



Operational Policy Statement

Use of Federal-Provincial Cooperation Mechanisms in Environmental Assessments pursuant to the *Canadian Environmental Assessment Act*

Purpose

The purpose of this Operational Policy Statement is to provide best practice guidance to increase usage of the full range of cooperation mechanisms, which are available under the Act to integrate the delivery of federal and provincial environmental assessment requirements to achieve the objective of one project-one assessment.

Application

This Operational Policy Statement sets out the cooperation mechanisms that can currently be applied under the Act, and criteria to be applied in determining the optimal mechanism for the conduct of a specific federal environmental assessment.

The Operational Policy Statement is primarily intended for responsible authorities¹. It also provides useful guidance for all other federal authorities, proponents, provinces and other interested parties involved in the environmental assessment process.

¹ For the purpose of this Operational Policy Statement, the reference to responsible authorities is meant to also include any other authorities referred to in sections 8 to 10.1 of the Act, as well as the Minister of the Environment in the context of joint review panels and of substitution.

Background

In *MiningWatch Canada v. Canada*, the Supreme Court of Canada noted the importance of minimizing any federal-provincial duplication in the conduct of environmental assessments.

Ultimately, the desired outcome of cooperating with provincial authorities is a single, consistently applied environmental assessment process, enabling each order of government to make its decisions in relation to projects in a certain, predictable and timely fashion, while safeguarding the environment. This is frequently referred to as a “one project-one assessment” approach — an approach endorsed by the Canadian Council of Ministers of the Environment (CCME).

The CCME *Sub-Agreement on Environmental Assessment*, signed in 1998, establishes a framework to provide the public, proponents, and governments with greater consistency, predictability, and timely and efficient use of resources where two or more jurisdictions are required by law to assess the same project.

In October 2009, all federal, provincial and territorial governments reaffirmed, through the CCME, their commitment to reducing federal-provincial duplication in environmental assessment, while ensuring high environmental standards are met. The

CCME endorsed a report that recommends jurisdictions consider a range of environmental assessment tools and models in their legislation, including the following cooperation mechanisms that are available under the *Canadian Environmental Assessment Act* (the Act) and its regulations: coordination, delegation, joint review panels and substitution (for infrastructure projects funded under certain federal funding initiatives, in the case of substitution).

Principles

Every opportunity shall be taken to make optimal use of the most effective cooperative mechanism available under the Act, taking into account the specifics of the project being assessed.

To take maximum advantage of the opportunities provided in the legislation for inter-jurisdictional cooperation, all federal authorities with a strong possibility of a trigger are expected to adopt an “automatically in” approach with respect to their environmental assessment obligations, rather than delaying engagement until they have certainty that an environmental assessment will be required. [“In until out” or “automatically in” approach]

This “automatically in” approach is essential to ensure that the full range of cooperation mechanisms available under the Act can be explored as early as possible, collaboratively with provincial authorities and prior to identifying the optimal cooperation mechanism to conduct the environmental assessment of a project.

As endorsed by the CCME in the 1998 *Sub-Agreement on Environmental Assessment* and more recently again in October 2009, the “one project-one assessment” objective

is to be achieved by relying primarily on the environmental assessment process of the best-placed jurisdiction, designated as the “lead party” in the Sub-Agreement.

Approach

a) Coordination

Coordination refers to the effective cooperation between jurisdictions so that projects, which require an environmental assessment by both jurisdictions, undergo a single environmental assessment. The best-placed jurisdiction takes the lead in administering the assessment, but both jurisdictions are full and active partners in the assessment. Each jurisdiction maintains authority and responsibility with respect to its own environmental assessment requirements, including public consultation, but agrees to use the information generated through the cooperative environmental assessment as the basis for its decisions in relation to the project.

In accordance with paragraph 12.2(e) of the Act, it is the duty of the federal environmental assessment coordinator to coordinate the involvement of responsible authorities and expert federal authorities with other jurisdictions.

The environmental assessment under the Act of any project that is also subject to a provincial environmental assessment is expected, at a minimum, be coordinated with the province in order to minimize duplication.

b) Delegation

Section 17 of the Act enables a responsible authority to delegate the conduct of any part of a screening or comprehensive study, as well as the preparation of a screening or

comprehensive study report to another person, body or jurisdiction, including a provincial authority. Under a delegated approach, a provincial authority (where it is the best placed jurisdiction) may agree, upon request, to conduct the environmental assessment required under the Act on behalf of the responsible authority.

