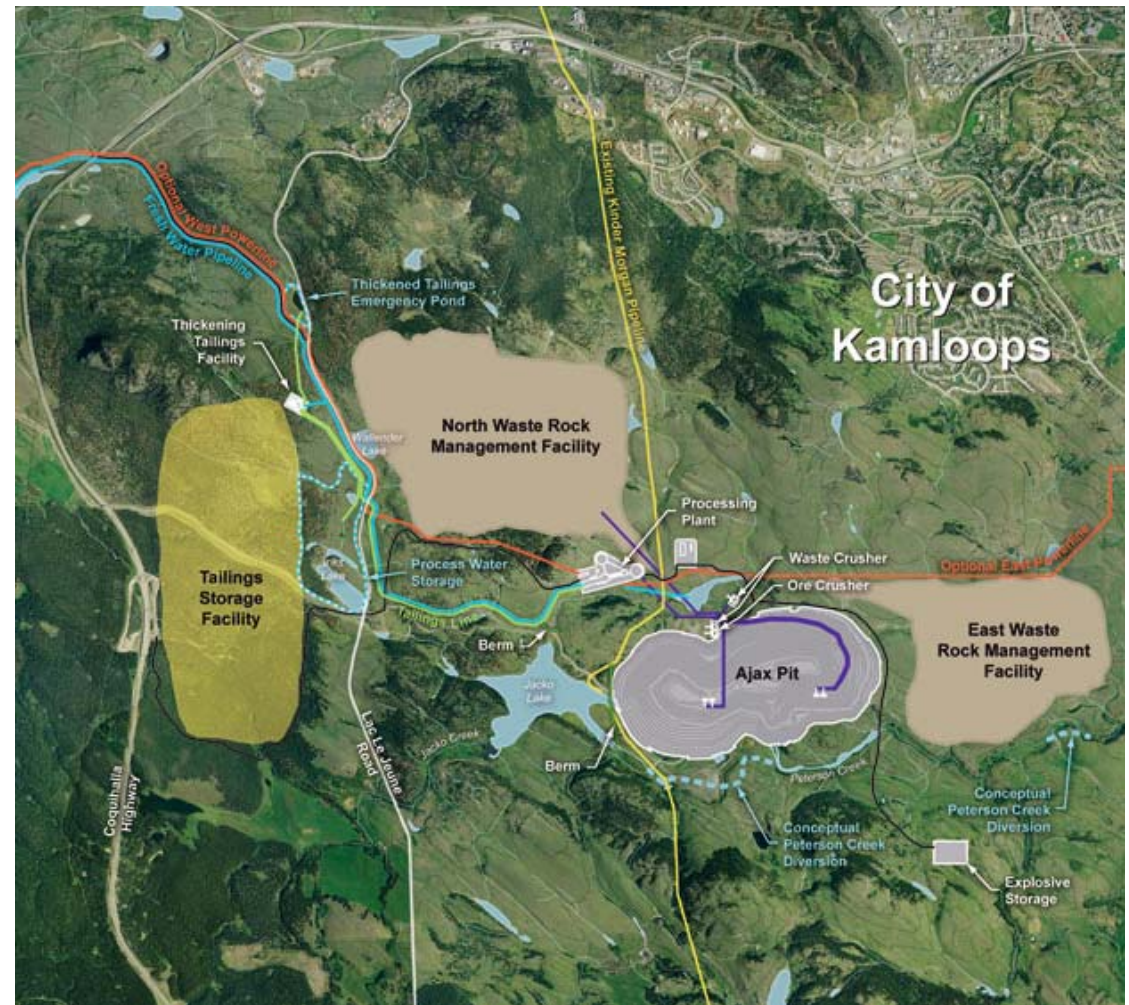
❑ Prescribed Time Limits Regulations (Sections 2-4)

- Pre-Application Phase
- Decision of formal application within 30 days of receipt
- Time limit for review of application is 180 days after the date of notification of acceptance
- The decision from the Minister is 45 days after the date on which the referral is made for decision on application for the EA certificate
- There is a 3 year period to provide information required by the Executive Director or the Minister
- There is an ability to suspend time limits (to a maximum period of 3 years cumulatively)

Case Study


Ajax Mine

- KGHM Ajax Mining Inc. is the proponent proposing to design, construct, operate, decommission, and reclaim the proposed Ajax Mine Project (“the Project”).
- The Project is a nominal 65,000 tonne per day open pit copper/gold mine, with an estimated 23-year mine life producing copper/gold concentrate.
- KGHM provided estimates that the total capital cost would 1.54 billion and average annual operating expenditures would be \$299 million. KGHM estimates overall tax revenue to be 354 million during the construction phase, with federal tax revenue of 162 million, provincial revenues of 115 million and local regional government revenue of 25 million.



