Classement CCEK

Titre Processus fédéral d'évaluation environnementale

Type Dossiers Environementaux

Date D'ouverture 1988

Notes 19 janvier 1988: Commentaires du CCEK au sujet de l'amélioration de l'évaluation environnementale fédérale

26 avril 1990: Notes des Affaires fédérales et intergouvernementales de l'Alberta, rencontre entre les provinces canadiennes à propos de l'évaluation environnementale fédérale (VA)

18 juin 1990: Chambre des Communes du Canada, projet de loi c-78, loi de mise en oeuvre du processus fédéral d'évaluation environnementale, le ministre de l'Environnement

31 juillet 1990: Sommaire législatif: "Loi c-78: loi de l'évaluation environnementale canadienne", par Helen Morrison, Bibliothèque du Parlement, département de la recherche (VA)

septembre 1990: Gouvernement du Canada: L'évaluation environnementale fédérale, nouvelles orientations

28-30 septembre 1990: Réunion du Comité électoral sur l'évaluation environnementale

novembre 1990: "Révision de l'évaluation environnementale fédérale", document produit dans le cadre de la réunion (VA)

23 novembre 1990: Projet de loi c-78 sur la mise en oeuvre du processus fédéral d'évaluation environnementale, commentaires du CCEK au Ministère de l'Environnement

8 juillet 1994: Règlement désignant les dispositions législatives et règlementaires fédérales prévoyant les attributions des autorités fédérales et du gouverneur en conseil dont l'exercice rend nécessaire une évaluation environnementale

6 octobre 1994: Gouvernement du Québec, communiqué du Cabinet du ministre de l'Environnement et de la Faune: Promulgation de la Loi canadienne sur l'évaluation environnementale: très vive réaction du Québec

JUS-94-163-01
(DORS/SOR)

Sur recommandation de la ministre de l'Environnement et en vertu des alinéas 59*f*) et *g*) de la Loi canadienne sur l'évaluation environnementale*, il plaît à Son Excellence le Gouverneur général en conseil de prendre le Règlement désignant les dispositions législatives et réglementaires fédérales prévoyant les attributions des autorités fédérales et du gouverneur en conseil dont l'exercice rend nécessaire une évaluation environnementale, ci-après, lequel entre en vigueur à la date d'entrée en vigueur de l'article 59 de la Loi canadienne sur l'évaluation environnementale.

---

* L.C. 1992, ch. 37

JUS-94-163-01
(DORS/SOR)

RÈGLEMENT DÉSIGNANT LES DISPOSITIONS LÉGISLATIVES ET RÉGLEMENTAIRES FÉDÉRALES PRÉVOYANT LES ATTRIBUTIONS DES AUTORITÉS FÉDÉRALES ET DU GOUVERNEUR EN CONSEIL DONT L'EXERCICE REND NÉCESSAIRE UNE ÉVALUATION ENVIRONNEMENTALE

Titre abrégé

1. *Règlement sur les dispositions législatives et réglementaires désignées*.

Dispositions générales

2. Pour l'application de l'alinéa 5(1)*d*) de la *Loi canadienne sur l'évaluation environnementale*, les dispositions législatives et réglementaires sont celles prévues respectivement aux parties I et II de l'annexe I.

3. Pour l'application du paragraphe 5(2) de la *Loi canadienne sur l'évaluation environnementale*, les dispositions législatives sont celles prévues à l'annexe II.

ANNEXE I
(*article 2*)

DISPOSITIONS LÉGISLATIVES ET RÉGLEMENTAIRES CONFÉRANT DES ATTRIBUTIONS À UNE AUTORITÉ FÉDÉRALE

PARTIE I

DISPOSITIONS LÉGISLATIVES

Article*	Dispositions
1. (*14*)	*Loi sur les chemins de fer*
	a) paragraphe 112(3)
	b) paragraphe 115(1)
	c) paragraphe 115(3)
	d) paragraphe 123(1)
	e) paragraphe 123(4)
	f) paragraphe 127(1)
	g) paragraphe 130(1)
	h) article 131
	i) article 132
	j) paragraphe 145(4)
	k) paragraphe 196(6)
	l) alinéa 197(3)*a*)
	m) paragraphe 201(2)
	n) alinéa 202(1)*c*)
	o) alinéa 202(1)*d*)
	p) paragraphe 212(1)
	q) paragraphe 212(2)
	r) paragraphe 214(3)
	s) article 216
	t) paragraphe 230(1)
	u) paragraphe 326(3)
	v) paragraphe 329(3)
	w) alinéa 330(1)*a*)
	x) alinéa 330(1)*b*)
	y) paragraphe 330(2)
2. (*16*)	*Loi sur le déplacement des lignes de chemin de fer et les croisements de chemin de fer*
	a) article 7
	b) paragraphe 8(1)

ANNEXE I (*suite*)

PARTIE I (*suite*)

Article*	Dispositions
3. (*12*)	*Loi sur les eaux des Territoires du Nord-Ouest* *a*) paragraphe 14(1) *b*) alinéa 18(1)*a*) *c*) alinéa 18(1)*b*) *d*) alinéa 18(1)*c*)
4. (*18*)	*Loi sur les eaux du Yukon* *a*) paragraphe 14(1) *b*) alinéa 18(1)*a*) *c*) alinéa 18(1)*b*) *d*) alinéa 18(1)*c*)
5. (*5*)	*Loi sur les explosifs* *a*) alinéa 7(1)*a*)
6. (*4*)	*Loi sur les forces hydrauliques du Canada* *a*) paragraphe 7(1)
7. (*7*)	*Loi sur les Indiens* *a*) paragraphe 18(2) *b*) paragraphe 28(2) *c*) alinéa 58(4)*b*)
8. (*8*)	*Loi sur l'Office national de l'énergie* *a*) paragraphe 46(1) *b*) paragraphe 58(1) *c*) paragraphe 58.11(1) *d*) paragraphe 58.32(1) *e*) paragraphe 58.34(2) *f*) alinéa 74(1)*d*) *g*) paragraphe 81(4) *h*) paragraphe 108(4) *i*) paragraphe 108(6) *j*) paragraphe 112(1) *k*) paragraphe 112(3)

ANNEXE I (*suite*)

PARTIE I (*suite*)

Article*	Dispositions
9. (*2*)	*Loi sur les opérations pétrolières au Canada* *a*) alinéa 5(1)*b*) *b*) paragraphe 5.1(4)
10. (*9*)	*Loi sur les parcs nationaux* *a*) alinéa 5(10)*c*) *b*) alinéa 5(10)*e*)
11. (*6*)	*Loi sur les pêches* *a*) paragraphe 22(1) *b*) paragraphe 22(2) *c*) paragraphe 22(3) *d*) article 32 *e*) paragraphe 35(2) *f*) paragraphe 37(2)
12. (*1*)	*Loi sur la prévention de la pollution des eaux arctiques* *a*) paragraphe 10(3), les attributions qui y sont prévues ayant été déléguées par le *Décret de délégation de pouvoirs par le gouverneur en conseil*
13. (*3*)	*Loi canadienne sur la protection de l'environnement* *a*) paragraphe 71(1) *b*) paragraphe 72(4)
14. (*11*)	*Loi sur la protection des eaux navigables* *a*) alinéa 5(1)*a*) *b*) paragraphe 6(4) *c*) article 16 *d*) article 20
15. (*13*)	*Loi sur la radiocommunication* *a*) alinéa 5(1)*f*)

ANNEXE I (*suite*)

PARTIE I (*fin*)

Article*	Dispositions
16. (*15*)	*Loi sur la sécurité ferroviaire*
	a) paragraphe 10(1)
17. (*17*)	*Loi sur les télécommunications*
	a) paragraphe 19(1) *b*) paragraphe 19(4)
18. (*10*)	*Loi de 1987 sur les transports nationaux*
	a) article 41 *b*) paragraphe 44(3) *c*) paragraphe 147(4) *d*) paragraphe 150(1) *e*) paragraphe 151(5) *f*) article 162 *g*) paragraphe 165(1) *h*) article 166 *i*) paragraphe 232(1) *j*) alinéa 243(1)*a*)

ANNEXE I (*suite*)

PARTIE II

DISPOSITIONS RÉGLEMENTAIRES

Article*	Dispositions
1. (*17*)	*Règlement sur l'amélioration des cours d'eau internationaux* *a*) paragraphe 10(1) *b*) article 12
2. (*24*)	*Règlement sur les bâtiments des parcs nationaux* *a*) paragraphe 5(1)
3. (*26*)	*Règlement de 1991 sur les baux et les permis d'occupation dans les parcs nationaux* *a*) paragraphe 18(1)
4. (*32*)	*Règlement de 1993 sur le bois* *a*) paragraphe 7(3) *b*) article 14
5. (*25*)	*Règlement sur le bois dans les parcs nationaux* *a*) paragraphe 4(1)
6. (*16*)	*Règlement sur le bois de construction des Indiens* *a*) paragraphe 5(1) *b*) article 9 *c*) paragraphe 22(1)
7. (*37*)	*Règlement sur le bois du Yukon* *a*) article 4 *b*) paragraphe 5(1)
8. (*6*)	*Règlement sur les câbles sous-marins de communication avec l'extérieur* *a*) alinéa 3*b*) *b*) alinéa 4*b*)

ANNEXE I (*suite*)

PARTIE II (*suite*)

Article*	Dispositions
9. (*11*)	*Règlement sur les canaux historiques*
	a) paragraphe 14(2)
10. (*3*)	*Règlement sur le contrôle de l'énergie atomique*
	a) paragraphe 7(1) *b*) article 10 *c*) alinéa 25(1)*b*) *d*) paragraphe 27(1)
11. (*15*)	*Règlement sur la destruction des déchets dans les réserves indiennes*
	a) article 5
12. (*19*)	*Règlement sur les effluents liquides des mines de métaux*
	a) paragraphe 5(2)
13. (*18*)	*Règlement sur l'emmagasinage en vrac des gaz de pétrole liquéfiés*
	a) article 6
14. (*9*)	*Règlement sur l'emmagasinage en vrac des liquides inflammables*
	a) article 6
15. (*13*)	*Règlement sur l'exploitation minière dans les réserves indiennes*
	a) paragraphe 5(2) *b*) paragraphe 6(1)
16. (*27*)	*Règlement sur la faune des parcs nationaux*
	a) paragraphe 15(2)

ANNEXE I (*suite*)

PARTIE II (*suite*)

Article*	Dispositions
17. (*5*)	*Règlement sur les forces hydrauliques du Canada* *a*) paragraphe 8(1) *b*) paragraphe 12(2) *c*) article 21 *d*) paragraphe 25(2) *e*) paragraphe 40(1) *f*) article 46 *g*) paragraphe 49(3) *h*) article 50 *i*) paragraphe 69(3)
18. (*35*)	*Règlement sur le gibier du parc de Wood-Buffalo* *a*) alinéa 56(1)*b*)
19. (*8*)	*Règlement concernant les immeubles fédéraux* *a*) alinéa 4(2)*a*)
20. (*4*)	*Règlement sur les installations de déchargement des wagons-citernes à chlore* *a*) paragraphe 6(1) *b*) paragraphe 6(2)
21. (*1*)	*Règlement sur les installations d'emmagasinage du nitrate d'ammonium* *a*) paragraphe 5(1) *b*) paragraphe 5(2) *c*) paragraphe 6(1)
22. (*33*)	*Règlement sur les mines d'uranium et de thorium* *a*) paragraphe 7(1) *b*) paragraphe 8(1) *c*) article 9 *d*) alinéa 17(1)*b*) *e*) paragraphe 17(7) *f*) paragraphe 18(2) *g*) article 34

ANNEXE I (*suite*)

PARTIE II (*suite*)

Article*	Dispositions
23. (*20*)	*Règlement sur les oiseaux migrateurs*
	a) paragraphe 4(1)
	b) article 33
	c) alinéa 35(2)*b*)
	d) article 36
24. (*22*)	*Règlement général sur les parcs historiques nationaux*
	a) article 10
	b) paragraphe 11(1)
	c) paragraphe 11(2)
25. (*23*)	*Règlement général sur les parcs nationaux*
	a) paragraphe 11(1)
	b) paragraphe 12(1)
	c) paragraphe 18(1)
	d) paragraphe 20(1)
	e) paragraphe 20(2)
26. (*29*)	*Décret sur les permis relatifs à des terres publiques*
	a) alinéa 3*a*)
	b) alinéa 3*d*)
	c) alinéa 3*f*)
27. (*14*)	*Règlement sur le pétrole et le gaz des terres indiennes*
	a) paragraphe 5(2)
	b) paragraphe 7(1)
	c) paragraphe 7(5)
	d) paragraphe 10(4)
	e) paragraphe 22(1)
	f) paragraphe 26(2)
	g) paragraphe 27(4)
	h) paragraphe 28(4)
	i) paragraphe 31(1)

ANNEXE I (*suite*)

PARTIE II (*suite*)

Article*	Dispositions
28. (*36*)	*Règlement sur la protection des forêts du Yukon* *a*) paragraphe 10(1)
29. (*21*)	*Règlement sur les refuges d'oiseaux migrateurs* *a*) paragraphe 9(1)
30. (*28*)	*Règlement sur les rennes des Territoires du Nord-Ouest* *a*) alinéa 5(1)*b*)
31. (*34*)	*Règlement sur les réserves de faune* *a*) article 4
32. (*10*)	*Règlement sur la santé des animaux* *a*) alinéa 10(1)*a*)
33. (*2*)	*Règlement sur le stockage de l'ammoniac anhydre* *a*) article 6
34. (*12*)	*Règlement sur les terrains contigus à des canaux relevant du ministère des A.I. et du N.C.* *a*) article 6 *b*) alinéa 7*a*) *c*) alinéa 7*d*) *d*) alinéa 7*f*)
35. (*7*)	*Règlement fédéral sur le traitement et la destruction des BPC au moyen d'unités mobiles* *a*) article 11 *b*) paragraphe 12(1)

ANNEXE I (*fin*)

PARTIE II (*fin*)

Article*	Dispositions
36. (*31*)	*Règlement sur l'utilisation des terres territoriales*
	a) alinéa 25(1)*a*)
	b) alinéa 27*a*)
37. (*30*)	*Ordonnance sur le vol sonique et supersonique*
	a) article 3

* Le numéro en italique qui figure entre parenthèses sous le numéro d'article correspond au numéro d'article dans la version anglaise.

ANNEXE II
(*article 3*)

DISPOSITIONS LÉGISLATIVES CONFÉRANT DES ATTRIBUTIONS AU GOUVERNEUR EN CONSEIL

Article*	Dispositions
1. (4)	*Loi sur les forces hydrauliques du Canada*
	a) article 9
2. (6)	*Loi sur les Indiens*
	a) paragraphe 35(1) *b*) paragraphe 39(1)
3. (7)	*Loi sur l'Office national de l'énergie*
	a) article 52 *b*) paragraphe 58.16(1)
4. (8)	*Loi sur les parcs nationaux*
	a) alinéa 6(2)*c*) *b*) paragraphe 8.3(3)
5. (5)	*Loi sur les pêches*
	a) article 32 *b*) paragraphe 35(2) *c*) alinéas 36(5)*a*) à *e*), dans le cas où le règlement pris en vertu de ces alinéas comprend une disposition qui en restreint le champ d'application à un emplacement qui y est nommé *d*) paragraphe 37(2)
6. (2)	*Loi sur les ponts*
	a) alinéa 8(1)*b*)
7. (1)	*Loi sur la prévention de la pollution dans les eaux arctiques*
	a) paragraphe 13(1)

ANNEXE II (*suite et fin*)

Article*	Dispositions
8. (3)	*Loi canadienne sur la protection de l'environnement*
	a) paragraphe 63(1)
9. (9)	*Loi de 1987 sur les transports nationaux*
	a) paragraphe 149(3)
	b) paragraphe 149(7)
	c) paragraphe 165(2)

* Le numéro en italique qui figure entre parenthèses sous le numéro d'article correspond au numéro d'article dans la version anglaise.

JUS-94-164-02
(DORS/SOR)

Sur recommandation de la ministre de l'Environnement et en vertu de l'alinéa 59*b*) de la Loi canadienne sur l'évaluation environnementale*, il plaît à Son Excellence le Gouverneur général en conseil de prendre le Règlement désignant les activités concrètes et les catégories d'activités concrètes non liées à des ouvrages et pouvant nécessiter une évaluation environnementale, ci-après, lequel entre en vigueur à la date d'entrée en vigueur de l'article 59 de la Loi canadienne sur l'évaluation environnementale.

---

* L.C. 1992, ch. 37

JUS-94-164-02
(DORS/SOR)

RÈGLEMENT DÉSIGNANT LES ACTIVITÉS CONCRÈTES ET LES CATÉGORIES D'ACTIVITÉS CONCRÈTES NON LIÉES À DES OUVRAGES ET POUVANT NÉCESSITER UNE ÉVALUATION ENVIRONNEMENTALE

Titre abrégé

1. *Règlement sur la liste d'inclusion*.

Définitions

2. Les définitions qui suivent s'appliquent au présent règlement.

« canal historique » Canal historique mentionné à la colonne I de l'annexe I du *Règlement sur les canaux historiques*. (*historic canal*)

« parc national »

a) Parc décrit à l'annexe I de la *Loi sur les parcs nationaux*;

b) parc érigé conformément à un accord fédéral-provincial et placé sous l'autorité du ministre des Communications, mais non décrit à cette annexe. (*national park*)

« plan d'eau » Tout plan d'eau, notamment les canaux, réservoirs, terres humides et océans, jusqu'à la laisse des hautes eaux. La présente définition ne vise pas les étangs de traitement des eaux usées et les étangs de résidus miniers. (*water body*)

« plate-forme d'armes militaires » Véhicule, navire ou aéronef conçu pour l'utilisation d'armes militaires. (*military weapons platform*)

« quantité réglementaire » ou « QR » Quantité d'un isotope radioactif d'un élément qui est :

a) soit indiquée à la partie I de l'annexe I du *Règlement sur le contrôle de l'énergie atomique*;

b) soit calculée conformément à la partie II de cette annexe. (*scheduled quantity* or *SQ*)

« réserve foncière » Réserve constituée en vertu de la *Loi modifiant la Loi sur les parcs nationaux et la Loi modifiant la Loi sur les parcs nationaux*, chapitre 48 des Lois du Canada (1988), et les terres définies à l'annexe de la *Loi sur le parc national de l'archipel de Mingan*. (*national park reserve*)

« réserve indienne » S'entend au sens de « réserve » au paragraphe 2(1) de la *Loi sur les Indiens*. (*Indian reserve*)

« site d'emprunt » Site duquel des matières de la terre sont extraites en vue d'obtenir de la terre végétale, du sable, du gravier, des roches, de la pierre concassée, des pierres à bâtir ou tout autre agrégat minéral à utiliser ailleurs qu'au site. (*borrow site*)

« substances réglementées » S'entend au sens de l'article 2 de la *Loi sur le contrôle de l'énergie atomique*. (*prescribed substances*)

« terres humides » Marécages, marais ou autres terres qui sont couverts d'eau durant au moins trois mois consécutifs au cours de l'année. (*wetland*)

Dispositions générales

3. Pour l'application de la définition de « projet », au paragraphe 2(1) de la *Loi canadienne sur l'évaluation environnementale*, les activités concrètes et les catégories d'activités concrètes non liées à des ouvrages sont celles énumérées à l'annexe.

ANNEXE
(*article 3*)

ACTIVITÉS CONCRÈTES ET CATÉGORIES D'ACTIVITÉS CONCRÈTES NON LIÉES À DES OUVRAGES

PARTIE I

PARCS NATIONAUX ET ZONES PROTÉGÉES

1. Les activités concrètes visant à fournir des services élémentaires aux usagers dans les réserves intégrales ou à assurer l'accès par air des régions éloignées de ces réserves intégrales, lesquelles activités nécessitent l'autorisation prévue aux alinéas 5(10)*c*) ou *e*) de la *Loi sur les parcs nationaux*.

2. L'utilisation de matières naturelles à des fins de construction dans un parc national qui nécessite le permis prévu au paragraphe 11(1) du *Règlement général sur les parcs nationaux*, lorsque l'utilisation vise un nouveau site d'emprunt, l'agrandissement d'un site d'emprunt existant, la réouverture d'un site d'emprunt inactif, l'augmentation de la quantité de matières extraites, de nouvelles activités d'extraction ou l'extraction de matières d'endroits aquatiques.

3. Le puisage d'eau à des fins commerciales qui nécessite le permis prévu au paragraphe 18(1) du *Règlement général sur les parcs nationaux*.

4. La fourniture d'eau qui nécessite l'entente prévue à l'article 20 du *Règlement général sur les parcs nationaux*.

5. L'élimination de façon sélective dans une population d'une espèce faunique ou la destruction d'une population entière d'une espèce faunique, qui nécessitent l'autorisation prévue au paragraphe 15(2) du *Règlement sur la faune des parcs nationaux*.

6. L'occupation des terres domaniales qui nécessite le permis d'occupation prévu au paragraphe 18(1) du *Règlement de 1991 sur les baux et les permis d'occupation dans les parcs nationaux*.

7. L'approvisionnement en eau à des fins commerciales qui nécessite le permis prévu à l'article 10 du *Règlement général sur les parcs historiques nationaux*.

8. L'approvisionnement en eau qui nécessite l'entente prévue à l'article 11 du *Règlement général sur les parcs historiques nationaux*.

ANNEXE (*suite*)

9. Les activités concrètes liées à la construction, l'agrandissement ou la modification d'un terrain de golf ou d'une pente de ski dans un parc national ou une réserve foncière.

10. La prise ou la mise à mort du gibier qui nécessite l'autorisation prévue à l'alinéa 56(1)*b*) du *Règlement sur le gibier du parc de Wood-Buffalo*.

11. La coupe et l'enlèvement de bois mort, de bois atteint d'une maladie ou de bois vert qui nécessitent le permis prévu au paragraphe 4(1) du *Règlement sur le bois dans les parcs nationaux*.

12. Le fait de tirer de l'eau d'un canal, à des fins agricoles ou industrielles, à l'exclusion de la production d'électricité, qui nécessite la licence d'occupation d'un terrain contigu à un canal prévue à l'alinéa 7*d*) du *Règlement sur les terrains contigus à des canaux relevant du ministère des A.I. et du N.C.*

13. Le déchargement dans un canal des eaux de ruissellement ou d'égout qui nécessite la licence d'occupation d'un terrain contigu à un canal prévue à l'alinéa 7*f*) du *Règlement sur les terrains contigus à des canaux relevant du ministère des A.I. et du N.C.*

PARTIE II

PROJETS PÉTROLIERS ET GAZIERS

14. Les activités concrètes liées à la cessation de l'exploitation d'une ligne internationale ou de toute ligne interprovinciale, qui nécessitent l'autorisation prévue au paragraphe 58.34(2) de la *Loi sur l'Office national de l'énergie*.

15. Les activités concrètes liées à la cessation de l'exploitation d'un pipeline qui nécessitent l'autorisation prévue à l'alinéa 74(1)*d*) de la *Loi sur l'Office national de l'énergie*.

16. La prospection ou l'exploitation de gisements qui nécessitent l'autorisation expresse prévue au paragraphe 81(4) de la *Loi sur l'Office national de l'énergie*.

17. Les travaux d'excavation, avec de l'équipement motorisé ou des explosifs, dans un périmètre de 30 m autour d'un pipeline, qui nécessitent l'autorisation prévue au paragraphe 112(1) de la *Loi sur l'Office national de l'énergie*.

ANNEXE (*suite*)

18. Les activités concrètes liées à la recherche ou à la production du pétrole ou du gaz, qui nécessitent l'autorisation prévue à l'alinéa 5(1)*b*) de la *Loi sur les opérations pétrolières au Canada*.

19. Les activités concrètes liées à l'approbation d'un plan de mise en valeur prévue au paragraphe 5.1(4) de la *Loi sur les opérations pétrolières au Canada*.

PARTIE III

ÉTABLISSEMENTS NUCLÉAIRES ET ÉTABLISSEMENTS CONNEXES

20. L'abandon ou la disposition d'une substance réglementée, autre que l'uranium ou le thorium, en une quantité supérieure à la quantité réglementaire applicable, lorsqu'elle :

a) s'enlève facilement d'une substance, d'une matière, d'un dispositif ou d'un équipement et n'est pas distribuée dans ceux-ci;

b) dans le cas d'une substance réglementée qui est distribuée dans une substance, une matière, un dispositif ou un équipement et qui ne s'enlève pas facilement de ceux-ci, a une concentration supérieure, selon le cas, à :

(i) 1 QR/kg de matière solide,

(ii) 0,01 QR/L de liquide,

(iii) 0,001 QR/m^3 de gaz.

21. L'abandon ou la disposition d'une substance, d'une matière, d'un dispositif ou d'un équipement qui renferme plus de 10 kg d'uranium ou de thorium, lorsque la concentration d'uranium ou de thorium est supérieure à 0,05 pour cent en poids.

22. L'abandon ou la disposition d'une substance, d'une matière, d'un dispositif ou d'un équipement dont la surface est contaminée par une substance réglementée qui ne s'enlève pas facilement de la surface, lorsque, à la fois :

a) la contamination est supérieure à 3 Bq/cm^2 en moyenne sur une surface d'au plus 100 cm^2;

b) le taux de dose à la surface de la substance, de la matière, du dispositif ou de l'équipement est supérieur à 1 µSv/h.

ANNEXE (*suite*)

23. Les activités concrètes liées à l'utilisation en médecine nucléaire d'une substance réglementée dont l'activité dépasse 10 GBq.

24. Les activités concrètes liées à l'utilisation d'une substance réglementée comme traceur dans une installation industrielle lorsque cette substance est rejetée dans l'environnement en une quantité supérieure à la quantité réglementaire applicable et qu'elle :

a) s'enlève facilement d'une substance, d'une matière, d'un dispositif ou d'un équipement et n'est pas distribuée dans ceux-ci;

b) dans le cas d'une substance réglementée qui est distribuée dans une substance, une matière, un dispositif ou un équipement et qui ne s'enlève pas facilement de ceux-ci, a une concentration supérieure, selon le cas, à :

(i) 1 QR/kg de matière solide,

(ii) 0,01 QR/L de liquide,

(iii) 0,001 QR/m^3 de gaz.

PARTIE IV

DÉFENSE

25. La mise à l'essai d'armes dans toute zone, autre qu'un secteur d'entraînement, un centre d'essai et d'expérimentation ou un champ de tir établis pour la mise à l'essai d'armes avant la date d'entrée en vigueur du présent règlement par le ministre de la Défense nationale ou sous son autorité.

26. L'incinération, l'élimination ou le recyclage des produits chimiques toxiques et de leurs précurseurs visés aux tableaux 1 à 3 de la Convention sur l'interdiction de la mise au point, de la fabrication, du stockage et de l'emploi des armes chimiques et sur leur destruction (Nations Unies), faite le 13 janvier 1993 à Paris.

27. L'incinération, l'élimination ou le recyclage des éléments suivants :

ANNEXE (*suite*)

a) les agents microbiologiques ou autres agents biologiques, ainsi que les toxines, visés au paragraphe 1) de l'article premier de la Convention sur l'interdiction de la mise au point, de la fabrication et du stockage des armes bactériologiques (biologiques) ou à toxines et sur leur destruction (Nations Unies), qui est entrée en vigueur le 26 mars 1975;

b) les armes, l'équipement et les vecteurs destinés à l'emploi de ces agents ou toxines.

28. L'exécution de vols à basse altitude au moyen d'avions à réaction militaires à voilure fixe, pour des programmes d'entraînement, lorsque les vols se déroulent à une altitude inférieure à 330 m au-dessus du niveau du sol sur toute route ou dans toute zone, autre que les routes ou zones établies comme routes ou zones d'entraînement au vol à basse altitude avant la date d'entrée en vigueur du présent règlement par le ministre de la Défense nationale ou le chef d'état-major de la défense, ou sous son autorité, lorsque le nombre d'heures de vol projetées dépasse 25 heures par année civile.

29. Les manoeuvres navales auxquelles participent plus de 15 bâtiments, y compris des bâtiments auxiliaires et des bâtiments étrangers.

30. Les manoeuvres militaires et l'entraînement militaire en campagne auxquels participent plus de 275 personnes et 40 véhicules et qui se déroulent dans toute zone, autre qu'un secteur d'entraînement ou un champ de tir établis avant la date d'entrée en vigueur du présent règlement par le ministre de la Défense nationale ou sous son autorité.

31. La prise ou la destruction d'animaux sauvages dans le cadre d'un programme de gestion de la faune, ou la coupe ou l'enlèvement du bois sur des terres gérées par le ministre de la Défense nationale ou sous son autorité.

32. Les activités concrètes liées à la mise à l'essai, à la construction, à l'exploitation ou à la disposition d'une plate-forme d'armes militaires.

ANNEXE (*suite*)

PARTIE V

TRANSPORTS

33. Les activités concrètes liées à l'abandon de l'exploitation des opérations de transport de marchandises sur une ligne de chemin de fer, lesquelles activités nécessitent l'arrêté prévu à l'article 162, au paragraphe 165(1) ou à l'article 166 de la *Loi de 1987 sur les transports nationaux*.

34. La construction de voies de drainage ou la pose de conduites d'eau ou autres tuyaux, qui nécessitent l'ordre ou la permission prévus aux paragraphes 212(1) ou (2) de la *Loi sur les chemins de fer*.

35. Le pilotage d'un aéronef en vol supersonique sur une route ou dans une zone non désignée par le ministre des Transports ou sous son autorité, qui nécessite l'autorisation prévue à l'article 3 de l'*Ordonnance sur le vol sonique et supersonique*.

36. Les travaux de dragage ou de remblayage dans les chenaux de navigation des canaux historiques ou autres eaux navigables afin qui soit assurée la navigabilité de ces canaux ou de ces eaux.

37. L'enlèvement ou la destruction d'épaves ou de tout autre objet en vertu de l'article 16 de la *Loi sur la protection des eaux navigables*.

38. L'enlèvement de tout bateau ou autre objet résultant du naufrage du bateau qui a sombré, s'est échoué ou s'est jeté à la côte dans des eaux navigables canadiennes, qui nécessite l'autorisation prévue à l'article 20 de la *Loi sur la protection des eaux navigables*.

39. La destruction ou le déplacement d'un navire, de sa cargaison, en tout ou en partie, ou d'autres objets se trouvant à bord d'un navire échoué, naufragé, coulé ou abandonné, aux termes d'un ordre du gouverneur en conseil donné en vertu du paragraphe 13(1) de la *Loi sur la prévention de la pollution des eaux arctiques*.

PARTIE VI

GESTION DES DÉCHETS

40. L'immersion de substances qui nécessite un permis aux termes de la partie VI de la *Loi canadienne sur la protection de l'environnement*.

ANNEXE (*suite*)

41. L'utilisation ou l'essai d'une unité mobile de destruction des BPC ou d'une unité mobile de traitement des BPC en vertu de l'article 11 ou du paragraphe 12(1) du *Règlement fédéral sur le traitement et la destruction des BPC au moyen d'unités mobiles*.

PARTIE VII

PÊCHES

42. La destruction de poissons par d'autres moyens que la pêche, qui nécessite l'autorisation émanant du ministre des Pêches et des Océans prévue à l'article 32 de la *Loi sur les pêches* ou l'autorisation prévue dans tout règlement pris par le gouverneur en conseil en application de cette loi.

43. La détérioration, la destruction ou la perturbation de l'habitat du poisson par des activités concrètes exercées dans un plan d'eau, notamment des opérations de dragage ou de remblayage, qui nécessitent l'autorisation du ministre des Pêches et des Océans prévue au paragraphe 35(2) de la *Loi sur les pêches* ou l'autorisation prévue dans tout règlement pris par le gouverneur en conseil en application de cette loi.

44. La détérioration, la destruction ou la perturbation de l'habitat du poisson par le vidage d'un plan d'eau ou la modification de son niveau d'eau, qui nécessitent l'autorisation du ministre des Pêches et des Océans prévue au paragraphe 35(2) de la *Loi sur les pêches* ou l'autorisation prévue dans tout règlement pris par le gouverneur en conseil en application de cette loi.

45. La détérioration, la destruction ou la perturbation de l'habitat du poisson par des mesures de contrôle de l'érosion le long d'un plan d'eau, qui nécessitent l'autorisation du ministre des Pêches et des Océans prévue au paragraphe 35(2) de la *Loi sur les pêches* ou l'autorisation prévue dans tout règlement pris par le gouverneur en conseil en application de cette loi.

46. La détérioration, la destruction ou la perturbation de l'habitat du poisson par l'enlèvement de la végétation dans un plan d'eau ou le long de celui-ci, qui nécessitent l'autorisation du ministre des Pêches et des Océans prévue au paragraphe 35(2) de la *Loi sur les pêches* ou l'autorisation prévue dans tout règlement pris par le gouverneur en conseil en application de cette loi.

ANNEXE (*suite*)

47. L'immersion ou le rejet d'une substance nocive qui nécessitent l'autorisation prévue dans tout règlement pris par le gouverneur en conseil en application du paragraphe 36(5) de la *Loi sur les pêches*.

PARTIE VIII

FAUNE

48. L'endommagement ou l'arrachage de la végétation, le fait de se livrer à des activités agricoles ou de déranger ou d'enlever de la terre d'une réserve de faune, qui nécessitent le permis prévu à l'article 4 du *Règlement sur les réserves de faune*.

49. Les activités concrètes visées à l'alinéa 3(2)*b*) ou au paragraphe 10(1) du *Règlement sur les refuges d'oiseaux migrateurs* qui nécessitent le permis prévu au paragraphe 9(1) de ce règlement.

50. La mise à mort ou la prise d'un oiseau migrateur ou la prise de son nid ou de ses oeufs, qui nécessitent le permis scientifique prévu au paragraphe 19(1) du *Règlement sur les oiseaux migrateurs*.

51. La mise à mort des oiseaux migrateurs d'une espèce en voie d'extinction qui constituent un danger pour les aéronefs utilisant un aéroport, qui nécessite le permis prévu au paragraphe 28(1) du *Règlement sur les oiseaux migrateurs*.

52. La cueillette d'édredon d'oiseaux migrateurs qui nécessite le permis prévu au paragraphe 32(1) du *Règlement sur les oiseaux migrateurs*.

53. Le fait de faire entrer au Canada des oiseaux migrateurs qui ne sont pas d'une espèce indigène du Canada, pour les mettre en liberté ou les acclimater ou pour le sport, qui nécessite l'autorisation écrite prévue à l'article 33 du *Règlement sur les oiseaux migrateurs*.

54. Le dépôt de pétrole, de résidus du pétrole ou d'autres substances nocives pour les oiseaux migrateurs dans des eaux ou une région fréquentées par ces oiseaux, qui nécessite l'autorisation prévue à l'alinéa 35(2)*b*) du *Règlement sur les oiseaux migrateurs*.

55. La mise à mort, la capture ou la possession d'oiseaux migrateurs ou la cueillette ou la possession de carcasses, d'oeufs ou de nids d'oiseaux migrateurs, qui nécessitent le permis spécial prévu à l'article 36 du *Règlement sur les oiseaux migrateurs*.

ANNEXE (*suite*)

PARTIE IX

PROJETS SUR DES TERRES AUTOCHTONES

56. L'utilisation de terres dans une réserve indienne aux fins d'écoles indiennes, de l'administration d'affaires indiennes, de cimetières indiens ou de projets relatifs à la santé des Indiens, qui nécessite l'autorisation prévue au paragraphe 18(2) de la *Loi sur les Indiens*.

57. L'occupation ou l'utilisation d'une réserve indienne, ou le fait de résider ou d'exercer des droits sur celle-ci, qui nécessitent le permis prévu au paragraphe 28(2) de la *Loi sur les Indiens*.

58. La disposition de sable, de gravier, de glaise ou d'autres substances non métalliques se trouvant sur des terres ou dans le sous-sol d'une réserve indienne en vertu de l'alinéa 58(4)*b*) de la *Loi sur les Indiens* ou la prise de ces substances qui nécessite le permis temporaire prévu à cet alinéa.

59. La tenue d'un dépotoir d'ordures ou la destruction ou le dépôt de déchets ou le fait de les brûler, qui nécessitent le permis prévu à l'article 5 du *Règlement sur la destruction des déchets dans les réserves indiennes*.

60. La recherche ou la mise en valeur de minéraux qui nécessitent le permis ou le bail prévus aux paragraphes 5(2) ou 6(1) du *Règlement sur l'exploitation minière dans les réserves indiennes*.

61. L'exécution de travaux d'exploration sur des terres indiennes qui nécessite la licence d'exploration prévue au paragraphe 5(2) du *Règlement sur le pétrole et le gaz des terres indiennes*.

62. Les travaux d'exploration ou de forage pour la recherche de pétrole ou de gaz, qui nécessitent le permis ou le bail prévus aux paragraphes 7(1) ou (5) du *Règlement sur le pétrole et le gaz des terres indiennes* ou la prolongation d'un tel permis aux termes du paragraphe 10(4) de ce règlement.

63. Le forage d'un puits visé dans une directive prévue au paragraphe 22(1) du *Règlement sur le pétrole et le gaz des terres indiennes*.

64. L'abandon d'un puits qui nécessite l'approbation prévue au paragraphe 26(2) du *Règlement sur le pétrole et le gaz des terres indiennes*.

JUS-94-229-02
(DORS/SOR)

Attendu que le gouverneur en conseil est convaincu que certains projets et certaines catégories de projets sont susceptibles d'entraîner des effets environnementaux négatifs importants,

À ces causes, sur recommandation de la ministre de l'Environnement et en vertu de l'alinéa 59*d*) de la Loi canadienne sur l'évaluation environnementale*, il plaît à Son Excellence le Gouverneur général en conseil de prendre le Règlement désignant les projets et les catégories de projets pour lesquels une étude environnementale approfondie est obligatoire, ci-après, lequel entre en vigueur à la date d'entrée en vigueur de l'article 59 de la Loi canadienne sur l'évaluation environnementale.

---

* L.C. 1992, ch. 37

JUS-94-229-02
(DORS/SOR)

RÈGLEMENT DÉSIGNANT LES PROJETS ET LES CATÉGORIES DE PROJETS POUR LESQUELS UNE ÉTUDE ENVIRONNEMENTALE APPROFONDIE EST OBLIGATOIRE

Titre abrégé

1. *Règlement sur la liste d'étude approfondie*.

Définitions

2. Les définitions qui suivent s'appliquent au présent règlement.

« aérodrome » S'entend au sens du paragraphe 3(1) de la *Loi sur l'aéronautique*. (*aerodrome*)

« aéroport » S'entend au sens du paragraphe 3(1) de la *Loi sur l'aéronautique*. (*airport*)

« canal historique » Canal historique mentionné à la colonne I de l'annexe I du *Règlement sur les canaux historiques*. (*historic canal*)

« déchets dangereux » S'entend au sens du paragraphe 43(4) de la *Loi canadienne sur la protection de l'environnement*. (*hazardous waste*)

« désaffectation » Ne vise pas le fait de cesser l'exploitation d'un ouvrage. (*decommissioning*)

« emprise » Terrain qui est assujetti à un droit de passage et qui est aménagé pour une ligne de transport d'électricité, un pipeline d'hydrocarbures, une ligne de chemin de fer ou une voie publique permanente. (*right of way*)

« établissement nucléaire » S'entend au sens de l'article 2 du *Règlement sur le contrôle de l'énergie atomique*. (*nuclear facility*)

« fabrique de pâtes et papiers » Fabrique qui produit de la pâte et des produits de papier. La présente définition exclut les fabriques qui ne produisent que des produits de papier. (*pulp and paper mill*)

« fermeture » Ne vise pas le fait de cesser, de façon temporaire, l'exploitation d'un ouvrage. (*abandonment*)

« lieu historique national »

a) Endroit signalé en vertu de l'article 3 de la *Loi sur les lieux et monuments historiques* et placé sous l'autorité du ministre des Communications;

b) terre érigée en parc historique national en vertu de la partie II de la *Loi sur les parcs nationaux*. (*national historic site*)

« nouvelle emprise » Terrain qui est assujetti à un droit de passage, qui est destiné à être aménagé pour une ligne de transport d'électricité, un pipeline d'hydrocarbures, une ligne de chemin de fer ou une voie publique permanente, et qui n'est pas situé le long d'une emprise existante ni contiguë à celle-ci. (*new right of way*)

« parc national »

a) Parc décrit à l'annexe I de la *Loi sur les parcs nationaux*;

b) parc érigé conformément à un accord fédéral-provincial et placé sous l'autorité du ministre des Communications, mais non décrit à cette annexe. (*national park*)

« pâte » Les fibres de cellulose traitées qui sont dérivées du bois, d'autres matières végétales ou de produits de papier recyclés. (*pulp*)

« pipeline d'hydrocarbures » Pipeline qui est utilisé, ou destiné à être utilisé, pour le transport d'hydrocarbures, seuls ou avec tout autre produit. (*oil and gas pipeline*)

« plan d'eau » Tout plan d'eau, notamment les canaux, réservoirs, terres humides et océans, jusqu'à la laisse des hautes eaux. La présente définition ne vise pas les étangs de traitement des eaux usées et les étangs de résidus miniers. (*water body*)

« plan de gestion » Plan de gestion déposé devant chaque chambre du Parlement et concernant un parc national, une réserve foncière, un lieu historique national ou un canal historique. (*management plan*)

« produit de papier » Produit directement dérivé de la pâte, notamment le papier, le papier couché, le carton, le carton-fibre, le carton pour boîtes, le carton doublure, le carton isolant, le carton de construction, le carton à onduler, le papier de soie et les produits de cellulose moulée. Ne sont pas visés par la présente définition la viscose, la rayonne, la cellophane ou tout autre dérivé de la cellulose. (*paper product*)

« refuge d'oiseaux migrateurs » Zone décrite à l'annexe du *Règlement sur les refuges d'oiseaux migrateurs*. (*migratory bird sanctuary*)

« réserve de faune » S'entend au sens de l'article 2 du *Règlement sur les réserves de faune*. (*wildlife area*)

« réserve foncière » Réserve constituée en vertu de la *Loi modifiant la Loi sur les parcs nationaux et la Loi modifiant la Loi sur les parcs nationaux*, chapitre 48 des Lois du Canada (1988), et les terres définies à l'annexe de la *Loi sur le parc national de l'archipel de Mingan*. (*national park reserve*)

« terres humides » Marécages, marais ou autres terres qui sont couverts d'eau durant au moins trois mois consécutifs au cours de l'année. (*wetland*)

Dispositions générales

3. Les projets et les catégories de projets figurant à l'annexe sont ceux pour lesquels une étude approfondie est obligatoire.

ANNEXE
(*article 3*)

LISTE D'ÉTUDE APPROFONDIE

PARTIE I

PARCS NATIONAUX ET ZONES PROTÉGÉES

1. Projet de construction, de désaffectation ou de fermeture d'un ouvrage dans un parc national, une réserve foncière, un lieu historique national ou un canal historique qui va à l'encontre du plan de gestion du parc, de la réserve, du lieu ou du canal.

2. Projet de construction, de désaffectation ou de fermeture, dans une réserve de faune ou un refuge d'oiseaux migrateurs :

a) d'une centrale électrique ou d'une ligne de transport d'électricité;

b) d'un barrage, d'une digue, d'un réservoir ou d'une autre structure de dérivation des eaux;

c) d'une installation pétrolière ou gazière ou d'un pipeline d'hydrocarbures;

d) d'une mine ou d'une usine;

e) d'un établissement nucléaire ou d'une installation d'extraction d'uranium;

f) d'une installation industrielle;

g) d'un canal ou d'une écluse;

h) d'un terminal maritime;

i) d'une ligne de chemin de fer ou d'une voie publique;

j) d'un aérodrome ou d'une piste;

k) d'une installation de gestion des déchets.

3. Projet d'agrandissement d'un terrain de golf ou d'une pente de ski dans un parc national ou une réserve foncière.

ANNEXE (*suite*)

PARTIE II

CENTRALES ÉLECTRIQUES ET LIGNES DE TRANSPORT D'ÉLECTRICITÉ

4. Projet de construction, de désaffectation ou de fermeture :

a) d'une centrale électrique alimentée par un combustible fossile d'une capacité de production de 200 MW ou plus;

b) d'une centrale hydroélectrique d'une capacité de production de 200 MW ou plus.

5. Projet d'agrandissement :

a) d'une centrale électrique alimentée par un combustible fossile qui entraînerait une augmentation de la capacité de production d'au moins 50 pour cent et d'au moins 200 MW;

b) d'une centrale hydroélectrique qui entraînerait une augmentation de la capacité de production d'au moins 50 pour cent et d'au moins 200 MW.

6. Projet de construction, de désaffectation ou de fermeture d'une centrale électrique marémotrice d'une capacité de production de 5 MW ou plus, ou projet d'agrandissement d'une telle centrale qui entraînerait une augmentation de la capacité de production de plus de 35 pour cent.

7. Projet de construction, sur une nouvelle emprise, d'une ligne de transport d'électricité d'une tension de 345 kV ou plus et d'une longueur de 75 km ou plus.

PARTIE III

PROJETS HYDRAULIQUES

8. Projet de construction, de désaffectation ou de fermeture d'un barrage ou d'une digue qui entraînerait la création d'un réservoir dont la superficie dépasserait la superficie moyenne annuelle du plan d'eau naturel de 1 500 hectares ou plus, ou projet d'agrandissement d'un barrage ou d'une digue qui entraînerait une augmentation de la superficie du réservoir de plus de 35 pour cent.

ANNEXE (*suite*)

9. Projet de construction, de désaffectation ou de fermeture d'une structure destinée à dériver 10 000 000 m^3/a ou plus d'eau d'un plan d'eau naturel dans un autre, ou projet d'agrandissement d'une telle structure qui entraînerait une augmentation de la capacité de dérivation de plus de 35 pour cent.

10. Projet de construction, de désaffectation ou de fermeture d'une installation destinée à extraire 200 000 m^3/a ou plus d'eau souterraine, ou projet d'agrandissement d'une telle installation qui entraînerait une augmentation de la capacité de production de plus de 35 pour cent.

PARTIE IV

PROJETS PÉTROLIERS ET GAZIERS

11. Projet de construction, de désaffectation ou de fermeture :

a) d'une plate-forme, d'une île artificielle ou de tout autre ouvrage qui sert à la production de pétrole ou de gaz et qui est situé au large des côtes en eau salée ou en eau douce;

b) d'une installation de traitement d'huile lourde ou de sables bitumineux d'une capacité de production de pétrole de plus de 10 000 m^3/d.

12. Projet d'agrandissement d'une installation de traitement d'huile lourde ou de sables bitumineux qui entraînerait une augmentation de la capacité de production de pétrole de plus de 5 000 m^3/d et qui ferait passer la capacité de production totale de pétrole à plus de 10 000 m^3/d.

13. Projet de construction, de désaffectation ou de fermeture, ou projet d'agrandissement entraînant une augmentation de la capacité de production de plus de 35 pour cent :

a) d'une raffinerie de pétrole, y compris une usine de valorisation d'huile lourde, d'une capacité d'admission de plus de 10 000 m^3/d;

b) d'une installation de production de produits pétroliers liquides, à partir du charbon, d'une capacité de production de plus de 2 000 m^3/d;

ANNEXE (*suite*)

c) d'une installation de traitement de gaz sulfureux d'une capacité d'admission de soufre de plus de 2 000 t/d;

d) d'une installation de liquéfaction, de stockage ou de regazéification de gaz naturel liquéfié d'une capacité de traitement de gaz naturel liquéfié de plus de 3 000 t/d ou d'une capacité de stockage de gaz naturel liquéfié de plus de 50 000 t;

e) d'une installation de stockage de pétrole d'une capacité de plus de 500 000 m^3;

f) d'une installation de stockage de gaz de pétrole liquéfié d'une capacité de plus de 100 000 m^3.

14. Projet de construction :

a) d'un pipeline d'hydrocarbures d'une longueur de plus de 75 km sur une nouvelle emprise;

b) d'un pipeline d'hydrocarbures extracôtier.

15. Projet de forage exploratoire extracôtier dans une zone où aucun autre projet de forage exploratoire extracôtier n'a fait l'objet d'une évaluation environnementale aux termes de la *Loi canadienne sur l'évaluation environnementale* ou du *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement*.

PARTIE V

MINERAIS ET TRAITEMENT DES MINERAIS

16. Projet de construction, de désaffectation ou de fermeture :

a) d'une mine métallifère, autre qu'une mine d'or, d'une capacité de production de minerai de 3 000 t/d ou plus;

b) d'une usine métallurgique d'une capacité d'admission de minerai de 4 000 t/d ou plus;

c) d'une mine d'or, autre qu'un placer, d'une capacité de production de minerai de 600 t/d ou plus;

d) d'une mine de charbon d'une capacité de production de charbon de 3 000 t/d ou plus;

ANNEXE (*suite*)

e) d'une mine de potasse d'une capacité de production de chlorure de potassium de 1 000 000 t/a ou plus.

17. Projet d'agrandissement :

a) d'une mine métallifère existante, autre qu'une mine d'or, qui entraînerait une augmentation de la capacité de production de minerai de 50 pour cent ou plus ou de 1 500 t/d ou plus, si l'augmentation faisait passer la capacité de production totale de minerai à 3 000 t/d ou plus;

b) d'une usine métallurgique existante qui entraînerait une augmentation de la capacité d'admission de minerai de 50 pour cent ou plus ou de 2 000 t/d ou plus, si l'augmentation faisait passer la capacité d'admission totale de minerai à 4 000 t/d ou plus;

c) d'une mine d'or existante, autre qu'un placer, qui entraînerait une augmentation de la capacité de production de minerai de 50 pour cent ou plus ou de 300 t/d ou plus, si l'augmentation faisait passer la capacité de production totale de minerai à 600 t/d ou plus;

d) d'une mine de charbon existante qui entraînerait une augmentation de la capacité de production de charbon de 50 pour cent ou plus ou de 1 500 t/d ou plus, si l'augmentation faisait passer la capacité de production totale de charbon à 3 000 t/d ou plus;

e) d'une mine de potasse existante qui entraînerait une augmentation de la capacité de production de chlorure de potassium de 50 pour cent ou plus ou de 500 000 t/a ou plus, si l'augmentation faisait passer la capacité de production totale de chlorure de potassium à 1 000 000 t/a ou plus.

18. Projet de construction, de désaffectation ou de fermeture, ou projet d'agrandissement qui entraînerait une augmentation de la capacité de production de plus de 35 pour cent :

a) d'une mine d'amiante;

b) d'une mine de sel d'une capacité de production de saumure de 4 000 t/d ou plus;

c) d'une mine de sel souterraine d'une capacité de production de 20 000 t/d ou plus;

ANNEXE (*suite*)

d) d'une mine de graphite d'une capacité de production de 1 500 t/d ou plus;

e) d'une mine de gypse d'une capacité de production de 4 000 t/d ou plus;

f) d'une mine de magnésite d'une capacité de production de 1 500 t/d ou plus;

g) d'une mine de pierre à chaux d'une capacité de production de 12 000 t/d ou plus;

h) d'une mine d'argile d'une capacité de production de 20 000 t/d ou plus;

i) d'une carrière de pierre, de gravier ou de sable d'une capacité de production de 1 000 000 t/a ou plus;

j) d'une mine métallifère située au large des côtes ou sur le fond marin.

PARTIE VI

ÉTABLISSEMENTS NUCLÉAIRES ET ÉTABLISSEMENTS CONNEXES

19. Projet de construction, de désaffectation ou de fermeture, ou projet d'agrandissement qui entraînerait une augmentation de la capacité de production de plus de 35 pour cent :

a) d'une installation d'extraction d'uranium sur un site à l'extérieur des limites d'une installation d'extraction d'uranium agréée existante;

b) d'une installation d'extraction d'uranium sur un site à l'intérieur des limites d'une installation d'extraction d'uranium agréée existante, si le projet met en cause des procédés de gestion des résidus d'extraction d'uranium ou des procédés de broyage qui ne sont pas autorisés par la licence existante;

c) d'une installation de raffinage ou de conversion d'uranium d'une capacité de production d'uranium de plus de 100 t/a;

d) d'un réacteur nucléaire d'une capacité de production de plus de 25 MW thermiques;

ANNEXE (*suite*)

e) d'une installation de production d'eau lourde utilisant du sulfure d'hydrogène et ayant une capacité de production d'eau lourde de plus de 10 t/a;

f) d'une installation de traitement du combustible nucléaire irradié d'une capacité d'admission de combustible nucléaire irradié de plus de 100 t/a;

g) d'une installation qui est située sur un site à l'extérieur des limites d'un établissement nucléaire agréé existant et qui est destinée, selon le cas :

(i) au stockage du combustible nucléaire irradié, lorsqu'elle a une capacité de stock de combustible nucléaire irradié de plus de 500 t,

(ii) au traitement ou au stockage de déchets radioactifs autres que le combustible nucléaire irradié lorsque :

(A) soit l'activité du traitement effectif des matières radioactives d'une période radioactive supérieure à un an correspond à plus de 1 TBq/a,

(B) soit l'activité du stock de matières radioactives d'une période radioactive supérieure à un an correspond à plus de 100 TBq;

(iii) à la disposition de substances réglementées, au sens de l'article 2 de la *Loi sur le contrôle de l'énergie atomique*, qui sont radioactives.

PARTIE VII

INSTALLATIONS INDUSTRIELLES

20. Projet de construction, de désaffectation ou de fermeture d'une fabrique de pâtes ou d'une fabrique de pâtes et papiers.

21. Projet d'agrandissement d'une fabrique de pâtes ou d'une fabrique de pâtes et papiers qui entraînerait une augmentation de la capacité de production de plus de 35 pour cent et de plus de 100 t/d.

ANNEXE (*suite*)

22. Projet de construction, de désaffectation ou de fermeture, ou projet d'agrandissement entraînant une augmentation de la capacité de production de plus de 35 pour cent :

a) d'une installation de production d'acier primaire d'une capacité de production de métal de 5 000 t/d ou plus;

b) d'une fonderie de métaux non ferreux d'une capacité de production de métal de 1 000 t/d ou plus;

c) d'une fonderie de métaux non ferreux située au Yukon ou dans les Territoires du Nord-Ouest;

d) d'une installation de fabrication de produits chimiques d'une capacité de production de 250 000 t/a ou plus;

e) d'une installation de fabrication de produits pharmaceutiques d'une capacité de production de 200 t/a ou plus;

f) d'une installation de fabrication de produits du bois traités sous pression avec des produits chimiques d'une capacité de production de 50 000 m^3/a ou plus;

g) d'une installation de fabrication de contreplaqué ou de panneaux de particules d'une capacité de production de 100 000 m^3/a ou plus;

h) d'une installation de production de fibres minérales naturelles inhalables;

i) d'une tannerie d'une capacité de production de 500 000 m^2/a ou plus;

j) d'une installation de fabrication de textiles primaires d'une capacité de production de 50 000 t/a ou plus;

k) d'une usine de fabrication d'explosifs chimiques faisant appel à des procédés chimiques;

l) d'une installation de fabrication d'accumulateurs au plomb.

ANNEXE (*suite*)

PARTIE VIII

DÉFENSE

23. Projet de construction d'une base ou d'une station militaire, ou d'un secteur d'entraînement, d'un champ de tir ou d'un centre d'essai et d'expérimentation pour l'entraînement militaire ou l'essai d'armes.

24. Projet d'agrandissement d'une base ou d'une station militaire qui entraînerait une augmentation de plus de 25 pour cent de la superficie de la base ou de la station, ou une augmentation de plus de 25 pour cent de la surface de plancher cumulative des bâtiments existants situés sur la base ou la station.

25. Projet de désaffectation d'une base ou d'une station militaire.

26. Projet d'essai d'armes effectué pendant plus de cinq jours au cours d'une année civile dans toute zone, autre qu'un secteur d'entraînement, un champ de tir ou un centre d'essai et d'expérimentation établi pour la mise à l'essai d'armes avant la date d'entrée en vigueur du présent règlement par le ministre de la Défense nationale ou sous son autorité.

27. Projet de vols à basse altitude au moyen d'avions à réaction militaires à voilure fixe, pour des programmes d'entraînement, lorsque les vols se déroulent à une altitude inférieure à 330 m au-dessus du niveau du sol sur des routes ou dans des zones qui ne sont pas établies comme routes ou zones réservées à l'entraînement au vol à basse altitude avant la date d'entrée en vigueur du présent règlement par le ministre de la Défense nationale ou le chef d'état-major de la défense, ou sous son autorité, lorsque les vols se déroulent pendant plus de 150 jours au cours d'une année civile.

ANNEXE (*suite*)

PARTIE IX

TRANSPORTS

28. Projet de construction, de désaffectation ou de fermeture :

a) d'un canal, ou de toute écluse ou structure connexe pour contrôler le niveau d'eau du canal;

b) d'une écluse ou d'une structure connexe pour contrôler le niveau d'eau dans des voies navigables existantes;

c) d'un terminal maritime conçu pour recevoir des navires de plus de 25 000 TPL.

29. Projet de construction :

a) d'une ligne de chemin de fer d'une longueur de plus de 32 km sur une nouvelle emprise;

b) d'une voie publique permanente qui a une longueur de plus de 50 km sur une nouvelle emprise ou qui mène à une collectivité sans accès à une voie publique permanente;

c) d'une ligne de chemin de fer conçue pour des trains dont la vitesse moyenne est de plus de 200 km/h.

30. Projet de construction ou de désaffectation :

a) d'un aérodrome situé à l'intérieur de la zone bâtie d'une ville;

b) d'un aéroport;

c) d'une piste utilisable en toute saison d'une longueur de 1 500 m ou plus.

31. Projet de prolongement de 1 500 m ou plus d'une piste utilisable en toute saison.

ANNEXE (*fin*)

PARTIE X

GESTION DES DÉCHETS

32. Projet de construction, de désaffectation ou de fermeture d'une installation utilisée exclusivement pour le traitement, l'incinération, l'élimination ou le recyclage de déchets dangereux, ou projet d'agrandissement d'une telle installation qui entraînerait une augmentation de la capacité de production de plus de 35 pour cent.

Attendu que le gouverneur en conseil est convaincu que les effets environnementaux de certains projets liés à un ouvrage ne sont pas importants,

À ces causes, sur recommandation de la ministre de l'Environnement et en vertu du sous-alinéa 59*c*)(ii) de la Loi canadienne sur l'évaluation environnementale*, il plaît à Son Excellence le Gouverneur général en conseil de prendre le Règlement désignant les projets et les catégories de projets pour lesquels une évaluation environnementale n'est pas nécessaire, ci-après, lequel entre en vigueur à la date d'entrée en vigueur de l'article 59 de la Loi canadienne sur l'évaluation environnementale.

* L.C. 1992, ch. 37

JUS-94-316-02
(DORS/SOR)

RÈGLEMENT DÉSIGNANT LES PROJETS ET LES CATÉGORIES DE PROJETS POUR LESQUELS UNE ÉVALUATION ENVIRONNEMENTALE N'EST PAS NÉCESSAIRE

Titre abrégé

1. *Règlement sur la liste d'exclusion*.

Définitions

2. Les définitions qui suivent s'appliquent au présent règlement.

« agrandissement » Augmentation des dimensions extérieures ou de la capacité de production d'un ouvrage. (*expansion*)

« aire de réparation de filets » Aire revêtue ou finie réservée à la réparation des filets de pêche. (*net repair area*)

« bâtiment du patrimoine » Bâtiment qui a été désigné à ce titre par une autorité gouvernementale. (*heritage building*)

« canal historique » Canal historique mentionné à la colonne I de l'annexe I du *Règlement sur les canaux historiques*, y compris le territoire domanial qui est contiguë ou connexe au canal. (*historic canal*)

« emprise » Terrain qui est assujetti à un droit de passage et qui est aménagé pour une ligne de télécommunications, une ligne de transport d'électricité, une station de commutation, un pipeline d'hydrocarbures, un chemin de fer ou une route. (*right of way*)

« établissement nucléaire » S'entend au sens de l'article 2 du *Règlement sur le contrôle de l'énergie atomique*. (*nuclear facility*)

« étang-réservoir » Excavation servant à stocker de l'eau pour abreuver le bétail. (*dugout*)

« lieu historique national »

a) Endroit signalé en vertu de l'article 3 de la *Loi sur les lieux et monuments historiques* et placé sous l'autorité du ministre des Communications;

b) terre érigée en parc historique national en vertu de la partie II de la *Loi sur les parcs nationaux*. (*national historic site*)

« ligne de transport d'électricité internationale » Ligne de transport d'électricité construite ou exploitée pour transporter de l'électricité d'un lieu situé au Canada à un lieu situé à l'étranger, ou d'un lieu situé à l'étranger à un lieu situé au Canada. (*international electrical transmission line*)

« modification » Transformations apportées à un ouvrage qui donnent lieu à l'érection d'une nouvelle structure ou à l'enlèvement d'une structure existante et qui n'en changent pas la fonction. La présente définition ne vise pas l'agrandissement. (*modification*)

« parc national »

a) Parc décrit à l'annexe I de la *Loi sur les parcs nationaux*;

b) parc érigé conformément à un accord fédéral-provincial et placé sous l'autorité du ministre des Communications, mais non décrit à cette annexe. (*national park*)

« pipeline d'hydrocarbures » Pipeline utilisé, ou destiné à être utilisé, pour le transport d'hydrocarbures, seuls ou avec tout autre produit. (*oil and gas pipeline*)

« plan d'eau » Tout plan d'eau, notamment les canaux, réservoirs, terres humides et océans, jusqu'à la laisse des hautes eaux. La présente définition ne vise pas les étangs de traitement des eaux usées et les étangs de résidus miniers. (*water body*)

« produits antiparasitaires » S'entend au sens de l'article 2 de la *Loi sur les produits antiparasitaires*. (*control product*)

« raccordement » Structure ou ligne reliant un bâtiment à une conduite principale de gaz, d'égout ou d'eau, ou à une ligne principale de transport d'électricité ou de télécommunications. (*hook-up*)

« réserve foncière » Réserve constituée en vertu de la *Loi modifiant la Loi sur les parcs nationaux et la Loi modifiant la Loi sur les parcs nationaux*, chapitre 48 des Lois du Canada (1988), et les terres définies à l'annexe de la *Loi sur le parc national de l'archipel de Mingan*. (*national park reserve*)

« structure d'irrigation » L'une des structures suivantes utilisées à des fins d'irrigation des terres agricoles :

a) un pipeline enfoui;

b) une conduite;

c) une pompe;

d) une station de pompage;

e) un réservoir;

f) un drain;

g) un canal muni d'un revêtement intérieur en asphalte, en bois, en béton ou en un autre matériau. (*irrigation structure*)

« structure fixe » Système d'électricité, de chauffage, de prévention des incendies, de plomberie ou de sécurité d'un bâtiment existant. La présente définition ne vise pas les systèmes destinés à la production de biens ou d'énergie. (*fixed structure*)

« substance polluante » Toute substance qui, ajoutée à un plan d'eau, est susceptible d'en dégrader ou d'en altérer l'état physique, chimique ou biologique ou de contribuer au processus de dégradation ou d'altération de cet état, au point de nuire à son utilisation par les êtres humains, les animaux, les poissons ou les végétaux. (*polluting substance*)

« superficie au sol » La surface de terrain occupée au niveau du sol par un bâtiment ou une structure. (*footprint*)

« terres humides » Marécages, marais ou autres terres qui sont couverts d'eau durant au moins trois mois consécutifs au cours de l'année. (*wetland*)

Dispositions générales

3. Les projets et les catégories de projets figurant à l'annexe I qui sont réalisés dans des lieux autres que des parcs nationaux, réserves foncières, lieux historiques nationaux ou canaux historiques sont ceux pour lesquels une évaluation environnementale n'est pas nécessaire.

4. Les projets et les catégories de projets figurant à l'annexe II qui sont réalisés dans un parc national, une réserve foncière ou un lieu historique national sont ceux pour lesquels une évaluation environnementale n'est pas nécessaire.

5. Les projets et les catégories de projets figurant aux annexes II ou III qui sont réalisés dans un canal historique sont ceux pour lesquels une évaluation environnementale n'est pas nécessaire.

ANNEXE I
(*article 3*)

LISTE D'EXCLUSION POUR LES LIEUX AUTRES QUE LES PARCS NATIONAUX, LES RÉSERVES FONCIÈRES, LES LIEUX HISTORIQUES NATIONAUX ET LES CANAUX HISTORIQUES

PARTIE I

DISPOSITIONS GÉNÉRALES

1. Projet d'entretien ou de réparation d'un ouvrage existant.

2. Projet d'exploitation d'un ouvrage existant qui est identique à une exploitation qui a fait l'objet d'une évaluation environnementale aux termes de la *Loi canadienne sur l'évaluation environnementale* ou du *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement*, lorsque :

a) d'une part, à la suite de l'évaluation, les effets environnementaux ont été jugés sans importance, compte tenu de l'application des mesures d'atténuation, le cas échéant;

b) d'autre part, les mesures d'atténuation et le programme de suivi, le cas échéant, ont en grande partie été appliqués.

3. Projet de construction ou d'installation d'un bâtiment d'une superficie au sol de moins de 100 m^2 et d'une hauteur de moins de 5 m, qui, à la fois :

a) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

4. Projet d'agrandissement ou de modification d'un bâtiment existant, y compris ses structures fixes, qui, à la fois :

a) n'en augmenterait pas la superficie au sol ou la hauteur de plus de 10 pour cent;

b) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

ANNEXE I (*suite*)

5. Projet de construction, d'installation, d'agrandissement ou de modification d'un instrument de collecte de données scientifiques sur l'environnement, ainsi que de son boîtier et de son enceinte, autre qu'un instrument de collecte de données sur la qualité de l'eau, y compris son boîtier et son enceinte, qui, à la fois :

a) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

6. Projet de construction, d'installation, d'agrandissement ou de modification d'une rampe, d'une porte ou d'une main courante pour faciliter l'accès en fauteuil roulant.

7. Projet de construction, d'installation, d'agrandissement ou de modification d'une structure d'exposition temporaire située à l'intérieur d'un bâtiment existant ou fixée à l'extérieur de celui-ci.

8. Projet de construction d'un trottoir, d'un passage en bois ou d'un parc de stationnement pour au plus 10 automobiles, lorsque, à la fois :

a) le trottoir, le passage en bois ou le parc de stationnement serait contigu à un bâtiment existant;

b) le projet ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

c) le projet n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

9. Projet d'agrandissement ou de modification d'un trottoir, d'un passage en bois ou d'un parc de stationnement existant, qui, à la fois :

a) n'en augmenterait pas la superficie de plus de 10 pour cent;

b) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

ANNEXE I (*suite*)

10. Projet d'agrandissement ou de modification d'une clôture existante, qui, à la fois :

a) n'en augmenterait pas la longueur ou la hauteur de plus de 10 pour cent;

b) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

11. Projet de construction, d'installation, d'agrandissement ou de modification d'une prise d'eau ou d'un raccordement, lorsque, à la fois :

a) la prise d'eau ou le raccordement ferait ou fait partie d'un réseau de distribution agricole ou municipal existant;

b) le projet n'entraînerait pas le franchissement d'un plan d'eau autre que le franchissement aérien par une ligne de télécommunications ou une ligne de transport d'électricité.

12. Projet de construction, d'installation, d'agrandissement ou de modification d'un panneau dont aucune des faces n'aurait ou n'a une superficie de plus de 25 m^2 et qui serait ou est situé à moins de 15 m d'un bâtiment existant.

13. Projet de construction, d'installation, d'agrandissement ou de modification d'une antenne de radiocommunications et de sa structure portante qui, à la fois :

a) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau;

c) comporterait l'une des caractéristiques suivantes :

(i) l'antenne et sa structure portante sont fixées à un bâtiment existant,

(ii) l'antenne et sa structure portante sont situées à moins de 15 m d'un bâtiment existant,

(iii) l'antenne, sa structure portante et ses haubans ont chacun une superficie au sol d'au plus 25 m^2;

ANNEXE I (*suite*)

d) dans le cas du sous-alinéa *c*)(iii), ne nécessiterait pas le permis prévu aux alinéas 25(1)*a*) ou 27*a*) du *Règlement sur l'utilisation des terres territoriales*.

14. Projet de construction, d'installation, d'agrandissement ou de modification d'un campement temporaire servant à la recherche scientifique ou technique ou au reboisement, lorsque, à la fois :

a) le campement temporaire serait utilisé pour moins de 200 jours-personnes;

b) le projet :

(i) d'une part, ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci,

(ii) d'autre part, n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

15. Projet d'agrandissement ou de modification d'une route existante qui serait réalisé sur son emprise existante et qui, à la fois :

a) ne prolongerait pas la route;

b) n'élargirait pas la route de plus de 15 pour cent;

c) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

d) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

16. Projet de démolition d'un bâtiment existant d'une surface de plancher de moins de 1 000 m^2, qui, à la fois :

a) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau;

c) ne serait pas réalisé à moins de 30 m d'un autre bâtiment.

17. Projet de construction, d'installation ou de modification de bornes frontières entre le Canada et les États-Unis.

ANNEXE I (*suite*)

PARTIE II

AGRICULTURE

18. Projet de modification d'une structure d'irrigation existante qui n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

19. Projet de construction, d'agrandissement ou de modification d'un puits d'approvisionnement domestique ou agricole, d'une station de pompage, d'une installation de chargement de réservoir à eau ou d'un étang-réservoir sur une terre agricole, qui, à la fois :

a) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

20. Projet de construction, d'agrandissement ou de modification d'un système d'irrigation à arroseur géant ou d'un arroseur automoteur à rampe mobile en ligne sur une terre agricole, qui, à la fois :

a) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

PARTIE III

ÉNERGIE ÉLECTRIQUE ET NUCLÉAIRE

21. Projet de construction ou d'installation d'une ligne de transport d'électricité, autre qu'une ligne de transport d'électricité internationale, d'une tension d'au plus 130 kV, qui, à la fois :

a) serait réalisé sur une emprise existante;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau;

c) n'exigerait pas la mise en place des structures portantes de la ligne dans ou sur un plan d'eau.

ANNEXE I (*suite*)

22. Projet d'agrandissement ou de modification d'une ligne de télécommunications existante ou d'une ligne de transport d'électricité existante, autre qu'une ligne de transport d'électricité internationale, qui, à la fois :

a) ne prolongerait pas la ligne de plus de 10 pour cent;

b) serait réalisé sur une emprise existante;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau;

d) n'exigerait pas la mise en place des structures portantes de la ligne dans ou sur un plan d'eau.

23. Projet de construction ou d'installation d'une station de commutation associée à une ligne de télécommunications ou à une ligne de transport d'électricité d'une tension d'au plus 130 kV, autre qu'une ligne de transport d'électricité internationale, qui, à la fois :

a) serait réalisé sur une emprise existante;

b) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

24. Projet d'agrandissement ou de modification d'une station de commutation existante associée à une ligne de télécommunications ou à une ligne de transport d'électricité, qui, à la fois :

a) serait réalisé sur une emprise existante;

b) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

25. Projet de construction, d'installation, d'agrandissement ou de modification d'une ligne de transport d'électricité internationale d'une tension d'au plus 50 kV, qui, à la fois :

a) serait réalisé sur une emprise existante;

ANNEXE I (*suite*)

b) n'étendrait pas la ligne sur plus de 4 km à l'extérieur du Canada;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau;

d) n'exigerait pas la mise en place des structures portantes de la ligne dans ou sur un plan d'eau ou à moins de 30 m de celui-ci.

26. Projet de construction, d'installation, d'exploitation ou de modification d'un des accélérateurs de particules suivants :

a) un accélérateur linéaire d'électrons ou un cyclotron pouvant fonctionner à au plus 50 MeV;

b) un accélérateur électrostatique pouvant fonctionner à au plus 5 MV.

27. Projet de construction, d'installation, d'exploitation, d'agrandissement, de modification, de désaffectation ou d'abandon d'un ouvrage, qui nécessite le permis prévu au paragraphe 7(1) du *Règlement sur le contrôle de l'énergie atomique*, lorsque, à la fois :

a) l'ouvrage a une superficie au sol d'au plus 100 m^2 et une hauteur d'au plus 5 m;

b) dans le cas de l'agrandissement, sa superficie au sol ou sa hauteur n'augmenterait pas de plus de 10 pour cent;

c) l'ouvrage n'est pas l'un des suivants :

(i) une installation servant à la séparation et au traitement des radio-isotopes ou une installation de fabrication de sources radioactives scellées, lorsque l'activité du stock de matières radioactives sur place est supérieure à 1 PBq ou que l'activité du traitement effectif des matières radioactives est supérieure à 1 PBq,

(ii) une installation d'irradiation à irradiateur de type intégré, lorsque la forme et la composition de la matière radioactive à l'intérieur de la source radioactive scellée sont telles que la matière se disperserait rapidement dans l'air ou se dissoudrait facilement dans l'eau advenant une rupture du sceau.