When the environmental assessment is delegated under this provision, the responsible authority remains legally responsible for making the scoping decisions (sections 15 and 16), and for taking the appropriate course of action under section 20 or 37 of the Act upon completion of the assessment. In the case of a comprehensive study, the Minister of the Environment also remains legally responsible for making decisions under sections 21.1 and 23 of the Act.

c) Joint review panels

In accordance with sections 40 to 42 of the Act, where the referral of a project to a review panel is required under the Act, the Minister of the Environment may enter into an arrangement or agreement with another jurisdiction (including a province) with respect to the establishment of a joint review panel and the manner in which the environmental assessment of the project is to be conducted.

A joint review panel process is a single jointly administered process, which when implemented, satisfies the legal requirements of both jurisdictions. Upon completion of the assessment, the joint review panel report is submitted to the responsible authority as the basis for taking the appropriate course of action under section 37 of the Act. Section 42 of the Act provides that the assessment conducted by the joint review panel is deemed to satisfy

the requirements of the Act respecting environmental assessments by a review panel.

d) Substitution

The *Infrastructure Projects Environmental Assessment Adaptation Regulations* (Adaptation Regulations), adopted in March 2009, allows the Minister of the Environment to approve the substitution of a provincial environmental assessment process to the environmental assessment process set out in the Act (where the province is the best placed jurisdiction), for infrastructure projects funded under certain federal funding initiatives. The Adaptation Regulations identify the requirements of the provincial environmental assessment process that have to be in place for the Minister of the Environment to approve the substitution.

Unlike the delegation mechanism, the Minister of the Environment, not the responsible authority, is responsible for approving the substitution. The Minister's approval can be granted for a particular project, or for a class of projects. Upon completion of the assessment, the provincial environmental assessment report is submitted to the responsible authority as the basis for taking the appropriate course of action under section 20 or 37 of the Act. The Adaptation Regulations provide that any assessment conducted in accordance with the substituted process approved by the Minister of the Environment is deemed to satisfy the requirements of the Act in respect of a screening or a comprehensive study.

e) Selecting the appropriate cooperation mechanism

The most appropriate mechanism to use in any given case, or for any particular class of projects, may vary based on the specifics of

the project or the class. The following should be considered when selecting, together with provincial authorities, a mutually agreeable approach:

- the nature and magnitude of any anticipated public concerns (high levels of public concerns in a proposed project may increase expectations that both orders of government will play an active role);
- the nature and magnitude of the anticipated or potential adverse environmental effects;
- the ability of the lead party to deliver on or address the requirements of the non-lead party;
- Aboriginal consultation requirements; and
- the existence of a bilateral cooperation agreement and mechanisms established thereby.

In every instance, having regard for the five considerations above, the objective should be to achieve the greatest level of integration of federal and provincial processes possible, while ensuring that, ultimately, a high-quality environmental assessment, which meets the requirements of the Act, is conducted.

The Canadian Environmental Assessment Agency, in its capacity as federal environmental assessment coordinator for most projects subject to the Act, which are also subject to provincial environmental assessments, will work with responsible authorities to ensure environmental assessment requirements under the Act are confirmed as early as possible and to ensure that the most appropriate federal-provincial cooperation mechanism is selected.

Related Guidance

- [Environmental Assessment Agreements](#)
- [The Canada-British Columbia Environmental Assessment Delegation Agreement](#)

Additional Information

For more information on this OPS or on the requirements of the Act, please contact the Agency office in your region.

Head Office:

<http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=16C9C18C-1>

Regional Offices: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=12D96EC7-1>

Additional Agency policies and guidance can be found on the Agency's Web site at: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=D75FB358-1>.

Disclaimer

This guide is for information purposes only. It is not a substitute for the Act or any of its regulations. In the event of any inconsistency between this guide and the Act or regulations, the Act or regulations, as the case may be, would prevail.

To ensure that you have the most up-to-date versions of the Act and regulations, please consult the Department of Justice Web site at <http://laws.justice.gc.ca>.

Updates

This document may be reviewed and updated periodically by the Canadian Environmental Assessment Agency (the Agency). To ensure that you have the most up-to-date version, please consult the Guidance Materials page of the Agency's Web site at <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=DACB19EE-1>.

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Comments and Feedback

The Agency would appreciate receiving comments on the content of this guide and feedback regarding whether the guidance effectively meets your needs. Comments

received will be considered for future updates.

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