

**APPENDIX B**

**EXCERPTS FROM THE “RESPONSIBLE AUTHORITY’S GUIDE”  
PREPARED AND PUBLISHED BY THE CANADIAN  
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Canadian Environmental  
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d'évaluation environnementale

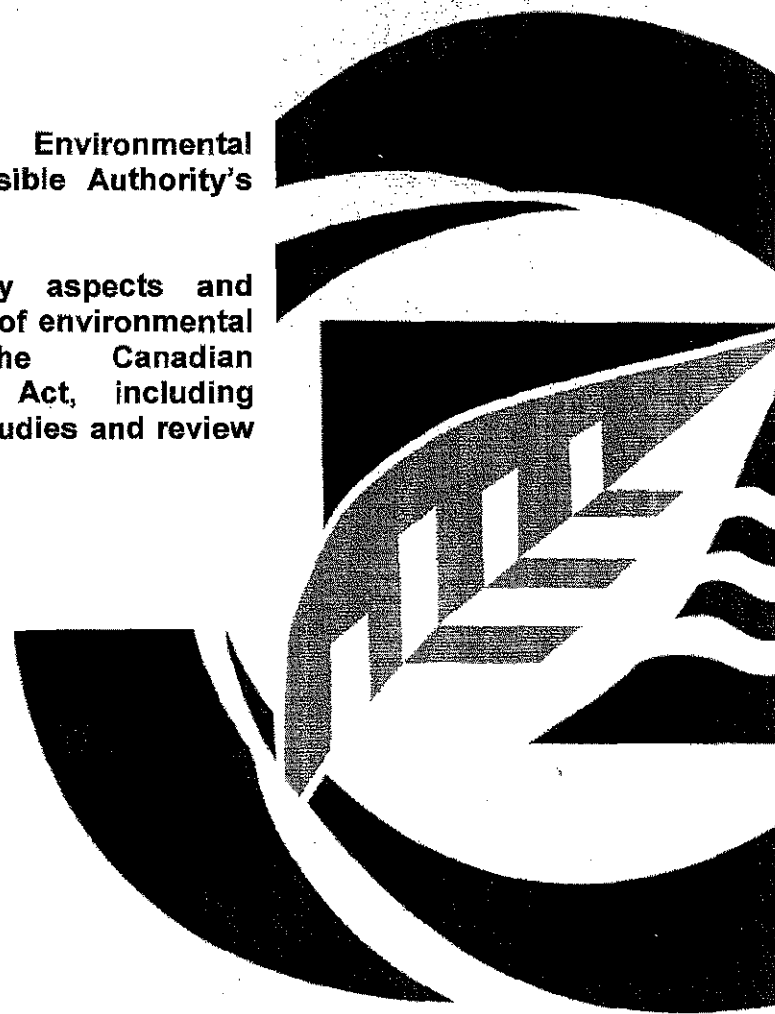
## The Canadian Environmental Assessment Act

# RESPONSIBLE AUTHORITY'S GUIDE

### Appendix B

Excerpts From Canadian Environmental  
Assessment Agency Responsible Authority's  
Guide (1994)

These excerpts outline key aspects and  
processes for the application of environmental  
assessments under the Canadian  
Environmental Assessment Act, including  
screenings, comprehensive studies and review  
panels.



The **Responsible Authority's Guide** is intended for educational purposes only. It should not be perceived as a substitute for the *Canadian Environmental Assessment Act*. In the event of any inconsistency between this guide and the Act, the latter would prevail. Individuals with specific legal problems are urged to seek legal advice.

*An Invitation to Users of the Responsible Authority's Guide*

*The Canadian Environmental Assessment Agency will update the guide in response to users' comments and needs as they gain experience with the CEEA. The Agency welcomes comments and suggestions from readers. These should be addressed to:*

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November, 1994

**PART I:  
THE MANAGER'S GUIDE**

## Part I: The Manager's Guide

### Applying the *Canadian Environmental Assessment Act*

The fundamental purpose of the *Canadian Environmental Assessment Act* (Act) is to ensure that federal decision-makers are aware of and carry out their obligation to assess the environmental impacts of a project. The EA must be conducted early on in the project's development process, and before any irrevocable decisions are made.

Figure 1 summarizes the major decision points of the EA process.

#### Key questions

##### *What is a project?*

Under the Act, a project can be either

- an undertaking in relation to a physical work, such as any proposed construction, operation, modification, decommissioning, abandonment or other undertaking;

or

- any proposed physical activity not relating to a physical work that is listed in the regulations to the Act.

