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## **Cabinet Directive on Implementing the *Canadian Environmental Assessment Act***

(Memorandum of Understanding)

The Government of Canada is committed to ensuring that the administration of the *Canadian Environmental Assessment Act* (the Act) results in a timely and predictable environmental assessment process that produces high quality environmental assessments so that federal decisions about projects safeguard the environment and promote sustainability.

In support of this commitment, the Government has embarked on consolidation of the federal environmental assessment process.

Until legislative amendments to achieve consolidation take effect, the Government will administer the Act in a manner that places a priority on the delivery of high quality environmental assessments in a predictable, certain and timely manner.

This Directive creates a framework within which federal authorities can exercise their respective powers, duties and functions established under the *Canadian Environmental Assessment Act* and its regulations. This Directive does not, however, fetter the powers, duties, functions or discretion of federal authorities, the federal environmental assessment coordinator or the Canadian Environmental Assessment Agency.

### **Part I - Making the Federal Environmental Assessment Process more Predictable, Certain and Timely**

#### **Federal Coordination**

Predictable, certain and timely application of the federal environmental assessment process requires a high degree of collaboration and cooperation among federal authorities. All parties must understand and perform their roles and responsibilities in a manner that facilitates the efficient preparation of a high quality environmental assessment that will support federal decision making.

Under section 12.1 of the *Canadian Environmental Assessment Act*, the role of the federal environmental assessment coordinator is to coordinate the participation of federal authorities in the environmental assessment of a project.

Under section 12.2, the federal environmental assessment coordinator has a duty to ensure the identification of responsible authorities and federal authorities with specialist or expert information or knowledge, to coordinate the involvement of those federal authorities and to ensure that they fulfil their obligations under the Act in a timely manner.

Under section 12.3, the federal environmental assessment coordinator, after consultation with responsible authorities and federal authorities, has the power to establish time lines in relation to the assessment.

Under section 12.5, federal authorities are required to comply in a timely manner with requests and determinations made by the federal environmental assessment coordinator in the course of carrying out its duties or functions.

**1. Responsible authorities and federal authorities with specialist or expert information or knowledge will cooperate with the federal environmental assessment coordinator when the coordinator is setting time lines for assessments, adhere to those time lines once established and comply with requests and determinations made by the federal**

**environmental assessment coordinator in support of timely, predictable and efficient preparation of high quality environmental assessments.**

**2. For those projects where the Canadian Environmental Assessment Agency (the Agency) is the federal environmental assessment coordinator (subsection 12.4 (1)) or where there is more than one responsible authority (paragraph 12.4 (2) (b)), the roles and responsibilities of responsible authorities and federal authorities in supporting the federal environmental assessment coordinator throughout the environmental assessment process lifecycle are to be documented and agreed to in a project workplan to be prepared and monitored by the federal environmental assessment coordinator with progress reports provided to the Canadian Environmental Assessment Agency.**

*The Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements (the Federal Coordination Regulations) contain time lines for a federal authority to determine if an environmental assessment is likely to be required for a proposed project or if the federal authority has specialist or expert information or knowledge that is necessary to conduct the environmental assessment.*

**3. Responsible authorities and federal authorities with specialist or expert information or knowledge will adhere to the time lines in these regulations.**

The provision of an adequate project description by the proponent is critical to enabling federal authorities to determine whether a federal environmental assessment is required and, if one is required, facilitating its efficient conduct. The quality and completeness of the project description have a direct bearing on the ability of responsible authorities and federal authorities with specialist or expert information or knowledge to meet the time lines set out in the *Federal Coordination Regulations*. Incomplete or inadequate information will lead to delays in initiating the environmental assessment process.

**4. The Agency, responsible authorities and federal authorities will ensure that adequate guidance is available to proponents on the preparation of project descriptions that contain sufficient information to determine the need for a federal environmental assessment and, when required, to initiate efficient conduct of the assessment.**

#### **Determining scope of project and scope of factors to be considered**

Determination of the scope of the project and the scope of the factors to be considered as part of the assessment in a timely and appropriate manner is critical to providing certainty to project proponents, to enabling coordination with other jurisdictions and to ensuring a high quality environmental assessment.

Section 4 sets out the following related purposes of the Act:

*To ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects.*

*To ensure that responsible authorities carry out their responsibilities in a coordinated manner with a view to eliminating unnecessary duplication in the environmental assessment process.*

Subsection 12(1) states that:

*Where there are two or more responsible authorities in relation to a project, they shall together determine the manner in which to perform their duties and functions under this Act and the regulations.*

Section 15 sets out the responsible authority's responsibility and discretion in determining the scope of the project.

**5. There will be a timely and coordinated determination of the scope of the project, the factors to be considered and the scope of the factors.**

**6. To support coordination and the administration of a timely, predictable and efficient process, responsible authorities will apply the Policy set out in Part II of this Directive to determine the scope of a project.**

### **Ensuring the Implementation of Mitigation Measures**

Implementation of mitigation measures identified through the environmental assessment process is a prerequisite to ensuring that projects do not cause significant adverse environmental effects. Clarity on roles and responsibilities is required to ensure that mitigation measures are identified, implementation plans specified and applied and follow-up programs undertaken as appropriate.

