

“No Surprises” – A Practical Approach to Successful EIAs

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Abstract

Surprises may be good for birthday parties and movie endings, but are unwelcome in the practical world of regulatory environmental impact assessment (EIA). In general, EIA is an exercise in building predictability, confidence, and transparency among proponents, stakeholders and regulators. Predictability is desirable in terms of appropriate levels of scientific knowledge, understanding of the proposed project, as well as general public and regulatory expectations. Unfulfilled expectations or misunderstanding (*i.e.*, surprises) can have unwanted consequences ranging from stakeholder mistrust, reduced scientific credibility, project delays, or even application rejection. In general, surprised people will react by delaying a proposal rather than allowing it to move forward even if they would otherwise be supportive.

EIA practitioners can play a key role in establishing mutual expectations for EIA process and outcomes, particularly in complex, multi-stakeholder environmental approval regimes. Building shared expectations and common knowledge among participants takes a steady effort at all EIA stages. A collaborative approach to EIA – that is, the feeling that all (or most) participants are on the same “side” in promoting an environmentally acceptable project - creates a cushion of trust in case surprises do in fact occur. The author’s experience has shown that the “no surprises” approach to EIA can expedite approvals and build trust in proposed developments particularly in jurisdictions where informal interactions with regulators are just as crucial as the formal requirements and guidelines.

This paper describes the EIA approach used by the author and colleagues at the environmental consulting firm Jacques Whitford. Some of the methods used to reduce surprises include: early, informal meetings with regulators; presentation of project descriptions; EIA scoping and related presentations; informal consultations with regulators and scientific authorities throughout the process; and special information sessions as required.

Key Words: environmental impact assessment, environmental consulting, environmental regulations, stakeholder consultation

1.0 Introduction

The purpose of this paper is to reinforce the argument that good practice in environmental impact assessment (EIA) requires good communication. This communication is not only important with respect to external stakeholders and “publics” through traditional public participation methods, but just as importantly among the EIA consulting team, the proponent, and regulators.

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Failure of good communication in EIA often leads to what we will refer to as “surprises”. Surprises may be good for birthday parties and movie endings, but are definitely unwelcome in the practical world of regulatory EIA. In general, EIA is an exercise in building predictability, confidence, and transparency among proponents, stakeholders and regulators. Predictability is desirable in terms of appropriate levels of scientific knowledge, understanding of the proposed project, as well as general public and regulatory expectations. Unfulfilled expectations or misunderstanding (*i.e.*, surprises) can have unwanted consequences ranging from stakeholder mistrust, reduced scientific credibility, project delays, or even application rejection. Other critical types of project support (*e.g.*, financing) often depend on a predictable environmental approval process. In general, surprised people will react to delay a proposal rather than allowing it to move forward, even if they would otherwise be supportive.

It is also our view that ethics in EIA are founded on good, open communication, mutual trust, and clear expectations. Ethical lapses in the practice are often associated with bad faith and concealed information, which could also lead to nasty surprises for the proponent, regulatory officials, political leaders and stakeholders.

2.0 Approach

This paper is not intended as a formal exposition or analysis, but is developed as a “best practice” from the perspective of experienced environmental consultants practicing in Atlantic Canada over the past decade. The focus of our practice is helping clients, mainly project proponents (both government and private sector), gain project approval according to the applicable environmental regulatory regime. In short, we are successful if our clients are successful obtaining their environmental approvals in a timely fashion.

It is our basic view that in participatory EIA, all, or most, of the key stakeholders (*e.g.*, proponent, regulators, external stakeholders) desire the same outcome: that is, an environmentally sustainable project and one without significant, adverse residual effects. It is the EIA practitioner’s job to help all the players achieve this thereby securing environmental approval for the proposed project. The EIA practitioner assists this process by:

- ***Facilitating development of a series of shared expectations among proponents, regulators and other key stakeholders as the foundation of good communications in support of EIA.***

It is acknowledged, of course, that some narrowly self-interested stakeholders may never come “on side”, and require a different approach.