#### *Examples of project definition*

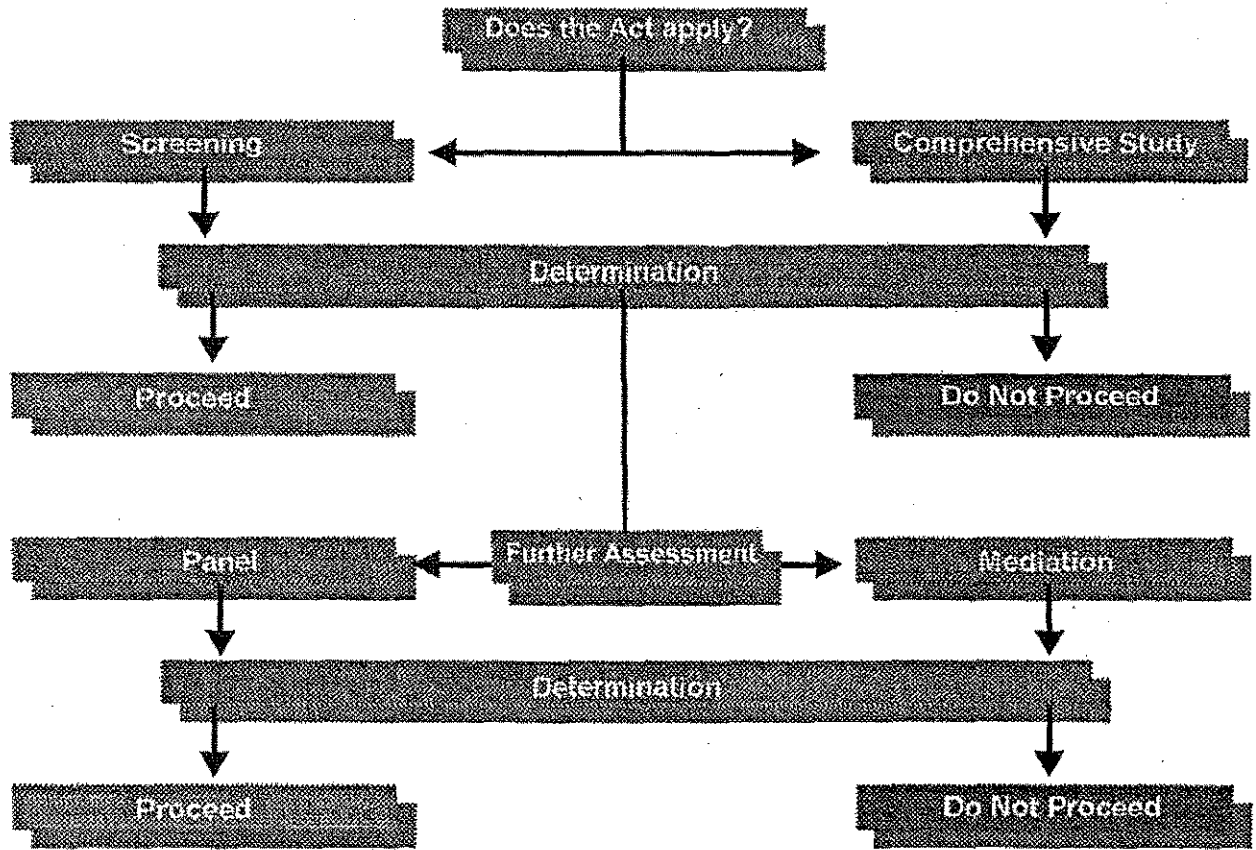
##### *Undertakings in relation to a physical work*

- *dredging as part of constructing a bridge*
- *construction of a fish ladder*

##### *Physical activities not relating to a physical work*

- *the movement of CFCs out of Canada*
- *the harvesting of marine plants in coastal waters*
- *low-level flying over the back country of a National Park*
- *ocean dumping of substances prescribed by the Canadian Environmental Protection Act*

Figure 1: Canadian Environmental Assessment Act Process Overview



### ***What is a federal authority?***

Under the Act, a federal authority is

- a federal Minister of the Crown;
- an agency or other body of the federal government that is ultimately accountable to Parliament through a federal Minister of the Crown;
- any federal department or departmental corporations set out in Schedule I or II to the *Financial Administration Act*;
- any other body prescribed in the regulations to the Act.

The following are not federal authorities under the Act:

- the governments of the Yukon or Northwest Territories;
- a council or band under the Indian Act;
- harbour commissions;
- Crown corporations within the meaning of the *Financial Administration Act*.

### ***When does the Act apply?***

An EA is required if a federal authority exercises or performs one or more of the following powers, duties, or functions in relation to a project:

- proposes the project;
- grants money or any other form of financial assistance to the project;
- grants an interest in land to enable a project to be carried out (that is, sells, leases, or otherwise transfers control of land); or
- exercises a regulatory duty in relation to a project, such as issuing a permit or licence, that is included in the Law List prescribed in the regulations to the Act.

### ***What is a responsible authority?***

The federal authority that either has proposed the project or has been asked to provide support or approval in the form of funding, land, or a permit, licence, or other approval specified by regulation is known as the project's responsible authority (RA). Among other things, the RA

- must ensure that an EA of the project is conducted as early as possible, and before irrevocable decisions are made regarding the proposed project;
- shall not provide federal support to the project before the EA is completed;
- shall not provide federal support to the project if, following an EA, an RA concludes that the adverse environmental effects of a project are not justified in the circumstances.

### ***Is the project likely to involve transboundary effects?***

The transboundary provisions of the Act give the Minister of the Environment the authority to refer a project directly to a mediator or panel, if the Minister believes that the project may cause significant adverse transboundary environmental effects in cases when the project would otherwise not require an EA, and no other federal Act or regulations apply.

Transboundary effects under the Act refer to adverse effects that are likely to occur

- on federal lands (because of projects carried out outside these lands);
- off federal lands (because of projects carried out on these lands);
- across provincial boundaries; or
- across international boundaries.

Special EA procedures may be required if a project is likely to have significant adverse environmental effects across Canada's international boundaries. Canada is a signatory to the *Convention on Environmental Assessment in a Transboundary Context*. The *Convention* seeks to ensure that countries take measures to prevent, reduce, and control significant adverse transboundary environmental effects from proposed activities.