Subsections 20(2.1) and 37(2.3) state that:

*A federal authority shall provide any assistance requested by a responsible authority in ensuring the implementation of mitigation measures on which the federal authority and the responsible authority have agreed.*

**7. A federal authority that proposes or agrees to the examination of an issue as part of an environmental assessment, or that is otherwise responsible under its departmental mandate for issues to be addressed in the environmental assessment, will, at the time it initiates examination of the issue, commit to identifying at the time a course of action is taken by the responsible authority, the means the federal authority will use to ensure the implementation of any mitigation measures that are agreed to by the responsible authority and the federal authority.**

**8. A federal authority that proposes or agrees to the examination of an issue as part of an environmental assessment, or that is otherwise responsible under its departmental mandate for issues to be addressed in the environmental assessment, will, at the time it initiates examination of the issue, commit to identifying at the time a course of action is taken by the responsible authority, the means the federal authority will use to ensure the implementation of any follow-up program requirements that are agreed to by the responsible authority and the federal authority.**

### **Canadian Environmental Assessment Agency**

The Canadian Environmental Assessment Agency has a key facilitation role to play in the administration of the Act and in encouraging the application of the federal environmental assessment process in a manner that supports timely, predictable and efficient preparation of high quality environmental assessments.

Under section 63, the Canadian Environmental Assessment Agency (the Agency) has the power to assist parties in building consensus and resolving disputes.

**9. The Agency will assist parties in building consensus and resolving disputes in a manner that supports the predictable, timely and efficient administration of the federal environmental assessment process, especially where there are disputes between**

**federal authorities on determining an appropriate scope of project or scope of the factors to be considered in an assessment.**

**10. The Agency will, in cooperation with responsible authorities and federal authorities, review existing environmental assessment policies and procedures and proactively develop new policies and procedures in support of consistent application of the federal environmental assessment process.**

Under section 62, the Agency has a role to promote, monitor and facilitate compliance with the Act and its regulations. It is also required to promote and monitor the quality of assessments. Section 63 requires that the Agency establish and lead a quality assurance program for assessments.

**11. The Agency will administer the quality assurance program in a manner that will encourage timely, predictable and efficient preparation of high quality environmental assessments. This will include the development of performance measures to track and evaluate success in achieving these objectives and public reporting on the results in a timely manner.**

### **Accountability and Reporting**

Collaboration and cooperation will be required among all federal authorities that engage in the environmental assessment process to achieve the objectives of making that process more predictable, certain and timely. Identifying the specific means that will be used to implement this Directive and public reporting on the results achieved will be central to encouraging improved performance.

**12. The President of the Agency and the deputy heads of federal authorities identified in Annex A to this Directive will enter into a Memorandum of Understanding (MOU) setting out the specific actions that will be taken to implement this Directive. The MOU will set out the respective roles and responsibilities of the Agency and the federal authorities in working together to ensure timely, predictable and efficient preparation of high quality environmental assessments. The MOU will provide specific direction on key issues such as identification of each department's federal interest based on its legislative or policy mandate, determination of triggers, determination of scope of project and scope of the factors to be considered in an assessment, implementation of mitigation measures, implementation of follow-up programs and incorporating species at risk considerations into environmental assessments.**

**13. The President of the Agency and the deputy heads of federal authorities not identified in Annex A to this Directive should consider the opportunity of similar MOUs and, as appropriate, enter into such MOUs.**

**14. The Minister of the Environment's annual report to Parliament on the implementation of the Act will include a summary of the results achieved in improving the timely, predictable and efficient preparation of high quality environmental assessments through implementation of this Directive.**

## **Part II - Policy for Determining an Appropriate Scope of Project for Environmental Assessments**

To achieve the key objective of ensuring that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, Ministers will support scope of projects determinations that correspond to the scenarios described below.

1. If the power, duty or function referred to in section 5 of the Act is to be exercised in relation to the entire proposal as described by the proponent, a scope of project determination that reflects the entire proposal.

2. If there is more than one power, duty or function referred to in section 5 of the Act that is to be exercised in relation to the proposal, scope of project determinations that result in one federal environmental assessment being conducted in respect of the proposal. Through consultation, this may be accomplished by agreeing to the same scope of project or considering separate projects in a single environmental assessment.
3. If components of the proposal other than the component directly related to the powers, duties or functions referred to in section 5 of the Act might cause adverse environmental effects on areas of federal jurisdiction, a scope of project determination that includes as much as possible these other components, so that the potential adverse environmental effects on areas of federal jurisdiction can be considered.
4. If the proposal or any component of it is subject to the environmental assessment process of another jurisdiction, a scope of project determination that facilitates cooperation and coordination with the other jurisdiction. This does not require that the federal and provincial scopes of project be the same but that they be complementary and facilitate an efficient and timely environmental assessment.

**Annex A to the Directive  
Federal Authorities Covered by a Memorandum of Understanding on  
Implementing the *Canadian Environmental Assessment Act***

- Environment Canada
- Fisheries and Oceans Canada
- Health Canada
- Natural Resources Canada
- Transport Canada

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