As with most environmental regulatory processes, the Canadian process (*Canadian Environmental Assessment Act* and Regulations) as well as the provincial processes (*e.g.*, *Nova Scotia Environment Act* and Regulations), are intended to be invoked relatively early in the project planning phase before irrevocable decisions are made. The often fluid, conceptual state of project descriptions subject to EIAs also require good

communications and an interactive approach between the EIA practitioners and the project designers. Therefore:

- *A pragmatic approach focussed on project approvals requires excellent communications between the project designers, proponent and EIA practitioners to fully understand the environmental management requirements and opportunities for a specific project, thus enhancing its acceptability to regulators and stakeholders.*

This approach has been developed over the past 10-15 years conducting EIAs in Atlantic Canada and particularly in Nova Scotia by the author and his colleagues at Jacques Whitford Limited. Jacques Whitford is a mid-sized company of consulting scientists and engineers with about 1,500 employees in about 40 offices in Canada and the US and a core capability in EIA. Some of the more recent EIAs we have worked on in Atlantic Canada include the first two liquefied natural gas (LNG) terminal projects to be approved in Canada, offshore petroleum exploration and development, highways, gas pipelines, contaminated site cleanups, and quarries.

3.0 The “No Surprises” Consulting Model

A pragmatic, “no surprises” approach to EIA consulting requires great flexibility to adapt to the often-unique aspects of projects, proponents and local, environmental and socio-economic conditions as well as mitigative strategies. While there are a number of acceptable EIA methodologies that satisfy local regulatory requirements, in our experience, there is no “one size fits all” approach. This is why the checklist approach to EIA is generally ineffective.

Our model is an education tool whereby the proponent, regulators, stakeholders and the consultant all share in learnings related to the proposed project and, ideally, establish shared expectations regarding environmental acceptability and appropriate levels of environmental management. This does not diminish the importance of scientific and technical rigour, but rather complements it. In this process, knowledge generally brings greater comfort and certainty among all the players, and confidence in the proposal grows. In this model, the practitioner-consultant is an educator whose main job is to make sure the right questions are asked and information is available at the right time for stakeholders and decision makers. The practitioner-consultant is more like a high school teacher, sharing in the learnings (*e.g.*, new technologies, locations), instead of acting as a high priest.

Notwithstanding the general assertion that surprises are unwelcome in EA practice, EIA is a complex analytical process and sometimes we get unexpected results because of good analysis. For example, it may turn out that significant adverse effects are unexpectedly predicted. While the proponent may not be initially pleased with the results, these may be considered beneficial surprises which will ultimately lead to project improvement through redesign or mitigation. How we manage and communicate around this situation, both internally and externally, is crucial to establishing credibility and trust. In terms of

ethics, it is equally important to ensure transparency and disclosure around the potential for adverse interactions. The consultant can help with the communication by encouraging the proponent to respond with the appropriate mitigative measures to be incorporated into the project design.

The basic elements or steps of “no surprises” EIA consulting along with some suggested “best practices” are described in Figure 1 and in the text below.