For more information on Canada's obligations under the *Convention*, the RA should contact the Agency.

### **What are the key stages to the EA process under the Act?**

There are four key stages to the EA process:

- start-up;
- the EA;
- decision by the RA;
- post-decision activity.

In start-up, the RA must determine whether the Act applies to the project, and which EA track will be followed.

In some cases, the first phase of the EA is a self-directed assessment through either a screening or a comprehensive study. These tracks are considered self-directed because the RA determines the scope of the EA, and directly conducts or manages the EA process in compliance with the requirements of the Act. If the project is not on the Comprehensive Study List, is not registered for a class screening, and has not been previously assessed, the RA must conduct the screening without the benefit of a class or previous screening report. Most projects will fall into this category.



*By one measure, screening is the most important EA track under the Act. The majority of federal projects -- perhaps 95% or more -- can be expected to be assessed through a screening or class screening.*

If the screening concludes that further investigation is needed, or if public concerns about the project warrant, the RA refers the project to the Minister of the Environment for a referral to mediation or a panel review. In the case of a comprehensive study, the Minister determines whether the project can be referred back to the RA for action or whether further investigation is required.

No matter which EA track is followed, the goal is to determine whether, after taking into account the implementation of any mitigation measures the RA considers appropriate, the project is likely to result in significant adverse environmental effects. Only those environmental effects as defined in the Act are considered in the determination, which must be supported by objective reasoning, based on scientific, technical, and other relevant information.

Upon completion of the EA, the RA must determine whether to provide federal support for the project (that is, whether it may undertake any action that enables the project to proceed). The fate of the project itself is the responsibility of the project's proponent. In some cases, of course, the RA will be the proponent. When this is not the case, however, the withholding of federal support or authorization may prevent the proponent from proceeding. In other cases, the proponent may be able to proceed without federal support.

Once the RA has made its decision, it must give public notice concerning its course of action and, if the project is to proceed, ensure that all appropriate mitigation measures are implemented. It must also determine whether a follow-up program is appropriate, and if so, design and implement one.

### ***What is a follow-up program?***

Under the Act, a follow-up program

- verifies the accuracy of the EA; and/or
- determines the effectiveness of any mitigation measures that have been implemented.

In a screening, the RA must consider whether a follow-up program is appropriate only when it has determined that it may provide federal support for the project.

comprehensive study, mediation, or panel review, on the other hand, must explicitly address the need for and requirements of a follow-up program during the assessment itself.

*When a follow-up program may be appropriate*

*The RA should develop a follow-up program for a project when the circumstances warrant. Examples include situations where*

- *the project involves a new or unproven technology*
- *the project involves new or unproven mitigation measures*
- *an otherwise familiar or routine project is proposed for a new or unfamiliar environmental setting*
- *the assessment's analysis was based on a new assessment technique or model, or there is otherwise some uncertainty about the conclusions*
- *project scheduling is subject to change such that environmental effects could result*

## **Scope of the environmental assessment**

The scope of the project and the scope of the assessment define the components of a proposed development and the environmental effects that should be included in an EA conducted under the Act.

### ***Scope of the project***

Under the Act, the RA must determine the scope of the project in a screening or comprehensive study. The scope of the project refers to those components of the proposed development that should be considered part of the project for the purposes of the EA.

In determining the scope of the project, therefore, the RA must consider:

- which physical works fall within the scope of the project, and which undertakings in relation to those physical works fall within the scope of the project;

or

- which physical activities not in relation to a physical work (identified in the Inclusion List regulation) fall within the scope of the project.

### *The "principal project/accessory" test*

The Act does not provide direction to RAs in determining which physical works should be included within the scope of a project. To ensure consistency in scope of the project determinations, RAs should consider applying the "principal project/accessory" test. This test consists of two steps.

First, what is the principal project? The principal project is always either the undertaking in relation to a physical work or the physical activity for which a power, duty, or function is being exercised (therefore triggering the need for an EA under the Act. The principal project must always be included as part of the scoped project.

Second, are other physical works or physical activities accessory to the principal project? If so, then these may be included as part of the scoped project. Those physical works or physical activities not accessory to the principal project may not be included as part of the scoped project. To determine what is accessory to the principal project, the RA should apply the following two criteria:

- **interdependence:** If the principal project could not proceed without the undertaking of another physical work or activity, then that other physical work or activity may be considered as a component of the scoped project.
- **linkage:** If the decision to undertake the principal project makes the decision to undertake another physical work or activity inevitable, then that other physical work or activity may be considered as a component of the scoped project.

### *Same EA for related projects*

Under the Act, the RA can combine two or more triggered projects into the same EA if it determines that the projects are so closely related that they can be considered to form a single project.

In making this determination, RAs should apply the following three criteria:

- **interdependence:** If the principal project could not proceed without the undertaking of another project, the two may be considered to form a single project.
- **linkage:** If the decision to undertake the principal project makes the decision to undertake another project inevitable, the two may be considered to form a single project.
- **proximity:** If the geographic study areas developed in relation to the scope of the assessment for the individual projects overlap, the two may be considered to form a single project.

Not all criteria must be met in every case. Each case must be considered on its own merit. However, the **proximity** criterion on its own will rarely be sufficient cause for the RA to combine two or more projects into the same EA.

