

Public Participation

Typical problems and solutions

Public Participation

- ▶ Why do we say we do it?
- ▶ Does how we do it rationally relate to those objectives?
- ▶ Does how we do it advance environmental protection?
- ▶ Do other flaws in the EA process undermine participation?

Ontario Environmental Assessment Act

- ▶ Sections 5.1, 13.1, 14(2) refer to consultation with those persons that may be interested. EA stage includes reference to public consultation (14(2)); Terms of reference (s.6(3)) and EA stage (completion 6.4(2); Ministry Review 7.2(2) make consultation mandatory
- ▶ No statutory guidance about
 - ▶ what to do with public comments
 - ▶ how to respond,
 - ▶ Disclosure requirements

MOECC Guidelines

- ▶ Code of Practice: Consultation in Ontario's Environmental Assessment Process
- ▶ Most ignored code of practice ?
- ▶ Sets out goals for public consultation:
 - ▶ Interested persons should have opportunity to comment on decisions that may affect them
 - ▶ Interested persons should be able to contribute to decision-making and influence decisions “where possible”
 - ▶ Identify and address concerns early in planning process
 - ▶ Consultation is said to be “essential”

MOECC Guidelines

Code of practice cont'd

- ▶ Purpose of consultation is:
 - ▶ To provide information to the public
 - ▶ Identify interested persons
 - ▶ To identify concerns
 - ▶ To create an opportunity to identify proponent commitments in response to public concerns
 - ▶ To focus on and address real public concerns rather than regulatory process and administration

Municipal Class EA

- ▶ “Consultation is a key feature” of EA process
- ▶ A.3 Consultation described as:
 - ▶ Two-way communication process
 - ▶ Information exchange
 - ▶ Opportunities to influence *decision-making*
 - ▶ Generate meaningful dialogue
 - ▶ Exchange of ideas
 - ▶ Broadening of information base
 - ▶ Principal aim is to “achieve resolution” of differences of points of view
 - ▶ Avoid Part II Order requests

Do public comments even matter?

- ▶ Meaningful disclosure forms the foundation for meaningful consultation
 - ▶ Increasingly limited info being provided at early stages of EA
 - ▶ Information is crucial to selecting appropriate alternative, and getting information about public's views of alternative that is appropriate.
 - ▶ Inaccurate or misleading disclosure is an increasing problem
- ▶ No statutory obligation to provide more information on issues of interest to public
- ▶ “Responses” have become ways of arguing away or dismissing public concerns, not addressing or resolving them.
- ▶ Focus in EA reports is on number of meetings held etc. not quality of consultation and issues resolved.

What consultation isn't (in theory, but is in practice)

- ▶ An opportunity to “sell” the preferred approach to the public
 - ▶ Fundamental assumption of EA scheme is flexibility to respond to identified problems and public concerns.
- ▶ An opportunity to identify what controversial aspects of project to take out of the EA and defer until later
 - ▶ Often potentially difficult or controversial issues are identified by proponents prior to consultation and are not included in the EA
 - ▶ Sometimes they are identified through consultation and information is withheld from early stages in EA
 - ▶ Undermines both purpose of entire EA scheme and of consultation itself

Problems

- ▶ Despite stated goals MOECC Code of Practice/MCEA is focused on procedure:
 - ▶ Notification requirements are very basic (no timelines, minimal content)
 - ▶ Information provided is focused on mechanics of EA process, not substance of impacts
 - ▶ Format of consultations and records of consultations emphasized over substance i.e.:
 - ▶ Keeping a record of consultations and responses
 - ▶ Timing
 - ▶ Unclear how much info proponent should give to public at various stages
 - ▶ Different conceptions of what the goal of the EA process is from public/proponent

Typical Obstacles

- ▶ Missing information on key and/or controversial environmental effects
- ▶ Lack of clear rationale for chosen alternative
- ▶ Too late in municipal planning process (after OP, approved development, even after contracts signed for preferred alternative)
- ▶ deferring to claims of broader provincial policy/limited TOR

Missing information

Typical EAs are missing key information on controversial effects

Example Wastewater MCEA:

- Effects of phosphorus on aquatic habitat including phosphorus concentrations predicted and how arrived at?
 - Effects of pharmaceuticals and PCPs
 - Specifics of treatment technology/efficacy/cost
- Impossible to resolve concerns without filling in information gaps - but cost and other disincentives to proponents

Problem: when should information gap be filled? - purpose suggests beginning but minimum requirements suggest at the end.