ANNEXE I (*suite*)

28. Projet de construction, d'installation, d'exploitation, de modification, de désaffectation ou d'abandon d'équipement de surveillance ou de sécurité fixé à un établissement nucléaire existant ou adjacent à celui-ci.

29. Projet de modification d'un établissement nucléaire existant ou d'une installation existante visée aux sous-alinéas 27*c*)(i) ou (ii) qui est identique à une modification qui a fait l'objet d'une évaluation environnementale aux termes de la *Loi canadienne sur l'évaluation environnementale* ou du *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement*, lorsque :

a) d'une part, à la suite de l'évaluation, les effets environnementaux ont été jugés sans importance, compte tenu de l'application des mesures d'atténuation, le cas échéant;

b) d'autre part, les mesures d'atténuation et le programme de suivi, le cas échéant, ont en grande partie été appliqués.

30. Projet d'agrandissement ou de modification de toute structure fixe à l'intérieur d'un établissement nucléaire existant ou d'une installation existante visée aux sous-alinéas 27*c*)(i) ou (ii), qui, à la fois :

a) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

PARTIE IV

FORÊTS

31. Projet d'agrandissement ou de modification d'une structure de drainage existante, autre qu'une structure de drainage raccordée à un plan d'eau, sur une terre boisée, qui, à la fois :

a) ne prolongerait pas la structure de plus de 10 pour cent;

b) serait réalisé ailleurs qu'au Yukon ou que dans les Territoires du Nord-Ouest.

ANNEXE I (*suite*)

PARTIE V

PROJETS HYDRAULIQUES

32. Projet qui n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau et qui vise la construction, l'agrandissement, la modification ou la démolition d'une structure, notamment un dépôt d'appâts, une aire de réparation de filets et un poste de patrouille, qui, à la fois :

a) serait ou est située sur la terre;

b) serait ou est liée à la pêche ou à la navigation de plaisance;

c) aurait ou a une superficie au sol de moins de 100 m^2 et une hauteur de moins de 5 m.

33. Projet de construction, d'installation, d'agrandissement ou de modification d'une structure visant à améliorer l'habitat du poisson, qui n'exigerait l'utilisation d'aucune machinerie lourde.

34. Projet de modification d'un brise-lames existant accessible par voie terrestre, ou d'un quai existant autre qu'un quai flottant, qui, à la fois :

a) serait réalisé au-dessous de la laisse des hautes eaux du brise-lames ou du quai;

b) n'entraînerait aucun dragage;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

35. Projet de réinstallation, d'agrandissement ou de modification d'un quai flottant existant qui n'augmenterait pas sa superficie de plus de 10 pour cent.

36. Projet de démolition d'un quai existant, qui, à la fois :

a) n'entraînerait pas l'utilisation d'explosifs;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

ANNEXE I (*suite*)

PARTIE VI

TRANSPORTS

37. Projet d'agrandissement ou de modification d'une surface existante couverte d'un revêtement ou de gravier dans les limites d'un aéroport, au sens du paragraphe 3(1) de la *Loi sur l'aéronautique*, qui, à la fois :

a) n'augmenterait pas la surface de plus de 10 pour cent;

b) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

c) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

38. Projet de modification de balises de manoeuvre d'aéronefs existantes ou d'aides à la navigation existantes.

39. Projet de construction, d'installation, d'agrandissement ou de modification d'une structure automatique d'avertissement à un passage à niveau.

40. Projet de construction, d'installation, d'agrandissement ou de modification d'une structure de signalisation ferroviaire sur l'emprise existante d'un chemin de fer.

41. Projet de modification de la partie d'un pipeline d'hydrocarbures, d'un égout ou d'un drain existant qui passe sous un chemin de fer ou une route et qui est située dans les limites de l'emprise existante du chemin de fer ou de la route.

42. Projet de modification d'une partie d'un ponceau existant qui, à la fois :

a) ne communique avec aucun plan d'eau;

b) passe sous un chemin de fer ou une route;

c) est située dans les limites de l'emprise existante du chemin de fer ou de la route.

43. Projet de modification, autre qu'une déviation, d'une voie ferrée existante ou du ballast existant, qui, à la fois :

a) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

ANNEXE I (*fin*)

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

44. Projet de modification d'un franchissement routier existant, au sens du paragraphe 4(1) de la *Loi sur la sécurité ferroviaire*, qui, à la fois :

a) serait réalisé sur une emprise existante;

b) ne serait pas visé par un ordre donné en vertu du paragraphe 202(1) de la *Loi sur les chemins de fer* ou une ordonnance prise en vertu de ce paragraphe;

c) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

d) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau.

ANNEXE II
(*articles 4 et 5*)

LISTE D'EXCLUSION POUR LES PARCS NATIONAUX, LES RÉSERVES FONCIÈRES, LES LIEUX HISTORIQUES NATIONAUX ET LES CANAUX HISTORIQUES

1. Projet de modification, d'entretien ou de réparation d'un bâtiment existant qui n'est pas visé à l'article 2, y compris ses structures fixes, qui, à la fois :

a) n'en augmenterait pas la superficie au sol ni la hauteur;

b) ne mettrait pas en cause un bâtiment du patrimoine;

c) n'entraînerait pas de changement dans le mode d'élimination des eaux usées ni d'augmentation de la quantité d'eaux usées, de résidus ou d'émissions;

d) ne nécessiterait aucune excavation au-delà de la superficie au sol du bâtiment;

e) ne rendrait pas nécessaire l'ajout d'installations connexes telles que des espaces de stationnement;

f) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans l'environnement.

2. Projet de modification, d'entretien ou de réparation d'un bâtiment résidentiel existant, y compris ses structures fixes, dans le périmètre urbain de Banff ou le périmètre urbain de Jasper décrits à l'annexe I du *Règlement de 1991 sur les baux et les permis d'occupation dans les parcs nationaux* ou dans les centres de villégiature ou les centres d'accueil décrits respectivement aux annexes II et III de ce règlement, qui, à la fois :

a) ne serait pas réalisé à l'extérieur des terres assujetties à un bail existant;

b) n'augmenterait pas la surperficie au sol ou la hauteur du bâtiment de plus de 10 pour cent;

c) ne mettrait pas en cause un bâtiment du patrimoine;

d) ne serait pas réalisé dans ou sur un plan d'eau ou au-dessus de celui-ci;

ANNEXE II (*suite*)

e) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans l'environnement;

f) n'entraînerait pas la coupe d'arbres indigènes.

3. Projet d'entretien ou de réparation d'un trottoir, d'un passage en bois ou d'un parc de stationnement existant.

4. Projet d'entretien ou de réparation d'une clôture existante.

5. Projet de construction, d'installation, d'entretien ou de réparation d'un panneau sur une emprise existante, ou qui serait réalisé à moins de 15 m d'un bâtiment existant.

6. Projet d'entretien ou de réparation d'une route existante, y compris les haltes routières, qui serait réalisé sur l'emprise existante et qui, à la fois :

a) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans un plan d'eau;

b) ne nécessiterait l'application d'aucune huile et d'aucun sel sur la route, ou d'aucun produit antiparasitaire sur les aires adjacentes à la route.

7. Projet d'entretien ou de réparation d'un instrument existant de collecte de données sur l'environnement, ainsi que de son boîtier et de son enceinte.

8. Projet de construction ou d'installation de médias ou d'objets d'interprétation associés à un bâtiment, une route, une halte routière ou un sentier existant, qui, à la fois :

a) ne nécessiterait aucun agrandissement des installations connexes existantes;

b) ne serait pas réalisé dans une zone de conservation spéciale ou une réserve naturelle désignée dans un plan de gestion de parc déposé devant chaque chambre du Parlement aux termes du paragraphe 5(1.1) de la *Loi sur les parcs nationaux*.

9. Projet de construction, d'installation, de modification, d'entretien ou de réparation d'une main courante ou d'un garde-fou associé à une structure existante.

10. Projet d'entretien ou de réparation de tours de guet existantes.

ANNEXE II (*fin*)

11. Projet d'exploitation d'un ouvrage existant, lorsque l'exploitation, à la fois :

a) ne nécessiterait ni la délivrance ni le renouvellement, par une autorité fédérale, d'un permis ou d'une autorisation;

b) ne nécessiterait aucun changement aux conditions d'un permis existant ou d'une autorisation existante, délivré par une autorité fédérale;

c) est identique à une exploitation qui a fait l'objet d'une évaluation environnementale aux termes de la *Loi canadienne sur l'évaluation environnementale* ou du *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement*, lorsque :

(i) d'une part, à la suite de l'évaluation, les effets environnementaux ont été jugés sans importance, compte tenu de l'application des mesures d'atténuation, le cas échéant;

(ii) d'autre part, les mesures d'atténuation et le programme de suivi, le cas échéant, ont en grande partie été appliqués.

12. Projet de modification, d'entretien ou de réparation de conduits souterrains existants, autre qu'un conduit franchissant un plan d'eau, utilisés pour les services d'eau, d'égout, de gaz, d'électricité ou de téléphone dans le périmètre urbain de Banff ou le périmètre urbain de Jasper décrits à l'annexe I du *Règlement de 1991 sur les baux et les permis d'occupation dans les parcs nationaux* ou dans les centres de villégiature ou les centres d'accueil décrits respectivement aux annexes II et III de ce règlement, lorsque le projet, à la fois :

a) serait réalisé dans une zone bâtie;

b) n'entraînerait pas la coupe d'arbres indigènes;

c) ne serait pas réalisé dans ou sur un plan d'eau ou à moins de 30 m de celui-ci;

d) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans l'environnement;

e) n'augmenterait pas la capacité de fonctionnement des conduits en cause;

f) ne comporterait aucun risque de lésion pour les mammifères.

ANNEXE III
(*article 4*)

LISTE D'EXCLUSION POUR LES CANAUX HISTORIQUES

1. Projet d'entretien ou de réparation d'un barrage, d'un canal historique, d'une écluse ou d'un mur de soutènement existants, qui, à la fois :

a) ne nécessiterait pas l'assèchement, ni l'abaissement du niveau d'eau, de toute partie du canal;

b) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans le canal;

c) ne nécessiterait aucun dragage, dynamitage ou remblayage.

2. Projet d'entretien ou de réparation d'une structure existante qui n'entraînerait vraisemblablement pas le rejet d'une substance polluante, lorsque la structure sert, selon le cas :

a) de base pour des aides à la navigation;

b) de moyen de régulariser le débit du chenal principal du canal historique;

c) de brise-lames.

3. Projet de construction, d'installation, d'entretien ou de réparation d'une structure placée dans l'eau n'ayant pas de fondations solides ou ne pénétrant pas le lit du canal historique, qui, à la fois :

a) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans le canal;

b) n'exigerait l'utilisation d'aucune machinerie lourde sur le lit du canal pour installer ou entretenir la structure;

c) ne nécessiterait aucun dragage.

4. Projet de construction, d'installation, d'entretien ou de réparation d'ouvrages de stabilisation des berges, qui, à la fois :

a) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans le canal historique;

ANNEXE III (*suite et fin*)

b) n'exigerait l'utilisation d'aucune machinerie lourde sur le lit du canal;

c) ne nécessiterait aucun dragage ni aucune excavation;

d) n'empièterait pas sur le lit du canal.

5. Projet de construction, d'installation, d'entretien ou de réparation d'un slip ou d'un ascenseur à bateaux utilisé à des fins non commerciales, qui, à la fois :

a) n'entraînerait vraisemblablement pas le rejet d'une substance polluante dans le canal historique;

b) n'exigerait l'utilisation d'aucune machinerie lourde sur le lit du canal pour installer, entretenir ou réparer le slip ou l'ascenseur;

c) ne nécessiterait aucun dragage.

6. Projet de construction, d'installation, d'entretien ou de réparation d'une ligne de télécommunications aérienne ou d'une ligne de transport d'électricité aérienne qui franchirait ou franchit le canal historique et qui est portée par un poteau simple de chaque côté du canal.

7. Projet de construction, d'installation, d'entretien ou de réparation d'un câble sous-marin ou d'une canalisation sous-marine, autre qu'un pipeline d'hydrocarbures, qui, à la fois :

a) n'entraînerait pas le franchissement de terres humides;

b) n'entraînerait aucune perturbation du lit du canal historique.

LCEE

Gouvernement du Québec

COMMUNIQUÉ

Cabinet du ministre
de l'Environnement et de la Faune

Pour publication immédiate
Diffusion : Telbec 1

Promulgation de la Loi canadienne sur l'évaluation environnementale :

TRÈS VIVE RÉACTION DU QUÉBEC

Sainte-Foy, le 6 octobre 1994 – Le ministre de l'Environnement et de la Faune du Québec, M. Jacques Brassard, a réagi vivement à l'annonce, par M^me^ Sheila Copps, ministre de l'Environnement du Canada, de la promulgation prochaine de la Loi canadienne sur l'évaluation environnementale (LCÉE).

M. Brassard estime en effet que la mise en application de cette loi et de ses règlements signifiera rien de moins que le dédoublement complet du processus d'évaluation environnementale qui existe déjà sur le territoire québécois. « Cette annonce est pour le moins choquante pour le gouvernement du Québec, qui a demandé sans relâche que des amendements soient apportés à cette loi pour éviter toute duplication. »

M. Brassard rappelle aussi que l'Assemblée nationale, dans une motion unanime, a appuyé la lutte de son prédécesseur, M. Pierre Paradis, qui s'est même rendu au Sénat pour dénoncer cette loi et le dédoublement qui en découle.

Selon le ministre Brassard, « la démarche du gouvernement fédéral est d'autant plus inacceptable que le processus québécois d'évaluation environnementale est considéré comme excellent ». Il a d'ailleurs rappelé que le gouvernement fédéral n'avait pas hésité à recourir à la procédure québécoise pour éclairer ses décisions à l'égard de plusieurs projets au Québec.

En outre, une telle promulgation contredit les efforts d'harmonisation consentis depuis un an par les différents gouvernements au Canada dans le cadre des travaux du Conseil canadien des ministres de l'environnement (CCME). M. Brassard estime que « le gouvernement fédéral agit encore une fois unilatéralement et fait preuve de mauvaise foi, puisque la ministre Copps a renié, en posant ce geste, l'esprit même des discussions au CCME ».

...2

3900, rue de Marly, 6e étage
Sainte-Foy (Québec)
G1X 4E4
Téléphone : (418) 643-8259
Télécopieur : (418) 643-4143

5199, rue Sherbrooke Est, bureau 3860
Montréal (Québec)
H1T 3X9
Téléphone : (514) 873-8374
Télécopieur : (514) 873-2413

Le gouvernement du Québec ne peut rester silencieux devant une telle démonstration de mauvaise foi du gouvernement fédéral et devant un tel gaspillage de fonds publics, il doit agir.

M. Brassard annonce qu'il a l'intention d'accélérer la révision du processus d'évaluation environnementale afin de le rendre encore plus efficace. À cet égard, le ministre entend convoquer d'ici quelques semaines les partenaires environnementaux et industriels pour revoir avec eux la Loi modifiant la Loi sur la qualité de l'environnement (L.Q. 1992, c. 56 - P.L. 61) et le projet de modifications du règlement sur l'examen et l'évaluation des impacts sur l'environnement. Le gouvernement du Québec recherchera ainsi le plus large consensus possible.

« Entre-temps, je recommanderai au Conseil des ministres la mise en application des articles pertinents du règlement actuel afin d'assujettir les projets industriels à la procédure d'évaluation environnementale », a ajouté le ministre.

Finalement, M. Brassard n'écarte aucun autre moyen pour contrer l'application de cette loi au Québec: « J'aurai même, si nécessaire, recours aux tribunaux ». Ce geste de la ministre fédérale n'a rien à voir avec une meilleure gestion de l'environnement. Il apparaît en effet, conclut-il, un geste gratuit d'envahissement dans un secteur très bien occupé par le Québec. C'est là une manifestation concrète de la soif de centralisation du gouvernement fédéral, de son art et de son empressement à dédoubler les services québécois existants.

-30-

Source: Cabinet du ministre de l'Environnement et de la Faune du Québec
Josée Tremblay, attachée de presse
(418) 643-8259

94-971-01

Points saillants de la *Loi canadienne sur l'évaluation environnementale*

Pour la première fois, le processus fédéral canadien **repose sur un fondement législatif,** réduisant ainsi les incertitudes juridiques et la nécessité de recourir aux tribunaux à des fins d'interprétation.

Le **développement durable** est placé au rang d'objectif fondamental du processus fédéral d'évaluation environnementale.

La participation du public fait partie des objectifs de la *Loi canadienne sur l'évaluation environnementale* (la Loi); la Loi offre au citoyen la possibilité de participer à la désignation des catégories aux fins du rapport d'examen préalable, aux examens des études approfondies, aux séances de médiation et aux audiences des commissions (voir définitions plus bas).

La Loi présente la définition détaillée des principaux termes afin de permettre l'évaluation la plus minutieuse possible des projets. Il s'agit notamment des termes *environnement, effets environnementaux, projet et activités concrètes*.

On dispose de **quatre différentes sortes d'évaluations environnementales** pour tenir compte des divers projets et circonstances : **examen préalable, étude approfondie, médiation et examen par une commission.** Les deux premières représentent environ 99 p. 100 de l'ensemble des projets évalués.

1. Au cours de **l'examen préalable,** il faut systématiquement énoncer par écrit les effets environnementaux du projet proposé et déterminer s'il y a lieu d'éliminer ou de réduire (atténuer) les effets nocifs; de modifier le projet ou de recommander une autre évaluation moyennant médiation ou examen par une commission. Afin d'améliorer l'efficacité du processus, les projets courants de petite envergure peuvent être évalués par le biais **d'un examen préalable par catégorie.**

2. Les projets de grande envergure et susceptibles de nuire à l'environnement sont soumis à une évaluation plus stricte désignée sous le nom **d'étude approfondie.** La Liste d'étude approfondie fait état des projets désignés par règlement dans cette catégorie.

3. La **médiation,** nouvelle approche d'évaluation environnementale adoptée par le Canada, est un processus volontaire qui permet à un médiateur impartial désigné par le ministre de l'Environnement d'aider les parties intéressées à résoudre les

problèmes entourant le projet. Cette approche s'applique seulement si les parties intéressées sont peu nombreuses et s'il est possible d'en arriver à un consensus.

4. Lorsqu'à la suite d'un examen préalable, d'une étude approfondie ou d'une médiation, on décide qu'il faut pousser plus loin l'évaluation d'un projet, le ministre de l'Environnement peut confier **l'examen à une commission indépendante.** Les examens soumis à des commissions publiques permettent à un grand nombre de groupes et de personnes ayant des points de vue différents de présenter de l'information et d'exprimer leurs préoccupations.

Les autorités fédérales responsables de projets peuvent aussi solliciter un examen public par un médiateur ou une commission en tout temps.

Le **ministre fédéral de l'Environnement** occupe une place importante dans la mise en oeuvre du processus fédéral d'évaluation environnementale, à savoir :

- dans certaines circonstances, il peut exiger, en consultation avec une autorité fédérale, un examen public par un médiateur ou une commission ou encore une combinaison des deux à n'importe quel moment de l'examen préalable ou de l'étude approfondie;

- il désigne le médiateur ou les membres d'une commission et, en consultation avec l'autorité fédérale responsable du projet, fixe son mandat;

- il peut autoriser **le remplacement de l'examen en commission aux termes de la Loi par un autre processus fédéral** afin de promouvoir l'efficacité, d'éviter le double emploi et de gagner du temps;

- il veille à ce que soient soumis à une évaluation environnementale les **projets susceptibles d'avoir des effets environnementaux négatifs importants sur les terres domaniales fédérales ou sur une région qui traverse une frontière provinciale ou internationale.**

Afin d'éviter la confusion ou les chevauchements possibles avec les processus d'évaluation environnementale des autres instances, comme les gouvernements provinciaux, le ministre fédéral de l'Environnement est autorisé à élaborer des procédures d'évaluation environnementale applicables à **l'examen conjoint** effectué en collaboration avec ces instances. La Loi favorise la possibilité d'ententes d'harmonisation sur l'évaluation environnementale pour encourager l'efficience et éliminer le double emploi.

La portée de l'évaluation de la plupart des grands projets doit englober les facteurs comme les solutions de rechange réalisables, la raison d'être du projet, les effets environnementaux cumulatifs et les effets sur la durabilité des ressources renouvelables.

Les promoteurs des grands projets doivent s'occuper du **programme de suivi**, à savoir vérifier l'exactitude de

l'évaluation environnementale et déterminer l'efficacité des mesures d'atténuation.

Un **registre public** est établi pour chaque projet afin que le public ait accès à l'information.

Un nouvel organisme indépendant, **l'Agence canadienne d'évaluation environnementale (l'ACEE),** qui remplace le Bureau fédéral d'examen des évaluations environnementale (BFEEE), est chargé d'administrer le processus d'évaluation environnementale et de veiller à ce que le public puisse participer au processus.

Règlements

Pour être mise en oeuvre, la Loi nécessite un certain nombre de règlements qui clarifient ses exigences et sa portée dans certaines circonstances. **Quatre de ces règlements** sont essentiels à une application efficace de la Loi:

- **Liste d'étude approfondie**
- **Liste des dispositions législatives et réglementaires désignées**
- **Liste d'exclusion**
- **Liste d'inclusion**

De plus, en consultation suivie avec d'autres gouvernements, le secteur privé, les groupes environnementaux et le public, d'autres règlements en vertu de la Loi sont en voie d'élaboration .

Un règlement va décrire les procédures pour la conduite d'évaluation environnementale pour des **projets en dehors du Canada,** dans le respect de la souveraineté des états et des lois internationales.

Un autre règlement va préciser le principe **«Un projet, une évaluation»** pour assurer que les évaluations environnementales d'un même projet, mais touchant plus d'une autorité responsable, soient coordonnées pour éviter les doubles emplois.

Un règlement va établir les **critères minimaux exigeant la participation fédérale** à une évaluation environnementale. Il va fixer des seuils tels que le pourcentage des fonds fédéraux fournis à un projet, ou la superficie des terres que le gouvernement fédéral vend ou loue pour permettre à un projet d'aller de l'avant.

Amendements proposés à la Loi

Un certain nombre d'amendements à la Loi ont été proposés afin de répondre aux soucis des organismes environnementaux, des provinces et de l'industrie.

Un de ces amendements va garantir dans la Loi l'application du principe **"un projet, une évaluation"**; un autre assurera **l'existence d'un programme d'aide aux participants** afin de promouvoir la participation efficace du public dans le processus.

De plus, **une décision du Cabinet sera requise en réponse du gouvernement aux recommandations d'une commission.**

D'autres règlements seront élaborés en vue d'assurer l'évaluation environnementale des projets relevant des sociétés de la Couronne fédérales et des commissions portuaires.

Fiches d'information aux médias

Il y a trois fiches d'information destinées aux médias dans cette série:

1. Points saillants de la *Loi canadienne sur l'évaluation environnementale*

2. Aperçu du Processus canadien d'évaluation environnementale

3. Mise en pratique de la Loi - Règlements en application de la *Loi canadienne sur l'évaluation environnementale*.

Information publique

L'Agence a un programme d'information publique. Pour de plus amples détails, veuillez communiquer à l'adresse suivante par téléphone ou télécopieur ou encore par écrit :

L'Agence canadienne d'évaluation environnementale
200, boul. Sacré-Coeur, 14e étage
Hull (Qué)
K1A OH3

Téléphone (819) 997-1000
Télécopieur (819) 994-1469

L'information contenue dans cette fiche est fondée sur la Loi canadienne sur l'évaluation environnementale. Pour plus de détails et de précisions, veuillez consulter le texte législatif.

(Also available in English)

Le 6 octobre 1994

Mise en pratique de la Loi : Règlements en application de la *Loi canadienne sur l'évaluation environnementale*

Pour la première fois, la **Loi canadienne sur l'évaluation environnementale** (La Loi) établit un processus prévu par un texte législatif en vue de procéder aux évaluations environnementales des projets mettant à contribution le gouvernement fédéral.

La Loi doit être complétée par un certain nombre de règlements pour donner effet à ses procédures et apporter des éclaircissements sur ses exigences et sa portée dans des circonstances particulières. Ainsi par le biais de consultations approfondies avec les autres gouvernements, le secteur privé, les groupes environnementaux et le grand public, plus d'une douzaine de règlements sont en voie d'élaboration. Parmi ces règlements, **quatre** sont essentiels au bon fonctionnement de la Loi :

- **la Liste d'étude approfondie;**
- **la Liste des dispositions législatives et réglementaires désignées (Liste des lois et règlements);**
- **la Liste d'exclusion;**
- **la Liste d'inclusion.**

Liste d'étude approfondie

La **Liste d'étude approfondie** décrit les genres de projets qui doivent être évalués au moyen d'une étude plus détaillée. Ces projets sont susceptibles de causer des effets environnementaux négatifs importants quel que soit le lieu de leur mise en oeuvre; ils engendrent souvent des préoccupations publiques considérables.

Le gouvernement a renforcé ce règlement pour tenir compte des commentaires reçus du public après la publication des quatre règlements essentiels dans la Partie I de la Gazette du Canada. En abaissant les seuils d'inclusion, un plus grand nombre de projets seront soumis à une étude approfondie.

En voici quelques exemples :

- grands projets d'exploitation pétrolière et gazière;
- projets dans les parcs nationaux et zones protégées;
- grands projets de production d'électricité;
- vastes projets d'exploitation minière;
- importants pipelines;

- centrales nucléaires, y compris les mines d'uranium;
- vastes installations industrielles.

Liste des lois et règlements

Aux termes de la Loi, une évaluation environnementale est effectuée lorsqu'un organisme ou ministère fédéral doit accorder une licence, un permis, un certificat ou toute autre autorisation réglementaire applicable à un projet qui figure dans la **Liste des lois et règlements**. Bien entendu, les décisions réglementaires du fédéral n'ont probablement pas toutes des effets environnementaux. La **Liste des lois et règlements** définit la portée de la Loi, c'est-à-dire qu'elle désigne les approbations législatives et réglementaires fédérales qui sont censées déclencher une évaluation environnementale.

Après examen des commentaires reçus du public lors de la publication du projet de règlements dans la Partie I de la Gazette du Canada, de nouvelles dispositions ont été ajoutées dans le Règlement sur la Liste des lois et règlements, portant ainsi à 190 le nombre de «déclencheurs» d'évaluations environnementales fédérales.

Liste d'exclusion et Liste d'inclusion

Aux termes de la Loi, un **projet** est défini comme suit :

- réalisation - y compris l'entretien, la modification, la désaffectation et la fermeture - d'un ouvrage;
- proposition d'exercice d'une activité concrète, non liée à un ouvrage, figurant dans la Liste d'inclusion établie par règlement en application de la LCEE.

Un règlement s'applique à chacun de ces deux genres de projets.

La **Liste d'exclusion** décrit les réalisations liées à un ouvrage qui ne donnent pas lieu à une évaluation environnementale. Ces projets sont courants et relativement petits et sont censés produire des effets environnementaux négligeables seulement. À titre d'exemples, mentionnons l'entretien normal, les rénovations mineures et la construction de petits immeubles. La Liste d'exclusion permettra de simplifier le processus fédéral d'évaluation environnementale en ce sens que les ministères et organismes fédéraux pourront concentrer leurs efforts dans ce domaine de façon plus efficace.

La **Liste d'inclusion** porte seulement sur les projets qui consistent en activités concrètes non liées à un ouvrage. Elle décrit les activités qui doivent être soumises à une évaluation environnementale dans le cas où un organisme ou ministère fédéral propose, finance ou autorise le projet moyennant délivrance d'un permis ou d'une licence. À titre d'exemples, mentionnons l'immersion en mer de substances visées par la **Loi**

sur la protection de l'environnement et la coupe et le retrait du bois des forêts d'un parc national.

Autres règlements importants

En plus de ces règlements, d'autres sont en voie d'élaboration, notamment :

- **Projets en dehors du Canada**

Ce règlement décrira les procédures applicables à l'évaluation environnementale des projets de développement international auxquels participe le gouvernement fédéral, tout en respectant la souveraineté des États et les règles du droit international.

- **Un projet - une évaluation**

Ce règlement assurera que les évaluations environnementales qui traitent d'un même projet, mais entreprises par des autorités responsables différentes, soient coordonnées afin d'éviter le double emploi.

- **Terres des réserves indiennes**

Ce règlement décrira les principes et procédures applicables à l'évaluation environnementale des projets sur les terres réservées aux Indiens lorsque les premières nations sont les principaux décideurs.

- **Procédures**

Ce règlement décrira les procédures selon lesquelles les évaluations environnementales seront entreprises pas les autorités responsables, les médiateurs, et les commissions publiques.

- **Révisions au règlement sur la Liste d'inclusion**

Ce règlement décrira les activités physiques qui ne découlent pas de la Liste des lois et règlements ou de la Liste d'étude approfondie et qui exigeront une évaluation environnementale.

- **Sociétés d'État et commissions portuaires**

Ce règlement établira un processus d'évaluation environnementale pour ces sociétés et commissions. Le règlement tiendra compte de la situation particulière de chaque société ou commission, notamment sa compétitivité. Il donnera aussi une certaine souplesse au processus en permettant l'usage des processus d'évaluation environnementale provinciaux ou territoriaux pertinents.

- **Offices extracôtiers**

Ce règlement adaptera le processus fédéral d'évaluation environnementale aux projets mis en oeuvre par des offices extracôtiers constitués conformément aux accords fédéraux-provinciaux, comme l'Accord Canada - Nouvelle-Écosse sur les hydrocarbures extracôtiers.

Fiches d'information

Il y a trois fiches d'information destinées aux médias dans cette série:

1. Points saillants de la *Loi canadienne sur l'évaluation environnementale*

2. Aperçu du Processus canadien d'évaluation environnementale

3. Mise en pratique de la Loi - Règlements en application de la *Loi canadienne sur l'évaluation environnementale*.

Information publique

L'Agence a un programme d'information publique. Pour de plus amples détails, veuillez communiquer à l'adresse suivante par téléphone ou télécopieur ou encore par écrit :

L'Agence canadienne d'évaluation environnementale
200, boul. Sacré-Coeur, 14e étage
Hull (Québec)
K1A OH3

Téléphone (819) 997-1000
Télécopieur (819) 994-1469

L'information contenue dans cette fiche est fondée sur la Loi canadienne sur l'évaluation environnementale. Pour plus de détails et de précisions, veuillez consulter le texte législatif.

(Also available in English)

6 octobre 1994

Aperçu du
Processus fédéral d'évaluation environnementale

La **Loi canadienne sur l'évaluation environnementale** (la Loi) définit clairement, pour la première fois dans la législation, le processus applicable à **l'évaluation environnementale des projets** mettant à contribution le gouvernement fédéral. L'application de la Loi relève de l'Agence canadienne d'évaluation environnementale (ACEE).

Principes directeurs

Le processus repose sur plusieurs principes, notamment :

- L'évaluation environnementale est un instrument qui permet aux décideurs de favoriser le développement durable -- le maintien d'un environnement sain et d'une économie solide.
- Le processus doit être mis en branle dès la planification du projet, et avant la prise de décisions irrévocables, afin que les facteurs environnementaux soient considérés au cours de la prise de décision de la même manière que les facteurs économiques et sociaux le sont depuis toujours.
- La participation du public et la responsabilité envers le public constituent les éléments importants d'un processus d'évaluation environnementale ouvert et équilibré.
- L'évaluation environnementale autogérée des projets par les ministères et organismes fédéraux responsables représente la pierre angulaire d'un processus d'évaluation environnementale efficace et efficient.

À quel moment la Loi s'applique-t-elle?

Une évaluation environnementale est nécessaire lorsqu'une **autorité fédérale** assume au moins un des devoirs, fonctions ou pouvoirs suivants dans le cadre d'un **projet** :

- propose le projet;
- fournit de l'argent ou une autre forme d'aide financière;
- cède des droits sur des terrains afin de permettre l'exécution du projet (à savoir, vend, loue ou transfère autrement le contrôle du terrain);

- assume une pouvoir de réglementation à l'égard du projet, comme la délivrance d'un permis ou d'une licence, dont il est fait état dans la Liste des dispositions législatives et réglementaires désignées, adoptée en vertu de la Loi.

Par **autorité fédérale**, on entend :

- un ministre fédéral de la Couronne;
- une agence ou tout autre organisme du gouvernement fédéral tenu de rendre compte finalement au Parlement par l'intermédiaire d'un ministre fédéral de la Couronne;
- un ministère fédéral ou un établissement public conformément à l'annexe I ou II de la **Loi sur la gestion des finances publiques;**
- tout autre organisme désigné par règlement pris en application de la Loi.

L'autorité fédérale est chargée de veiller à ce que l'évaluation soit effectuée conformément à la Loi.

Un **projet** se définit comme suit :

- réalisation liée à un ouvrage (par exemple, construction d'un pont), y compris l'entretien, la modification, la désaffectation ou la fermeture;
- proposition d'exercice d'une activité concrète, non liée à un ouvrage, désignée par règlement dans la Liste d'inclusion en vertu de la Loi (par exemple, coupe et retrait du bois des forêts d'un parc national).

Quelles sont les différentes sortes d'évaluations environnementales?

Dans la Loi, on retrouve quatre sortes d'évaluations environnementales : examen préalable, étude approfondie, médiation et examen par une commission.

Effectué par l'autorité responsable du projet, **l'examen préalable** constitue l'évaluation la plus souple puisqu'elle s'applique aussi bien aux projets simples et courants qu'à ceux de plus d'envergure. Il s'agit d'une approche systématique visant à inventorier les effets environnementaux d'un projet et à déterminer s'il y a lieu d'éliminer ou d'atténuer ces effets; de modifier le plan ou de recommander la conduite d'une autre évaluation par médiation ou par le truchement d'une commission.

La participation du public à l'examen préalable repose sur le pouvoir discrétionnaire de l'autorité responsable (sauf avis contraire stipulé par règlement aux termes de la Loi) et dépend de facteurs comme la nature du projet, sa situation par

rapport à l'environnement et les préoccupations du public.

Examen préalable par catégorie

L'examen préalable de certains projets courants, comme le dragage, les ouvrages de drainage et l'entretien du réseau routier peut être simplifié au moyen d'un rapport d'examen préalable par catégorie. Conçu par l'Agence canadienne d'évaluation environnementale (ACEE) après avoir tenu compte des commentaires du public, le rapport d'examen préalable par catégorie présente l'ensemble des connaissances acquises sur les effets environnementaux d'un projet donné et détermine les mesures connues permettant de réduire ou d'éliminer les effets environnementaux négatifs possibles.

Certains projets sont soumis à une évaluation longue et détaillée de leurs effets sur l'environnement. Décrits dans la **Liste d'étude approfondie** prescrite par règlement aux termes de la Loi, ces grands projets écologiquement risqués peuvent vraisemblablement avoir des effets environnementaux négatifs et entretenir les préoccupations du public. Il s'agit notamment de projets d'exploitation pétrolière et gazière d'envergure, de projets à mettre en oeuvre dans les parcs nationaux, de centrales nucléaires, de grands projets de production d'électricité et d'installations industrielles d'envergure. Au cours d'une étude approfondie, l'autorité responsable analyse un plus large éventail de facteurs que dans l'examen préalable et elle présente au ministre de l'Environnement (le ministre) un rapport d'étude approfondie à soumettre à l'ACEE et au public.

Si, d'après la conclusion de l'Examen préalable ou de l'Étude approfondie, le projet doit faire l'objet d'une autre investigation ou si le public se préoccupe beaucoup à ce sujet, le ministre renverra le projet à un **médiateur ou à une commission.**

La médiation est un processus volontaire de négociation dans le cadre duquel un médiateur indépendant et impartial, nommé par le ministre de l'Environnement, aide les parties intéressées à résoudre leurs problèmes et à parvenir à un consensus sur les questions comme les effets environnementaux possibles d'un projet et les mesures d'atténuation les plus efficaces. Elle peut s'appliquer à l'ensemble de l'évaluation environnementale d'un projet ou à une partie seulement et elle peut se faire en parallèle avec un examen par une commission.

Lorsque la médiation ne convient pas ou ne réussit pas, l'évaluation environnementale est confiée à une **commission d'examen public** nommée par le ministre. L'examen par une commission représente un moyen exceptionnel d'informer et d'intéresser un grand nombre de groupes et de particuliers visés en leur fournissant l'occasion, par exemple, de participer aux audiences publiques sur le projet. Les audiences publiques sont structurées, mais elles se déroulent dans un cadre relativement souple et

non antagoniste. La commission présente ses recommandations au gouvernement à la fin du processus d'examen public.

Que se passe-t-il après une évaluation environnementale?

Compte tenu des constatations découlant de l'évaluation environnementale et des observations du public, l'autorité responsable doit décider si elle peut prendre les mesures relatives au projet -- à savoir, mettre le projet en branle s'il s'agit du promoteur, ou fournir les fonds, le permis, la licence ou autre autorisation.

La Loi prévoit un **programme de suivi** visant à vérifier l'exactitude de l'évaluation environnementale et à déterminer l'efficacité des mesures d'atténuation qui ont été prises.

Participation du public

La participation du public fait partie des principaux objectifs de la LCEE; les ministères et organismes fédéraux ne doivent pas l'oublier lorsqu'ils effectuent ou dirigent les évaluations environnementales. Le public peut être une source précieuse d'information à l'échelon local et de connaissances écologiques traditionnelles à l'occasion d'une évaluation. **Les préoccupations du public** peuvent aussi justifier un examen par un médiateur ou une commission.

Le rôle du public dans le processus d'évaluation environnementale est mis en valeur de la façon suivante :

- le public a l'occasion de participer aux examens préalables par catégorie, aux études approfondies et aux examens par un médiateur ou une commission;
- grâce à l'établissement **d'un registre public** pour chaque projet soumis à une évaluation environnementale, toute personne intéressée à participer au processus peut examiner la plupart des documents se rapportant à l'évaluation environnementale et en obtenir des copies;
- le **Programme d'aide financière aux participants** a été conçu de façon à offrir des fonds limités aux personnes et aux groupes (partisans ou opposants) intéressés à prendre part aux principaux stades des examens par un médiateur ou une commission.

Collaboration avec les autres gouvernements

Dans bien des cas, il faut obtenir l'autorisation **à la fois** du gouvernement fédéral et d'un gouvernement provincial ou territorial. En l'absence d'une étroite

collaboration entre ces gouvernements, un projet pourrait être soumis à des évaluations environnementales distinctes -- pour se solder par un double emploi inutile, un climat de confusion et des frais excessifs pour toutes les parties.

Compte tenu de ces possibilités de double emploi et de confusion, la LCEE autorise le ministre à conclure des ententes avec les gouvernements provinciaux et territoriaux en ce qui a trait à l'évaluation environnementale des projets lorsque les deux ordres de gouvernement sont appelés à donner une licence, un permis, un certificat, ou autre autorisation. Ces **ententes bilatérales** contiennent des directives sur les rôles et responsabilités de chaque gouvernement dans l'évaluation environnementale des projets. Ces ententes prévoient la coopération dans les domaines comme les commissions conjointes, la médiation, l'examen préalable, l'étude approfondie, la notification, le partage des coûts et les délais.

Jusqu'à présent, une entente a été signée avec l'Alberta. Une autre avec le Manitoba a été approuvée par les deux parties. Cinq autres ententes sont en voie de négociation.

Fiches d'information

Il y a trois fiches d'information destinées aux médias dans cette série:

1. Points saillants de la *Loi canadienne sur l'évaluation environnementale*

2. Aperçu du Processus canadien d'évaluation environnemental

3. Mise en pratique de la Loi - Règlements en application de la *Loi canadienne sur l'évaluation environnementale*.

Information publique

L'Agence a un programme d'information publique. Si vous désirez recevoir un document faisant partie de cette série ou obtenir de plus amples renseignements, veuillez communiquer à l'adresse suivante par téléphone ou télécopieur ou encore par écrit :

L'Agence canadienne d'évaluation environnementale
200, boul. Sacré-Coeur, 14e étage
Hull, (Québec)
K1A OH3

Téléphone (819) 997-1000
Télécopieur (819) 994-1469

L'information contenue dans cette fiche est fondée sur la Loi canadienne sur l'évaluation environnementale. Pour plus de détails et de précisions, veuillez consulter le texte législatif.

(Also available in English)

6 octobre 1994

Communiqué

POUR DIFFUSION IMMÉDIATE

LE GOUVERNEMENT TIENT SA PROMESSE DU «LIVRE ROUGE» ET RENFORCE LE RÉGIME D'ÉVALUATION ENVIRONNEMENTALE

OTTAWA -- Le 6 octobre 1994 -- Après une série de consultations publiques, la vice-première ministre et ministre de l'Environnement, Sheila Copps a annoncé aujourd'hui que le gouvernement respectera ses engagements du «Livre rouge» et proclamera la *Loi canadienne sur l'évaluation environnementale* (la Loi). Le gouvernement a aussi approuvé un ensemble de règlements révisés sur l'évaluation environnementale et va bientôt déposer des amendements à la Loi de 1992.

L'annonce d'aujourd'hui ouvre la voie à la création de l'Agence canadienne d'évaluation environnementale. Cette nouvelle agence va prendre la relève du Bureau fédéral d'examen des évaluations environnementales. Celui-ci va s'occuper de la transition à la nouvelle Loi et assurer sa mise en oeuvre à compter de janvier 1995. Un vaste programme de formation a été élaboré afin d'aider l'industrie et les fonctionnaires dans la transition au nouveau régime d'évaluation environnementale.

La promulgation de la Loi signifiera la fin du coûteux et controversé Processus d'évaluation et d'examen en matière d'environnement. Celui-ci a entraîné des retards importants et créé un climat d'incertitude pour l'industrie et, par conséquent, pour la création d'emplois. La Loi, en réduisant les chevauchements et les doubles emplois, va également fournir un meilleur encadrement pour un fédéralisme coopératif en matière d'évaluation environnementale.

La ministre a déclaré : «Nous tenons les promesses que nous avons faites dans le «Livre rouge». Tout compte fait, comparativement au premier projet de règlement, un plus grand nombre de projets seront soumis à une évaluation environnementale, et après deux ans de consultations, cette Loi sera enfin promulguée».

La ministre a fait valoir que les règlements approuvés tenaient compte à la fois du besoin de créer des emplois et de la responsabilité du gouvernement de protéger l'environnement. Un programme de surveillance d'un an sera établi avec la participation de tous les intéressés, afin d'assurer qu'aucun projet ayant des répercussions environnementales importantes n'échappe à l'évaluation, et que le nouveau régime n'entrave pas inutilement l'industrie.

.../2

Suite à l'adoption des règlements révisés, la Loi devrait pouvoir être promulguée en janvier 1995. «Ce gouvernement veut gérer l'environnement en pensant à nos enfants. L'évaluation environnementale influe sur la façon dont nous prenons nos décisions et représente donc la pierre angulaire des efforts du gouvernement afin d'assurer un développement durable», a dit la ministre.

En plus des règlements révisés qui traitent essentiellement de l'évaluation des projets, la ministre a aussi annoncé un examen du mode d'évaluation des politiques et des programmes du gouvernement. «Le gouvernement s'est engagé à tenir compte de l'environnement dans ses propres décisions, a-t-elle dit, et il est déterminé à évaluer toutes les nouvelles politiques et tous les nouveaux programmes avant de prendre une décision à leur sujet. Au cours des prochains mois, je vais donc élaborer des options pour renforcer la façon dont se fait l'évaluation des politiques et des programmes gouvernementaux.»

Par ailleurs, la ministre a présenté trois modifications à la Loi qui, combinées aux règlements, permettront au gouvernement de tenir tous les engagements qu'il a pris dans le «Livre rouge».

Ces modifications visent à :

- garantir dans la Loi l'existence du programme d'aide financière aux participants;
- exiger une décision du Cabinet en réponse aux recommandations des commissions indépendantes d'évaluation environnementale;
- confirmer dans la Loi le principe voulant qu'il n'y ait qu'une seule évaluation par projet.

La nouvelle Loi assure également la participation du public au processus. Un nouveau registre public où seront consignés les renseignements se rapportant à l'évaluation environnementale des projets sera créé afin de faciliter la participation du public. Ce registre, informatisé, pourra être consulté dans diverses bibliothèques publiques partout au pays.

- 30 -

Pour plus de renseignements, s'adresser à :

Jean Valin
Bureau fédéral d'examen des
évaluations environnementales
(819) 997-2212

Duncan Dee
Bureau de la ministre
Sheila Copps
(819) 997-1441

CCEK 49.3

ᑲᑎᕕᒃ ᓄᓇᒧᑦ ᐃᓱᒪᒃᓴᖅᓯᐅᑎᓕᒫᕆᑦᑐᑦ ᑲᑎᒪᔩᑦ

comité consultatif de l'environnement KATIVIK
KATIVIK environmental advisory committee
C.P. 9, KUUJJUAQ, QUÉBEC, J0M 1C0 • TÉL.: (819) 964-2941

Le 23 novembre 1990

Monsieur Robert de Cotret
Ministre
Ministère de l'Environnement
Chambre des Communes
Pièce 511-S, édifice du Centre
OTTAWA (CANADA)
K1A 0A6

OBJET: Projet de loi C-78 sur la mise en oeuvre du processus <u>fédéral d'évaluation environnementale</u>

Monsieur le ministre,

Le Comité consultatif de l'environnement Kativik est un organisme créé par la Convention de la Baie James et du Nord québécois (ci-après appelée «la Convention»); il est composé à part égale de représentants du Canada, du Québec, et de l'Administration régionale Kativik. Le Comité consultatif est l'interlocuteur privilégié et officiel des gouvernements du Canada et du Québec ainsi que des administrations locales et régionales lorsqu'ils veulent élaborer des lois et des règlements concernant la protection de l'environnement et du milieu social au nord du cinquante-cinquième parallèle.

Le Comité a de plus pour mandat de surveiller l'application du chapitre 23 de la Convention en faisant, entre autres, des recommandations quant à l'adoption de lois, règlements et autres mesures destinées à assurer une meilleure protection du milieu social et de l'environnement, à la révision ou la modification des lois, règlements et procédures administratives existant concernant l'environnement, le milieu social et l'utilisation des terres, ainsi qu'aux mécanismes et procédures d'évaluation et d'examen des impacts sur l'environnement et le milieu social.

Dans cette optique, le Comité a examiné le projet de loi C-78 visant à mettre en oeuvre le processus fédéral d'évaluation environnementale. Ne disposant que peu de temps et de ressources pour mener une telle activité, nous avons laissé à d'autres le soin de faire une analyse plus exhaustive et étendue du projet de loi, et avons préféré nous approfondir sur les éléments qui, à

...2/

notre avis, s'appliquent davantage à la région du Québec située au nord du cinquante-cinquième parallèle.

Nous croyons opportun de rappeler dès le départ que le processus fédéral d'évaluation et d'examen environnemental établi par le Décret sur les lignes directrices visant le Processus fédéral d'évaluation et d'examen environnemental (C.P. 1984-2132, le 21 juin 1984) ne s'applique pas dans la région Kativik (ci-après appelée «la Région») telle que définie par la Convention. En effet, la Convention, et plus particulièrement le chapitre 23, prévoient la création d'un régime particulier et indépendant, qui soumet au processus tous les développements ou projets de développement dans la Région, qui relèvent de la compétence fédéral, y compris les développements ou projets de développement mis en oeuvre par le Canada, ses organismes ou toute personne agissant en sont nom. Nous vous reportons pour plus de détails à la section 23.4 de la Convention.

Par conséquent, nous croyons essentiel que le législateur insère dans le projet de loi, de préférence au début du chapitre 1, une clause dérogatoire affirmant la préséance de la Convention et des lois y afférentes, et du processus fédéral d'évaluation et d'examen des répercussions sur l'environnement et le milieu social qu'elle créé, pour tout développement ou projet de développement dans la Région relevant de la compétence fédérale. Une telle disposition aurait l'avantage d'éliminer toute ambiguité et tout conflit juridique potentiel lié à cette question.

Dans une optique constructive, nous aimerions également attirer votre attention sur certains éléments du projet de loi C-78 qui, à notre avis mériterait des modifications avant qu'il ne soit adopté par la Chambre des Communes du Canada.

D'une part, nous accueillons très favorablement l'intention du gouvernement d'assujettir le processus fédéral d'évaluation et d'examen environnemental à une loi, ce qui aura pour effet immédiat de rendre sa mise en oeuvre obligatoire et donnera davantage de crédibilité au processus et aux décisions qui seront prises conformément à ses dispositions. D'autre part et bien que cet élément soit une nette amélioration par rapport au processus actuel, d'autres aspects sont à notre avis inadéquats et constituent un recul par rapport à que ce qui est actuellement prévu.

Notre première remarque, de nature très générale, porte sur le type de répercussions dont traite le projet de loi. Il est évident pour tous les intervenants familiers avec l'évaluation

...3/

environnementale que, dans une majorité de cas, il est impossible de réaliser un projet de développement sans qu'il y ait de répercussions sur le milieu social, culturel et économique, lesquelles sont souvent aussi importantes que les répercussions sur l'environnement. L'étude des impacts sociaux est une activité qui doit émaner prioritairement de la communauté touchée, c'est-à-dire qu'il revient aux personnes touchées de décider de la nature et de l'importance des répercussions d'un développement. L'évaluation de ce type d'impacts devrait à notre avis mettre l'accent sur la participation du public à toutes les étapes de l'évaluation, et sur une approche holistique plutôt que technique.

Or, le projet de loi semble ignorer, ou du moins ne l'aborde pas vraiment, cet aspect de l'évaluation d'un projet de développement, ce qui n'est pas le cas pour le processus fédéral s'appliquant dans la Région où, en effet, la dimension sociale et le respect des valeurs humaines et culturelles est toute aussi importante, sinon plus que la dimension environnementale, et tente d'intégrer à l'évaluation et à l'examen des impacts autant l'approche technique que l'approche holistique.

Nous considérons donc que la définition du terme *environnement* (article 2) devrait être plus explicite, et à la fois englober les aspects biologiques et physiques mais également les questions d'ordre démographique, social, culturel et économique. De la même manière, le terme *effets environnementaux* devrait englober les impacts à court et à long termes, y compris les impacts synergiques et cumulatifs sur l'environnement.

La portée et le champ d'application du projet de loi sont à notre avis trop limités (article 5). Le processus devrait obligatoirement s'appliquer à tous les développements mais aussi aux projets de développement relevant de la compétence fédérale, y compris aux projets susceptibles d'entrainer des répercussions environnementales en dehors de la province où le projet origine, à toutes les sociétés de la Couronne, aux politiques et programmes gouvernementaux, et à tous les domaines soumis à la juridiction du gouvernement fédéral, en particulier lorsqu'un permis, une autorisation ou une license est obligatoire en vertu d'une loi ou d'un règlement. Le processus actuel est en ce sens supérieur au projet de loi puisqu'il peut être mis en branle dans le cas d'un projet entrainant des impacts sur un domaine de juridiction fédérale. Le processus donne au Ministre de l'Environnement le pouvoir de faire procéder à une médiation ou à un examen par une commission un projet de développement dont les préoccupations du public à l'égard des effets environnementaux de ce projet le

...4/

justifient (article 20). Dans ce cas particulier, le projet deloi donne au Ministre un pouvoir discrétionnaire presqu'absolu, puisqu'aucun mécanisme n'est prévu pour que le public lui-même participe à cette décision de procéder à un examen public.

Tout en donnant ce pouvoir au Ministre de l'Environnement, il semble que le projet de loi ne lui donne pas le pouvoir de prendre la décision finale d'autoriser ou de ne pas autoriser un projet de développement. L'article 34 du projet de loi indique que la décision finale est prise par l'autorité responsable, qui peut être dans certains cas le Ministre de l'Environnement, mais dans d'autres tout autre autorité fédérale tenue de veiller à ce l'on procède à l'évaluation environnementale d'un projet. Nous croyons plutôt que le projet de loi devrait attribuer cette responsabilité ultime au Ministre de l'Environnement.

Comme cela est le cas pour le processus prévu par la Convention, nous croyons que le projet de loi devrait permettre et encourager la participation du public à toutes les étapes de l'examen d'un projet. Le public doit être assuré, par voie législative, d'avoir accès direct à l'information, mais surtout de disposer d'un mode de financement adéquat et indépendant pour participer pleinement à l'examen d'un projet.

Il nous apparaît extrêmement important que le projet de loi spécifie, de façon formelle, qu'aucune activité de construction reliée à un projet de développement ne pourra être entreprise avant que l'examen environnemental ne soit complété et la décision prise par l'autorité responsable, ce qui n'est pas explicite dans le projet de loi. Le projet de loi semble également muet dans le cas où le promoteur d'un projet ne respecte pas une décision prise par le gouvernement ou la commission chargée de l'examen de ce projet. Sur cette question, le projet de loi devrait intégrer un mécanisme permettant d'appliquer une décision finale, par exemple par le biais d'un permis ou d'une license.

Finalement, la question de l'examen conjoint fédéral-provincial nous intéresse particulièrement, notamment pour l'examen de projets de développements hydroélectriques comme le projet Grande-Baleine ou Nottaway-Broadback-Rupert. Il est essentiel que le gouvernement fédéral exerce sa juridiction dans tous les cas, et ne délègue pas ses pouvoirs à la province sans s'assurer que tous les éléments-clés du processus fédéral ne soient formellement incorporés dans le processus provincial d'évaluation et d'examen. Le projet de loi devrait également donner au gouvernement fédéral l'obligation de nommer au moins la

...5/

Monsieur Robert de Cotret Le 23 novembre 1990

moitié des membres siégeant à une commission fédérale-provinciale; le projet de loi devrait aussi prévoir, dans ce cas-là, le maintien des programmes fédéraux de financement de la participation du public, et l'obligation par le gouvernement provincial de fournir au public un montant égal à celui du gouvernement fédéral pour sa participation à l'examen.

Avant de terminer, nous aimerions recevoir l'assurance de votre part que le gouvernement fédéral maintiendra l'application du processus actuel tant et aussi longtemps qu'un nouveau processus n'entrera officiellement en vigueur. Nous vous demandons également de retarder l'adoption du présent projet de loi afin d'y apporter toutes les modifications et correctifs requis suite aux audiences de la Commission parlementaire.

Nous vous prions d'agréer, Monsieur le Ministre, l'expression de nos sentiments les plus distingués.

Le secrétaire,

Philippe DI PIZZO

Reforming Federal Environment Assessment

Submission of the Environmental Assessment Caucus on the Canadian Environment Assessment Act, Bill C-78

November 1990

Reforming Federal Environment Assessment

Submission of the Environmental Assessment Caucus on the Canadian Environment Assessment Act, Bill C-78

November 1990

Environment Assessment Caucus

One Nicholas Street, Suite 412

Ottawa, Ontario

K1N 7B7

Co-chairs Stephen Hazell (613) 236-7379

Brian Pannell (204) 942-8101

Rapporteur Kathy Cooper (416) 960-2284

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Environmental Assessment Caucus, made up of environmental organizations and environmental law experts from across Canada met in September of 1990 to consider the proposed Canadian Environmental Assessment Act, Bill C-78 and develop a caucus position paper on the Bill. All participants considered the Bill to be seriously flawed. Key among these criticisms is the very narrow scope of the Bill and the many layers of discretionary decision making that undermine the Bill's legislative force. As such, the Bill is a step backward from the Environmental Assessment Review Process (EARP) Guidelines Order.

The caucus has set out what it considers to be the appropriate preamble and purpose to the legislation as well as eight key, interdependent elements of a strong federal environmental assessment process. Bill C-78 is discussed in the context of these eight key elements.

The Preamble to the legislation should state the constitutional bases for the Act setting out why the federal government has the ability to enact this bill. Of these bases, the "peace, order and good government" is the most important to specify and the Preamble should cite the national dimension of environmental issues and the national concerns about them.

The Purpose of the Act contained in Section 4 of Bill C-78 omits critical elements and this paper sets out seven points which ought to be included in the purpose section of the Bill. These points assume a considerably broadened scope for the entire environmental assessment process than that contained in Bill C-78.

The eight key elements of a strong environmental assessment process are as follows:

(1) **Mandatory and Independent Process**
The legislation must establish a process that is mandatory and subject to review by an independent agency. As such, the process must be independent, accountable, free from political interference and must culminate in a final, binding decision. Cabinet could potentially override the initially binding decision.

(2) **"All in Unless Exempted Out"**
The environmental assessment process must define "environment" broadly and be universal in application within federal jurisdiction. We support the principle of different levels of assessment wherein the screening exercise would determine at which level of the process each proposal would be assessed.

We recommend that the environmental assessment of policy be grounded in legislation. The entire process, including policy assessments, should be audited in some way, either by an expanded role for the Auditor General or by a Parliamentary Commissioner for the Environment. Further, the Government should publish the full background analysis of the policy assessments undertaken by Cabinet when new policy decisions are announced.

(3) **Criteria to Guide Discretionary Decision Making**
Specific criteria must be established to guide the planning and assessment of proposals and to ensure accountability whenever discretionary decision making occurs in the process. The Act should ensure a proponent has the financial wherewithal to see a proposal through to its closure.

(4) **Justification of Purpose, Need and Alternatives**

Each environmental assessment must justify the proposed activity by showing that its purpose is legitimate, that it will meet an environmentally acceptable need, and that it is the best of the alternatives for meeting the need. In considering alternatives both alternatives to the proposal and alternative means of carrying out the proposal should be considered.

(5) **Significant Public Role**

A significant role for the public is essential throughout the environmental assessment process. There must be public rights to notice and adequate time for comment on drafts of anticipated lists, schedules and regulations to the Act, and timely notice of and access and/or input to documents and procedures (such as the selection of panel members and the setting of their terms of reference) relevant to individual assessment processes.

Participation must also be guaranteed by a legislated intervenor funding program which should specifically include coverage of the costs of legal counsel for representation in hearings. Decisions must be made on the basis of a hearing process conducted according to the rules of natural justice including full disclosure of information and cross-examination.

(6) **Implementable and Enforceable Decision**

The ultimate decision must be capable of implementation and enforcement. A comprehensive system is required that would include the assessment process, the final decision, and an enforceable (and revocable) licence or permit that would incorporate and ensure implementation of the terms and conditions, including monitoring and follow-up, of the final decision.

(7)**Monitoring and Follow Up**

Monitoring, follow-up and conditions for abandonment of a proposal must be a mandatory part of the final decision. This paper suggests three, options for deciding who receives and evaluates the monitoring reports. In addition, those members of the public who were involved in the environmental assessment process should be considered first as candidates of monitoring committees.

(8) **Efficiency; Levels of Assessment; Federal-Provincial Reviews**

The process must be efficient. Efficiency can be encouraged by employing the concept of different "levels of assessment" and combining the federal environmental assessment process with provincial review processes. Classes of proposals, within the "levels of assessment" approach, should include only proposals which are similar, occur frequently, and are of relatively low environmental impact.

In summary, the revised preamble and purpose of the Act together with the eight key elements reflect our view of the fundamental requirements of any reasonable environmental assessment process. For this Bill to truly satisfy the objectives of an environmental assessment process, substantial amendments to or rewriting of Bill C-78 is required. In addition, key areas such as criteria for discretionary decision making and the Mandatory List ought to be developed and made available for the purposes of deliberations on this Bill. Otherwise, it is our view that Bill C-78 should not be passed.

REFORMING FEDERAL ENVIRONMENTAL ASSESSMENT

SUBMISSION OF THE ENVIRONMENTAL ASSESSMENT CAUCUS ON THE PROPOSED CANADIAN ENVIRONMENTAL ASSESSMENT ACT, BILL C-78

1.0 *INTRODUCTION*

The Environmental Assessment Caucus has prepared this brief to address reform of the federal environmental assessment process and the proposed Canadian Environmental Assessment Act, Bill C-78. Many of the caucus' individual members and member groups have worked on this issue for upwards of twenty years. In 1988, the caucus participated in a consultation on the Environmental Assessment Review Process (EARP) conducted by the Federal Environmental Assessment Review Office (FEARO) and produced a position paper. That paper, entitled, "A Federal Environmental Assessment Process: The Core Elements", (Attachment A) set out the caucus' consensus position on reforming the federal environmental assessment process.

These core elements remain at the heart of our response to Bill C-78. While the caucus has always advocated the need for a legislated process, Bill C-78 considerably limits the scope of what the EARP Guidelines Order presently covers and is replete with elements that weaken, or render ineffectual, its legislative force. As such, it is a step backward from the EARP Guidelines Order which obliges all departments of the federal government to ensure that each initiative, undertaking or activity (each "proposal") for which they have decision-making authority is subject to an environmental screening for potentially adverse effects. If significant effects are likely as determined by the screening, the department is further obligated to refer the proposal to the Minister of the Environment for public review. In contrast, Bill C-78 provides considerable discretion as to whether public review is required.

From the perspective of fully integrating environmental goals into federal planning and decision-making, our review of Bill C-78 reveals fundamental flaws. This brief sets out what we consider should be the fundamental purpose of this legislation. We **have also set out eight key, interdependent elements of a strong and comprehensive federal environmental assessment process.** In its current form, Bill C-78 and its accompanying regulatory and administrative package of reforms does not adequately satisfy the requirements of a comprehensive environmental assessment process. Following each sub-section of this brief we have commented on Bill C-78 with respect to our objectives. In some cases we have suggested examples of amendments to the bill or referred to amendment suggestions made by others. In other cases we have noted where further discussion is necessary to correct problems with the bill.

We hope to work with the government to ensure that a significantly amended bill or a re-written bill will contain the necessary elements of an environmental assessment process at the federal level. It is important to note that this position paper represents our views on an **interdependent** package of reforms. The purpose of the legislation and each of the key elements must be implemented together.

2.0 *PREAMBLE AND PURPOSE*

2.1.0 PREAMBLE TO THE LEGISLATION

Both the preamble to and the purpose of the legislation must reflect federal commitment to ensuring that all decision making under Canadian federal jurisdiction is environmentally responsible. In addition, **the preamble should set out the constitutional bases for the Act. It should set out the federal government's authority for the Act and why the government has the ability to enact this bill.** These constitutional bases include:

(1) trade and commerce;
(2) criminal law (human health);
(3) seacoast and inland fisheries;
(4) treaty making (if this should be held by the courts to support federal legislation);
(5) Indians and lands reserved for the Indians;
(6) federal spending;
(7) federal property;
(8) peace, order and good government (POGG).

Of these bases, the POGG power is the most critical and the Preamble should cite the national dimension of environmental issues and the national concerns about them.

2.1.1 Comment

We therefore endorse the recommendations made by the West Coast Environmental Law Association to pattern the preamble to Bill C-78 after that of the *Canadian Environmental Protection Act*. **The Preamble should set out the constitutional bases for the Act and, in particular, the following paragraphs should be added:**

"WHEREAS degradation of the environment is a matter of national concern;

"WHEREAS significant adverse environmental effects of human activities cannot always be contained within geographic boundaries;

"WHEREAS Canada must be able to fulfil its international obligations in respect of the environment."

2.2.0 PURPOSE OF THE LEGISLATION

In our view, the purpose of the act is to ensure:

(1) the compulsory, comprehensive and independent assessment of the environmental effects of proposals as early as possible in the planning stage;
(2) the assessment of the need for, alternatives to and alternative means of carrying out proposals;
(3) that no action, other than an environmental assessment and public review, is taken by anyone, with respect to any proposal, until the assessment of the environmental effects has been completed;
(4) that all environmental effects are carefully considered in any decision made as a result of the environmental assessment;
(5) that the best interests of the environment are paramount in decision making and that federal authorities only take action consistent with environmental protection, conservation and enhancement;

(6) that, where the Governor in Council permits adverse environmental effects to occur as a result of a proposal in Canada, including on federal lands, this Act will ensure that effects are prevented from occurring outside the jurisdiction in which the proposal is carried out; and
(7) full and effective public participation in an open environmental assessment process that includes public rights to information, notification, input and review.

2.2.1 Comment

The above seven points lay out the rationale and the general goals as to how an environmental assessment should be done. These points assume a considerably broadened scope for the entire environmental assessment process. **Section 4 of Bill C-78 should set out the above seven purposes.** It is particularly unfortunate that Section 4 presently omits reference to public participation, long recognized as a key element of any successful environmental assessment process.

To ensure that an environmental assessment process complies with these points and a revised Purpose section in Bill C-78 we have set out below what we consider to be the eight key elements of an environmental assessment process at the federal level.

3.0 *EIGHT KEY ELEMENTS OF AN ENVIRONMENTAL ASSESSMENT PROCESS*

3.1.0 MANDATORY AND INDEPENDENT PROCESS

The legislation must establish a process that is mandatory and subject to review by an independent agency.

3.1.1.0 Discretion Must be Minimized

A federal environmental assessment process must include a combination of legislatively imposed non-discretionary obligations and, to the extent that discretion is permitted, criteria to circumscribe discretionary decision making. Unfortunately, Bill C-78 is replete with diseretionary language; apparent obligations to conduct critical steps in the process (the responsible authority "shall"...) are followed by subjective tests ("shall" do... where, "in the opinion of" the responsible authority...). The subjective test transforms the otherwise mandatory language into discretionary language.

The discretionary language in this bill often defeats the purpose of the legislation. **The removal of discretionary language and the addition of criteria to guide the relatively few decisions that require discretion would ensure proper application of the process and permit judicial review in cases where duties are not performed.** Uncertainty about legislative requirements undermines the potential for early inclusion of environmental factors in planning and frustrates proponents who face unpredictable approval requirements.

3.1.1.1 Comment

The many discretionary decision making points in Bill C-78 have been outlined for the Committee by other reviewers[1]. As Finlayson notes, while many stages of the EARP process are mandatory, **C-78 contains layers**

[1] Finlayson, M.G., McJannet, Rich, Winnepeg, Manitoba, "Opinion Regarding Canadian Environmental Assessment Act", Submission to the Canadian Environmental Act House of Commons Committee, October, 1990; and Andrews, W., West Coast Environmental Law Association, in preparation.

upon layers of discretion which should be replaced by mandatory requirements wherever possible. For example, Section 17 of Bill C-78 regarding Mandatory Study requires the responsible authority to ensure that a mandatory study is completed or that a project is referred for mediation or a review panel where the project is one that the authority "is of the opinion" is described in the mandatory study list. This subjective test is inappropriate and should be replaced by an objective test to determine if a project is on the mandatory list. Any doubt as to whether a project is on the mandatory list should be resolved in favour of the decision to conduct the more thorough environmental assessment option. In this example, **we would recommend that Section 17 of Bill C-78 be amended by striking out "a responsible authority is of the opinion that".**

3.1.2.0 The Process Must Be Independent and Culminate in a Decision

The federal environmental assessment process must be independent, accountable and free from political interference. As such, it must be able to ensure, in an open and accessible public forum, the most effective integration of environmental considerations into decision making. **In addition, the process must culminate in a final, binding decision.** It is desirable as well that the government of the day have the ability to make a final decision. However, this ability should be exercised in practice through an appeal from the initial "decision-maker's" (responsible authority, panel, mediator) otherwise binding decision. In effect, **Cabinet could potentially override the initially binding decision** though of course, this should not be encouraged.

3.1.2.1 Comment

We support the approach in Bill C-78 of setting up the Canadian Environmental Assessment Agency for which the Minister of the Environment would be responsible. The Agency should have the same environmental protection mandate as Environment Canada. **We support maintaining responsibility for initial screening with the responsible authority.** However, to ensure greater accountability during the screening stage, **we consider that screening decisions should be appealable to the Minister of the Environment and that the Minister should have the power to make the final decisions regarding screening, both whether the project requires screening, and whether the screening conducted has been adequate.** The Minister's decision should be made within a clearly specified time frame and according to specific criteria (discussed further below and in section 3.3).

In addition, **for environmental assessment hearings, we prefer that a review panel be empowered to make a binding decision that would be appealable to the Minister or Cabinet.** Again, appeals and response to appeals should be circumscribed by time requirements and criteria for decision making. Such criteria are discussed further in section 3.3 below but would include consideration of such factors as extent of public concern, potential for significant adverse environmental effects and the need for broad consideration of alternatives.

3.2.0 "ALL IN UNLESS EXEMPTED OUT"

The environmental assessment process must define "environment" broadly and be universal in application within federal jurisdiction.

3.2.1.0 Definition of "Environment"

"Environment" should be defined broadly in the act to include biophysical, socio-economic and cultural elements and interactions. As the caucus stated in 1988, many proposed activities have significant immediate

and future impacts on local, regional and global ecosystems and on communities in terms of their health, livelihood, traditional practices and autonomy. All of these elements of the human and natural environment are interrelated and changes in one affect the other.

We recommend that the definitions of "environment" and "environmental effect" in Bill C-78 be broadened to ensure that human systems are never excluded. In particular, the definition of "environment" in subsection 2(1) should be amended to add ", human and human-made" after "natural". As well, the definition of "environmental effect" should be amended by adding "or physical or cultural heritage" after "socio-economic conditions".

3.2.2.0 Scope and Application

The environment knows no distinction between damage caused by different actors and there should be no such distinction recognized in law. **This legislation should automatically apply to all proposals potentially within federal jurisdiction** including proposals[2]:

(1) initiated or regulated by federal departments, agencies, regulatory boards, Cabinet, and Crown corporations;
(2) that may have an environmental effect on an area of federal responsibility;
(3) for which federal funds are committed including all foreign aid and private sector proposals;
(4) for activities on lands or waters under federal jurisdiction, including those affecting native land claims;
(5) initiated and funded under federal-provincial development agreements;
(6) related to international or interprovincial trade; and
(7) having international or interprovincial environmental impacts.

3.2.2.1 Comment

Accordingly, Section 5 of Bill C-78 should be amended. Presently, the new legislation severely restricts what currently exists in law.

Further, for the planning of any given proposal, the environmental assessment process must be triggered as early as possible. Such timeliness is clearly the intention of the EARP Guidelines Order, Section 3. The Order expressly attempts to invoke the environmental assessment process before final decisions are made. Bill C-78 purports to do to same (Sections 7 and 9). However, pursuant to Section 5(d) and Section 55(1)(g), numerous environmental assessments may not be initiated until a permit or licence are issued. This inconsistency belies both the currently-worded purpose of the Act and a fundamental principle of environmental assessment - to anticipate and prevent. **We recommend that Bill C-78 be amended to ensure that environmental assessments are done as early as possible in the planning process and in advance of any decisions to proceed with a proposal.**

3.2.3.0 Automatic Application/Criteria for Each Level of Assessment

The principle of automatic application to all proposals within federal jurisdiction is one of "all in unless exempted out". To accommodate all of these proposals, **we support the principle of different levels of assessment, wherein the screening exercise would determine at which level of the process each proposal would be assessed.**

---

[2] For the purposes of this paper, "proposals" are defined as: any initiative, undertaking or activity for which the Government of Canada potentially has a decision making responsibility.

3.2.3.1 Comment

Using the principle of "all in unless exempted out" and a "levels of assessment" approach, **two critical lists must be developed and be available for deliberation on this Bill: a Mandatory List of proposals that cannot be exempted and an Exemption List of proposals that are not subject to the Act (but can be "bumped-up" if they are found, according to clearly identified criteria, to have effects worthy of assessment). The Mandatory List should appear in the legislation but should be able to be added to by regulation. The Exemption List should be developed by regulation.** There will of course be many other proposals subject to assessment for which screening decisions will be required.

The screening mechanism ought to determine, according to clearly enunciated criteria, the appropriate path a proposal takes in the process. The Act should include all of the following assessment options:

(1) individual assessment with or without public hearings;
(2) assessment as a class with or without public hearings;
(3) fast-track assessment of individual items within a class;
(4) exemption after the screening exercise;
(5) exemption with conditions;
(6) exemption (either individually or as a class).

The goal is to ensure as broad an application of the environmental assessment process as possible from the outset. This universal application is streamlined using this "levels of assessment" approach.

The class approach proposed here is different from that proposed in Bill C-78. Rather than applying a class assessment to subsequent projects, this approach entails first defining what may be included in a class. Then, an assessment document is prepared for each class of proposals which lays out the planning process to be applied when individual proposals within the class are contemplated. A decision on the class environmental assessment amounts to an approval of a planning process to be applied under individual circumstances.

A clear, limiting definition of a class is essential under this approach and is discussed further in item 3.8.1 below. As individual proposals within the class require assessment they would be subject to a fast-track assessment process since most of the issues would have already been addressed in the class assessment. Classes of exemptions would also be possible.

Assessment needs for proposals (standard process or fast-track) must be pre-determined to provide process certainty for proponents and other participants and to encourage early incorporation of environmental factors in planning and proposals. All proponents should be assured, from the outset, of where their proposals will fit within the overall scheme and what requirements must be met.