*Undertakings in relation to a physical work*

Finally, under the Act, the RA must include in the EA all relevant aspects of a physical work (that is, all undertakings in relation to that physical work) that are proposed or, in its opinion, are likely to be carried out. These undertakings could include, for example, the construction, operation, modification, decommissioning, or abandonment of a physical work. Such proposed undertakings or undertakings that are likely to be carried out must be included in the scope of the project even if there is no specific trigger for them. The assessment of all proposed undertakings or undertakings that are likely to be carried out in relation to a physical work should be conducted as early in the planning stages of the physical work as is practicable.

(Note that this applies only to undertakings in relation to a physical work and not to physical activities.)

*Scope of Project for  
EA Triggered by Federal Funding*

*Project:*

- . *Construction of an oil refinery in southern Saskatchewan by an oil company*
- . *An extension of a pipeline is required to the new refinery.*

*EA Trigger:*

- . *Funding contribution from Natural Resources Canada.*

*Scope of the project:*

- (i) Principal project:*
  - . *construction of oil refinery*
- (ii) Accessory physical works:*
  - . *under the linkage principle, the construction of the pipeline can be considered an accessory work of the construction of the refinery*
- (iii) Other undertakings in relation to the physical work:*
  - . *operation, planned modifications, and decommissioning of refinery*
  - . *operation of pipeline*

### *Scope of the assessment*

Once the RA has determined the scope of the project, it must then address the question of the scope of assessment. The scope of assessment includes a determination of the environmental effects to be addressed, the scope of the environmental effects to be assessed, and the effects to be considered in making decisions regarding the project.

### *Effects to be assessed*

The RA exercising any power, duty or function under section 5 of the Act must include in the assessment all factors that are relevant to the decision that the RA must make:

- all the factors that the Act requires an RA to consider, including all effects that fall within the Act's definition of "environmental effect", regardless of whether the effect falls within an area of federal jurisdiction. Section 1.4.2 below, addresses the statutory provisions in the Act for the scoping of environmental effects in greater detail;

and

- any factors that are relevant to the assessment of effects of the project in the environment that any other federal law or regulation require or permit the RA to consider. Where the RA is acting as a regulator this includes the factors that the law creating the RA's decision-making authority states must or may be considered.

Additionally, where the RA is

- the project proponent,
- asked to provide financial assistance, or
- asked to sell, lease or transfer its interest in lands,

it may also assess beyond the statutory requirements to the extent that it considers necessary in the circumstances. The RA may broaden the scope of assessment for these decisions because they relate to the operation of the Government itself or its property; matters which are within exclusive federal jurisdiction.

### *Effects to be considered in making decisions*

If a factor is considered relevant to the decision that the RA must make (see "Effects to be Assessed" above), the RA must take it into account in making its decision whether to provide federal support for a project.

### *Attaching conditions*

Where the RA is

- the project proponent,
  - asked to provide financial assistance, or
  - asked to sell, lease or transfer its interest in lands, it may attach any condition or require any mitigation measure it considers appropriate in the circumstances. Where the RA takes a regulatory action that supports the project (that is, where the RA decides to issue an authorization under a statutory or regulatory provision on the Law List regulation), the conditions it attaches to the approval must pertain to the factors which are relevant to its decision:
- the factors that the Act requires the RA to consider, and
  - any factors that the RA must or may consider pursuant to the triggered federal law or regulation.

This analysis is based on recent decisions of the Supreme Court of Canada relating to the permitted scope of assessment under the EARP Guidelines Order. However, it is expected that the principles enunciated by the Court with respect to the Order will apply to the Act as well.

### **Public registry**

The Act is based, in large part, on the principle of public participation. To help realize this objective, public access to information upon which EAs are based is provided through a public registry.

#### *Obligations*

The Act imposes two main obligations on RAs with respect to the public registry:

- to establish a public registry for the purpose of facilitating public access to the records relating to EAs;
- to operate such a registry in a manner to ensure convenient public access.

A public registry must be maintained in respect of every project for which an EA is conducted, regardless of whether the project undergoes a screening, comprehensive study, panel review, or mediation.

#### *Organization*

The Agency has established a public registry framework within which all RAs can function. The framework seeks to provide all Canadians convenient access to

complete information about EAs carried out under the Act. It will also ensure consistency across the federal government, and assist RAs in meeting their public registry obligations in an efficient and convenient manner.

The framework consists of three components:

- **The Federal EA Index**

The Federal EA Index is an electronic listing of all EAs conducted by all RAs under the Act. The index provides "one-window" access to information on the who, what, when, where, and why of any EA conducted under the Act, regardless of the RA. It also directs the public to contacts and document listings related to specific EAs.

- **RA document listings**

The second component of the public registry system is the listing of all publicly available documents relating to each EA. The RA maintains such a listing (in electronic or hardcopy form) for each of its respective EAs. The RA has three key responsibilities with respect to its listings:

- . determining whether each document should be placed in the public registry;
- . maintaining a current list of documents for all active EAs;
- . ensuring the document listing is available to the public upon request.

- **EA documents**

The third component of the public registry system consists of the EA documents produced by, collected by, or submitted to the RA with respect to an EA. Key issues are

- . responding to requests in a timely manner;
- . determining the need to translate documents into the other official language;
- . applying cost recovery guidelines, when applicable.

### *Benefits*

The public registry system provides several important benefits to RAs:

- The framework allows all RAs to meet their registry obligations in a consistent, cost-effective manner that ensures convenient, low, or no-cost public access to information.
- RAs do not have to develop their own procedures.
- RA tasks are streamlined so as to minimize workload requirements.