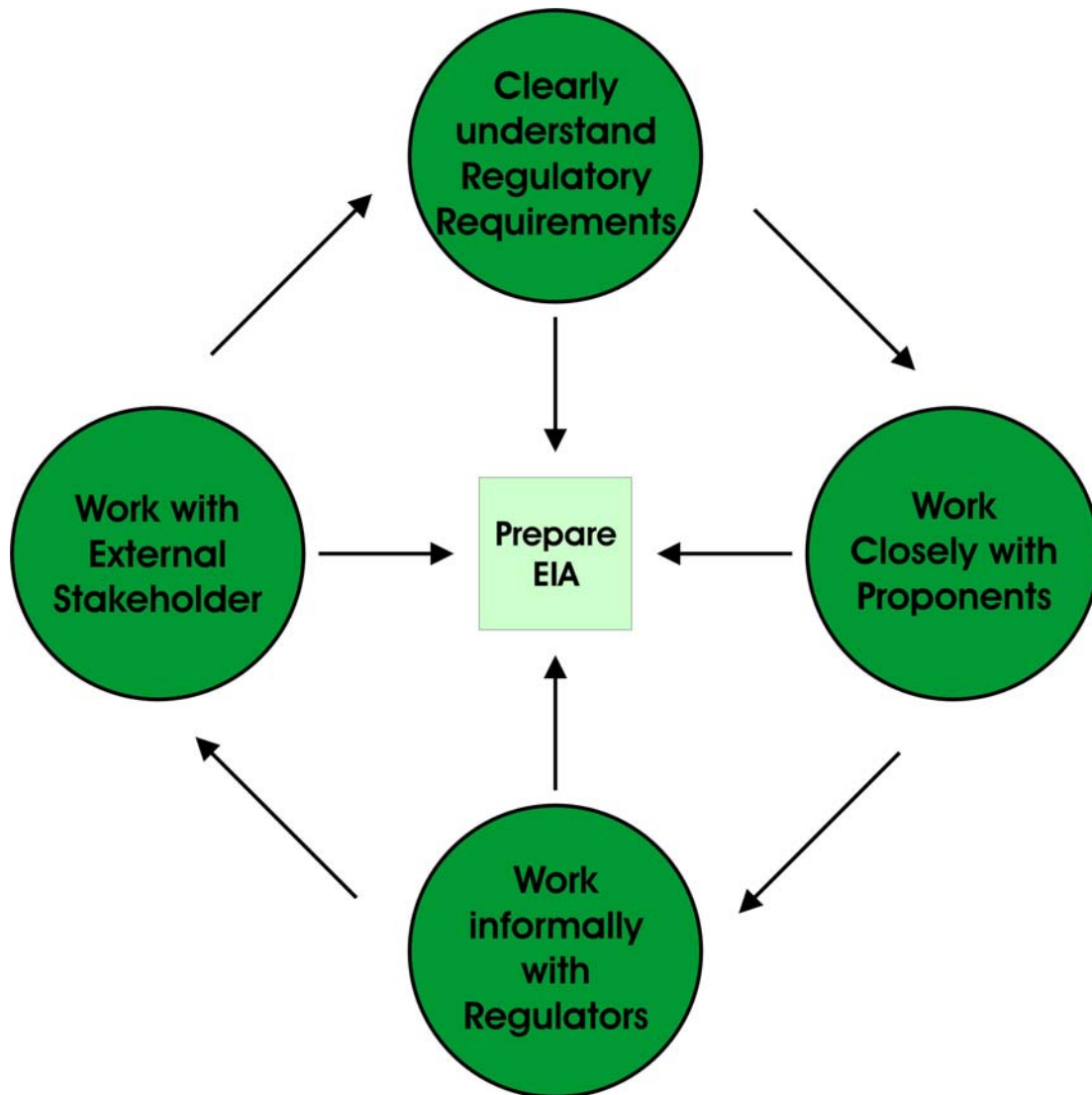


Figure 1 No Surprises EIA Consulting Model

Step 1 - Clearly understand the regulatory basis for EIA. It may seem obvious to state that the practitioner must start by having a clear understanding of the regulatory requirements for EIA before proceeding. But, we have seen many cases where unfortunate surprises were created because it was discovered late in the planning process that an EIA was required and the field season for surveys was lost. Perhaps less serious, though also a concern to ethical practitioners, is the case where an EIA was initiated, but

not required by law. It may be virtuous to undertake voluntary EIA and environmental management in general, but one should have a clear knowledge of the legal requirements. This may sound simple, but it is not. We have seen various EIA checklists and general guidance documents; but understanding the interpretive or informal expectations of the regulatory officials is just as critical to a smooth approval process as the letter of the law. It is this unwritten part of the approval process that often mystifies proponents and some practitioners. But in our experience, it often just requires good communication over the course of many projects working closely with the regulators to really understand their expectations. A depth of knowledge and mutual comfort level is built this way, and evolving aspects and trends in regulatory expectations also become understood and accommodated (*e.g.*, increasing emphasis on wetland protection; new expectations for field surveys). The mutual trust also tends to expedite the process for individual projects as the regulators tend to prequalify the quality and accuracy of the EIA work that is done. It is our experience that the regulators appreciate the role played by the qualified consultant who educates proponents regarding the written and unwritten expectations.