3.2.4.0 Federal Policies and Legislation

A mandatory, publicly reviewed process for the environmental assessment of federal policies and legislation is desirable. While we recognize the difficulty of imposing such a process through application of the standard procedures designed for proposals, **we recommend that the environmental assessment of policy be grounded in legislation.**

Rather than including policy assessment in the legislation, the Bill C-78 "reform package" purports to establish a "much-enhanced and progressive environmental review process for all of [the federal government's] policies and programs" (FEARO information package - June 18, 1990). However, this separate, non-legislated review process for policies has been only vaguely outlined with no assurance that assessments will actually be required, no indication of who will do the assessment, whether the assessor will be impartial, whether the public will have any access to documents used to support decisions resulting from the process or if any enforcement of assessments will occur. Moreover, as the federal Cabinet was so accurately informed in a secret, but leaked, document in November of 1989[3], "exemption of policy proposals from the Process would be seen as a backward step, as the [Guidelines] Order can be interpreted as applying to policy initiatives" (p.8) and "would be seen as weakening the scope of the federal process" (p.20).

The Cabinet document laid out two additional options, both of which involved including policy assessment in the legislation. The document states:

As with a project, the most effective way of proceeding is to analyze the likely environmental effects of a policy early in its development and use the resulting information to shape the design or alter the policy options under consideration. Such analyses can be seen as analogous to those that are done to assess a proposal's economic utility, its social repercussions, its technical feasibility and its political implications. Given the high political profile Canadians give the environment, and given the present global environmental stresses, ministers cannot afford to make critical policy decisions in the absence of sound environmental information (p.8).

3.2.4.1 Comment

The Cabinet document clearly advised that policy assessment, while different from the review of other proposals, was capable of being set out in the Act. These admissions concur with our view that **the Act should contain requirements for assessing policy.** The document suggested that Ministers ought to be obliged to do these assessments according to "guidelines and criteria" (p.8) established in advance. Excluding policies from assessment could, according to the Cabinet document "result in public pressure on the House Committee reviewing the Bill to put forward amendments to cover policies, without assurances that the required procedural safeguards would also be included" (p.3).

The Cabinet document also recommended that the process implementation be audited in some way either by the new Federal Environmental Assessment Agency, the Auditor General or by a Parliamentary Commissioner for the Environment. We agree. However, we prefer the auditing function to be conducted by a Parliamentary Commissioner for the Environment or as an additional role for the Auditor General. Further, the Government should publish the full background analysis of the policy assessment undertaken by Cabinet when new policy decisions are announced. We note the agreement of the National Round Table on the Environment and the Economy with respect to these points (Attachment B).

3.3.0 CRITERIA TO GUIDE DISCRETIONARY DECISION MAKING

Specific criteria must be established to guide the planning and assessment of proposals and to ensure accountability whenever discretionary decision making occurs in the process. These criteria should capture the values behind the environmental assessment process and constitute a recognition of the value judgements inherent in such decision making. They should be open to public scrutiny and input and be the test of the ultimate decision-making.

---

[3] Document headed "FEARO" "SECRET", pages 2-40 inclusive including, "Ministerial Recommendations", Communications Synopsis", and "Analysis", November, 1989

The overall intention of setting clear criteria for discretionary decision making should be to ensure that the resulting decision will be the best one rather than one that meets only a minimum standard of acceptability. The effect of such a decision-making structure will be a positive improvement in environmental quality and a reduction of impacts.

3.3.1 Comment

Despite the above-mentioned need to replace many layers of discretion currently built into this Bill with obligations to act, there will remain, nevertheless, points in the environmental assessment process where judgements must be made concerning very specific decisions. In particular, legislated criteria are needed to evaluate, and then must be consistently applied to, each of the following decisions:

- determination of whether environmental assessment content requirements have been satisfactorily met (**see Attachment C for an example of draft standard environmental assessment content requirements**);
- the creation of the Mandatory and Exemption Lists;
- the determination, during screening, of which level of assessment each proposal falls into;
- bump-ups and bump-downs from class lists;
- the selection of panel members or mediators;
- terms of reference for mediation or review panels;
- the allocation of intervenor funding.

Regarding the requirements for Panel members, appropriate criteria are available in the EARP Guidelines Order under Section 22. We recommend therefore **that Section 30 of Bill C-78 be amended by replacing "in the opinion of the Minister, possess the required knowledge or experience" with the sub-sections of Section 22 of the EARP Guidelines Order, i.e., panel members should be unbiased and free of any potential conflict of interest relative to the proposal under review; be free of any political influence; and have special knowledge and experience relative to the anticipated technical, environmental and social effects of the proposal under review.**

3.3.2.0 Financial Guarantees

The Act should ensure a proponent has the financial wherewithal to see a proposal through to its closure. Where a proponent does not foresee the termination of a proposal, the Act should specify that the proponent shall nevertheless ensure that it has financial guarantees sufficient to pay all expenses related to any abandonment of the proposal. Further, financial guarantees must be sufficient to cover accidents and environmental problems that arise during the existence of the proposal.

3.4.0 JUSTIFICATION OF PURPOSE, NEED AND ALTERNATIVES

In light of the purpose of the Act and the decision-making criteria, **each environmental assessment must justify the proposed activity by showing that its purpose is legitimate, that it will meet an environmentally acceptable need, and that it is the best of the alternatives for meeting the need.**

As discussed above, the process should be a broadly applied one in which all proponents know from the outset where their proposals fit within it. The process can be strengthened by ensuring that the screening exercise and the content requirements of the environmental assessment place the principles of environmental assessment squarely

on the table at the conceptual stage of planning for each proposal. At the outset, the proponent must address the fundamental issues of purpose, need and alternatives and describe the major issues to be confronted.

In considering alternatives, both alternatives to the proposal and alternative means of carrying out the proposal should be considered. For example, if a particular area were proposed for a mining development, in considering alternative **means**, the environmental assessment would address various techniques for extracting the ore body (shaft, pit, etc.,), supplying the power source (on-site hydro, cogeneration at an associated smelting operation, etc.) and other such alternative means of using the land for a mining development. In considering alternatives **to** the proposal, the environmental assessment would consider other uses to which the land and its associated resources could be put including the no-go alternative and reasonable non-mining alternative uses.

3.4.1 Comment

Bill C-78 currently includes the notion of addressing alternative **means** of carrying out the project. However, the lack of a requirement to consider alternatives **to** the project and the need for the project is a critical flaw. **We recommend that the need for, and alternatives to, the project be included in Section 11 among the criteria to be considered in an environmental assessment.**

3.5.0 SIGNIFICANT PUBLIC ROLE

A significant role for the public is essential throughout the environmental assessment process.

3.5.1.0 Access to the Process and to Information

The public's role in the environmental assessment process is absolutely essential - from the initial decision on where proposals fit within the assessment scheme through to the final decision and follow up monitoring. Public participation is a fundamental feature of environmental assessment and must be ensured by legislatively guaranteed access to the process and to information.

The public has a role to play during both development and implementation of the environmental assessment process. **There must be public rights to notice and adequate time for comment on drafts of anticipated lists (the exclusion list, class lists, etc.) schedules and regulations to the Act, and timely notice of and access and/or input to documents and procedures (such as the selection of panel members and the setting of their terms of reference) relevant to individual assessment processes.**

3.5.1.1 Comment

The Public Registries suggested in Bill C-78 are an important component of the process. Its use should be expanded to allow it to serve as a vehicle for early notification and access to information about proposals and be the repository for all background documentation. This accumulation of information should be coordinated across all such registries to ensure a continuously expanding database of information. The Act should specifically state that the information in the registries is available to the public. **We would therefore recommend that Section 51(4) be amended by adding a new sub-section as follows:**

Anyone has the right to access the records in a public registry in a manner that is reasonably fast and affordable, and the responsible authority or Agency which operates a public registry shall provide such access.

Filing of proposals in the Public Registry should be accompanied by additional forms of public notice such as the use of local newspapers and/or other relevant media to make the public aware of proposals as early as possible in the process. Early involvement and resolution of issues during such "pre-submission consultation" helps to avoid conflict and expense later in the process.

3.5.2.0 Intervenor Funding

Participation must also be guaranteed by a legislated intervenor funding program. This program should include criteria for the allocation of funds and an independent panel or committee to allocate funds. It should have no cap on total funding and it should be made available early in the process to ensure that recipients have adequate time and resources to prepare submissions. On a case by case basis, government financing of intervenor funding may be augmented, as determined by the panel, by proponents. **The intervenor funding program should specifically include coverage of the costs of legal counsel for representation in hearings.** FEARO has had such recommendations before it since 1988 when it commissioned a report entitled "Public Review: Neither Judicial, Nor Political But an Essential Forum For the Future of the Environment".

Recognizing that public involvement in the early stages of an assessment frequently contributes to early and often otherwise swifter resolution of conflicts, early funding of this "participant" involvement is also necessary. Intervenor funding should also be available for public participants in mediation under the Act.
In the meantime, the current ad hoc program should be properly funded and remain in place until legislation providing an intervenor funding program is passed.

3.5.3.0 Hearings

One particularly crucial area of public participation is the hearing process. The effectiveness of the entire environmental assessment process will inevitably depend upon the rigour of the hearings. Even though only a minority of cases will involve hearings, the prospect of rigorous hearings should keep decision making in all other cases thorough.

The process must provide clear legal rights and procedural safeguards to all participants and ensure that rigour and fairness are served. **Decisions must be made on the basis of a hearing process conducted according to the rules of natural justice including full disclosure of information and cross-examination.**

3.5.3.1 Comment

For example, Section 32 of Bill C-78 sets out various powers and obligations of a review panel but neglects to set out the concept of a "party" to the review panel's assessment. **We recommend that Section 32 be amended to ensure certain privileges for party status in hearings by adding two new subsections as follows:**

32(5) Upon application, the review panel shall register a stakeholder as a party to the assessment by the panel of a proposal.

32(6) A party has a right to

(a) be represented by counsel;

(b) present oral and written evidence to the review panel;

(c) question the oral and written evidence considered by the review panel.

During public hearings, it is desirable that panel members have the flexibility to establish less formal, and therefore less intimidating, proceedings for hearing from members of the public. The panel would therefore need the power to make its own procedural rules to accommodate differing situations within an overall framework of procedural fairness. In addition, panel chairs require specialized training and panel members need professional staff to assist them.

3.6.0 IMPLEMENTABLE AND ENFORCEABLE DECISION

The ultimate decision must be capable of implementation and enforcement.

3.6.1.0 "Cradle to Grave"

We support a "cradle to grave" approach for a federal environmental assessment process. **A comprehensive system is required that would include the assessment process, the final decision on whether to approve the proposal, and an enforceable (and revocable) licence or permit that would incorporate and ensure implementation of the terms and conditions, including monitoring and follow-up, of the final decision.**

A proper environmental assessment system provides the critical link between planning for a proposal and then regulating it. It also imposes a tougher test of environmental acceptability than existing pollution abatement regulations which are narrowly focused and set minimum standards allowing "acceptable" environmental degradation. In contrast to traditional regulation-making, the final decision of a sound environmental assessment is the "best" one, measured against the various alternatives proposed, rather than just a minimum standard of acceptability measured against otherwise harmful practices.

3.6.2.0 The Enforcement Mechanism

As recommended above, a final decision on the environmental assessment of proposals should be made by the Agency, in the case of proposals that do not go to a review panel or mediation, and by the mediation and review panels for those that do. **These decision makers should have the power to issue permits and licences to enforce the decision arising from the assessment.** There is a need to expand regulatory and permitting requirements under Bill C-78 and other federal statutes to accommodate these decisions. In addition to any licence and conditions, decisions by the Canadian Environmental Assessment Agency, resulting from mediation or from a review panel, as the case may be, must include written reasons for the decision taken. **The final decision must be appealable to the Minister or Cabinet.**

In addition, **the following four points are essential elements of an enforcement mechanism.**

(1) No action should be permitted to take place until the environmental assessment is complete.

(2) Injunctive relief must be available upon application by anyone and can be applied specifically against the Crown.

(3) The Act must contain a provision making a violation of any order or provision under the Act an offence.

(4) In the case of joint federal-provincial reviews, a mechanism is required to hold the provinces accountable to implement the provincial decision regarding the proposal.

3.6.2.1 Comment

Bill C-78 does not contain any clear link between the environmental assessment process and any legally binding mechanism, such as a licence or permit, for imposing conditions to the assessed proposal. It is a recommendatory process not a decision making one. Nor is there any provision in the bill for any binding settlement agreement as a result of mediation. This lack of an implementation and enforcement vehicle is a critical flaw. The process has no credibility if the decisions generated are not implemented and enforced.

Even with improvements to the process, Bill C-78 will be unacceptably weak if it does not contribute to enforceable results. A comprehensive system is required to fill the vacuum that currently exists in federal planning in matters of federal jurisdiction.

3.7.0 MONITORING AND FOLLOW-UP

Monitoring, follow-up and conditions for abandonment of a proposal must be a mandatory part of the final decision.

This requirement should include regular monitoring reports dealing with specific terms and conditions of the final decision. The information should be public and regularly reviewed to ensure that the impacts are as predicted and appropriate mitigative measures are in place.

3.7.1 Comment

We suggest three options for deciding who receives and evaluates the monitoring reports. The first option could accommodate proposals where little or no effects occur, such as the creation of a park. In such cases, little or no monitoring would be required. Reports could be received and evaluated by relevant federal agencies or contained in the Public Registry required under Bill C-78. The second option would cover very large proposals where monitoring would be essential and the "decision maker" would establish, as part of the proposal license, the terms of reference of a monitoring committee to receive and evaluate monitoring information. The third option would be to build in a bias in favour of establishing a monitoring committee in borderline cases. For example, unless the decision maker is convinced that the evidence establishes that a monitoring committee is unnecessary, it shall be presumed that every licence shall require provisions for establishing the terms of reference for a monitoring committee and that the committee would include members of the public.

In addition, **those members of the public who were involved in the environmental assessment process should be considered first as candidates of monitoring committees.**

All of the information generated by this monitoring should be placed in the Public Registries and be coordinated. Such monitoring serves as a feedback loop to ensure implementation of the final decision and a continually expanding database of information to improve the predictive ability of environmental assessment procedures.

3.8.0 EFFICIENCY; LEVELS OF ASSESSMENT; FEDERAL-PROVINCIAL REVIEWS

The process must be efficient. This can be encouraged by i) employing the concept of different "levels of assessment" and ii) integrating the federal environmental assessment process with other federal and provincial review processes where federal standards are met.

3.8.1.0 Levels of Assessment

Different levels of assessment are needed for proposals of different levels of significance. As discussed above, different levels of assessment can be used to assess efficiently large numbers of proposals of varying environmental significance provided that clear criteria are applied to implementation. This approach ensures that all parties know from the outset where they fit in the process and what is expected of them. If this knowledge is lacking or unclear, proponents in particular, will likely wait until they do know. Delay and duplication can be avoided.

Class assessments offer a useful means of providing streamlined assessments of proposals with modest environmental significance. They are also useful for assessing the cumulative impacts of a large number of otherwise small proposals. For example, the impact of farming practices across a large geographic area could be assessed for their overall impacts during the class assessment in a way that individual assessment would not.

3.8.1.1 Comment

Bill C-78 contains a "levels of assessment" approach to a certain extent, presumably as a similar kind of efficiency measure as recommended here. We recommend a more comprehensive approach as outlined in Section 3.2.3.1 above. In particular, the Bill must define the term "class" and set out how and by whom these classes of proposals would be determined.

Of critical importance in the "levels of assessment" approach is the need to limit the definition of the "classes" of proposals which can be assessed adequately through a fast-track version of the process. **Classes should include only proposals which are similar, occur frequently, and are of relatively low environmental impact.** Unless the scale of "classes" of proposals is limited it is conceivable that all nuclear plants or all pulp and paper plants could be included in a class with only a fast-track review of individual undertakings. Limiting the definition of a class ensures that a useful efficiency measure is not abused. **Such class assessments will need to be periodically reviewed to ensure that small impact proposals are not continually licensed to operate notwithstanding changes in knowledge, technologies and techniques.**

It must be a condition of class assessments that special attention be given to encouraging environmental group intervenors to participate in class assessments. The relatively small number of environmental, non-governmental organizations typically focus on identifiable proposals that threaten to create significant environmental impacts. Measures such as intervenor funding are particularly necessary to ensure that ENGOs get involved in class assessments.

3.8.2 Joint Federal-Provincial Reviews

In cases of joint federal-provincial responsibility, the most appropriate action is for the federal and provincial processes to be combined. It is important that the federal government insist that joint federal-provincial processes meet all federal standards, including the availability of intervenor funding. In addition, the federal government must make what conditions on the project are necessary for environmental protection a part of the federal approval Where a combined process does not occur, for whatever reason, the federal government must maintain its responsibilities where it has jurisdiction for example under the Fisheries Act.

4.0 *FINAL COMMENTS*

The proposals set out in this paper represent our view of the fundamental requirements of any environmental assessment process. Bill C-78 falls far short of these interconnected and essential requirements and requires substantial amendment to meet them. It is our view that Bill C-78 should not be passed without these fundamental changes.

APPENDIX A

A Federal Environmental Assessment Process: The Core Elements

Environmental Planning and Assessment Caucus *
March 1988

Introduction

The fundamental relationship between environmental quality and human development is now universally recognized. Both the *World Commission on Environment and Development* (the *Brundtland Commission*) and the *National Task Force on Environment and Economy* recognized that economic development can only be sustained into the future if resources are conserved and environmental quality maintained today. Both the *Brundtland Commission* and the *National Task Force* called for the development of tools and techniques to bring about the integration of environmental protection and economic development. Environmental assessment is one of these tools.

In looking at economic planning and decision-making in Canada in 1988, it is clear that environmental protection, resource conservation, preservation of ecosystems and species, human health and community integrity remain secondary considerations, in the shadow of narrow economic goals. The existing federal Environmental Assessment and Review Process (EARP) has not been able to realize its potential for helping to change this balance and needs to be substantially reformed. For this reason, the EARP Consultation should be seen as an opportunity to begin the process of integrating environmental goals fully into federal planning and decision-making. However, EARP reform must be seen as only one step toward integration. Other initiatives are required to realize this integration.

The Environmental Planning and Assessment Caucus believes that the federal environmental assessment process can be made more effective if it is set within a comprehensive environmental planning framework, given a statutory basis, broadened in scope and application, made fairer and more open, with greater accountability for decisions. In particular, the following elements are considered essential for an effective process.

---

* The Environmental Planning and Assessment Caucus is composed of environmental groups from across Canada. This document is a product of a February 1988 Caucus meeting and reflects the Caucus' consensus position on reforming the Federal environmental assessment process. The assistance of Marcia Valiente in preparing this document is gratefully acknowledged.

Core Elements

1. Environmental assessment must take place within a comprehensive environmental framework.

An environmental assessment process cannot work effectively unless it takes place within a comprehensive environmental planning framework. In Canada, this framework requires the establishment of processes for:

- defining regional environmental goals, objectives and priorities;
- policy development and review;
- environmental assessment of programs and projects;
- incorporation of information about environmental consequences and values into development decisions; and
- monitoring and evaluation of policies, programs and projects with feedback into their formation and design.

Review of all government policies for their environmental consequences is a necessary part of this new system. Without a review at this level, the potential for integrating environment and development is greatly diminished and policies that tolerate environmental degradation will continue to be implemented. A mechanism for conducting policy reviews, for ensuring public participation in them and for feeding the results into the policy development process should be established. With these mechanisms in place, an environmental assessment process can focus on evaluating particular programs and projects.

2. The process must be legislated.

The environmental assessment process must be put into legislation that is a balance between enabling legislation and detailed regulatory legislation. Legislating the core elements of the process will minimize discretion and provide the authority to ensure that the process is mandatory and applied consistently and that application is enforceable. This will enhance the credibility of the process and the ultimate decisions coming from it and will provide a clear basis for enforcing compliance with its requirements.

The details of the legislation can only be spelled out when the substance of the process has been determined. A public consultation process on the draft bill should be held at that time.

3. The process must be mandatory and universal in application.

The environmental assessment process must clearly and routinely apply to all programs and projects touching on federal jurisdiction and those with

interprovincial, national or international impacts, including, but not restricted to, programs and projects:

- initiated or regulated by federal departments, agencies, regulatory boards, Cabinet, and Crown corporations;
- for which federal funds are committed including all foreign aid and private sector projects;
- on lands or waters under federal jurisdiction, including those affecting native land claims;
- initiated and funded under federal-provincial development agreements;
- related to international or interprovincial trade; and
- having international or interprovincial impacts.

Application of the process to all these activities ensures comprehensiveness. There is no distinction in environmental terms between damage caused by different categories of actors and there should be no distinctions recognized in law. It is Canada's responsibility to ensure it is supporting programs and projects that fulfill the objectives of sustainability and respect for human dignity.

The environmental assessment process must apply to all of these programs and projects. Unnecessary scrutiny of programs and projects with minimal impacts should be avoided. Public participation must be allowed in decisions to exclude programs and projects from further scrutiny. The steps in the process should be registration of all programs and projects, initial screening for impacts on the environment, environmental impact statements and full public review for activities that may have adverse environmental impacts, decision on whether and under what conditions to proceed, opportunity for review or appeal of all decisions taken and monitoring of implementation.

4. The scope of the process must be broad.

"Environment" must be defined broadly to include biophysical, socio-economic, spiritual and cultural elements and interactions. Many programs and projects have significant immediate and future impacts on local, regional and global ecosystems and on communities in terms of their health, livelihood, traditional practices and autonomy. All of these elements of the human and natural environment are interrelated and changes in one affect the other elements.

5. There must be effective public participation throughout the process.

Public participation in environmental decision-making is essential. A community has a right to participate in decisions affecting its interests. Public

involvement is the best way to introduce into the process relevant information and values that would otherwise be excluded. Moreover, the public can provide independent scrutiny of the basis for a proponent's actions. This allows for a full exploration of all alternatives and makes the decision and the process better and more credible and ensures greater accountability of decision-makers. With foreign aid or export projects, the public in the recipient country must have the right to participate in the process. It is not acceptable to deny them a voice in decisions that dramatically alter the environment on which they depend.

The public must be included throughout the process, starting as early as possible. This requires:

- notification of key steps and decisions taken;
- input into procedural decisions, such as selection of panel members and terms of reference for public reviews and scoping of the impact statement;
- participation in public reviews; and
- rights to initiate review and appeal of decisions.

Effective participation by the public requires funding. The disproportion of resources between proponents and the public necessitates the establishment of an independent funding body to provide adequate amounts of funding to allow full and meaningful participation, at all steps, to committed members of the public. Intervenor funding should be levied from the proponent and allocated and administered by an independent body.

Effective participation also requires access to information. From inception through monitoring, information about programs and projects should be placed in a public register. In addition, all studies, data and other information that will be used in a decision must be available to all participants in the process. This requirement applies equally to foreign aid projects, where information form other governments is relied on. A mechanism to deal with claims to confidentiality, that presumes disclosure unless exclusion is justified, needs to be developed.

6. The process must ensure accountability.

Accountability is essential for credible, supportable decisions. In the environmental assessment process, decisions at each step must be made on the basis of consistently applied criteria and must be in writing. Legislated criteria, to be applied in making the final decision of whether and under what conditions programs should be approved, should include:

- demonstration of need for the programs or projects;
- alternatives to the program or project and alternative ways of implementing it, including the "no go" alternative;

- enhancement of ecological sustainability; and
- minimized community and environmental impacts and maximized benefits.

Requiring written decisions that address each of these criteria makes the basis for decisions clear. This gives the process and the decisions credibility and provides the participants with information needed in initiating reviews or appeals.

7. The process must avoid unnecessary duplication.

Efficient planning and decision-making require the development of mechanisms that avoid duplication of effort and inconsistent decisions. However, in doing so, the objectives of the process must be fulfilled. At the federal level, many programs and projects require consideration or approval by more than one board or agency as well as under EARP. In this situation, the environmental assessment process should apply in addition to the other required procedures but new procedures for joint screening, hearings and decision-making should be established.

Where programs and projects touch on provincial as well as federal jurisdiction, provincial environmental assessment processes could apply., In this situation, the "more stringent" processes should apply. In other words, the process that demands the fullest and most open review and the incorporation of all environmental, socio-economic and cultural concerns into the decision should be used. However, all governments with jurisdiction should participate to ensure their perspectives are taken into account.

In cases where both federal and provincial governments issue licenses, as in the case of uranium development, both governments must remain fully accountable. Both federal and provincial laws must be complied with but procedures for joint screening, hearings and decision-making need to be established.

For foreign aid programs and projects, the objectives could be fulfilled if the recipient government either applies its own environmental assessment process or elects to follow the Canadian one. If the government applies its domestic process, it must satisfy the minimum requirements of the Canadian process and there must be a procedure for verification by Canadians that the process has been properly applied, with full rights of review and appeal by the Canadian public.

8. The process must require monitoring of approved programs and projects.

All approved programs and projects should include a mechanism to monitor their implementation so that compliance with approval conditions is assured, expected impacts studied and unexpected impacts identified and mitigated as

quickly as possible. The information derived from project monitoring should be fed back into the process so that an information base can be developed to improve future programs and projects. Follow-up studies of projects that have already gone through EARP are also needed. The public must have access to all monitoring reports.

Consultation on Sustainable Development

"Sustainable development" has evolved over the past two decades into a concept rich with meaning for environmentalists. Since release of Our Common Future, the report of the Brundtland Commission, the phrase is now embraced by many disparate groups who give it different, not always compatible, meanings. Although sustainable development offers a potential context for a Canadian environmental planning framework, including the federal environmental assessment process, the term must be clearly defined before it is used.

To do so, public discussion and consultation on sustainable development and its implications for policy development and environmental assessment should be initiated in Canada. The purpose of this discussion should be to review the Brundtland Commission Report and its recommendations, to evaluate the Report of the National Task Force on Environment and Economy and to initiate a comprehensive environmental planning process that implements the goals of sustainable development.

APPENDIX B

News Release

OTTAWA (October 23, 1990)-- The Chairman of the National Round Table on the Environment and the Economy (NRTEE), David Johnston, today made public the NRTEE's advice to the Prime Minister on how to strengthen the new Environmental Assessment Reform Package by opening up government *policy* assessment to closer public scrutiny.

The Environmental Assessment Reform Package which was tabled in the House of Commons on June 18, 1990 by the Minister of the Environment features proposed legislation (the Canadian Environmental Assessment Act) which is designed, among other things, to create an environmental assessment process conducive to increasing the Government's accountability to the public for environmental assessments while improving public participation in all phases of this process. It is also designed to avoid duplication by promoting joint panels with other jurisdictions and creates a new agency to assist the Minister of the Environment on the administration of the environmental assessment process.

In making the announcement Dr. Johnston pointed out that though the NRTEE strongly supports the reform of the federal environment assessment process, after review of the Package by the NRTEE Decision Making Committee, it was decided that the section dealing with *policy* assessment processes required strengthening and that the NRTEE would concentrate its efforts in this area.

In communicating the NRTEE position to the Prime Minister, Dr. Johnston said that, "for the environmental assessment of government policy to be effective , there is a need for public confidence in the process..." He added that there is also a need for "...reassurance that such assessment meets appropriate general standards, particularly since departments initiating policy proposals will be doing the assessments themselves."

The elements of the NRTEE position were developed at the September 6-8 plenary meeting of the NRTEE in Yukon. Ministers participated in the discussions on this issue with their NRTEE colleagues but given their cabinet responsibilities took no part in formulating the following recommendations:

1. The establishment of a Parliamentary Commissioner (or an Auditor) on Sustainable Development whose responsibility would be to monitor the implementation of the policy assessment process and to report publicly on federal agencies' compliance with it.

2. Under the EARP package, public scrutiny of policy decisions should be achieved through a public statement by the Government regarding the environmental implications of each new policy. The public will only have confidence that all dimensions of environmental implications have been appropriately weighed if the documentation used to support the assessment is made public.

3. In order to facilitate policy development in a sustainable development context, there should be a wider use of green and white papers. This would open up opportunities for public input at an early stage.

4. Because the assessment of government policies--from a sustainable development point of view--is a new, and as yet untried, approach the Government should conduct a full evaluation of the process, with public consultation, after a period of five years. Then consideration would be given to including policy assessment within the EARP legislation.

In releasing these recommendations, the Chairman underlined that advising the Government on matters such as the Environmental Assessment Reform package is central to the mandate given to the NRTEE by the Prime Minister to help stimulate sustainable development in Canada.

For more information please call:

Susan Holtz, Co-chair of the Decision Making Practices Committee of NRTEE, (902) 477 3690,
Philippe Clément, NRTEE Secretariat, 943-0396 or
Eric Mikkelborg, Communications Advisor, 995-7618.

APPENDIX C

DRAFT STANDARD ENVIRONMENTAL ASSESSMENT
CONTENT REQUIREMENTS

1.0 Description of the proposal and alternatives to the proposal including:

1.1 The need and/or absence of need for the proposal and alternatives to the proposal

1.2 Alternative means of carrying out the proposal and alternatives to the proposal

1.3 Description of the Site and alternatives to the Site including site ownership and legal description. For each site, describe the existing environment, existing land use and existing human activities including:

1.3.1 Topography
1.3.2 Landforms
1.3.3 Geology
1.3.4 Soil types and depth
1.3.5 Flora and Fauna
1.3.6 Climate
1.3.7 Existing and possible resource extraction
1.3.8 Existing land use (including air and water use), such as agriculture, Aboriginal use, commercial use, ecological reserves use, aesthetic use, roads, etc., including down stream and down wind uses
1.3.9 noise and light

1.4 Describe all activities, equipment, materials, information and energy that will be required for the construction, operation, maintenance, mitigation, monitoring, contingency plans or abandonment and alternatives, including:

1.4.1 Complete construction schedules
1.4.2 Equipment life span ratings and data on the incidence of equipment breakdown for equipment where breakdown or inappropriate operation may adversely effect the environment
1.4.3 Complete maintenance schedules for all equipment the breakdown or inappropriate operation of which may adversely effect the environment
1.4.4 A plan to ensure compliance with equipment maintenance schedules
1.4.5 An inventory of all relevant federal, provincial and municipal environmental requirements

1.5 Provide evidence of finances sufficient to initiate and sustain the proposal. Describe all insurance, bonds, funds and other financial resources available over the life of the proposal (and alternatives) to:

1.5.1 Clean up the worst case environmental accident/environmental problem during a difficult economic period; and
1.5.2 In the event that the proposal (and alternatives) is to continue thereafter:
(i) Ensure that there are sufficient financial resources to re-establish these financial guarantees after such an environmental accident/environment problem;
(ii) Ensure that the changes necessary to avoid a recurrence of the accident are made; and

1.5.3 In the event that the proposal is to be withdrawn or terminated to ensure that there are sufficient funds to terminate and monitor the proposal. The status of financial arrangements is to be included inall monitoring programs.

1.6 Describe all possible impacts of the proposal and alternatives, including:

1.6.1 All things that might be impacted globally, continentally, regionally and locally, including:

1.6.1.1 Environment

1.6.1.2 Air quality

1.6.1.3 Flora and fauna

1.6.1.3.1 unique rare or endangered species or communities

1.6.1.3.2 ecosystem diversity

1.6.1.3.3 habitat and birthing sites

1.6.1.3.4 wintering areas

1.6.1.3.5 human health

1.6.1.4 Soil

1.6.1.4.1 soil stability per erosion;

1.6.1.4.2 soil structure per compaction;

1.6.1.4.3 nutrient status;

1.6.1.4.4 moisture.

1.6.1.5 Water

1.6.1.5.1 streams, rivers and lakes and surface water drainage;

1.6.1.5.2 runoff regime;

1.6.1.5.3 water quality (including sediments);

1.6.1.5.4 groundwater including recharge and interception.

1.6.1.6 Aesthetics

1.6.2 Land use (existing and potential)

1.6.3 Socio-economics

1.6.4 All possible sources or methods of impact

1.6.5 All possible steps to mitigate or eliminate impacts

2.0 Describe all possible pre- and post-proposal research and monitoring, including research and monitoring relevant to alternatives.

3.0 Describe methods of public involvement including:

3.1 formation of proposal

3.2 access to information

3.3 funding of public groups

3.4 involvement in EA

3.5 views on the proposal and alternatives

3.6 mitigation

3.7 monitoring

4.0 Substainability: identify the degree to which the proposal and alternatives are or are not sustainable into the indefinite future.

5.0 Identify contingency plans to deal with:
5.1Possible adverse environmental impacts
5.2Financing

6.0 *REPORT FORMAT*

The findings and "end-product" material within the EIA should be presented in report form with maps, charts, diagrams and photographs wherever possible. The maps in particular, should be presented at a common scale to allow direct overlay for ease of comparison.

All discussion of each component potentially impacted, should be presented in discrete sections with specific sub-headings. For example, all information relative to wildlife should be included in a separate section and not dispersed throughout the EIA.

The proponent should keep in mind that many resource users do not have technical backgrounds and therefore, lay terminology should be used wherever possible. Where lay terminology will lead to oversimplification or trivialization provide the information in both lay and technical forms.

Wherever possible use worst possible case assumptions. Be prepared to redo any work that fails to rely upon worst cases scenarios. Worst case means worst statistically possible case rather than worst case on record.

In each case where data or information relied upon is not derived from the geographic area impacted by the proposal, please expressly say so. In each case where data or information is insufficient, or unavailable, expressly say so. Expressly identify all assumptions made.

PARTICIPANTS
ENVIRONMENTAL ASSESSMENT CAUCUS MEETING
28-30 SEPTEMBER 1990, ECONICHE, CANTLEY, QUEBEC

Marie Ann Bowden
University of Saskatchewan,
College of Law
Saskatoon, SASK S7N 0W0
(306)966-5877
FAX:(306)966-5900

Johannah Bernstein
76 Glebe Ave. #1
Ottawa, Ontario K1S 2C3
(613)231-2909

Jean Francois Brault
Quebec Environmental Law
Association

Francois Bregha
Rawson Academy
1 Nicholas, 4th Floor
Ottawa, Ontario K1N 7B7
(613)563-2636

Roberta Bruce
Cape Breton Coalition for
Environmental Protection
R.R. #2
North Sydney, N.S. B2A 3L8
(902)794-2828

Shelley Bryant
Wilderness Society of
NFLD and Lab.
89 Bond Street
St. John's, NF A1C 5B6
(709)576-2428 (w)/
(709)753-3680 (h)

Ron Buechert
Arrowsmith Ecological Society
Box 179
Errington, B.C. V0R 2T0
(604)248-2894

Kathy Cooper
Canadian Envl Law Assoc.
516 College Street, Suite 401
Toronto, Ontario M6G 4A2
(416)960-2284
FAX:(416)960-9392

Grant Copeland
Valhalla Wilderness Society
Box 284
New Denver, B.C. V0G 1S0
(604)358-7158

Jim Darwish
Friends of the North
11539-42nd Avenue
Edmonton, AB T6J 0W4
(403)435-2404/463-9245

David Donnelly
Canadian Envtl Defense Fund
347 College Street, Suite 301
Toronto, Ontario M5T 2V8
(416)323-9521

Linda Duncan
Faculty of Law
Dalhousie Unversity
Halifax, N.S. B3H 4H9
(902)494-1214
FAX:(902)494-1316

Stewart Elgie
Faculty of Law, Law Centre
Office #425
University of Alberta
89th Avenue & 111th Street
Edmonton, Alberta T6G 2H5
(403)492-2599

Jackie Evans
Slave River Coalition
c/o Uncle Gabe's Friendship
Centre
P.O. Box 957
Fort Smith, NWT X0E 0P0
(403)872-3013

Don Gamble
Rawson Academy
1 Nicholas St., 4th Floor
Ottawa, Ontario K1N 7B7

Julie Gelfand
Canadian Wildlife Federation,
1673 Carling Avenue
Ottawa, Ontario K2A 1C4
(613)725-2191

Bob Gibson
Dept. of Environmental and
Resource Studies
University of Waterloo
Waterloo, Ontario N2L 3G1
(519)885-1211x3407
(519)886-2835

Stephen Hazell
Cdn Arctic Resources Committee
Ste. 412, 1 Nicholas Street
Ottawa, Ontario K1N 7B7
(613)236-7379
FAX:(613)232-4665

Anne Hillyer
West Coast Environmental Law
Association
1001-207 W. Hastings ST.
Vancouver, B.C. V6B 1H7
(604)684-7378
FAX:(604)684-1312

Marilyn Kansky
Environmental Resource Centre
1701-10883 Saskatchewan Drive
Edmonton, Alberta T6E 4S6
(403)431-0699
FAX:(403)431-0699

Martha Kostuch
Friends of the Oldman River
Box 1288
Rocky Mountain House, AB
T0M 1T0
(403)845-3668
FAX:(403)845-5377

Rod MacDonald
Saskatchewan Action Foundation
for the Environment
Box 70
Radville, Saskatchewan S0C 2G0
(306)869-2230
FAX:(306)869-2552

John McCullum
Ecology North
Box 2888
Yellowknife, NWT X1A 2R2
(403)873-3639

Bruno Marcocchio
Cape Breton Coaltion for
Environmental Protection
R.R. #2
North Sydney, N.S. B2A 3L8
(902)794-2828

Kai Millyard
Friends of the Earth
701-251 Laurier Ave. West
Ottawa, Ontario K1P 5J6
(613)230-3352
FAX:(613)232-4354

Pat Moss
Save the Bulkley
Box 121
Smithers, BC V0J 2N0
(604)847-3043/847-9693
FAX:(604)847-5791

Peter Mulvihill
C.P. 657, Succ. Cote des
Neiges
Montreal, Quebec H3S 2V4
(514)341-8299

Ernie Oginsky
Rolls Ridge Citizen's
Committee
Box 1, Site 208
R.R. #2
St. Albert, AB T8N 1M9
(403)973-3301/973-7106

Moses Okimaw
AFN Environment Committee
Buchald, Asper, Henteless
2500-360 Main Street
Winnipeg, MAN R3C 4H6
(204)956-0560
FAX:(204)957-0227

Brian Pannell
Manitoba Environmentalists Inc.
c/o McJanet Rich
1100 One Canada Centre
Winnipeg, Manitoba R3B 3H5
(204)942-8101
FAX:(2304)956-0098

Gary Schneider
Environmental Coalition of PEI
R.R. #6
Cardigan, PEI C0A 1G0
(902)838-2678

Elizabeth Swanson
Environmental Law Centre
202, 10110-124 Street
Edmonton, Alberta T5N 1P6
(403)482-4891
FAX:(403)488-6779

Joan E. Vance
BC Public Interest Advocacy Centre
701-744 West Hastings Street
Vancouver, BC V6E 1A5
(604)687-3063
FAX:(604)682-7896

Toby Vigod
Canadian Envl Law Association
517 College Street, Suite 401
Toronto, ONT M6G 4A2
(416)960-2284
FAX:(416)960-9392

Brad Wylynko
c/o RQGE
C.P. 1480, Succ. Place d'Armes
Montreal, Quebec H2Y 3K8
(514)982-9444

NOT ATTENDING BUT INTERESTED IN BEING KEPT INVOLVED

Margaret Barber
Probe International
225 Brunswick Street
Toronto, Ontario M5S 2M6
(416)978-7014

John Barris
Public Interest Advocacy Centre
1 Nicholas Street, 4th Floor
Ottawa, ONT K1N 7B7

Ed Burt
AMNA
R.R. #1
Gore Bay, Ontario P0P 1H0
(705)282-2886

David Coon
Conservation Council of NB
380 St. John Street
Fredericton, NB
(506)458-8747

Rick Coronado
Clean Water Alliance
312 Erie St. W.
Windsor, Ontario N9A 6B7
(519)255-1616

Terry Fenge
Tungavik Federation of Nunavut
130 Slater, Suite 1200
Ottawa, Ontario K1P 6E2

Cindy Gilday
Yellowknife, NWT

Bernice Goldsmith
Ass. Professor
Social Aspects of Engineering
Concordia University
1455 boul. du Maisonneuve O.
Montreal, Quebec H3G 1M8

Moira Hutchinson
Taskforce on Churches and Corporate Responsibility
129 St. Clair Ave. West
Toronto, Ontario M4V 1N5
(416)923-1758

Brennain Lloyd
Northwatch
P.O. Box 282
North Bay, Ontario P1B 8H2
(705)476-7060

Elizabeth May
Cultural Survival
1 Nicholas Street, 4th Floor,
Ottawa, ONT K1N 7B7
(613)232-4653

Kevin O'Reilly
Dene Nation
Box 2338
Yellowknife, NWT
X1A 2P7

Maisie Shiell
Interchurch Uranium Committee
2332 Atkinson Street, Regina,
SASK S4N 3X3
(306)966-5877

Dalhousie University

Dalhousie Law School
6061 University Avenue
Halifax, Nova Scotia
Canada B3H 4H9

M E M O R A N D U M

TO: CEN E.I.A. Caucus

FROM: Linda Duncan

RE: New Problems Generated by Bill C-78

DATE: September 15, 1990

1.SCOPE SERIOUSLY NARROWED

-no requirement to consider federal areas of jurisdiction without specific license authority (SERIOUS DELETION)

-duty to review impacts of policy and programs intentionally excluded

-imposes duty to assess only after license or permit issued

-delays imposing duty until after regulations are issued(previously automatic legal obligation)

-eia limited to projects (previously proposals)

-eia triggered only after commitment to a decision

-exempts fiscal incentive programs

-new exemption for "class screenings",license renewals

-screening for impacts required only where EIA already required (previously initial assessment required)

-Crown corporations and other federal agencies exempted eg.Atomic Energy of Canada, Petro Canada, CNR

.../2

TELEPHONE: 902 494-3495 TELEX: 19-21863 FAX: 902 494-1316

2.PUBLIC CONCERN OVERRIDE DELETED

-deletes previous obligation for public hearing where evidence of public concern

3.LIMITS CITIZENS RIGHTS

-removes previous right to consult on eia terms of reference

-limited consultation on mitigation measures - restricted to notice after the fact

-in mediation right to participate limitee to "directly affected or those with direct interest"

-required public review limited to mandatory list

4.NO ENFORCEMENT MECHANISMS

-no clear link to any legally binding mechanism for imposing conditions to project (eg.license or permit)

-no provision for binding settlement agreement following mediation

5.RETROACTIVITY

-new law will have retroactive effect on all past activities unless review already underway

West Coast Environmental Law Association
1001-207 W[redacted] Hastings St., Vancouver, BC V6B 1H7
Phone: (604) 684-7378; Fax: (604) 684-1312

MEMO

TO: CEN Environmental Assessment Caucus

FROM: Bill Andrews

DATE: September 14, 1990

RE: Draft Key Points Regarding the Proposed Canadian Environmental Assessment Act

---

I was asked by the Steering Committee of the Caucus to put on one page (sorry, it's two!) my thoughts as to the key points which the Caucus should consider making regarding the federal government's proposed Canadian Environmental Assessment Act. I should emphasize that this is a **draft** list, that by virtue of picking a short number of key points, I have omitted a large number of other important points which it will certainly be necessary to make, and that I expect the Caucus to add and delete items from this list during its September 28 to 30 meeting.

The list follows:

I. THE SCOPE OF THE ACT IS INADEQUATE

The Act as it is currently worded is quite inadequate because it seriously weakens the federal requirements for environmental impact assessment by drastically narrowing the scope of the matters which must be subjected to environmental review, as compared to the requests of the existing EARP Guidelines Order.

II. BROADEN THE SCOPE OF MATTERS SUBJECT TO THE ACT

The Act should be broadened so as to require environmental impact assessment (EIA) of all matters within federal jurisdiction, including but not limited to:

- matters subject to federal authority even where no federal permit or license is required (e.g., the protection of fish habitat);
- projects which may have an environmental impact outside the province in which the project is located;
- all federal Crown Corporations including the Export Development Corporation;

- major government purchases of goods and services; and
- government policies and programs.

III. CLOSE THE CURRENT LOOPHOLE

The current loophole exempting EIA where it would be "inappropriate" should be eliminated and replaced with a narrowly-worded exemption only for matters which have no environmental impact and are the subject of no public concern.

IV. NO ABDICATION TO PROVINCES

The Act should be re-worded to ensure that **all** of the beneficial features of federal EIA (for example public participant funding) are incorporated into any joint federal/provincial environmental review.

V. STATUTORY PROTECTION FOR INTERVENER FUNDING

The government's promise to institute funding for public participants in federal and joint federal/provincial EIAs should be enshrined in the legislation, to insulate it from political interference.

VI. MUST CONSIDER "NEED" AND "ALTERNATIVES"

The proposed Act should be amended to require that federal EIA consider the **need for** and **alternatives to** the project, policy or program being assessed.

VII. RELEASE FULL INFORMATION

The federal government should release drafts of the anticipated lists, schedules and regulations to the Act, to enable meaningful consideration of the proposed Act.

BA

90\9\a06CEAAM

A Federal Environmental Assessment Process: The Core Elements

Environmental Planning and Assessment Caucus *
March 1988

Introduction

The fundamental relationship between environmental quality and human development is now universally recognized. Both the *World Commission on Environment and Development* (the *Brundtland Commission*) and the *National Task Force on Environment and Economy* recognized that economic development can only be sustained into the future if resources are conserved and environmental quality maintained today. Both the *Brundtland Commission* and the *National Task Force* called for the development of tools and techniques to bring about the integration of environmental protection and economic development. Environmental assessment is one of these tools.

In looking at economic planning and decision-making in Canada in 1988, it is clear that environmental protection, resource conservation, preservation of ecosystems and species, human health and community integrity remain secondary considerations, in the shadow of narrow economic goals. The existing federal Environmental Assessment and Review Process (EARP) has not been able to realize its potential for helping to change this balance and needs to be substantially reformed. For this reason, the EARP Consultation should be seen as an opportunity to begin the process of integrating environmental goals fully into federal planning and decision-making. However, EARP reform must be seen as only one step toward integration. Other initiatives are required to realize this integration.

The Environmental Planning and Assessment Caucus believes that the federal environmental assessment process can be made more effective if it is set within a comprehensive environmental planning framework, given a statutory basis, broadened in scope and application, made fairer and more open, with greater accountability for decisions. In particular, the following elements are considered essential for an effective process.

---

* The Environmental Planning and Assessment Caucus is composed of environmental groups from across Canada. This document is a product of a February 1988 Caucus meeting and reflects the Caucus' consensus position on reforming the Federal environmental assessment process. The assistance of Marcia Valiente in preparing this document is gratefully acknowledged.

Core Elements

1. Environmental assessment must take place within a comprehensive environmental framework.

An environmental assessment process cannot work effectively unless it takes place within a comprehensive environmental planning framework. In Canada, this framework requires the establishment of processes for:

- defining regional environmental goals, objectives and priorities;
- policy development and review;
- environmental assessment of programs and projects;
- incorporation of information about environmental consequences and values into development decisions; and
- monitoring and evaluation of policies, programs and projects with feedback into their formation and design.

Review of all government policies for their environmental consequences is a necessary part of this new system. Without a review at this level, the potential for integrating environment and development is greatly diminished and policies that tolerate environmental degradation will continue to be implemented. A mechanism for conducting policy reviews, for ensuring public participation in them and for feeding the results into the policy development process should be established. With these mechanisms in place, an environmental assessment process can focus on evaluating particular programs and projects.

2. The process must be legislated.

The environmental assessment process must be put into legislation that is a balance between enabling legislation and detailed regulatory legislation. Legislating the core elements of the process will minimize discretion and provide the authority to ensure that the process is mandatory and applied consistently and that application is enforceable. This will enhance the credibility of the process and the ultimate decisions coming from it and will provide a clear basis for enforcing compliance with its requirements.

The details of the legislation can only be spelled out when the substance of the process has been determined. A public consultation process on the draft bill should be held at that time.

3. The process must be mandatory and universal in application.

The environmental assessment process must clearly and routinely apply to all programs and projects touching on federal jurisdiction and those with

interprovincial, national or international impacts, including, but not restricted to, programs and projects:

- initiated or regulated by federal departments, agencies, regulatory boards, Cabinet, and Crown corporations;
- for which federal funds are committed including all foreign aid and private sector projects;
- on lands or waters under federal jurisdiction, including those affecting native land claims;
- initiated and funded under federal–provincial development agreements;
- related to international or interprovincial trade; and
- having international or interprovincial impacts.

Application of the process to all these activities ensures comprehensiveness. There is no distinction in environmental terms between damage caused by different categories of actors and there should be no distinctions recognized in law. It is Canada's responsibility to ensure it is supporting programs and projects that fulfill the objectives of sustainability and respect for human dignity.

The environmental assessment process must apply to all of these programs and projects. Unnecessary scrutiny of programs and projects with minimal impacts should be avoided. Public participation must be allowed in decisions to exclude programs and projects from further scrutiny. The steps in the process should be registration of all programs and projects, initial screening for impacts on the environment, environmental impact statements and full public review for activities that may have adverse environmental impacts, decision on whether and under what conditions to proceed, opportunity for review or appeal of all decisions taken and monitoring of implementation.

4. The scope of the process must be broad.

"Environment" must be defined broadly to include biophysical, socio-economic, spiritual and cultural elements and interactions. Many programs and projects have significant immediate and future impacts on local, regional and global ecosystems and on communities in terms of their health, livelihood, traditional practices and autonomy. All of these elements of the human and natural environment are interrelated and changes in one affect the other elements.

5. There must be effective public participation throughout the process.

Public participation in environmental decision-making is essential. A community has a right to participate in decisions affecting its interests. Public

involvement is the best way to introduce into the process relevant information and values that would otherwise be excluded. Moreover, the public can provide independent scrutiny of the basis for a proponent's actions. This allows for a full exploration of all alternatives and makes the decision and the process better and more credible and ensures greater accountability of decision-makers. With foreign aid or export projects, the public in the recipient country must have the right to participate in the process. It is not acceptable to deny them a voice in decisions that dramatically alter the environment on which they depend.

The public must be included throughout the process, starting as early as possible. This requires:

- notification of key steps and decisions taken;
- input into procedural decisions, such as selection of panel members and terms of reference for public reviews and scoping of the impact statement;
- participation in public reviews; and
- rights to initiate review and appeal of decisions.

Effective participation by the public requires funding. The disproportion of resources between proponents and the public necessitates the establishment of an independent funding body to provide adequate amounts of funding to allow full and meaningful participation, at all steps, to committed members of the public. Intervenor funding should be levied from the proponent and allocated and administered by an independent body.

Effective participation also requires access to information. From inception through monitoring, information about programs and projects should be placed in a public register. In addition, all studies, data and other information that will be used in a decision must be available to all participants in the process. This requirement applies equally to foreign aid projects, where information form other governments is relied on. A mechanism to deal with claims to confidentiality, that presumes disclosure unless exclusion is justified, needs to be developed.

6. The process must ensure accountability.

Accountability is essential for credible, supportable decisions. In the environmental assessment process, decisions at each step must be made on the basis of consistently applied criteria and must be in writing. Legislated criteria, to be applied in making the final decision of whether and under what conditions programs should be approved, should include:

- demonstration of need for the programs or projects;
- alternatives to the program or project and alternative ways of implementing it, including the "no go" alternative;

- enhancement of ecological sustainability; and
- minimized community and environmental impacts and maximized benefits.

Requiring written decisions that address each of these criteria makes the basis for decisions clear. This gives the process and the decisions credibility and provides the participants with information needed in initiating reviews or appeals.

7. The process must avoid unnecessary duplication.

Efficient planning and decision-making require the development of mechanisms that avoid duplication of effort and inconsistent decisions. However, in doing so, the objectives of the process must be fulfilled. At the federal level, many programs and projects require consideration or approval by more than one board or agency as well as under EARP. In this situation, the environmental assessment process should apply in addition to the other required procedures but new procedures for joint screening, hearings and decision-making should be established.

Where programs and projects touch on provincial as well as federal jurisdiction, provincial environmental assessment processes could apply., In this situation, the "more stringent" processes should apply. In other words, the process that demands the fullest and most open review and the incorporation of all environmental, socio-economic and cultural concerns into the decision should be used. However, all governments with jurisdiction should participate to ensure their perspectives are taken into account.

In cases where both federal and provincial governments issue licenses, as in the case of uranium development, both governments must remain fully accountable. Both federal and provincial laws must be complied with but procedures for joint screening, hearings and decision-making need to be established.

For foreign aid programs and projects, the objectives could be fulfilled if the recipient government either applies its own environmental assessment process or elects to follow the Canadian one. If the government applies its domestic process, it must satisfy the minimum requirements of the Canadian process and there must be a procedure for verification by Canadians that the process has been properly applied, with full rights of review and appeal by the Canadian public.

8. The process must require monitoring of approved programs and projects.

All approved programs and projects should include a mechanism to monitor their implementation so that compliance with approval conditions is assured, expected impacts studied and unexpected impacts identified and mitigated as

quickly as possible. The information derived from project monitoring should be fed back into the process so that an information base can be developed to improve future programs and projects. Follow-up studies of projects that have already gone through EARP are also needed. The public must have access to all monitoring reports.

Consultation on Sustainable Development

"Sustainable development" has evolved over the past two decades into a concept rich with meaning for environmentalists. Since release of Our Common Future, the report of the Brundtland Commission, the phrase is now embraced by many disparate groups who give it different, not always compatible, meanings. Although sustainable development offers a potential context for a Canadian environmental planning framework, including the federal environmental assessment process, the term must be clearly defined before it is used.

To do so, public discussion and consultation on sustainable development and its implications for policy development and environmental assessment should be initiated in Canada. The purpose of this discussion should be to review the Brundtland Commission Report and its recommendations, to evaluate the Report of the National Task Force on Environment and Economy and to initiate a comprehensive environmental planning process that implements the goals of sustainable development.

HOUSE OF COMMONS
OTTAWA CANADA
K1A 0A6

CHARLES CACCIA
[illegible]

TELEPHONE
OTTAWA (613) 992 [illegible]
TORONTO (416) 664 [illegible]

September 10, 1990

MEMO: Mr Caccia

FROM: Glen Okrainetz

SUBJECT: PRINCIPLE CONCERNS REGARDING BILL C-78

Generally, there are three primary weaknesses inherent in the legislation:

1) too much power is given to the initiating Department;

2) too much is left to regulation by Cabinet;

3) there does not seem to be explicit authority for the Minister of the Environment to reject a project.

Listed below in a telegraphic form are comments on specific sections of Bill C-78 that raise concern.

Section 4 - sets out the purposes of this Act, of which three are itemized:
a) to ensure environmental impacts are studied
b) to promote and maintain a healthy environment and a health economy
c) to ensure there are not transboundary [international] environmental impacts

Sec 4 cont'd

Comments:

The wording in Section 4 is very weak: i.e. 4(a) ensures only that environmental effects receive "careful consideration" before actions are taken. In addition, despite many statements on the topic, it is not the purpose of this Act to ensure sustainable development.

Section 5 - there are 4 conditions under which a project may be referred to the environmental assessment and review process (EARP):

a) the federal government is the proponent
b) federal funds are involved
c) federal land is involved
d) federal approval is required

Comments:

There are two concerns with this section. First, and most important, this is weaker than the current regulations. At present, EARP can be triggered if a project has an impact on an area of federal responsibility. It is under this provision that the court ruling on the Oldman Dam was made in favour of the necessity of a federal EARP because fish habitat, a federal responsibility, would be impacted by the provincial project. This ruling is likely a contributing factor to the omission of this 'trigger' for the federal EARP.

Second, tax breaks are specifically excluded [Section 5(b)] as a reason to refer a project to a federal EARP. This has implications for many energy and natural resource projects.

Section 6 - establishes conditions under which an environmental assessment is unnecessary.

1(a) where, in the opinion of the responsible authority, the project is described in an exclusion list

Sec6 cont'd

1(b) & (c) exclude national emergencies

2(a) & (b) exclude projects which would require an assessment under either 5(b) [federal money] or 5(c) [federal land], but where the projects were either not identified at the time the money or land was given [6.2(a)] or the federal government will have no power to exercise etc after the projects are identified [6.2(b)]

Comments:

Section 6.1(a) is an example of how decisions seem to rest with the proponent. Clear rules should be established to remove the notion that a proponent forms an opinion about whether or not a project is referred to EARP or not.

Section 6.2 is confusing - although it begins "For greater certainty"! Clarification is needed to determine exactly what the implications of this section are

THE ASSESSMENT PROCESS

Section 11 - lists the factors to be studied by a panel created by the implementation of this legislation.

1(a) immediate and cumulative effects on the environment
(b) degree of significance or seriousness
(c) public comment
(d) possible mitigation measures

Comments:

One of the strongest recommendations coming out of the 1988 consultation on the federal EARP was the need to include socio-economic impacts in the project review. This is not required in the Bill. In addition, the Bill does not require the review of alternatives to the proposed project or Native land claims/rights.

Sec11 cont'd

11.3 describes who sets the terms of reference and scope of the panel's study:

3(a) the responsible authority; or

(b) the Minister of the Environment, "after consulting the responsible authority"

Comments:

The fox is still in charge of the chicken coop. Under this legislation the Minister of the Environment does not have the unfettered authority to set the terms of reference and scope of the panel review.

Section 16 - describes the decisions to be taken after the completion of a screening report.

Comments:

The "responsible authority" - i.e. the initiating department or proponent - makes all the decisions as to whether to proceed, refer the project to mediation or a review panel, or involve the Minister of the Environment. Whatever action is taken hinges on the "opinion" of the "responsible authority".

Even more interesting, cancellation of the project is not an option! The responsible authority must withhold approvals etc if the project is referred to a panel, but the Bill does not include rejection of the project, even if the project "is likely to cause significant adverse effects that cannot be mitigated". This is cause to create a review panel, not reject the project!

Section 20 - where, in the opinion of a responsible authority, a project is described in the mandatory study list (created by regulation), the Minister of the Environment has certain powers to deal with the initial environmental report. The

Sec20 cont'd

Minister may

(a) refer the project to a mediator or a panel if

(i) the project will likely cause significant impacts that cannot be mitigated, or

(ii) public concerns warrant it

(b) refer the project back to the proponent if

(i) project not likely to cause significant impacts, or

(ii) effects can be mitigated

Comments:

Section 20(a)(i) summarizes the fundamental problem that underlies the approach the Government has taken to this legislation. What better reason, within the framework of sustainable development, to reject a project than if it is likely to cause significant projects that cannot be mitigated? However, the Minister of the Environment does not have that option. In the opinion of this government, such projects merit study, not cancellation. To make matters worse it is the proponent department that has a major say in writing the terms of reference for such panel studies.

The referral back to the proponent department in Section 20(b) triggers Section 34(1)(a), where we finally find the authority to cancel a project. However, the decision is the not the Minister of the Environment's to make. Section 34(1)(a) is discussed in sequence.

DISCRETIONARY POWERS

Section 24 - gives the Minister of the Environment the authority to refer a project to a mediator or a panel if

(a) the project is likely to cause significant environmental impacts that cannot be mitigated, or

(b) public concern warrants it

Sec24 cont'd

Comments:

The Minister of the Environment can only do those things after consulting with the responsible authority. The Minister is continually fettered in responding to proposals that have significant environmental impacts. Even under this section, the most the Minister can do is refer projects to panels or mediators. The Minister does not have the authority to reject any project as unsound from an environmental or sustainable perspective.

MEDIATION AND PANEL REVIEWS

Section 25 - section 25(a)(i) limits participation in mediation to parties that are directly affected or have a direct interest.

Comments:

This seems aimed directly at environmental groups who intervene in projects. For example, Ottawa based national groups would be excluded from mediation on any project except one taking place in Ottawa! Thus to be at the mediation table you must live, own land or otherwise be directly affected by the proposed project.

Section 26 - authorizes the Minister to
a) appoint a mediator
b) fix the terms of reference
after consultation with the responsible authority.

Section 30 - authorizes the Minister to
a) appoint members of a review panel
b) fix terms of reference
after consultation with the responsible authority.

Section 31 - outlines the duties of a review panel

a) obtain and make public information

b) hold public hearings

c) prepare a report setting out:

(i) conclusions and recommendations relating to environmental effects, mitigation measures and follow-up

(ii) summary of public comments

d) submit report to Minister of the Environment and proponent

Comments:

It would appear that when read in conjunction with other sections of this Bill, particularly Section 11, that a review panel is not empowered to examine alternatives to the proposal or recommend cancellation of the project.

DECISION OF RESPONSIBLE AUTHORITY

Section 34 - is the heart of the Bill because it deals with the response to the report of a mediator or panel.

1) following the report of a mediator or panel, or referral by the Minister of the Environment under Section 20(b), the responsible authority shall:

a) approve the project where, in its opinion,

(i) there is not likely to be significant impacts

(ii) any such effects can be mitigated or justified in the circumstances

b) where, in the opinion of the responsible authority, the project is likely to cause impacts that cannot be mitigated or justified, it shall not permit the project to be carried out.

Comments:

Finally, a project can be rejected. But not by the Minister of the Environment, only by the proponent. Even then, Section 34.1(a)(ii) allows a project to proceed, no matter how serious

Sec34 cont'd
the impacts, if it can be "justified". A very troublesome concept.

JOINT REVIEW PANELS

Section 38 - lists 5 conditions that must be met before the Minister of the Environment establishes a joint review panel
a) Minister appoints or approves chair and at least one panel member
b) Minister fixes or approves terms of reference
c) public participation guaranteed
d) final report submitted to the Minister
e) panel's report is made public

Comments:
This section could be strengthened by requiring that the Minister of the Environment appoint at least half the panel members, and requiring that federal intervenor funding is at least matched by the other parties to the joint review.

Ironically, the Minister of the Environment has more control over inter-governmental reviews than over strictly federal assessments.

ADMINISTRATION - REGULATIONS

Section 55 - authorizes the Governor in Council to set regulations establishing exemption lists, mandatory lists, which Crown corporations fall under the Act and which do not. In all there are twelve subsections (a to l) to Section 55(1) outlining regulatory powers. Section 55(2) authorizes Cabinet to prescribe a list of projects for which "conducting an environmental assessment of such projects would be inappropriate."

Sec55 cont'd

Comments:

There are four subsections of 55(1) which are a source of concern, and potential abuse.

(d) establishes a list of projects for which EARP does not apply because federal involvement is "minimal"

(g) establishes which existing Acts qualify to trigger mandatory assessments under Section 5(d)

(i)(iv) establishes projects which trigger mandatory assessments under Section 5(b)[money] or (c)[land]

(j) all Crown corporations (as defined by Schedule III of the Financial Administration Act) and Harbour Commissions are excluded from this Bill, unless specified by regulations made under this section

Section 55(2) deserves scrutiny to define exactly why it may be "inappropriate" to subject certain projects to EARP. Inappropriate to whom?

The Canadian Environmental Assessment Act

Bill C-78

Comparison of Bill C-78 to CEN Position (1988) and to Judicial Interpretation of the Earp Guidelines Order

by Elizabeth Swanson

This brief outline has been prepared to assist in the assessment of: (1) the extent to which the provisions of Bill C-78 meet the expectations of the environmental community as expressed in CEN's position paper prepared in 1988, and (2) the extent to which Bill C-78 eliminates or entrenches gains made through litigation of the Earp Guidelines Order.

Two sets of criteria will be used to assess Bill C-78:

I. The expectations of the environmental community as expressed in the 1988 CEN position paper; and

II. The current environmental impact process now found in the EARP Guidelines Order as judicially considered by the courts.

An assessment of how Bill C-78 measures up will follow each set of criteria.

I. CEN Criteria

The criteria which follow are taken from the paper, **A Federal Environmental Assessment Process: The Core Elements**, prepared by the Environmental Planning and Assessment Caucus, March, 1988.

1. Environmental assessment must take place within a comprehensive environmental framework, which should include (amongst other things) policy development and review and the monitoring and evaluation of policies, programs and projects.

Comment: Fact Sheet # 7 in the package of information sent out with Bill C-78 states that a "much - enhanced and progressive environmental review process" for <u>new</u> policies and programs is being established. According to the Fact Sheet this is in direct response to the 1988 consultations. A statement of the environmental implications of each new policy and program will be made public when the new policy or program is announced.

Obviously this begs the question of existing policy and programs. There is no legislative duty to subject policy, per se under Bill C-78.

2. The environmental assessment process must be put into legislation.

Comment: This condition has baen met.

3. Discretion must be minimized.

Comment: Although the "shalls" in Bill C-78 far out-number the "mays", in almost every instance a "shall" is followed by a subjective modifier like: "The responsible authority shall, if **it is of the opinion that**". The use of a subjective test makes mandamus applications much more difficult, and quite simply begs the question of compellability. See, for example, the following sections of Bill C-78: 6(1)(a)(b), 7(2),13(1), 14(4), 15(2), 16(1), 17(1), 18(2), 20(a).

4. The process should be mandatory.

Comment: Of interest here are sections 5 and 6 which , respectively, establish what comes within and what falls outside of the eia process. There has been considerable revision of the applicability sections now found in the Guidelines Order. For example, the process now only applies if the federal government (agency) is a proponent and does something that commits the government to carrying out the project. In a similar way, section 5(c) of Bill C-78 refers to the administration of federal lands and the sale (etc.) of those lands. The trigger of federal jurisdiction now found in the Guidelines Order has been removed and (perhaps) replaced with section 5(d) which refers to "permits (etc.) or any other action taken to enable a project to go ahead" pursuant to legislation which is to be identified in regulation. Quite obviously, it is difficult to assess the scope of Bill C-78 until that regulation is available. One wonders, however, at the intent of the additional conditions. In my view, Bill C-78 is quite drafted to narrow the scope of application which now exists under the Guidelines Order.

Furthermore, section 6 excludes all sorts of projects including: (a) those on an exclusion list (to be developed by Cabinet and enacted as a regulation); (b) projects undertaken in a national emergency; (c) projects carried out in other emergency conditions and which are necessary in the interest of public health or safety; (d) with respect to the provision of financial assistance or the transfer of federal lands, those projects which were not identified at the time the assistance was given or the transfer occurred.

The "exclusion lists" can be one of many. Section 55 gives Cabinet the authority to "prescribe a list of projects": (a) which are <u>likely</u> to have negligible environmental effects; (b) for which the contribution of the responsible authority is minimal (subjective test); (c) for which an assessment would be inappropriate for "reasons of national security"; and (d) which are physical activities and for which an assessment would be inappropriate.

5. Application is enforceable.

Comment: There are provisions in Bill C-78 which would allow the Minister to issue prohibitions (s.47) but there is no general offence provision stating that to proceed with a project without compliance is an offence (etc.). A provision of this sort would seem to make good sense, if the government is determined to make the Act "enforcable". Also missing is a positive duty to co-operate, to provide information and so on.

6. The process must routinely apply to: all projects touching on federal jurisdiction; those with interprovincial, national or international impacts; initiated by federal departments; projects funded by the federal government, including foreign aid and private sector projects; lands and waters under federal jurisdiction, including those affecting native land claims; initiated and funded under federal-provincial development agreements; projects related to international or interprovincial development agreements; those related to international or interprovincial trade.

Comment: Of the types of projects listed above, it seems that some, if not all, are excluded from the process. In particular, it looks as though projects funded under general agreements will not "trigger" the process by virtue of the funding itself (see section 6). It is not at all clear to me that lands subject to native land claims will come within section 5(c) given the definition of "federal lands" in the Bill. With respect to projects having an interprovincial or international environmental impact, special procedures apply. These procedures, in my view, need not necessarily meet the standards (such as they are) which would otherwise apply under Bill C-78.

7. Different categories of actors should not be treated differently.

Comment: Sections 40 and 41 provide for the "substitution" of process where a review is required by a (different) federal agency. Section 41 essentially requires equivalency of process, however. Of greater concern are the provisions allowing for joint reviews with other jurisdictions. These concerns will be addressed under a different heading. Note, however, the definition of "federal authority" which excludes a number of

crown corporations, band councils and territorial governments.

8. Unnecessary scrutiny of programs and projects with minimal impacts should be avoided.

Comment: Section 55 empowers Cabinet to enact regulations respecting projects which need not be subjected to the eia process at all. Such projects will be listed on an "exclusion list" which may be one of several types: (a) projects which, in the opinion of Cabinet, are <u>likely</u> to have negligible impact; (b) projects in which, in the opinion of Cabinet, federal involvement is minimal; (c) projects for which, in the opinion of Cabinet an eia would be inappropriate for reasons of national security, and (d) projects or classes of projects that are physical activities and for which, in the opinion of Cabinet, an eia would be inappropriate (s.55(2)). I have a number of concerns about the extent of Cabinet's ability to exclude these broad categories from the eia process altogether. For example, shouldn't projects which <u>may</u> have an impact be subject to some sort of scrutiny? How will Cabinet decide which types of projects are <u>likely</u> to have <u>negligible</u> effects?

9. The steps in the process should be: (a) registration of all programs and projects, (b) initial screening for environmental impact (c) environmental impact statements (d) full public review for activities which may have adverse environmental impacts, (e) a decision on whether and under what conditions to proceed, (f) an opportunity for review or appeal of all decision taken and (g) monitoring of implementation.

Comment: The process established by Bill C-78 does, in general terms, incorporate the 1988 recommendations. However, the following observations should be noted:

(a) there is no system for requiring the registration of projects or programs. Presumably, projects would come to the attention of the "responsible authority" because of federal involvement of some sort. At a that point, projects on an exclusion list would simply be taken out of the eia system;

(b) those projects which are not on an exclusion list nor on a mandatory study list will be subject to an initial screening;

(c) environmental impact statements are not referred to. Instead, there is reference to something called a "screening report" and to a "mandatory study" report. The contents of the reports are prescribed by section 11. It is interesting to note that "purpose" and

"alternative means" are only mandatory elements of the mandatory study report, mediation or review. Neither subject is required to be addressed in the screening report. Need for a particular project is not addressed anywhere, although 11(2) (c) does refer to the "need for... any follow up program";

(d) Unlike the Guidelines Order, Bill C-78, the decision to put a project before a review panel is left wholly to the discretion of the Minister of the Environment. The triggers for a decision by the Minister are two-fold: (1) significant adverse effects and (2) public concern. I have some question about the wording of section 16(1)(b) which requires a responsible authority to refer a project having unmitigabale significant adverse effects and/or for which there exists public concern to refer to the Minister of the Environment for a referral to a review panel or to mediation. This is slightly different wording than that found in section 12 of the Guidelines Order under which the Federal Court recently ordered the Minister of the Environment to establish a review panel (Rafferty #2). That section reads : ..."in which case the proposal shall be referred to the Minister for public review." In Bill C-78 the project must be referred for a referral to either mediation or review panel. I find it interesting that the words "review panel" are used and not "public review" as in the Guidelines Order.

Leaving aside section 24, a project comes to the Minister of the Environment for a decision either as a referral by a responsible authority (ss 16, 17, 21) he arises out of a duty to make a decision (s. 20) or where he has the discretion to intervene in the process (s.24). The decision to send a project to mediation or review is, in essence, discretionary notwithstanding the use of the word "shall". This is because every "shall" is followed by a subjective test. For example, section 20 provides:

> 20. After taking into consideration the mandatory study report and any comments filed ... the Minister shall
>
> > (a) refer the project to mediation or a review panel ... where in the opinion of the Minister,

(i) the project is likely to cause significant adverse environmental effects...

or

(ii) public concerns ... warrant it.

It is clear that public review or mediation is not required for projects which "are not likely to cause significant adverse effects", or where "any such effects can be mitigated" (20(b)). Again, the test is simply the opinion of the Minister.

The one possible exception may be section 25 which requires the Minister to refer a project for mediation or review by a panel if referred to the Minister for that very purpose. However, the choice between the two options is again left (largely) to the discretion of the Minister. The bottom line is that there is no way to compel the Minister to put a project forward for a panel review unless: (a) it was referred for either mediation or review by a responsible authority and (b) the Minister clearly acted outside of the guidelines found in section 25(a)(i) in choosing mediation.

10. "Environment" must be defined broadly to include biophysical, socio-economic, spiritual and cultural elements and interactions.

Comment: Bill C-78 essentially adopts the definition of "environment" given in CEPA. Cultural, socio-economic and spiritual concerns are not addressed in the definition.

11. There must be effective public participation throughout the process. This requires: (a) notification of key decisions, (b) input into procedural decisions such as the selection of panel members and setting terms of reference, (c) participation in public reviews and (d) the right to initiate review and appeals of decisions.

Comment: (a) Bill C-78 does provide for public notification of decisions (ss 14(2),16(3),19,33, 35(2)) but little else;

(b) With respect to input, the public has some opportunity to comment upon decisions and have these comments taken into consideration (ss 16(3), 20). There is no right of public participation in the selection of panel members (left to the Minister of the Environment in consultation with the responsible authority, s. 30) or in setting the terms of reference for either mediation or review by a panel (left to the Minister of the Environment and the responsible authority, ss 26, 30);

(c) The only "right" to participate in panel reviews is found in section 31(b) which requires a review panel to hold hearings "in a manner that offers the public an opportunity to participate in the assessment". It does not appear certain that this means the right to be heard in person, in an open forum;

(d) There is no right of appeal to either Cabinet or the courts under Bill C-78. Nor does it appear likely that the courts could readily review decisions by officials who merely have to form an "opinion" or be "satisfied" before acting. The use of a subjective test nullifies, in my view, the use of the word "shall" throughout the Bill.