- Many of the tasks build on current practices so as to minimize costs and workload requirements for RAs.
- Procedures make practical and effective use of technology whenever possible, further reducing the RA's workload and costs.
- Tasks can be phased-in where appropriate.

"The Public Registry" reference guide in Part III of the guide provides details on the organization of the public registry system, as well as guidelines in five key areas:

- coordination with other RAs;
- document clearing;
- responding to requests;
- cost recovery;
- official language considerations.

### **Expert federal departments**

Some federal authorities may be a source of baseline data, information, knowledge, or expertise relevant to the EA. These federal authorities, or expert federal departments, have a special role to play in the EA process. Under the Act, these expert departments must provide specialist information and expertise when requested by the RA, mediator, or panel.

Expert federal authorities include Agriculture Canada, Department of Natural Resources Canada, Environment Canada, Fisheries and Oceans Canada, Health Canada, Heritage Canada, and Indian Affairs and Northern Development.

Expert federal departments may be involved at every stage of the EA process, from reviewing terms of reference at the scoping step, and providing data during preparation of the EA report, to reviewing the report and appearing as an expert witness during a panel review. The independent review function is of particular importance, because it helps ensure the scientific and technical integrity of EA reports prepared under the Act.

The following general guidelines should apply to the RA when involving an expert department:

- The RA should try to identify and involve the relevant expert federal departments at the early stages of an EA.
- The RA's request for information or advice should relate directly to its EA, and should be clear and concise, in order to use the expert department's time most effectively.
- Expert departments should be expected to provide reasonably available (that is, "off-the-shelf") information, but not to undertake lengthy or costly research to



obtain the information.

- The "proponent pays" principle should apply in cases where the expert department undertakes new work, at the request of the RA, to provide necessary information or analysis.
- Prior to submitting a class screening report or comprehensive study report for Agency and public review, the RA should ensure that all relevant expert federal departments have reviewed it for scientific and technical accuracy, and that any concerns raised by these departments have been addressed.

## **Public involvement**

Since public involvement is a key objective of the EA process established by the Act, the RA should make an effort to understand the range of public concerns in a project. The public is not a single entity, but rather comprises varied interests: local residents, local environmental groups, small-business owners, and many others.

The public can also be a valuable source of information to the RA. Local community residents and indigenous peoples can provide helpful information at all steps of an EA. Public input also will be appropriate when there are public concerns about a proposed project, and when the RA needs to build a consensus among different groups. Thus, the RA should determine as early as possible when and to what extent public input should be sought.

A public involvement program goes beyond allowing the public to comment on a completed screening report or comprehensive study report. Rather, it seeks to provide the public with a variety of opportunities to be informed at all stages of the EA, to offer ideas and information, to react to proposals in order to influence recommendations and decisions, and to be informed of all decisions.

### *Public concerns*

*Public concerns, if not addressed sufficiently in the screening or comprehensive study, can warrant a referral to a public review either through mediation or panel review. Public concerns can be expressed in many ways:*

- *correspondence and telephone calls to the Minister, local MPs, the Agency, or the department*
- *media coverage of public concerns*
- *community events, such as demonstrations or meetings about the project;*
- *formal interventions*
- *informal communication*

*RAs should not necessarily rely on numbers when judging the importance of public concerns. Even a few letters or calls may express public concerns, particularly if they are from people who will be most directly affected by a project.*

## **Self-directed Environmental Assessment**

The majority of federal projects requiring an EA will undergo either a screening or a comprehensive study. Both can be considered self-directed environmental assessments in the sense that the RA determines the scope of the EA and the scope of the factors to be considered, directly manages the EA process, and ensures the EA report is prepared.

In practice, the project proponent may conduct the EA, prepare the report, and design and implement mitigation measures and a follow-up program. The RA alone, however, remains directly responsible for ensuring that the screening or comprehensive study is carried out in compliance with the Act, and for deciding on the course of action with respect to the project following the screening or comprehensive study.

### **Screening**

Screening is a self-directed assessment in which the RA retains the greatest degree of management and flexibility over the scope and pace of the EA process. Screenings will vary in time, length, and depth of analysis, depending on the circumstances of the proposed project, the existing environment, and the likely environmental effects. Some screenings may require only a brief review of the available information and a one- or

two-page report; others may need new background studies and be as thorough and rigorous as a comprehensive study.

In cases where there is sound knowledge of the environmental effects and appropriate mitigation measures for a group or class of projects, the RA may be able to use all or part of a class screening report.

#### *Different levels of screening*

*A screening is the most flexible EA track, accommodating a wide range of projects. A railway crossing, for example, may require only a simple screening without the involvement of outside experts, the public, or the Minister of the Environment. The RA for a proposed gold mine in an environmentally sensitive area may, on the other hand, decide that the assessment needs to*

- consider the project's purpose and any alternative means of carrying out the project*
- collect additional information*
- involve the public and outside experts.*

#### *Future use of a screening report*

*Besides forming the basis of the decision on the project, an RA's screening report will become a source of information on environmental effects and mitigation for future screenings, and eventually may be used as a class screening report. Some departments may want to establish a database of completed screening reports that is easily accessible to those responsible for screening.*

### **Comprehensive study**

Although the majority of projects covered by the Act will undergo an EA through a screening, some projects will require a comprehensive study, a more intensive and rigorous assessment of their environmental effects. Conducting a comprehensive study may eliminate the need for further review by mediation or review panel.