In practice many information gaps are never filled.

Lack of alternatives rationale

- ▶ Ontario EAs typically have no comprehensible explanation for choosing “alternatives to”
- ▶ Various methodologies are used
- ▶ Some are opaque, others are transparent
- ▶ no clear weighting
- ▶ Choosing alternative is not subject to rigorous public (or even agency/municipal) consultation in class EAs
- ▶ Public has no meaningful input into what values/objectives should prevail in decision-making
- ▶ Public gets stuck at “wrong alternative chosen” stage.

Too late in process

- ▶ Important planning, spending and contractual decisions made before consultations
- ▶ Proponent will dig in - especially on alternatives - exacerbates weakness of rationale.
 - ▶ Example: Consultation on “residual waste management solution” no explicit alternative
 - ▶ Proponent admitted at first TOR consultation that building contract already entered into
 - ▶ Consultants own analysis demonstrated benefits of other alternatives - important comparators were missing - unclear rationale for selecting unspecified “thermal treatment” and impacts of mass burn incinerator not clearly described.
 - ▶ Proponent resorted to pointing to provincial policy change allowing incinerator
 - ▶ Public opposition “dug in”

Other problems

- ▶ Consultation on TOR alternatives does not reflect final TOR
 - ▶ Final TOR seen as limiting alternatives that can be selected
- ▶ Premise of earlier consultation changes - example: criteria for site selection or selecting alternatives
- ▶ Misleading information on effects - description of effects of alternatives at early stage unrealistic and simplistic - no opportunity to go back to an earlier alternative.

Where public participation goes wrong

- ▶ Public do not like to be “duped”
 - ▶ Incomplete or inaccurate information, slanted information
- ▶ Public can tell if you are not sincere about listening or modifying - that it is a sales pitch
- ▶ Public (non-experts) can see through irrational or grossly incomplete explanations for decisions
- ▶ Public can tell when key effects are missing

Result: opposition grows to a project due to mistrust between proponent and public generated at consultations - not due to merits of project on its own.

Where public participation goes wrong

- ▶ Proponent attitudes: “lets get through this public meeting alive”
 - ▶ Unwilling to accept/resolve criticism
 - ▶ Unwilling to accept concerns as legitimate/face value - explain away concerns as ignorance.
 - ▶ Insulates self from public by:
 - ▶ Hiding behind external facilitators/consultants etc.
 - ▶ Hiding behind “done deal” decisions at other levels (provincial policy, approved development etc.)
 - ▶ Refusing to provide additional info requested

A different approach

- ▶ Spend less money addressing non-essential and uncontroversial aspects of the project: These are throw away papers used in sales pitch
- ▶ Maintain an open mind about new and innovative solutions
- ▶ Identify likely key environmental issues early
- ▶ Consult public very early - identify controversial issues - redirect resources towards solving those issues
- ▶ Be accessible and willing to answer questions honestly
- ▶ **PROVIDE INFORMATION!!!**
 - ▶ Example - round 1 of the Gardiner EA - this was done well but then proponent undermined the process by revisiting other options.

Addressing concerns

- If done strategically - could cost less and be more effective
- Will make final decision look better, even if it makes initial approach look worse - that is the purpose of the process!
- Builds public trust for future projects
- Is faithful to purpose of process
- Avoiding Part II orders and other controversies
- Sometimes the public have a point - even if not expressed in technical jargon or with some inaccuracies/misunderstandings -lack of info may be the cause!
- EA Act explicitly grants the required flexibility
- Proponent must be willing to accept results!

Recommendations

OEAA/MCEA and related COPs need amendment:

- Right for public to require further study/independent review on controversial issues
- Access to information requirements must be fulsome - public registry of EA related documentation
- More emphasis on substantive early consultation - esp on alternatives & opportunities to revisit alternatives
- More emphasis on substantive resolution of concerns versus “response” or “a rationale” for ignoring.
- “Alternatives to” methodology and requirements should be clarified