12. There must be access to information.

Comment: In one respect, Bill C-78 clearly meets the recommendations of the CEN: section 51 provides for the establishment of a public registry for "every project for which an environmental assessment is conducted". Although the letter of the recommendation may have been met, I am not so sure that the spirit was, given the restrictions in sections 51(4)(5) and (7). Only those documents coming within the categories set out in section 51(4) must be included; certain other information, notably "third party" information need not be if it comes within the terms of sections 51(5) and (7). Vital information may be withheld from the public on the basis of " material loss". This is presently the case in Alberta, with respect to the "scientific" review of Alpac's new proposal.

13. The process must ensure accountability. This means: (a) decisions must be made on the basis of consistently applied criteria, (b) decisions must be in writing, (c) criteria for decision making should include: demonstration of the need for the project; alternatives to the project and alternate means of implementing it, including a "no go" option; enhancement of ecological sustainability and minimized environmental impact.

Comment: (a) Bill C-78 does specify criteria for decision making in most instances. The most frequently used criteria seem to be: (1) significant adverse effects, (2) whether these effects are mitigable or not, (3) whether these effects, though not mitigable, are justifiable. More importantly, the decision maker (either the responsible authority or the Minister of the Environment) merely has to be "of the opinion" or "be satisfied" before acting.

(b) Though publication of decisions is required in many instances, it is not clear that reasons for the decision must be given. In other words, all the Minister must say, for example, is that: "I am of the opinion that there are no significant adverse effects that are not mitigable caused by this project and therefore will not send it forward for mediation or review".

(c) "Need for a project" is not a criteria found in Bill C-78 although the "purpose of the project" is a required element of a mandatory study report, mediation or assessment by a review panel (s. 11(2)). Nor are alternatives to the project to be considered, although "alternate means of carrying out the project that are technically and economically feasible" are (s. 11(2)). The "no go" option is not a required element of any study, report or assessment but exists in terms of decision making (ss.16(1)(c),34(1)(b)) For example, in making the ultimate decision, the responsible authority may, in essence, reject any project which has significant adverse environmental effects which are not mitigable and not justifiable (s.34(1)(b)).

14. The process must avoid unnecessary duplication, however, where joint reviews are to be held, the most stringent rules are to apply.

Comment: Bill C-78 authorizes the Minister of the Environment to enter into joint reviews with provinces, other federal agencies and any body established under a land claims agreement (s. 37(2)). The same authority is given to the Minister and the Secretary of State for External Affairs with respect to foreign jurisdictions (s.37(3)). The authority to enter into joint reviews is conditional; criteria are provided in section 38. Whether these criteria will be the "most" stringent remains, of course, to be seen.

15. The process must require monitoring of approved programs and projects.

Comment: When the responsible authority makes a decision to "approve" a project, there generally follows an obligation to ensure that "any mitigation measures that the responsible authority considers appropriate are implemented" (see s.34(1)(2)). In addition, section 35 requires that the responsible authority "design any follow-up program" and, amongst other things advise the public thereof (s. 35(2)(d)).

II. Environmental Impact Assessment Under the Guidelines Order

What follows is a brief comparison of the existing environmental impact assessment process under the Guidelines Order and that provided for by Bill C-78.

1. Scope.

Section 6 of the Guidelines Order sets out the scope of the existing process. It applies to <u>proposals</u>: (a) undertaken by the federal government, (b) that may have an environmental effect on an area of federal responsibility, (c) for which the federal government has made a financial commitment and (d) that are located on lands administered by the federal government.

The term "proposal" is defined as any activity (etc.) for which the federal government has decision making authority. "Decision making" itself was given a very broad interpretation by the Federal Court of Appeal in the **Friends of the Old Man River Society** v. **Minister of Transport**((13 March 1990), Ottawa A-395-89). Leave to appeal that decision to the Supreme Court of Canada was granted September 13, 1990.

Comment: Section 5 of Bill C-78 sets out the scope of that Act. In general terms it considerably narrows the applicability of the eia process. In particular, there is no mention of "federal jurisdiction". Instead there is a reference to power exercised by the federal government pursuant to other legislation which is to be specified in a future regulation. Until that regulation is available it is difficult to assess the ultimate scope of the Bill.

In addition, though the trigger of federal lands remains, it is now somehow tied to the sale or other disposition of those lands.

Finally, there are considerable limits placed upon the trigger of federal funding. In my opinion, federal-provincial development agreements, for example, would not come within Bill C-78.

3. Public Review.

Subject to the outcome of the appeal to the Supreme Court of Canada, the **Friends of the Old Man River case**, supra, makes it clear that the courts can compel public review under the Guidelines Order. That ruling is based upon section 12(e) which requires the Minister to send a project for public review, if the potential adverse environmental effects are "significant". Public review is also one of the two options given in section 12(d), if the potential adverse environmental effects are not known.

The Guidelines Order gives specific criteria for selection of panel members (s.22), sets out, in general terms, what must be in the terms of reference (s. 25) and imposes positive duties upon government officials to make information available and to co-operate throughout the review process (ss 28, 29, 35, 36).

Comment: Bill C-78, in my view, virtually eliminates the ability of the courts to compel public hearings. There may be some authority to do so under section 25, where the Minister of the Environment must either refer a project to mediation or to a review panel.

Even if a project is put forward for panel review, it is not clear, for reasons set out above, that the public will have the right to be heard in person.

Moreover, Bill C-78 does not set out any criteria for the selection of panel members nor the terms of reference for mediation or review. That is left to the Minister of the Environment and the responsible authority pursuant to section 30, with criteria to be developed in regulation (54(f)).

Bill C-78 does not impose any positive duty of co-operation on any government department, agency, official or employee.

4. Ultimate Decision Making

The Guidelines Order does not specify who is to make a decision about a project, even after a review. It is clear that any recommendations arising from a public review are advisory only. Experience indicates that both the Ministers of "initiating" departments and of the Environment have a say in the ultimate decision following an environmental impact assessment.

Comment: It is clear from section 34 of Bill C-78 that the ultimate decision belongs to the "responsible authority". Unless that person is also the Environment Minister, the only significant decision made by that official is whether a project goes to mediation or review.

Concluding Comments

In my view, Bill C-78 pays lip service, at best, to the 1988 recommendations of the CEN. Using the word "shall" means nothing if followed by a subjective test. Providing for public notification is simply not the same thing as allowing for full public participation as a <u>right</u>. Giving the ultimate decision about a project to the "responsible authority" does nothing to enhance the status and power of the Department of the Environment. I find particularly troublesome the idea that projects having significant adverse effects which are not mitigable might go ahead if such effects are "justifiable". What does this mean? Justifiable on what grounds and to whom? I believe that such an approach is inconsistent with the intent of environmental impact assessment and with public opinion and expectation. It does not, in my opinion, facilitate a balance between continued development and a healthy environment. All things being equal, the tie goes to the economy.

Finally, I think that Bill C-78 shuts the door to judicial intervention. Again, I am of the view that this is inconsistent with the concept of public participation which this Government says it supports.

Bill C-78 does not withstand close scrutiny. Although in basic terms the environmental impact assessment process established is efficient, there appears to be many areas which fall short, not only of expectations, but of the process we have now under the

Guidelines Order.

1. KEY ADVANCES OF THE REFORMS OVER THE CURRENT ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS

1. The Minister of the Environment makes decisions on public reviews.
   (currently, responsible authority)

2. All major projects must undergo a mandatory assessment.
   (currently, discretionary)

3. Mandatory assessments of major projects will include:

   - cumulative effects relative to other projects;
   - reasons for the project;
   - alternative ways of carrying out the project;
   - effects on the sustainability of resources;
   - formalized public consultation.
     (never before mandated by law -- not in EARP Order)

4. Public registries will be maintained for all assessed projects.
   (currently, registries are ad hoc and voluntary)

5. Public review panels, including the Chair, will be fully independent of government.
   (currently, chaired by public servants from the Federal Environmental Assessment Review Office)

6. Public review panels will have subpoena powers.
   (currently, rely on good will of participants)

7. There is provision for mediation of environmental disputes.
   (not now available -- rare in the world)

8. Follow-up and monitoring plans will be required for major projects.
   (until now, one of the most significant deficiencies of all assessment processes -- unique to Canada)

9. There are provisions for assessing and mitigating serious adverse transborder environmental effects domestically and internationally.
   (currently, no such provisions)

10. There is express provision for the assessment of environmental effects of projects to be carried out on lands in which Indians or Inuit have a well-defined interest.
   (only other country known to do so is New Zealand)

11. Special procedures will be adapted to Crown Corporations.
   (currently, voluntary)

12. The new agency will be separate from Environment Canada.
   (currently, administratively dependent on the department)

13. The new agency will examine and report to the Minister on the way in which the process is being implemented across government.
   (currently, not specified)

14. A formal, consistent participant funding program is part of the reforms.
   (currently, ad hoc)

15. A process for assessing government policy initiatives is also part of the reform.
   (almost unique in the world)

16. Significant increases in funding and person-years beyond current levels will be made available to ensure the job is done right.

July 1990

(Aussi disponible en français)

4. COMPARISON OF THE CURRENT AND PROPOSED ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESSES

1. Comparison of changes arising from the proposed legislation

Issue	Current	Proposed
Authority	Guidelines Order approved by Governor-in-Council	Canadian Environmental Assessment Act, binding on all federal Crown entities
Need for public review	Decision by minister responsible for project	Decision of Environment Minister
Application to regulatory agencies and Crown Corporations	Unclear or voluntary	Explicit requirements through regulation
Scope of assessment	No clear guidelines	Requirements to describe need for project and assess practical alternatives, cumulative effects and sustainability of resources
Public reviews	Panel review only option	Mediation and panel are options; panel review given subpoena powers
Duplicate hearings with other federal and provincial processes	Possible	Provisions to avoid duplicate hearings

Issue	Current	Proposed
Transborder effects	No federal role	Substantial federal role
Follow-up and Monitoring	Not clearly required	Plans required as part of assessment; proponent must implement
Administration	Federal Environmental Assessment Review Office, dependent on Environment Canada	Canadian Environmental Assessment Agency, independent of any other federal department or agency
Evaluation and reporting	No systematic process	Regular process of examination and reporting

2. Comparison of changes arising from regulations, orders and guidelines

Issue	Current	Proposed
Exclusion List	Prepared by some departments without public consultations	One government-wide list prepared with public consultation
Class assessments	Not practised	Practised
Mandatory assessments	None required	List of projects requiring mandatory assessments
Procedures	None specified	Specified

3. Comparison of changes arising from government decision

Issue	Current	Proposed
Consideration of environmental matters in policy and program decisions before Cabinet	Uneven, discretionary	Environmental assessment to be included - statement to be published

Issue	Current	Proposed
Participant Funding	Occasionally provided	Program established
Indian Lands where no federal decision-making authority exists	Exempt	Land claims and self government negotiators to address environmental assessment needs

July 1990

(Aussi disponsible en français)

The following is an item on the proposed federal environmental assessment act written by Shelley Bryant. She has prepared it for insert into newsletters and gives her permission for revision and editing changes.

REJECTION OF FEDERAL ENVIRONMENTAL ASSESSMENT LEGISLATION

The Environmental Assessment Caucus of the Canadian Environmental Network met outside of Hull, Quebec on 28-30 September to discuss the federal government's proposed Environmental Assessment Legislation (Bill C-78). The 35 delegates from across the country unanimously rejected Bill C-78 on the grounds that it falls seriously short of meeting some very fundamental requirements of environmental assessment legislation.

Some of the key points raised about this legislation are:

* The proposed environmental assessment process is not mandatory. Under the proposed legislation the federal government is under no legal obligation to perform an environmental assessment on any undertaking. The government will have complete discretion throughout the proposed environmental assessment process with regard to what projects must undergo an EA, the appointment of panel members for an EA, whether it accepts the findings of the environmental impact statement, and what monitoring and follow-up conditions are put on the project, among other things.

* Specific criteria for how decisions about such matters as those above are made are completely lacking in Bill C-78. Should this Bill be passed nothing will be legislated regarding what constitutes environmental damage, or what project or type of projects must undergo a complete environmental assessment.

* The Bill does not satisfactorily address what process will be followed for projects with federal-provincial agreements in place. Room is left in C-78 for the federal government to abdicate their responsibility, and pass the process on to the province, even in the event that the provincial environmental assessment process is weak or non-existent.

* There is no provision in Bill C-78 to stop a project from going ahead while the EA process is underway, or if the proponent or responsible authority does not comply with decisions made by the government or the panel. Work on a particular project may continue therefore, quite possibly causing environmental injury, while the EA process is ongoing, and before a decision has been made about its potential effects!

* The Bill allows for environmental damage to occur if, in the opinion of the Minister or responsible authority, it is seen as "justified". The criteria for what is considered justified is omitted, however, and leaves room for purely political decision making.

* The definition provided for what constitutes "mitigation" under Bill C-78 includes monetary compensation. The implication, of course, is that any environmental damage is mitigable provided the pay off is sufficient.

* Bill C-78 does not provide for effective public input into the environmental assessment process. Intervenor funding is not mentioned in the legislation. As a result, should we actually ever receive intervenor funding we have no guarantee that it would continue should there be a change in government.

* The definition of environment in Bill C-78 is restricted to the bio-physical aspects of our earth, and does not include such things as the socio-cultural and spiritual qualities of life.

* Another concern is that the possibility exists that the government may remove our present environmental assessment process (EARP guidelines) before Bill C-78 gets amended, leaving Canada with absolutely no environmental assessment process.

WHAT YOU CAN DO!!!!

Write to the Minister of the Environment and your local MP stating that the EARP guidelines should not be removed until the new legislation is passed. In addition, a written or oral brief may be presented to the Parliamentary Committee for Bill C-78. Should you wish to appear as a witness and voice your opinion about Bill C-78, write to the address below and ask to be a witness and for expense coverage:

Ross Stevenson
Chairperson
Committee on Bill C-78
Parliament Buildings
Ottawa, Ontario K1A 0A6

The Environmental Assessment Caucus is drafting a position paper and preparing to go before the Parliamentary Committee to present the caucus' concerns about Bill C-78.
If you want more information about Bill C-78, feel free to contact

DRAFT

MEMO

TO: EA Caucus Advisory Committee
FROM: Kathy Cooper
DATE: October 9, 1999

Well, here it is either via web or fax or both. It took longer than I expected and is still pretty rough. I have included as much has I could from the econiche discussions (we can likely cut some of it out) and still need to add more examples. There is some duplication and I think all will agree that some reorganization is required. For the time being, I stayed with the format we agreed upon, i.e., I stayed with the order of the eight key elements as they were discussed.

I have introduced it all as I thought appropriate but am happy to change it and certainly shrink it, have borrowed from Bob's paper in a couple of places, and have included some points on which I was unsure we had reached consensus. I have tried to flag those points where I think the wording or the meaning is rough. You will no doubt find more. Since this is later than expected, I would love to see your comments before Saturday and can incorporate them up until Thursday afternoon but am otherwise assuming that this will be the draft for discussion on Saturday. I will try to fax or web it out to as many others on the caucus list as possible on Thursday. Otherwise, I will be in Montreal on Friday morning and will try and get copies to caucus members asap.

INTRODUCTION

The Environmental Assessment Caucus of the Canadian Environment Network has worked together for over four years to address reform of the federal environmental assessment process. Many of its individual members and member groups have worked on this issue for upwards of twenty years. In 1988, the caucus participated in a consultation on the Environmental Assessment Review Process (EARP) conducted by the Federal Environmental Assessment Review Office (FEARO) and produced a position paper. That paper, entitled, "A Federal Environmental Assessment Process: The Core Elements", set out the caucus' consensus position on reforming the federal environmental assessment process. Those core elements remain at the heart of this position paper. Fundamental to the entire position, then and now, is the need for an enforceable, legislated process rather than a guideline as the EARP Guidelines Order was interpreted at the time. Very little came of that process in 1988 in terms of federal commitment to changing and strengthening the environmental assessment process.

However, much to the surprise of many Canadians, particularly in the federal government, recent court decisions on the Rafferty and Oldman dams, in Saskatchewan and Alberta respectively, gave the force of law to the EARP Guidelines Order of 1984 thus obliging all departments of the federal government to ensure that each initiative, undertaking or activity (each "proposal") for which they have decision-making authority be subject to an environmental screening for potentially adverse effects. If such effects occur, the department is further obligated to refer the proposal to the Minister of the Environment for public review.

The current Bill, C-78, The Canadian Environmental Assessment Act, is the federal government's response to those court decisions. Legislation has been drafted ostensibly to correct what the federal government views as a problem of the force of law having been given to "guidelines". The government states that this interpretation was not originally intended. In fact, it appears clear from our review of this bill, that it has been prepared to considerably limit the scope of what the EARP Guidelines Order now covers by law, if somewhat inadvertently. While the caucus has always recommended the need for a legislated process, the federal government appears to be backing into a legislated process out of necessity rather than by choice. This draft legislation is replete with elements that weaken, or render ineffectual, its legislative force.

From the perspective of fully integrating environmental goals into federal planning and decision making, our review of Bill C-78 reveals fundamental flaws. We have set out what we consider to be eight key, interdependent elements of a federal environmental assessment process and judged this bill accordingly. Bill C-78 and

its accompanying regulatory and administrative package of reforms does not adequately satisfy any of our eight elements. In addition, we have laid out what we consider to be the fundamental elements to be contained in the preamble to and purpose of this legislation.

We conclude by indicating how we plan to work with the government to ensure that a significantly amended bill will contain the necessary elements of an environmental assessment process at the federal level. It is important to note that this position paper represents our views on an interdependent package of reforms. The purpose of the legislation and each of the key elements must be implemented together.

PURPOSE OF THE LEGISLATION

note - a committee was struck at the econiche meeting to discuss this issue further. They will be reporting to the caucus meeting. Introductory paragraph borrows from Bob's paper.

Both the preamble to and the purpose of the legislation must reflect federal commitment to ensuring that all decision making under Canadian federal jurisdiction is environmentally responsible. Such responsibility requires that Canadian decisions contribute positively and significantly to achieving sustainability in human relations with the environment regionally, nationally and globally.

The preamble to the legislation should state that the federal environmental assessment process is intended :

(taken from the core elements paper of 88. I didnt spend much time on this since there is some duplication with the first part of the criteria discussion in item 3 of the key elements discussion)

- to contribute to the enhancement of ecological sustainability; and
- minimize community and environmental impacts and maximize benefits.

The purpose of the act should include the following fundamental points:

1. Environmental Assessment is a mandatory process for the systematic description and integrated analysis of environmental effects of any undertaking.

2. The best interests of the environment shall be paramount in decision making and only undertakings consistent with environmental protection, conservation and enhancement shall proceed.

3. The Environmental Assessment process shall take place in an open atmosphere and include a public right to information, notification, input and review.

* each of these items must be defined in the act.

These points assume a considerably broadened scope for the entire environmental assessment process as outlined in the key elements below.

EIGHT KEY ELEMENTS OF A FEDERAL ENVIRONMENTAL ASSESSMENT PROCESS

1. The legislation and its accompanying process must be independent and mandatory.

The federal environmental assessment process must be an independent one free from political interference. As an independent process, it must be at arm's length from the federal government and able to assess, in an open and accessible public forum, the most effective integration of environmental considerations into decision making on matters under the purview of this legislation. (this is a little rough we did not discuss this independence issue in any detail)

This process must be legislated and impose non-discretionary obligations. Unfortunately, Bill C-78 is replete with discretionary language such that apparent obligations to conduct critical steps in the process (the responsible authority "shall"...) are followed by subjective tests ("shall" do... where, "in the opinion of" the responsible authority...). The caucus will be conducting a clause by clause review of the bill to review this discretionary language and will suggest its removal in appropriate cases. Where discretion is appropriate, it must be limited by specified criteria. For example, in Sections 16 and 20 of the bill, criteria must be established to judge "significant impacts" for the purposes of assigning projects to the mandatory or exclusionary lists. This issue is discussed in greater detail in item 3 below.

As the caucus stated in 1988, legislating the core elements of the process will minimize discretion and provide the authority to ensure that the process is mandatory and applied consistently and that application is enforceable (see item ? below regarding enforcement). The discretionary language in this bill defeats the purpose of preparing legislation. Its removal would ensure proper application of the process and permit judicial review in cases of suspected negligence (wording?). Uncertainty in the legislative wording as to the duty to act invites litigation. (more detail can go in here a la the Finlayson draft opinion)

2. The environmental assessment process must be universal in application.

As has been stated countless times, the environment knows no distinction between damage caused by different actors and there should be no distinction recognized in law. This legislation should automatically apply to all programs and projects touching on federal jurisdiction and those with interprovincial, national or international impacts, including, but not restricted to, programs and projects (use the term proposals alone ?):

- initiated or regulated by federal departments, agencies, regulatory boards, Cabinet, and Crown corporations;

- for which federal funds are committed including all foreign aid and private sector projects;

- on lands or waters under federal jurisdiction, including those affecting native land claims;

- initiated and funded under federal-provincial development agreements;

- related to international or interprovincial trade; and

- having international or interprovincial impacts.

The Act should automatically apply to all undertakings within the above list. Therein, we support the principle of different levels of assessment (this idea is discussed further in item eight below). Within this approach all relevant undertakings are automatically subject to the Act unless specifically exempted out. Two critical lists must then be developed: a Mandatory List of projects that are subject to the Act and cannot be exempted and an Exemption List of projects that are not subject to the Act but can be "bumped-up" if they are found, according to clearly identified criteria, to have effects worthy of assessment. The Mandatory List should appear in the legislation. The Exemption List should be developed by regulation.

Additional levels of assessment include application of the process to classes of undertakings that would be assessed as a class at one time. As individual projects within the class require assessment they would be subject to a fast track assessment process since most of the issues have already been addressed in the class assessment. It follows that classes of exemptions would also be possible.

A scoping document would have to be prepared for each undertaking to make an initial determination as to whether assessment is necessary. This document would outline the need for, the purpose of, and the alternatives to the proposal (more on these requirements in item ? below). Minimum content and procedural requirements for this scoping document will have to be developed. (econiche notes refer to Bob's paper - details limited here to a couple of examples)

This scoping proposal replaces the screening mechanism currently envisioned in Bill C-78. The philosophy embraced is to ensure as broad application as possible from the outset rather than a narrowly focused bill which can opt in projects only by regulation at a later date. Beginning with this broad scope, coverage can be streamlined using various means including exemption (either individually or as a class), exemption with conditions, exemption after the scoping exercise, assessment as a class, fast-track assessment of individual items within a class, and individual assessment with or without public hearings. All proponents are assured, from the outset, of where their proposals fit within the overall scheme and therefore the requirements that must be met. A mechanism is also needed for exceptions to the general rule where, for example, an emergency like an oil spill can be quickly exempted with no delay in clean up response.

Regarding the assessment of federal policies, a mandatory, publicly reviewed process is ultimately desirable. While we recognize the unlikelihood and difficulty of such a process occurring, we must emphasize that, as a minimum principle, we encourage the environmental assessment of policy with the intention of eventually including this requirement in the legislation. (sounds pretty wimpy - even a tad counterproductive - but I think that is what was said - more of the details from Francois' paper can be added - e.g. the Env'l Auditor general, etc.)

Finally, "environment" must be defined broadly in the act to include biophysical, socio-economic, spiritual and cultural elements and interactions. As the caucus stated in 1988, many programs and projects have significant immediate and future impacts on local, regional and global ecosystems and on communities in terms of their health, livelihood, traditional practices and autonomy. All of these elements of the human and natural environment are interrelated and changes in one affect the other elements. Using this broad definition, we consider that inclusion into the process (at its different levels) would be judged on the basis of the biophysical portion of the definition and once into the review, the broader definition would apply. For example, a pulp and paper mill would be included in the review process on the basis

of its potential for biophysical effects alone. Once into the review, the environmental assessment would consider the additional elements and interactions of the definition.

3. Specific criteria must be established to ensure accountability whenever discretionary decision making occurs in the process.

There are two broad areas of discretionary decision-making in this process and criteria must be clearly spelled out in each and every instance where discretion must be applied to ensure credible, supportable decisions. These criteria should capture the values behind the environmental assessment process and constitute a recognition of the value judgements inherent in such decision making.

The first, more general, area is in the preamble to the legislation where judgements must be made as to what we mean by such terms as "sustainability" and "environmental quality". The concept of setting criteria to make these judgements implies that there can be a substantive test to judge sustainability. Such a test could be undertaken using the following criteria to assess whether the decision will reflect a commitment to:

- protecting and enhancing the existing and future wellbeing of all people recognizing the dependency of Canadians on the wellbeing of the biosphere and other people sharing it;

- requiring undertakings to offer net positive biophysical and socioeconomic improvements and net reductions in Canadian resource requirements and environmental impositions;

- avoiding additional negative biophysical and socioeconomic effects, including cumulative effects;

- recognizing the depth and extent of public concerns; and

- appreciating the uncertainties surrounding environmental processes and the risks of underestimating negative aspects of ill-understood relationships.

The second area includes the many points in the process where judgements must be made concerning very specific decisions. In particular, in making the final decision as to whether and under what conditions proposals should be approved, legislated criteria must be consistently applied to each of the following:

- demonstration of need for the proposal;
- consideration of alternatives to the proposal and alternative

ways of implementing it, including the "no-go" alternative;
- determination of the significance of environmental effects;
- determination of whether content requirements have been satisfactorily met - i.e. adequacy of the EA document (this didn't come up at the meeting but is a hot item in the Ontario process and may be worthy of pursuit at this point in this exercise);

Additional legislated criteria are needed for other decision-making points, including:

- the creation of the Mandatory and Exemption Lists;
- the determination of which level of assessment each proposal falls into;
- bump-ups and bump-downs from class lists;
- deferring to provincial authorities;
- the selection of panel members or mediators;
- terms of reference for mediation or review panels;
- the allocation of intervenor funding
- more

In all cases, these criteria should capture the values behind the environmental assessment process, be open to public scrutiny and input, and provide an override set of controls on the ultimate decision making. (latter point poorly phrased (?) but was expressed something like this at econiche meeting) The overall intention is to ensure that "significance" of impacts is judged against something that is clearly spelled out. The resulting decision will be the best one rather than a minimum standard of acceptability. The effect of such a decision-making structure will be a positive improvement in environmental quality and a reduction of impacts. (I suggest appendices to the report with lists of criteria for each of these areas alternatively they can go in here as examples for each case such as the list developed for choosing panel members. However, to be thorough, it would be better to itemize each with its own list)

4. The environmental assessment must justify the purpose of the proposal in light of the purpose of the Act, the need for it, and alternatives to it including the "no-go" option.

As discussed above, a broadly applied process in which all proponents know from the outset, or as a result of the scoping exercise, where their proposals fit within the process is desirable. The scoping exercise places the principles of environmental assessment squarely on the table at the conceptual stage of each proposal. In the scoping document, the proponent must address the fundamental issues of whether and how the proposal is consistent with the purpose of the Act, the need for the proposal

must be justified in light of environmental imperatives, and the proponent is obligated to assess reasonable alternatives including alternatives to, and alternative methods including the "no-go" alternative. Such an exercise would include, for example, in a pulp mill development, the need to address the sustainability of the resource to support the project.

The scoping document would define problems and dictate how to resolve issues. The legislation should clearly specify the scoping document's content requirements, a public review mechanism and the terms of the document's approval, the latter to be appealable to Cabinet. (notes remind us that the details of this mechanism need to be fleshed out)

5. A significant role for the public is essential throughout the environmental assessment process.

The public's role in the environmental assessment process - from the initial decision as to where proposals fit within the assessment scheme through to the final decision and follow up monitoring - is absolutely critical. This participation has been noted above where various points in the process are discussed. Our submissions are motivated by the principles of natural justice and the need to ensure procedural fairness throughout. Only through a quasi-judicial process that provides clear legal rights and procedural safeguards to all participants will these principles be served.

Participation must be ensured by legislatively guaranteed access to information. This access applies to both development of and participation in the environmental assessment process. It would include the right to notice and adequate time for comment on drafts of anticipated lists (the Exclusion List, class lists, etc.) schedules and regulations to the Act, and timely notice of and access and/or input to documents and procedures (such as the selection of panel members and the setting of their terms of reference) relevant to individual assessment processes.

Participation must also be guaranteed by a legislated intervenor funding program which would include criteria for the allocation of funds, be proponent supported and have no cap on total funding. recognizing that public involvement in the early stages of an assessment frequently contributes to early and often otherwise swifter resolution of conflicts, early funding of this "participant" involvement is also necessary.

During public hearings, panel members (and mediators? - notes don't say so) will need the power to make their own procedural rules to

accommodate differing situations within an overall framework of procedural fairness. For example, panels need to have the flexibility to establish less formal, and therefore less intimidating, proceedings for community hearings. In addition, panel members require specialized training and need professional staff to assist them. The criteria for the selection of panel members should be similar to those outlined in the 1984 EARP Guidelines Order, i.e. -- (can also refer to these in an appendix of all the various criteria lists that will need to be developed)

6. The ultimate decision must be capable of implementation and enforcement.

Bill C-78 does not contain any clear link between the environmental assessment process and any legally binding mechanism, such as a license or permit, for imposing conditions to the assessed proposal. Nor is there any provision in the bill for any binding settlement agreement as a result of mediation. This lack of enforcement is a critical flaw.

We support a "cradle to grave" approach for a federal environmental assessment process. A comprehensive system is required that would include the assessment process, the final decision, and an enforceable (and revocable) license or permit that would ensure implementation of the terms and conditions of the final decision. The environmental assessment system provides the critical link between planning for a proposal and then regulating it. In contrast to traditional regulation-making, the final decision of an environmental assessment is the "best" one, measured, generally, against criteria for environmental quality included in the Act, and specifically, against the various alternatives proposed, rather than just a minimum standard of acceptability measured against otherwise harmful practices.

Bill C-78, in its current form however, creates a vacuum. Even a with the improvements to the process that we are suggesting, it will be empty if it does not contribute to enforceable results. A comprehensive system is required to fill the vacuum that currently exists in federal planning in matters of federal jurisdiction.

The caucus' preliminary position on how to fill this vacuum in the enforcement of federal planning decisions is to lay out a number of options which need to be explored in greater detail.

1. The final decision must be binding either under Bill C-78 or using the regulatory/permitting systems extant under other Acts. (this discussion must be continued) Two options were suggested.
   i) The EARP process as an override of other federal law

permitting processes, or
ii) the final decision of the environmental assessment (including terms and conditions) is incorporated into existing permitting schemes.

Either way, the criteria for making the ultimate decision are critical.

2. The decision makers (agency, panel, mediators) must be capable/empowered (expertise, staff, etc.) to put together a comprehensive enforcement scheme to accompany the approval decision. All licenses and permits shall be consistent with the terms and conditions of the final (written) decision as indicated by i) the agency (decision with terms), ii) mediation (report), or iii) the panel (report).

3. The final decision must be appealable. The Act should specify appeal periods to the Minister, Cabinet and the Courts (unsure if was agreement on this point)

3. No action should be permitted to take place until the environmental assessment is complete.

4. Injunctive relief must be obtained upon application by anyone and can be applied specifically against the Crown.

5. The Act must contain a general offense clause.

6. In the case of joint federal provincial reviews, a mechanism is required to hold the provinces accountable to that potion of the decision that lies outside federal jurisdiction.

In summary, the enforceability of the final decision is absolutely critical. The process has no credibility if the decisions generated are not implemented and enforced.

7. Monitoring and follow-up must be a mandatory part of the final decision.

Assuming that the process will be generating an enforceable decision for each proposal, that decision must include binding requirements for both effects monitoring and compliance monitoring. This requirement should include regular monitoring reports dealing with specific terms and conditions of the final decision. The information shall be public and regularly reviewed (by the agency?) to ensure that the impacts are as predicted and appropriate mitigative measures are in place. Such monitoring serves as a feedback loop to ensure implementation of the final decision and a continually expanding database of information to improve the

END

predictive skills of environmental assessment procedures as time goes on.

8. The process must be efficient by i) employing the concept of different levels of assessment and ii) integrating federal and provincial review processes.

i) Different levels of assessment.
As discussed in items two and three above, different levels of assessment can be used to efficiently assess large numbers of proposals of varying environmental significance provided that clear criteria are applied to implementation. This approach ensures that all parties know from the outset, accordingto specific and clear criteria, where they fit in the process. Without this knowledge or if it is unclear, proponents in particular, will likely wait until they do know. Unnecessary delay and duplication can be avoided.

Of critical importance in this approach is the need to limit the definition of a class of proposals to those which are similar, occur frequently, and are of relatively low environmental impact. Without limiting the scale of the proposals to be included in a class, it is conceivable that all nuclear plants or all pulp and paper plants could be included in a class with only a fast-track review of individual undertakings. Limiting the definition of a class ensures that a useful efficiency measure is not abused. Class assessments also offer a useful means of assessing the cumulative impacts of a large number of otherwise small projects. For example, the impact of draining many small wetlands across a large geographinc area could be assessed for its overall impacts during the class assessment in a way that each individual assessment would not.

ii) In cases of joint federal-provincial responsibility, the processes should be integrated and the principle of "equivalency" should be applied. This approach would involve deferring to provincial processes which are at least as stringent as an improved federal process (as judged against the eight points herein outlined). This "equivalency" agreement between the federal government and the provinces must recognize that the result of the joint environmental assessment can involve areas that are exclusively under provincial jurisdiction. To ensure that those decisions are binding the federal government can place, as a condition on the federal portion of the approval, that the provincial approval satisfy the terms and conditions of the final decision. (I may not have got this right and in any case, I am not sure there was agreement on it)

Notwithstanding an agreement on "equvalency" of processes and a deferal to the more stringent process, the federal government must exercise its jurisdiction. If the process to be used is a provincial one, the federal government must stay involved in the process and maintain its responsibilities where it has jurisdiction for example under the Fisheries Act.

Conclusion

Short summary of strategy to deal with this bill - to be added later. Draft will come to Saturday meeting.

Minister of the Environment

CANADA

Ministre de l'Environnement

SEP 28 1990

Ms. Lynn Sebean,
Canadian Environmental Network,
P.O. Box 1289, Station B,
Ottawa, Ontario.
K1P 5R3

Dear Ms. Sebean:

I am writing to express my support for the Canadian Environmental Network's September 28 to 30 workshop to consider Bill C-78, the Canadian Environmental Assessment Act.

The EARP reform package is, in my view, a good one; the proposed legislation represents a very significant advance over the current Guidelines. Nevertheless, I have encouraged the House of Commons Committee to consider improvements to the Bill with a view to creating a federal environmental assessment process that is as effective, efficient, fair and open as can be designed. Crucial to the achievement of this goal will be the active participation of the Canadian Environmental Network and its member groups in the review process.

Although I was generally pleased with the public response to the tabling of Bill C-78, I was rather taken aback by the statements of a small core of critics who claimed that the Bill was a step backwards from the current Guidelines. Most of the criticism seemed to centre on the concern that, whereas the court-defined Guidelines apply to all federal statutes and regulations, the new Act might not.

The application of the process to federal regulatory decisions is an important issue, and I want to give you my own perspective on it. In the present circumstances, the EARP Guidelines do, indeed, apply to all federal regulatory decisions, whether they have any connection with, or implications for, the environment. As a consequence, much government time and effort is being

.../2

directed towards the environmental assessment of projects that carry little or no threat of environmental damage. The result is that fewer resources are available to deal effectively with the projects that most deserve attention. In other circumstances, the federal government might be obligated to apply the process in situations where it has little or no authority to enforce the implementation of recommendations flowing from the assessment.

The new legislation, and a proposed list of federal statutes and regulations (S.55.(1)(g)) to which the Act would apply, are intended to maximize the effectiveness of the environmental assessment process. By focusing on those federal regulatory powers that have any connection with or implications for the environment there will be a real potential for controlling the environmental effects of projects. If the list is sufficiently comprehensive and responsible, there should be no loss of environmental protection capability; rather, there should be a significant gain.

When the legislation was tabled on June 18, I published a very preliminary list of federal statutes to which the process would apply. That document was intended to indicate only the types of statutes that would appear on the list, and not its true length or scope. Over the summer, FEARO worked with the Department of Justice, and with line departments and agencies throughout the federal government, to develop a first draft of the actual list. That work has not yet been completed. It is my intention, however, to make the draft publicly available this fall while the Bill is before the Legislative Committee. I think that its comprehensiveness will impress you.

In addition to the list of statutes and regulations, I also intend to make public in the near future a preliminary draft of the mandatory study list (S.55.(1)(c)). I hope that the publication of these two draft lists will go a long way towards assuring environmentally conscious Canadians of the government's commitment to a strong and effective federal environmental assessment process.

.../3

I have enclosed, for your information, copies of two updated fact sheets similar to those released at the same time Bill C-78 was tabled for First Reading. The first offers an impressive list of key advances that have been achieved in the EARP reform package; the second provides a revealing comparison of the current and proposed processes. Although I would not suggest that the package is ideal, or that it would not benefit from improvements, I do believe that it represents a very significant advance in environmental assessment as well as being an important step along the path towards sustainable development.

Please accept my very best wishes for a productive workshop. I look forward to your effective participation in the legislative review process. A French text of this letter and the enclosures has also been provided for the convenience of your French-speaking members.

Yours sincerely,

Robert R. de Cotret

Enclosures

Legislative Summary

LS-67E

BILL C-78: CANADIAN ENVIRONMENTAL ASSESSMENT ACT

Helen Morrison
Law and Government Division

31 July 1990

Library of Parliament
Bibliothèque du Parlement

Research Branch

Two recent decisions of the Federal Court of Appeal, one of which is on appeal to the Supreme Court of Canada, upheld lower court rulings which interpreted the Guidelines Order as having a legal force and effect and a broader application than had been previously supposed. Both cases involved provincial dam projects, one in Saskatchewan (the Rafferty-Alameda) and one in Alberta (the Oldman River). In both cases, federal Ministers were ordered to comply with the Guidelines Order in issuing the relevant federal licences for the dam projects (one pursuant to the International River Improvements Act and the other under the Navigable Waters Protection Act). In the Oldman River case, the Minister of Fisheries and Oceans was also ordered to fulfill his responsibility under the Fisheries Act to assess the potential impacts of the dam on fish habitat. These decisions were significant in that they extended the Guidelines Order to apply to projects previously considered to be exclusively provincial in nature, thus expanding the federal jurisdiction in resource development. It was held that every federal decision or responsibility with respect to a project requires an environmental assessment. Furthermore, even where a provincial environmental assessment had been conducted, the Court held that a federal review was required if either some federal concerns were not dealt with (Rafferty) or (as in the case of Oldman River) the provincial process was not on a par with the federal. Because the Guidelines Order, as its name suggests, was never intended to be binding legislation, its provisions were inadequate to deal with the ramifications of the Court's interpretation. It soon became obvious that reforms would be necessary to give the Minister more flexibility.

Even without these cases, however, public interest in environmental matters is putting environmental impact assessment in the limelight and making it more of a priority for governments. Prior to the Court decisions, the EARP Guidelines Order had been widely criticized for being ineffective and limited in scope.(1) Preparation of new legislation to replace the Order was well under way at the time of the first court decision (April 1989); that decision and those following added urgency to the task.

---

(1) Reference may be made to another Library of Parliament publication, "Environmental Impact Assessment in Canada: Proposals for Change" (BP-219E), for background on the perceived weaknesses and past suggestions for reform of the federal environmental assessment process.

corporations listed in Schedule I or II of the Financial Administration Act are included, as well as any other body prescribed by regulation. Specifically excluded from the definition are the commissioners of the Territories, councils of Indian bands, harbour commissions, and those corporations listed in section 85 and Schedule III of the Financial Administration Act and their subsidiaries, although these would be "captured" by regulation under clause 55(1)(j).

A final definition worth noting is that of "project." This is defined as a proposal to "construct, operate, modify, decommission, abandon, or otherwise carry out" a physical work, or to "undertake or otherwise carry out" a physical activity. A "physical activity" (which is not defined in the bill) may be designated by the Governor in Council as not requiring an environmental assessment (clause 55(2)).

Purposes (clause 4)

Clause 4 sets out the purposes of the bill as being threefold: (1) to ensure the careful consideration of the environmental effects of projects; (2) to encourage actions which promote and maintain both a healthy economy and a healthy environment; and (3) to safeguard against trans-border environmental effects.

Environmental Assessment of Projects (clauses 5 to 9)

Clause 5 delineates what projects are to be subject to a mandatory environmental assessment; they include:

(a) a project proposed by a federal authority,

(b) a project financed, in whole or in part, by a federal authority, unless the project was not identified at the time of financing and the federal authority would have no power with respect to the project after it was identified,

(c) a project requiring the transfer of lands from a federal authority, unless the project was not identified at the time of the transfer,

effects, public comments, and possible measures to mitigate significant effects.

Every mandatory study, mediation, and panel review must also consider the purpose of the project and feasible alternatives to it, the need for a follow-up program, the effect of the project on renewable resources and their capacity to regenerate, and any other matter required by the federal authority. It need not address the possible effects of carrying out the project during a national emergency.

The Governor in Council would have the authority to prescribe both exclusion lists and a list of projects or classes of projects requiring mandatory study. Any project not on either list would be subject to a screening.

Screening (clauses 13 to 16)

The federal authority responsible for the project pursuant to clause 5 would also be responsible for a screening of the project and a screening report. If, in its opinion, the project was likely to cause significant adverse environmental effects that might not be mitigable, the project would have to be referred to the Minister of the Environment for a referral to mediation or to a review panel. The project would also have to be referred to the Minister if public concern about the project so warranted. At this point, the federal authority could not exercise any statutory or other authority that would allow the project to proceed.

Should the federal authority find that the project was not likely to cause significant adverse environmental effects, or that those effects could be mitigated, the project might be licensed, approved or financed by the federal authority. The federal authority would also have to ensure that any mitigation measures that the responsible authority considered appropriate were implemented and that its licensing or approval was exercised accordingly. Before allowing the project to be carried out, the authority would have to give the public an opportunity to comment on the screening report and any record in the public registry.

Mediation and Panel Reviews (clauses 25 to 33)

The availability of mediation, as an alternative to a hearing before a review panel, is new to the federal environmental assessment process. From the way it is set up in the legislation, it appears it would be the preferred option. The Minister of the Environment would refer a project to mediation if he was satisfied that the parties directly affected by the project, or who had a direct interest in it, were identified and willing to participate in the mediation and that the mediation would likely result in a consensus among the parties. The Minister might terminate the mediation at any time if such proved not to be the case and a satisfactory result was unlikely. In any other case, the Minister would refer the project to a review panel.

It is the responsibility of the Minister, in consultation with the responsible authority, to appoint the mediator and fix the terms of reference of the mediation. A mediator could be any person who, in the opinion of the Minister, possessed the required knowledge or experience.

A mediator would be responsible for helping the participants to reach a consensus on the environmental effects of the project, on measures to mitigate these, and on a follow-up program. He would then submit a report to the Minister and to the responsible authority setting out the conclusions and recommendations of the participants.

With respect to a review panel, the Minister would also be responsible for fixing the terms of reference and appointing members who, in his opinion, possessed the required knowledge or experience. The EARP Guidelines Order had specified that members must be unbiased and free of any conflict of interest, free of political influence, and have expertise relevant to the anticipated technical, environmental and social effects of the proposal. Presumably, however, members of a review panel (and mediators) would be subject to the Conflict of Interest Code as public office holders and thus be required to conform to principles which would prevent a conflict of interest situation even without those requirements being spelled out in the statute; moreover, similar guidelines could be established pursuant to clause 54(1)(f).

Joint Review Panels (clauses 37 to 39)

Where another jurisdiction, such as a province, was also conducting an environmental assessment of a project, the Minister of the Environment, together with the Secretary of State for External Affairs in the case of a foreign state or an international organization, could establish a joint review panel with that jurisdiction. The panel could have to meet certain conditions, however. The Minister must be involved in the appointment of the chairperson and in setting the terms of reference, and must receive the report. There would also have to be an opportunity for the public to participate in the assessment and see a published report.

Public Hearing by a Federal Authority (clauses 40 to 42)

Another process for assessing the environmental effects of projects under another Act of Parliament might be substituted for the process under this Act with the written approval of the Minister. That substitute process would have to consider the same factors, provide for public participation, and produce a published report, which would be submitted to the Minister.

Trans-Border and Related Environmental Effects (clauses 43 to 49)

The spillover effects of a project from one jurisdiction to another could also be assessed by a federal review panel, either on the Minister's own initiative or at the request of one of the parties involved. The Minister would have to give ten days' notice of his intention to establish a panel both to the proponent of the project and to the governments of all the interested parties. The Minister would have the authority to prohibit the proponent of the project from doing anything to commit himself to the project until the assessment was completed. Should the report of the review panel indicate that the project was likely to cause serious adverse environmental effects, the Minister might order that the project be halted until he or she was satisfied that those effects would be mitigated. Any order of the Minister would expire after 14 days

research and advisory bodies, entering into agreements with other jurisdictions with respect to environmental assessments, recommending appointments and establishing criteria for appointments of mediators and panel members, and establishing criteria for the approval of substitute review processes.

Regulations (clauses 55 and 56)

The Governor in Council would have extensive regulation-making authority with respect to the following matters under the Act.

(a) procedures and time periods for the assessment process,
(b) prescribing an exclusion list of projects likely to have negligible environmental effects,
(c) prescribing a mandatory study list,
(d) prescribing an exclusion list of projects having minimum federal involvement,
(e) prescribing an exclusion list of projects involving national security,
(f) prescribing any body to be a federal authority,
(g) prescribing federal statutes or regulations that confer powers, duties or functions on federal authorities and that require an environmental assessment,
(h) prescribing how information is communicated to the public and the
(i) operation of public registries, varying or excluding any procedure or requirement of the process for certain kinds of projects,
(j) requiring harbour commissions and those corporations listed in section 85 or Schedule III of the Financial Administration Act and their subsidiaries to conduct assessments of their projects,
(k) prescribing anything that is required to be prescribed under the bill, and
(l) generally for carrying out the purposes and provisions of the bill.

The Governor in Council could also prescribe exclusion lists of projects that were physical activities and for which an environmental assessment would be inappropriate.

COMMENTARY

Environmentalists have generally received this bill with some scepticism because its scope is indeterminate until the regulations are developed. One major criticism has been the extensive regulation-making power the bill proposes for the Governor in Council to prescribe both exclusion lists and the federal regulatory authority triggering an environmental assessment. It has been argued that this would leave far too much discretion to Cabinet to circumvent the process and allow projects to be undertaken without an environmental assessment. In response to this it must be pointed out that there is enough public concern about environmental issues to make it almost impossible for any government to authorize a project without an environmental impact study.

Similarly, critics have also noted that a fundamental weakness of the proposed environmental assessment process is that the reports from mediators and review panels would be nothing more than advisory opinions, which the Minister would not necessarily be required to follow. Given, however, that the Minister is required to make the report available to the public, and that all of the documentation is to be filed in a public registry, it is arguable that there would be adequate safeguards against the Minister's rejecting the report without valid reasons. The area of environmental assessment is extremely technical and specialized, however, and it puts a very heavy burden on the public to act as watchdog to ensure the right decisions are taken with regard to the results of an assessment.

One very interesting aspect of the bill is its assertion of the federal jurisdiction in environmental assessment. There would be no delegation of responsibility to the provinces in this area since a federal assessment would be required even where a provincial review was being conducted. At most, a joint review panel might be established with a province. Even then, there would be significant federal control over the process since the bill specifies that the Minister must have a say in the appointment of the chairperson and the terms of reference of the panel, and would receive the report. This approach might be contrasted with that adopted in the other recent piece of reform legislation from the Department of the Environment, the Canadian Environmental Protection Act. That

the basic structure for a completely public process at every stage of assessment.

At the time the bill was tabled in the House, the Minister of the Environment announced a package of reforms to the federal assessment process, including programs and funding to accompany Bill C-78. One of these is a participant funding program which would give financial assistance to parties interested in making representations on the environmental effects of a particular project. Funds on be allocated by the Agency on a project-by-project basis.

Unlike the case in other jurisdictions, the participant federal funding program would not be provided for in legislation. In Ontario, for example, intervenor funding for environmental assessment hearings is available under the Intervenor Funding Project Act, 1988. The decision whether or not to entrench a program in legislation is a policy one, but the advantages of doing so are that the criteria are more public and certain. It could be argued, however, that administration of the program is not likely to be affected in either case.

2nd Session, 34th Parliament,
38-39 Elizabeth II, 1989-90

THE HOUSE OF COMMONS OF CANADA

BILL C-78

An Act to establish a federal environmental assessment process

Preamble

WHEREAS the Government of Canada seeks to achieve an appropriate balance between economic development and the preservation and enhancement of environmental quality;

WHEREAS environmental assessment provides an effective means of integrating environmental factors into planning and decision-making processes in a manner that ensures that present needs are met without compromising the ability to meet the needs of future generations;

WHEREAS the Government of Canada is committed to exercising leadership within Canada and internationally in anticipating and preventing the degradation of environmental quality and at the same time ensuring that economic development is compatible with the high value Canadians place on environmental quality;

AND WHEREAS the Government of Canada is committed to promoting public participation in the environmental assessment of projects to be carried out by or with the approval or assistance of the Government of Canada and providing access to the information on which those environmental assessments are based;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

2e session, 34e législature,
38-39 Elizabeth II, 1989-90

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-78

Loi de mise en œuvre du processus fédéral d'évaluation environnementale

Préambule

Attendu :

que le gouvernement fédéral veut réaliser un juste équilibre entre, d'une part, la croissance économique et, d'autre part, la conservation et l'amélioration de la qualité de l'environnement;

que l'évaluation environnementale constitue un outil efficace pour la prise en compte des facteurs environnementaux dans les processus de planification et de décision, de façon que la satisfaction des besoins actuels ne compromette pas celle des besoins des générations futures;

que le gouvernement fédéral s'engage à jouer un rôle moteur tant au plan national qu'au plan international dans la prévention de la dégradation de l'environnement tout en veillant à ce que les activités de développement économique soient compatibles avec la grande valeur qu'accordent les Canadiens à l'environnement;

que le gouvernement fédéral s'engage à promouvoir la participation de la population à l'évaluation environnementale des projets à entreprendre par lui ou approuvés ou aidés par lui, ainsi qu'à fournir l'accès à l'information sur laquelle se fonde cette évaluation,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

C-78

Second Session, Thirty-fourth Parliament,
38-39 Elizabeth II, 1989-90

THE HOUSE OF COMMONS OF CANADA

BILL C-78

An Act to establish a federal environmental assessment process

First reading, June 18, 1990

THE MINISTER OF THE ENVIRONMENT

C-78

Deuxième session, trente-quatrième législature,
38-39 Elizabeth II, 1989-90

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-78

Loi de mise en œuvre du processus fédéral d'évaluation environnementale

Première lecture le 18 juin 1990

LE MINISTRE DE L'ENVIRONNEMENT

Available from the Canadian Government Publishing Centre, Supply and Services Canada, Ottawa, Canada K1A 0S9

En vente: Centre d'édition du gouvernement du Canada, Approvisionnements et Services Canada, Ottawa, Canada K1A 0S9

32070

SHORT TITLE

Short title

1. This Act may be cited as the *Canadian Environmental Assessment Act*.

INTERPRETATION

Definitions

2. (1) In this Act,

"Agency" «*Agence*» "Agency" means the Canadian Environmental Assessment Agency established by section 57;

"assessment by a review panel" «*examen par une commission*» "assessment by a review panel" means an environmental assessment that is conducted by a review panel appointed pursuant to section 30 and that includes a consideration of the factors set out in subsections 11(1) and (2);

"environment" «*environnement*» "environment" means the components of the Earth, and includes

(*a*) land, water and air, including all layers of the atmosphere,

(*b*) all organic and inorganic matter and living organisms, and

(*c*) the interacting natural systems that include components referred to in paragraphs (*a*) and (*b*);

"environmental assessment" «*évaluation environnementale*» "environmental assessment" means, in respect of a project, an assessment of the environmental effects of the project that is conducted in accordance with this Act and the regulations;

"environmental effect" «*effets environnementaux*» "environmental effect" means, in respect of a project,

(*a*) any change that the project may cause in the environment, and

(*b*) any change to the project that may be caused by the environment,

whether any such change occurs within or outside Canada, and includes any effect of any such change on health and socio-economic conditions;

"exclusion list" «*listes d'exclusion*» "exclusion list" means any list prescribed pursuant to paragraph 55(1)(*b*), (*d*) or (*e*) or subsection 55(2);

"federal authority" «*autorité fédérale*» "federal authority" means

(*a*) a Minister of the Crown in right of Canada,

(*b*) an agency of the Government of Canada or other body established by or

TITRE ABRÉGÉ

Titre abrégé

1. *Loi canadienne sur l'évaluation environnementale*.

DÉFINITIONS

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

«Agence» "Agency" «Agence» L'Agence canadienne d'évaluation environnementale constituée par l'article 57.

«autorité fédérale» "federal authority"

«autorité fédérale»

a) Ministre fédéral;

b) agence fédérale ou organisme constitué sous le régime d'une loi fédérale et tenu de rendre compte au Parlement de ses activités par l'intermédiaire d'un ministre fédéral;

c) ministère ou établissement public mentionnés aux annexes I et II de la *Loi sur la gestion des finances publiques*;

d) tout autre organisme désigné par règlement.

Sont exclus le commissaire en conseil du territoire du Yukon et des Territoires du Nord-Ouest et tous les organismes de ces territoires, tout conseil de bande au sens donné à «conseil de la bande» dans la *Loi sur les Indiens*, les commissions portuaires constituées par la *Loi sur les commissions portuaires*, les commissaires nommés en vertu de la *Loi des commissaires du havre de Hamilton* et de la *Loi de 1911 concernant les commissaires du havre de Toronto*, et les personnes morales mentionnées à l'article 85 ou à l'annexe III de la *Loi sur la gestion des finances publiques* ainsi que les personnes morales dont elles ont le contrôle.

«autorité responsable» "responsible authority" «autorité responsable» L'autorité fédérale qui, en conformité avec le paragraphe 7(1), est tenue de veiller à ce qu'il soit procédé à l'évaluation environnementale d'un projet.

«document» "record" «document» Tous éléments d'information, quels que soient leur forme et leur support, notamment correspondance, note, livre, plan, carte, dessin, diagramme, illustration ou graphique, photographie, film, microformule, enregistrement sonore, magnétos-

RECOMMENDATION

His Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "An Act to establish a federal environmental assessment process".

RECOMMANDATION

Son Excellence le gouverneur général recommande à la Chambre des communes l'affectation de deniers publics dans les circonstances, de la manière et aux fins prévues dans une mesure intitulée «Loi de mise en œuvre du processus fédéral d'évaluation environnementale».

Published under authority of the Speaker of the House of Commons
by the Queen's Printer for Canada

Available from the Canadian Government Publishing Centre, Supply and Services Canada, Ottawa, Canada K1A 0S9

Publié en conformité de l'autorité de l'Orateur de la Chambre des communes par l'imprimeur de la Reine pour le Canada

En vente: Centre d'édition du gouvernement du Canada, Approvisionnements et Services Canada, Ottawa, Canada K1A 0S9

pursuant to an Act of Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs,

(*c*) any department or departmental corporation set out in Schedule I or II to the *Financial Administration Act*, and

(*d*) any other prescribed body,

but does not include the Commissioner in Council or an agency or body of the Yukon Territory or the Northwest Territories, a council of the band within the meaning of the *Indian Act*, The Hamilton Harbour Commissioners constituted pursuant to *The Hamilton Harbour Commissioners' Act*, The Toronto Harbour Commissioners constituted pursuant to *The Toronto Harbour Commissioners' Act, 1911*, a harbour Commission established pursuant to the *Harbour Commissions Act*, a corporation set out in section 85 of the *Financial Administration Act* or Schedule III to that Act or a corporation controlled by such a corporation;

"federal lands" *«territoire domanial»*

"federal lands" means

(*a*) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands, other than lands the administration and control of which have been transferred by the Governor in Council to the Commissioner of the Yukon Territory or the Northwest Territories,

(*b*) the following lands and areas, namely,

(i) the internal waters of Canada within the meaning of the *Territorial Sea and Fishing Zones Act*, including the seabed and subsoil below and the airspace above those waters,

(ii) the territorial sea of Canada as determined in accordance with the *Territorial Sea and Fishing Zones Act*, including the seabed and subsoil below and the airspace above that sea,

(iii) any fishing zone of Canada prescribed under the *Territorial Sea and Fishing Zones Act*,

copique ou informatisé, ou toute reproduction de ces éléments d'information.

«effets environnementaux» Tant les changements que la réalisation d'un projet risque de causer à l'environnement que les changements susceptibles d'être apportés au projet du fait de l'environnement, que ce soit au Canada ou à l'étranger; y sont comprises les répercussions de ces changements en matière sanitaire et socio-économique. *«effets environnementaux» "environmental effect"*

«environnement» Ensemble des conditions et des éléments naturels de la terre, notamment : *«environnement» "environment"*

a) le sol, l'eau et l'air, y compris toutes les couches de l'atmosphère;

b) toutes les matières organiques et inorganiques ainsi que les êtres vivants;

c) les systèmes naturels en interaction qui comprennent les éléments visés aux alinéas *a*) et *b*).

«étude environnementale obligatoire» Évaluation environnementale d'un projet effectuée aux termes de l'article 17 et qui comprend la prise en compte des éléments énumérés aux paragraphes 11(1) et (2). *«étude environnementale obligatoire» "mandatory study"*

«évaluation environnementale» Évaluation des effets environnementaux d'un projet effectuée conformément à la présente loi et aux règlements. *«évaluation environnementale» "environmental assessment"*

«examen par une commission» Évaluation environnementale effectuée par une commission d'évaluation environnementale nommée aux termes de l'article 30 et qui comprend la prise en compte des éléments énumérés aux paragraphes 11(1) et (2). *«examen par une commission» "assessment by a review panel"*

«examen préalable» Évaluation environnementale qui, à la fois : *«examen préalable» "screening"*

a) est effectuée de la façon prévue à l'article 13;

b) prend en compte les éléments énumérés au paragraphe 11(1).

«liste d'étude environnementale obligatoire» Liste établie par règlement aux termes de l'alinéa 55(1)*c*). *«liste d'étude environnementale obligatoire» "mandatory study list"*

TABLE OF PROVISIONS

AN ACT TO ESTABLISH A FEDERAL ENVIRONMENTAL ASSESSMENT PROCESS

TABLE ANALYTIQUE

LOI DE MISE EN ŒUVRE DU PROCESSUS FÉDÉRAL D'ÉVALUATION ENVIRONNEMENTALE

COMING INTO FORCE

Coming into force

75. This Act, or any provision of this Act, shall come into force on a day or days to be fixed by order of the Governor in Council.

ENTRÉE EN VIGUEUR

Entrée en vigueur

75. La présente loi ou telle de ses dispositions entre en vigueur à la date ou aux dates fixées par décret du gouverneur en conseil.

(iv) any exclusive economic zone that may be created by the Government of Canada, and

(v) the continental shelf, consisting of the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the inner limits of the territorial sea, whichever is the greater, or that extend to such other limits as may be prescribed pursuant to an Act of Parliament, and

(*c*) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and are subject to the *Indian Act*, and all waters on and airspace above those reserves or lands;

"follow-up program" means a program for

(*a*) verifying the accuracy of the environmental assessment of a project, and

(*b*) determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project;

"mandatory study" means an environmental assessment that is conducted pursuant to section 17 and that includes a consideration of the factors set out in subsections 11(1) and (2);

"mandatory study list" means the list prescribed pursuant to paragraph 55(1)(*c*);

"mandatory study report" means a report of a mandatory study that is prepared in accordance with the regulations;

"mediation" means an environmental assessment that is conducted with the assistance of a mediator appointed pursuant to section 26 and that includes a consideration of the factors set out in subsections 11(1) and (2);

"Minister" means the Minister of the Environment;

«listes d'exclusion» Listes établies par règlement aux termes des alinéas 55(1)*b*), *d*) et *e*) et du paragraphe 55(2). «listes d'exclusion» *"exclusion list"*

«médiation» Évaluation environnementale effectuée sous la direction d'un médiateur nommé aux termes de l'article 26 et qui comprend la prise en compte des éléments énumérés aux paragraphes 11(1) et (2). «médiation» *"mediation"*

«mesures d'atténuation» Maîtrise, réduction ou élimination des effets environnementaux négatifs d'un projet, éventuellement assortie d'actions de rétablissement notamment par remplacement ou restauration; y est assimilée l'indemnisation des dommages causés. «mesures d'atténuation» *"mitigation"*

«ministre» Le ministre de l'Environnement. «ministre» *"Minister"*

«ministre responsable» «ministre responsable» *"responsible Minister"*

a) Dans le cas d'un ministère ou d'un département d'État, le membre du Conseil privé de la Reine pour le Canada qui en est chargé;

b) dans tout autre cas, le membre du Conseil privé de la Reine pour le Canada désigné par le gouverneur en conseil à titre de ministre responsable.

«programme de suivi» Programme visant à permettre : «programme de suivi» *"follow-up program"*

a) de vérifier la justesse de l'évaluation environnementale d'un projet;

b) de juger de l'efficacité des mesures d'atténuation des effets environnementaux négatifs.

«projet» Réalisation — y compris l'entretien, la modification, la désaffectation ou la fermeture — d'un ouvrage ou exercice d'une activité concrète que propose d'accomplir un promoteur. «projet» *"project"*

«promoteur» Autorité fédérale, personne physique ou morale ou tout organisme qui propose un projet. «promoteur» *"proponent"*

«rapport d'étude environnementale obligatoire» Rapport des résultats d'une étude environnementale obligatoire établi conformément aux règlements. «rapport d'étude environnementale obligatoire» *"mandatory study report"*

«rapport d'examen préalable» Rapport des résultats d'un examen préalable. «rapport d'examen préalable» *"screening report"*

Privacy Act *Loi sur la protection des renseignements personnels*

Clause 72: New. *Article 72.* — Nouveau.

Public Service Staff Relations Act *Loi sur les relations de travail dans la fonction publique*

Clause 73: New. *Article 73.* — Nouveau.

Public Service Superannuation Act *Loi sur la pension de la fonction publique*

Clause 74: New. *Article 74.* — Nouveau.

"mitigation" *«mesures d'atténuation»*
"mitigation" means, in respect of a project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means;

"prescribed" *Version anglaise seulement*
"prescribed" means prescribed by the regulations;

"project" *«projet»*
"project" means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out or a physical activity that a proponent proposes to undertake or otherwise carry out;

"proponent" *«promoteur»*
"proponent", in respect of a project, means the person, body or federal authority that proposes the project;

"record" *«document»*
"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof;

"responsible authority" *«autorité responsable»*
"responsible authority", in relation to a project, means a federal authority that is required pursuant to subsection 7(1) to ensure that an environmental assessment of the project is conducted;

"responsible Minister" *«ministre responsable»*
"responsible Minister" means, in respect of a responsible authority,

(*a*) in the case of a department or ministry of state, the member of the Queen's Privy Council for Canada presiding over that department or ministry, and

(*b*) in any other case, such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the responsible Minister for that responsible authority;

"screening" *«examen préalable»*
"screening" means an environmental assessment that is conducted pursuant to section 13 and that includes a consideration of the factors set out in subsection 11(1);

«territoire domanial» *"federal lands"*
«territoire domanial»

a) Les terres qui appartiennent à Sa Majesté du chef du Canada ou qu'elle a le pouvoir d'aliéner, ainsi que leurs eaux et leur espace aérien, à l'exception des terres sur lesquelles le commissaire du Yukon ou celui des Territoires du Nord-Ouest a pleine autorité par décision du gouverneur en conseil;

b) les terres et zones suivantes :
(i) les eaux intérieures du Canada au sens de la *Loi sur la mer territoriale et la zone de pêche*, ainsi que leur fond, leur sous-sol et leur espace aérien,
(ii) la mer territoriale du Canada délimitée conformément à la *Loi sur la mer territoriale et la zone de pêche*, ainsi que le fond de la mer, son sous-sol et son espace aérien,
(iii) toute zone de pêche délimitée par règlement pris sous le régime de la *Loi sur la mer territoriale et la zone de pêche*,
(iv) toute zone économique exclusive créée par le gouvernement fédéral,
(v) le plateau continental, c'est-à-dire le fond de la mer et le sous-sol des zones sous-marines qui s'étendent au-delà de la mer territoriale sur tout le prolongement naturel du territoire terrestre du Canada soit jusqu'au rebord externe de la marge continentale, soit jusqu'à deux cents milles marins des limites intérieures de la mer territoriale là où ce rebord se trouve à une distance inférieure, soit jusqu'aux limites fixées au titre d'une loi fédérale;

c) les réserves, terres cédées ou autres terres qui ont été mises de côté à l'usage et au profit d'une bande et assujetties à la *Loi sur les Indiens*, ainsi que leurs eaux et leur espace aérien.

Canadian Environmental Protection Act

Clause 71: The definition at present reads as follows:

" "federal lands" means

(*a*) lands that belong to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has power to dispose and all waters on and air above such lands,

(*b*) those submarine areas, not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater, and the water and air above those submarine areas, and

(*c*) reserves, surrendered lands or any other lands vested in Her Majesty and subject to the *Indian Act*, and all waters on and air above such reserves or lands;"

Loi canadienne sur la protection de l'environnement

Article 71. — Texte actuel de la définition de «territoire domanial» :

«territoire domanial»

a) Les terres qui appartiennent à Sa Majesté du chef du Canada ou qu'elle a le pouvoir d'aliéner, ainsi que les eaux et l'air les recouvrant;

b) les zones sous-marines, hors provinces, contiguës au littoral du Canada qui s'étendent sur tout le prolongement naturel de son territoire terrestre jusqu'au rebord externe de la marge continentale, ou jusqu'à deux cents milles marins des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale du Canada là ou le rebord se trouve à une distance inférieure, ainsi que les eaux et l'air recouvrant ces zones sous-marines;

c) les réserves, terres cédées ou autres terres dévolues à Sa Majesté et assujetties à la *Loi sur les Indiens* ainsi que les eaux et l'air les recouvrant.

ritorial sea throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the inner limits of the territorial sea, whichever is the greater, or that extend to such other limits as may be prescribed pursuant to an Act of Parliament, and

(*c*) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and are subject to the *Indian Act*, and all waters on and airspace above those reserves or lands;"

prolongement naturel du territoire terrestre du Canada soit jusqu'au rebord externe de la marge continentale, soit jusqu'à deux cents milles marins des limites intérieures de la mer territoriale là où ce rebord se trouve à une distance inférieure, soit jusqu'aux limites fixées au titre d'une loi fédérale;

c) les réserves, terres cédées ou autres terres qui ont été mises de côté à l'usage et au profit d'une bande et assujetties à la *Loi sur les Indiens*, ainsi que leurs eaux et leur espace aérien.»

R.S., c. P-21 *Privacy Act* *Loi sur la protection des renseignements personnels* L.R., ch. P-21

72. The schedule to the *Privacy Act* is amended by adding thereto, in alphabetical order under the heading "*Other Government Institutions*", the following:

"Canadian Environmental Assessment Agency
Agence canadienne d'évaluation environnementale"

72. L'annexe de la *Loi sur la protection des renseignements personnels* est modifiée par insertion, suivant l'ordre alphabétique, sous l'intertitre «*Autres institutions fédérales*», de ce qui suit :

«Agence canadienne d'évaluation environnementale
Canadian Environmental Assessment Agency»

R.S., c. P-35 *Public Service Staff Relations Act* *Loi sur les relations de travail dans la fonction publique* L.R., ch. P-35

73. Part I of Schedule I to the *Public Service Staff Relations Act* is amended by adding thereto, in alphabetical order, the following:

"Canadian Environmental Assessment Agency
Agence canadienne d'évaluation environnementale"

73. La partie I de l'annexe I de la *Loi sur les relations de travail dans la fonction publique* est modifiée par insertion, suivant l'ordre alphabétique, de ce qui suit :

«Agence canadienne d'évaluation environnementale
Canadian Environmental Assessment Agency»

R.S., c. P-36 *Public Service Superannuation Act* *Loi sur la pension de la fonction publique* L.R., ch. P-36

74. Part I of Schedule I to the *Public Service Superannuation Act* is amended by adding thereto, in alphabetical order, the following:

"Canadian Environmental Assessment Agency
Agence canadienne d'évaluation environnementale"

74. La partie I de l'annexe I de la *Loi sur la pension de la fonction publique* est modifiée par insertion, suivant l'ordre alphabétique, de ce qui suit :

«Agence canadienne d'évaluation environnementale
Canadian Environmental Assessment Agency»

"screening report" *«rapport d'examen préalable»*

"screening report" means a report that summarizes the results of a screening.

Control

(2) For the purposes of this Act, a corporation is controlled by another corporation if

(*a*) securities of the corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation are held, other than by way of security only, by or for the benefit of that other corporation; and

(*b*) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

HER MAJESTY

Binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

PURPOSES

Purposes

4. The purposes of this Act are

(*a*) to ensure that the environmental effects of projects receive careful consideration before responsible authorities take actions in connection with them;

(*b*) to encourage responsible authorities to take actions that will promote and maintain a healthy environment and a healthy economy; and

(*c*) to ensure that serious adverse environmental effects of projects to be carried out in Canada or on federal lands do not occur outside the jurisdictions in which the projects are carried out.

ENVIRONMENTAL ASSESSMENT OF PROJECTS

Projects to be Assessed

Cases where environmental assessment required

5. An environmental assessment of a project is required where a federal authority

(*a*) is the proponent of the project and does any act or thing that commits the federal authority to carrying out the project in whole or in part;

Contrôle

(2) Pour l'application de la présente loi, a le contrôle d'une personne morale la personne morale :

a) d'une part, qui détient — ou en est bénéficiaire —, autrement qu'à titre de garantie seulement, des valeurs mobilières conférant plus de cinquante pour cent du maximum possible des voix à l'élection des administrateurs de la personne morale;

b) d'autre part, dont les valeurs mobilières confèrent un droit de vote dont l'exercice permet d'élire la majorité des administrateurs de la personne morale.

SA MAJESTÉ

Sa Majesté

3. La présente loi lie Sa Majesté du chef du Canada ou d'une province.

OBJET

Objet

4. La présente loi a pour objet :

a) de permettre aux autorités responsables de décider de tout projet susceptible d'avoir des effets environnementaux en se fondant sur un jugement éclairé quant à ces effets;

b) d'inciter ces autorités à favoriser à la fois la santé de l'économie et la salubrité de l'environnement dans la mise en œuvre du projet;

c) de faire en sorte que les éventuels effets environnementaux négatifs graves des projets devant être réalisés dans les limites du Canada ou du territoire domanial ne débordent pas ces limites.

ÉVALUATION ENVIRONNEMENTALE DES PROJETS

Projets visés

Projets visés

5. L'évaluation environnementale d'un projet est effectuée dans les cas suivants :

a) une autorité fédérale en est le promoteur et le met en œuvre en tout ou en partie;

EXPLANATORY NOTES

Access to Information Act

Clause 70: (1) and (2). New.

NOTES EXPLICATIVES

Loi sur l'accès à l'information

Article 70, (1) et (2). — Nouveau.

alphabetical order under the heading "*Other Government Institutions*", the following:

"Canadian Environmental Assessment Agency
Agence canadienne d'évaluation environnementale"

(2) Schedule II to the said Act is amended by adding thereto, in alphabetical order, a reference to

"Canadian Environmental Assessment Act
Loi canadienne sur l'évaluation environnementale"

and a corresponding reference in respect of that Act to "subsection 32(4)".

vant l'ordre alphabétique, sous l'intertitre «*Autres institutions fédérales*», de ce qui suit :

«Agence canadienne d'évaluation environnementale
Canadian Environmental Assessment Agency»

(2) L'annexe II de la même loi est modifiée par insertion, suivant l'ordre alphabétique, de ce qui suit :

«Loi canadienne sur l'évaluation environnementale
Canadian Environmental Assessment Act»

ainsi que de la mention «paragraphe 32(4)» placée en regard de ce titre de loi.

R.S., c. 16 (4th Supp.)

Canadian Environmental Protection Act

Loi canadienne sur la protection de l'environnement

L.R., ch. 16 (4e suppl.)