The Comprehensive Study List (Appendix D), established by regulation, deals with those projects that have the potential to result in significant environmental effects regardless of their location. Such projects tend to be large-scale and often generate considerable public concern. Examples include

- large oil and natural gas developments;
- major electrical-generation projects;
- large mining projects;
- major pipelines;
- nuclear power facilities, including uranium mines;
- large industrial plants.

In a comprehensive study, the RA retains a primary management role over the EA, although it has more obligations than in a screening. These include the need to consider a wider range of factors, to submit the comprehensive study report for review by the Agency and the public, to take public comments into account, and to consider the need for a follow-up program. In addition (opposed to a screening), the Minister of the Environment has a key role to play in determining the next step in the EA process, when the comprehensive study has been completed.

Federal authorities with specialist information and expertise have a special role to play in a comprehensive study. Under the Act, expert departments must provide specialist information and expertise related to the project when requested by the RA. To ensure that all scientific or technical matters have been adequately addressed in the comprehensive study report prior to submitting the report to the Agency, the RA should make certain that all relevant expert federal departments have provided specialist information or expertise, and have had an opportunity to comment on the comprehensive study report.

Given the scale and complexity of many of the projects that will undergo a comprehensive study, the RA should also consider establishing a public consultation program during preparation of the comprehensive study report.

The comprehensive study report submitted to the Agency for review should include a record of consultations with expert federal departments and the public, as well as a discussion of any unresolved scientific or technical concerns.

### **Factors to be considered**

The RA determines the scope of the factors to be considered in the self-directed EA. Both a screening and comprehensive study must consider the following factors:

- the environmental effects of the project, including environmental effects of

*Sample outline for an EA report*

*The RA can develop its own simple format for a screening report or comprehensive study report. Following is a sample outline:*

- *Name of proposal*
- *Brief description (location, cost, etc.)*
- *Nature of effects identified*
- *Proposed mitigation measures*
- *Federal/provincial agencies consulted*
- *Public advised (list methods as applicable)*
- *Approximate date of implementation*
- *Conclusion and rationale*
- *Departmental/agency contact (name and telephone number)*

malfunctions or accidents that may occur in connection with the project, and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;

- the significance of these environmental effects;
- comments from the public received in accordance with the Act and its regulations;
- technically and economically feasible measures that would mitigate any significant adverse environmental effects of the project;
- any other matter relevant to the screening or comprehensive study that the RA or, in the case of a comprehensive study, the Minister, may require.

Environmental effects of the project are changes in the biophysical environment caused by the project, as well as certain effects that flow directly from those changes, including effects on

- human health;
- socioeconomic conditions;
- physical and cultural heritage, including effects on things of archaeological, paleontological, or architectural significance;
- the current use of lands and resources for traditional purposes by aboriginal persons.

Environmental effects also include the effects of any changes to the project that may be caused by the environment.

In addition to the above factors, the comprehensive study must address

- the purpose of the project;
- alternative means of carrying out the project that are technically and economically feasible, as well as the environmental effects of any such alternative means;
- the need for, and the requirements of, any follow-up program;
- the capacity of renewable resources that are likely to be significantly affected by the project to meet present and future needs.

#### *Alternatives*

*The Act distinguishes between "alternative means" and "alternatives to"*

*"Alternative means" of carrying out the project are methods of a similar technical character or methods that are functionally the same. "Alternative means" with respect to a nuclear power plant, for example, includes selecting a different location, building several smaller plants, and expanding an existing nuclear plant. "Alternative means" that are technically and economically feasible must be considered in a comprehensive study, mediation, and panel review, but are discretionary under a screening.*

*In contrast, "alternatives to" the project are functionally different ways of achieving the same end. For example, "alternatives to" the nuclear power plant include importing power, building a hydroelectric dam, conserving energy, and obtaining the energy through renewable sources. Consideration of "alternatives to" the project is at the discretion of the RA in screening, or of the Minister in consultation with the RA in a comprehensive study, mediation, or panel review.*

## **Review of the environmental assessment report**

The screening and comprehensive study tracks differ on the matter of mandatory review. In a screening, the RA has the option of allowing public review and comment on the screening report before making any decision on the project. In addition, it also may give expert federal departments an opportunity to review the report and other relevant documents.

When the comprehensive study report has been completed, however, the RA must submit it to the Agency for review and public comment. The Agency has several responsibilities relating to the review of the comprehensive study report, including

- ensuring that the report complies with the Act;
- ensuring opportunities are provided for the public to comment on the report;
- receiving and reviewing public comments that are forwarded to the Agency;
- making recommendations to the Minister based on its review of the report and the comments received from expert departments and the public.

The Agency will not normally subject the report to a rigorous scientific review.

Prior to the deadline set out in the public notice issued by the Agency, any person may file comments with the Agency about the conclusions, recommendations, and any other aspect of the comprehensive study report.

## **Decision by the responsible authority or Minister**

There is an important difference between the screening and comprehensive study in terms of who determines the next step in the EA process upon completion and review of the report.

When the screening report is completed, the RA must determine whether it may provide federal support to the project (that is, whether to grant the funds, licence, or interest in lands needed by the project). One of three decisions is possible:

- It may provide federal support if the project is not likely to cause significant adverse environmental effects, taking into account appropriate mitigation measures, if necessary.
- It must not provide federal support if the project is likely to cause significant adverse environmental effects that cannot be justified, taking into account appropriate mitigation measures.
- The RA will request that the Minister order a mediation or panel review of the project.

