



Bill C-38: What you need to know

Canada's Finance Minister, Jim Flaherty, introduced Bill C-38 on March 29, 2012, ostensibly to implement measures announced in Budget 2012. In reality, amendments to environmental laws account for about half of the 452-page bill. These amendments will weaken Canada's capacity for environmental governance, threatening our land, climate and water.

Environmental assessments – less common and more political

Bill C-38 overwrites the entire *Canadian Environmental Assessment Act*. The new Act no longer requires environmental assessments of projects proposed or regulated by the federal government – except if the Environment Minister designates a project for assessment. We do not yet have information about which types of projects (if any) the Minister intends to designate. But the politicization of this process opens the door for intense lobbying by industry proponents keen on keeping their projects off the list.

When a project is designated for environmental assessment, the new Act allows provincial assessments to replace federal assessments. The federal government may then base its decision on the conclusions of the provincial assessment or decide to exempt the project from the federal Act altogether. This is of concern because in some cases provincial environmental assessments may have a narrower scope and more limited opportunities for public participation.

For federal environmental assessments, review by an independent panel will be rarer. Pipelines and nuclear projects – if they are designated for environmental assessment – can no longer be referred to an independent panel; they will be assessed in-house by government agencies (the National Energy Board and Canadian Nuclear Safety Commission, respectively). The Environment Minister may refer other types of projects to an independent panel, but is not required to do so.

If any federal environmental assessments are authorized, the new Act also limits their scope (see below).

Narrower definition of “environmental effects”

In many circumstances, the new Act limits assessment of environmental impacts to effects on fish and fish habitat, other aquatic species and migratory birds, as well as other environmental effects, “directly linked or necessarily incidental” to the government's role in the project. This could mean that certain indirect impacts are no longer considered – such as effects on endangered terrestrial species and their habitat (except if the effect occurs on federal land or crosses provincial or international borders). The Environment Minister may require other environmental impacts to be assessed, but we do not yet know if he or she will do so.

Public participation limited

Bill C-38 recasts the purpose of the Canadian Environmental Assessment Agency, such that, “[ensuring] an opportunity for timely public participation in the environmental assessment process” is no longer part of the Agency’s *raison d’être*. Public participation in hearings on pipelines and some environmental assessments will be restricted to individuals, “directly affected” by the proposed project or deemed to have, “relevant information or expertise.” It is not clear how these criteria will be assessed. Participant funding programs to facilitate the participation of the public in the environmental assessment process will be scaled back, as well.

Time limits imposed on environmental assessments

Bill C-38 imposes new time limits on some federal environmental assessments. Assessments conducted by independent panels must be completed within two years and, by the Canadian Environmental Assessment Agency, one year. As well, the National Energy Board’s review of pipeline projects must be completed within 15 months – including an environmental assessment, if one is required.

If the clock runs out on an independent panel, the Canadian Environmental Assessment Agency will complete the assessment in-house. Moreover, the Environment Minister has new powers to pre-emptively disband an independent panel and reassign it to the Agency if he or she is of the opinion that the assessment will not be completed on time – essentially authorizing political interference in the process.

Decision-making power moved to Cabinet

When an environmental assessment identifies significant adverse impacts, Bill C-38 transfers decision-making to Cabinet. Cabinet – rather than the department or agency responsible for regulating the proposed projects – will decide whether the project should proceed despite its impact on the environment. This essentially formalizes political interference in the environmental assessment process. Similarly, Cabinet will now decide whether to approve or reject pipeline applications, and can require the National Energy Board to reconsider its recommendations in this regard.

Pipeline approvals expedited

In addition to the new 15-month time limit, Bill C-38 bestows broad new powers to the chair of the National Energy Board to expedite consideration of pipeline and power line applications. The chair may even remove other members from decision-making and issue a recommendation unilaterally if he or she is of the opinion that the time limit may not be met. Also, in reviewing pipeline applications, the Board is to take into account only considerations *directly related to the pipeline*, whereas previously the scope of the review extended to any considerations the Board considered relevant.

Fish habitat protections lifted

Bill C-38 significantly weakens the habitat protection provisions in the Fisheries Act, essentially turning a blind eye on fish and fish habitat that do not contribute to commercial, recreational or aboriginal fisheries. Furthermore, controls focus narrowly on activities that could cause

permanent alteration or destruction of habitats that support fisheries; *disrupting* fish habitat is no longer prohibited.

Reporting against GHG emission reduction targets dropped

Bill C-38 repeals the *Kyoto Implementation Act*, legislation that required the government to develop a plan for meeting greenhouse gas reduction targets and mandated the Commissioner of the Environment and Sustainable Development to report annually on results. Although Canada withdrew from the Kyoto Protocol, the government has committed to less ambitious targets for greenhouse gas emissions by 2020. Regular reporting is important for accountability. The Commissioner's last [report](#) under this Act concluded that Environment Canada has not put in place an appropriate implementation plan to support the necessary reductions, and that the 2020 target will not be met with existing measures. Rather than implementing the measures needed to realize meaningful GHG reductions, it seems the government is opting to duck from the spotlight by cancelling independent reporting.

Protection of species at risk weakened

Bill C-38 removes the time limitations on permits and agreements allowing activities that affect species at risk or their habitat (previously restricted to three and five years, respectively). In addition, Bill C-38 exempts the National Energy Board, when reviewing pipeline applications, from a requirement in the *Species at Risk Act* to consider and seek to minimize impacts on the habitat of species at risk.

National Roundtable on Economy and Environment abolished

Bill C-38 abolishes the [National Roundtable on Economy and Environment](#), an arms-length agency whose purpose is, "to play the role of catalyst in identifying, explaining and promoting, in all sectors of Canadian society and in all regions of Canada, principles and practices of sustainable development." Parliament – and Canadians – will lose this source of independent advice on solutions to reconcile environmental and economic issues, at a time when the challenges of sustainable development are ever more pressing.

Less frequent government reporting on environmental management

Bill C-38 eliminates reporting requirements on GHG emission reductions (see above) and makes other environmental management reporting less frequent. Parks Canada will now report to Parliament every five years, rather than every two years, on the state of national parks, historic sites and marine conservation areas and is no longer required to provide Parliament with annual corporate plans and reports. Likewise, management plans for national parks, historic sites and marine conservation areas will be reviewed less frequently: on a ten year-cycle, rather than every five years.

May 2012