71. The definition "federal lands" in section 52 of the *Canadian Environmental Protection Act* is repealed and the following substituted therefor:

"federal lands" *«territoire...»*

" "federal lands" means

(*a*) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the right to dispose of, and all waters on and airspace above those lands,

(*b*) the following lands and areas, namely,

(i) the internal waters of Canada within the meaning of the *Territorial Sea and Fishing Zones Act*, including the seabed and subsoil below and the airspace above those waters,

(ii) the territorial sea of Canada as determined in accordance with the *Territorial Sea and Fishing Zones Act*, including the seabed and subsoil below and the airspace above that sea,

(iii) any fishing zone of Canada prescribed under the *Territorial Sea and Fishing Zones Act*,

(iv) any exclusive economic zone that may created by Canada, and

(v) the continental shelf, consisting of the seabed and subsoil of the submarine areas that extend beyond the ter-

71. La définition de «territoire domanial», à l'article 52 de la *Loi canadienne sur la protection de l'environnement*, est abrogée et remplacée par ce qui suit :

«territoire domanial» «territoire domanial» *"federal lands"*

a) Les terres qui appartiennent à Sa Majesté du chef du Canada ou qu'elle a le pouvoir d'aliéner, ainsi que leurs eaux et leur espace aérien;

b) les terres et zones suivantes :

(i) les eaux intérieures du Canada au sens de la *Loi sur la mer territoriale et la zone de pêche*, ainsi que leur fond, leur sous-sol et leur espace aérien,

(ii) la mer territoriale du Canada délimitée conformément à la *Loi sur la mer territoriale et la zone de pêche*, ainsi que le fond de la mer, son sous-sol et son espace aérien,

(iii) toute zone de pêche délimitée par règlement pris sous le régime de la *Loi sur la mer territoriale et la zone de pêche*,

(iv) toute zone économique exclusive créée par le gouvernement fédéral,

(v) le plateau continental, c'est-à-dire le fond de la mer et le sous-sol des zones sous-marines qui s'étendent au-delà de la mer territoriale sur tout le

(*b*) makes or authorizes payments or provides a guarantee for a loan or any other form of financial assistance to the proponent for the purpose of enabling the project to be carried out in whole or in part, except where the financial assistance is in the form of any reduction, avoidance, deferral, removal, refund, remission or other form of relief from the payment of any tax, duty or impost imposed under any Act of Parliament, unless that financial assistance is provided for the purpose of enabling an individual project specifically named in the Act, regulation or order that provides the relief to be carried out;

(*c*) has the administration of federal lands and sells, leases or otherwise disposes of those lands or any interests in those lands, or transfers the administration and control of those lands or interests to Her Majesty in right of a province, for the purpose of enabling the project to be carried out in whole or in part; or

(*d*) under a provision prescribed pursuant to paragraph 55(1)(*g*), issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part.

b) une autorité fédérale accorde à un promoteur en vue de l'aider à mettre en œuvre le projet en tout ou en partie un financement, une garantie d'emprunt ou toute autre aide financière, sauf si l'aide financière est accordée sous forme d'allègement — notamment réduction, évitement, report, remboursement, annulation ou remise — d'une taxe ou d'un impôt qui est prévu sous le régime d'une loi fédérale, à moins que cette aide soit accordée en vue de permettre la mise en œuvre d'un projet particulier spécifié nommément dans la loi, le règlement ou le décret prévoyant l'allègement;

c) une autorité fédérale administre le territoire domanial et en autorise la cession, notamment par vente ou cession à bail, ou celle de tout droit foncier relatif à celui-ci ou en transfère à Sa Majesté du chef d'une province l'administration et le contrôle, en vue de la mise en œuvre du projet en tout ou en partie;

d) une autorité fédérale, aux termes d'une disposition prévue par règlement pris en vertu de l'alinéa 55(1)*g*), délivre un permis ou une licence, donne toute autorisation ou prend toute mesure en vue de permettre la mise en œuvre du projet en tout ou en partie.

Excluded Projects

Exclusion

6. (1) An environmental assessment of a project is not required where

(*a*) in the opinion of the responsible authority the project is described in an exclusion list;

(*b*) the project is to be carried out during a national emergency for which special temporary measures have been taken under the *Emergencies Act*; or

(*c*) the project is to be carried out in response to circumstances that, in the opinion of the responsible authority, constitute an emergency and the responsible authority considers that carrying out the project is in the interest of public health or safety.

Idem

(2) For greater certainty, where a federal authority exercises a power or performs a

Exclusions

Exclusions

6. (1) N'ont pas à faire l'objet d'une évaluation environnementale les projets :

a) qui sont visés, selon l'autorité responsable, dans les listes d'exclusion;

b) qui sont mis en œuvre lors de situations de crise nationale pour lesquelles des mesures d'intervention sont prises aux termes de la *Loi sur les mesures d'urgence*;

c) qui sont mis en œuvre, selon l'autorité responsable, en réaction à une situation d'urgence et lorsqu'elle est d'avis qu'il importe pour la santé ou la sécurité publique que le projet soit mis en œuvre.

Précision

(2) Il est entendu qu'il n'est pas nécessaire d'effectuer une évaluation environnementale

TRANSITIONAL

Employment continued

68. (1) Each person employed in the Federal Environmental Assessment Review Office, or seconded to that Office from any portion of the public service of Canada, on the day preceding the day on which section 57 comes into force is deemed to have been appointed pursuant to section 64 to a position in the Agency of the same occupational nature and at the same level as the position occupied by the person on that preceding day.

Probation

(2) Notwithstanding section 28 of the *Public Service Employment Act*, no person who is deemed under subsection (1) to have been appointed to a position in the Agency is subject to probation unless the person was subject to probation on the day preceding the day of the deemed appointment, and any person who was so subject to probation continues subject thereto only for as long as would have been the case but for this section.

Order continued

69. (1) The *Environmental Assessment and Review Process Guidelines Order*, approved by Order in Council P.C. 1984-2132 of June 21, 1984 and registered as SOR/84-467, shall continue to apply in respect of any proposal that prior to the coming into force of this section was referred to the Minister for public review and for which an Environmental Assessment Panel was established by the Minister pursuant to that Order.

Idem

(2) The Order referred to in subsection (1) shall continue to apply in respect of any proposal for which an environmental screening or initial assessment under that Order was commenced before the coming into force of this section, but where any such proposal is referred to the Minister for public review pursuant to section 20 of that Order, this Act shall thereupon apply and the Minister may refer the project to mediation or a review panel in accordance with section 25.

DISPOSITIONS TRANSITOIRES

Maintien en poste

68. (1) Les membres du personnel du Bureau fédéral d'examen des évaluations environnementales et les personnes détachées d'autres secteurs de l'administration publique fédérale auprès de lui et en fonctions à l'entrée en vigueur de l'article 57 deviennent membres de celui de l'Agence et sont réputés avoir été nommés à des fonctions identiques en vertu de l'article 64 lors de cette entrée en vigueur.

Stage

(2) Par dérogation à l'article 28 de la *Loi sur l'emploi dans la fonction publique*, les personnes qui, la veille du jour de la présomption de nomination, étaient stagiaires continuent de l'être jusqu'à la fin de la période initialement prévue.

Maintien de l'application du décret

69. (1) Le *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement* approuvé par le décret C.P. 1984-2132 du 21 juin 1984 et enregistré sous le numéro DORS/84-467 continue de s'appliquer aux examens publics qui y sont visés et pour lesquels les membres de la commission d'évaluation environnementale ont été nommés sous son régime avant l'entrée en vigueur du présent article.

Examens préalables en cours et évaluations initiales

(2) Le décret visé au paragraphe (1) continue de s'appliquer aux examens préalables ou aux évaluations initiales commencés sous son régime avant l'entrée en vigueur du présent article, jusqu'au moment où, le cas échéant, une proposition est soumise au ministre pour examen public aux termes de l'article 20 du Décret, auquel cas la présente loi commence de s'appliquer et le ministre peut prendre une décision aux termes de l'article 25.

CONSEQUENTIAL AMENDMENTS

R.S., c. A-1

Access to Information Act

70. (1) Schedule I to the *Access to Information Act* is amended by adding thereto, in

MODIFICATIONS CORRÉLATIVES

L.R., ch. A-1

Loi sur l'accès à l'information

70. (1) L'annexe I de la *Loi sur l'accès à l'information* est modifiée par insertion, sui-

duty or function referred to in paragraph 5(*b*) or (*c*) for the purpose of enabling projects to be carried out, an environmental assessment is not required if

(*a*) the projects have not been identified at the time the power is exercised or the duty or function is performed; and

(*b*) the federal authority will have no power to exercise or duty or function to perform in relation to the projects after they are identified.

pour un projet visé aux alinéas 5*b*) ou *c*) si, à la fois :

a) le projet n'est pas déterminé au moment où les attributions visées aux alinéas 5*b*) ou *c*) sont exercées;

b) lorsque le projet sera déterminé, l'autorité fédérale n'aura aucune attribution à exercer à son égard.

Responsible Authority

Autorité responsable

Timing of assessment

7. (1) A federal authority that exercises a power or performs a duty or function referred to in section 5 in relation to a project shall ensure that an environmental assessment of the project is conducted as early as practicable in the planning stages of the project.

7. (1) L'autorité fédérale visée à l'article 5 veille à ce que l'évaluation environnementale soit effectuée le plus tôt possible au stade de la planification du projet.

Moment de l'évaluation

No power, etc., to be exercised until assessment is complete

(2) A responsible authority shall not exercise any power or perform any duty or function referred to in section 5 in relation to a project unless it is satisfied that an environmental assessment of the project has been completed.

(2) L'autorité responsable d'un projet ne peut exercer ses attributions à l'égard de celui-ci que si elle est convaincue que l'évaluation environnementale du projet a été faite.

Effet suspensif

More than one responsible authority

8. (1) 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.

8. (1) Dans le cas où plusieurs autorités responsables sont chargées d'un même projet, elles décident conjointement de la façon de remplir les obligations qui leur incombent aux termes de la présente loi et des règlements.

Pluralité d'autorités responsables

Disagreement

(2) In the case of a disagreement, any of the responsible authorities referred to in subsection (1) may ask the Agency for advice respecting their duties and functions.

(2) En cas de différend, l'une ou l'autre de ces autorités responsables ou elles toutes peuvent demander à l'Agence de les conseiller sur leurs responsabilités communes.

Différend

Action of Federal Authorities Suspended

Suspension des prises de décision

Action suspended

9. Where a project is described in the mandatory study list or is referred to mediation or a review panel, no federal authority shall exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part until the responsible authority has taken a course of action pursuant to paragraph 34(1)(*a*).

9. Dans le cas où un projet appartient à une catégorie visée dans la liste d'étude environnementale obligatoire, ou si un examen par une commission ou une médiation doit être effectué, l'autorité fédérale qui a une ou plusieurs décisions à prendre à l'égard du projet ne peut prendre la décision qui en permet la mise en œuvre en tout ou en partie avant que l'autorité responsable elle-même n'ait pris sa décision aux termes de l'alinéa 34(1)*a*).

Suspension de la prise de décision

Executive Vice-President

62. (1) The Governor in Council may appoint an officer, to be called the Executive Vice-President of the Agency, to hold office during pleasure.

62. (1) Le gouverneur en conseil peut nommer à titre amovible le premier vice-président de l'Agence.

Premier vice-président

Powers, duties and functions

(2) The Executive Vice-President shall exercise such powers and perform such duties and functions as the President may assign.

(2) Le premier vice-président exerce les pouvoirs et fonctions que lui attribue le président.

Pouvoirs et fonctions

Remuneration

63. The President and the Executive Vice-President shall be paid such remuneration as the Governor in Council may fix.

63. Les président et premier vice-président reçoivent la rénumération fixée par le gouverneur en conseil.

Rémunération

Appointment under the *Public Service Employment Act*

64. The officers and employees necessary to carry out the work of the Agency shall be appointed in accordance with the *Public Service Employment Act*.

64. Le personnel nécessaire à l'exécution des travaux de l'Agence est nommé conformément à la *Loi sur l'emploi dans la fonction publique*.

Nominations : *Loi sur l'emploi dans la fonction publique*

Head office

65. The head office of the Agency shall be in the National Capital Region described in the schedule to the *National Capital Act*.

65. Le siège de l'Agence est fixé dans la région de la capitale nationale définie à l'annexe de la *Loi sur la capitale nationale*.

Siège

Contracts, etc., binding on Her Majesty

66. (1) Every contract, memorandum of understanding and arrangement entered into by the Agency in its own name is binding on Her Majesty in right of Canada to the same extent as it is binding on the Agency.

66. (1) Les contrats ou ententes conclus par l'Agence sous son propre nom lient Sa Majesté du chef du Canada au même titre qu'elle-même.

Contrats

Legal proceedings

(2) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Agency, whether in its own name or in the name of Her Majesty in right of Canada, may be brought or taken by or against the Agency in the name of the Agency in any court that would have jurisdiction if the Agency were a corporation that is not an agent of Her Majesty.

(2) À l'égard des droits et obligations qu'elle assume sous le nom de Sa Majesté du chef du Canada ou le sien, l'Agence peut ester en justice sous son propre nom devant tout tribunal qui serait compétent si elle était dotée de la personnalité morale et n'avait pas la qualité de mandataire de Sa Majesté.

Actions en justice

ANNUAL REPORT

RAPPORT ANNUEL

Annual report to Parliament

67. (1) The Minister shall report annually to Parliament, within four months after the end of the fiscal year being reported, on the activities of the Agency and the administration and implementation of this Act during that year.

67. (1) Dans les quatre mois suivant la fin de chaque exercice, le ministre établit un rapport sur l'application de la présente loi et les activités de l'Agence au cours de l'exercice précédent et le fait déposer devant le Parlement.

Rapport annuel du ministre

Statistical summary to be included

(2) The annual report to Parliament referred to in subsection (1) shall include a statistical summary of all environmental assessments conducted and completed under the authority of this Act during the fiscal year being reported.

(2) Le rapport contient le résumé statistique des évaluations environnementales effectuées et terminées en application de la présente loi au cours de l'exercice visé.

Contenu du rapport

ENVIRONMENTAL ASSESSMENT PROCESS

General

Environmental assessment process

10. The environmental assessment process includes, where applicable,

(*a*) a screening or mandatory study and the preparation of a screening report or a mandatory study report;

(*b*) a mediation or assessment by a review panel as provided in section 25 and the preparation of a report; and

(*c*) the design and implementation of a follow-up program.

Factors to be considered

11. (1) Every screening or mandatory study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors:

(*a*) the environmental effects of the project, including the 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 that have been or will be carried out;

(*b*) the significance or, in the case of projects referred to in section 43, 44 or 45, the seriousness of those effects;

(*c*) comments concerning those effects received from the public in accordance with this Act and the regulations; and

(*d*) measures that are technically and economically feasible and that would mitigate any significant or, in the case of projects referred to in section 43, 44 or 45, any serious adverse environmental effects of the project.

Additional factors

(2) In addition to the factors set out in subsection (1), every mandatory study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors:

(*a*) the purpose of the project;

(*b*) alternative means of carrying out the project that are technically and economi-

PROCESSUS D'ÉVALUATION ENVIRONNEMENTALE

Dispositions générales

Processus d'évaluation environnementale

10. Le processus d'évaluation environnementale d'un projet comporte, selon le cas :

a) un examen préalable ou une étude environnementale obligatoire et l'établissement d'un rapport d'examen préalable ou d'un rapport d'étude environnementale obligatoire;

b) une médiation ou un examen par une commission prévu à l'article 25 et l'établissement d'un rapport;

c) l'élaboration et l'application d'un programme de suivi.

Éléments à examiner

11. (1) L'examen préalable, l'étude environnementale obligatoire, la médiation ou l'examen par une commission d'un projet portent notamment sur les éléments suivants :

a) les effets environnementaux du projet, y compris ceux causés par les accidents ou défaillances pouvant en résulter, et les effets cumulatifs que sa réalisation, combinée à l'existence d'autres ouvrages ou à la réalisation d'autres projets, est susceptible de causer à l'environnement;

b) l'importance ou, pour l'application des articles 43, 44 et 45, la gravité des effets environnementaux;

c) les observations du public à cet égard, envoyées conformément à la présente loi et aux règlements;

d) les mesures d'atténuation réalisables, sur les plans technique et économique, des effets environnementaux négatifs importants du projet ou, pour l'application des articles 43, 44 et 45, ses effets environnementaux négatifs graves.

Éléments supplémentaires

(2) L'étude environnementale obligatoire d'un projet et l'évaluation environnementale qui fait l'objet d'une médiation ou d'un examen par une commission portent également sur les éléments suivants :

a) les raisons d'être du projet;

b) les solutions de rechange réalisables sur les plans technique et économique, et leurs effets environnementaux;

Powers

(2) In carrying out its objects, the Agency may

(*a*) undertake studies or activities or conduct research relating to environmental assessment;

(*b*) advise persons and organizations on matters relating to the assessment of environmental effects;

(*c*) negotiate agreements referred to in paragraph 54(1)(*c*) or (*d*) on behalf of the Minister;

(*d*) examine and from time to time report to the Minister on the implementation of the environmental assessment process by responsible authorities; and

(*e*) issue guidelines regarding the records to be kept by responsible authorities in relation to the environmental assessment of projects.

Idem

(2) Dans l'exécution de sa mission, l'Agence peut :

a) mener des études, entreprendre des travaux ou mener des recherches en matière d'évaluation environnementale;

b) conseiller toute personne ou tout organisme en matière d'évaluation des effets environnementaux;

c) négocier au nom du ministre les accords prévus aux alinéas 54(1)*c*) et *d*);

d) examiner l'application du processus d'évaluation environnementale par les autorités responsables et en faire rapport au ministre;

e) établir des lignes directrices relativement aux documents que celles-ci doivent conserver à l'égard de l'évaluation environnementale d'un projet.

Government facilities

60. In exercising its powers and performing its duties and functions under this Act, the Agency shall, where appropriate, make use of the services and facilities of departments, boards and agencies of the Government of Canada.

Usage des services fédéraux

60. Dans l'exercice de ses attributions, l'Agence fait usage, en tant que de besoin, des installations et services des ministères et organismes fédéraux.

President

61. (1) The Governor in Council shall appoint an officer to be called the President of the Agency, to hold office during pleasure, who shall be, for the purposes of this Act, a deputy of the Minister.

Président

61. (1) Le gouverneur en conseil nomme à titre amovible le président de l'Agence; celui-ci a, pour l'application de la présente loi, rang d'administrateur général de ministère.

Idem

(2) The President shall be the chief executive officer of the Agency, and may exercise all of the powers of the Minister under this Act as authorized by the Minister.

Idem

(2) Le président est le premier dirigeant de l'Agence et peut exercer les pouvoirs que la présente loi confère au ministre et que celui-ci l'autorise à exercer.

Acting President

(3) Subject to subsection (5), in the event of the absence or incapacity of the President or a vacancy in that office, the Executive Vice-President shall act as, and exercise the powers of, the President for the time being.

Absence ou empêchement

(3) Sous réserve du paragraphe (5), en cas d'absence ou d'empêchement du président ou de vacance de son poste, l'intérim est assuré par le premier vice-président.

Idem

(4) Subject to subsection (5), the Minister may appoint a person other than the Executive Vice-President to act as the President for the time being.

Idem

(4) Sous réserve du paragraphe (5), le ministre peut nommer une autre personne que le premier vice-président pour assurer l'intérim.

Approval required

(5) The Executive Vice-President, or a person appointed pursuant to subsection (4), shall not act as the President for a period exceeding ninety days without the approval of the Governor in Council.

Approbation du gouverneur en conseil

(5) Le premier vice-président ou une personne nommée aux termes du paragraphe (4) ne peut assurer l'intérim que pour une période de quatre-vingt-dix jours, sauf approbation du gouverneur en conseil.

cally feasible and the environmental effects of any such alternative means;

(*c*) the need for, and the requirements of, any follow-up program in respect of the project;

(*d*) the short-term or long-term capacity for regeneration of renewable resources that are likely to be significantly or, in the case of projects referred to in section 43, 44 or 45, seriously affected by the project; and

(*e*) any other matter that the responsible authority, or the Minister at the request of the responsible authority, may require.

c) la nécessité d'un programme de suivi du projet, ainsi que ses modalités;

d) la capacité de régénération, à court et à long terme, des ressources renouvelables qui risquent d'être touchées de façon importante ou, pour l'application des articles 43, 44 et 45, de façon grave par le projet;

e) tout autre élément que détermine l'autorité responsable ou, sur demande de celle-ci, le ministre.

Determination of factors

(3) For greater certainty, the scope of the factors to be taken into consideration pursuant to paragraphs (1)(*a*), (*b*) and (*d*) and (2)(*b*), (*c*) and (*d*) shall be determined

(*a*) by the responsible authority; or

(*b*) where a project is referred to mediation or a review panel, by the Minister, after consulting the responsible authority, when fixing the terms of reference of the mediation or review panel.

Obligations

(3) Il est entendu que l'évaluation de la portée des éléments visés aux alinéas (1)*a*), *b*) et *d*) et (2)*b*), *c*) et *d*) incombe :

a) à l'autorité responsable;

b) au ministre, après consultation de l'autorité responsable, lors de la détermination du mandat du médiateur ou de la commission d'examen.

Factors not included

(4) An environmental assessment of a project is not required to include a consideration of the environmental effects that could result from carrying out the project during a national emergency for which special temporary measures have been taken under the *Emergencies Act*.

Situations de crise nationale

(4) L'évaluation environnementale d'un projet n'a pas à porter sur les effets environnementaux que sa réalisation peut entraîner lors de situations de crise nationale pour lesquelles des mesures d'intervention sont prises aux termes de la *Loi sur les mesures d'urgence*.

Delegation

12. (1) A responsible authority may delegate any part of the screening or mandatory study of a project, including the preparation of the screening report or mandatory study report, but shall not delegate the duty to take a course of action pursuant to subsection 16(1) or 34(1).

Délégation

12. (1) L'autorité responsable d'un projet peut déléguer l'exécution de l'examen préalable ou de l'étude environnementale obligatoire ainsi que l'établissement des rapports correspondants, à l'exclusion de toute prise de décision aux termes du paragraphe 16(1) ou 34(1).

Idem

(2) For greater certainty, a responsible authority shall not take a course of action pursuant to subsection 16(1) or 34(1) unless it is satisfied that any duty or function delegated pursuant to subsection (1) has been carried out in accordance with this Act and the regulations.

Précision

(2) Il est entendu que l'autorité responsable qui a délégué l'exécution de l'examen ou de l'étude ainsi que l'établissement des rapports en vertu du paragraphe (1) ne peut prendre une décision aux termes du paragraphe 16(1) ou 34(1) que si elle est convaincue que les attributions déléguées ont été exercées conformément à la présente loi et à ses règlements

limitation or other procedural requirement in so far as it applies to those duties and functions and to the extent necessary to permit the federal authority to perform them.

plir les obligations qui lui incombent sous le régime de la présente loi.

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY

AGENCE CANADIENNE D'ÉVALUATION ENVIRONNEMENTALE

Agency established

57. (1) There is hereby established an agency, to be called the Canadian Environmental Assessment Agency, which shall advise and assist the Minister in performing the duties and functions conferred on the Minister by this Act.

57. (1) Est constituée l'Agence canadienne d'évaluation environnementale chargée de conseiller et d'assister le ministre dans l'exercice des attributions qui lui sont conférées par la présente loi.

Constitution

Responsibility of Minister

(2) The Minister is responsible for the Agency.

(2) L'Agence est placée sous la responsabilité du ministre.

Responsabilité du ministre

Objects

58. The objects of the Agency are

(*a*) to administer the environmental assessment process and any other requirements and procedures established by this Act and the regulations;

(*b*) to promote uniformity and harmonization in the assessment of environmental effects across Canada at all levels of government;

(*c*) to promote research in matters of environmental assessment and to encourage the development of environmental assessment techniques and practices, including testing programs, alone or in cooperation with other agencies or organizations; and

(*d*) to promote environmental assessment in a manner that is consistent with the purposes of this Act.

58. L'Agence a pour mission :

a) de gérer le processus d'évaluation environnementale et toute autre procédure ou exigence établis par la présente loi conformément à celle-ci et aux règlements;

b) de promouvoir l'uniformisation et l'harmonisation des processus d'évaluation des effets environnementaux à l'échelle du Canada et à tous les niveaux administratifs;

c) de promouvoir, seule ou en collaboration avec d'autres organismes, la recherche en matière d'évaluation environnementale et de favoriser l'élaboration de techniques en cette matière, notamment en ce qui a trait aux programmes d'essais;

d) de promouvoir les évaluations environnementales conformément à l'objet de la présente loi.

Mission

Duties

59. (1) In carrying out its objects, the Agency shall

(*a*) provide administrative support for mediators and review panels;

(*b*) provide, on the request of the Minister, administrative support for any research or advisory body that the Minister may establish in the area of environmental assessment; and

(*c*) provide information or training to facilitate the conduct of environmental assessments.

59. (1) Dans l'exécution de sa mission, l'Agence :

a) fournit un soutien administratif aux médiateurs et aux commissions d'évaluation environnementale;

b) à la demande du ministre, fournit un soutien administratif aux organismes de recherche et de consultation en matière d'évaluation environnementale que le ministre peut créer;

c) fournit toute information ou formation en vue de faciliter l'application du processus établi par la présente loi et les règlements.

Attributions de l'Agence

Screening

Screening

13. (1) Where a responsible authority is of the opinion that a project is not described in the mandatory study list or any exclusion list, the responsible authority shall ensure that

(*a*) a screening of the project is conducted; and

(*b*) a screening report is prepared.

Source of information

(2) Any available information may be used in conducting the screening of a project, but where a responsible authority is of the opinion that the information available is not adequate to enable it to take a course of action pursuant to subsection 16(1), it shall ensure that any studies and information that it considers necessary for that purpose are undertaken or collected.

Declaration of class screening report

14. (1) Where the Agency receives a screening report from a responsible authority and the Agency is of the opinion that the report could be used as a model in conducting screenings of other projects within the same class, the Agency may, on the request of the responsible authority, declare the report to be a class screening report.

Publication

(2) Any declaration made pursuant to subsection (1) shall be published in the *Canada Gazette* and the screening report to which it relates shall be made available to the public at the registry maintained by the Agency.

Use of class screening report

(3) Where in the opinion of a responsible authority a project or part of a project is within a class in respect of which a class screening report has been declared, the responsible authority may use or permit the use of that report and the screening on which it is based to whatever extent the responsible authority considers appropriate for the purpose of complying with section 13.

Necessary adjustments

(4) Where a responsible authority uses or permits the use of a class screening report, it shall ensure that any adjustments are made that in the opinion of the responsible authority are necessary to take into account local circumstances and any cumulative environmental effects that in the opinion of the

Examen préalable

Examen préalable

13. (1) Dans le cas où, selon elle, le projet n'est pas visé dans la liste d'étude environnementale obligatoire ou dans les listes d'exclusion, l'autorité responsable veille :

a) à ce qu'en soit effectué l'examen préalable;

b) à ce que soit établi un rapport d'examen préalable.

Information

(2) Dans le cadre de l'examen préalable qu'elle effectue, l'autorité responsable peut utiliser tous les renseignements disponibles; toutefois, si elle est d'avis qu'il n'existe pas suffisamment de renseignements pour lui permettre de prendre une décision en vertu du paragraphe 16(1), elle fait procéder aux études qu'elle estime nécessaires à leur obtention.

Déclaration

14. (1) Sur demande de l'autorité responsable, l'Agence, si elle estime qu'un rapport d'examen préalable peut servir de modèle pour d'autres projets appartenant à la même catégorie, peut faire une déclaration à cet effet.

Publication

(2) La déclaration est publiée dans la *Gazette du Canada* et le rapport est accessible au public et consigné au registre tenu par l'Agence.

Catégorie de projets

(3) Si elle estime que tout ou partie d'un projet fait partie d'une catégorie de projets pour laquelle une déclaration a été faite aux termes du paragraphe (1), l'autorité responsable peut permettre l'utilisation de tout ou partie de l'examen préalable et du rapport correspondant dans la mesure qu'elle estime indiquée pour l'application de l'article 13.

Adaptations

(4) Dans les cas visés au paragraphe (3), l'autorité responsable veille à ce que soient apportées les adaptations nécessaires à la prise en compte des facteurs locaux et des effets environnementaux cumulatifs qui, selon elle, sont susceptibles de résulter de la réalisation du projet combinée à l'existence

Implementation Act or other similar boards exercise a power or perform a duty or function referred to in section 5, or

(vi) projects in relation to which there are matters of national security;

(*j*) requiring The Hamilton Harbour Commissioners constituted pursuant to *The Hamilton Harbour Commissioners' Act*, The Toronto Harbour Commissioners constituted pursuant to *The Toronto Harbour Commissioners' Act, 1911*, any harbour Commission established pursuant to the *Harbour Commissions Act*, any corporation set out in section 85 of the *Financial Administration Act* or Schedule III to that Act or any corporation controlled by such a corporation to conduct assessments of the environmental effects of projects for which they exercise any power or perform any duty or function referred to in paragraph 5(*a*), (*b*) or (*c*) and providing the manner of conducting those assessments;

(*k*) prescribing anything that, by this Act, is to be prescribed; and

(*l*) generally, for carrying out the purposes and provisions of this Act.

j) exiger des commissions portuaires constituées par la *Loi sur les commissions portuaires*, et des commissaires nommés en vertu de la *Loi des commissaires du havre de Hamilton* et de la *Loi de 1911 concernant les commissaires du havre de Toronto* ainsi que des personnes morales mentionnées à l'article 85 et à l'annexe III de la *Loi sur la gestion des finances publiques* et des personnes morales dont elles ont le contrôle, qu'elles procèdent à l'évaluation des effets environnementaux des projets, à l'égard desquels elles exercent une attribution visée aux alinéas 5*a*), *b*) ou *c*), et régir les modalités de cette évaluation;

k) prendre toute mesure d'ordre réglementaire prévue par la présente loi;

l) prendre toute autre mesure d'application de la présente loi.

Exclusion of physical activities

(2) The Governor in Council may, on the recommendation of the Minister, make regulations prescribing a list of projects or classes of projects that are physical activities, and for which an environmental assessment is not required, where the Governor in Council is of the opinion that conducting an environmental assessment of such projects would be inappropriate.

(2) Sur recommandation du ministre, le gouverneur en conseil peut, par règlement, exclure certaines activités matérielles ou certaines catégories d'activités de l'évaluation environnementale s'il est d'avis qu'il ne serait pas indiqué de les y soumettre.

Exclusion

Variation of procedures

56. Notwithstanding this or any other Act of Parliament, where the Governor in Council is of the opinion that a federal authority on which duties and functions are imposed under this Act is unable to perform those duties and functions by reason of a time limitation or other procedural requirement that is binding on the federal authority under an Act of Parliament other than this Act or any regulation made under such an Act, the Governor in Council may, on the recommendation of the Minister and the Minister responsible for the administration of that other Act, make regulations varying the time

56. Malgré les autres dispositions de la présente loi ou toute autre loi fédérale, le gouverneur en conseil peut, s'il estime qu'une autorité fédérale assujettie à la présente loi ne peut remplir ses obligations en raison des délais impartis ou de toute autre formalité prévue sous le régime d'une autre loi fédérale ou de ses règlements, prendre, sur la recommandation du ministre et du ministre responsable de l'application de cette autre loi, des règlements visant à modifier ces délais et formalités dans la mesure où ils s'appliquent à ces obligations et dans la mesure nécessaire pour permettre à l'autorité fédérale de rem-

Modification de la procédure

responsible authority are likely to result from the project in combination with other projects that have been or will be carried out.

d'autres ouvrages ou à la réalisation d'autres projets.

Use of previously conducted screening

15. (1) Where a proponent proposes to carry out, in whole or in part, a project for which a screening report has been prepared but the project did not proceed or the manner in which it is to be carried out has subsequently changed, or where a proponent seeks the renewal of a licence, permit or approval referred to in paragraph 5(*d*) in respect of a project for which a screening report has been prepared, the responsible authority may use or permit the use of that report and the screening on which it is based to whatever extent the responsible authority considers appropriate for the purpose of complying with section 13.

Évaluation antérieure

15. (1) Si un promoteur se propose de mettre en œuvre, en tout ou en partie, un projet pour lequel un rapport d'examen préalable a déjà été établi mais qui n'a pas été mis en œuvre ou dont les modalités de mise en œuvre ont été par la suite modifiées ou qui fait l'objet d'une demande de renouvellement d'un permis ou autre type d'autorisation visé à l'alinéa 5*d*), l'autorité responsable peut permettre l'utilisation de tout ou partie de cet examen préalable et du rapport correspondant, dans la mesure qu'elle estime indiquée pour l'application de l'article 13.

Necessary adjustments

(2) Where a responsible authority uses or permits the use of a screening or screening report pursuant to subsection (1), it shall ensure that any adjustments are made that in its opinion are necessary to take into account any significant changes in the circumstances of the project.

Adaptations

(2) Dans les cas visés au paragraphe (1), l'autorité responsable veille à ce que soient apportées les adaptations qu'elle estime nécessaires à la prise en compte des changements importants de circonstances survenus depuis.

Decision of responsible authority

16. (1) After the completion of a screening report in respect of a project, the responsible authority shall take one of the following courses of action:

(*a*) where, in the opinion of the responsible authority,

(i) the project is not likely to cause significant adverse environmental effects, or

(ii) any such effects can be mitigated,

the responsible authority may exercise any power or perform any duty or function that would permit the project to be carried out and shall ensure that any mitigation measures that the responsible authority considers appropriate are implemented;

(*b*) where, in the opinion of the responsible authority,

(i) the project is likely to cause significant adverse environmental effects that may not be mitigable, or

Décision de l'autorité responsable

16. (1) Dès l'achèvement du rapport d'examen préalable, l'autorité responsable prend l'une des décisions suivantes :

a) si elle estime que la réalisation du projet n'est pas susceptible d'entraîner d'effets environnementaux négatifs importants ou qu'ils peuvent être atténués, exercer ses attributions afin de permettre la mise en œuvre du projet et veiller à l'application des mesures d'atténuation qu'elle estime indiquées;

b) si elle estime que la réalisation du projet est susceptible d'entraîner des effets environnementaux négatifs importants qui ne peuvent être atténués ou que les préoccupations du public à l'égard des effets environnementaux le justifient, s'adresser au ministre pour une médiation ou un examen par une commission prévu à l'article 25;

c) si elle estime que la réalisation du projet est susceptible d'entraîner des effets

(*g*) prescribing the provisions of any Act of Parliament or any regulation made pursuant thereto that confer powers, duties or functions on federal authorities the exercise or performance of which requires an environmental assessment under paragraph 5(*d*);

(*h*) respecting the dissemination by responsible authorities of information relating to projects and the environmental assessment of projects and the establishment, maintenance and operation of a public registry, including facilities to enable the public to examine records contained in the registry, the time and manner in which those records may be examined by the public, and the transfer and retention of those records after the completion of any follow-up program;

(*i*) varying or excluding, in the prescribed circumstances, any procedure or requirement of the environmental assessment process set out in this Act or the regulations for the purpose of adapting the process to responsible authorities or any class of responsible authorities in respect of

(i) projects to be carried out on reserves, surrendered lands or other lands that are vested in Her Majesty and subject to the *Indian Act*,

(ii) projects to be carried out outside Canada and any federal lands,

(iii) projects to be carried out under international agreements or arrangements entered into by the Government of Canada or a federal authority,

(iv) projects to be carried out within Canada or on federal lands in respect of which a federal authority exercises a power or performs a duty or function referred to in paragraph 5(*b*) or (*c*),

(v) projects in respect of which the Canada-Nova Scotia Offshore Petroleum Board established pursuant to the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the Canada-Newfoundland Offshore Petroleum Board established pursuant to the *Canada-Newfoundland Atlantic Accord*

attributions des autorités fédérales relativement à un projet dont l'exercice rend nécessaire une évaluation environnementale en vertu de l'alinéa 5*d*);

h) régir la communication par les autorités responsables de l'information relative aux projets et à l'évaluation environnementale de ceux-ci, et l'établissement et la tenue des registres publics, y compris les installations nécessaires pour permettre au public de les consulter, les heures et les modalités de consultation ainsi que le transfert et la garde des documents une fois terminé le programme de suivi;

i) modifier ou exclure, dans les circonstances prévues par règlement, toute procédure ou exigence du processus d'évaluation environnementale établi en vertu de la présente loi et des règlements afin d'adapter le processus aux :

(i) projets à réaliser dans les réserves, terres cédées ou autres terres dévolues à Sa Majesté et assujetties à la *Loi sur les Indiens*,

(ii) projets à réaliser à l'extérieur du Canada et à l'extérieur du territoire domanial,

(iii) projets à entreprendre en vertu d'accords internationaux conclus par le gouvernement du Canada ou une autorité fédérale,

(iv) projets à réaliser au Canada ou sur le territoire domanial pour lesquels une autorité fédérale exerce une attribution visée aux alinéas 5*b*) ou *c*),

(v) projets à l'égard desquels l'Office Canada — Nouvelle-Écosse des hydrocarbures extracôtiers constitué en application de la *Loi de mise en œuvre de l'Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers*, l'Office Canada — Terre-Neuve des hydrocarbures extracôtiers constitué en application de la *Loi de mise en œuvre de l'Accord atlantique Canada — Terre-Neuve* ou un autre organisme semblable exerce des attributions visées à l'article 5,

(vi) projets qui soulèvent des questions de sécurité nationale;

Use of previously conducted mandatory study

18. (1) Where a proponent proposes to carry out, in whole or in part, a project for which a mandatory study report has been prepared but the project did not proceed or the manner in which it is to be carried out has subsequently changed, or where a proponent seeks the renewal of a licence, permit or approval referred to in paragraph 5(*d*) in respect of a project for which a mandatory study report has been prepared, the responsible authority may use or permit the use of that report and the mandatory study on which it is based to whatever extent the responsible authority considers appropriate for the purpose of complying with section 17.

Évaluation antérieure

18. (1) Si un promoteur se propose de mettre en œuvre, en tout ou en partie, un projet pour lequel un rapport d'étude environnementale obligatoire a déjà été établi mais qui n'a pas été mis en œuvre ou dont les modalités de mise en œuvre ont été par la suite modifiées ou qui fait l'objet d'une demande de renouvellement d'un permis ou autre type d'autorisation visé à l'alinéa 5*d*), l'autorité responsable peut permettre l'utilisation de tout ou partie de cette étude environnementale obligatoire et du rapport correspondant, dans la mesure qu'elle estime indiquée pour l'application de l'article 17.

Necessary adjustments

(2) Where a responsible authority uses or permits the use of a mandatory study or a mandatory study report pursuant to subsection (1), it shall ensure that any adjustments are made that in its opinion are necessary to take into account any significant changes in the circumstances of the project.

Adaptations

(2) Dans les cas visés au paragraphe (1), l'autorité responsable veille à ce que soient apportées les adaptations qu'elle estime nécessaires à la prise en compte des changements importants de circonstances survenus depuis.

Public notice

19. (1) After receiving a mandatory study report in respect of a project, the Agency shall, in any manner it considers appropriate, publish a notice setting out the following information:

(*a*) the date on which the mandatory study report will be available to the public;

(*b*) the place at which copies of the report may be obtained; and

(*c*) the deadline and address for filing comments on the conclusions and recommendations of the report.

Avis public

19. (1) Quand elle reçoit un rapport d'étude environnementale obligatoire, l'Agence donne avis, de la façon qu'elle estime indiquée, des éléments suivants :

a) la date à laquelle le rapport d'étude environnementale obligatoire sera accessible au public;

b) le lieu d'obtention d'exemplaires du rapport;

c) l'adresse et la date limite pour la réception par celle-ci d'observations sur les conclusions et recommandations du rapport.

Public concerns

(2) Prior to the deadline set out in the notice published by the Agency, any person may file comments with the Agency relating to the conclusions and recommendations of the mandatory study report.

Observations du public

(2) Toute personne peut, dans le délai indiqué dans l'avis publié par l'Agence, lui présenter ses observations relativement aux conclusions ou recommandations issues de l'étude environnementale obligatoire.

Decision of Minister

20. After taking into consideration the mandatory study report and any comments filed pursuant to subsection 19(2), the Minister shall

(*a*) refer the project to mediation or a review panel in accordance with section 25 where, in the opinion of the Minister,

(i) the project is likely to cause significant adverse environmental effects that may not be mitigable, or

Décision du ministre

20. Après avoir pris en compte le rapport d'étude environnementale obligatoire et les observations qui ont été présentées en vertu du paragraphe 19(2), le ministre :

a) fait procéder à une médiation ou à un examen par une commission conformément à l'article 25, s'il estime que le projet est susceptible d'avoir des effets environnementaux négatifs importants qui ne peuvent être atténués ou que les préoccupa-

STATISTICAL SUMMARY

Preparation of statistical summary

52. (1) During each fiscal year a responsible authority shall maintain a statistical summary of all of the environmental assessments undertaken or directed by it and all courses of action taken, and all decisions made, in relation to the environmental effects of the projects after the assessments were completed.

Idem

(2) The responsible authority shall ensure that the summary for a fiscal year is completed within one month after the end of that fiscal year.

JUDICIAL REVIEW

Defect in form or technical irregularity

53. An application for judicial review in connection with any matter under this Act shall be refused where the sole ground for relief established on the application is a defect in form or a technical irregularity.

ADMINISTRATION

Minister's Powers

Powers to facilitate environmental assessments

54. (1) For the purposes of this Act, the Minister may

(*a*) issue guidelines and codes of practice respecting the application of this Act and the regulations to assist in conducting assessments of the environmental effects of projects;

(*b*) establish research and advisory bodies;

(*c*) enter into agreements or arrangements with any jurisdiction within the meaning of paragraph 37(1)(*a*), (*b*), (*c*) or (*d*) respecting assessments of environmental effects;

(*d*) enter into agreements or arrangements with provinces for the purposes of coordination, consultation, and exchange of information in relation to the assessment of the environmental effects of projects of common interest;

(*e*) recommend the appointment of members to bodies established by federal authorities or to bodies referred to in paragraph 37(1)(*d*), on a temporary basis, for the purpose of facilitating a substitution pursuant to section 40;

RÉSUMÉS STATISTIQUES

Résumés statistiques

52. (1) L'autorité responsable prépare pour chaque exercice un résumé statistique de toutes les évaluations environnementales effectuées par elle ou sous son autorité ainsi que de toutes les décisions prises à l'égard des effets environnementaux causés par les projets une fois terminées les évaluations.

Idem

(2) L'autorité responsable veille à ce que le résumé applicable à un exercice soit prêt au plus tard un mois après la fin de l'exercice.

CONTRÔLE JUDICIAIRE

Vice de forme

53. Il n'est admis aucune demande de contrôle judiciaire liée à la présente loi et fondée uniquement sur un vice de forme ou une irrégularité technique.

ADMINISTRATION

Pouvoirs du ministre

Évaluation environnementale

54. (1) Pour l'application de la présente loi, le ministre peut :

a) donner des lignes directrices et établir des codes de pratique ou de procédure d'application de la présente loi et des règlements en vue d'aider à la tenue des évaluations des effets environnementaux;

b) constituer des organismes consultatifs et de recherche;

c) conclure des accords avec toute instance au sens des alinéas 37(1)*a*), *b*), *c*) ou *d*) en matière d'évaluation des effets environnementaux;

d) conclure des accords avec les provinces en matière de coordination, de consultation et d'échange d'information relativement à l'évaluation des effets environnementaux de projets d'intérêt commun;

e) recommander la nomination de membres temporaires auprès des organismes constitués par des autorités fédérales ou auprès des organismes visés à l'alinéa 37(1)*d*) pour les examens substitués aux examens par une commission aux termes de l'article 40;

(ii) public concerns respecting the environmental effects of the project warrant it,

the responsible authority shall refer the project to the Minister for a referral to mediation or a review panel in accordance with section 25; or

(*c*) where, in the opinion of the responsible authority, the project is likely to cause significant adverse environmental effects that cannot be mitigated, the responsible authority shall not exercise any power or perform any duty or function conferred on it by or under any Act of Parliament that would permit the project to be carried out in whole or in part.

environnementaux négatifs importants qui ne peuvent être atténués, ne pas exercer les attributions qui lui sont conférées sous le régime d'une loi fédérale et qui pourraient permettre la mise en œuvre du projet en tout ou en partie.

Responsible authority to ensure implementation of mitigation measures

(2) For greater certainty, where a responsible authority takes a course of action referred to in paragraph (1)(*a*), it shall exercise any power and perform any duty or function conferred on it by or under any Act of Parliament in a manner that ensures that any mitigation measures that the responsible authority considers appropriate in respect of the project are implemented.

Précision

(2) Il est entendu que l'autorité responsable qui prend la décision visée à l'alinéa (1)*a*) exerce les attributions qui lui sont conférées sous le régime d'une loi fédérale de façon que les mesures d'atténuation qu'elle estime indiquées soient mises en application.

Consideration of public concerns

(3) Before taking a course of action in relation to a project pursuant to subsection (1), the responsible authority shall give the public an opportunity to examine and comment on the screening report and any record that has been filed in the public registry established in respect of the project pursuant to section 51 and shall take into consideration any comments that are filed.

Observations du public

(3) L'autorité responsable donne au public la possibilité d'examiner le rapport d'examen préalable et les documents consignés au registre public établi aux termes de l'article 51 et de faire ses observations à leur égard, et les prend en compte avant de prendre une décision relative à un projet en vertu du paragraphe (1).

Mandatory Study

Étude environnementale obligatoire

Mandatory study

17. Where a responsible authority is of the opinion that a project is described in the mandatory study list, the responsible authority shall

(*a*) ensure that a mandatory study is conducted, and a mandatory study report is prepared and submitted to the Agency, in accordance with the regulations; or

(*b*) refer the project to the Minister for a referral to mediation or a review panel in accordance with section 25.

Étude environnementale obligatoire

17. Dans le cas où, selon elle, le projet est visé dans la liste d'étude environnementale obligatoire, l'autorité responsable a le choix :

a) de veiller à ce que soit effectuée, en conformité avec les règlements, une étude environnementale obligatoire et à ce que soit présenté à l'Agence un rapport d'étude environnementale obligatoire;

b) de s'adresser au ministre afin qu'il fasse effectuer, aux termes de l'article 25, une médiation ou un examen par une commission.

(*f*) establish criteria for the appointment of mediators and members of review panels; and

(*g*) establish criteria for the approval of a substitution pursuant to section 40.

Power to enter into international agreements

(2) The Minister and the Secretary of State for External Affairs may enter into agreements or arrangements with any jurisdiction within the meaning of paragraph 37(1)(*e*) or (*f*) respecting assessments of environmental effects.

Regulations

Regulations

55. (1) The Governor in Council may make regulations

(*a*) respecting the procedures and requirements of, and the time periods relating to, the environmental assessment process set out in this Act, including the conduct of assessments by review panels established pursuant to section 37;

(*b*) prescribing a list of projects or classes of projects for which an environmental assessment is not required, where the Governor in Council is of the opinion that the environmental effects of the projects are likely to be negligible;

(*c*) prescribing a list of projects or classes of projects for which a mandatory study is required, where the Governor in Council is of the opinion that the projects are likely to have significant adverse environmental effects;

(*d*) prescribing a list of projects or classes of projects for which an environmental assessment is not required, where the Governor in Council is of the opinion that the contribution of the responsible authority to the projects through the exercise of its powers or the performance of its duties or functions is minimal;

(*e*) prescribing a list of projects or classes of projects for which an environmental assessment is not required, where the Governor in Council is of the opinion than an environmental assessment of the projects would be inappropriate for reasons of national security;

(*f*) prescribing any body to be a federal authority for the purposes of this Act;

f) fixer les critères de nomination des médiateurs et des membres des commissions d'évaluation environnementale;

g) fixer les critères applicables aux substitutions effectuées en vertu de l'article 40.

Accords internationaux

(2) Le ministre et le secrétaire d'État aux Affaires extérieures peuvent conclure des accords avec toute instance au sens des alinéas 37(1)*e*) ou *f*) en matière d'évaluation des effets environnementaux.

Règlements

Règlements

55. (1) Le gouverneur en conseil peut, par règlement :

a) régir les procédures, les délais applicables et les exigences relatives au processus d'évaluation environnementale prévu par la présente loi, notamment les évaluations effectuées par une commission aux termes de l'article 37;

b) établir la liste des projets ou catégories de projets susceptibles selon lui d'entraîner des effets environnementaux négligeables et pour lesquels l'évaluation environnementale n'est pas nécessaire;

c) établir la liste des projets ou catégories de projets susceptibles, selon lui d'entraîner des effets environnementaux négatifs importants et pour lesquels une étude environnementale est obligatoire;

d) établir la liste des projets ou catégories de projets à l'égard desquels l'exercice par une autorité responsable de ses attributions ne constitue selon lui qu'une intervention marginale au point qu'une évaluation environnementale ne devrait pas être nécessaire;

e) établir la liste des projets ou catégories de projets pour lesquels une évaluation environnementale n'est pas nécessaire, s'il est d'avis qu'il ne serait pas indiqué de les y soumettre pour des raisons de sécurité nationale;

f) déterminer quels organismes sont des autorités fédérales pour l'application de la présente loi;

g) déterminer les dispositions législatives ou réglementaires fédérales prévoyant les

(ii) public concerns respecting the environmental effects of the project warrant it; or

(*b*) refer the project back to the responsible authority for action to be taken under paragraph 34(1)(*a*) where, in the opinion of the Minister,

(i) the project is not likely to cause significant adverse environmental effects, or

(ii) any such effects can be mitigated.

tions du public à l'égard des effets environnementaux du projet le justifient;

b) renvoie le projet à l'autorité responsable pour une décision aux termes de l'alinéa 34(1)*a*) s'il estime que la réalisation du projet n'est pas susceptible d'entraîner des effets environnementaux négatifs importants ou qu'ils peuvent être atténués.

Discretionary Powers

Pouvoirs d'appréciation

Referral to Minister

21. Where at any time a responsible authority is of the opinion that

(*a*) a project is likely to cause significant adverse environmental effects that may not be mitigable, or

(*b*) public concerns respecting the environmental effects of the project warrant it,

the responsible authority may refer the project to the Minister for a referral to mediation or a review panel in accordance with section 25.

Examen par une commission

21. À tout moment, si elle estime que le projet est susceptible d'entraîner des effets environnementaux négatifs importants qui ne peuvent être atténués ou que les préoccupations du public à l'égard des effets environnementaux du projet justifient une médiation ou un examen par une commission, l'autorité responsable peut s'adresser au ministre afin d'y faire procéder conformément à l'article 25.

Termination by responsible authority

22. Where at any time a responsible authority decides not to exercise any power or perform any duty or function referred to in section 5 in relation to a project that has not been referred to mediation or a review panel, it may terminate the environmental assessment of the project.

Arrêt d'une évaluation environnementale

22. L'autorité responsable peut, à tout moment au cours d'une évaluation environnementale qui n'a pas fait l'objet d'une médiation ou d'un examen par une commission, mettre fin à l'évaluation si elle décide de ne pas exercer les attributions visées à l'article 5 qu'elle possède à l'égard du projet.

Termination by Minister

23. Where at any time a responsible authority decides not to exercise any power or perform any duty or function referred to in section 5 in relation to a project that has been referred to mediation or a review panel, the Minister may terminate the environmental assessment of the project.

Pouvoir du ministre

23. Le ministre peut, à tout moment au cours d'une évaluation environnementale qui fait l'objet d'une médiation ou d'un examen par une commission, mettre fin à l'évaluation si l'autorité responsable décide de ne pas exercer les attributions visées à l'article 5 qu'elle possède à l'égard du projet.

Referral by Minister

24. Where at any time the Minister is of the opinion that

(*a*) a project is likely to cause significant adverse environmental effects that may not be mitigable, or

(*b*) public concerns respecting the environmental effects of the project warrant it,

the Minister may, after consulting the responsible authority or, where there is no responsible authority in relation to the

Idem

24. À tout moment, le ministre, après consultation de l'autorité responsable ou, à défaut, de toute autorité fédérale appropriée, s'il estime qu'un projet assujetti à la présente loi est susceptible d'entraîner des effets environnementaux négatifs importants qui ne peuvent être atténués ou que les préoccupations du public à l'égard des effets environnementaux du projet le justifient, peut faire procéder à une médiation ou à un examen

the public to participate effectively in the assessment.

Third party information

(5) Sections 27, 28 and 44 of the *Access to Information Act* apply, with such modifications as the circumstances require, to any determination made under paragraph (4)(*b*) in respect of third party information, and, for the purpose of section 27 of that Act, any record referred to in paragraph (4)(*b*) shall be deemed to be a record that the responsible Minister or the Minister intends to disclose and, for the purpose of applying that Act, any reference in that Act to the person who requested access shall be disregarded if no person has requested access to the information.

Protection from civil proceeding or prosecution

(6) Notwithstanding any other Act of Parliament, no civil or criminal proceedings lie against a responsible Minister or the Minister, or against any person acting on behalf of or under the direction of a responsible Minister or the Minister, and no proceedings lie against the Crown or any responsible authority for the disclosure in good faith of any record or any part of a record pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under section 27 or any other provision of the *Access to Information Act* if reasonable care is taken to give the required notice.

Meaning of "third party information"

(7) For the purposes of this section, "third party information" means

(*a*) trade secrets of a third party;

(*b*) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

(*c*) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; and

(*d*) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

nécessaire à une participation efficace du public à l'évaluation environnementale.

Renseignements relatifs à un tiers

(5) Les articles 27, 28 et 44 de la *Loi sur l'accès à l'information* s'appliquent, compte tenu des adaptations de circonstance, à toute détermination faite aux termes de l'alinéa (4)*b*) à l'égard de renseignements relatifs à un tiers, et tout document visé à cet alinéa est réputé, pour l'application de l'article 27 de cette loi, constituer un document que le ministre ou le ministre responsable a l'intention de communiquer; pour l'application de cette loi, il ne doit pas être tenu compte de la mention de la personne qui a demandé la communication des renseignements si nul ne l'a demandée.

Immunité

(6) Malgré toute autre loi fédérale, le ministre responsable ou le ministre et les personnes qui agissent en leur nom ou sous leur autorité bénéficient de l'immunité en matière civile ou pénale, et la Couronne ainsi que les autorités responsables bénéficient de l'immunité devant toute juridiction, pour la communication totale ou partielle d'un document faite de bonne foi dans le cadre de la présente loi ainsi que pour les conséquences qui en découlent; ils bénéficient également de l'immunité dans les cas où, ayant fait preuve de la diligence nécessaire, ils n'ont pu donner les avis prévus à l'article 27 ou à toute autre disposition de la *Loi sur l'accès à l'information*.

Définition de «renseignements relatifs à un tiers»

(7) Au présent article, «renseignements relatifs à un tiers» s'entend des renseignements suivants :

a) secrets industriels de tiers;

b) renseignements financiers, commerciaux, scientifiques ou techniques fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers;

c) renseignements dont la divulgation risquerait vraisemblablement de causer des pertes ou profits financiers appréciables à un tiers ou de nuire à sa compétitivité;

d) renseignements dont la divulgation risquerait vraisemblablement d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

project, the appropriate federal authority, refer the project to mediation or a review panel in accordance with section 25.

Mediation and Panel Reviews

Decision of Minister

25. Where a project is to be referred to mediation or a review panel under this Act, the Minister shall, within a prescribed period, refer the project

(*a*) to mediation, if the Minister is satisfied that

(i) the parties who are directly affected by or have a direct interest in the project have been identified and are willing to participate in the mediation through representatives, and

(ii) the mediation is likely to produce a result that is satisfactory to all of the parties; or

(*b*) to a review panel, in any other case.

Appointment of mediator

26. Where a project is referred to mediation, the Minister shall, in consultation with the responsible authority,

(*a*) appoint as mediator any person who, in the opinion of the Minister, possesses the required knowledge or experience; and

(*b*) fix the terms of reference of the mediation.

Minister's determination

27. In the case of a dispute respecting the participation of parties in a mediation, the Minister may, on the request of the mediator, determine those parties who are directly affected by or have a direct interest in the project, and for the purposes of this Act any such determination is binding.

Mediation

28. (1) A mediator shall not proceed with a mediation unless the mediator is satisfied that all of the information required for a mediation is available to all of the participants.

Idem

(2) A mediator shall, in accordance with the regulations and the terms of reference of the mediation,

(*a*) help the participants to reach a consensus on

par une commission conformément à l'article 25.

Médiation ou examen par une commission

Décision du ministre

25. Dans le cas où un projet doit faire l'objet d'une médiation ou d'un examen par une commission en vertu de la présente loi, le ministre, dans le délai réglementaire :

a) fait effectuer une médiation pour le projet s'il est convaincu que les conditions suivantes sont réunies :

(i) les parties directement touchées par le projet ou qui y ont un intérêt direct ont été identifiées et acceptent de participer à la médiation par l'intermédiaire de représentants,

(ii) la médiation produira vraisemblablement des résultats satisfaisants pour toutes les parties;

b) dans tout autre cas, fait effectuer un examen par une commission.

Nomination du médiateur

26. S'il fait effectuer une médiation, le ministre, après consultation de l'autorité responsable, nomme médiateur une personne qu'il estime posséder les connaissances ou l'expérience voulues, et fixe son mandat.

Parties

27. En cas de différend, le ministre peut déterminer, à la demande du médiateur, quelles sont les parties directement touchées par le projet ou qui y ont un intérêt direct; pour l'application de la présente loi, cette décision s'impose à tous.

Médiation

28. (1) Le médiateur ne peut procéder à la médiation à moins d'être convaincu que tous les participants ont eu accès à tous les renseignements nécessaires à la médiation.

Idem

(2) Le médiateur, conformément à son mandat et aux règlements, a pour mission :

a) d'aider les participants à s'entendre sur les effets environnementaux que le projet est susceptible d'entraîner, ainsi que sur les mesures d'atténuation des effets environ-

assessment until any follow-up program in respect of the project is completed; and

(*b*) where the project is referred to mediation or a review panel, by the Agency from the appointment of the mediator or the members of the review panel until the report of the mediator or review panel is submitted to the Minister.

Contents of registry

(3) Subject to subsection (4), a public registry shall contain all records produced, collected, or submitted with respect to the environmental assessment of the project, including

(*a*) any report relating to the assessment;

(*b*) any comments filed by the public in relation to the assessment; and

(*c*) any records prepared by the responsible authority for the purposes of section 35.

Categories of information to be made publicly available

(4) A public registry shall contain a record referred to in subsection (3) if the record falls within one of the following categories:

(*a*) records that have otherwise been made available to the public in carrying out the assessment pursuant to this Act and any additional records that have otherwise been made publicly available;

(*b*) any record or part of a record that the responsible authority, in the case of a record in its possession, or the Minister, in the case of a record in the Agency's possession, determines would have been disclosed to the public in accordance with the *Access to Information Act* if a request had been made in respect of that record under that Act at the time the record was filed with the registry, including any record that would be disclosed in the public interest pursuant to subsection 20(6) of that Act; and

(*c*) any record or part of a record, except a record or part containing third party information, if the responsible Minister, in the case of a record in the responsible authority's possession, or the Minister, in the case of a record in the Agency's possession, believes on reasonable grounds that its disclosure would be in the public interest because it is required in order for

b) par l'Agence, dans les cas où une médiation ou un examen par une commission est effectuée, dès la nomination du médiateur ou des membres de la commission jusqu'au moment de la remise du rapport au ministre.

Contenu du registre

(3) Sous réserve du paragraphe (4), le registre public contient tous les documents produits, recueillis ou reçus relativement à l'évaluation environnementale d'un projet, notamment :

a) tout rapport relatif à l'évaluation environnementale du projet;

b) tout commentaire donné par le public relativement à l'évaluation;

c) tous les documents que l'autorité responsable a préparés pour l'application de l'article 35.

Genre d'information disponible

(4) Le registre public permet l'accès aux documents visés au paragraphe (3) si ceux-ci appartiennent à l'une des catégories suivantes :

a) documents qui sont mis à la disposition du public dans le registre conformément à la présente loi ainsi que tout autre document qui a déjà été rendu public;

b) tout ou partie d'un document qui, de l'avis de l'autorité responsable, dans le cas d'un document en sa possession, ou de l'avis du ministre, dans le cas d'un document en la possession de l'Agence, serait communiqué conformément à la *Loi sur l'accès à l'information* si une demande en ce sens était faite aux termes de celle-ci au moment où l'information est versée au registre, y compris tout document qui serait communiqué dans l'intérêt public aux termes du paragraphe 20(6) de cette loi;

c) tout ou partie d'un document, à l'exception d'un document contenant des renseignements relatifs à un tiers, si le ministre responsable, dans le cas d'un document en la possession d'une autorité responsable, ou le ministre, dans le cas d'un document en la possession de l'Agence, a des motifs raisonnables de croire qu'il serait d'intérêt public de le communiquer parce qu'il est

(i) the environmental effects that are likely to result from the project,

(ii) any measures that would mitigate any significant adverse environmental effects, and

(iii) an appropriate follow-up program;

(*b*) prepare a report setting out the conclusions and recommendations of the participants; and

(*c*) submit the report to the Minister and the responsible authority.

nementaux négatifs importants et le programme de suivi indiqué;

b) d'établir un rapport assorti des conclusions et recommandations des participants;

c) de présenter ce rapport au ministre et à l'autorité responsable.

Subsequent reference to review panel

29. Where at any time after a project has been referred to mediation the Minister is of the opinion that the mediation is not likely to produce a result that is satisfactory to all of the parties, the Minister may terminate the mediation and refer the project to a review panel.

Examen par une commission

29. À tout moment après avoir demandé une médiation, s'il estime que celle-ci a peu de chances de produire des résultats satisfaisants pour les parties, le ministre peut y mettre fin et faire effectuer un examen par une commission.

Appointment of review panel

30. Where a project is referred to a review panel, the Minister shall, in consultation with the responsible authority,

(*a*) appoint as members of the panel, including the chairperson thereof, persons who, in the opinion of the Minister, possess the required knowledge or experience; and

(*b*) fix the terms of reference of the panel.

Commission

30. Le ministre, en consultation avec l'autorité responsable, nomme les membres, y compris le président, de la commission d'évaluation environnementale et fixe le mandat de celle-ci. À cette fin, le ministre choisit des personnes qu'il estime posséder les connaissances ou l'expérience voulues.

Assessment by review panel

31. A review panel shall, in accordance with the regulations and its terms of reference,

(*a*) ensure that the information required for an assessment by a review panel is obtained and made available to the public;

(*b*) hold hearings in a manner that offers the public an opportunity to participate in the assessment;

(*c*) prepare a report setting out

(i) the conclusions and recommendations of the panel relating to the environmental effects of the project and any mitigation measures or follow-up program, and

(ii) a summary of any comments received from the public; and

(*d*) submit the report to the Minister and the responsible authority.

Commission d'évaluation environnementale

31. La commission, conformément à son mandat et aux règlements :

a) veille à l'obtention des renseignements nécessaires à l'évaluation environnementale d'un projet et veille à ce que le public y ait accès;

b) tient des audiences de façon à donner au public la possibilité de participer à l'évaluation environnementale du projet;

c) établit un rapport assorti de ses conclusions et recommandations relativement aux effets environnementaux du projet, aux mesures d'atténuation et au programme de suivi, et énonçant, sous la forme d'un résumé, les observations reçues du public;

d) présente son rapport au ministre et à l'autorité responsable.

the Government of Canada or the federal authority shall ensure that the agreement or arrangement provides for the assessment of the environmental effects of those projects and that the assessment will be carried out as early as practicable in the planning stages of those projects.

International agreement or arrangement

(2) Where a federal authority or the Government of Canada on behalf of a federal authority enters into an agreement or arrangement with the government of a foreign state or of a subdivision of a foreign state, an international organization of states, or any institution of such a government or organization, under which a federal authority exercises a power or performs a duty or function referred to in paragraph 5(*b*) or (*c*) in relation to projects

(*a*) that have not been identified at the time the power is exercised or the duty or function is performed, and

(*b*) in respect of which the Government of Canada or the federal authority, as the case may be, will have no power to exercise or duty or function to perform when the projects are identified,

the Government of Canada or the federal authority shall ensure, in so far as is practicable and subject to any other such agreement to which the Government of Canada or federal authority is a party, that the agreement or arrangement provides for the assessment of the environmental effects of those projects and that the assessment will be carried out as early as practicable in the planning stages of those projects.

(2) Le gouvernement du Canada ou toute autorité fédérale veille à ce que les accords que l'autorité fédérale conclut — ou que le gouvernement conclut en son nom — avec le gouvernement d'un État étranger, une subdivision politique d'un État étranger, une organisation internationale d'États ou avec l'un de leurs organismes, en vertu desquels une autorité fédérale exerce une attribution visée aux alinéas 5*b*) ou *c*) au titre de projets qui ne sont pas déterminés au moment où les attributions sont exercées et à l'égard desquels le gouvernement fédéral ou l'autorité fédérale n'aura aucune attribution à exercer lorsqu'ils seront déterminés, prévoient, dans la mesure du possible, tout en étant compatibles avec les accords internationaux dont le Canada est déjà signataire à leur entrée en vigueur, l'évaluation des effets environnementaux des projets, cette évaluation devant être effectuée le plus tôt possible au stade de leur planification.

Accords internationaux

ACCESS TO INFORMATION

ACCÈS À L'INFORMATION

Public registry

51. (1) For the purpose of facilitating public access to records relating to environmental assessments, a public registry shall be established and operated in accordance with this Act and the regulations in respect of every project for which an environmental assessment is conducted.

51. (1) Est tenu, conformément à la présente loi et aux règlements, un registre public pour chacun des projets pour lesquels une évaluation environnementale est effectuée afin de faciliter l'accès aux documents relatifs à cette évaluation.

Registre public

Registry established

(2) The public registry in respect of a project shall be maintained

(*a*) by the responsible authority from the commencement of the environmental

(2) Le registre public est tenu :

a) par l'autorité responsable dès le début de l'évaluation environnementale et jusqu'à ce que le programme de suivi soit terminé;

Établissement du registre

Hearing of witnesses

32. (1) A review panel has the power of summoning any person to appear as a witness before the panel and of ordering the witness to

(*a*) give evidence, orally or in writing; and

(*b*) produce such documents and things as the panel considers necessary for conducting its assessment of the project.

Audition de témoins

32. (1) La commission a le pouvoir d'assigner devant elle des témoins et de leur ordonner de :

a) déposer oralement ou par écrit;

b) produire les documents et autres pièces qu'elle juge nécessaires en vue de procéder à l'examen dont elle est chargée.

Enforcement powers

(2) A review panel has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and other things as is vested in a court of record.

Pouvoirs de contrainte

(2) La commission a, pour contraindre les témoins à comparaître, à déposer et à produire des pièces, les pouvoirs d'une cour d'archives.

Hearings to be public

(3) A hearing by a review panel shall be public unless the panel is satisfied after representations made by a witness that specific, direct and substantial harm would be caused to the witness by the disclosure of the evidence, documents or other things that the witness is ordered to give or produce pursuant to subsection (1).

Audiences publiques

(3) Les audiences de la commission sont publiques sauf si elle décide, à la suite d'observations faites par le témoin, que la communication des éléments de preuve, documents ou objets qu'il est tenu de présenter au titre du présent article lui causerait directement un préjudice réel et sérieux.

Non-disclosure

(4) Where a review panel is satisfied that the disclosure of evidence, documents or other things would cause specific, direct and substantial harm to a witness, the evidence, documents or things are privileged and shall not, without the authorization of the witness, knowingly be or be permitted to be communicated, disclosed or made available by any person who has obtained the evidence, documents or other things pursuant to this Act.

Non-communication

(4) Si la commission conclut que la communication d'éléments de preuve, de documents ou d'objets causerait directement un préjudice réel et sérieux au témoin, ces éléments de preuve, documents ou objets sont protégés; la personne qui les a obtenus en vertu de la présente loi ne peut sciemment les communiquer ou permettre qu'ils le soient sans l'autorisation du témoin.

Enforcement of summonses and orders

(5) Any summons issued or order made by a review panel pursuant to subsection (1) may, for the purposes of enforcement, be made a summons or order of the Federal Court by following the usual practice and procedure.

Exécution des assignations et ordonnances

(5) Aux fins de leur exécution, les assignations faites et ordonnances rendues aux termes du paragraphe (1) peuvent, selon la procédure habituelle, être assimilées aux assignations ou ordonnances de la Cour fédérale.

Public notice

33. On receiving a report submitted by a mediator or a review panel, the Minister shall make the report available to the public in any manner the Minister considers appropriate and shall advise the public that the report is available.

Publication

33. Sur réception du rapport du médiateur ou de la commission d'évaluation environnementale, le ministre en donne avis public et le rend accessible au public de la manière qu'il estime indiquée.

Decision of Responsible Authority

Décision de l'autorité responsable

Decision of responsible authority

34. (1) Following the submission of a report by a mediator or a review panel or the referral of a project back to the responsible

Autorité responsable

34. (1) L'autorité responsable, dès la présentation du rapport du médiateur ou de la commission ou si le ministre, à la suite d'une

is satisfied that the project is not likely to cause any serious adverse environmental effects referred to in that subsection or any such effects will be mitigated or are justified in the circumstances; and

(*b*) with respect to an order made pursuant to subsection 47(2), the Minister is satisfied that the serious adverse environmental effects referred to in that subsection will be mitigated.

qu'ils seront atténués ou qu'ils sont justifiables dans les circonstances;

b) dans le cas d'un arrêté pris en vertu du paragraphe 47(2), le ministre soit convaincu que les effets environnementaux négatifs graves seront atténués.

Notice

(2) At least forty-eight hours before an injunction is issued under subsection (1), notice of the application shall be given to the persons named in the application, unless the urgency of the situation is such that the delay involved in giving such notice would not be in the public interest.

Préavis

(2) L'injonction est subordonnée à la signification d'un préavis d'au moins quarante-huit heures aux parties nommées dans la demande, sauf lorsque cela serait contraire à l'intérêt public en raison de l'urgence de la situation.

Order in force

49. (1) An order under section 47 comes into force at the time it is made.

Prise d'effet de l'arrêté

49. (1) L'arrêté pris en application de l'article 47 prend effet dès sa prise.

Approval of Governor in Council

(2) The order ceases to have effect fourteen days after it is made unless, within that period, it is approved by the Governor in Council.

Approbation du gouverneur en conseil

(2) L'arrêté devient inopérant à défaut d'approbation du gouverneur en conseil dans les quatorze jours suivant sa prise.

Exemption from application of *Statutory Instruments Act*

(3) The order is exempt from the application of sections 3, 5 and 11 of the *Statutory Instruments Act* and shall be published in the *Canada Gazette* within twenty-three days after it is approved by the Governor in Council.

Dérogation à la *Loi sur les textes réglementaires*

(3) L'arrêté est soustrait à l'application des articles 3, 5 et 11 de la *Loi sur les textes réglementaires* et publié dans la *Gazette du Canada* dans les vingt-trois jours suivant son approbation.

AGREEMENTS AND ARRANGEMENTS

ACCORDS SIGNÉS PAR LES AUTORITÉS FÉDÉRALES

Agreements or arrangements with provinces

50. (1) Where a federal authority or the Government of Canada on behalf of a federal authority enters into an agreement or arrangement with the government of a province or any institution of such a government under which a federal authority exercises a power or performs a duty or function referred to in paragraph 5(*b*) or (*c*) in relation to projects

(*a*) that have not been identified at the time the power is exercised or the duty or function is performed, and

(*b*) in respect of which the Government of Canada or the federal authority, as the case may be, will have no power to exercise or duty or function to perform when the projects are identified,

Accords avec les provinces

50. (1) Le gouvernement du Canada ou toute autorité fédérale veille à ce que les accords que l'autorité fédérale conclut — ou que le gouvernement conclut en son nom — avec le gouvernement d'une province ou avec l'un de ses organismes, en vertu desquels une autorité fédérale exerce une attribution visée aux alinéas 5*b*) ou *c*) au titre de projets qui ne sont pas déterminés au moment où les attributions sont exercées et à l'égard desquels le gouvernement fédéral ou l'autorité fédérale n'aura aucune attribution à exercer lorsqu'ils seront déterminés, prévoient l'évaluation des effets environnementaux des projets, cette évaluation devant être effectuée le plus tôt possible au stade de leur planification.

authority pursuant to paragraph 20(*b*), the responsible authority shall take one of the following courses of action in relation to the project:

(*a*) where in the opinion of the responsible authority

(i) the project is not likely to cause significant adverse environmental effects, or

(ii) any such effects can be mitigated or justified in the circumstances,

the responsible authority may exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part and shall ensure that any mitigation measures that the responsible authority considers appropriate are implemented; or

(*b*) where, in the opinion of the responsible authority, the project is likely to cause significant adverse environmental effects that cannot be mitigated and cannot be justified in the circumstances, the responsible authority shall not exercise any power or perform any duty or function conferred on it by or under any Act of Parliament that would permit the project to be carried out in whole or in part.