Scope of Review

- ❑ Potentially key adverse environmental effects are assessed and the scope is determined through the terms of reference set out by the Environmental Assessment Office (“EAO”)

 Environmental Assessment Office				FIND EA PROJECTS ACTIVITIES & UPDATES THE EA PROCESS	
Ajax Mine				Valued Components	
Comment Periods					
Documents					
Valued Components					
Name	Title	Pillar	Type		
Aboriginal Interests	Aboriginal Interests	Other	Valued Component		
Accidents and Malfunctions	Accidents and malfunctions	Other	Pathway Component		
Acoustics	Noise and vibration	Health	Pathway Component		
Air quality	Air quality	Health	Pathway Component		
Community well-being	Community well-being	Social	Valued Component		
Employment and income	Local and regional economy	Economic	Valued Component		
Freshwater fish and fish habitat	Fish and fish habitat	Environment	Valued Component		
Greenhouse gas emissions	Greenhouse gases / Climate change	Environment	Valued Component		

Ajax Mine

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Environmental assessment sinks proposed Ajax mine near Kamloops

KGHM's proposed open-pit copper and gold mine would have spanned 1,700 hectares

Ajax Mine

Project Timeline

Intake

COMPLETE

Determination

COMPLETE

Completion Date:
Feb 25, 2011

Scope

COMPLETE

Completion Date:
Sep 09, 2015

Evaluation

COMPLETE

Completion Date:
Jan 17, 2016

Review

COMPLETE

Completion Date:
Nov 20, 2017

Decision

COMPLETE

Completion Date:
Dec 13, 2017

SSN Panel Assessment and Report for Project at Pípsell

- ❑ 46 Stk'emplúpsmc te Secwépemc Nation ("SSN") members representing each family in Skeetchestn and Tk'emlúps, with their Chief, Counsellors and youth and elder representatives
- ❑ Significance of Pípsell
 - An oral evidence hearing was conducted May 2-6 2016
 - Oral evidence was given by 75 witnesses, 274 written submissions were produced from the general public
 - Evidence was produced by the traditional Secwepemc, knowledge keepers and youth, Western experts, and reps from KGHM, the BC EAO and the Canadian Environmental Agency ("CEAA")



Honouring Our Sacred Connection to Pípsell

**Stk'emplúpsmc te Secwépemc
Says Yes to Healthy People
and Environment**



SSN Panel Recommendations Report

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SSN Decision Summary

- ❑ SSN did not give its free, prior and informed consent to the development of the lands and resources at Pípsell (Jacko Lake and Area) for the purposes of The Project.
- ❑ The SSN decision to preserve and sustain Pípsell is for the long-term benefit of all Canadians; ensuring the future enjoyment of this special place serves to further reconciliation, so that we may all be great and good.
- ❑ The SSN overarching land use objective for Pípsell and the surround area is:
 - Pípsell is a cultural keystone area that must be preserved in a state consistent with the traditional importance of the site to the Secwépemc people. Pípsell must only be used in ways which preserve and sustain the area, and which allow for the culture of the Secwépemc people to be exercised and maintained.



Lessons learned

- Focus on providing input into the scope of the terms of reference (spend the money to include topics critical to First Nations here: ie., current use of the land for traditional purposes; Indigenomics).
- Parallel consultation process agreements were time consuming and late in the process.
- The requirement for the EAO and CEA to review the Aboriginal Assessment Package was incorporated into the s.13 order. Timing of completion and coordination was critical.
- It will take much longer than you think for the indigenous-led assessment and it will be more expensive.
 - Try to understand what indigenous laws teach you and define the scope of the review in the initial planning stages (i.e., All my Relations; the Power of a Place)– don't try to fit a square peg into a round hole
 - Respect indigenous governance with respect to the roles various panel members and knowledge keepers will take on – they will also teach you
 - Keep the process on track – regularly scheduled meetings; documents sharing and management; etc.

Ministers' Decision

- ❑ On December 13, 2017, the Provincial Ministers released their Reasons for Decision not to Approve the Ajax Mine, based in part on:
- The EAO determined that there would be significant adverse effects to Indigenous heritage and current use of land and resources for traditional purposes
 - The Executive Director advised that there would be adverse impacts to SSNs asserted Aboriginal rights and title and the EAO was not able to conclude that accommodation for these impacts were adequate
 - 21 of 50 residual effects were medium to high magnitude



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