In the case of a comprehensive study, however, the Minister determines whether the project can be referred back to the RA for appropriate action, or whether further assessment is required by mediation or a panel review. The Minister

- refers the project back to the RA for appropriate action if
    - the project is not likely to cause significant adverse environmental effects, taking into account appropriate mitigation measures, if necessary; or
    - the project is likely to cause significant adverse environmental effects that cannot be justified, taking into account appropriate mitigation measures;
- or
- orders a public review of the project through either mediation or a panel review when
    - it is uncertain whether the project is likely to cause significant adverse environmental effects;
    - the project is likely to cause significant adverse environmental effects and a determination must be made as to whether they are justified in the circumstances;
    - public concerns warrant a public review.

From a practical perspective, the RA can ask the Minister to refer the project directly to a public review before the EA begins, or at any time before completion of the screening or comprehensive study, if it is clear that a public review will be necessary. For example, it may be apparent to all interested parties at the start that public concerns about the project are unlikely to be adequately addressed in a self-directed EA.

### **Summary of responsibilities**

The following summarizes the RA's responsibilities in a self-directed EA:

#### ***Prior to screening or comprehensive study***

- determines, along with the Agency if necessary, the lead RA for projects with two or more RAs;
- establishes and maintains the public registry;
- must not provide any federal support to the project until completion of the EA;
- determines whether a previous EA was conducted with respect to the project.



### *Public concerns*

*At any time during a screening or comprehensive study, the RA may request that the Minister of the Environment refer the project to a review by mediator or panel. One key justification for such a request is the presence of public concerns.*

*Depending on the nature of the project and the environmental setting, public concerns can be expressed in a wide range of ways. As a result, RAs should be aware of, and sensitive to, such questions as*

- *Who will be affected by the project?*
- *What are the views of these affected parties?*
- *Do they need more information about the project?*
- *How do they express themselves -- through the media, correspondence, community action, informal communication?*

### ***Screening and comprehensive study***

- determines the scope of the EA (that is the scope of the project and the scope of the assessment);
- ensures that a screening or comprehensive study is conducted on a project as early as is practicable in the planning stages and before irrevocable decisions are made (may delegate conduct of EA and preparation of report);
- ensures that a screening report or comprehensive study report is prepared;
- makes a determination on the impact of the project.

### ***Screening***

- may use or permit the use of all or part of any class screening report, ensuring that adjustments are made to take into account local circumstances and any cumulative environmental effects;
- determines whether public participation is appropriate and, if so, gives the public an opportunity to comment on the screening report;
- makes a determination about whether it may provide federal support to the project, based on the results of the screening report, and taking into account any comments from the public or expert departments.

### ***Comprehensive study***

- considers the need for and requirements of a follow-up program during the comprehensive study;
- submits the comprehensive study report to the Agency for review by the Agency and the public;
- if the Minister has referred the project back to the RA, makes a determination about whether it may provide federal support to the project.

### ***Following screening or comprehensive study***

- provides public notice of its course of action, taking into account any obligations under the *Official Languages Act*;
- ensures that, for any project that is proceeding, all appropriate mitigation measures are implemented;
- ensures that, if appropriate, a follow-up program is developed and implemented.

## **Public Review**

### **Need for a public review**

In a public review, members of the public are allowed to participate in the conduct of the EA. The Act provides three options for the public review of projects: mediation, panel review, or a combination of the two. The Minister of the Environment can order a public review at any time during a screening or comprehensive study. The RA may also request such a review from the Minister at any time.

Mediation and panel reviews are advisory, not decision-making procedures. The RA still determines whether it may provide federal support to the project.

A referral to a public review is made because

- it is uncertain whether the project is likely to cause significant adverse environmental effects;
- the project is likely to cause significant adverse environmental effects and a determination must be made on whether these effects are justified in the circumstances;
- public concerns about the project and its possible environmental effects warrant further investigation of the project.

A project can be referred to mediation or a panel review after a screening or comprehensive study, or at any time before completion of a screening or

comprehensive study (and, in practice, before the screening or comprehensive study actually begins, if it is clear from the outset that a public review will be necessary).

The Minister determines whether the project will proceed to mediation or a panel review.

Where mediation is inappropriate or unsuccessful, the EA review is conducted by an independent panel. In certain cases, a panel review may be conducted jointly with another jurisdiction.

### **Factors to be considered**

The Minister establishes the terms of reference for the mediator or panel review after consulting with the RA and other parties as appropriate. The factors that must be considered in a public review are the same as those for a comprehensive study.

These are

- the purpose of the project;
- alternative means of carrying out the project that are technically and economically feasible, as well as the environmental effects of any such alternative means;
- the environmental effects of the project, including environmental effects of malfunctions or accidents that may occur in connection with the project, and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
- effects on the capacity of renewable resources that are likely to be significantly affected by the project to meet present and future needs.
- the significance of these environmental effects;
- public comments
- mitigation measures;
- the need for and the requirements of any follow-up program;
- any other matter relevant to the review, such as the need for and alternatives to the project, that the Minister or RA may require.

### **Mediation**

Mediation is a voluntary process of negotiation in which an independent and impartial mediator helps the interested parties resolve their issues. It is characterized by a non-adversarial, collaborative approach to solving problems and generating agreements where consensus is possible. It may also be used to identify and clarify issues where agreement is not possible.