étude environnementale obligatoire, lui demande de prendre une décision aux termes de l'alinéa 20*b*), prend l'une des décisions suivantes :

a) si elle estime que la réalisation du projet n'est pas susceptible d'entraîner des effets environnementaux négatifs importants, qu'ils peuvent être atténués ou qu'ils sont justifiables dans les circonstances, exercer ses attributions afin de permettre la mise en œuvre du projet en tout ou en partie et veiller à l'application des mesures d'atténuation qu'elle estime indiquées;

b) si elle estime que la réalisation du projet est susceptible d'entraîner des effets environnementaux négatifs importants qui ne peuvent être atténués et ne sont pas justifiables dans les circonstances, ne pas exercer les attributions qui lui sont conférées sous le régime d'une loi fédérale et qui pourraient permettre la mise en œuvre du projet en tout ou en partie.

Responsible authority to ensure implementation of mitigation measures

(2) For greater certainty, where a responsible authority takes a course of action referred to in paragraph (1)(*a*), it shall exercise any power and perform any duty or function conferred on it by or under any Act of Parliament in a manner that ensures that any mitigation measures that the responsible authority considers appropriate in respect of the project are implemented.

Précision

(2) Il est entendu que l'autorité responsable qui prend une décision visée à l'alinéa (1)*a*) exerce les attributions qui lui sont conférées sous le régime d'une loi fédérale de façon que les mesures d'atténuation qu'elle estime indiquées soient mises en application.

Follow-up Program

Programme de suivi

Design and implementation

35. (1) Where a responsible authority takes a course of action pursuant to paragraph 34(1)(*a*), it shall, in accordance with the regulations, design any follow-up program that it considers appropriate for the project and arrange for the implementation of that program.

Suivi

35. (1) L'autorité responsable qui décide de la mise en œuvre conformément à l'alinéa 34(1)*a*) élabore, conformément aux règlements, tout programme de suivi qu'elle estime indiqué et veille à son application.

Public notice

(2) A responsible authority referred to in subsection (1) shall, in accordance with the regulations, advise the public of

Renseignements

(2) L'autorité responsable visée au paragraphe (1) porte à la connaissance du public,

Rules governing review panels

46. Sections 30 to 33 and 37 to 39 apply, with such modifications as the circumstances require, to a review panel established pursuant to subsection 43(1), 44(1) or 45(1) or (2).

Règles applicables aux commissions

46. Les articles 30 à 33 et 37 à 39 s'appliquent, compte tenu des adaptations de circonstance, à la commission d'examen constituée en vertu des paragraphes 43(1), 44(1) ou 45(1) ou (2).

Ministerial orders

47. (1) Where the Minister establishes a review panel to conduct an assessment of the environmental effects of a project referred to in subsection 43(1), 44(1) or 45(1) or (2), the Minister may, by order, prohibit the proponent of the project from doing any act or thing that would commit the proponent to ensuring that the project is carried out in whole or in part until the assessment is completed and the Minister is satisfied that the project is not likely to cause any serious adverse environmental effects referred to in that subsection or that any such effects will be mitigated or are justified in the circumstances.

Suspension du projet

47. (1) Dans le cas où il ordonne la tenue d'un examen par une commission aux termes des paragraphes 43(1), 44(1) ou 45(1) ou (2), le ministre peut, par arrêté, interdire au promoteur d'accomplir tout acte permettant la mise en œuvre du projet en tout ou en partie jusqu'à ce que l'examen soit terminé et qu'il soit convaincu que la réalisation du projet n'est pas susceptible d'entraîner les effets environnementaux négatifs graves visés à ces articles, qu'ils pourront être atténués ou qu'ils sont justifiables dans les circonstances.

Idem

(2) Where a review panel established to assess the environmental effects of a project referred to in subsection 43(1), 44(1) or 45(1) or (2) submits a report to the Minister indicating that the project is likely to cause any serious adverse environmental effects referred to in that subsection the Minister may, by order, prohibit the proponent of the project from doing any act or thing that would commit the proponent to ensuring that the project is carried out in whole or in part until the Minister is satisfied that such effects will be mitigated.

Idem

(2) Dans le cas où la commission en vient à la conclusion dans son rapport au ministre que la mise en œuvre du projet visé aux paragraphes 43(1), 44(1) ou 45(1) ou (2) est susceptible d'entraîner des effets environnementaux négatifs graves, le ministre peut, par arrêté, interdire au promoteur d'accomplir tout acte permettant la mise en œuvre du projet en tout ou en partie jusqu'à ce qu'il soit convaincu que les effets seront atténués.

Injunction

48. (1) Where, on the application of the Attorney General of Canada, it appears to a court of competent jurisdiction that an order made under section 47 in respect of a project has been, is about to be or is likely to be contravened, the court may issue an injunction ordering any person named in the application to refrain from doing any act or thing that would commit the proponent to ensuring that the project or any part thereof is carried out until

(*a*) with respect to an order made pursuant to subsection 47(1), the assessment of the environmental effects of the project referred to in subsection 43(1), 44(1) or 45(1) or (2) is completed and the Minister

Injonction

48. (1) Si, sur demande présentée par le procureur général du Canada, il conclut à l'inobservation — réelle ou appréhendée — de l'arrêté pris en application de l'article 47, le tribunal compétent peut, par ordonnance, interdire à toute personne visée par la demande d'accomplir tout acte permettant la mise en œuvre du projet en tout ou en partie jusqu'à ce que :

a) dans le cas d'un arrêté pris en vertu du paragraphe 47(1), l'examen par une commission soit terminé et que le ministre soit convaincu que la réalisation du projet n'est pas susceptible d'entraîner les effets environnementaux négatifs graves visés aux paragraphes 43(1), 44(1) ou 45(1) ou (2),

(*a*) its course of action in relation to the project;

(*b*) any mitigation measures to be implemented with respect to the adverse environmental effects of the project;

(*c*) the extent to which the recommendations set out in any report submitted by a mediator or a review panel have been adopted; and

(*d*) any follow-up program designed for the project pursuant to subsection (1).

Certificate

Certificate

36. A certificate that states that an environmental assessment of a project has been completed, and that is signed by a responsible authority that exercises a power or performs a duty or function referred to in paragraph 5(*c*) in relation to the project is, in the absence of evidence to the contrary, proof of the matter stated.

Joint Review Panels

Definition of "jurisdiction"

37. (1) For the purposes of this section and sections 38 and 39, "jurisdiction" includes

(*a*) a federal authority;

(*b*) the government of a province;

(*c*) any other agency or body established pursuant to an Act of Parliament or the legislature of a province and having powers, duties or functions in relation to an assessment of the environmental effects of a project;

(*d*) any body established pursuant to a comprehensive land claims agreement referred to in section 35 of the *Constitution Act, 1982* and having powers, duties or functions in relation to an assessment of the environmental effects of a project;

(*e*) a government of a foreign state or of a subdivision of a foreign state, or any institution of such a government; and

(*f*) an international organization of states or any institution of such an organization.

Review panels established jointly with another jurisdiction

(2) Subject to section 38, where the referral of a project to a review panel is required or permitted by this Act and a jurisdiction

conformément aux règlements, les renseignements suivants :

a) sa décision relativement au projet;

b) les mesures d'atténuation des effets environnementaux négatifs, s'il y a lieu;

c) si une médiation ou un examen par une commission a eu lieu, la suite qu'elle entend donner aux recommandations issues des rapports de médiation ou d'examen par une commission;

d) le programme de suivi élaboré en application du paragraphe (1).

Certificat

Certificat d'évaluation environnementale

36. Le certificat signé par l'autorité responsable qui exerce une attribution visée à l'alinéa 5*c*) et où il est déclaré qu'une évaluation environnementale a été effectuée fait foi, sauf preuve contraire, de son contenu.

Examen conjoint

Définition d'«instance»

37. (1) Pour l'application du présent article et des articles 38 et 39, «instance» s'entend notamment :

a) d'une autorité fédérale;

b) du gouvernement d'une province;

c) de tout autre organisme établi sous le régime d'une loi provinciale ou fédérale ayant des attributions relatives à l'évaluation des effets environnementaux d'un projet;

d) de tout organisme, constitué aux termes d'un accord sur des revendications territoriales visé à l'article 35 de la *Loi constitutionnelle de 1982*, ayant des attributions relatives à l'évaluation des effets environnementaux d'un projet;

e) du gouvernement d'un État étranger, d'une subdivision politique d'un État étranger ou de l'un de leurs organismes;

f) d'une organisation internationale d'États ou de l'un de ses organismes.

Examen conjoint

(2) Sous réserve de l'article 38, dans le cas où il estime qu'un examen par une commission est nécessaire ou possible et où une

to the self-government of Indians referred to in subsection (2), to the governing body established by that legislation.

Meaning of "lands in respect of which Indians have interests"

(4) For the purposes of this section, "lands in respect of which Indians have interests" means

(*a*) land areas that are subject to a comprehensive land claim accepted by the Government of Canada for negotiation under its comprehensive land claims policy and that

(i) in the case of land areas situated in the Yukon Territory or the Northwest Territories, have been withdrawn from disposal under the *Territorial Lands Act* for the purposes of land claim settlement, or

(ii) in the case of land areas situated in a province, have been agreed on for selection by the Government of Canada and the government of the province;

(*b*) land areas that belong to Her Majesty or in respect of which Her Majesty has the right to dispose and that have been identified and agreed on by Her Majesty and an Indian band for transfer to settle claims based on

(i) an outstanding lawful obligation of Her Majesty towards an Indian band pursuant to the specific claims policy of the Government of Canada, or

(ii) treaty land entitlement;

(*c*) settlement lands described in a comprehensive land claims agreement referred to in section 35 of the *Constitution Act, 1982*; and

(*d*) lands that have been set aside for the use and benefit of Indians pursuant to legislation that relates to the self-government of Indians and is mentioned in a prescribed schedule.

Reference to lands, etc.

(5) For the purposes of this section, a reference to any lands, land areas or reserves includes a reference to all waters on and air above those lands, areas or reserves.

au paragraphe (2) ou qui, de l'avis du ministre, est susceptible d'y entraîner des effets environnementaux négatifs graves, à l'organisme dirigeant constitué par cette loi.

Terres sur lesquelles les Indiens ont des droits

(4) Pour l'application du présent article, les terres sur lesquelles les Indiens ont des droits s'entendent :

a) des terres visées par des revendications territoriales globales que le gouvernement fédéral a accepté de négocier dans le cadre de sa politique en matière de revendications territoriales des Indiens et :

(i) dans le cas du territoire du Yukon ou des Territoires du Nord-Ouest, celles qui ont été soustraites à l'application de la *Loi sur les terres territoriales* pour les fins d'un règlement en matière de revendications territoriales,

(ii) dans le cas des provinces, celles qui ont été choisies par le gouvernement fédéral et celui de la province concernée;

b) des terres qui appartiennent à Sa Majesté ou qu'elle a le droit de céder et qui ont été choisies par elle et une bande indienne pour cession en vue d'un règlement des revendications territoriales fondées :

(i) sur une obligation légale de Sa Majesté envers une bande indienne aux termes de la politique du gouvernement fédéral en matière de revendications particulières,

(ii) sur les droits fonciers découlant d'un traité;

c) des terres visées dans un accord de revendications territoriales visé à l'article 35 de la *Loi constitutionnelle de 1982*;

d) des terres mises de côté à l'usage et au profit des Indiens conformément à une loi relative à l'autonomie gouvernementale des Indiens mentionnée à l'annexe établie par règlement.

Règle d'application

(5) Pour l'application du présent article, toute mention des terres, territoires ou réserves comprend leurs eaux et leur espace aérien.

referred to in paragraph (1)(*a*), (*b*), (*c*) or (*d*) has a responsibility or an authority to conduct an assessment of the environmental effects of the project or any part of it, the Minister may establish a review panel jointly with that jurisdiction.

instance visée à l'un des alinéas (1)*a*), *b*), *c*) ou *d*) a la responsabilité ou le pouvoir d'entreprendre l'évaluation des effets environnementaux de tout ou partie du projet, le ministre peut organiser un examen conjointement avec l'instance visée.

Idem

(3) Subject to section 38, where the referral of a project to a review panel is required or permitted by this Act and a jurisdiction referred to in paragraph (1)(*e*) or (*f*) has a responsibility or an authority to conduct an assessment of the environmental effects of the project or any part of it, the Minister and the Secretary of State for External Affairs may establish a review panel jointly with that jurisdiction.

(3) Sous réserve de l'article 38, dans le cas où ils estiment qu'un examen par une commission est nécessaire ou possible et où une instance visée à l'alinéa (1)*e*) ou *f*) a la responsabilité ou le pouvoir d'entreprendre l'évaluation des effets environnementaux de tout ou partie du projet, le ministre et le secrétaire d'État aux Affaires extérieures peuvent organiser un examen conjointement avec l'instance visée.

Idem

Conditions

38. The Minister shall not establish a review panel jointly with a jurisdiction referred to in subsection 37(1) unless the Minister is satisfied that

(*a*) the Minister may appoint or approve the appointment of the chairperson or a co-chairperson and one or more other members of the panel;

(*b*) the Minister may fix or approve the terms of reference for the panel;

(*c*) the public will be given an opportunity to participate in the assessment conducted by the panel;

(*d*) on completion of the assessment, the report of the panel will be submitted to the Minister; and

(*e*) the panel's report will be published.

38. Le ministre ne participe à l'organisation d'un examen conjoint avec une instance visée au paragraphe 37(1) que s'il est convaincu que les conditions suivantes sont réunies :

a) il peut nommer le président ou le coprésident et un ou plusieurs membres de la commission, ou approuver leur nomination;

b) il peut fixer ou approuver le mandat de la commission;

c) le public aura la possibilité de participer à l'examen;

d) dès l'achèvement de l'examen, la commission lui présentera un rapport;

e) le rapport sera publié.

Conditions de l'examen conjoint

Deemed substitution

39. Where the Minister establishes a review panel jointly with a jurisdiction referred to in subsection 37(1), the assessment conducted by that panel shall be deemed to satisfy any requirements of this Act and the regulations respecting assessments by a review panel.

39. Dans le cas où le ministre organise un examen conjointement avec une instance visée au paragraphe 37(1), l'examen est réputé satisfaire aux exigences de la présente loi et des règlements en matière d'évaluation environnementale effectuée par une commission.

Examen réputé conforme

Public Hearing by a Federal Authority

Audience publique par une autorité fédérale

Substitute for review panel

40. (1) Where the referral of a project to a review panel is required or permitted by this Act and the Minister is of the opinion that a process for assessing the environmental effects of projects that is followed by a federal authority under an Act of Parliament other than this Act or by a body referred to

40. (1) Dans le cas où la présente loi lui permet de demander un examen par une commission ou l'y oblige, et s'il estime que le processus d'évaluation des effets environnementaux suivi par une autorité fédérale sous le régime d'une autre loi fédérale ou par un organisme visé à l'alinéa 37(1)*d*) serait indi-

Substitution

respect of which Indians have interests, the Minister may establish a review panel to conduct an assessment of the environmental effects of the project on those lands.

le territoire domanial et sur les terres sur lesquelles les Indiens ont des droits.

Environmental effects originating on federal and other lands

(2) Where a project for which an environmental assessment is not required under section 5 is to be carried out on lands in a reserve that is set apart for the use and benefit of a band and is subject to the *Indian Act*, on settlement lands described in a comprehensive land claims agreement referred to in section 35 of the *Constitution Act, 1982* or on lands that have been set aside for the use and benefit of Indians pursuant to legislation that relates to the self-government of Indians and is mentioned in a prescribed schedule, and the Minister is of the opinion that the project is likely to cause serious adverse environmental effects outside those lands, the Minister may establish a review panel to conduct an assessment of the environmental effects of the project outside those lands.

(2) S'il est d'avis qu'un projet non visé à l'article 5 qui doit être mis en œuvre sur des terres d'une réserve mise de côté à l'usage et au profit d'une bande et assujettie à la *Loi sur les Indiens*, sur des terres visées dans un accord de revendications territoriales visé à l'article 35 de la *Loi constitutionnelle de 1982* ou sur des terres qui ont été mises de côté à l'usage et au profit des Indiens conformément à une loi relative à l'autonomie gouvernementale des Indiens mentionnée à l'annexe établie par règlement est susceptible d'entraîner des effets environnementaux négatifs graves à l'extérieur de ces terres, le ministre peut ordonner l'examen par une commission de ces effets.

Effets sur les terres d'une réserve et autres

Notice

(3) At least ten days before a review panel is established pursuant to subsection (1) or (2), the Minister shall give notice of the intention to establish a panel to the proponent of the project and to the governments of all interested provinces and

(*a*) in the case of a project that is to be carried out on, or in the opinion of the Minister is likely to cause serious adverse environmental effects on, lands in a reserve that is set apart for the use and benefit of a band and is subject to the *Indian Act*, to the band council established under that Act for that reserve;

(*b*) in the case of a project that is to be carried out on, or in the opinion of the Minister is likely to cause serious adverse environmental effects on, settlement lands described in a comprehensive land claims agreement referred to in subsection (2), to the party to the agreement representing the Indians or that party's successor; and

(*c*) in the case of a project that is to be carried out on, or in the opinion of the Minister is likely to have serious adverse environmental effects on, lands that have been set aside for the use and benefit of Indians pursuant to legislation that relates

(3) Avant d'ordonner l'examen par une commission en vertu des paragraphes (1) et (2), le ministre donne un préavis d'au moins dix jours au promoteur du projet et aux gouvernements des provinces concernées, ainsi qu'aux organismes suivants :

a) dans le cas d'un projet qui doit être mis en œuvre sur des terres d'une réserve mise de côté à l'usage et au profit d'une bande et assujettie à la *Loi sur les Indiens* ou qui, de l'avis du ministre, est susceptible d'y entraîner des effets environnementaux négatifs graves, au conseil de bande constitué sous le régime de cette loi pour cette réserve;

b) dans le cas d'un projet qui doit être mis en œuvre sur des terres visées dans un accord de revendications territoriales visé au paragraphe (2) ou qui, de l'avis du ministre, est susceptible d'y entraîner des effets environnementaux négatifs graves, à la partie à l'accord qui représente les Indiens;

c) dans le cas d'un projet qui doit être mis en œuvre sur des terres qui ont été mises de côté à l'usage et au profit des Indiens conformément à une loi relative à l'autonomie gouvernementale des Indiens visée

Avis

in paragraph 37(1)(*d*) would be an appropriate substitute, the Minister may approve the substitution of that process for an environmental assessment by a review panel under this Act.

qué dans les circonstances, le ministre peut autoriser la substitution.

Manner of approval

(2) An approval of the Minister pursuant to subsection (1) shall be in writing and may be given in respect of a project or a class of projects.

(2) L'autorisation du ministre est donnée par écrit et peut viser un projet ou une catégorie de projets.

Modalités

Conditions

41. The Minister shall not approve a substitution pursuant to subsection 40(1) unless the Minister is satisfied that

(*a*) the process to be substituted will include a consideration of the factors referred to in section 11;

(*b*) the public will be given an opportunity to participate in the assessment;

(*c*) at the end of the assessment, a report will be submitted to the Minister; and

(*d*) the report will be published.

41. Le ministre ne peut autoriser la substitution que s'il est convaincu que les conditions suivantes sont réunies :

a) l'évaluation à effectuer portera entre autres sur les éléments visés à l'article 11;

b) le public aura la possibilité de participer au processus d'évaluation;

c) dès l'achèvement de l'évaluation, un rapport lui sera présenté;

d) le rapport sera publié.

Conditions

Deemed substitution

42. Where the Minister approves a substitution of a process pursuant to subsection 40(1), an assessment that is conducted in accordance with that process shall be deemed to satisfy any requirements of this Act and the regulations in respect of assessments by a review panel.

42. L'évaluation autorisée en application du paragraphe 40(1) est réputée satisfaire aux exigences de la présente loi et des règlements en matière d'évaluation environnementale effectuée par une commission.

Évaluation réputée conforme

TRANS-BORDER AND RELATED ENVIRONMENTAL EFFECTS

EFFETS HORS FRONTIÈRES ET EFFETS ENVIRONNEMENTAUX CONNEXES

Interprovincial environmental effects

43. (1) Where a project for which an environmental assessment is not required under section 5 is to be carried out in a province and the Minister is of the opinion that the project is likely to cause serious adverse environmental effects in another province, the Minister may establish a review panel to conduct an assessment of the interprovincial environmental effects of the project.

43. (1) Le ministre peut ordonner l'examen par une commission des effets environnementaux d'un projet non visé à l'article 5 s'il estime que le projet doit être mis en œuvre dans une province et est susceptible de causer des effets environnementaux négatifs graves dans une autre province.

Effets interprovinciaux

Absence of agreement

(2) The Minister shall not establish a review panel pursuant to subsection (1) where the Minister and the governments of all interested provinces have agreed on another manner of conducting an assessment of the interprovincial environmental effects of the project.

(2) Le ministre ne peut ordonner l'examen par une commission en vertu du paragraphe (1) que si lui-même et les gouvernements des provinces concernées ne peuvent s'entendre sur des modalités de rechange de l'évaluation des effets environnementaux interprovinciaux du projet.

Entente interprovinciale

Initiative for establishing review panel

(3) A review panel may be established pursuant to subsection (1) on the Minister's

(3) Le ministre peut ordonner l'examen par une commission de sa propre initiative ou

Initiative

own initiative or at the request of the government of any interested province.

Notice

(4) At least ten days before establishing a review panel pursuant to subsection (1), the Minister shall give notice of the intention to establish a panel to the proponent of the project and to the governments of all interested provinces.

Meaning of "interested province"

(5) For the purposes of this section and subsection 45(3), "interested province" means

(*a*) a province in which the project is to be carried out; or

(*b*) a province that claims that serious adverse environmental effects are likely to occur in that province as a result of the project.

International environmental effects

44. (1) Where a project for which an environmental assessment is not required under section 5 is to be carried out in Canada or on federal lands and the Minister is of the opinion that the project is likely to cause serious adverse environmental effects outside Canada and those federal lands, the Minister and the Secretary of State for External Affairs may establish a review panel to conduct an assessment of the international environmental effects of the project.

Notice

(2) At least ten days before establishing a review panel pursuant to subsection (1), the Minister shall give notice of the intention to establish a panel to

(*a*) the proponent of the project;

(*b*) the government of any province in which the project is to be carried out or that is adjacent to federal lands on which the project is to be carried out; and

(*c*) the government of any foreign state in which, in the opinion of the Minister, serious adverse environmental effects are likely to occur as a result of the project.

Environmental effects on federal and other lands

45. (1) Where a project for which an environmental assessment is not required under section 5 is to be carried out in Canada and the Minister is of the opinion that the project is likely to cause serious adverse environmental effects on federal lands or on lands in

à la demande du gouvernement d'une province concernée.

Avis

(4) Avant d'ordonner l'examen par une commission, le ministre donne un préavis d'au moins dix jours au promoteur du projet et à tous les gouvernements des provinces concernées.

Définition de «province concernée»

(5) Pour l'application du présent article et du paragraphe 45(3), «province concernée» s'entend de la province où est mis en œuvre le projet et de celle qui prétend que le projet est susceptible d'entraîner des effets environnementaux négatifs graves sur son territoire.

Effets internationaux

44. (1) Le ministre et le secrétaire d'État aux Affaires extérieures peuvent ordonner l'examen par une commission des effets environnementaux internationaux d'un projet non visé à l'article 5 si le projet, à la fois :

a) doit être mis en œuvre au Canada ou sur le territoire domanial;

b) est susceptible, de l'avis du ministre, d'entraîner des effets environnementaux négatifs graves à l'étranger ou hors du territoire domanial.

Avis

(2) Avant d'ordonner l'examen par une commission, le ministre donne un préavis d'au moins dix jours :

a) au promoteur du projet;

b) au gouvernement de la province où est mis en œuvre le projet ou dont le territoire est contigu au territoire domanial sur lequel le projet est mis en œuvre;

c) au gouvernement de l'État étranger à l'égard duquel, selon le ministre, le projet est susceptible d'entraîner des effets environnementaux négatifs graves sur son territoire.

Territoire domanial et autre

45. (1) Le ministre peut ordonner l'examen par une commission des effets environnementaux d'un projet non visé à l'article 5 si le projet doit être mis en œuvre au Canada et, à son avis, est susceptible d'entraîner des effets environnementaux négatifs graves sur

Alberta MEMORANDUM

FEDERAL AND
INTERGOVERNMENTAL AFFAIRS

FROM Bill Oppen
Director, Natural Resource Policy

OUR FILE REFERENCE

YOUR FILE REFERENCE

TO Orysia J. Lennie
Deputy Minister
Federal and Intergovernmental Affairs

DATE April 26, 1990

TELEPHONE

Vance MacNichol
Deputy Minister
Environment

STRATEGY RESPECTING FEDERAL ENVIRONMENTAL ASSESSMENT LEGISLATION

On Thursday, April 19th, representatives from Alberta, British Columbia, Manitoba, Quebec, Ontario, and Nova Scotia met in Vancouver to develop a strategic position regarding the proposed federal Environmental Assessment Act, and with respect to interim measures that need to be taken to remove environmental decision making from the courts. Representing Alberta at the meeting were Jim Taylor, Environment, David Axler, Attorney General, and myself.

This meeting was called in order to develop a consistent and coordinated provincial position in advance of a meeting of Deputy Ministers of Environment on May 3rd in Ottawa. At this meeting, the Deputies, along with representatives of Energy Ministers, will be consulted on the new legislation.

Essentially, all of the participating provinces agreed on the fundamentals of a unified position. All of Alberta's proposals respecting the position were adopted. Manitoba will prepare a draft provincial position paper by Wednesday, April 25th, and will circulate it to all provinces for comment prior to the May 3rd meeting.

The position respecting the new legislation will be built around the following principles:

1. Respect for provincial jurisdiction must be a central theme. There must be the capability, through administrative agreements, for Canada to defer to a provincial process where federal interests are limited.

2. The Act must contain provisions for joint reviews based upon a formula or set of criteria. This formula will determine the extent of each jurisdiction's involvement.

3. The Act, or the regulations, must contain an exclusion or grandfather clause for projects that are either underway or that have previously been reviewed by a provincial process.

4. The current federal process whereby ad hoc "expert" panels are struck for each review needs to be changed to ensure consistency. It has been recommended that a standing "pool" of panel members be established. These panel members need not be "experts" in a particular field.

5. Federal reviews must be sensitive to the time frames under which projects are planned and developed. Reasonable time limits need to be imposed on reviews.

6. The Act should not attempt to supersede a province's responsibility or jurisdiction to determine the need or justification for a project. This would only be appropriate in the case where the project is 100 percent federal.

7. The Act must reference and be built upon the Statement of Principles on Cooperation on the Environment as approved by the CCME.

8. The provinces need to be a party to the development of the exclusion and compulsory review lists.

9. With respect to projects with transboundary impacts there needs to be a provision for the deferral to the provinces of federal interests where there is an inter-provincial accord on cooperative assessments.

With respect to the interim measures, the provinces will demand that action be taken to amend the existing EARP Guidelines Order in order to remove environmental policy from the courts. The provinces will suggest that if the new legislation contains provisions allowing for the deferral to a provincial process then, as an interim step, the existing Order should be amended in order to be consistent.

Alberta has also asked that the issue of delegation of administration of the habitat and pollution provision of the Fisheries Act be considered within the context of these consultations as a related issue.

William Oppen

WO/fr

NOT FOR PUBLICATION

EXCERPTS FROM THE UNOFFICIAL TRANSCRIPTS OF THE CANADIAN ENVIRONMENTAL NETWORK MEETING WITH FEDERAL MINISTER OF THE ENVIRONMENT HON. ROBERT DECOTRET MONDAY OCTOBER 15TH
Comments have been edited.

RE: ENVIRONMENTAL ASSESSMENT ACT, BILL C-78

Included in Minister deCotret's opening remarks:
Bill C-78 is a far reaching piece of legislation. We are moving ahead of a number countries on this, even the Dutch, who are considered to be way ahead, have said so. I am not saying it is perfect, but if you recall from the very outset I said that I would be willing to look at recommendations for amendments. If there are things that we can change I am willing to look at that. The only point that I would like to register is that we can no longer wait. Let's do it. Let's do it well or as well as we can. [The system we have now] is basically flawed at the base. With the new legislation I believe that we will be able to work more effectively for the environment.

I would like to see the legislation through the House as quickly as possible. Hopefully we can get it through second reading in a day, get it into committee and then the committee would work over the next month to hear everyone who has a point of view. I would like to get it through before the end of the session, otherwise there will be year's delay.

Answers to questions:

BRIAN PANNELL, ENVIRONMENTAL ASSESSMENT CAUCUS: The Environmental Assessment Caucus would like to ask you to give us a commitment today that there will no changes to the EARP guidelines order while C-78 is pending nor until any new legislation concerning environmental assessment completes its passage through the House.

DECOTRET: The only commitment I can give you this morning is that I would personally oppose very strongly any changes to the guidelines order. We have got the legislation before the House. I would like to move it into committee as quickly as possible and get it through, with or without amendments. If there are good amendments I will accept them.

We need the new legislation to get rid of the guidelines order, because it is a flawed process. It was never designed as legislation. It is not the way you should legislate environmental assessment. You have got to have a piece of legislation that has gone through the House, been debated and that is comprehensive.

In terms of modifying the guidelines order itself. I think it has to stay there until we have something better to put in the window and that is C-78, in one form or another. But we have got to get that piece of legislation through. It is very critical.

BRIAN PANNELL: I would like to add for your information that the general view is that the current Bill is far less perfect than the EARP guidelines order. We are therefore very appreciative of the fact that you are prepared to entertain the possibility of amendments to it.

DECOTRET: I have told you I am willing to see any proposed amendments. You claim it is less perfect than the guidelines order, I would probably argue the opposite. There are flaws in the guidelines order that are so blatant as to make the whole process ridiculous at points.

We can not live with the guidelines order much, much longer. It is a very flawed process. Decision making is scattered all over the place, standards are not proscribed. It is all based on an exception basis. You can't run a system like that with any kind of assurance that you are going to accomplish the goal that you want to accomplish, which is to make sure that these projects or policies or programmes are effectively controlled in a way that will ensure that there is no environmental negative impact. We have got to move to a new system.

EVELYN CROWSHOE, OLDMAN-RAFFERTY: Will you withdraw the licence to build the Rafferty-Alameda dam? How will you ensure that both the Saskatchewan and Alberta governments actually stop work on unlicensed dams until the federal environmental assessment process is complete? We consider it your department's responsibility to take the legal action to ensure that work is stopped. You should not be abdicating that responsibility to volunteer environmental groups.

DECOTRET: You all know what happened in the Rafferty case last week. The panel sent me a letter on Tuesday after Thanksgiving saying they were suspending their work. They wanted clarification of their terms of reference. On Friday they resigned. They were appointed under a court order and I will not be held in any way in contempt of court. That court order will be fulfilled.

There are a number of options, the first would be to appoint a new panel. Another option would be to take Saskatchewan to court. Since that only happened on Friday, I have asked my lawyers to give me the whole list of options to take and I am meeting with them this afternoon.

EVELYN CROWSHOE: Why are you not doing this for the Oldman River dam?

DECOTRET: The only reason I am not doing it is because that one is before the Supreme Court. They have been granted leave to appeal, the appeal is proceeding and that is the only reason. The other question on the Oldman that is quite different is that there was never any requirement to stop work. It was a question of looking at the mitigative measures that had to be taken.

EVELYN CROWSHOE: What about revoking the license?
DIANNE PACHAL: The concern is that as of March 13, 1989 that dam has no federal licenses and it does not do any good for the federal government to sit back and wait to see what the province is going to do. The federal government has its responsibility to enforce according to that court order which meant putting that dam through an EARP.

DECOTRET: The problem is that that court order is being challenged in the Supreme Court. People have agreed to serve on that panel. I am ready to go as soon as the Supreme Court has dealt with it.

BRUNO MARCOCCHIO, POINT ACONI: The Department of Fisheries and Oceans recent reversal of its recommendation to conduct a full panel review on the Point Aconi generating plant underscores the dramatic inadequacies in the present environmental assessment process and in the proposed Bill C-78. Allowing Point Aconi to proceed without a full panel review sends a clear signal that the federal government has no intention of meeting its responsibilities. The Department of Fisheries and Oceans reversal of its decisions that there is enough significant public concern to warrant a full panel review is particularly disturbing. Will the Minister agree to meet with the 90 families on Beaudry Island that have already lost their fresh water supplies?

DECOTRET: That is why we need C-78 because there is an inference in what you just read that touches me quite deeply, as though I were the Minister that made the decision. Under the system right now, I never even saw the report on Point Aconi. The line Ministers, be it Fisheries and Oceans, be it Forestry, or what have you, make their own calls. I am not even legally entitled to see a copy of the report they have had done internally in terms of the environmental assessment. That is one of the great flaws that I have to deal with at the moment.

RE: Point Aconi, the Minister responsible says he is satisfied that there are no significant negative impacts on the environment and he goes ahead and signs the thing. Then what happens? We are likely to get right back into the situation we are with Rafferty, with Oldman. We will be before the courts, we will have a court order and then I (the Environment Minister) inherits the thing. That is why I am putting so much emphasis on getting C-78 through. We have got to make sure that we have a coherent system in this country that reviews projects and programmes and policies in terms of their environmental impacts before, not after the fact.

BRUNO MARCOCCHIO: I understand the problems with the responsibility, but the flaws with both the standing order and C-78 are the discretionary powers. RE: Point Aconi, if you do feel concerned, some of the residents in the community have proposed a solution. Would you immediately begin to consider the Bras d'Or Lakes as a national marine park and lift the permit on Point Aconi pending the negotiations for that park? And will you come and meet with the residents about their concerns?

DECOTRET: I have no objections to meeting with the residents. But when you are talking about a marine park, I just can't give you an answer right now. I would have to look at the proposal.

PAT MOSS: I would like to ask you for some comments on three specific areas of concern that we have had. First, is the narrowing of the application from the guidelines order. Under the new legislation policies will not automatically receive environmental assessment and areas where a specific federal permit is not being issued will not necessary come under jurisdiction of the Act. Secondly, there is no provision in the legislation for intervenor funding in the Act. Thirdly, there is provision for joint federal-provincial review panels and we would like to see some assurance that they would have to meet federal environmental assessment standards.

DECOTRET: Under the existing guidelines order policies were totally exempted. We have now established a new guideline that requires every federal policy to be assessed for environmental consequences. The information would have to be included in the Cabinet document. When the policy was put forth then that assessment would be made public and would automatically be referred to the Parliamentary Committee on the Environment for public review.

RE: federal permits. Before I tabled the Act, I asked Ray Robinson, FEARO, if he could imagine a big project in this country that can possibly escape the Act. His response was no. Not only a large one, even a medium sized one, everything literally would fall under the Act. Federal permit or not, anything that touches water, that touches fish, that touches anything that we are financing, anything that we have agreed to, all of that falls totally within the Act. If you have an example of something that doesn't fall within the Act I would like to know.

In terms of funding, I will agree with you that it is not in the Act but we have that intervenor funding outside of the Act. If you want to make a case it should be in the Act rather than outside of the Act, we could certainly look at that.

From a federal-provincial panel point of view, I can assure you that it is the federal standards that will prevail whenever we go into that kind of agreement.

PAT MOSS: On the first point regarding jurisdiction, I think there is a lot of complex legal arguments we could get into there. I am wondering if you would be interested in meeting with a small group of people to give you a different perspective than Ray Robinson's on that.

DECOTRET: Yes. I am happy to do that.

NOT FOR PUBLICATION

UNEDITED EXCERPTS FROM THE
UNOFFICIAL TRANSCRIPT OF THE
CANADIAN ENVIRONMENTAL NETWORK MEETING
WITH PAUL MARTIN, FEDERAL LIBERAL ENVIRONMENT CRITIC
MONDAY 15 OCTOBER 1990
CHAIRED BY DAVID COON, NATIONAL STEERING COMMITTEE

COMMENTS RE: FEDERAL ENVIRONMENTAL ASSESSMENT LEGISLATION

BRIAN PANNELL, ENVIRONMENTAL ASSESSMENT CAUCUS: The Environmental Assessment Caucus asked questions of the Minister that were particularly oriented to the Minister's responsibilities. I have taken the liberty, and I hope the Caucus will indulge me, in constructing a fairly large general question for you that supposes you would form the next federal government. I would ask you to pay special attention to the provisions here because they are quite precise and seeking a commitment in the event that you had a role to play in the next government. Therefore, whatever happens to Bill C-78 currently before the Parliament and whatever happens to the current EARP Guidelines Order, I would ask you to tell us whether you would be prepared to commit to an environmental assessment piece of legislation that would do the following things: firstly, it would be environmental assessment legislation that would consider all activities, policies, legislation, programmes or projects that would possibly cause significant environmental impacts within any area of federal jurisdiction under the constitution; that it would be a process with the purpose to find the best choices to govern our behaviour; that it would identify the need for such activities and alternatives to such activities; it would provide legislated intervenor funding for the public; that it would ensure such activities do not occur until an environmental assessment is completed; that it would ensure that the federal government has the power to both say no to any such activities at the conclusion of the environmental assessment; and that it would also enforce the "no go" decision. Those are the key elements we believe that should be incorporated into any environmental assessment policy and we would ask for your commitment to bring them into being.

PAUL MARTIN: Let me go through them again in my own mind to make sure that, because I don't want to give you an easy answer, the basic answer is yes. Let me just go through it. Let me rephrase what you said in my own words then you tell me if I have the gist of your question. Number one, should the new legislation essentially say that everything is in unless specifically excluded, as opposed to the current situation where everything is put into the regulations and god knows what it is going to be. In other words, should the legislation be absolutely comprehensive and then giving the government the opportunity to exclude something but specifically excluding it. Correct? It better be Brian because that is the way you explained it to me.

BRIAN PANNELL: Well, we did discuss that point yesterday. I think, the crux to this question would be in the first section of my comments. Let me just review that. The notion, I think, that you are looking for is flexibility of government decision making and what we are seeking is to consider all activities, policies, legislation, programmes or projects that would possibly cause significant environmental impacts. The key is the words "possibly cause significant environmental impacts" within any area of federal jurisdiction. There would be some kinds of options of figuring that out, whatever they may be, but this is the key to inclusion within the legislation.

PAUL MARTIN: The answer to that is yes. The answer to your second question, which is the whole question of alternatives, I believe, again is yes, which as I understand it simply says that environmental assessment should not look at a particular project and decide whether that project itself is environmentally viable or not, what you should really do is to look at the project and say is there a better way. The answer, I think, is yes that is what an assessment ought to include. On the question of intervenor funding, again the answer is yes. I think that the intervenor funding ought be done in a way that is not depending upon the legal equivalent of being awarded court costs. It ought to be something that is up front so intervenors know they are going to get the money and that they don't have to beg, borrow or steal or be nice to the panel in order to get their funding. Should they government be able to say no? Very clearly, yes. Should the government enforce it? Yes. There is not much use having a law if you are not prepared to enforce it. Should a project be allowed to go ahead until the assessment is done? Clearly not. The absurdity of what is happening right now with Rafferty-Alameda is a classic example, and indeed Point Aconi, of what you don't want to see happen.

The following is an item on the proposed federal environmental assessment act written by Shelley Bryant. She has prepared it for insert into newsletters and gives her permission for revision and editing changes.

REJECTION OF FEDERAL ENVIRONMENTAL ASSESSMENT LEGISLATION

The Environmental Assessment Caucus of the Canadian Environmental Network met outside of Hull, Quebec on 28-30 September to discuss the federal government's proposed Environmental Assessment Legislation (Bill C-78). The 35 delegates from across the country unanimously rejected Bill C-78 on the grounds that it falls seriously short of meeting some very fundamental requirements of environmental assessment legislation.

Some of the key points raised about this legislation are:

* The proposed environmental assessment process is not mandatory. Under the proposed legislation the federal government is under no legal obligation to perform an environmental assessment on any undertaking. The government will have complete discretion throughout the proposed environmental assessment process with regard to what projects must undergo an EA, the appointment of panel members for an EA, whether it accepts the findings of the environmental impact statement, and what monitoring and follow-up conditions are put on the project, among other things.

* Specific criteria for how decisions about such matters as those above are made are completely lacking in Bill C-78. Should this Bill be passed nothing will be legislated regarding what constitutes environmental damage, or what project or type of projects must undergo a complete environmental assessment.

* The Bill does not satisfactorily address what process will be followed for projects with federal-provincial agreements in place. Room is left in C-78 for the federal government to abdicate their responsibility, and pass the process on to the province, even in the event that the provincial environmental assessment process is weak or non-existent.

* There is no provision in Bill C-78 to stop a project from going ahead while the EA process is underway, or if the proponent or responsible authority does not comply with decisions made by the government or the panel. Work on a particular project may continue therefore, quite possibly causing environmental injury, while the EA process is ongoing, and before a decision has been made about its potential effects!

* The Bill allows for environmental damage to occur if, in the opinion of the Minister or responsible authority, it is seen as "justified". The criteria for what is considered justified is omitted, however, and leaves room for purely political decision making.

* The definition provided for what constitutes "mitigation" under Bill C-78 includes monetary compensation. The implication, of course, is that any environmental damage is mitigable provided the pay off is sufficient.

* Bill C-78 does not provide for effective public input into the environmental assessment process. Intervenor funding is not mentioned in the legislation. As a result, should we actually ever receive intervenor funding we have no guarantee that it would continue should there be a change in government.

* The definition of environment in Bill C-78 is restricted to the bio-physical aspects of our earth, and does not include such things as the socio-cultural and spiritual qualities of life.

* Another concern is that the possibility exists that the government may remove our present environmental assessment process (EARP guidelines) before Bill C-78 gets amended, leaving Canada with absolutely no environmental assessment process.

WHAT YOU CAN DO!!!!

Write to the Minister of the Environment and your local MP stating that the EARP guidelines should not be removed until the new legislation is passed. In addition, a written or oral brief may be presented to the Parliamentary Committee for Bill C-78. Should you wish to appear as a witness and voice your opinion about Bill C-78, write to the address below and ask to be a witness and for expense coverage:

Ross Stevenson
Chairperson
Committee on Bill C-78
Parliament Buildings
Ottawa, Ontario K1A 0A6

The Environmental Assessment Caucus is drafting a position paper and preparing to go before the Parliamentary Committee to present the caucus' concerns about Bill C-78.
If you want more information about Bill C-78, feel free to contact

National Round Table on Environment and the Economy (NRTEE)

Table ronde nationale sur l'environnement et l'économie (TRNEE)

News Release

OTTAWA (October 23, 1990)-- The Chairman of the National Round Table on the Environment and the Economy (NRTEE), David Johnston, today made public the NRTEE's advice to the Prime Minister on how to strengthen the new Environmental Assessment Reform Package by opening up government *policy* assessment to closer public scrutiny.

The Environmental Assessment Reform Package which was tabled in the House of Commons on June 18, 1990 by the Minister of the Environment features proposed legislation (the Canadian Environmental Assessment Act) which is designed, among other things, to create an environmental assessment process conducive to increasing the Government's accountability to the public for environmental assessments while improving public participation in all phases of this process. It is also designed to avoid duplication by promoting joint panels with other jurisdictions and creates a new agency to assist the Minister of the Environment on the administration of the environmental assessment process.

In making the announcement Dr. Johnston pointed out that though the NRTEE strongly supports the reform of the federal environment assessment process, after review of the Package by the NRTEE Decision Making Committee, it was decided that the section dealing with *policy* assessment processes required strengthening and that the NRTEE would concentrate its efforts in this area.

In communicating the NRTEE position to the Prime Minister, Dr. Johnston said that, "for the environmental assessment of government policy to be effective , there is a need for public confidence in the process..." He added that there is also a need for "...reassurance that such assessment meets appropriate general standards, particularly since departments initiating policy proposals will be doing the assessments themselves."

The elements of the NRTEE position were developed at the September 6-8 plenary meeting of the NRTEE in Yukon. Ministers participated in the discussions on this issue with their NRTEE colleagues but given their cabinet responsibilities took no part in formulating the following recommendations:

1. The establishment of a Parliamentary Commissioner (or an Auditor) on Sustainable Development whose responsibility would be to monitor the implementation of the policy assessment process and to report publicly on federal agencies' compliance with it.

2. Under the EARP package, public scrutiny of policy decisions should be achieved through a public statement by the Government regarding the environmental implications of each new policy. The public will only have confidence that all dimensions of environmental implications have been appropriately weighed if the documentation used to support the assessment is made public.

3. In order to facilitate policy development in a sustainable development context, there should be a wider use of green and white papers. This would open up opportunities for public input at an early stage.

4. Because the assessment of government policies--from a sustainable development point of view--is a new, and as yet untried, approach the Government should conduct a full evaluation of the process, with public consultation, after a period of five years. Then consideration would be given to including policy assessment within the EARP legislation.

In releasing these recommendations, the Chairman underlined that advising the Government on matters such as the Environmental Assessment Reform package is central to the mandate given to the NRTEE by the Prime Minister to help stimulate sustainable development in Canada.

For more information please call:

Susan Holtz, Co-chair of the Decision Making Practices Committee of NRTEE, (902) 477 3690,
Philippe Clément, NRTEE Secretariat, 943-0396 or
Eric Mikkelborg, Communications Advisor, 995-7618.

ENVIRONMENTAL ASSESSMENT CAUCUS MEMBERS

J.K. Arnold
Canadian Seniors for Social Responsibility
145 Spruce Street
Ottawa, Ontario
(613)820-5262

Margaret Barber
Probe International
225 Brunswick Street
Toronto, Ontario M5S 2M6
(416)978-7014

John Barris
Public Interest Advocacy Centre
1 Nicholas Street, 4th Floor
Ottawa, ONT K1N 7B7

Johannah Bernstein
76 Glebe Ave. #1
Ottawa, Ontario K1S 2C3
(613)231-2909

Marie Ann Bowden
University of Saskatchewan, College of Law
Saskatoon, SASK S7N 0W0
(306)966-5877
FAX:(306)966-5900

Jean Francois Brault
Centre quebecois du droit de l'environnement
681 Vinet
Montreal, Quebec H3J 2V6
(514)989-5543
(514)496-2630

Francois Bregha
Rawson Academy
1 Nicholas, 4th Floor
Ottawa, Ontario K1N 7B7
(613)563-2636

Roberta Bruce
Cape Breton Coalition for Environmental Protection
R.R. #2
North Sydney, N.S. B2A 3L8
(902)794-2828

Ed Burt
AMNA
R.R. #1
Gore Bay, Ontario P0P 1H0
(705)282-2886

Shelley Bryant
Wilderness Society of NFLD and Lab.
89 Bond Street
St. John's, NF A1C 1T3
(709)576-2428 (w)/
(709)753-3680 (h)
FAX:(709)772-5097

Ron Buechert
Arrowsmith Ecological Society
Box 179
Errington, B.C. V0R 2T0
(604)248-2894

John Christian
2785 West 25th Avenue
Vancouver, B.C. V6K 2P8

David Coon/Mark Lutes
Conservation Council of NB
380 St. John Street
Fredericton, NB E3B 4A9
(506)458-8747

Grant Copeland
Valhalla Wilderness Society
Box 284
New Denver, B.C. V0G 1S0
(604)358-7158

Rick Coronado
Clean Water Alliance
312 Erie St. W.
Windsor, Ontario N9A 6B7
(519)255-1616

Jim Darwish
Friends of the North
11539-42nd Avenue
Edmonton, AB T6J 0W4
(403)435-2404/463-9245

Patrick Donovan
The Green Coalition
Montreal, Quebec
FAX:(514)695-1869

David Donnelly
Canadian Envtl Defense Fund
347 College Street, Suite 301
Toronto, Ontario M5T 2V8
(416)323-9521

Jerry Dziadek
PALSS
Box 356
Sundre, Alberta T0M 1X0
(403)638-2374

Stewart Elgie
Faculty of Law, Law Centre
Office #425
University of Alberta
89th Avenue & 111th Street
Edmonton, Alberta T6G 2H5
(403)492-2599

Jackie Evans
Slave River Coalition
c/o Uncle Gabe's Friendship Centre
P.O. Box 957
Fort Smith, NWT X0E 0P0
(403)872-3013

Terry Fenge
Tungavik Federation of Nunavut
130 Slater, Suite 1200
Ottawa, Ontario K1P 6E2

Don Gamble
Rawson Academy
1 Nicholas St., 4th Floor
Ottawa, Ontario K1N 7B7
(613)563-2636

Julie Gelfand
Canadian Wildlife Federation,
1673 Carling Avenue
Ottawa, Ontario K2A 1C4
(613)725-2191

Bernice Goldsmith
Ass. Professor
Social Aspects of Engineering
Concordia University
1455 boul. du Maisonneuve O.
Montreal, Quebec H3G 1M8

Lloyd Greenspoon
AMNA
R.R. #1
Gore Bay, Ontario P0P 1H0

Nina Hall
Quebec Public Interest Research Group
Eaton Building, Rm 505
3620 University Street
McGill University
Montreal, Quebec H3A 2A2
(514)398-7432

Wayne Hall
Ottawa Nuclear Awareness
584 McLeod Street
Ottawa, Ontario K1R 5R3
(613)237-3135

Margot Hearne
Islands Protection Society
Box 187
Masset, B.C. B0T 1M0
(604)626-5015

Susan Holtz
Ecology Action Centre
Box 49, Site 15
R.R. #5
Armdale, N.S. B3L 4J5
(902)477-3690

Moira Hutchinson
Taskforce on Churches and Corporate Responsibility
129 St. Clair Ave. West
Toronto, Ontario M4V 1N5
(416)923-1758

Marilyn Kansky
Environmental Resource Centre
2007-10883 Saskatchewan Drive
Edmonton, Alberta T6E 4S6
(403)431-0699
FAX:(403)431-0699

Carole Karamessines
James Bay Committee
3565 Lorne Avenue, Apt. 601
Montreal, Quebec H2X 2A5
(514)842-0552

Martha Kostuch
Friends of the Oldman River
Box 1288
Rocky Mountain House, AB
T0M 1T0
(403)845-3668
FAX:(403)845-5377

Annette Languay
607 Gaspe
Greenfield Park,QC J4V 1H6

J.J. Lee
Quebec Public Interest
Research Group
2130 MacKay
Montreal, Quebec
AK-101 Concordia University
(514)848-7585

Paul Linegar
Environmental Law Society of
N.B.
654 King's College Road
Fredericton,NB E3B 2G8
(506)457-2151

Brennain Lloyd
Northwatch
P.O. Box 282
North Bay, Ontario P1B 8H2
(705)476-7060

Rod MacDonald
Saskatchewan Action Foundation
for the Environment
Box 70, Radville, SASK S0C 2G0
(306)869-2230
FAX:(306)869-2552

Karen Mahen
Greenpeace
578 Bloor Street West
Toronto, Ontario M6G 1K1
(416)538-6470

Bruno Marcocchio
Cape Breton Coaltion for
Environmental Protection
R.R. #2
North Sydney, N.S. B2A 3L8
(902)794-2828

Elizabeth May
Cultural Survival
1 Nicholas Street, 4th Floor,
Ottawa, ONT K1N 7B7
(613)232-4653

Kai Millyard/Julia Langer
Friends of the Earth
701-251 Laurier Ave. West
Ottawa, Ontario K1P 5J6
(613)230-3352
FAX:(613)232-4354

Pat Moss
Save the Bulkley
Box 222
Smithers, BC V0J 2N0
(604)847-3043/847-9693
FAX:(604)847-5791

Peter Mulvihill
C.P. 657, Succ. Cote des
Neiges
Montreal, Quebec H3S 2V4
(514)341-8299

Ernie Oginsky
Rolls Ridge Citizen's
Committee
Box 1, Site 208
R.R. #2
St. Albert, AB T8N 1M9
(403)973-3301/973-7106

Eliza Olson
Burns Bog Conservation Society
11158 Canyon Court
Delta, B.C. V4E 2R9

Kevin O'Reilly
Dene Nation
Box 2338
Yellowknife, NWT
X1A 2P7

Dave Parker
Nature Club
9211, 72nd Street
Edmonton, AB T6B 1Y6

Gary Schneider
Environmental Coalition of PEI
R.R. #6
Cardigan, PEI C0A 1G0
(902)838-2678

Maisie Shiell
Interchurch Uranium Committee
2332 Atkinson Street, Regina,
SASK S4N 3X3
(306)966-5877

Toivo Taal
P.O. Box 925
Rossland, B.C. V6G 1Y0
(604)362-7192

Darielle Talarico
Western Arctic Coalition
Box 1530
Inuvik, NWT X0E 0T0
(403)979-3400

Joan E. Vance
BC Public Interest Advocacy
Centre
701-744 West Hastings Street
Vancouver, BC V6E 1A5
(604)687-3063
FAX:(604)682-7896

Toby Vigod
Canadian Envl Law Association
517 College Street, Suite 401
Toronto, ONT M6G 4A2
(416)960-2284
FAX:(416)960-9392

Brad Wylynko
c/o RQGE
C.P. 1480, Succ. Place d'Armes
Montreal, Quebec H2Y 3K8
(514)982-9444

ENVIRONMENTAL ASSESSMENT CAUCUS
WORKING LIST
Dated 25 October 1990

Technical Advisory/Steering Committee

Anne Hillyer/Bill Andrews
West Coast Environmental Law Association
1001-207 W. Hastings ST.
Vancouver, B.C. V6B 1H7
(604)684-7378
FAX:(604)684-1312

Linda Duncan
Faculty of Law
Dalhousie Unversity
Weldon Building, 6061
University Avenue
Halifax, N.S. B3H 4H9
(902)494-1214
FAX:(902)494-1316

Bob Gibson (Technical Advisory Committee only)
Dept. of Environmental and Resource Studies
University of Waterloo
Waterloo, Ontario N2L 3G1
(519)885-1211x3407 (w)
(519)886-2835 (h)

Stephen Hazell
Cdn Arctic Resources Committee
Ste. 412, 1 Nicholas Street
Ottawa, Ontario K1N 7B7
(613)236-7379
FAX:(613)232-4665

John McCullum
Ecology North
Box 2888
Yellowknife, NWT X1A 2R2
(403)873-3639

Moses Okimaw
AFN Environment Committee
Buchald, Asper, Henteless
2500-360 Main Street
Winnipeg, MAN R3C 4H6
(204)956-0560
FAX:(204)957-0227

Brian Pannell
Manitoba Environmentalists Inc.
c/o McJanet Rich
1100 One Canada Centre
Winnipeg, Manitoba R3B 3H5
(204)946-6947 (w)
(204)452-5695 (h)
FAX:(204)956-0098

Elizabeth Swanson
Environmental Law Centre
202, 10110-124 Street
Edmonton, Alberta T5N 1P6
(403)482-4891
FAX:(403)488-6779

DRAFTER OF CAUCUS POSITION PAPER:

Kathy Cooper
Canadian Envl Law Assoc.
517 College Street, Suite 401
Toronto, Ontario M6G 4A2
(416)960-2284
FAX:(416)960-9392

ENVIRONMENTAL ASSESSMENT CAUCUS

c/o Friends of the Earth, 251 Laurier West, Ottawa 613-230-3352

For immediate release
October 15, 1990

REVOKE RAFFERTY DAM PERMIT IMMEDIATELY, ENVIRONMENTALISTS DEMAND

OTTAWA - The federal government must revoke the federal license which allows the Rafferty-Alameda dam to proceed, says a coalition of environmentalists gathering in Montreal.

"There is no question that the Federal government's credibility on the environment hangs in the balance on Rafferty", says Brian Pannell, Co-Chairman of the Environmental Assessment Caucus, "de Cotret must stop construction until a proper environmental assessment has been completed."

"There is a real need for an un-biased assessment of this project. Even though it is very late in the day, we need the federal government to use its mandate", says Joan Harrison of the Saskatchewan Environmental Society.

"How dare de Cotret slough off legal action to environmental groups?" asked Julia Langer, Executive Director of Friends of the Earth, responding to the Minister's comments on Friday that he will not act to seek an injunction against construction. "We know the Saskatchewan government is dam-crazy but it is the federal government's incompetence which led to this mess and it's their responsibility to pull the pan out of the fire".

The groups are highly critical of the proposed environmental assessment bill, C-78, which would allow the government of Canada

complete discretion to avoid environmental assessment of projects. The organizations have set out an action plan for the federal government on Rafferty-Alameda in particular, and for better environmental assessment in general. The action plan includes a demand that the federal government immediately:

1. revoke the Rafferty-Alameda license
2. launch an injunction application to prevent Saskatchewan from proceeded with the dam's construction
3. demand repayment of the millions of dollars of compensation paid to Saskatchewan by the federal government for stopping construction.

The Environmental Assessment Caucus, a growing coalition of groups, is preparing a full critique of the proposed environmental assessment law and will be making interventions at the parliamentary committee reviewing Bill C-78.

- 30 -

For more information contact:

Julia Langer 613-230-3352
Joan Harrison 306-242-8569

05 October 1990

Environmental Assessment Caucus
Strategy Tasks

1. Homework Package

ITEM	BY WHOM	DATE
* Legal Analysis of Bill C-78	Environmental Law Centre, Alberta	
* Prepare Key Elements Document	Coordinated by Stephen Hazell Env. Law Centre, West Coast Env. Law Assoc., Bob Gibson, Joan E. Vance, MA	Draft by Oct. 13
(Existing Act with recommended amendments side by side)	Technical Advisory Committee	
* Summary of NEPA Key Points	Steward Elgie	Oct. 10
* Prepare a list of experts to advise Committee	Linda Duncan	ASAP
* Prepare a critique of what would have happened with Rafferty & Oldman under Bill C-78.	Brian Pannell Martha Kostuch	ASAP
Distribute widely including to the media	CEN	
* Develop list of people/orgns who should be briefed about FNGO position on Bill C-78	Coordinated by Stephen Hazell.	

LIST (to date):
CEAC - Stephen Hazell
Paul Martin -
Charles Caccia -
Jim Fulton -
Canadian Bar Assoc. - Linda Duncan
Canadian Labour Congress - Toby Vigod
Canadian Public Health Association -

National Roundtable -
Other roundtables:
Ontario - Toby Vigod

2. Safety Net

ITEM	BY WHOM	DATE
* Try to get a commitment in the House of Commons from Prime Minister that EARP guidelines won't be withdrawn until legislation is in place.	Stephen Hazell Don Gamble	Oct. 13
- First check to see if commitment has been made		
- Find someone, preferably a conservative, to ask question.		
- Draft the question.		
- Develop strategy at CEN AGM Caucus meeting if we don't get that commitment.		Oct. 13
* Supreme Court Appeal		
- Funding aid	All groups	
- Letters of support for Friends of the Oldman River		
- Legal brain power		
- Get copy of Leave application/ factum from Brian Crane	Don Gamble	
- See if GNWT will support Friends of the Oldman River	Don Gamble John McCullum	
- Prepare mailing to groups	CEN/Lynn	
- Find out who the six supporting provinces are	Martha Kostuch will tell Lynn	

3. Delay and Amend Bill

A) Political

House of Commons Committee

- Write committee and ask to be a to be a witness and to have your expenses covered	Everyone	ASAP
- Submit written briefs if you can't attend		
- Provide Lynn with names of other groups who should be notified of CEAA strategy/House Committee		
- Prepare package to help ENGO witnesses (what to expect at committee, lobbying, etc.)	Lynn	Oct. 5
- Monitor Committee meetings & prepare summaries	Stephen and Lynn to find someone	

ITEM	BY WHOM	DATE
Lobby		
- All witnesses should arrange in advance to meet with each committee member, own MP and Ministers (esp. those from your own province), & Opposition MPs	All Witnesses	
- Plant questions you want members of the committee to ask you		
- ENGO witnesses to appear on the same day can lobby as a Team	Lynn to help organize	
- Write Minister & Opposition Critics (send brief after appearing)		
- EARP Caucus request to appear as a witness	Technical Advisory Committee	ASAP
- Submit briefs to CEN for circulation	Everyone Lynn to circulate	
Bureaucratic		
* Meet with Ray Robinson and follow-up with letter	Stephen & Lynn	ASAP

Anticipated content: Thanks, we support strong legislation and his personal commitment and have a technical advisory committee to assist you. We are prepared to meet with you in conjunction with CEN AGM.

* Organize a few people to meet and brief Lorette Goulet	Technical Advisory Committee	
* Write directly to Len Good, Deputy Minister	Everyone	
* Witnesses should try to get meeting with Deputy Minister of someone from his office (phone in advance)	All witnesses	
Media/Public		
* Media release following this meeting	Everyone Lynn to circulate in Ottawa	
* Media release and/or conference following Oct. 13 meeting		

ITEM	BY WHOM	DATE
* Contact your local media when you appear before House of Commons committee	All witnesses	
* Caucus to hold media conference when they appear	Technical Advisory Committee	
* Contact media when you meet with someone or get a response		
* Prepare article for newsletters and distribute	Shelley Bryant, Marilyn Kansky Lynn to circulate	

4. Other

* Organize follow-up and organize Phase II meeting if legislation dies on the order paper	Technical Advisory Committee	
* Use some money to bring extra people to CEN AGM Caucus meeting: Moses Okimaw, Gary Schneider, David Donnelly, CELA	Lynn to coordinate	
* Review membership of Technical Committee		CEN AGM
* Write up paper from meeting Position paper Strategy and tasks	 Kathy Cooper Lynn	 Draft by Oct. 13

CONFIDENTIAL

DRAFT

Message 15 (89 l[illegible]es)
From cela Wed Oct 24 20:30 GMT 1990
To: cen enorth
Subject: cover memo

M E M O R A N D U M

TO: EA Caucus Steering Committee
FROM: Kathy Cooper
DATE: October 23, 1990
RE: Position Paper and Conference Call

By now I will have spoken to you all and tried to establish a time for the conference call. My deadline of last night passed me by so I have asked Stephen to take on the tricky and time consuming task of arranging the call.

This draft contains the combined input from the Econiche and CEN AGM caucus meeting discussions (at least I hope I got it all in - we haven't really included Friday night at econiche but more on that critical gap below). I have also received and incorporated comments from Elizabeth Swanson (Purpose section - ES note changes by subsequent reviewers), Toby Vigod, Brian Pannell, Bob Gibson, Julia Langer, Jean Francois Brault and Marilyn Kansky.

I have laid out an agenda for our call so that we can go through the paper section by section. I have flagged items in the text using parentheses and "FLAG" with a comment or question following so it is easy to spot on the page. I have tried to note each of these in the agenda - many are short so the list is not as daunting as it looks, I hope... When you review the paper, you will no doubt flag other points as well. I have also made comments explaining changes from previous drafts in light of various reviewers comments. I had hoped to note a lead commentator for some of the key points that I have flagged. I didn't get a chance so lets decide as we go.

The CEN has requested this draft for circulation as a confidential draft for those member groups who have expressed interest in using it to prepare briefs. However, as you may know, the committee has requested that briefs refer to specific provisions in the bill. Our brief does not do these referrals which is going to make it fairly difficult to use in preparing briefs to the committee.

I think this omission is a real problem. As Marilyn pointed out, the bill contains some of our purpose and key elements but this paper as it is now gives no credit for inclusions, does not detail specific omissions or make any specific suggestions for where amendments are necessary. While we are all doing this clause by clause work in our individual briefs, I think it needs to go in this document too.

Marilyn's suggestion is to have a final section in each of our sub-sections called "Comment" which evaluates the Bill in light of the requirements we have set out. Obviously, this suggestion presents me (and I think therefore all of you) with a lot more work. This task has grown considerably from what I was originally asked to do and while I'm

keen on making these changes (additions), i.e., I think they are essential, to this paper, time is getting really tight. Perhaps we can divide it up and have each of you take on one of the "comment" sections (we can do one from here) from the work you are doing on your own briefs and I'll continue to make this paper grow. As you will see in the text, I have experimented with this format by putting a "comment" section at the end of each section and noting what kinds of points should go in each of the "comment" sections. As you will also see, I didn't get to all of them. I am assuming they would rarely be longer than a paragraph or two.

An alternative would be to state early on that this paper must be read in conjunction with the clause by clause review that the caucus will be preparing. This option is problematic since I am pretty sure that we decided against the caucus doing such a review although it was referred to in a previous draft with respect to the need to remove discretionary language. Marilyn pointed out that it should be referred to more broadly in the introduction as a companion to this document.

I have put discussion of this issue first on our agenda.

==========

Environmental Assessment Caucus Position Paper on Bill C-78, The Canadian Environmental Assessment Act

Table of Contents

DRAFT

DRAFT

Message 18 (945 lines)
From cela Wed Oct 24 20:38 GMT 1990
To: cen enorth
Subject: position paper - draft #4

CONFIDENTIAL

DRAFT

DRAFT

1.0 INTRODUCTION

The Environmental Assessment Caucus (members listed below) has worked together for over four years to address reform of the federal environmental assessment process. Many of its individual members and member groups have worked on this issue for upwards of twenty years. In 1988, the caucus participated in a consultation on the Environmental Assessment Review Process (EARP) conducted by the Federal Environmental Assessment Review Office (FEARO) and produced a position paper. That paper, entitled, "A Federal Environmental Assessment Process: The Core Elements", (Attachment A) set out the caucus' consensus position on reforming the federal environmental assessment process. Those core elements remain at the heart of this position paper.

Fundamental to the entire position, then and now, is the need for an enforceable, legislated process rather than a guideline as the EARP Guidelines Order was interpreted at the time. Very little came of that process in 1988 in terms of federal commitment to changing and strengthening the environmental assessment process. The federal government, from 1984 to 1989, treated the EARP Guidelines Order as purely voluntary. However, recent court decisions on the Rafferty and Oldman dams, in Saskatchewan and Alberta respectively, have concluded that the EARP Guidelines Order is mandatory. Consequently, all departments of the federal government are obliged to ensure that each initiative, undertaking or activity (each "proposal") for which they have decision-making authority be subject to an environmental screening for potentially adverse effects. If such effects occur, the department is further obligated to refer the proposal to the Minister of the Environment for public review. The mandatory application of the EARP Guidelines Order has brought into sharp relief the inadequate federal government funding of departments to meet their obligations under the Guidelines Order.

The current Bill, C-78, The Canadian Environmental Assessment Act, is the federal government's response to those court decisions. It is clear from our review of this bill, that it considerably limits the scope of what the EARP Guidelines Order now covers by law. While the caucus has always recommended the need for a legislated process, the federal government appears to be backing into a legislated process out of necessity rather than by choice. This draft legislation is replete with elements that weaken, or render ineffectual, its legislative force. As such, it is a step backward from the Guidelines Order as interpreted by the courts.

(FLAG - As a couple of reviewers suggested, I removed wording from previous drafts that implied the government's motives in writing the bill so as not to make unsubstantiated claims or offend FEARO et al too much at the outset)

From the perspective of fully integrating environmental goals into federal planning and decision-making, our review of Bill C-78 reveals fundamental flaws. We have set out what we consider to be the fundamental elements to be contained in the preamble to and purpose of this legislation and eight key, interdependent elements of a federal environmental assessment process that would satisfy the purpose of the legislation. Bill C-78 and its accompanying regulatory and administrative package of reforms does not adequately satisfy our requirements. (FLAG - assuming we include the "comment" sub-sections in each section, we can introduce the layout of the paper further by including the following) At the end of each section of the report we have commented on whether Bill C-78 satisfies our objectives, where it falls short or runs counter to our objectives and how the Bill should be amended to accommodate our objectives.

We plan to work with the government to ensure that a significantly amended bill will contain the necessary elements of an environmental assessment process at the federal level. It is important to note that this position paper represents our views on an interdependent package of reforms. The purpose of the legislation and each of the key elements must be implemented together.

2.0 PREAMBLE AND PURPOSE

2.10 Preamble to the Legislation

Both the preamble to and the purpose of the legislation must reflect federal commitment to ensuring that all decision making under Canadian federal jurisdiction is environmentally responsible. Such responsibility requires that Canadian decisions contribute positively and significantly to achieving sustainability in human relations with the environment regionally, nationally and globally.

The preamble to the legislation should state that the federal environmental assessment process is intended:

- to contribute to the enhancement of ecological sustainability; and
- to minimize negative community and environmental impacts and maximize benefits of any proposal (the use of the word "proposal" is intended as more fully discussed below).

2.20 Purpose of the Legislation

The purpose of the act should include each of the following interdependent components.

2.21 Compulsory, Comprehensive and Independent

The purpose of the Act is to provide for the compulsory, comprehensive and independent assessment of the need for, alternatives to, alternative means of carrying on and the environmental effects of proposals as early as possible in the planning stage.

2.22 No Action Before the Environmental Assessment is

The purpose of the Act is to ensure that no action is taken by anyone, other than an environmental assessment and public review, with respect to any proposal until the assessment of the environmental effects has been completed.

2.23 All Effects Considered in the Decision

The purpose of the Act is to ensure that all environmental effects are carefully considered in any decision made as a result of the environmental assessment.

2.24 Environmental Interests Paramount

The purpose of the Act is to ensure that the best interests of the environment are paramount in decision making and to ensure that responsible authorities only take action consistent with environmental protection, conservation and enhancement.

2.25 Avoid Extra-jurisdictional Effects

The purpose of the Act is to ensure that, where the Governor in Council permits adverse environmental effects to occur as a result of a proposal in Canada, including on federal lands, this Act attempts to prevent the effects from occurring outside the jurisdiction in which the proposal is carried out. (FLAG - Marilyn suggested we not adopt the wording "in Canada or on federal lands" from the bill since it is such poor drafting)

2.26 Public Process

The purpose of the Act is to ensure full and effective public participation in the environmental assessment process and that the process takes place in an open atmosphere and includes a public right to information, notification, input and review.

The above six points lay out the rationale and the general goals as to how an environmental assessment should be done. These points assume a considerably broadened scope for the entire environmental assessment process. To ensure that an environmental assessment process complies with these six points we have set out in detail the eight key elements of the process.

2.30 Comment
suggested format for these sections:
some of our points are captured in the bill; paragraph each for purpose and preamble to show good points, shortfalls; suggestions for amendments e.g. (a,b,c... in sections x,y,z); most of our points are not in the bill; the bill should be amended (d,e,f,... at x,y,z)

3.0 EIGHT KEY ELEMENTS OF AN ENVIRONMENTAL ASSESSMENT PROCESS

3.10 Mandatory and Independent Process

The legislation must establish a process that is mandatory and

independent.

3.11 Discretion Must be Minimized

This process must include a combination of legislatively imposed non-discretionary obligations and criteria to circumscribe discretionary decision making. Unfortunately, Bill C-78 is replete with discretionary language; apparent obligations to conduct critical steps in the process (the responsible authority "shall"...) are followed by subjective tests ("shall" do... where, "in the opinion of" the responsible authority...).

The discretionary language in this bill often defeats the purpose of preparing legislation. The removal of discretionary language and the addition of criteria to guide those decisions that require discretion would ensure proper application of the process and permit judicial review in cases where duties are not performed. Uncertainty about legislative requirements undermines the potential for encouraging early integration of environmental factors in planning and frustrates proponents who face unpredictable approval requirements.

3.12 The Process and Panel Must be Independent

FLAG - Marilyn has a lot of trouble with losing Environment Canada's environmental protection mandate if this process goes to an independent agency. Hence final sentence. Alternate could be like the Ontario model where Ministry of the Environment EA Branch administers the program and the EA Board is an independent tribunal with its own act and rules and made up of political appointments - with good Env Ministers, and likely this new government, we get good appointments.

The federal environmental assessment process must be an independent one free from political interference. As an independent process, it must be at arm's length from the federal government and able to ensure, in an open and accessible public forum, the most effective integration of environmental considerations into decision making.

However, the Act should specify that this independent agency have an environmental protection mandate similar to that of Environment Canada.

3.13 The Process Must Culminate in a Decision

FLAG - who is our "decision maker"? If we are going to lay out options as done below, we have to respond to the bill in that it says the "responsible authority" makes the final decision.

The process must culminate in a final, binding decision. A more difficult question is who the decision maker should be. At the end of the process, possible decision makers are: a) the Minister of the Environment, b) the Panel (ad hoc), and c) an independent Board or Tribunal. It is desirable that the government of the day have the ability to make a final decision. However, this ability should be exercised in practice through an appeal of the "decision-makers" decision and not be the first binding decision. In effect, Cabinet could potentially override the "decision-maker's" decision.

(FLAG - I don't know if I got this appeal stuff right or not. Brian - other reviewers stumbled over your initial suggestion so this is another attempt)

3.14 Comment

Itemize those points in the bill where non-discretionary obligations should exist and those points where discretionary decision making occurs and therefore where criteria are required. Note that this is discussed further in items 3.3 and 3.8 below. Alternatively, refer relevant points directly to items below.

Once we decide on the agency/decision maker - suggest changes to the Act accordingly

Cabinet appeal process into bill

3.20 "All In Unless Exempted Out"

The environmental assessment process must define "environment" broadly and be universal in application within federal jurisdiction.

