

ENERGY & ENVIRONMENTAL POLICY TRENDS

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DEMYSTIFYING BILL C-69: THE PROJECT LIST

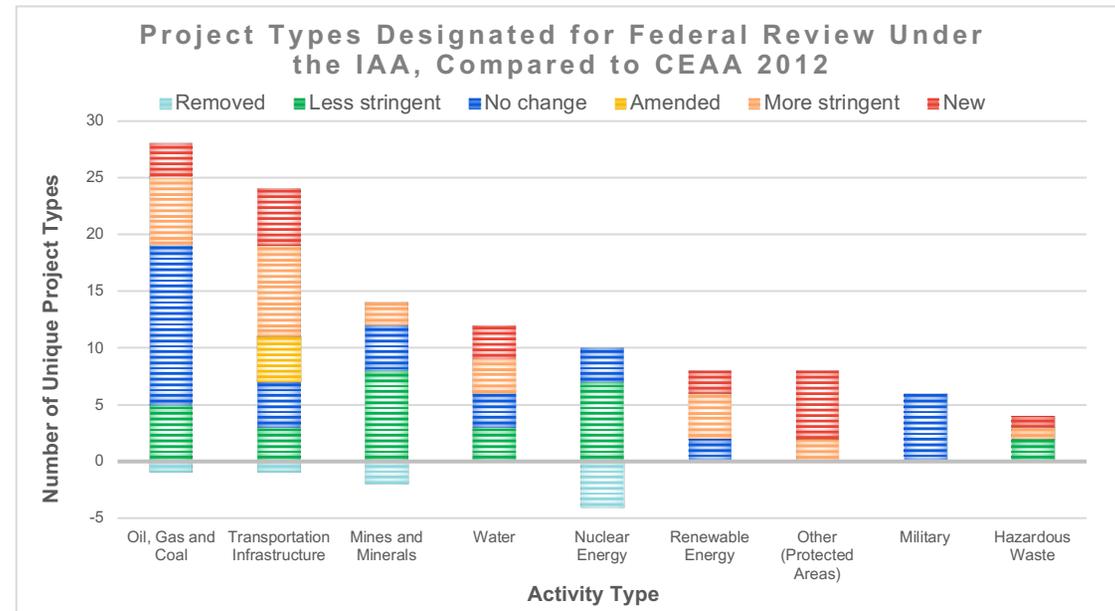
Based solely on a comparison of projects that will automatically require federal review, it is not likely that the IAA will be a disabler of major infrastructure projects as compared to the outgoing CEAA.

Controversial federal Bill C-69 passed in June 2019, with its major piece of legislation, the Impact Assessment Act (IAA), coming into force August 28, 2019. The IAA replaces the Canadian Environmental Assessment Act 2012 (CEAA), establishing a new regime for assessing the impacts of major infrastructure projects and physical activities in Canada. Some critics fear the new legislation will make it more difficult to build oil and gas pipelines, especially. Is the backlash over the IAA justified? What exactly has changed from CEAA? For insight, we can compare: 1) the types of projects subject to the regime; 2) the assessment process; 3) on what basis the final decision is made. This Policy Trends tackles the first point.

Relative to CEAA, 36 project descriptions were unchanged or not significantly changed, 28 became less stringent, and 26 more stringent.

Like CEAA, the IAA is a project-based regime that relies on regulations (“the project list”) to identify the types of projects with the most potential for adverse environmental effects in areas of federal jurisdiction (“designated projects”). A designated project requires at least initial review by federal authorities, with a later determination of whether a full federal impact assessment is necessary.¹ Also, and again like CEAA, the IAA enables the responsible Minister to designate *any* project for federal review (based on prescribed factors), even if it’s not on the project list. Aside from this rare case, the project list reigns. So what does it tell us?

¹ Because both the IAA and CEAA take a designated project-based approach, their reach is still significantly less than that of the environmental assessment regime in place for the 20 years prior. Under the Canadian Environmental Assessment Act 1992, a federal assessment was triggered for any project in which a federal authority was involved, with a wide berth for how “involvement” was defined.



Sources: CEAA Project List (Canada. 2014. *Regulations Designating Physical Activities*. SOR/2012-147: Minister of Justice); IAA Project List (Canada. 2019. *Physical Activities Regulations*. SOR/2019-285: Minister of Justice).

The figures show that a variety of changes occurred between the CEAA and IAA lists, with changes to projects in all activity categories except military.