Best Practices

- Frequent, informal discussions with regulators, where possible.
- Internal meetings among EA practitioners to share learnings and experiences and identify trends.
- Written communications with regulators requesting clarifications

Step 2 - Work closely with proponents. In this step, the proponent is educated regarding regulatory requirements for EIA and the characteristics of the receiving environment; the consultant is educated on the nature of the project and technical opportunities for environmental management. The EIA team should be given free access to the proponent's design team to ensure a proper understanding of potential environmental interactions, as well as assistance developing feasible mitigative strategies to reduce impacts. These types of considerations can often begin at the project site selection phase, as well as during decision-making related to key project options. Advising the proponent on environmental matters and getting their "buy in", can be surprisingly challenging. This may be the case where the proponent is a strong entrepreneur perhaps unused to taking advice if it constrains them in unfamiliar ways or ways they may think trivial based on an uninformed opinion (*e.g.*, avoidance of sensitive habitat or species). Consultants may also have to be particularly persuasive when proponents are large bureaucratic organizations (public or private) with layers of in-house environmental and legal staff who have their own style of regulatory affairs that may or may not be consistent with specific local issues and regulatory requirements.

Best Practices

- Early orientation sessions including “regulatory road map”.
- Early, informal sessions with key EA regulators.
- Provide examples of other similar EAs.
- Develop realistic schedule including time-sensitive field surveys.
- Encourage open communication with engineering design team, PR team, and legal team, where applicable.

Step 3 - Working informally with regulators. In this step, the consultant works informally (*i.e.*, pre-EIA filing) to inform regulators to ensure they have a thorough understanding of the specific project proposal, including options being considered, as well as environmental issues taken into consideration in project design. The consultant and proponent are educated regarding important issues related to the specific project and/or receiving environment that must be addressed in the EIA. There is nothing quite as effective in motivating proponents toward environmental management early in project planning than for them to hear it directly from the regulators. It is important that this informal dialogue continue frequently throughout the pre-filing period, if possible, to address any key information gaps or uncertainties. For example, special workshops could be held for regulators unfamiliar with technologies new to a region (*e.g.*, LNG), or to discuss some preliminary findings from the EIA that may be of concern in order to negotiate a mitigative or monitoring approach that can be included in the EIA. Again, the purpose is to build a comfort level with the proposal, so that issues can be addressed either informally, and/or in the formal filing, so that surprises can be minimized during the EIA review.

Best Practices

- Initial, informal meeting with key regulators and proponent.
- Meeting to provide detailed project description.
- Meeting to review scope of the EIA.
- Special meetings to review technical issues (*e.g.*, workshops on new technologies).

Step 4 - Conduct project information/consultation with external stakeholders. In this step, which can be considered traditional public consultation, the public is educated on the project proposal including environmental management considerations. The proponent, consultant and regulators are educated with regard to public issues and concerns. This step is critical for proper EIA scoping, stakeholder relations and, in some cases, is an explicit regulatory requirement under certain environmental assessment regimes. The importance of this for successful environmental assessment is unquestioned and has been well described and documented elsewhere and will not be detailed here. As with understanding general regulatory requirements for EIA however, it is also important to know the specific requirements for public/stakeholder consultations so one does not overscope consultation which can present unnecessary costs and public concern.

Best Practices

- Standard participation methods such as open house public meetings, newsletters, websites, *etc.*
- Best practices described in literature and guidelines (*e.g.*, Canadian Environmental Assessment Agency), but important to scope at appropriate level (*i.e.*, not too much or too little) and conduct at the right time given the specific characteristics of each EIA.