3.21 Definition of "Environment"

"Environment" must be defined broadly in the act to include biophysical, socio-economic, spiritual and cultural elements and interactions. As the caucus stated in 1988, many proposed activities have significant immediate and future impacts on local, regional and global ecosystems and on communities in terms of their health, livelihood, traditional practices and autonomy. All of these elements of the human and natural environment are interrelated and changes in one affect the other elements. Using this broad definition, we consider that, similar to the National Environmental Policy Act in the U.S., decisions on what kinds of proposals would be subject to the process, (at its different levels), would be judged on the basis of the biophysical portion of the definition but the broader definition would apply in all assessment decision making on proposals subject to the process. For example, a pulp and paper mill would be included in the review process on the basis of its potential for biophysical effects alone. Once into the review, the environmental assessment would consider the additional elements and interactions of the definition. (FLAG - comment raised by CCNB at caucus meeting that the nukewaste storage facility was not reviewed on basis of no env'l effects and this NEPA model was of concern - how can these concerns be accommodated?)

3.22 Scope and Application

The environment knows no distinction between damage caused by different actors and there should be no distinction recognized in law. This legislation should automatically apply to all proposals potentially within federal jurisdiction including those with interprovincial, national or international impacts. It should cover proposals:

- initiated or regulated by federal departments, agencies, regulatory boards, Cabinet, and Crown corporations;

- that may have an environmental effect on an area of federal responsibility;

- for which federal funds are committed including all foreign aid and private sector projects;

- for activities on lands or waters under federal jurisdiction, including those affecting native land claims;

- initiated and funded under federal-provincial development agreements;

- related to international or interprovincial trade; and

- having international or interprovincial impacts.

3.23 Automatic Application/Criteria for Each Level of Assessment

The Act should automatically apply to all proposals within the above list. The principle of the process would be "all in unless exempted out". To accommodate all of these proposals, we support the principle of different levels of assessment wherein a scoping exercise would determine at which level of the process each proposal would be assessed. This levels of assessment approach is discussed further below and in item 3.81.

At the outset, two critical lists must be developed: a Mandatory List of projects that are subject to the Act and cannot be exempted and an Exemption List of projects that are not subject to the Act but can be "bumped-up" if they are found, according to clearly identified criteria, to have effects worthy of assessment. The Mandatory List should appear in the legislation. The Exemption List should be developed by regulation. There will be many other proposals subject to assessment in addition to those on the Mandatory List.

The screening mechanism currently envisioned in Bill C-78 would therefore be unnecessary. The goal should be to ensure as broad an application of environmental assessments as possible from the outset rather than accept the narrowly focused C-78 approach. The C-78 approach opts in projects by screening after a proposal has been developed. By using the broader approach, coverage can be streamlined using the levels of assessment approach. Proposals would be subject to a scoping exercise and a decision made (FLAG - by the agency?) as to which level of assessment is appropriate including the following options:

- exemption (either individually or as a class)
- exemption with conditions
- exemption after the scoping exercise
- assessment as a class
- fast-track assessment of individual items within a class
- individual assessment with or without public hearings.

Under the class approach, many similar proposals can be assessed at one time. A clear, limiting definition of a class is required under this approach and is discussed further in item 3.81 below. As individual projects within the class require assessment they would be subject to a fast-track assessment process since most of the issues would have already been addressed in the class assessment. Classes of exemptions would also be possible.

Assessment needs for proposals (standard process or fast-track) must be pre-determined to provide process certainty for proponents and other participants and to encourage early incorporation of environmental factors in planning and proposals. All proponents should be assured, from the outset, of where their proposals fit within the overall scheme and what requirements must be met.

Exceptional cases would begin in the process but could be bumped down to the fast track version of the process or fully exempted from assessment requirements if no significant environmental issues were involved. Exceptions to the general rule would be allowed where, for example, an emergency like an oil spill clean up must be quickly exempted with no delay in effective response. Discretionary decision making under this levels of assessment approach must be guided by explicit criteria set out in the legislation. For the many projects that will not have a full environmental assessment with a public hearing, these criteria will ensure that decisions are publicly accountable and environmentally sound.

3.24 Federal Policies and Legislation

A mandatory, publicly reviewed process for the environmental assessment of federal policies and legislation is desirable. While we recognize the difficulty of imposing such a process through application of the standard procedures designed for proposals, we must emphasize that, as a minimum principle, we encourage the environmental assessment of policy as a requirement in the legislation.

Rather than including policy assessment in the legislation, the Bill C-78 "reform package" purports to establish a "much-enhanced and progressive environmental review process for all of the federal government's policies and programs" (FEARO information package - June 18, 1990). However, this separate, non-legislated review process for policies has been only vaguely outlined with no assurance that assessments will actually be required, no indication of who will do the assessment, whether the assessor will be impartial, whether the public will have any access to documents used to support decisions resulting from the process or if any enforcement of assessments will occur. Moreover, as the federal Cabinet was so accurately informed in a secret, but leaked, document in November of 1989, "exemption of policy proposals from the Process would be seen as a backward step, as the Guidelines Order can be interpreted as applying to policy initiatives" (p.8) and "would be seen as weakening the scope of the federal process" (p.20).

The Cabinet document laid out two additional options, both of which involved including policy assessment in the legislation. The document states:

> As with a project, the most effective way of proceeding is to analyze the likely environmental effects of a policy early in its development and use the resulting information to shape the design or alter the policy options under consideration. Such analyses can be seen as analogous to those that are done to assess a proposal's economic utility, its social repercussions, its technical feasibility and its political implications. Given the high political profile Canadians give the environment, and given the present global environmental stresses, ministers cannot afford to make critical policy decisions in the absence of sound environmental information (p.8).

The Cabinet document clearly foresaw, and Cabinet therefore has clearly already been made aware of the need, to assess policy in a way that is different from the review of proposals but that the requirement be in the Act. The document suggested that Ministers ought to be obliged to do these assessments according to "guidelines and criteria" (p.8) established in advance. Excluding policies from assessment could, according to the Cabinet document "result in public pressure on the House Committee reviewing the Bill to put forward amendments to cover policies, without assurances that the required procedural safeguards would also be included" (p.3).

The Cabinet document also recommended that the process implementation be audited in some way either by the new Federal Environmental Assessment Agency, the Auditor General or by a Parliamentary Commissioner for the Environment. This auditing function is very important particularly to ensure the accountability of policy assessments. Further, the Government should publish the full background cabinet analysis of the policy assessment when new policy decisions are announced.

3.25 Comment

Definition of environment; NEPA style entry to process; automatic application and lists of what's in; definition of "proposals"; scoping exercise and document(process and content requirements) to replace screening mechanism; levels of assessment; define terms in each; criteria for each; policy assessment in Act as different kind of process with criteria to guide application

3.30 Criteria to Guide Discretionary Decision Making

Specific criteria must be established to guide the planning and assessment of proposals and to ensure accountability whenever discretionary decision making occurs in the process.

3.31 Introduction

There are two broad areas of discretionary decision-making in this process - general and specific - and criteria must be clearly spelled out in each and every instance where discretion must be applied to ensure credible, supportable decisions. These criteria should capture the values behind the environmental assessment process and constitute a recognition of the value judgements inherent in such decision making.

3.32 General Criteria

The first set of criteria guides judgements on what we mean by such terms as "significance", "sustainability" and "environmental quality" and will affect decisions on what proposals should be subject to assessment and what proposals should be approved or rejected. The concept of setting criteria to make these judgements implies that there can be a substantive test to judge sustainability. Such a test could be undertaken through elaboration of the following criteria to assess whether the decision will reflect a commitment to:

- protecting and enhancing the existing and future wellbeing of all people recognizing the dependency of Canadians on the wellbeing of the biosphere and other people sharing it;

- requiring undertakings to offer net positive biophysical and socioeconomic improvements and net reductions in Canadian resource requirements and environmental impositions;

- avoiding additional negative biophysical and socioeconomic effects, including cumulative effects;

- recognizing the depth and extent of public concerns; and

- appreciating the uncertainties surrounding environmental processes and the risks of underestimating negative aspects of ill-understood relationships.

These criteria clarify the broad purposes of the Act and should guide the evaluation of whether the critical requirements of establishing need, considering alternatives, and determining the significance of environmental effects have been met. They would apply to decisions about application of the Act and throughout the process including the final decision on proposals.

3.33 Specific Criteria

The second area includes the many points in the process where judgements must be made concerning very specific decisions. In particular, legislated criteria are needed to evaluate, and then must be consistently applied to, each of the following decision points:

- determination of whether the environmental assessment content requirements have been satisfactorily met (see Appendix 1 for an example of the kind of criteria that should be included in the legislation to evaluate the adequacy of the environmental assessment document) (Brian - in preparation - FLAG
- the creation of the Mandatory and Exemption Lists;
- the determination of which level of assessment each proposal falls into;
- bump-ups and bump-downs from class lists;
- deferring to provincial authorities;
- the selection of panel members or mediators;
- terms of reference for mediation or review panels;
- the allocation of intervenor funding

Criteria established in each of these cases should capture the values behind the environmental assessment process, be open to public scrutiny and input, and be the test of the ultimate decision-making. A process must therefore be put in place to develop these criteria, publicly review them and incorporate them into this legislation. Some criteria are already available in the EARP Guidelines Order such as the requirements for Panel members under Section 22. (FLAG - this is my addition - I assume it could work just as well with a standing tribunal as with ad hoc panels depending on what we decide on that score)

The overall intention is to ensure that the resulting decision will be the best one rather than one that meets only a minimum standard of acceptability. The effect of such a decision-making structure will be a positive improvement in environmental quality and a reduction of impacts.

3.34 Financial Guarantees

The Act must make standard the task of ensuring a proponent has the financial wherewithal to see a proposal through to its closure. Where a proponent does not foresee the termination of a proposal, the proponent shall nevertheless ensure that it has financial guarantees sufficient to pay all expenses related to any abandonment of the proposal. Further, financial guarantees must been sufficient to cover accidents and environmental problems that arise during the existence of the proposal. In cases where a public hearing is held, the proponent shall provide intervenor funding pursuant to awards determined by the panel/"decision-maker". Such awards shall be made as early as possible in the planning process.

3.35 Comment

Criteria into bill, financial guarantee stuff into bill

3.40 Justification of Purpose, Need and Alternatives

In light of the purpose of the Act and the decision-making criteria, each environmental assessment must justify the proposed activity by showing that its purpose is legitimate, that it will meet an environmentally acceptable need, and that it is the best of the alternatives for meeting the need. The overall result is a positive move towards sustainability.

As discussed above, a broadly applied process in which all proponents know from the outset where their proposals fit within the process can be strengthened through an early scoping exercise which places the principles of environmental assessment squarely on the table at the conceptual stage of planning for each proposal. In the scoping document, the proponent must address the fundamental issues of purpose, need and alternatives and describe the major issues to be confronted. Such an exercise would include, for example, in a pulp mill development, the need to address the sustainability of the resource to support the project.

In considering alternatives both alternatives to the proposal and

alternative means of carrying out the proposal should be considered. In the pulp mill example, alternative means of carrying out the proposal would address various technologies for producing pulp and paper from the resource base targeted by a proposed mill.

Alternatives to the proposal would consider alternate means of producing pulp and paper such as from the recycling of post-consumer paper and therefore utilizing or only partially utilizing forest resources.

The scoping document would define problems and outline how to resolve issues. The legislation should clearly specify the scoping document's content requirements, the public involvement mechanism and the method by which the scoping document is finalized. (FLAG - flow problems here and notes from Econiche remind us that we wanted to flesh this out)

3.41 Comment
still to do

3.50 Significant Public Role

A significant role for the public is essential throughout the environmental assessment process.

3.51 Access to the Process and to Information

The public's role in the environmental assessment process - from the initial decision on where proposals fit within the assessment scheme (mandatory inclusion, exemption list, individual decisions and exceptional cases) through to the final decision and follow up monitoring - is absolutely critical. Public participation must be ensured by legislatively guaranteed access to the process and to information.

The public has a role to play during both development and implementation of the environmental assessment process. There must be public rights to notice and adequate time for comment on drafts of anticipated lists (the exclusion List, class lists, etc.) schedules and regulations to the Act, and timely notice of and access and/or input to documents and procedures (such as the selection of panel members and the setting of their terms of reference) relevant to individual assessment processes.

The Public Registry suggested in Bill C-78 is an important component of the process. It should be used as a vehicle for early notification and access to information about proposals and be the repository for all background documentation. Filing of proposals in the Public Registry must be accompanied by other forms of public notice such as the use of local newspapers and/or other relevant media to make the public aware of proposals as early as possible in the process. Early involvement and resolution of issues during such "pre-submission consultation" helps to avoid conflict and expense later in the process. (FLAG - this is my Ontario stuff coming in again; there are other thins we should probably be building in regarding pre-submission consultation)

3.52 Intervenor Funding

Participation must also be guaranteed by a legislated intervenor funding program which would include criteria for the allocation of funds, an independent panel or committee to allocate funds, be proponent supported, have no cap on total funding and be made available early in the process to ensure recipients have adequate time and resources to prepare submissions. The program should specifically include coverage of the costs of legal counsel for representation in hearings. FEARO has had such recommendations before it since 1988 when it commissioned a report entitled "Public Review: Neither Judicial, Nor Political But an Essential Forum For the Future of the Environment".

Bill C-78 should contain an intervenor funding program and an adequate ad hoc program should remain place until legislation is passed. Recognizing that public involvement in the early stages of an assessment frequently contributes to early and often otherwise swifter resolution of conflicts, early funding of this "participant" involvement is also necessary.

3.53 Hearings

One particularly crucial area of public participation is the hearing process. The effectiveness of the whole process will inevitably depend upon the rigour of the hearings. Even though only a minority of cases will involve hearings, the prospect of rigorous hearings should keep decision making in all other cases honest.

A quasi-judicial process is the most preferable option to provide clear legal rights and procedural safeguards to all participants and ensure that rigour and fairness be served. Such a process empowers an administrative body to make an enforceable decision on the basis of a hearing process conducted according to the rules of natural justice for hearing submissions, following notice requirements, providing direct evidence, conducting cross- examination, etc.

We envision two kinds of party status for hearings (vs the two kinds of hearings approach - FLAG for Bill). The first would be intervenors who would have full party status and therefore have as full a role as any other party. They would also be eligible for intervenor funding. Anyone should be able to seek intervenor status. The second party status would be "presenters" who would have the opportunity to give their opinions but would not be subject to cross-examination. These two categories would ensure accessibility and non-intimidating opportunities to participate while ensuring rigour and fairness. (FLAG unsure I got this right - Brian's suggestion here is to address Bill's concern about avoiding using the "loaded" term "quasi-judicial". Other reviewers echo need to use the term, i.e. call a spade a spade but justify it)

During public hearings, panel members will need the power to make their own procedural rules to accommodate differing situations within an overall framework of procedural fairness. For example, panels need to have the flexibility to establish less formal, and therefore less intimidating, proceedings for hearing presenters. in addition, panel chairs require specialized training and members need professional staff

to assist them. The criteria for the selection of panel members should be the same as those outlined in the 1984 EARP Guidelines Order, i.e. they should be unbiased and free of any potential conflict of interest relative to the proposal under review; be free of any political influence; and have special knowledge and experience relevant to the anticipated technical, environmental and social effects of the proposal under review.

3.54 Comments

lots of them - later

3.60 Implementable and Enforceable Decision

The ultimate decision must be capable of implementation and enforcement.

Bill C-78 does not contain any clear link between the environmental assessment process and any legally binding mechanism, such as a licence or permit, for imposing conditions to the assessed proposal. Nor is there any provision in the bill for any binding settlement agreement as a result of mediation. This lack of an implementation and enforcement vehicle is a critical flaw.

3.61 "Cradle to Grave"

We support a "cradle to grave" approach for a federal environmental assessment process. A comprehensive system is required that would include the assessment process, the final decision, and an enforceable (and revocable) licence or permit that would incorporate and ensure implementation of the terms and conditions of the final decision. A proper environmental assessment system provides the critical link between planning for a proposal and then regulating it. It also imposes a tougher test of environmental acceptability than existing pollution abatement regulations which are narrowly focused and set minimum standards allowing "acceptable" environmental degradation. In contrast to traditional regulation-making, the final decision of an environmental assessment is the "best" one, measured, generally, against criteria for environmental quality included in the Act, and specifically, against the various alternatives proposed, rather than just a minimum standard of acceptability measured against otherwise harmful practices.

Bill C-78, in its current form however, creates a vacuum. Even a with the improvements to the process that we are suggesting, it will be empty if it does not contribute to enforceable results. A comprehensive system is required to fill the vacuum that currently exists in federal planning in matters of federal jurisdiction.

3.62 Enforcement Options

The caucus' preliminary position on how to fill this vacuum in the enforcement of federal planning decisions is to lay out two options for which different regulatory schemes will be necessary.
(FLAG - or we can chose which we prefer of a combination of the two - Julia Langer suggested the latter)

a) The final decision must be binding either
   i) under Bill C-78, or
   ii) under a comprehensive set of regulatory/permitting requirements introduced under other Acts. (FLAG - we are unlikely to get this commitment in any form we can trust)

If i) is chosen then Bill C-78 would itself include a licensing provision which would allow for the full set of terms and conditions to be imposed through a single permit under the Act. This permit would override or be consolidated with other federal law permitting processes.

If ii) is chosen, numerous additions to federal regulatory legislation would be required and the final decision of the environmental assessment (including terms and conditions) would be incorporated into the new set of permits.

Either way, the criteria for making the ultimate decision are critical.

In both cases the decision-makers (agency, panel, mediators) must be capable/empowered (expertise, staff, etc.) to put together a comprehensive enforcement scheme to accompany the approval decision. The single approval under the Act or the new comprehensive package of permits shall be consistent with the terms and conditions of the final (written) decision as indicated by i) the agency (decision with terms), ii) mediation (report), or iii) the panel (report).

3.63 The Decision Maker

The final decision could be made by the Environmental Assessment Agency or the panel and be appealable to the Minister or Cabinet on points of policy, and the Courts on points of law. Mandatory phrasing in the Act of the decision makers responsibilities would permit judicial review as necessary.

3.64 Essential Elements

The following four points are essential elements of the enforcement mechanism whichever option is chosen.

a) No action should be permitted to take place until the environmental assessment is complete.

b) Injunctive relief must be available upon application by anyone and can be applied specifically against the Crown.

c) The Act must contain a provision making violation of any order or provision under the Act an offence.

d) In the case of joint federal-provincial reviews, a mechanism is required to hold the provinces accountable to implement that portion of the decision that lies outside federal jurisdiction.

In summary, the enforceability of the final decision is absolutely critical. The process has no credibility if the decisions generated are

not implemented and enforced.

3.65 Comment

still to do

3.70 Monitoring and Follow-up

Monitoring, follow-up and conditions for abandonment of a proposal must be a mandatory part of the final decision.

Assuming that the process will be generating an enforceable decision for each proposal, that decision must include binding requirements for both effects monitoring and compliance monitoring. This requirement should include regular monitoring reports dealing with specific terms and conditions of the final decision. The information shall be public and regularly reviewed to ensure that the impacts are as predicted and appropriate mitigative measures are in place.

Three options are available for deciding who receives and evaluates the monitoring reports. The first option could accommodate proposals where little or no effects occur, such as public parks. In such cases, little or no monitoring would be required. Reports could be received and evaluated by relevant federal agencies or contained in the Public Registry suggested under Bill C-78. The second option would cover very large projects where monitoring would be essential and the "decision maker" would establish, as part of the project license, the terms of reference of a monitoring committee to receive and evaluate monitoring information. The third option would be to build in a bias in favour of a monitoring committee. For example, unless the decision maker is convinced that the evidence establishes that a monitoring committee is unnecessary, it shall be presumed that every licence shall require provisions for establishing the terms of reference for a monitoring committee and that the committee would include members of the public. Those members of the public who were involved as presenters or intervenors should be considered first as candidates.

All of the information generated by this monitoring should be placed in the Public Registry. Such monitoring serves as a feedback loop to ensure implementation of the final decision and a continually expanding database of information to improve the predictive ability of environmental assessment procedures.

3.71 Comment

3.80 Efficiency; Levels of Assessment; Federal-Provincial Reviews

The process must be efficient. This can be encouraged by i) employing the concept of different levels of assessment and ii) integrating the federal environmental assessment process with other federal and provincial review processes.

3.81 Levels of Assessment

Different levels of assessment for proposals of different levels of significance. As discussed in items two and three above, different

levels of assessment can be used to assess efficiently large numbers of proposals of varying environmental significance provided that clear criteria are applied to implementation. This approach ensures that all parties know from the outset where they fit in the process and what is expected of them. If this knowledge is lacking or unclear, proponents in particular, will likely wait until they do know. Unnecessary delay and duplication can be avoided.

Class assessments offer a useful means of providing streamlined assessments of proposals with modest environmental significance. They are also useful for assessing the cumulative impacts of a large number of otherwise small projects. For example, the impact of draining many small wetlands across a large geographic area could be assessed for its overall impacts during the class assessment in a way that each individual assessment would not.

Of critical importance in this approach is the need to limit the definition of a the "classes" of proposals which can be assessed adequately through a fast-track version of the process. Classes should include only proposals which are similar, occur frequently, and are of relatively low environmental impact. Unless the scale of "classes" of proposals is limited it is conceivable that all nuclear plants or all pulp and paper plants could be included in a class with only a fast-track review of individual undertakings. Limiting the definition of a class ensures that a useful efficiency measure is not abused.

3.82 Joint Federal-Provincial Responsibilities

In cases of joint federal-provincial responsibility, the processes should be integrated and the principle of "equivalency" should be applied. This approach would involve deferring to provincial processes which are at least as stringent as an improved federal process (as judged against the eight points herein outlined). This "equivalency" agreement between the federal government and the provinces must recognize that the result of the joint environmental assessment can involve areas that are exclusively under provincial jurisdiction. To ensure that those decisions are binding the federal government can require, as a condition on the federal portion of the approval, that the provincial powers, including enforcement, be exercised in accordance with the terms and conditions of the final decision. (FLAG - reviewers keep tripping over this one. I am not sure there was agreement on it)

Notwithstanding an agreement on "equivalency" of processes and a deferral to the more stringent process, the federal government must exercise its jurisdiction. If the process to be used is a provincial one, the federal government must stay involved in the process and maintain its responsibilities where it has jurisdiction for example under the Fisheries Act.

3.83 Comment

still to do

4.0 Final Comments (very quickly done)

The haste with which we have had to prepare detailed comments on a complex Act that contains so many flaws is disturbing. It is inappropriate to have to suggest major changes to such an important Bill with this degree of haste. It seems clear that the House Committee will face similar difficulties in trying to improve this bill within such a short time frame. Nevertheless, we must emphasize that it is critically important that this Bill receive dramatic improvements.

The proposals set out in this paper set out a fundamentally different approach than that contained in C-78. It is our view that C-78 should not be passed without these fundamental changes. Should the Bill not contain the key elements we have described, it should not be passed. In addition, all of the regulations proposed under C-78 should be made available to the public and the House Committee prior to passage of the Bill. (FLAG - some of our proposals are to put items scheduled for regs into the Bill) In the interval, the House Committee should recommend to the Minister of the Environment that the EARP Guidelines Order be applied and that potential proposals not be exempted by Order in Council as occurred recently in the case of the Alcan Kemano hydro-electric project in British Columbia.

INFORMATION FOR WITNESSES APPEARING BEFORE BILL C-78

* Contact Jacques Lehaie, Clerk of the Committee, as soon as possible to request to appear as a witness before the committee. Remember to ask for your travel expenses to be covered.
While you are talking/communicating with him, you may want to ensure that you will be receiving the hansards of the committee hearings.

* Confirm your request/conversation with Jacques Lehaie in writing.

* Prepare and submit your brief to the Committee before November 21.

* Send a copy of your brief to CEN.
These briefs will be circulated to other Caucus members appearing before the committee. This will enable witnesses to be better prepared when appearing before the committee to: 1) respond to questions from the Legislative Committee on other ENGO briefs; 2) support and reinforce arguments of other Caucus members; 3) strengthen their own arguments.

  These briefs will be made available to Caucus members not appearing before the committee on request only, to cut down on photocopying and postage charges.

* Before leaving home, send a copy of your brief and a notice to your press contacts in an attempt to get coverage of your presentation to the committee.

* Before leaving home, try to set up meetings around Bill C-78 for when you are in Ottawa with: members of the Legislative Committee, your MP, Cabinet Ministers from your province, Opposition Party Critics, Len Good, Deputy Minister, Environment Canada.

* At minimum, try to provide Opposition Party members of the Legislative Committee with a list of questions you want them to ask you.
Witnesses are usually given 10 minutes to present their position and then committee members ask questions. To make sure that you get asked the right questions, it is useful to plant them.

* After you appear, send a copy of your brief to Minister deCotret and FEARO.

* After you appear, talk to the Press. Some members of the press will likely be attending the committee meetings. You may want to personally contact national and your local press contacts both before and after your presentation, and/or plan a press conference after you appear. A press conference may be most feasible when more than one ENGO witness appears on the same day.

* Be prepared to pass on information from your experience with the committee to future witnesses to help them prepare. Contact Lynn and she can help get the information to future witnesses.

* Do not hesitate at any time to call on Lynn to help set up meetings, put you in touch with other Caucus witnesses and/or provide any additional information.

SPECIAL COMMITTEE ON BILL C-78

Ross Stevenson, Chair	(613)992-9302
Jean-Marc Robitaille, ViceChair	(613)992-5296
Lee Clark, Parliamentary Secretary	(613)992-2352
Jim Edwards	(613)992-3046
Marcel R. Tremblay	(613)995-9391
Charles Caccia (LIB)	(613)992-2576/FAX:(613)995-8202
Paul Martin (LIB)	(613)992-4284/FAX:(613)992-4291
Jim Fulton (NDP)	(613)995-1127/FAX:(613)995-8830

Clerks of the Committee:

Jacques Lehaie, 996-4258/FAX:(613)992-7974
Sandy Birch, 996-1198

UPDATE ON BILL C-78

Bill C-78 was reintroduced into the House of Commons and debated at second reading the week of October 22-26, 1990. It is expected to pass the vote on second reading on Tuesday October 30, 1990. Once it passes second reading, it will be referred to a Legislative Committee. The existing Special Committee on Bill C-78 is expected to become the Legislative Committee.

A Legislative Committee can hear witnesses and conduct a clause-by-clause review of the Bill. It can recommend changes to the legislation to the House of Commons but only amendments that are considered to be within the existing "principle" of the Bill. It is not empowered to substantially revise and rewrite the Bill as Environmental Assessment Caucus members believe this legislative package requires.

The usual process for a Bill from this stage is for the Legislative Committee to hold hearings, do a clause by clause review of the Bill and report to the House of Commons on their findings with recommended changes. These changes are either accepted or rejected. The Bill is debated and voted at Third reading, then referred to the Senate. Once it is passed by the Senate, it is proclaimed as law. This process must all take place during one session of Parliament.

With respect to Bill C-78, there is a possibility that this session of Parliament will end before the Bill is proclaimed. Rumors from Parliament Hill indicate that the Mulroney government intends to end this session of Parliament once the GST passes through the Senate. The most recent rumor indicates this may be as early as Friday November 9, 1990. This would mean that Bill C-78 "dies on the order paper" and has to be reintroduced at first reading when a new speech from the throne open Parliament in the Spring.

However, the government is exhibiting strong interest in pushing this legislation through as quickly as possible - in large part, it appears, to get rid of the current EARP guidelines Order. If the legislation dies on the order paper, they will pursue an all party agreement to reintroduce Bill C-78, as is, to the new session of Parliament and move it through the Parliamentary process (first, second reading) with little debate and no delays.

Until this session of Parliament ends, Bill C-78 will continue through the usual committee process.

One potential opportunity for achieving substantial changes to this legislation is for the legislation to die on the order paper, be withdrawn by the government, be substantially rewritten and strengthened, and be reintroduced as stronger legislation during the new session of Parliament. Among other things, this course of action would require 1) concerted pressure on the government reinforcing the inadequacy and deficiencies of the proposed legislation; 2) ensuring C-78 dies on the Order Paper, which may include having as many witnesses as possible appear before to the Legislative Committee, preventing the Legislative Committee from reaching the report stage; 3) preventing an all party agreement on swift passage of the legislation; and 4) getting the government to agree to withdraw and rewrite the legislation, preferably with Caucus input. The Technical Advisory Committee has sent a letter requesting the government to consider point 4.

Among concerns about the legislation, you may want to include some of the key points raised in the papers prepared by Bill Andrews, Linda Duncan, Brian Pannell, Elizabeth Swanson, which included (refer to those papers for more details):

* intervenor funding should be legislated and currently is not guaranteed in the legislation;
* the scope of the act is inadequate/too narrow and should be broadened to at least include:
  - matters subject to federal authority even where no federal permit or license is required;
  - projects which may have an environmental impact outside of the province in which the project is located;
  - all federal Crown Corporations;
  - major government purchases of goods and services;
  - government policies and programs;
* there should be no abdication to the provinces;
* exemption clause, "inappropriate" projects, too broadly worded and should be replaced by a more narrowly worded one for matters which have no environmental impact and are the subject of no public concern;
* Act should be amended to require federal environmental assessments to consider the need for and alternatives to project, policy or program being assessed;
* EARP guidelines order specification that panellists are to be "unbiased, free of any potential conflict of interest, free of any political influence and in command of special knowledge" should be legislated;
* there is too much Ministerial discretion;
* there are no binding mechanisms;
* public involvement, in setting terms of references, in triggering environmental assessments, in determining mitigation matters, review of assessments, has been limited and should be expanded.

2. Send a copy of your letter to as many of the following as possible: Prime Minister Mulroney; Ray Robinson, FEARO; Len Good, Deputy Minister, Environment Canada; Paul Martin, MP; Jim Fulton, MP; Hon. Michael Wilson, Minister of Finance; Hon. Don Mazankowski, Deputy Prime Minister; Environmental Assessment Caucus c/o CEN.

Addresses:

(For all federal politicians/no postage required)
House of Commons
Ottawa, Ontario K1A 0A6

Ray Robinson
FEARO
Fontaine Building
Hull, Quebec K1A 0H3

Len Good, Deputy Minister
Environment Canada
Les Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec K1A 0H3

3. Contact your MP expressing your concerns about this legislation.

4. Contact Cabinet Minister from your province and express your concerns, especially key Ministers blocking strong legislation, e.g. Ministers of Transport, International Trade, Indian and Northern Affairs, National Defence, COLA, Western Diversification.

5. Put an article about C-78 in your newsletter (sample prepared by Shelley Bryant and included in this package).

6. Write an opinion piece for your local newspaper.

7. Keep in regular contact with your press contacts on this legislation.

FINALIZING ENVIRONMENTAL ASSESSMENT CAUCUS POSITION PAPER
The groundwork for the Caucus paper was developed at the Environment Assessment Caucus meeting at Econiche, September 27-29, 1990 and a draft paper was discussed at the follow-up Caucus meeting held at the CEN Annual General Meeting, October 13, 1990. You will find enclosed the October 13, 1990 confidential draft paper.

The Caucus charged the Technical Advisory Committee with the responsibility of developing and finalizing this paper. A process is in place to have a final draft by November 9-13. The final draft will be circulated to Caucus members and you will be asked to sign on as endorsing the paper.

If you have any major concerns, please contact Lynn Sabean or Kathy Cooper as soon as possible.

WHAT YOU WILL FIND ENCLOSED:
* Environmental Assessment Caucus list - updated as of 25 October 1990;
* October 13, 1990 Draft Caucus Position Paper;
* Newrelease on National Roundtable position on Bill C-78;
* Briefing paper by Steward Elgie on U.S. NEPA legislation;
* Sample newsletter article prepared by Shelley Bryant;
* Summary Strategy tasks coming out of Econiche Caucus meeting;
* Caucus press release on Rafferty situation, coming out of Caucus meeting at CEN AGM;
* Responses from Robert deCotret, Minister of the Environment and Paul Martin, Liberal Environment Critic, to questions asked about Bill C-78. (These are for your information only and are not for publication.)
* Legislative briefing document on Bill C-78.
* Alberta government memo on Bill C-78 leaked May 1990.

If you require further information, please do not hesitate to contact Lynn Sabean at CEN.

Draft: circulated for comment only, not for quotation or citation

Federal environmental assessment process/legislation: alternative legislative outline for consideration in anticipation of a government proposal

prepared by
Robert B. Gibson, Ph.D., Associate Professor
Department of Environment and Resource Studies, University of Waterloo
Waterloo, Ontario, Canada N2L 3G1
June 15, 1990

The following legislative outline has been developed in response to the evident deficiencies of the current EARP, the weaknesses of the legislative proposal set out in the unsuccessful Cabinet submission of fall 1989, and the basic principles for design of an effective, efficient and fair environmental assessment process. It also reflects lessons from experience with the legislated process established under the Ontario *Environmental Assessment Act.*

1.0 Principles of process design

1.1 General intent

The federal environmental assessment process is intended to ensure that all decision making under Canadian federal jurisdiction is environmentally responsible. Such responsibility requires that Canadian decisions contribute positively and significantly to achieving sustainability in human relations with the environment regionally, nationally and globally.

1.2 Purposes

The federal environmental assessment assessment process is intended

- to recognize the interests of Canadian people in regional, national and global environmental wellbeing, and to utilize fully the knowledge and experience of Canadians in encouraging development that respects biophysical and community needs;
- to provide a coordinating focus for decision making on proposed undertakings, certainty of decision making requirements and procedures, and reasonably predictable time and resource requirements for proponents and other parties affected by decision making on undertakings;
- to ensure comprehensive and integrated consideration of biophysical and socioeconomic effects, throughout planning and prior to approval, for projects, programs, regulatory initiatives plans and policies that may have negative biophysical and socioeconomic effects in Canada and or in lands and waters affected by Canadian decisions and actions;

- to ensure that proponents consider biophysical and socioeconomic factors (along with conventional economic and technical factors) in the initial determination of purposes and in the selection and evaluation of alternatives as well as in the design and implementation of undertakings;
- to facilitate effective participation by Canadians in the making of decisions that will affect their lives and environment; and
- to ensure that undertakings subject Canadian federal authority contribute to future as well as immediate, wellbeing for all people, including residents of other nations who may be affected by Canadian decisions, by protecting and enhancing biophysical and socioeconomic sustainability.

1.3 Best options vs acceptable proposals

Unlike regulatory requirements that are generally meant to ensure proposed undertakings meet standards for environmental "acceptability", the environmental assessment process should result not merely in environmentally "acceptable" undertakings but in undertakings that are, relative to other options, most in accord with the principles of sustainability and the broad public interest.

The process must therefore require proponents to defend the objectives of their undertakings, to demonstrate that they have examined alternative means of satisfying these objectives in light of environmental as well as financial and technical considerations, and to show that their proposals represent the best available means of serving sustainability and the public interest.

1.4 General decision criteria (global imperatives, national and regional implications)

Considered at a global level, current human demands and practices are not environmentally sustainable. This is in part because of a general failure in the past to ensure that biophysical and socioeconomic factors were considered, along with the usual financial and technical considerations, in public and private decision making.

This failure must now be corrected. However, it will not be enough simply to ensure that excessive waste of resources is avoided and additional environmental damages are minimized through the "integration of environment and economy". Given current and prospective global conditions, it is the responsibility of Canada and other wealthy nations to ensure that the overall effect of their decisions and actions is to reduce Canadian demands on global resources and to reduce negative environmental impacts under Canadian influence or control.[1]

---

1 As the World Commission on Environment and Development observed, one of the greatest barriers to achieving sustainability is poverty and insecurity, which contribute both to increasing human populations and to environmental

If the new federal environmental assessment process is to be an effective vehicle for acting on this imperative, it will be necessary to specify the national and regional implications of a commitment to global as well as national and regional sustainability and to incorporate these in the assessment process as decision criteria. This will include identification of appropriate biophysical and socioeconomic objectives and indicators.

A programme for developing and specifying implications, objectives and indicators for sustainability shall be initiated pursuant to this legislation. As they are developed and specified, these implications, objectives and indicators for sustainability shall be integrated into the standard decision criteria for environmental assessment deliberations.

In the interim, decision making under this legislation shall respect an initial set of decision criteria reflecting commitment to:

- protecting and enhancing the existing and future wellbeing of all people, recognizing the dependency of Canadians on the wellbeing of the biosphere and other people sharing it;
- requiring undertakings to offer net positive biophysical and socioeconomic improvements and net reductions in Canadian resource requirements and environmental impositions;
- avoiding additional negative biophysical and socioeconomic effects, including cumulative effects;
- recognizing the depth and extent of public concerns; and
- appreciating the uncertainties surrounding environmental processes and the risks of underestimating negative aspects of ill-understood relationships.

1.5 General principles for process design

The process must be effective in reducing current resource requirements and environmental impacts, efficient in discharging its responsibilities, and fair to all parties.

To ensure effectiveness, efficiency and fairness

- the process must apply clearly and automatically to all proponents of undertakings that may pose environmentally significant effects, so that all

---

abuses driven by economic desperation. A considerable increase in the economic wellbeing of the world's poor is therefore an environmental (as well as social, economic and moral) imperative. But since current human demands and practices are not now sustainable, steps to combat poverty through "sustainable development" in poor regions and nations must be accompanied by sizable overall reductions of resource use and environmental impacts in wealthy regions and nations, including Canada. Otherwise global environmental deterioration will continue.

such proponents incorporate environmental considerations from the very beginning of the planning of new undertakings;
- environmental considerations must be defined broadly, and realistically, to include socioeconomic as well as biophysical effects and their interrelations;
- proponents subject to the process must be required to demonstrate that they have examined alternative means of satisfying the objectives and meeting the public interest, in light of environmental as well as financial and technical considerations;
- implementation of the process must ensure attention is focused on the cases and issues that are of greatest significance and must not impose unnecessary or inappropriate costs and delays;
- the process must ensure early and effective public involvement to allow for incorporation of public views and to ensure independent scrutiny; and
- all central components of the process must be enshrined in law, and compliance with requirements and products of the process must be legally enforcable.

2.0 Application

2.1 Comprehensiveness

The new federal environmental assessment process shall apply to all decision making under federal jurisdiction which involves potentially negative biophysical and/or socioeconomic effects, or opportunities for potentially positive steps to reduce current resource requirements and environmental impacts. This would include all environmentally significant projects, programmes, regulatory initiatives, plans and policies initiated, funded or regulated by federal agencies or authorities.

2.2 Timing

The nature of the process and the rules for its application must be defined clearly enough that all proponents of environmentally significant undertakings are aware of their obligations and can incorporate environmental considerations from the very beginning of their deliberations. Proponents who judge application of the process to be inappropriate may seek exemption, but must consider environmental factors at least to the extent necessary to prepare a persuasive exemption request;

3.0 Definitions

3.1 Environment

"Environment" must be defined to include the social, economic and cultural environment as well as the biophysical environment. A broad definition of

"environment" is needed to recognize the inevitable interconnections among biophysical, social, economic and cultural effects and to ensure proper breadth in a process that should provide the best available public opportunity to scrutinize and participate in government decision making.

The interrelations of these various elements must be stressed. This is not just because socioeconomic and biophysical factors are inevitably linked, but also because their joint, interactive effects are what will threaten or serve prospects for sustainability.[2]

3.2 Environmental effects
The definition of "environmental effects" shall include immediate and long term, individual, additive, synergistic and cumulative effects, including effects on ecosystems (and components thereof), communities and cultural traditions.

3.3 Undertakings
"Undertakings" potentially subject to the process shall be defined to include all projects, programmes, regulatory initiatives, plans and policies initiated, funded or regulated by federal authorities, agencies or corporations. This would include proposed activities partially or wholly outside Canada but subject to decision making under Canadian federal jurisdiction.

As well as new undertakings the definition shall cover substantial change to existing undertakings and abandonment or decommissioning of existing undertakings.

4.0 Assessment obligations and review requirements

4.1 Assignment of responsibilities
Since assessment requirements are intended to facilitate the incorporation of environmental factors in the planning of undertakings, it is proper for proponents to be given responsibility for environmental assessments of options they are considering. Because of the inevitable limitations of proponents' interests, it is also necessary to require proponents to consult other concerned parties during the assessment process and to ensure that completed assessments and proposals are subject to appropriately rigorous and open review.

---

2 Just as no society can be sustained if it is based on activities that degrade the bio-physical environment, no bio-physical balance can be maintained by a socio-economic regime does not meet basic criteria for acceptability and durability.

4.2 Legal obligation

While environmental assessment can provide net benefits for proponents, the evident inclination of many proponents to avoid some or all assessment responsibilities means implementation of the environmental assessment, documentation and review responsibilities must be obligatory.

4.3 Adversarial character

Because assessment responsibilities are given to the proponents of undertakings and because the immediate interests of proponents may often conflict with the principles of sustainability and the larger public interest, the process must ensure rigorous testing of proponents' claims, independent decision making, and monitoring of compliance with commitments and approval conditions. This means that an effective environmental assessment process, especially the review component, must have a somewhat adversarial character.

This does not mean that assessment review hearings must follow the conventional legal model of adversarial proceedings. Indeed, practical opportunities for more cooperative and efficient deliberations should be pursued. Nevertheless, if proponents do the assessment work, the process must be sufficiently open and adversarial to ensure rigorously critical reviews and effective supervision of implementation.

5.0 Process design

5.1 Different assessment and review needs

Because of differences in the significance of potential effects and controversies surrounding undertakings of various kinds, different versions of the process are needed. These different versions of the process, and other variations in requirements and procedures, will be needed to ensure appropriate application of the process to

- individual undertakings of major significance;
- classes of significant undertakings with important cumulative as well as individual case effects;
- classes of undertakings that are of relatively modest environmental significance, recur frequently and have generally predictable environmental effects;
- successive related undertakings (e.g. plans, programmes or policies followed by individual projects);
- minor individual undertakings,
- undertakings covered by a class assessment.

It may also be necessary define means of adjusting these versions of the process for application to different kinds of major undertakings (e.g. policies vs. projects)

5.2 Cradle to grave application

Each version of the process must be designed to ensure that biophysical and socioeconomic factors are considered, along with economic and technical factors, in all decision making on subject undertakings - i.e. in the identification of need and opportunities, in the initial selection and evaluation of alternatives, in the preparation of proposals, in the review and approval of applications for approvals, in final design and implementation, and in eventual decommissioning and abandonment.

5.3 Definition of process versions and application rules

If environmental considerations are to be incorporated effectively into planning, everyone contemplating and proposing undertakings know from the outset what the appropriate assessment obligations are and how they must be met. Therefore, each version of the process must be clearly defined, and implementation instructions must specify as precisely as possible which process version applies to which kinds of undertakings.[3]

While flexibility must be provided to recognize case-specific needs, there must be basic certainty about the structure and demands of each process version, and about the appropriate version for each kind of undertaking. This entails defining the standard information requirements, decision routes, review and approval procedures, evaluation criteria, and monitoring and enforcement requirements for each version of the process.

It will be necessary to anticipate exceptions to the general rules of application and to establish procedures for exempting certain undertakings from some or all review requirements, for bumping certain undertakings up to more rigorous review requirements or down to less rigorous review requirements.

---

3 In its favouring of flexibility and case-by-case process determination, EARP has been an ill-defined system for late addition of environmental considerations into project design and approval processes. Usually, information requirements and appropriate decision routes are determined only after a proposal has been prepared and submitted for approval. This leaves EARP in an essentially reactive, regulatory role. It defeats the purpose of encouraging inclusion of environmental factors along with the usual financial and technical ones in early planning. Moreover, the process uncertainties make planning difficult for proponents. A clearly defined process that requires early appreciation and integration of environmental concerns is needed.

5.4 General implications

To meet process design requirements the process must

- provide clearly specified rules of application, planning and documentation requirements, and decision routes, providing for different levels of detail appropriate to undertakings of different levels of significance;
- establish means of ensuring timely and appropriately rigorous reviews, including provisions for effective public scrutiny and participation;
- provide flexible means of adjusting requirements for exceptional cases;
- provide certainty of relations with other approval processes;
- include enforcable means of ensuring compliance with process requirements and decisions;
- ensure attention is focused on the cases and issues that are of greatest significance; and
- avoid unnecessary or inappropriate costs and delays.

6.0 Application of different versions of the process

6.1 Versions of the process

The implementing legislation shall establish two basic versions of the assessment process, varying according to the significance of, and uncertainties concerning, potential effects and concerns raised by undertakings subject to the process.

The two versions of the process shall be defined to identify standard assessment and documentation requirements, review provisions and decision routes for applications in each version.

Monitoring and enforcement requirements for each version of the process shall also be specified.

6.2 Full assessment and review

The full assessment and review version of the process is intended for medium and large-scale undertakings which

- may have significant environmental effects or implications for progress toward sustainability in Canada or elsewhere;
- are precedent-setting, involve technologies or other components the effects of which are unknown or disputed, or are otherwise unusual in ways that mean the potential effects are not easily predictable;
- are likely to stir public concern or controversy; or
- while not generating significant effects by themselves, may contribute to significant cumulative effects.

6.3 Fast-track assessment and review
The fast-track assessment and review version of the process is intended for small-scale undertakings which

- are likely to have modest environmental effects or implications for progress toward sustainability,
- have potential effects that are well-understood and easily avoided, and
- are not likely to stir significant public controversy.

6.4 Combined versions - class assessment
Where the process is applied to classes of undertakings, it will ordinarily be appropriate to require full assessment and review of the class as a whole (considering cumulative and overall as well as generic needs, purposes, alternatives, impacts, mitigation options and monitoring requirements) and subsequently to subject the individual undertakings covered by the class assessment to fast-track assessment and review only.

6.5 Combined versions - programme, plan and policy assessments
A similar combined approach with full assessment and review followed by fast track consideration of individual undertakings will also be appropriate where the process is applied to those programmes, plans or policies which are to be implemented through subsequent individual undertakings, so long as these individual undertakings are of modest scale, environmental significance and controversy.

6.6 Exemptions
The process shall set criteria and procedures for exemption of undertakings that are biophysically and socioeconomically sound. Exemption provisions shall focus on preparation of initial exclusion lists setting out categories of environmentally insignificant undertakings.

6.7 Assignment of undertakings to process versions
Unless exempted or specifically assigned to the fast-track version of the process, undertakings are subject to the full assessment and review version of the process.

The legislation shall set detailed criteria and procedures for determining which (kinds of) undertakings can be appropriately assigned to the fast-track version of the process.

6.8 Exceptions
While pre-determination of assessment requirements is needed to provide a modicum of certainty for proponents and other participants in the process, the cost is a limitation of flexibility. Some flexibility for adjustment is necessary because the standard assessment requirements and decision routings will not always be appropriate. Needs to accommodate exceptional

cases can be met through special criteria and procedures for reassignment of individual cases.

The process shall include provisions for assigning exceptional cases to the appropriate category (full version, fast-track, or exemption). This would involve criteria and procedures for

- moving individual undertakings from the full version to the fast-track version (bump-down),
- moving individual undertakings from the fast-track version to the full version (bump-up),
- requiring assessment and review of undertakings listed among exempted activities (designation), and
- exemption of undertakings in categories ordinarily subject to full or fast-track assessment (individual exemption).

7.0 Full assessment and review

7.1 Outline of the full assessment and review process

The main elements of the full process shall be

- proponent responsibility for integrating consideration of environmental factors effectively in the planning of the undertaking, and for preparation of an environmental assessment document;
- mandatory public notice and consultation with interested and potentially affected parties during planning;
- submission of the proposal for an undertaking and the supporting environmental assessment document to an Environmental Assessment Agency at arms length from proponent authorities and agencies;
- government and public review of proposal and environmental assessment document;
- provisions for requiring additional information to meet identified deficiencies;
- public hearings before an Environmental Assessment Panel on cases involving significant unresolved concerns;
- decision by the Panel on acceptability of assessment work and approval, conditional approval or rejection of the proposal;
- Cabinet authority to overrule Panel decisions, with reasons;
- appeal provisions; and
- monitoring provisions.

7.2 Environmental assessment document

The environmental assessment document reports on the environmental component of planning work in considering problems and opportunities, in developing and evaluating alternative responses, in identifying and

evaluating potential effects and mitigation options, in selecting a preferred undertaking from the evaluated options and in preparing a detailed proposal.

The environmental assessment document must

- justify the need and purpose for the proposed undertaking in light of the environmental assessment decision criteria;[4]
- demonstrate that an appropriate range of alternative undertakings and other means of responding to the identified need and purpose have been identified, and that means of maximizing beneficial effects and avoiding, mitigating or compensating for negative effects have been considered;
- describe the environments (lands, waters, communities, etc.) which may be affected;
- describe the nature and significance of the potential environmental effects of each of the alternatives, with and without implementation of mitigation options;
- demonstrate that the preferred undertaking has been selected appropriately from the evaluated options in light of the decision criteria;
- summarize implementation, mitigation and compensation commitments; and
- report on the nature of, and responses to, pre-submission consultations with relevant agencies and other potentially affected or concerned parties.

7.3 Government and public review

The environmental assessment document will be reviewed by appropriate government agencies and non-government parties including communities, interest groups and interested individuals. This review will be initiated and facilitated by the Environmental Assessment Agency.

The main elements of the government and public review are as follows:

- the Environmental Assessment Agency shall be responsible for public notice when a proposal for an undertaking and the supporting environmental assessment document have been submitted, and for circulation of (or otherwise convenient and timely access to) the application and document for interested and potentially affected parties, including non-government organizations and members of the public as well as relevant federal, provincial/territorial and local government authorities;
- the Agency shall provide an appropriate, specified period for review and comment

---

4 See s. 1.3 above. These criteria will have to be specified. In general they concern the broad public interest, immediate environmental considerations, and responsibilities for enhancing biophysical and socioeconomic sustainability regionally, nationally and globally.

- the government shall ensure that adequate resources are available to government and public reviewers to ensure the proposal and environmental assessment document receive carefully comprehensive, critical examination;
- the Agency shall assemble the review comments and provide them to the Environmental Assessment Panel assigned to the case;
- the Panel shall identify any information deficiencies and require correction of these deficiencies by the proponent;
- the Panel shall also identify potential areas of fruitful discussion between reviewers and the proponent, for possible clarification or resolution of concerns, and shall encourage such discussions;
- the Panel shall provide additional notice and addition time for government and public review when new information is provided by the proponent in response to identified defiencies or changes in the proposal;
- the Panel may hold a public meeting or public meetings during the review period to allow for oral submissions on the proposal and assessment;
- at the end of the review and comment period, any party, including a member of the public, that believes there are significant unresolved concerns about the proposal and the assessment, may request a public hearing before the Panel;
- where a public hearing is held the Panel shall be responsible for ensuring appropriate notice, time, resources and procedures;
- whether or not a public hearing is not held, the Panel shall in the end prepare a report on the proposal and the environmental assessment document; the report shall conclude with a decision on the acceptability of assessment work and approval, conditional approval or rejection of the proposal;
- Panel decisions stand unless overruled by Cabinet.

All submissions by the proponent, all reviewer comments and all statements and rulings by the Panel shall be public documents.

7.3 Determining need for public hearings
The legislation shall set out appropriate procedures and criteria for determining need for detailed review through public hearings.

In general,
- a request for a public hearing may be made by any reviewer who believes there are significant unresolved concerns about the proposal and the assessment;
- the request for a public hearing is made to the appropriate Panel;
- the Panel will decide on the appropriateness of a public hearing in the case in light of the environmental assessment decision criteria and the nature and significance of the unresolved concerns;

- Panel decisions on whether or not a public hearing shall be held must be supported with written reasons and must be made public;
- Panel decisions on whether or not a public hearings shall be held are subject to appeal by any party;
- appeals shall be submitted to the Office of the Environmental Defender reporting to the House of Commons;
- any decision by the Environmental Defender to overturn a Panel decision must be based on the environmental assessment decision criteria and the nature and significance of the unresolved concerns, must be supported with written reasons and must be made public;
- where a Panel decision not to hold a hearing is overturned and a hearing is required, a new Panel shall be appointed to hear the case.

The legislation may identify kinds of undertakings that would be automatically designated for consideration at hearings.

7.4 Public hearing procedures
The legislation shall set out standard procedures of public hearings. The procedures shall be designed to

- ensure rigorous review through effective testing of the proponent's claims;
- ensure effective public involvement; and
- focus attention (time and resources) on matters of greatest significance, and avoid unnecessary costs and delays.

In general the procedures shall favour the inquisitorial rather than adversarial model, but shall also recognize the inevitably adversarial character of the review and hearing process.

7.5 Decisions
Panel decisions on acceptability of assessment work and on approval, conditional approval or rejection of the proposal are immediately public documents.

The Panel decisions stand unless overruled by Cabinet. Following a Panel decision, Cabinet shall have a specified period (e.g.30 days) to decide whether or not to alter the Panel decision. Where Cabinet chooses to alter the decision, a written rationale must be provided in a public document and the rationale must address the environmental assessment decision criteria. Cabinet may also refer a case back to the Environmental Assessment Agency for further assessment, to be conducted within a specified time frame.

Final decisions, including approval conditions, issued by a Panel or by Cabinet are binding and enforcable. Approval conditions set in decisions under the

federal environmental assessment process shall be no less stringent than those set in laws of general application.

Decisions and reports prepared by Environmental Assessment Panels and decisions with reasons made by Cabinet shall be available to the public as soon as is practicable.

7.6 Bump-downs
The proponent or initiator of an undertaking ordinarily subject to the full assessment and review process may submit a request to the director of the Environmental Assessment Agency that the case be bumped down to consideration through the fast-track assessment and review process.

The burden of establishing grounds for a bump down shall lie with the applicant who shall be responsible for submitting appropriate information in support of the bump-down request.

The Agency shall be responsible for ensuring appropriate public notice of and consultation on bump-down requests. In cases of significant uncertainty or controversy, the director shall arrange for a public meeting before an Environmental Assessment Panel.

In light of the environmental assessment decision criteria, the specifics of the case and the merits of the full and fast-track versions of the process, director or the Panel shall determine whether a bump-up is appropriate. Decisions of the director or Panel stand unless overruled by Cabinet within 21 days.

8.0 Fast-track assessment and review

8.1 Outline of the fast-track version of the process
The fast-track provides for more less onerous assessment requirements and for more streamlined reviews appropriate to less significant undertakings. It gives the planners and regulators of undertakings (proponents and initiating agencies) more responsibility for consultation and review.

The main components of the fast-track version of the process centre on generic requirements for:

- early public and government agency notice and time-limited opportunities for review and comment on proponent proposals and draft documents at specified steps in the planning process;
- identification of purposes and alternatives and for examination of potential effects;

- preparation of an environmental study report on the planning and assessment findings, the justification for the proposed undertaking and the identified plans for addressing environmental concerns;
- circulation of, and provision of public access to, the proposal and environmental study report;
- review period for public and government agency review of the proposal and environmental study report;
- opportunity for submission and consideration of critical reviews and requests for bump-up (moving the undertaking from the fast-track to more detailed assessment under the full version of the process);
- authority for proponents and initiating agencies to proceed with the undertaking if no bump-up is requested in the review period, or if the bump-up requests are rejected; and
- enforcable obligation for the proponent to carry out the undertaking in compliance with the plans and commitments set out in the environmental study report and with any subsequent agreements reached to satisfy reviewer concerns.

Because most decision making in the fast-track is left in the hands of the proponent and/or initiating agency, there must be special focus on ensuring effective public and review agency notice and participation, and implementing effective provisions for bump-up (moving cases of particular concern from the fast-track to the full process).

8.2 Consultation

Public and government agency notice, and time-limited opportunities for review and comment shall be mandatory at three stages of planning:

- after the need and purpose of an undertaking and alternative general response options have been identified;
- after initial evaluation of the alternative options (including alternative designs) has been completed; and
- after the preferred undertaking has been identified and the environmental study report completed.

8.3 Environmental study report

The environmental study report documents how environmental considerations were integrated in the selection and planning of the proposed undertaking.

In general the environmental study report must provide

- a description of the purpose and nature of the proposed undertaking;
- an outline of any reasonable alternative means of serving the purposes of the undertaking, including alternative methods (designs, timing, scale, etc.) for implementing the proposed undertaking;

- evidence that reasonable alternative means of serving the identified purpose were considered and justification for selection of the proposed undertaking;
- a description of the potential environmental effects of the undertaking and options for mitigating these effects;
- implementation and monitoring commitments; and
- an account of consultations with relevant government agencies the potentially affected public and other interested or concerned parties

8.4 Bump-ups
Any party may submit a request to the director of the Environmental Assessment Agency that a proposal be bumped up to consideration under the full process.

The Agency shall be responsible for ensuring appropriate notice of and consultation on bump-up requests. In cases of significant uncertainty or controversy, the director shall arrange for a public meeting before an Environmental Assessment Panel.

In light of the environmental assessment decision criteria, the specifics of the case and the merits of the full and fast-track versions of the process, the director or the Panel shall determine whether a bump-up is appropriate. Decisions of the director or Panel stand unless overruled by Cabinet within 21 days.

8.5 Monitoring fast-track performance
All fast-track environmental study reports and decisions must be submitted to the Environmental Assessment Agency. The Agency will be responsible for maintaining a public record of fast-track decision making and for monitoring proponent compliance with fast-track procedures and requirements.

9.0 Combined versions of the process

9.1 Class assessment
Assessment of classes of undertakings will be appropriate where the overall and cumulative effects of these undertakings are worthy of assessment and where the individual undertakings in the class are sufficiently similar that generic assessment of such undertakings will provide for more efficient later consideration of specific individual proposals.

The class assessment process has two components: consideration of the class as a whole through full assessment and review version of the process, and subsequent consideration of specific undertakings within the class through

the fast-track version of the process but in light of the approved class assessment.

The initial component involves preparation of a class assessment document covering the class as a whole (considering cumulative and overall as well as generic needs, purposes, alternatives, impacts, mitigation options and monitoring requirements). The class assessment document shall also outline how the standard fast-track version of the process would be adjusted for application to individual undertakings in the class. Such adjustments may not compromise the basic elements of the fast-track version of the process. In particular they may not weaken bump-up provisions.

The second component is the appropriately adjusted fast-track assessment and review of undertakings in the class.

9.2 Assessment of programmes, plans and policies guiding subsequent undertakings
Environmentally significant programmes, plans and policies shall ordinarily be examined through the full assessment and review process. In some cases where the programmes, plans and policies involved are intended, at least in part, to guide design and implementation of subsequent undertakings (e.g. capital projects or regulatory intiiatives) it may be appropriate to allow fast track consideration of these individual subsequent undertakings.

This shall be allowed only when the subsequent undertakings are of modest scale, environmental significance and controversy and only when provisions for fast-track consideration of subsequent undertakings are set out and approved in the initial full assessment.

In these cases, the standard fast-track version of the process may be adjusted for application to individual undertakings under the applicable programme, plan or policy. Such adjustments may not compromise the basic elements of the fast-track version of the process. In particular they may not weaken bump-up provisions.

10.0 Exemptions process

10.1 Kinds of exemptions
The legislation shall permit interim, categorical and individual exemptions.

10.2 Exemption criteria
The legislation shall outline appropriate criteria for evaluating exemption proposals. These criteria shall reflect the standard environmental assessment decision criteria.

In general, exemptions shall be approved only for individual undertakings or categories of undertakings that

- are accepted as environmentally sound or will have no, or clearly insignificant, negative biophysical and socioeconomic effects;
- require immediate approval to address emergency situations (e.g. toxic waste spills); or
- will be assessed and reviewed under an equivalent alternative process with appropriate technical and procedural requirements, including provisions for rigorous and comprehensive review and effective public participation, enforcable decisions and monitoring provisions.

Time-limited interim exemptions may also be granted when the legislation first comes into force to allow on-going activities to continue while proper assessments are undertaken and approvals sought.

10.3 Process for interim and categorical exemptions
An initial set of appropriate interim exemptions and categorical exemptions covering specified kinds of undertakings shall be established by regulation when the legislation comes into force.

Interim exemptions shall be for a maximum period of three years and shall not be renewable.

Categorical exemptions shall be for a maximum period of four years and shall subject to public review by an Environmental Asssessment Panel before they may be renewed. Any proposal for a new categorical exemption after the legislation has come into force shall be considered in the process for individual exemptions.

10.4 Process for individual exemptions
The proponent or initiator of an undertaking ordinarily subject to the full or fast-track version of the assessment and review process may submit a request to the director of the Environmental Assessment Agency that the case be exempted from assessment requirements.

The burden of establishing grounds for an exemption shall lie with the applicant who shall be responsible for submitting appropriate information in support of the exemption request.

The Agency shall be responsible for ensuring appropriate public notice of and consultation on exemption requests. In cases of significant uncertainty or controversy, the director shall arrange for a public meeting before an Environmental Assessment Panel.

In light of the exemption criteria, the environmental assessment decision criteria, the specifics of the case and the merits of the full and fast-track versions of the process, director or the Panel shall determine whether a bump-up is appropriate. Decisions of the director or Panel stand unless overruled by Cabinet within 21 days.

11.0 Authority

No undertaking subject to the process may be initiated, and no government approvals or funding for implementing an undertaking subject to the process may be issued, before an environmental assessment approval or exemption for that undertaking is granted.

Government regulatory agencies shall ensure that conditions of permits and licences reflect, and where appropriate incorporate, the conditions contained in environmental assessment approvals.

12.0 Appeals

The legislation will provide for and specify appeal rights and procedures for proponents, interested parties, and the public concerning exemption requests, bump up and bump down requests, and approval decisions.

13.0 Implementation, monitoring and enforcement

The Environmental Assessment Agency shall be responsible for

- monitoring the overall implementation of the environmental assessment process,
- ensuring that proponents comply with approval commitments and conditions, and
- recommending, requiring or initiating audits of undertakings or effects monitoring studies to determine if impact predictions were accurate, if the terms and conditions of approval were adequate or if changes should be made in the review of future undertakings of like nature.

The Agency shall issue reports based on the review of the results of audits and effects monitoring studies.

Existing regulatory agencies retain their responsibilities for compliance monitoring and enforcement of approvals in areas within their expertise and authority.

The legislation shall make it an offence

- to proceed without the necessary approvals;
- not to comply with the approval commitments or conditions.

14.0 Public involvement

The legislation shall specify mandatory minimum measures to ensure effective public involvement through appropriate and timely public notice and access to information, opportunity for review and comment, and provisions for intervenor funding, in the early stages of planning as well as at the review and hearing stages.

15.0 Integration and coordination with other decision making processes

Introduction of the new federal assessment process must be accompanied by moves to amend other, existing legislation to facilitate effective and efficient application of the process. It will also be necessary to specify the practical relationships between the new federal environmental assessment requirements and existing regulatory approval requirements. With the proliferation of, and general lack of coherence among, review and regulatory demands there is a need and legitimate demand for a clearly specified set of coordinating arrangements in the new assessment process.

To reduce assessment process overlaps, it will sometimes be appropriate to establish joint submission, review and approval processes or simply to defer to other processes.
However, the principle of equivalency shall apply when any such arrangements are made. The joint or substitute process established for generic or specific cases must be at least as open, comprehensive, rigorous and fair as the process established under this legislation, and the review criteria should be compatible.

To facilitate streamlining of reviews and to avoid duplication, the legislation shall provide for coordination and/or integration of the new federal environmental assessment process with

- review and regulatory requirements of other federal authorities;
- planning and assessment processes established or being developed by the territorial governments;
- assessment processes established or being developed in native claims settlement agreements and legislation; and
- provincial regulatory and assessment processes.

16.0 Process administration

The legislation shall establish the general procedures and powers for the Environmental Assessment Agency and for Environmental Assessment Panels, and shall specify relevant uses of the Office of the Environmental Defender, which should be established under separate legislation.

16.1 Federal Environmental Assessment Agency
A federal Environmental Assessment Agency shall be established as an independent authority, operating at arm's length from government. The Agency shall have overall responsibility for overseeing and administering the federal environmental assessment process.

The director of the Agency would report to Parliament through the Minister of the Environment.

16.2 Federal Environmental Assessment Panels
Environmental Assessment Panels shall be appointed by the director of the Environmental Assessment Agency to consider cases requiring Panel review and decision as set out in the legislation. Panel members shall be selected from a standing list of full and part-time panellists available to the Agency.

Individuals shall be appointed to the list of panellists for limited periods of no more than three years, renewable only once. Criteria for making panellist appointments shall be published and recommendations for suitable appointees should be publicly solicited.

All panellists shall be free of any conflict of interest concerning the proposals they consider.

17.0 Regulation making powers

The legislation shall, to the extent possible and reasonable, specify clearly the nature and requirements of the development assessment process and its implementation.

The legislation shall provide for further specification through the making of regulations but shall set out clearly the limits of the regulation making powers (i.e. it will specify what matters may be addressed in regulations) and establish a mandatory process for public consultation before any regulation is made.

18.0 Review

The legislation shall provide for an independent review of the effectiveness of the federal environmental assessment process and of specific aspects of the process - including the two basic versions of the process, class assessment, programme and policy assessment, and the assignment of kinds of undertakings to these versions of the process, use of the bump-up, bump-down and exemption provisions - to be undertaken every five years by the Office of the Environmental Defender.

What type of issue will the Commissioner investigate?

The office has a wide mandate and limited resources. The Commissioner has determined that the best returns on effort will be achieved by focussing on significant *system failures*. Accordingly, the Commissioner is most likely to investigate where it is known, suspected or alleged that:

- *there is a significant deficiency in the legislation relating to the allocation, use or preservation of a natural or physical resource;*
- *the environmental planning or management carried out by a public authority has been ineffective;*
- *significant adverse effects on the environment have arisen as a result of the acts or omissions of any public authority.*

Environmental auditor

The Commissioner reserves the right to audit, by way of an investigation, any proposal with nationally important environmental implications or which is considered to warrant independent public review for some other reason.

The Commissioner and the public

The public has a right to expect the system of environmental management to be capable of delivering environmentally and culturally sensitive decisions. The Commissioner is a guardian of that right. The Commissioner may intervene on behalf of the public and may take steps to promote informed public debate on environmental issues.

How can the Commissioner help you?

If you believe that the quality of the environment is being degraded or that someone is planning or managing the environment inadequately, you should first contact the agency responsible. If you are not satisfied with the response you receive, please advise the Commissioner, stating:

- *the problem you have identified;*
- *the action you have taken;*
- *the response of the agency(ies) concerned.*

The Commissioner will then determine whether or not an investigation will be undertaken. Not all issues will be investigated but the information received will help the Commissioner monitor public concerns about the state of the environment and the quality of environmental management.

PARLIAMENTARY COMMISSIONER
FOR THE ENVIRONMENT

5TH FLOOR
163 THE TERRACE
PO BOX 10241
THE TERRACE
WELLINGTON
PHONE: (04) 711 669

THE PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT

What is the office of Parliamentary Commissioner for the Environment?

The office of Parliamentary Commissioner for the Environment was established on 1 January 1987, primarily to provide an independent source of advice to Parliament on significant environmental matters.

What is the significance of the Commissioner's independence?

Unlike the Ministry for the Environment, or any other Government department, the Commissioner is free from Government policy constraints, or Government directive. In essence, the Commissioner acts as an independent watchdog over the system of environmental management. Constitutionally the Commissioner occupies a position similar to that of the Ombudsmen.

Who is the Commissioner?

The Commissioner is Mrs Helen R. Hughes.

Who appoints the Commissioner?

The Commissioner is appointed by the Governor General, on the recommendation of the House of Representatives.

What does the Commissioner aim to achieve?

The Commissioner aims to maintain or improve the quality of the environment by improving the quality of environmental management.

The Government has established a system of legislation, agencies and processes to administer and manage the allocation, use and preservation of New Zealand's natural and physical resources. The Commissioner is not part of that system. She operates from *outside the system*, monitoring it, identifying system failures and tendering remedial advice for the protection of the environment.

Statutory functions and powers

Under the provisions of the Environment Act 1986, the Commissioner possesses substantial powers, including the ability to:

- Review the performance of the system of agencies and processes established by Government to manage the environment;
- Investigate the effectiveness of planning and management undertaken by public authorities;
- Investigate any matter which has or may adversely affect the environment;
- Review and report on environmentally significant legislation or petitions before the House of Representatives;
- Undertake inquiries, at the request of the House of Representatives;
- Require individuals or agencies to supply information;
- Appear and be heard at statutory consent hearings.

The Commissioner is required to have regard to a number of considerations, including: the maintenance and restoration of ecosystems, the heritage of the tangata whenua, and the sustainability of resource use.

Who does the Commissioner report to?

The Commissioner reports the results of reviews, inquiries and investigations to the House of Representatives.

When the Commissioner investigates the effectiveness of environmental planning and management carried out by a public authority she is able to report the results of her investigations directly to the authority. Under the Environment Act 1986, public authority includes Ministers of the Crown, Government departments and local authorities.

Does the Commissioner possess powers of enforcement?

As an officer of Parliament, the Commissioner has no executive authority. She derives her influence from the ability to report directly to the House of Representatives and from the fact that she can make her findings and recommendations public.

What "triggers" an investigation?

An investigation may be initiated as a result of a request from the House of Representatives, a public complaint or when a significant problem is identified by the office during routine monitoring activities.

THE ENVIRONMENTAL ASSESSMENT OF POLICY

Econiche, September 29

François Bregha

1. Background

The environmental assessment reform package includes an undertaking that, effectiv immediately, "the environmental implications of all proposed policy and program initiatives will be considered before decisions are made".

The government defines "policy" as cabinet decisions (i.e., only they would be assessed). Empirical studies by FEARO suggest that only about 20 percent of the about 350 decisions cabinet makes annually have environmental implications and only one quarter of these (i.e., 5 percent or 14 per year on average) are environmentally significant. Departments will conduct their own assessments with the help of guidelines to be developed by FEARO. There are to be no exemptions to the assessment process.

2. Issues

The environmental assessment of policy raises difficult methodological and institutional issues. The five most important are presented below in point form as a discussion guide.

2.1 Legislation

Should policy assessment be legislated?

Pros:

- provides certainty process would be applied
- visible demonstration of commitment

Cons:

- would fetter cabinet discretion
- "one cannot legislate virtue"
- risk of lawsuits would be inhibiting

Recommendation: accept that the government will not give the environment special treatment and push for strong accountability and public consultation instead.

2.2 Accountability

How will policy-makers be held accountable for the environmental implications of their policies? Options include:

i) the government's proposals: the issuance of a public "statement" after a cabinet decision and possible consideration by a Parlamentary Committee

ii) the creation of an office of Parliamentary Commissioner (as exists in New Zealand) to audit the implementation of policy assessment (modelled after Auditor-General). The Auditor-General could assume this responsibility.

As a related question, will it be necessary to reinforce accountability at the bureaucratic level (by including environmental protection in job descriptions; performance appraisals; renumeration, etc.)?

Recommendation: an independent Commissioner reporting to Parliament should be created through legislation to audit the implementation of the process. Government must also entrench accountability at the bureaucratic level through administrative measures.

2.3 Public access to process

How much access should the public have to the environmental assessment of policy? Options include:

i) the government's proposals: same as above. What should the statement contain?

ii) publication of the full cabinet analysis on environmental impacts (not the recommendation to Ministers) rather than just a statement. Would the publication of this analysis inhibit the provision of bureaucratic advice?

iii) in addition to (ii), publication of supporting studies

iv) greater use of white and green papers to receive public input in policy formulation

Recommendation: Government should publish the full background cabinet analysis when it announces its decision.

2.4 Machinery of government

How should the environmental assessment of policy be managed? Options include:

i) the Agency administering the process to have the right to vet assessments before these are submitted to cabinet (i.e., control for quality)

ii) alternatively, rely on guidelines and departmental self-assessment

Recommendation: the Agency should behave as a central agency and set standards for quality.

2.5 Support activities

What additional activities may be necessary to ensure the success of this initiative?

- the definition of environmental quality objectives: policy cannot be assessed without objectives
- the development of environmental indicators (to gauge success)
- greater investment in scientific research and development of methodology (e.g., integration of environmental considerations in cost/benefit analysis)
- staff training
- post-assessment audit and monitoring

Recommendation: These activities are essential and need to be promoted to ensure the success of policy assessment.

BRIEFING NOTE ON
CANADIAN ENVIRONMENTAL ASSESSMENT ACT (BILL C78)
PARLIAMENTARY PROCESS

The Act was introduced into the House of Commons and read for the first time on June 18, 1990. The Bill began debate at second reading on June 26 and is expected to complete second reading in October 1990.

