

WHAT IS WRONG WITH THE RAVEN UNDERGROUND COAL MINE ENVIRONMENTAL ASSESSMENT PROCESS

Alice de Wolff, Mike Morrell and Patti Willis, May 5, 2013

What is an environmental assessment?

Present environmental review assessments (EAs) are, as they should be, largely political exercises because so many of the questions raised by resource development projects involve values, goals and visions. Science contributes to the process by collecting physical and biological data and predicting potential effects. Predictions, however, involve uncertainty. Questions about acceptable levels of risks and uncertainties about negative effects are not resolved by science. Project benefits, risks and costs may not all flow to the same people, and decisions about who benefits, who pays costs and who takes risks are not scientific matters. It is important that accountable representatives of the public make these sometimes difficult decisions, and that they are made in the broad public interest. Fairness to all interests requires that such decisions be based on stated criteria and be made publicly.

The promise:

That a joint Provincial and Federal environmental review would administer neutral, transparent assessment processes that consider the views of local, provincial and federal government agencies, First Nations and the public.

The critique:

The Raven Underground Coal Mine review has been conducted by the Canadian Environmental Assessment Agency and the B.C. Environmental Assessment Office. The process is not balanced. Rather, it favors the proponent over the public, is often discretionary in nature, limits the scope of science produced and ultimately, does not serve environmental or public interests. The experience with this review has been that:

- a) The review process is biased in favor of the proponent. Interests of the general public, First Nations, local residents and the environment are not adequately represented.
- b) Criteria for decision-making are not clear. Decision-makers are not accountable to the public.
- c) Agency decisions have unduly limited the scope of the science produced by this environmental assessment.
- d) The public consultation process has provided some opportunity for public input; however government agencies and the proponent have not acted to resolve stated concerns and there has been no opportunity for substantive public debate.
- e) Government agency consultation with their advisory Government Working Group has been limited.

THE CRITIQUE IN DETAIL

1. The review process is biased in favor of the proponent. Interests of the general public, First Nations, local residents and the environment are not adequately represented.

- The goal of the Raven Mine assessment has not been to determine whether the proposal serves the public interest. Rather it has been designed to identify potential impacts and develop technical strategies to mitigate them so that the project can proceed.
- Intangibles like quality of life and hard-to-quantify values like sustainability and local self-sufficiency are not well integrated into the review.
- The Raven Mine review relies primarily on information from Compliance Energy and government agency employees. The formal process involves little analysis by independent experts.
- There is a relatively small amount of public money available for local governments, First Nations, citizen groups, environmental groups, and other industries to participate in the process. Compliance has spent more than \$5 million on the review; governments provided about \$430,000 for First Nations and \$84,000 for others to support their participation.
- There is no mechanism in the process to determine if a project has earned “social license”. Among the 1500 people who attended public consultations only a handful supported the project, and among 2,865 written submissions, over 95% opposed the project or had serious concerns about it. To date in the process, responses by the review agencies have been dismissive.

2. Criteria for decision making are not clear. Decision-makers are not accountable to the public

- Decision makers denied requests by all Comox Valley local governments, Coal Watch, the Environmental Law Centre (University of Victoria), the B.C. Shellfish Growers Association and many other organizations to refer this project to a public hearings by a federal-provincial review panel. The provincial Minister of Environment can make this decision at his/her discretion. The federal Minister can do so when the project may cause “significant adverse effects”, or “when public concerns warrant”. The denial did not provide any criteria for how this decision was made.
- This project was referred to a “comprehensive” joint federal provincial review. Decision-makers at all points in the resulting process are federal and provincial project managers, agency heads, and Cabinet Ministers.

They appear to have complete discretion about criteria like “significance”, “tolerable risk” and ‘uncertainty’, as well as the scope of impact assessment. In this case they made unexplained decisions contrary to strong public recommendations about:

- whether the environmental and public concerns warranted an public review panel
- public consultation venues, public meeting process, adjudication of conflicts and responses to public input
- scope and detail of the proponents application: study areas, methodology, and elements of baseline data.
- Agency staff produce a final report, which is reviewed by the agency director who produces a second report to the Minister, who makes the final decision in consultation with Cabinet.

3. Government agency decisions have limited the scope of the science produced by this EA

- Agencies decided on narrow terms of reference for this proposal:
 - the definition of the affected area around the mine that would be studied for possible effects is very restricted
 - terms of reference excluded assessments of the project’s contribution to global CO2 emissions produced by transport to and burning the coal at destination
 - ecological studies in Baynes Sound are restricted to the immediate vicinity of the proposed mine and deal with a small number of parameters and only a few species. There is no assessment of the health, structure and function of the larger Baynes Sound ecosystem.
 - There is insufficient consideration of cumulative effects of this project combined with others, including historic mine pollution, residential development and Compliance Energy’s plans for further coal mine development in the area.

4. The public consultation process has provided some opportunity for public input; however the government and the proponent have not acted to resolve stated concerns, and there has been no opportunity for public debate

- Public meetings were poorly implemented. Two minute limits on questions and responses made substantive exchange impossible, comments at meetings were not accurately transcribed and the lack of a meeting on Denman Island excluded may affected citizens.

- 2,865 people sent comments about the terms of reference for the proponent's full application. The proponent was required to keep a Tracking Table intended to record its responses to commentators. In most cases individual's names were not listed in the Tracking Table along with their comments; this made it difficult for commenters to locate the proponent's response to their submissions. Many of the proponent's responses were superficial and defensive rather than acknowledging or responsive.
- Compliance Energy's full application is 12,000 pages long. The public has 50 days to review it and comment in writing. Very few members of the public will have the capacity to manage this.
- Public meetings during the public review of the full proposal will be open house information sessions only, providing no public forum for discussion of concerns.

5. Government agency consultation with their advisory Government Working Group has been limited.

The public is reliant on a Working Group chosen by government agencies in this process. It is composed of government agency experts, VIHA, First Nations and local government representatives who are expected to represent various public interests. The reality has been that Working Group members may comment on material generated in the process but do not have real influence or authority to affect decisions.

- Meetings of the full Working Group are infrequent, and much of the work takes place in smaller sub-groupings or in one-on-one meetings with the proponent. There has been little opportunity for Working Group members to hear and discuss each other's concerns and comments.
- The Working Group has not been asked to analyse the content of the full 12,000 page application prior to the public comment period. They were tasked only with assessing whether the proponent had discussed all the required subjects.
- Working Group members have expressed concerns about lack of sufficient time and resources to properly address the documents under their review. Some have found that they cannot oblige the proponent to respond satisfactorily to critical comments.
- The Working Group may not include expertise in all fields of assessment.
- The proponent may discuss issues with Working Group members, and may call on members' expertise, but the public does not have the same access.