

Weaknesses of the BAPE's truncated mandate under Section 6.3 of the EQA compared with the process required by Sections 31.1 and following of the EQA

The voluntary process announced by the Government of Québec has a number of disadvantages in comparison with the mandatory process stipulated in the *Environment Quality Act* (EQA). Citizens' rights to participation are violated in the following ways:

- No formal authorization from the Government will ensue from the public hearings held during this process, despite stipulated in Section 31.5 of the EQA. The Government will be unable to impose special conditions on TransCanada to take into account the rights and obligations stipulated in the specific laws of the Province of Québec and the conditions set out in a resolution voted by the National Assembly of Québec.
- The lack of environmental authorization annuls the possibility for citizens to use the environmental injunction provided for in Sections 19.2 and following of the EQA to ensure that the conditions to project authorizations are respected.
- There will be no mention of the proponent's project in the register containing authorizations granted in accordance with Section 118.5 of the EQA. The fundamental right to information and the right to a healthy environment are therefore limited.
- No project notice has been filed in order to allow the Minister of Développement durable, de l'Environnement et de la Lutte aux changements climatiques to issue a directive establishing the environmental issues and concerns specific to Quebec, which the Minister would have to like to see addressed in the proponent's impact assessment.
- No ministerial directive will be issued to the proponent to prepare its environmental assessment; this means that it will be impossible for citizens to know in advance the major issues and impacts to be evaluated.
- No impact assessment will be filed, as required under the *Regulation respecting environmental impact assessment and review*, to provide grounds for the BAPE to hold its hearings.
- An impact assessment prepared under the *Regulation respecting environmental impact assessment and review* is being carefully studied by several ministers concerned, until the Minister deems it satisfactory and makes it public. This process helps ensure that the proponent will prepare a higher quality document, which will then be open to public consultation.
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- The process under Sections 31.1 and following of the EQA stipulates that all aspects of the project are submitted for public information and participation and that a BAPE inquiry commission cannot restrict them. By proceeding under Section 6.3 of the EQA, the Minister will be able to limit the topics that will be discussed during the hearings. Therefore, the mandate given by the Minister to the BAPE excludes aspects of the project related to Quebec's natural gas supply issues, the economic and fiscal benefits for Quebec and the respect of First Nations consultation requirements. For example, our right to be informed about and discuss the potential royalties that Quebec and/or the municipalities would receive by allowing the pipeline to cross the province will not be addressed, unlike the case where the project was subject to the process stipulated in Sections 31.1. and following of the EQA.
- The Minister is denying himself the power to ask the proponent to provide information, delve deeper into certain issues and undertake research that he deems necessary to fully assess the environmental impact of the proposed project. This power exists at all times under Section 31.4 of the EQA, during and following public hearings. The Minister will be unable to request documents or information from TransCanada other than that which the company voluntarily provides.
- By not complying with the mandatory provisions of Sections 31.1 and following of the EQA, TransCanada avoids disbursing the fees due from the organization requesting the issuance of an authorization certificate, which include fees related to: the filing of the project notice stipulated in the first clause of Section 31.2 of the EQA; the filing of the impact assessment stipulated in Section 31.3 of the EQA; and the public hearing stipulated in the third clause of Section 31.3 of the EQA. According to the rates in effect in 2016, the fees due for the TransCanada project would total \$136,640. It is Quebec taxpayers who will be footing the bill for this public hearing.
- The process will move forward based on documents deemed to be incomprehensible by the National Energy Board (NEB) and will differ from the consolidated bilingual request made by the NEB to proceed with federal hearings.
- The BAPE hearing will be held without mandatory attendance by the proponent. The hearing should have included a period of participant questions addressed directly to the proponent and the exercise of the investigative powers inherent to the BAPE procedure, specifically contravening Section 26 of the *Rules of procedure relating to the conduct of public hearings*, CQLR, c. Q-2, r. 45, which imposes this question period prior to the filing of memoranda.

Relevant Statutory Provisions

Generic / voluntary/ truncated BAPE procedure:

Environment Quality Act

6.3. The function of the Bureau is to inquire into any question relating to the quality of the environment submitted to it by the Minister and to make to him a report of its findings and of its analysis thereof.

It must hold public hearings whenever required to do so by the Minister.

Regulatory / mandatory / complete BAPE procedure:

Environment Quality Act

31.1. No person may undertake any construction, work, activity or operation, or carry out work according to a plan or program, in the cases provided for by regulation of the Government without following the environmental impact assessment and review procedure and obtaining an authorization certificate from the Government.

31.2. Every person wishing to undertake the realization of any of the projects contemplated in section 31.1 must file a written notice with the Minister describing the general nature of his project; the Minister, in turn, shall indicate to the proponent of the project the nature, the scope and the extent of the environmental impact assessment statement that he must prepare.

31.4. The Minister may, at any time, request the proponent of the project to furnish any information, to study certain matters more thoroughly or to undertake certain research which he considers necessary to fully evaluate the impact of the proposed project on the environment.

31.5. Where the environmental impact assessment statement is considered satisfactory by the Minister, it is submitted together with the application for authorization to the Government. The latter may issue or refuse a certificate of authorization for the realization of the project with or without amendments, and on such conditions as it may determine. That decision may be made by any committee of ministers of which the Minister is a member and to which the Government has delegated that power.

Regulation respecting environmental impact assessment and review (REIAR)

2. List: The constructions, works, plans, programs, operations and activities described below are subject to the environmental impact assessment and review procedure provided for in Division IV.1 of the Act and must be the subject of a certificate of authorization issued by the Government in accordance with section 31.5 of the Act:

(j) (...) the construction of more than 2 km of oil pipeline (...).