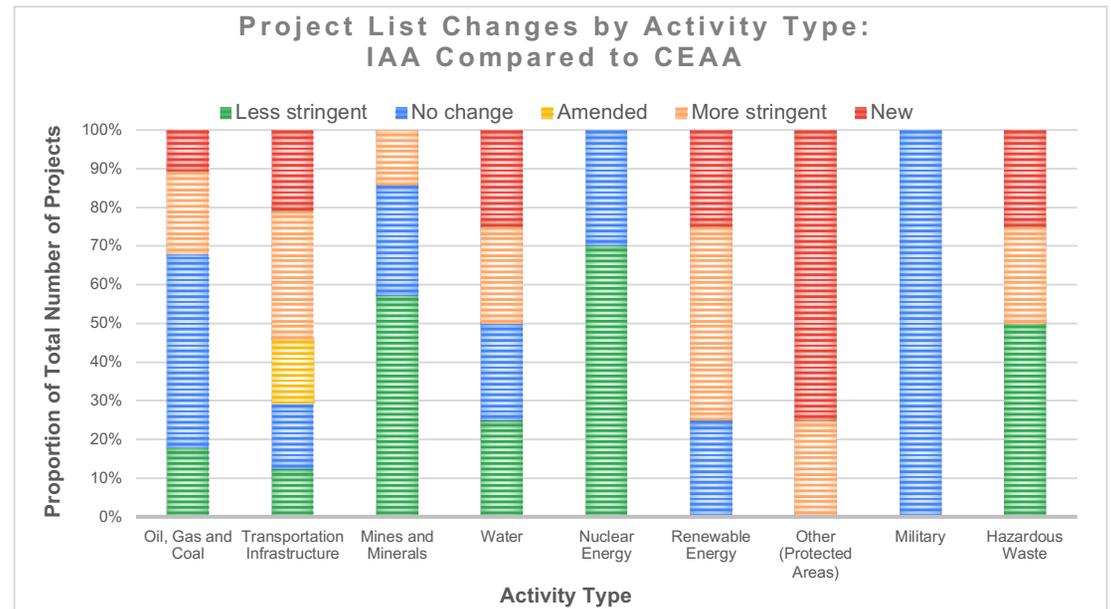
We determined whether project types were removed, added or their description changed. If a description was changed, we assessed whether the entry became more or less stringent, based on a change to (a) the prescribed activity threshold (e.g. a certain output or rate of activity that must be reached before federal review is triggered), or (b) the scope of activities covered. Less stringent is defined as a threshold increase or otherwise narrowed scope, thereby capturing a smaller range of potential projects; more stringent is defined as a threshold decrease or broadened scope, thereby capturing a wider range of potential projects.

114 unique project types are now designated under the IAA, compared to 98 under CEAA. 20 project types were added and 8 removed. Most (13) of the new project entries are for projects located specifically in a national park or federally protected area, in line with the Trudeau government’s commitment to protect and conserve Canada’s wilderness.

Of the 8 project entries removed, 6 were removed to eliminate redundancies and 2 (both apatite mine projects) because the project's environmental footprint was deemed too small to warrant designation. Of the 94 unique project descriptions on both the IAA and CEAA lists, 36 were unchanged or not significantly changed; 28 became less stringent; 26 became more stringent; and 4 (all air transportation infrastructure projects) were amended but it is not clear whether the change will result in more or less stringency.

Proponents of mining projects and nuclear energy projects are now less likely to face federal assessment; proponents of offshore wind or tidal energy projects, more likely. Thresholds were raised for 11 of the 13 mining projects listed, including both coal mine entries. Only oil sands mining entries remained unchanged; all other types of mines are now allowed a production capacity that is two-thirds to three times greater than that prescribed under CEAA before federal review is required. For nuclear, whereas any uranium mine, mill or nuclear reactor triggered federal review under CEAA regardless of size, the IAA puts minimum production capacity thresholds in place for these projects. In contrast, thresholds for tidal energy projects were significantly reduced, increasing the range of potential designated projects. Offshore wind power-generating facilities is a new addition to the list, though exemption is possible where a regional assessment has been conducted.

Specific to petroleum-based energy projects (oil, gas and coal), 50% of projects under this activity type (14) remained unchanged from CEAA. Of the project descriptions changed, 5 became less stringent (including a slight increase in the storage capacity allowed before an LNG facility triggers federal review) and 6 became more stringent through broadened scope. "Liquefied petroleum gas storage facility" was replaced with the more general "natural gas liquids storage facility", for example, and "fossil fuel-fired electrical generating facility" with "fossil fuel-fired power generating facility". In situ oil sands extraction facilities are a new addition to the list, with possible exemption: a facility with a production capacity of 2,000 m³/day or more will require review, unless the facility is located in a province with a legislated (and unreachd) greenhouse gas emissions limit for oil sands sites. As such, this exemption currently applies in Alberta.



Sources: CEAA Project List (Canada. 2014. *Regulations Designating Physical Activities*. SOR/2012-147: Minister of Justice); IAA Project List (Canada. 2019. *Physical Activities Regulations*. SOR/2019-285: Minister of Justice).

The IAA list is arguably more lenient than CEAA on oil and gas pipeline proponents. Of the 4 oil and gas pipeline entries, the impact is split: 1 removed, 1 less stringent, 1 more stringent and 1 new. Most notably, the entry for a new onshore pipeline became less stringent, with both a reduced threshold and narrowed scope.² Only pipelines requiring 75km or more of a new right-of-way will be designated, compared to 40km or more of new pipeline under CEAA; this means that pipelines built within an already established right-of-way will no longer be automatically designated. The description was also amended to include pipeline decommissioning and abandonment and the separate entry for those end-of-life activities removed, meaning only one federal assessment is now required over the lifetime of a pipeline project.

Based solely on a comparison of projects that will automatically require federal review, it is not likely that the IAA will be a disabler of major infrastructure projects, especially oil and gas pipeline infrastructure, as compared to the outgoing CEAA.

² Like under CEAA, only interprovincial pipelines for the transmission of oil, gas or another commodity apply here.