In mediation, members of the public participate as representatives of interested

parties, along with representatives of the RA, the proponent, and other groups as appropriate. Meetings or hearings open to the general public, as are held in a panel review, usually are not part of a mediation.

Mediation is an appropriate choice whenever all of the interested parties have been identified and are willing to participate, and a consensus appears possible. It is particularly effective where there are a small number of interested parties and the environmental issues are limited in scope and number. It can be sensitive to local concerns and less costly than a panel review in terms of time and resources. Participants also gain a sense of having contributed to the resolution of a problem.

In this process, a mediator is appointed by the Minister after consulting with the RA and the other parties to the mediation. The mediator assists the participants in reaching a consensus, but does not make decisions for them.

Successful mediation reflects the following guiding principles:

- Participation must be voluntary, and participants must see the value of such an approach.
- All legitimate stakeholders must be allowed to participate.
- The mediator must be independent and impartial.
- The mediator must be acceptable to all the parties involved.

### **Panel review**

The fourth EA track established by the Act is an EA by an independent public review panel. The Minister appoints the panel and establishes its terms of reference after consulting with the RA. Where appropriate, a panel review may be conducted jointly with another jurisdiction.

Panel reviews are conducted in compliance with the Act and according to the following guiding principles:

- Information available to the panel is also made available to the public (with the exception of information that must remain confidential because of privacy or security concerns).
- Parties with a legitimate interest in the project are encouraged to participate.
- Panel reviews involve informal but structured meetings.

In conducting the public review, the panel must

- ensure that the information required for the EA is obtained and made available to the public;

- convene hearings in a manner that offers the public an opportunity to participate;
- prepare a report setting out the rationale, conclusions, and recommendations of the panel, including any mitigation measures and follow-up program, as well as a summary of comments received by the public;
- submit the report to the Minister and the RA.

### **Decision by the responsible authority**

When the report of the mediator or panel is completed, the RA must decide what action to take.

The RA may provide federal support to the project if the project is not likely to cause significant adverse environmental effects, taking into account appropriate mitigation measures, or if the project is likely to cause significant adverse environmental effects that can be justified in the circumstances.

Conversely, the RA may **not** provide federal support if the project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances.

### **Summary of responsibilities**

The following summarizes the responsibilities of the RA in a public review:

#### ***Prior to mediation or panel review***

- must not provide federal support to the project until completion of the EA;
- recommends to the Minister of the Environment whether mediation is appropriate;
- maintains the public registry for the project up to the time the project is referred to a mediator or panel and after the report of the mediator or panel is submitted to the Minister and RA, until the completion of any follow-up program.

#### ***Mediation***

- advises the Minister on the terms of reference for the mediator;
- provides background information;
- participates in the mediation process.

#### ***Panel review***

- advises the Minister on the panel's terms of reference;
- ensures, for any project referred to a panel, that an environmental impact

- statement (EIS) is prepared in accordance with the guidelines established by the panel (if a screening report or comprehensive study report has not been prepared);
- ensures any information deficiencies in the EIS that are identified by the panel are addressed;
  - participates in the panel's public hearings.

#### ***Following mediation or panel review***

- considers the report of the mediator or panel in reaching a decision about whether to provide federal support to the project;
- provides public notice of its course of action, including the extent to which the recommendations of the mediator or panel have been adopted;
- ensures that for any project that is proceeding, all appropriate mitigation measures are implemented;
- ensures that, when appropriate, a follow-up program is developed and implemented.

## **Working with Other Governments**

Some projects require authorization from both the federal government and a provincial or territorial government. Without close cooperation, a project might need to undergo separate EAs, resulting in unnecessary duplication, confusion, and excessive costs for all parties.

Harmonization of Canada's various EA processes is essential if the environmental effects of projects are to be assessed in an effective and consistent way across the country. Harmonization also helps create a more favourable atmosphere for private-sector decision-makers by streamlining regulatory approval processes and reducing planning uncertainties and delays.

Given the potential for overlapping EAs, the Act allows the Minister of the Environment to enter into agreements with provincial and territorial governments relating to the EA of projects where both governments have an interest.

The bilateral agreements provide guidelines for the roles and responsibilities of each government in the EA of such projects. The agreements cover cooperation in such areas as joint panels, mediation, screening, comprehensive studies, notification, cost-sharing, and time frames.

In 1992 the Canadian Council of Ministers of the Environment (CCME) approved the *Framework for Environmental Assessment Harmonization*. The framework serves as

the foundation for bilateral agreements. Governments committed themselves to establishing appropriate mechanisms for consultation and cooperation at every stage of an EA.

#### The framework

- confirms each government's jurisdictional responsibilities for EA;
- recognizes that federal, provincial, and territorial EA practices are consistent in principle and intent;
- acknowledges the need for clear and consistent rules that eliminate unnecessary duplication and are sensitive to the needs of proponents and to concerns for a timely and fair process;
- affirms the need for a "single-window" approach to EA that provides all proponents with the information they may require;
- establishes the mechanisms to allow for intergovernmental cooperation at all steps of the federal EA process.

The Canada-Alberta Agreement for Environmental Assessment Cooperation, the first bilateral agreement under the framework, includes provisions for

- early notification of projects of shared interest to allow for cooperative EAs;
- establishment of designated "single-window" offices in Alberta;
- coordination of decision-making by both parties with mutually agreeable time frames;
- guidelines for the establishment of joint review panels consistent with federal and provincial legal and operational requirements.