Step 5 - Prepare EIA document in consideration of steps 1-4 above. In this step, the public, including key stakeholders, are educated on the project and potential environmental effects, mitigative measures, monitoring, *etc.*, in addition to any previous involvement in directed information and consultation programs (Step 4). It is standard practice to summarize the results of regulatory and stakeholder consultations in the EIA with a list of key issues and concordance with sections in the EIA document. In general, regulators don't react well to surprises in the final EIA document submitted for approval. In addition to regulatory consultations noted above, a regulatory review of draft EIA documents, if permitted, can greatly help to address any remaining key issues. If a draft review is permitted, the study team can develop a detailed "disposition" document that includes all comments received from regulatory reviewers and the public and how they were addressed in the final EIA.

Best Practices

- Prepare draft documents for government review if permitted.
- Develop "disposition" documents and other means of demonstrating response to questions and comments.

4.0 Limitations to the Model

One of the potential limitations to the EIA model described in this paper is the inherent level of formality contained in various regulatory regimes. The "no surprises" approach depends on ample opportunity afforded for informal interactions with regulators to discuss projects and exchange information. Such opportunities can generally be found within the author's experience in Atlantic Canada; however, exceptions such as the quasi-judicial processes presented, for example, by the National Energy Board (NEB) also occur. The opportunity for informal interaction with regulatory reviewers is conducive to building of trust and shared expectations. We fully understand that some regulatory processes in other jurisdictions are highly prescriptive and limit the ability for informal dialogue on projects.

5.0 Ethics

Considering the IAIA'05 conference theme, a word or two should be included about the linkage between good communication – no surprises – and good ethical practice in EIA.

Ethical problems, most often expressed in EIA practice as conflicts of interest, can arise because of poor communication or a lack of transparency. As EIA practitioners, we are often in situations that are ethically challenging. Obviously, the proponent is paying for our services and expects a favorable outcome; yet we are bound by ethics and by law, to uphold the regulatory position. For example, proponents may have little interest or enthusiasm in following regulatory process and other requirements particularly if it adversely affects their schedule and/or costing. Regulators may not be as interested in helping proponents be successful as they are in furthering a particular research agenda. Other stakeholders may have a very narrow interests (*e.g.*, NIMBY). As environmental assessment practitioners we often attempt to facilitate a multi-stakeholder process where we have strategic information about the various participants that can be used or misused.

Consultants are often perceived as inherently biased because of the contractual relationship with the proponents (at least in the Canadian jurisdiction). Actually, we are proud to be biased! We are biased toward a successful outcome which is an environmentally acceptable project or activity as defined by the law and the general public interest. Good government bureaucrats don't want to stop good projects. If a project is not good to start with, they want to work with the proponent to improve it through redesign or mitigation so that it is at least minimally acceptable to the public. Not everyone will be happy, but that is not the mark of a corrupt process.

Good communication and transparency helps to reveal positions and interests so that it is clear where everyone stands. This is the starting point for building shared expectations as the environmental assessment process moves forward. Ethical dilemmas arise when there are hidden agendas, traps are set, or someone attempts to get away with something. This leads to surprises and everyone is compromised. In general, secrecy breeds ethical problems. The worst kind of surprises are those exposing ethical and/or legal lapses.

This doesn't mean to say that there are not opportunities to negotiate on some EIA issues where there is an inherent lack of clarity or guidelines. There may be good reason to hold back some information strategically while options are still being considered and evaluated) as long as the preferred option is brought to light as quickly as possible and incorporation into the EIA process and consultation process as applicable.

6.0 Conclusion

EIA practitioners can play a key role in establishing mutual expectations for EIA process and outcomes, particularly in complex, multi-stakeholder environmental approval regimes. Building shared expectations and common knowledge and understanding among participants takes a steady effort at all EIA stages. A collaborative approach to EIA – that is, the feeling that all (or most) participants are on the same “side” in promoting an environmentally acceptable project - creates a cushion of trust in case surprises do in fact occur. The author's experience has shown that the “no surprises” approach to EIA can expedite approvals and build trust in proposed developments, particularly in jurisdictions where informal interactions with regulators are just as crucial as the formal requirements and guidelines.