When the House recessed on June 27, a Special Parliamentary Committee was setup to "pre-study" the Bill. The Committee held its first meeting the day after the House reconvened, September 25. It elected its chairperson, Ross Stevenson (PC) and vice-chairperson, Jean-Marc Robitaille. A Steering Committee (Stevenson, Robitaille, Charles Caccia, Jim Fulton) was struck and held an organizational meeting September 26. They decided the following:

* That the Special Committee would become the Legislative Committee once Bill C-78 passed second reading.
  (The Special Committee can operate as if it is already the Legislative Committee except that it can not conduct a clause-by-clause vote on the Bill.)
* They would not travel.
* Ads would be placed in newspapers notifying people of the hearings.
* Travel funding would be available for witnesses.
* They would begin to hear witnesses immediately.
* They would work at a normal committee schedule, approx. 2 meetings a week.

The Committee is expected to call the Minister of the Environment and FEARO officials to appear as witnesses between now and Thanksgiving (October 9th). The first public/non-government witnesses are expected to be called mid-October.

TO APPEAR AS A WITNESS: Send a short letter as soon as possible to Ross Stevenson which indicates you want to appear before the committee and that you require travel expenses:

Ross Stevenson, Chair, Committee on Bill C78
Parliament Buildings, Ottawa, Ontario K1A 0A6

Written briefs will also be accepted and should be sent in during October.

MEMBERS OF SPECIAL COMMITTEE ON BILL C-78:

Ross Stevenson, Chair	992-9302
Jean-Marc Robitaille, ViceChair	992-5296
Lee Clark, Parliamentary Secretary	992-2352
Jim Edwards	992-3046
Marcel R. Tremblay	995-9391
Charles Caccia (LIB)	992-2576*subject to change
Sheila Copps (LIB)	995-2772*subject to change
Jim Fulton (NDP)	995-1127

Committee clerks: Jacques Lehaie, 996-4258 Sandy Birch, 996-1198

Canadian Environmental Network
Réseau Canadien de l'Environnement

P.O. Box 1289, Station B, Ottawa, Ontario, K1P 5R3
(613) 563-2078

MEMORANDUM

TO: Environmental Assessment Caucus
FROM: Lynn Sabean, Caucus/Consultation Coordinator
DATE: 26 October 1990

RE: Update on Bill C-78 (Environmental Assessment Act) and reminders.

==========

URGENT REMINDER RE: APPEARING BEFORE PARLIAMENTARY COMMITTEE!!!! If you are interested in appearing as a witness before the Parliamentary Committee on Bill C-78, call Jacques Lehaie, Committee Clerk (613)996-4258/ FAX:(613)992-7974 **TODAY!!!** Make sure you ask for your travel expenses to be paid. It would be a good idea to follow-up your phone call with a letter of confirmation.

Written briefs must be submitted to the committee no later than November 21, 1990. Send to:
The Clerk
Special Committee to pre-study Bill C-78
Room 644 - Wellington Building, House of Commons
Ottawa, Ontario K1A 0A6

Please remember to send a copy of your brief to CEN (P.O. Box, 1289, Station B, Ottawa, Ontario, K1P 5R3). I will make sure the briefs are circulated to all Environmental Assessment Caucus witnesses appearing before the committee.

(See below for further information for witnesses appearing before the committee.)

WHAT YOU CAN DO!!!!!!!!
There is warranted concern that the government is trying to push through Bill C-78, in its present form with minimal changes, as quickly as possible (see section "Update on Bill C-78" below). If <u>your time is limited and you can only do one or two things, please do one or more of the following:</u>

1. Write a letter to Minister deCotret, stating, in addition to your other concerns about the legislation, that the government should slow down its process for passing this Bill and should seriously consider making an opportunity to substantially amend this Bill, which should include withdrawing and rewriting it. (**PRIORITY**)

NEWSLETTER
ENVIRONMENTAL
LAW CENTRE

l'ecupoint

Vol. 5 Nos. 1-2, 1990 202, 10110 - 124 Street, Edmonton, Alta. T5N 1P6 ISSN 0826-581X

EARP Goes to Court

When I first became acquainted with the federal Environmental Assessment and Review Process ("EARP") about twelve years ago, it was a process that was virtually unknown to lawyers and policy makers, at least in southern Canada. At that time, it was viewed as an informal mechanism for reviewing resource developments that might have an adverse impact on the environment. It was used primarily to review and assess projects which were clearly under the ownership or jurisdiction of the federal government such as developments in the offshore or north of 60°. In contrast, in 1990, every developer of a resource project in Canada is looking over his shoulder to see whether or not it might be "EARPed" by the federal government.

This change has occurred as a direct result of actions by committed environmentalists to force the federal government through court action, to "EARP" two dam projects - the Rafferty-Alameda in Saskatchewan and the Oldman in Alberta. The state of the law respecting EARP is developing quickly as new legal actions are started and court decisions are appealed. Nonetheless, it is important at this point to take stock of the law respecting EARP. The following is a brief summary of the principles developed in recent court cases on the application of EARP to resource developments.

1. Applicability of the EARP "Guidelines Order"

The "Environmental Assessment Review Process Guidelines Order" [1] "is not a mere description of a policy or program, it may create rights which may be enforceable by way of mandamus".[2] The "Guidelines Order" binds all to whom they are addressed, including the Minister of the Environment himself.[3]

A Minister, in granting an approval under a statute, in this case the Navigable Waters Protection Act, must apply the "Guidelines Order" even though the statutory criteria in the Act do not include environmental concerns.[4]

The Application of the "Guidelines Order" is a condition precedent to the issuance of a license under the International River Improvements Act; failure to comply is an excess of jurisdiction and an order for certorari will lie.[5]

2. The Meaning of "Decision Making Responsibility"

In order for the EARP "Guidelines Order" to apply, there must be a "proposal" which is defined in s.1 of the Order to include "any initiative, undertaking or activity for which the Government of Canada has a decision making responsibility".

The issuance of a license under the International River Improvements Act is a decision making responsibility.[6]

"Proposal" does not mean "application"; an application or request is only one way of drawing the attention of a Minister to an "initiative, undertaking or activity". Another way would "include a request on the part of an individual for specific action falling within the Minister's responsibility under a statute which he is charged with administering on behalf of the Government of Canada."[7]

3. Duplication of Provincial Environmental Review Processes

If a provincial environmental review has not dealt with all relevant federal concerns then the application of the EARP "Guidelines Order" will not result in unwarranted duplication.[8]

Further, there will be no duplication if the process adopted in the provincial review does not meet the requirements of the EARP "Guidelines Order" and, in particular, where there has not been a full opportunity for the public to participate in the environmental assessment and review process nor the establishment of an independent panel to review the assessment.[9]

4. Initial Assessment

The courts are willing to review the contents of an initial assessment to determine whether the conclusions are supported by the information contained in the document. As well, they will review a decision taken by the Minister under s.12 of the "Guidelines Order"; it is essential that the conclusions of an initial assessment conform to the wording of that section.[10]

Donna Tingley
Environmental Law Centre

1. SOR/84-467.
2. *Canadian Wildlife Federation Inc. et.al.* v. *Minister of the Environment* (1989), 3 C.E.L.R. (N.S.) 288 at 300 (F.C.T.D.).
3. *Saskatchewan Water Corporation* v. *Canadian Wildlife Federation et.al.* (1989), 4 C.E.L.R. (N.S.) 1 at 3 (F.C.A.D.).
4. *Friends of the Old Man River Society* v. *Minister of Transport and Minister of Fisheries and Oceans and Her Majesty the Queen in Right of Alberta* (13 March 1990), Ottawa A-395-89 (F.C.A.D.). Leave to appeal this decision to the Supreme Court of Canada has been sought.
5. *Supra*, note 2 at 305-306.
6. *Supra*, note 2 at 301.
7. *Supra*, note 4 at 23.
8. *Supra*, note 2 at 303-304.
9. *Supra*, note 4 at 29-30.
10. See *Canadian Wildlife Federation et. al.* v. *Minister of the Environment* (1989), 4 C.E.L.R. (N.S.). 1.

Canadian policy-makers, **is whether judicial review of NEPA has been a benefit or a hindrance**?

Judicial Review of NEPA: Costs and Benefits

The most commonly-raised complaint is that NEPA litigation is used simply as a tool to delay projects. This of course begs the question of whether projects which have not undergone a thorough environmental review ought to go forward. Leaving that issue aside, however, the numbers do not support this assertion. A project is not delayed unless a plaintiff is successful in obtaining an injunction from the courts. Over the past 6 years, less than 2% of the roughly 500 EISs prepared each year have been the subject of an injunction. Given the strong reluctance of Reagan-appointed officials to comply with environmental laws, this figure represents only the most egregious NEPA violations.

Other agency complaints about the need to do EISs, and the amount of detail required, are simply complaints about having to comply with the legislation.

What, if any, benefits have resulted from NEPA litigation?

"External Check"

The greatest benefit of judicial review is that it has provided an outside check on agency compliance with NEPA. In the early years of the Act, agency compliance with NEPA was, on the whole, notoriously poor. The quality of research and analysis in early EISs was erratic and generally substandard, despite strong public criticism of these problems. Simply adding an environmental mandate to agencies which had operated under a development mandate for decades was not enough. According to senior officials at the Council of Environmental Quality, which oversees NEPA, "agencies simply wouldn't have looked seriously at alternatives, and impacts, without litigation."

NEPA litigation has provided an external check, outside of the executive, to enforce the integrity of the legislation. As agency compliance with NEPA has increased, the volume of litigation has declined. For example, the two peak periods for litigation were the early 1970's, when agencies were first forced to comply with the Act, and the early 1980's, when a new corps of Reagan-appointed officials sought to roll back costly environmental laws. Since 1984, the volume of NEPA litigation has declined to less than half the level in those peak periods. Over time, the threat of litigation has lead to greater NEPA compliance.

In fact, it has become increasingly common in recent years for agencies and/or project proponents to negotiate with environmental groups during the EIS process. Proponents ensure that the major concerns of the groups are met, in return for an undertaking not to litigate. These efforts have often, though not always, proven successful.

Might these improvements have occurred anyway, independent of

rigorous environmental assessment. They are, the requirement to: consider all reasonable alternatives, to assess cumulative impacts, and to estimate the potential extent of uncertain impacts.

* Judicial Review

"The judicial role is to ensure that the promise of the legislation becomes reality and is not lost in the halls of bureaucracy."

Those words, written by Judge Wright of the Federal Court of Appeal, launched two decades of judicial scrutiny of NEPA compliance. Judicial review is available because NEPA and its regulations consistently impose affirmative requirements ("shall") on agencies.

Despite the frequency of litigation, courts, with a few exceptions, have been reluctant to substitute their opinion for that of the agency. In general, four types of issues stand a fair chance of success in NEPA litigation. First, the most common subject of litigation is a decision not to prepare an EIS (about 50% of all cases). Courts will overturn an agency Finding of No Significant Impact when it is not supported by reasonable evidence, or for any of the other 3 reason listed below.

Second, suits frequently focus on a failure to consider a reasonable alternative. When an alternative which could significantly reduce environmental impacts was not even considered in an EIS, courts often are willing to step in.

Third, another important area of litigation is allegations that an agency has failed altogether to assess a particular type of environmental impact (as opposed to claiming the assessment was inadequate). Failure to consider cumulative impacts, and failure to identify and quantify uncertain impacts are two growing subjects of litigation.

Fourth, courts are extremely reluctant to delve into whether the assessment of impacts in an EIS is adequate. Judges shy away from mediating over a battle of experts. However, the one instance where courts will require a more thorough assessment of impacts is when expert agencies have voiced strong concerns about particular impacts of a project, and those concerns have not been properly answered in the EIS.

As such, one of the primary effects of judicial review of NEPA decisions has been to elevate the role of environmental expert agencies in project decision-making. Without the threat of litigation, decision-makers often discard concerns of environmental agencies which are seen to interfere with their development mandate.

The difficult question, and one of great importance to

Consider Alternatives

The requirement to consider alternatives to the proposed action is unambiguously identified as the "heart" of the NEPA process. This step is designed to prevent agencies from adopting an "all or nothing" approach to projects. Agencies must consider all reasonable alternatives which might reduce impacts to the environment, including the "no action" alternative. An alternative must be considered even if it requires actions outside the agency's mandate. The EIS must identify which is the "environmentally preferred alternative."

Allegations that an agency has failed to consider a reasonable alternative are frequently the subject of litigation. The courts have drawn the line at requiring consideration of alternatives which are "remote and speculative."

Describe Affected Environment

An EIS must describe the baseline conditions of an area which is about to be affected by a project. This description must be concise, and relevant to the likely impacts of a project.

Assess Environmental Impacts

The EIS must "rigorously explore and objectively evaluate" the likely environmental impacts for each alternative. Here is where the agency must really do its homework. It must identify all significant environmental impacts which the project is likely to cause, and evaluate the probable extent of the impact.

Of particular importance is the requirement that an agency assess the likely cumulative impacts of a project. These include past, present, and foreseeable future impacts. The impacts from other activities, even if outside the scope of federal authority, must be included under cumulative impacts. This requirement prevents agencies from considering the impacts of a project in isolation.

In many instances, information to assess significant impacts simply will not be available. Oftentimes scientific knowledge concerning the effects of certain actions is in an uncertain state (e.g. greenhouse effect, loss of biological diversity). It is common practice to ignore such effects and limit discussion to known impacts. Yet waiting until the full effects of an activity are proven often means it is too late to prevent the effects. NEPA requires agencies to gather important missing information, unless the costs of doing so would be exorbitant. If that is the case, the agency still must identify the lack of information. Then it must assess the extent of foreseeable adverse impacts, based on credible scientific information.

Both the requirement to assess cumulative impacts and to assess uncertain impacts are emerging as frequent bases of litigation.

Mitigation

An EIS must consider methods to mitigate environmental impacts. However, as a result of a recent Supreme Court decision, no such measures need be adopted. Only where the agency specifically relies on mitigation to reduce impacts to acceptable levels must it describe a mitigation plan.

Record of Decision

"NEPA's purpose is not to generate paperwork -- even excellent paperwork -- but to foster excellent action." To accomplish this objective, an EIS must be followed by a thorough written Record of Decision ("ROD"). The rod must describe the selected action, and why it was chosen. If the environmentally preferred alternative was not chosen, this decision must be explained. Monitoring and mitigation measures, if adopted, must be described in the ROD.

Supplemental EIS

After an unfavourable EIS, it is not uncommon for a company to propose a more environmentally benign method of operation. The fiasco over the Al-Pac pulp mill in Alberta is a perfect example. NEPA law requires an agency to prepare a supplemental EIS in at least two instances. First, when substantial changes to the project are proposed which would affect its environmental impacts (for better or worse). Second, when significant new information arises after the EIS is completed.

NEPA's Weaknesses

(1) Lack of Substantive Mandate

NEPA's requirements have been interpreted as purely procedural. Agencies must thoroughly consider environmental impacts in an EIS, but are free to disregard such impacts in reaching a final decision. Most NEPA litigation is inspired, at bottom, by dissatisfaction with the agency's decision, not with its process. Unable to question the decision, litigants are forced to attack the procedure (although successful suits almost invariably result in improved decisions). While it would not be desirable to place final decisions in the hands of judges rather than elected politicians, NEPA certainly could go further in mandating that environmental concerns be translated into decisions.

Two working examples serve to crystallize this suggestion. The first arises under ANILCA, the statute governing public land management in Alaska. The responsible agency may permit activities on federal lands only if it determines, after an EIS, (1) that the minimum amount of public lands necessary to accomplish the purpose are being committed, (2) that any significant impacts are necessary, consistent with sound management principles, and (3) that all practicable steps to mitigate impacts have been taken.

The second example comes from the environmental assessment statutes of Minnesota and Michigan. These statutes require that an agency adopt the "environmentally preferred alternative," plain and simple (not including the no action alternative).

These two examples afford the public, and the courts, some objective standard by which to judge a final decision. The provisions do not substitute judicial for agency discretion. They simply require an agency to translate the findings of its own EIS into final action.

(2) No Duty To Monitor

The environmental benefits of an EIS are only as good as the accuracy of its predictions of adverse impacts. Yet NEPA does not require monitoring to ensure that impacts fall within the range predicted in the EIS. At present, their are attempts to create such a duty through the courts, but their success is far from assured. Requiring monitoring is an indispensable component of any environmental assessment legislation.

Legislation to require monitoring is now before Congress.

(3) No Duty To Mitigate

As a result of the Supreme Court's recent decision in Methow Valley, there is no duty under NEPA to adopt mitigation measures, no matter how reasonable they may be. As is required under ANILCA (above), requiring the adoption of all practicable mitigation measures would be a reasonable and enforceable requirement.

Legislation to require mitigation is now before Congress.

NEPA's Strengths

Draft EIS and Comments

The requirement for public and agency input on a draft EIS greatly enhances public accountability. In the words of one commenter, it "creates a forum for pluralistic debate over the merits [and impacts] of an activity." Calling for comments after an agency has issued its draft assessment, instead of seeking comments on a bare proposal, permits informed input, and often narrows the issues in contention. Providing a forum for informed public debate, before a decision is reached, has been one of the greatest achievements of NEPA.

Nor can agencies simply ignore public comments. They must respond to every comment in writing in the final EIS. An agency must pay special attention to the comments of other expert agencies. Especially when those comments are critical of a project and its impacts.

Specifying Contents of an EIS

Before the requirements of an EIS were fleshed out by regulation it was very difficult for an agency, or a court, to know what issues the EIS must address, and when an agency had done enough. Specifying the required contents of an EIS has enhanced uniformity among agencies.

Three requirements have been particularly pivotal in promoting

litigation? The evidence in the U.S. strongly indicates that the answer is "no." A Presidential Executive Order in 1979 required agencies, for the first time, to comply with NEPA in the assessing international impacts of U.S. actions. However, that order also precluded judicial review of such compliance. Senior officials in the Council on Environmental Quality surveyed compliance with this executive order 2 years ago. They found that "compliance has been minimal," and that "lack of judicial review is the biggest factor."

The ultimate question is whether judicial review has resulted in more environmentally sound decision-making? Obviously there is only so much the law can do in this regard ("you can lead a horse to water..."). Nonetheless, judicial review of NEPA compliance has produced several tangible improvements in agency decisions. First of all, as discussed above, it has elevated the role of expert environmental agencies in decision-making. Secondly, it has produced a much more thorough and comprehensive assessment of environmental impacts, including cumulative impacts of projects and uncertain impacts. Thirdly, it has forced agencies to examine a broader range of alternatives to their proposed action. Not infrequently, this public examination of alternatives leaves an agency little choice but to adopt a less harmful option.

40.10.4

ᑲᑎᕕᒃ ᓄᓇᕗᑦ ᑲᑭᒪᖅ

Administration Régionale KATIVIK Regional Government
P.O. Box 9, KUUJJUAQ (Fort Chimo), Quebec J0M 1C0

Le 19 janvier 1988

Monsieur Carol Martin
Bureau fédéral d'examen des
évaluations environnementales
13e étage
Immeuble Fontaine
Hull (QC)
K1A 0H3

Cher monsieur,

Vous trouverez sous pli les commentaires de l'Administration régionale Kativik au sujet de l'amélioration de l'évaluation environnementale fédérale.

Ce document fait suite à la rencontre que nous avons eu à Montréal le 15 janvier dernier.

Veuillez agréer, cher monsieur, l'expression de nos sentiments distingués.

Michael Barrett
Environnement et
ressources

p.j.

ᑲᑎᕕᒃ ᓄᓇᕗᒻᒥᒃ ᑲᑭᒪᖅᑐᑦ

Administration Régionale KATIVIK Regional Government
P.O. Box 9, KUUJJUAQ (Fort Chimo), Quebec J0M 1C0

Commentaires de l'Administration régionale Kativik sur l'amélioration du Processus fédéral d'évaluation et d'examen en matière d'environnement

Présenté par l'Administration régionale Kativik

au Bureau fédéral d'examen des évaluations environnementales

Janvier 1988

AVANT-PROPOS

L'Administration régionale Kativik est un organisme qui a été légalement constitué en août 1978 en vertu de la Loi sur les villages nordiques et l'Administration régionale Kativik (L.R.Q. ch. V-6.1). Elle a juridiction sur tout le territoire situé au nord du 55e parallèle de la province de Québec, sauf sur certaines terres décrites dans la Convention de la Baie James et du Nord québécois (ci-après «la Convention») et la Loi Kativik. Le siège social et le secrétariat de l'Administration régionale Kativik sont situés à Kuujjuaq.

L'Administration régionale Kativik possède dans son territoire le pouvoir de faire des ordonnances et de règlementer, qui comprend également, au besoin, celui d'interdire, de révoquer et de suspendre toute activité, dans les domaines suivants:

- administration locale;
- transports et communications;
- justice;
- services de santé et sociaux;
- développement économique; et
- environnement, ressources et gestion de l'affectation des terres.

En mars dernier, le ministre fédéral de l'Environnement, l'Honorable Tom McMillan, exprimait son intention d'apporter des améliorations au Processus fédéral d'évaluation et d'examen en matière d'environnement (le PFEEE), et entamait une révision interne du processus dans son ensemble. Le Bureau fédéral d'examen des évaluations environnementales (le BFEEE) présentait par la suite un document de travail intitulé *Améliorer l'évaluation environnementale fédérale: un document de travail*, résumant le processus actuel et ses lacunes principales, et tentant d'identifier des alternatives pour l'améliorer.

Une série de consultations régionales eurent lieu au cours de l'automne 1987, et les résultats et les conclusions seront étudiés lors d'un atelier national à la suite duquel le ministre de l'Environnement déposera un projet de modifications au Cabinet.

Nous croyons dès le départ utile de mentionner que le PFEEE ne s'applique pas au Nouveau-Québec puisqu'un régime propre a été créé suite à la signature de la Convention (chapitre 23: l'environnement et le développement des ressources au nord du 55e parallèle) en 1975. C'est cependant dans une optique constructive que l'Administration régionale Kativik fait part des ses brefs commentaires au

BFEEE, chargé d'administrer le Processus fédéral actuel et de coordonner la consultations sur les améliorations à y apporter.

Nous présenterons nos observations sur chaque aspect particulier en relation avec le régime environnemental fédéral prévu au chapitre 23 de la Convention.

INTRODUCTION

Depuis 1975, suite à la signature de la Convention, tous les projets de développement au Nouveau-Québec et à la Baie James sont soumis à une procédure particulière d'évaluation et d'examen des répercussions sur l'environnement et le milieu social, à l'instar des autres régions du Québec et du Canada. Cependant, le régime qui s'applique sur le territoire visé par la Convention au nord du 55e parallèle (celui qui s'applique au sud du 55e parallèle est distinct, quoique similaire dans son essence) se substitue au Processus fédéral d'évaluation et d'examen en matière d'environnement (PFEEE), entré en vigueur en 1974 et qui s'applique à la planification et à la mise en oeuvre de toutes les propositions de projets de développement relevant de la compétence fédérale.

Le régime en vigueur à la fois au Nouveau-Québec et à la Baie James est différent selon que le projet est de juridiction provinciale ou fédérale; il existe en effet deux régimes parallèles, mais dont les principes directeurs de l'évaluation environnementale sont les mêmes, et visent à assurer:

- la protection des autochtones, de leurs sociétés et communautés et de leur économie;

- la réduction des répercussions des activités de développement sur les autochtones;

- la protection des droits de chasse, de pêche et de piégeage des autochtones;

- la protection des ressources fauniques, du milieu physique et biologique et des écosystèmes du territoire;

- la participation des autochtones et des autres habitants à l'application du régime;

- les droits et les intérêts des non autochtones;

- le droit de procéder au développement qu'ont les personnes agissant légitimement dans la région;

- la réduction des répercussions indésirables découlant du développement relativement à l'environnement et au milieu social sur les autochtones et non autochtones et sur les communautés autochtones et non autochtones.

La procédure fédérale afférente à la Convention est administrée par l'Administrateur fédéral nommé par le Cabinet, lequel réfère tous les projets de développement de

juridiction fédérale assujettis au processus (nous verrons plus loin comment un projet est soumis ou non au processus) au Comité fédéral d'examen, chargé d'étudier les projets soumis au processus. Le Comité fédéral d'examen est composé de trois membres nommés par le Canada et de deux membres nommés par l'Administration régionale Kativik.

Lorsqu'un développement doit faire l'objet d'une évaluation environnementale, le promoteur effectue un rapport d'évaluation des répercussions sur l'environnement et le milieu social tenant compte des lignes directrices particulières édictées par le Comité d'examen, qui évaluera le rapport et recommandera, après avoir effectué s'il y a lieu des consultations auprès des personnes, groupes ou communautés intéressées, d'autoriser ou de ne pas autoriser le développement et, le cas échéant, à quelles conditions.

L'expérience de l'Administration régionale Kativik avec le processus fédéral visé par le chapitre 23 de la Convention est relativement limitée. En effet, depuis la mise en application de la Convention, seulement un développement de juridiction fédérale - la route d'accès au lac Stewart, à proximité de Kuujjuaq - a été soumis au processus fédéral; notons que les activités de vol militaire au Nouveau-Québec et au Labrador, dont le promoteur est le ministère de la Défense nationale, fait actuellement l'objet d'une évaluation environnementale en vertu du PFEEE, mais auquel ont été intégrées les préoccupations des intervenants du territoire Kativik, et certains aspects du processus fédéral y ont été incorporés.

Toutefois, notre expérience avec le processus provincial s'appliquant au nord du 55e parallèle est extensive, et sa similarité - dans son fond et non dans sa forme - nous permet d'apporter une appréciation valable du processus fédéral dans son ensemble.

1. L'évaluation environnementale fédérale

Notre réaction générale aux propositions de réforme contenues dans le document de travail présenté par le BFEEE est à prime abord très favorable. Nous appuyons évidemment la démarche du ministère de l'Environnement dans son intention de corriger les déficiences du PFEEE, et pour cette raison, nos commentaires ne porteront que sur les facettes de cette réforme qui semblent manquer de force.

Notre première remarque, de nature très générale, porte sur le type de répercussions dont traite le PFEEE. Il est évident pour tous les intervenants familiers avec les études d'impacts que, dans une majorité de cas, il soit impossible de réaliser un projet de développement sans qu'il y ait de répercussions sociales, lesquelles sont souvent aussi importantes que les répercussions sur l'environnement.

L'étude des impacts sociaux est une activité qui doit émaner prioritairement de la communauté touchée, c'est-à-dire qu'il revient aux personnes touchées de décider de la nature et de l'importance des répercussions sociales d'un développement. L'évaluation des impacts sociaux devrait à notre avis mettre l'accent sur la participation du public et sur une approche holistique plutôpt que technique où le recours à des experts et à l'acquisition de données factuelles semble limitatif.

Or, le PFEEE semble ignorer, du moins formellement, toute prise en considération de cet aspect de l'évaluation d'un projet, ce qui n'est pas le cas pour le processus fédéral s'appliquant dans le territoire visé par la Convention où, en effet, la dimension sociale est toute aussi importante, sinon plus que la dimension environnementale, et tente d'intégrer à l'évaluation et à l'examen des impacts autant l'approche technique que l'approche politique.

Nous considérons donc que la définition du terme *environnement* devrait être moins restrictive, et englober à la fois les aspects biologiques et physiques mais également les changements d'ordre démographiques, sociaux, culturels et économiques.

2. La portée du PFEEE: qui doit s'y soumettre?

Il existe actuellement un manque d'uniformité flagrant dans l'application du PFEEE aux divers ministères, organismes et sociétés fédérales. Plusieurs organismes fédéraux mènent des activités ayant des répercussions environnementales, mais certains ne sont pourtant pas obligés de procéder à une évaluation environnementale.

D'un autre côté, nous estimons que la Convention est claire à ce sujet. Au nord du 55e parallèle, la procédure fédérale d'évaluation et d'examen des répercussions sur l'environnement et le milieu social s'applique à tous les projets fédéraux, c'est-à-dire proposés par les ministères et organismes fédéraux, entrainant une participation financière fédérale, ou étant de juridiction fédérale en raison du régime foncier. Cette définition nous semble plus large, et permet d'éviter l'impasse dans laquelle on se trouverait si l'on se contentait seulement de désigner officiellement les organismes fédéraux devant se soumettre au PFEEE, comme le propose le document de travail.

3. Les projets de développement visés

Le PFEEE actuel contient un mécanisme permettant d'identifier une série de projets qui ne sont pas soumis au Processus en raison de leur caractère inoffensif du point de vue environnemental.

Parallèlement, le document de travail présenté par le BFEEE propose d'établir une liste des types de projets exigeant une évaluation environnementale initiale. Nous sommes d'accord avec cette suggestion, qui reprend en fait l'idée exprimée aux annexes 1 et 2 du chapitre 23 de la Convention, la première identifiant les projets de développement majeurs automatiquement soumis au processus (aménagements hydro-électriques, routes, mines, services municipaux, etc.), et la deuxième les projets de développement mineurs (écoles, rues, trottoirs, exploration, motels, etc.) soustraits au processus d'évaluation.

A l'instar du processus prévu au chapitre 23 de la Convention, le PFEEE devrait également considérer les projets non visés par les deux listes comme des projets de *zone grise*, et les promoteurs de tels projets devraient les considérer comme assujettis au processus tant qu'un certificat d'autorisation ou une attestation d'exemption soit émise par l'administrateur responsable.

4. L'évaluation initiale

A notre avis, le ministre responsable ou le promoteur de tout projet de développement fédéral quel qu'il soit, devrait obligatoirement aviser le ministre de l'Environnement de son intention de le réaliser et ce, dès le début de la phase de planification de ce projet, aussi mineur qu'il paraisse. Le promoteur devrait inclure dans cet avis des renseignements préliminaires pertinents au projet, pouvant permettre au ministre de l'Environnement de demander une évaluation environnementale initiale et de dresser une liste de critères pour sa préparation.

Nous croyons que le BFEEE, ou tout autre comité neutre composé d'experts et créé à cet effet, devrait être mandaté par le ministre pour administrer le Processus du début jusqu'à la fin; son rôle devrait être de conseiller le ministre de l'Environnement, mais de servir également d'organisme de ressource pour le promoteur et le public. En tout temps, la responsabilité de décider de préparer l'EEI ainsi que son contenu ne devrait pas être laissée au promoteur du projet, ce dernier pouvant avoir des intérêts incompatibles avec les buts de l'évaluation environnementale.

Bien que le principe de l'auto-évaluation soit foncièrement valable, l'expérience nous porte à croire que le ministre de l'Environnement devrait avoir des pouvoirs décisionnels beaucoup plus étendus, incluant entre autres celui d'obliger tout promoteur de lui soumettre pour évaluation tout projet de développement de juridiction fédérale visé ou non par les listes. Ceci n'écarte évidemment pas l'importance de mener les dossiers de concert avec les ministères ou organismes fédéraux proposant le développement, de même qu'ave d'autres ministères possédant une compétence technique et scientifique appropriée au type de développement.

La participation de personnes, d'organismes ou de communautés intéressés devrait être favorisée dès l'étape de l'évaluation initiale. Le public devrait également pouvoir intervenir avant et après la préparation de l'évaluation environnementale initiale par le promoteur du projet de développement, et avoir aussi accès direct aux services du comité d'experts chargé d'administrer le Processus.

5. L'appui financier pour la participation du public

La participation efficace des personnes, communautés et groupes intéressés à l'évaluation environnementale ne peut évidemment se faire sans un appui financier adéquat de la part du gouvernement. L'importance de cet aspect a été souvent soulevée au cours des années par plusieurs intervenants et groupes communautaires, et preuve nous en a été donnée lors de l'examen des activités de vol militaire par la Commission d'évaluation environnementale.

Dans ce dossier, un montant global d'un demi-million de dollars a été disponible pour le financement des intervenants, à la fois pour la période aprécédant la soumission de l'étude d'impacts à la Commission par le promoteur dans le but d'aider les intervenants à élaborer des programmes d'information, d'organisation et de communication, et pour l'examen de l'étude d'impacts et les audiences publiques ultérieures. Un comité, chargé d'administrer le programme d'appui financier, a été responsable d'examiner les demandes de financement et d'allouer les fonds aux intervenants désireux de participer à l'examen.

Le document de travail mentionne d'ailleurs le problème du financement des intervenants et tente d'identifier certaines solutions. Nous sommes bien entendu fortement en faveur de la proposition du BFEEE, mais nous sommes conscients du fait que la disponibilité des ressources monétaires nécessaires pour supporter un tel programme peut constituer un fardeau important, à la fois pour le ministère de l'Environnement, les promoteurs et surtout pour le publice qui devra, de toute façon, payer la note finale. Nous croyons, en définitive, qu'une saine planification environnementale à toutes les étapes du projet est moins coûteuse à long terme, et cette constatation appuie le besoin de donner au ministre de l'Environnement des pouvoirs et des mécanismes régulateurs adéquats et efficaces.

6. La mise en application du PFEEE

Nous croyons que la question de la mise en application du PFEEE est primordiale. Bien que l'absence de législation relative au processus fédéral au Nouveau-Québec ne nous ait pas causé de problèmes depuis la mise en oeuvre de la Convention en 1975 - le nombre de projets de développement de juridiction fédérale a été et restera probablement restreint - cet aspect pourrait revêtir une importance particulière pour ce qui est de la mise en applicatioan du PFEEE.

En effet, contrairement au régime de protection de l'environnement et du milieu social de juridiction provinciale qui a été sanctionné par une loi provinciale, les dispositions de la Convention relatives au régime environnemental de juridiction fédérale n'ont pas, à ce jour encore été incorporées dans une loi du Parlement fédéral.

Ce n'est évidemment pas le forum adéquat pour discuter de ce point spécifique, et nous n'insisterons pas sur ce point. Nous saisissons quand même l'occasion pour rappeler au ministre de l'Environnement que l'absence de législation fédérale peut entrainer des difficultés sérieuses dans l'application du régime, et que certains aspects environnementaux importants d'un projet peuvent être laissés pour compte en raison de l'absence d'intervention fédérale dans l'étude des répercussions environnementales affectant des terres ou des écosystèmes sous la juridiction du fédéral.

D'ailleurs, les Cris de la Baie James insistent depuis plusieurs années pour que le processus en vigueur au sud du 55e parallèle soit sanctionné par une loi fédérale (le nombre de projets de développement de juridiction fédérale est plus grand en territoire cri).

L'expérience acquise avec le développement hydro-électrique de la rivière La Grande (communément appelé la Baie James) démontre qu'il existe plusieurs déficiences dans l'étude environementale de méga-projets de ce type, puisque le fédéral ne s'est pas senti obligé d'assumer ses responsabilités dans le traitement du dossier, pour des raisons administratives autant que législatives. Le développement de la Baie James a entrainé de sérieuses répercussions environnementales, en particulier sur les écosystèmes estuairiens et marins de la baie James. Les modifications au débit ont eu des conséquences sur certains habitats fauniques essentiels (poissons anadromes, oiseaux migrateurs, etc.) de juridiction fédérale qui n'ont pas été etudiées, ni dans le cadre du processus prévu dans la Convention ou par le PFEEE.

Lorsque l'on examine le Programme d'équipement de Hydro-Québec, il ne fait aucun doute que des projets majeurs de développement hydro-électrique seront mis en branle dans les dix prochaines années. Le projet NBR, au sud du territoire, et Grande-Baleine plus au nord, seront bientôt réalisés. Il ne fait aucun doute que les détournements de bassins versants de ce genre auront également des répercussions en aval et sur les écosystèmes estuairiens et marins. Ces répercussions environnementales complexes et peu documentées n'ont jamais été examinées par le Canada dans le contexte du développement de la Baie James, et nous croyons que le besoin de créer un mécanisme d'intervention approprié est évident.

Il existe donc dans ces cas particuliers un vide juridique que ni la Convention, ni la proposition de réforme du PFEEE ne résolvent, mais qui n'en demeure pas moins génant.

Pour conclure, nous estimons important que le PFEEE soit assujetti à une loi afin que sa mise en oeuvre soit rendue obligatoire et pour donner au ministre de l'Environnement des pouvoirs accrus, y compris celui de pouvoir directement initier l'examen d'un projet de développement particulier et celui, plus important, de déterminer seul l'importance de préparer une étude environnementale pour un projet.

CONCLUSION

Comme nous l'avons mentionné plus haut, nous sommes dans l'ensemble satisfait des proposition de réforme du PFEEE énoncées dans le document de travail du BFEEE, bien que ce même processus ne s'applique pas dans le territoire visé par la Convention.

Les quelques remarques que nous avons faites l'ont été dans un esprit constructif; elles visent en définitive à appuyer la démarche de réforme que veut entreprendre le ministère de l'Environnement, tout en proposant certaines améliorations sur des sujets spécifiques.

Federal Environmental Assessment Review Office
Bureau fédéral d'examen des évaluations environnementales

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

1. KEY ADVANCES OF THE REFORMS OVER THE CURRENT ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS

1. The Minister of the Environment makes decisions on public reviews
   (currently, responsible authority).

2. All major projects must undergo a mandatory assessment
   (currently, discretionary).

3. Mandatory assessments of major projects will include:
   - cumulative effects relative to other projects;
   - reasons for the project;
   - alternative ways of carrying out the project;
   - effects on the sustainability of resources;
   - formalized public consultation

   (never before mandated by law – not in Environmental Assessment and Review Process Guidelines Order).

4. Public registries will be maintained for all assessed projects
   (currently, registries are *ad hoc* and voluntary).

5. Public review panels, including the chair, will be fully independent of government
   (currently, chaired by public servants from the Federal Environmental Assessment Review Office).

6. Public review panels will have subpoena powers
   (currently, rely on good will of participants).

7. There is provision for mediation of environmental disputes
   (not now available – rare in the world).

8. Follow-up and monitoring plans will be required for major projects
   (until now, one of the most significant deficiencies of all assessment processes – unique to Canada).

9. There are provisions for assessing and mitigating serious adverse transborder environmental effects domestically and internationally
   (currently, no such provisions).

10. There is express provision for assessment of the environmental effects of projects to be carried out on lands in which Indians or Inuit have a well-defined interest (New Zealand – only other country known to deal with aboriginal interests in this manner).

11. Special procedures will be adapted to Crown Corporations
    (currently, voluntary).

12. The new Canadian Environmental Assessment Agency will be separate from Environment Canada
    (currently, administratively dependent on the department).

13. The new agency will examine and report to the Minister on the way in which the process is being implemented across government
(currently, not specified).

14. A formal, consistent participant funding program is part of the reforms
(currently, *ad hoc*).

15. A process for assessing government policy initiatives is also part of the reform
(almost unique in the world).

16. Significant increases in funding and person-years beyond current levels will be made available to ensure the job is done right.

September 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

2. OVERVIEW OF THE ENVIRONMENTAL ASSESSMENT REFORM PACKAGE

HISTORY OF THE REFORM

During the last two decades, Canadians have become increasingly aware of the importance of maintaining both a strong economy and a healthy natural environment. To help satisfy these dual goals, Canadian governments have established environmental assessment (EA) processes.

EA is a systematic method of identifying potential environmental consequences and their impact on people, their livelihood and their way of life. By identifying adverse environmental effects before they occur, plans can be altered so that unwanted environmental impacts can be minimized, or ideally eliminated. In some cases, proposals will have to be abandoned, if negative impacts are unacceptable and cannot be mitigated.

Studies conducted by the United States Environmental Protection Agency have shown that the costs of assessing impacts on the environment are not high. They are, in fact, on average less than 0.5 per cent of capital costs and represent a fraction, in most instances, of the costs entailed in retrofitting or changing poorly designed projects.

Environmental assessment, as a planning tool, has been practiced by the Government of Canada since 1974. It has been used to predict the potential environmental effects of proposals requiring a federal government decision. The process was updated in 1977 and reinforced in 1984 when the Environmental Assessment and Review Process (EARP) Guidelines were issued by Order-in-Council.

While the Guidelines have, in many respects, proven to be an effective environmental planning tool, over time, several difficulties have been identified. For one, the Guidelines allow the minister responsible for proposed projects, not the Minister of the Environment, to decide on the need for public review by an EA panel.

As well, the Guidelines do not provide clear procedures for EAs and fail to clarify the responsibilities of certain Agencies and federal bodies, such as Crown Corporations.

Finally, the Guidelines do not establish mechanisms for full public participation in the initial assessment part of the EA process.

The World Commission on Environment and Development, the Brundtland Commission, added new impetus and focused growing public demand for reforming the process. In its report, Our Common Future, the Commission concluded that EA processes would be more effective, if they were mandatory and entrenched in legislation.

THE CONSULTATION PROCESS

In 1987, the government asked the Minister of the Environment to consult the public on the need for reforming the EARP. The Minister issued a Green Paper to serve as a basis for that consultation.

Six months of public meetings were held in major centres across Canada, followed by a national consultative workshop in March 1988. Broad consultations were held with a wide spectrum of Canadians including governments, the private sector, native peoples, environmental and other special interest groups, the legal profession and EA professionals.

Participants in the consultations called for an accountable and administratively simple process based in law that would be effective, efficient, fair and open.

In October 1988, the Minister of the Environment announced that the process would be legislated and strengthened. The April 1989 Speech from the Throne reiterated the government's intention to introduce legislation to strengthen the federal EA process.

Recent court decisions on the Rafferty-Alameda and Old Man River dams have again illustrated the crucial need for EA reform. The courts have ruled that what was thought to be a non-enforceable guideline is, in fact, a legally enforceable law of general application that imposes added duties on top of existing federal responsibilities. The Guidelines, however, were not drafted with a view to strict legal interpretation and this has caused significant administrative difficulty and uncertainty.

THE REFORM PACKAGE

The proposed EA reform package will ensure that environmental considerations are integrated into the decision-making process. The reforms are designed to yield timely results based on consensus whenever possible.

By reducing the uncertainty surrounding the process, the reforms will also reduce its costs to all stakeholders.

To support these initiatives, more funds and staff will be allocated to environmental assessment across the federal government.

In addition, public participation will be strengthened throughout the process. The reform package consists of three key elements:

- new EA legislation;
- a new process for policy and program assessment;
- a program for funding participants in public reviews.

LEGISLATION

The Canadian Environmental Assessment Act (CEAA) would, for the first time, set out in an Act passed by Parliament the federal government's responsibilities and procedures for the environmental assessment of projects. The Act will remove the uncertainty of the old Guidelines and provide a clear balanced process to which all stakeholders will have access.

The legislation establishes a new agency, the Canadian Environmental Assessment Agency. It will report to the Minister of the Environment, but will be fully separate from Environment Canada, as well as from other federal departments and agencies.

POLICY AND PROGRAM REVIEW

Government is establishing, for the first time, an environmental assessment process for new policy and program proposals. This process will be implemented immediately.

The Minister of the Environment will provide advice with respect to the assessment of these policy and program proposals.

PARTICIPANT FUNDING

A participant funding program will assist people affected by a project to make their views better known on the matter. Funding will be available to support effective public participation in both public panel reviews and mediation.

September 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

4. Comparison of Current and Proposed Environmental Assessment and Review Processes

1. Comparison of Changes Arising from Proposed Legislation

Issue	Current	Proposed
Authority	Guidelines Order approved by Governor-in-Council	Canadian Environmental Assessment Act, binding on all federal Crown entities
Need for public review	Decision by minister responsible for project	Decision of Environment Minister
Application to regulatory agencies and Crown Corporations	Unclear or voluntary	Explicit requirements through regulation
Scope of assessment	No clear guidelines	Requirements to describe need for project and assess practical alternatives, cumulative effects and sustainability of resources
Public reviews	Panel review only option	Mediation and panel are options; panel review given subpoena powers
Duplicate hearings with other federal and provincial processes	Possible	Provisions to avoid duplicate hearings
Transborder effects	No federal role	Substantial federal role
Follow-up and monitoring	Not clearly required	Plans required as part of assessment; proponent must implement
Administration	Federal Environmental Assessment Review Office, dependent on Environment Canada	Canadian Environmental Assessment Agency, independent of any other federal department or agency
Evaluation and reporting	No systematic process	Regular process of examination and reporting

2. Comparison of Changes Arising from Regulation, Orders and Guidelines

Issue	Current	Proposed
Exclusion list	Prepared by some departments without public consultation	One government-wide list prepared with public consultation
Class assessments	Not practiced	Practiced
Mandatory assessments	None required	List of projects requiring mandatory assessments
Procedures	None specified	Specified

3. Comparison of Changes Arising from Government Decision

Issue	Current	Proposed
Consideration of environmental matters in policy and program decisions before Cabinet	Uneven, discretionary	Environmental assessment to be included – statement to be published
Participant funding	Occasionally provided	Program established
Indian lands where no federal decision-making authority exists	Exempt	Land claims and self-government negotiators to address environmental assessment needs

September 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

6. PUBLIC REVIEW – MEDIATION AND PANEL REVIEWS

The Canadian Environmental Assessment Act provides two options – mediation and panel review – for public review of major projects with significant potential environmental effects and/or serious public concerns.

Under the Act, only the Minister of the Environment can order a public review of a proposed project. A responsible authority, however, may, at any time during its assessment of a project, recommend such a review to the Minister.

MEDIATION

Mediation is the preferred choice whenever all of the stakeholders are willing to participate and a consensus is considered to be possible.

This process will most likely be used in situations where there are a limited number of readily identifiable stakeholders. The environmental issues will also have to be limited in scope and number for a mediation to be successful.

The Minister of the Environment will appoint the mediator. The mediator will assist and advise participants, but will not make decisions for them.

Once a consensus has been reached, the mediator will report the results and recommendations to the Minister of the Environment and to the responsible authority for the project.

There are a number of advantages to mediation. It is sensitive to local concerns and less costly in terms of time and resources. Also, those involved with and most concerned about a proposal can communicate directly with each other.

PANEL REVIEWS

As under the current Guidelines Order, a review panel is an advisory, not a decision-making, body.

The Minister of the Environment will establish a panel, appoint the members and the chair and set its terms of reference.

While dependent upon the Agency for logistical and technical support, review panels will continue to conduct their deliberations independently of government.

Although panels will have subpoena powers, panel reviews will remain informal processes for investigating the potential environmental effects of project proposals. Panels may require project proponents to undertake studies and prepare reports to assist them in their deliberations. Panels will hold hearings and review material brought before them, and may refuse to proceed with hearings until they are satisfied with the environmental assessment information that is available to them.

Once a panel has reached a conclusion, it will make its recommendations to the Minister of the Environment and the responsible authority. The Minister of the Environment will make the report public and the responsible authority will make public its response to the panel's recommendations.

In certain cases, a panel review may be conducted jointly with another jurisdiction. In such circumstances, the Minister of the Environment will appoint or approve the appointment of the chairperson or the co-chairperson, as well as one or more members of the panel. The Minister will also set or approve the terms of reference.

(See Fact Sheet 'Working with Others' for more information on joint and substitute panels.)

September 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

8. WORKING WITH OTHERS

Many projects requiring a federal decision also require decisions from other interests, including provincial governments, foreign states and bodies established under land claims or Indian self-government legislation.

Where interested parties do not cooperate, there can be serious risk of duplication and confusion. On the other hand, cooperation ensures the process is efficient and reduces duplication of work and costs to *all* parties and stakeholders.

The Act offers a number of mechanisms designed to overcome such duplication and inefficiency to achieve closer cooperation and coordination among interested parties having responsibilities in relation to the same project.

COOPERATION

The Act enables a responsible authority to cooperate in the preparation of environmental assessments with another party or jurisdiction in the case of a screening or a mandatory study. It requires the responsible authority to exercise the appropriate quality control for any assessments so undertaken. It does not, however, allow the responsible authority to delegate any of its decision-making powers.

This feature will enable federal authorities to work closely with other parties and jurisdictions to minimize duplication and confusion without sacrificing environmental values.

JOINT PANELS

To further minimize duplication of processes, where another party or jurisdiction has a responsibility to undertake a public environmental review of a project, the Act provides the Minister of the Environment with the authority to establish a joint review panel.

The other party could be a provincial government, the government of a foreign state, a body set up under a comprehensive land claim agreement or a federal regulatory authority.

In order to establish a joint panel review, the Minister must be able to:

- appoint or approve the chairperson or co-chairperson and one or more of the panel members;
- fix or approve the panel's terms of reference;
- provide a reasonable opportunity for public participation;
- receive and publish the panel's report.

SUBSTITUTE PANELS

To again avoid duplication for all stakeholders, where another federal authority has a responsibility to undertake a public environmental review of a project, the Minister of the Environment may declare that review to be an adequate substitute for a panel review under the Canadian Environmental Assessment Act. One such example of a substitute panel is the National Energy Board.

The Minister of the Environment may also identify a person or persons to be named to the substitute panel.

In order to approve the substitution, the Minister must be satisfied that:

- the assessment will be consistent with the requirements of an environmental assessment set out in the Canadian Environmental Assessment Act;
- the public will be given an opportunity to participate in the assessment;
- the report will be submitted to the Minister and published.

PROGRAM AGREEMENTS WITH PROVINCES AND FOREIGN STATES

Program agreements with provinces or foreign states will stipulate that an environmental assessment must be undertaken under the terms of the agreement before carrying out any project under that agreement. The assessment may be carried out under procedures put in place by the other jurisdiction. This will apply when the federal government has no explicit project-by-project decision-making authority under the agreement.

ADMINISTRATIVE AGREEMENTS WITH PROVINCES

The Act provides for federal-provincial agreements for the purposes of consultation, coordination and the exchange of information relating to environmental assessment programs in general and the assessment of individual projects of common interest.

September 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

10. PUBLIC PARTICIPATION AND PARTICIPANT FUNDING

PUBLIC PARTICIPATION

The Government of Canada believes public participation is essential to achieving an appropriate integration of economic development and environmental protection.

The Canadian Environmental Assessment Act will provide greater opportunity for public input at *all* stages of project assessment. Under the Act, public participation will be encouraged through:

1. Early Notification

Responsible authorities will be required to inform the public, through public registries and newspaper advertisements, of major project proposals at an early stage of the assessment process. Public comments will be invited at that time. Time periods for the receipt of comments and information will be established by the Agency.

2. Public Registries

A public registry will be established for each project, containing reports and supporting documents and information used in the assessment of the project, and the course of action following completion of the assessment. The public will have full access to the registries. The Access to Information Act will apply with respect to any restricted information.

3. Mediation

Mediation will involve representatives of public groups which have a direct interest in, or are directly affected by, a proposed project.

4. Public Hearings

Review panels will be required to hold public hearings to allow the public to present its views and recommendations.

5. Public Comments

The Act requires that public comments be considered by the responsible authority before making a decision on a major project which has undergone an environmental assessment (EA). Responses received from the public must be reflected in mandatory study, mediation and panel reports submitted to the Minister of the Environment.

6. Reports and Follow-up Activities

When the Minister receives an assessment report, the public must be notified through a newspaper notice or other appropriate means and the report must be made available to the public.

If a responsible authority determines that such a project can proceed, it must advise the public of its decisions, any mitigating measures, the extent to which the panel or mediation report was adopted, and its follow-up program.

7. An Annual Report

The Minister of the Environment will be required to table an annual report to Parliament on the implementation of the process across government.

PARTICIPANT FUNDING

To assist public participation, the reforms include a participant funding program to ensure that stakeholders have the opportunity to participate in panel reviews and mediations.

The purpose of the financial assistance program is to improve the effectiveness of public reviews by increasing the quality of participation. It will help achieve balance and objectivity of decision-making by supporting the preparation and presentation of informed views for decision-makers that might otherwise not be available.

The amount of financial assistance will be determined by taking into account the number of public reviews underway or in prospect. Funds are intended to supplement and not duplicate support or services provided by other public or private sources.

The following criteria will be used to determine successful applicants:

Direct Interest

Participants should be directly affected by the proposed project or represent those who will be affected. If they are not directly affected, they should have a special interest in the project's potential environmental and related health or socio-economic effects.

Legitimate Association

Participants must show a legitimate association with the public interest that will be represented.

Need

Those who need help the most in preparing and presenting their views will be given priority. Participants must also demonstrate a commitment to contribute their own time and resources.

Quality of Presentation

Applicants whose presentation will be unique and original will be given priority.

Cooperation

Cooperative presentations involving more than one group will be encouraged.

Duplication

Duplicate studies or material presented elsewhere, such as to another enquiry body, will not be funded.

Plan of Activity

Applicants must prepare a clearly defined plan of activity. The proposal must be consistent with the terms of reference for the review.

Equal Consideration

Applicants reflecting both sides of the issue will be equally considered.

Funds may be used for the following types of activities:

- professional fees,
- salaries for research and preparation,
- travel and accommodation,
- purchase of background information,
- information collection and dissemination,
- workshops,
- accounting and auditing services,
- rental of office space and equipment,
- supplies, telephone and advertising for meetings,
- translation.

Funds will be allocated by the Agency on a project-by-project basis.

September 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

11. THE MINISTER, THE GOVERNOR-IN-COUNCIL AND THE AGENCY

MINISTER OF THE ENVIRONMENT

The Canadian Environmental Assessment Act gives the Minister of the Environment augmented powers and stronger control of the assessment process.

1. Panel Reviews and Mediation

Upon referral from, or after consultation with, a responsible authority, the Minister may refer a project to panel review or mediation. The Minister must believe a project could cause significant adverse environmental effects or that public concern warrants a public review. The Minister may also:

- determine the chair and members of a panel or the mediator and fix the terms of reference;
- establish criteria for the appointment of review panel members and mediators;
- where necessary, terminate a mediation and refer the project to a review panel;
- approve the substitution of another federal or aboriginal organization for a review panel under specified conditions. The Minister may also establish criteria for substitution.

2. Transborder Environmental Effects

The Minister may, on his or her initiative or at the request of one or more interested jurisdictions or parties, establish a public review panel to assess the serious transborder and related environmental effects of a project on federal, provincial, foreign or Indian lands.

Such projects include those to be carried out in a province and likely to cause serious adverse environmental effects in another province, on federal or Indian lands or outside the country. Projects also include those to be carried out on reserves, or other Indian lands that are likely to cause serious adverse environmental effects elsewhere.

For the Minister to exercise this discretion, the transboundary and related effects are likely to be serious and adverse. In addition, the Minister must give the proponent at least 10 days notice before instituting a public review by a panel.

At the time that a review panel is established or following the report of such review panel, the Minister may issue a Ministerial Order prohibiting the proponent from undertaking further work on the project. Work cannot resume until the environmental assessment (EA) is completed and the Minister determines that the project can be carried out to his or her satisfaction.

The Attorney General of Canada may apply to a court of competent jurisdiction for an injunction where it appears that a Ministerial Order has been or is likely to be contravened.

3. Other

The Act also gives the Minister the power to:

- issue guidelines to assist responsible authorities;
- establish advisory groups;
- enter into agreements with provinces for coordination, consultation and information exchange;
- consult and cooperate with other governments;
- conduct research, provide advice, develop codes of practice and develop training programs;

GOVERNOR-IN-COUNCIL

Under the Act, the Governor-in-Council may make regulations pertaining to:

- procedures and requirements for EA including the conduct of mandatory studies, mediation, panel reviews and joint panel reviews;
- lists of mandatory studies and exclusions;
- lists of regulatory authorities to be covered by the Act;
- preparation and implementation of follow-up plans;
- dissemination to the public of information relating to projects and their assessments;
- procedures governing substitute panels;
- special sectoral regulations for such matters as Crown Corporations, Indian reserves and international commercial activities.

THE CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY

The Act will create the Canadian Environmental Assessment Agency. The Agency will be instrumental in ensuring that the EA process is efficient, effective, fair and open. The objectives of the Agency are to:

- advise and assist the Minister in carrying out his or her duties;
- administer the EA process established by the Act and Regulations;
- promote uniformity in carrying out EA;
- promote research on EA.

The Agency will be administered by a president appointed by the Governor-in-Council. The president will report directly to the Minister of the Environment.

Specific roles of the Agency include:

- advising the Minister on whether to refer projects to a panel review or mediation, recommending panel members and mediators and terms of reference and providing administrative support to panels and mediations;
- advising the Minister on the substitution of environmental assessment processes and public hearings;
- supporting public reviews;
- providing advice to responsible authorities on their roles and responsibilities under the Act;
- undertaking studies, negotiating agreements for joint review panels, providing administrative support for research or advisory bodies and providing information and training for other government departments;
- examining and reporting to the Minister on the implementation of the environmental assessment process across government.

September 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

12. IMPACTS ON OTHER ACTS OF PARLIAMENT

The federal government regulates projects or portions of projects across a broad range of Canadian economic and social activities. Examples are the transportation and energy sectors, including atomic energy. Some of the functions carried out by the departments or agencies administering regulatory statutes are amenable to the conduct of an environmental assessment. On the other hand, some federal regulatory statutes either do not regulate projects, or have no scope to impose terms and conditions of an environmental nature.

The federal government intends to identify those regulatory authorities that should trigger an environmental assessment (EA) when the regulator takes a decision about a project. For this purpose, the *Canadian Environmental Assessment Act* (CEAA) gives authority to the Governor-in-Council to specify, through regulation, which provisions of other federal acts would trigger the need for an EA, and thereby require application of the procedures under the CEAA.

A preliminary review of federal regulatory statutes suggests that **some provisions** of the following acts may warrant being covered by the CEAA:

National Energy Board Act,
Railway Act,
Railway Relocation and Crossing Act,
Atomic Energy Control Act,
International River Improvements Act,
Fisheries Act,
National Parks Act,
Canada Oil and Gas Act.

Other acts may also be relevant. The regulation under the CEAA listing particular provisions of other statutes will be the subject of public consultations once the bill has been passed.

September 1990

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

12. RÉPERCUSSIONS SUR D'AUTRES LOIS DU PARLEMENT

Le gouvernement fédéral réglemente des projets ou certaines parties de projets dans divers secteurs économiques et sociaux, notamment ceux des transports et de l'énergie, y compris l'énergie atomique. En raison d'une partie de leurs attributions, certains ministères ou agences chargés de l'administration d'actes réglementaires sont appelés à effectuer des évaluations environnementales. Par contre, certains actes réglementaires fédéraux ne permettent pas de réglementer des projets ou n'ont pas la portée nécessaire pour imposer des mandats ou des conditions d'ordre environnemental.

Le gouvernement fédéral a l'intention de désigner les autorités de réglementation qui devraient déclencher une évaluation environnementale lorsqu'elles prennent une décision concernant un projet. À cette fin, la **Loi canadienne sur l'évaluation environnementale** (LCEE) autorise le Gouverneur en conseil à préciser, par voie de règlements, quelles dispositions d'autres lois fédérales entraîneraient la nécessité de réaliser une évaluation environnementale et seraient ainsi visées par l'application des procédures prévues par la LCEE.

Un examen préliminaire de la législation fédérale indique qu'il serait peut-être justifié d'assujettir à la LCEE certaines dispositions des lois suivantes :

- Loi sur l'Office national de l'énergie;
- Loi sur les chemins de fer;
- Loi sur le déplacement des lignes et sur les croisements de chemin de fer;
- Loi sur le contrôle de l'énergie atomique;
- Loi sur les ouvrages destinés à l'amélioration des cours d'eaux internationaux;
- Loi sur les pêcheries;
- Loi sur les parcs nationaux;
- Loi sur le pétrole et le gaz du Canada.

D'autres textes de loi sont peut-être aussi pertinents. Les règlements en vertu de la **LCEE** faisant état des dispositions particulières d'autres lois feront l'objet de consultations publiques lorsque le projet de loi aura été adopté.

Septembre 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

13. EXCLUSION OF SPECIAL CASES

The main purpose of the legislation is to subject to environmental assessment projects that are physical works and may have significant environmental impacts. However, there will be physical activities, such as low-flying military aircraft exercises, that should also be subject to the EA process. In order to capture this range of activities, the definition of project in the Act is very broad including not only "physical works" but also "physical activities".

The possibility exists that this broad definition could include activities never intended to be considered under the EA process established by the Act and Regulations. For example, matters intended to be assessed under the government-ordered policy assessment process might in some instances be regarded as "physical activities". Accordingly, and to avoid narrowing unduly the definition of projects contained in the Act, provision has been made whereby those physical activities which do not lend themselves in a practical way to the regime established by the Act may be excluded from the requirements of the Act and Regulations.

Another matter requiring the exercise of good judgement is the application of the Act and Regulations to projects which fall under provincial or foreign jurisdiction, but entail a very minor federal component or responsibility. A good example would be a large industrial project to which the federal government is contributing a very small percentage of the infrastructure cost or a right-of-way, but is not otherwise exercising any authority over the project. It would not be reasonable in these circumstances to regard the project as federal for the purposes of the Act.

Accordingly, the Act contains a provision enabling such projects to be excluded from the requirements of the Act and Regulations.

September 1990

Bureau fédéral d'examen des évaluations environnementales
Federal Environmental Assessment Review Office

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

13. CAS PARTICULIERS NON VISÉS PAR LA LOI

La loi vise principalement à assujettir à une évaluation environnementale les projets qui sont des ouvrages concrets et qui peuvent avoir d'importantes répercussions sur l'environnement. Toutefois, certains genres d'activités physiques, notamment les vols d'avions militaires à basse altitude, devraient aussi être soumis au processus d'évaluation environnementale. Afin de tenir compte de toute cette gamme d'activités, la loi accorde une définition très large au terme de projet, désignant ainsi non seulement la réalisation d'ouvrages, mais aussi l'exercice d'activités. En raison de l'ampleur de cette définition, il se peut que l'on prenne en considération des activités non visées par le processus d'évaluation mis en place par la loi et les règlements. Ainsi, des questions appelées à être examinées en vertu du processus d'évaluation des politiques exigé par le gouvernement peuvent, dans certaines circonstances, être considérées comme activités physiques. Par conséquent, et pour éviter de limiter indûment la définition des projets visés par la loi, des dispositions ont été prises pour que les activités physiques qui, en pratique, ne se prêtent pas au régime établi par la loi puissent être exemptées des dispositions de la loi et des règlements.

Il faut également faire preuve de discernement dans l'application de la loi et des règlements aux projets de compétence provinciale ou étrangère, mais qui comportent un élément très faible de participation ou de responsabilité fédérale. Ce serait le cas notamment de grands projets industriels auxquels le gouvernement fédéral contribuerait un très faible pourcentage du coût de l'infrastructure ou accorderait un droit de passage, mais sur lesquels il n'exercerait autrement aucune autorité. Il ne serait pas raisonnable, dans de telles circonstances, de considérer ces projets comme étant du ressort fédéral aux termes de la loi.

Par conséquent, une disposition de la loi permet d'exempter de tels projets des exigences de la loi et des règlements.

Septembre 1990

Bureau fédéral d'examen des évaluations environnementales
Federal Environmental Assessment Review Office

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

1. PRINCIPALES AMÉLIORATIONS APPORTÉES PAR LA RÉFORME DU PROCESSUS D'ÉVALUATION ENVIRONNEMENTALE

1. La décision d'entreprendre un examen public relève du Ministre de l'Environnement; (actuellement de l'autorité responsable).

2. Tous les grands projets seront soumis à une évaluation environnementale obligatoire; (actuellement laissée à l'appréciation de l'autorité responsable).

3. Les évaluations environnementales obligatoires des grands projets devront tenir compte :
   - des effets cumulatifs en regard d'autres projets;
   - des raisons d'être du projet;
   - des autres façons de réaliser le projet;
   - des effets sur la durabilité des ressources;
   - de la consultation officielle de la population;

   (jamais exigés précédemment par la loi – non prévus dans le décret sur le PEÉE).

4. Des registres publics seront tenus pour tous les projets faisant l'objet d'une évaluation; (actuellement non officiels et non obligatoires).

5. Les commissions d'examen public, y compris leur président, seront tout à fait indépendantes du gouvernement; (actuellement présidées par des fonctionnaires du BFEÉE).

6. Les commissions d'examen public auront le pouvoir de citer des témoins à comparaître; (on compte actuellement sur le bon vouloir des participants).

7. La médiation est prévue en cas de différend en matière d'environnement; (disposition encore inexistante – rare dans le monde).

8. Des plans de suivi et de contrôle seront exigés dans le cadre des grands projets; (l'une des principales lacunes de tous les processus d'évaluation jusqu'à présent – seul le Canada a prévu une telle disposition).

9. Certaines dispositions de la loi visent à évaluer et à établir des mesures d'atténuation des répercussions environnementales graves hors frontières, à l'intérieur et à l'extérieur du pays; (rien n'est prévu à cet effet pour l'instant).

10. Des dispositions particulières ont été prévues pour l'évaluation des répercussions environnementales de projets réalisés sur des terres dans lesquelles les Indiens et les Inuit ont des intérêts bien définis; (la Nouvelle-Zélande est le seul autre pays à traiter des intérêts autochtones de cette manière).

11. Des procédures spéciales seront adaptées aux sociétés d'État; (toute mesure dépend actuellement de leur bon vouloir).

12. La nouvelle agence est distincte d'Environnement Canada; (pour l'administration, elle relève actuellement du ministère).

13. La nouvelle agence étudiera la mise en oeuvre du processus dans l'ensemble du gouvernement et rendra compte de son examen au Ministre; (cette fonction n'est actuellement pas précisée).

Canada

14. La réforme comprend un programme officiel et uniforme d'aide financière aux participants; (le financement varie actuellement selon les circonstances).

15. La réforme comprend également un processus d'évaluation des initiatives en matière de politiques gouvernementales; (mesure unique au monde).

16. L'aide financière et le nombre d'années-personnes seront considérablement accrus afin d'assurer que le travail soit bien fait.

Septembre 1990

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

2. APERÇU DE LA RÉFORME DU PROCESSUS D'ÉVALUATION ENVIRONNEMENTALE

HISTORIQUE DE LA RÉFORME

Depuis une vingtaine d'années, la population canadienne accorde de plus en plus d'importance à une économie vigoureuse et à la santé de l'environnement naturel. Afin d'atteindre ces deux objectifs, divers ordres de gouvernement au Canada ont élaboré des processus d'évaluation environnementale.

L'évaluation environnementale est une méthode **systématique** permettant de déterminer les répercussions éventuelles de tout projet sur l'environnement et sur la population, de même que sur les sources de revenus et le mode de vie de celle-ci. En déterminant **avant** qu'ils ne se produisent quels peuvent être les effets néfastes pour l'environnement, il est possible de modifier les plans pour amoindrir ou, mieux encore, pour éliminer ces répercussions. Il faut dans certains cas abandonner un projet dont les répercussions fâcheuses seraient inacceptables et ne pourraient être atténuées.

Des études menées par la United States Environmental Protection Agency démontrent que les coûts associés à l'évaluation environnementale ne sont pas des plus élevés. En fait, ils représentent moins de 0,5 p. 100 des coûts en capital et, le plus souvent, une fraction seulement des dépenses occasionnées pour tenter de corriger la situation ou de modifier des projets mal conçus.

Le gouvernement fédéral a recours à l'évaluation environnementale depuis 1974. Cet outil de planification sert à prévoir les répercussions environnementales que pourraient avoir les projets relevant d'une décision du gouvernement fédéral. Le processus a été révisé en 1977 et amélioré en 1984, lorsque les lignes directrices sur le processus d'évaluation et d'examen en matière d'environnement (PEEE) ont été décrétées.

Même si ces lignes directrices représentent à bien des égards un outil de planification environnementale efficace, plusieurs problèmes sont apparus au fil des ans. À titre d'exemple, le ministre responsable d'un projet et **non** le Ministre de l'Environnement décidait, en vertu de ces directives générales, s'il fallait qu'un examen public soit effectué par une commission environnementale.

D'autre part, les lignes directrices ne proposaient pas de procédures explicites d'évaluation environnementale et ne fournissaient pas de précisions claires sur les responsabilités de certains organismes et agences du gouvernement, tels que les sociétés d'État. Enfin, elles ne prévoyaient pas de mécanisme pour assurer la pleine participation de la population à l'étape initiale du processus d'évaluation environnementale.

La Commission mondiale sur l'environnement et le développement – la Commission Brundtland – a donné un nouvel élan à la réforme du processus et a mis en lumière les demandes croissantes de la population en ce sens. Dans son rapport, **Notre avenir à tous**, la commission en arrive à la conclusion que les processus d'évaluation environnementale seraient plus efficaces s'ils étaient obligatoires et enchâssés dans des lois.

LE PROCESSUS DE CONSULTATION

En 1987, le gouvernement a demandé au Ministre de l'Environnement de consulter la population quant à la nécessité d'engager une réforme du processus d'évaluation et d'examen en matière d'environnement. Le Ministre a alors déposé un livre vert qui allait servir de base à cette consultation.

Des réunions publiques ont eu lieu sur une période de six mois dans les principaux centres du Canada; elles ont été suivies d'une assemblée nationale consultative en mars 1988. Des Canadiens et Canadiennes de tous les milieux ont pris part aux discussions, y compris des représentants des gouvernements, du secteur privé, des Autochtones, des groupes écologiques, d'autres groupes d'intérêts et des milieux juridiques, ainsi que des spécialistes de l'évaluation environnementale.

Les participants ont souligné la nécessité d'adopter un processus efficient, efficace, juste et ouvert, qui soit fondé sur une loi et qui comporte l'obligation de rendre des comptes.

En octobre 1988, le Ministre de l'Environnement a annoncé que le processus serait renforcé et qu'il serait régi par une loi. À l'occasion du discours du trône, en avril 1989, le gouvernement fédéral a réitéré son intention de légiférer pour modifier le processus d'évaluation environnementale.

Des jugements récents, relatifs aux barrages Rafferty Alameda et Old Man ont démontré encore une fois la nécessité d'une réforme de l'évaluation environnementale. Selon ces jugements, les lignes directrices dont on a pu croire qu'elles n'avaient pas force de loi, représentent en fait une loi d'application générale qui impose des charges additionnelles aux autorités fédérales. Or, les lignes directrices n'ont pas été rédigées en fonction d'une interprétation juridique rigoureuse, ce qui a occasionné de l'incertitude et d'importantes difficultés d'ordre administratif.

LA RÉFORME

La réforme proposée vise à assurer que les considérations environnementales seront prises en compte dans le processus décisionnel. La réforme a été conçue pour produire des résultats dans un délai raisonnable, si possible à partir d'un consensus.

En réduisant l'incertitude qui entoure le processus d'évaluation environnementale, la réforme en diminuera également les coûts pour toutes les parties intéressées.

Ces initiatives seront appuyées par une augmentation des ressources financières et du personnel affectés à l'évaluation environnementale à l'échelle du gouvernement fédéral.

En outre, la population aura un plus grand rôle à jouer dans le déroulement du processus. Les réformes comptent trois éléments principaux, soit :

- la promulgation de la loi sur l'évaluation environnementale;
- un nouveau processus d'évaluation des politiques;
- un programme d'aide financière aux participants dans le cadre des examens publics.

LA LÉGISLATION

La Loi canadienne sur l'évaluation environnementale (LCEE) définira pour la première fois dans un acte législatif les attributions et les directives du gouvernement fédéral en matière d'évaluation environnementale des projets. Cette loi élimine l'incertitude des anciennes lignes directrices et introduit un processus équilibré et clair auquel toutes les parties intéressées auront accès.

La loi prévoit la création de l'Agence canadienne d'évaluation environnementale. Bien que relevant du Ministre de l'Environnement, celle-ci sera totalement distincte d'Environnement Canada et des autres ministères et organismes fédéraux.

L'EXAMEN DES POLITIQUES

Pour la première fois, le gouvernement est en voie d'instaurer un processus d'évaluation environnementale pour tout **nouvel** énoncé de politiques ou de programmes. Ce processus entrera immédiatement en vigueur.

Le Ministre de l'Environnement fera office de conseiller en matière d'évaluation des énoncés de politiques ou de programmes.

L'AIDE FINANCIÈRE AUX PARTICIPANTS

Un programme d'aide financière aux participants permettra aux personnes touchées par un projet de mieux faire connaître leur point de vue. Des fonds permettront de financer la participation efficace de la population à la médiation et aux travaux des commissions.

Septembre 1990

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

4. COMPARAISON ENTRE LE PROCESSUS ACTUEL D'ÉVALUATION ENVIRONNEMENTALE ET LE PROCESSUS PROPOSÉ

1. Modifications découlant du projet de loi

Aspect	Processus actuel	Processus proposé
Autorité	Décret des lignes directrices approuvé par le Gouverneur en conseil	Loi canadienne sur l'évaluation environnementale, exécutoire pour l'ensemble des institutions gouvernementales et fédérales
Nécessité d'un examen public	Décision du ministre responsable du projet	Décision du Ministre de l'Environnement
Assujettissement des organismes de réglementation et des sociétés d'État	Incertain ou selon leur bon vouloir	Dispositions explicites dans la réglementation
Portée de l'évaluation	Absence de lignes directrices claires	Obligation de démontrer la nécessité du projet et d'évaluer les autres façons de le réaliser, les effets cumulatifs et la durabilité des ressources
Examens publics	Seule possibilité : commission d'étude	Possibilité de médiation ou d'examen par une commission; pouvoir donné aux commissions d'examen de citer des témoins à comparaître
Audiences publiques et autres processus fédéraux et provinciaux se chevauchant	Possible	Dispositions visant à éviter le chevauchement des audiences publiques
Effets hors frontières	Aucun rôle du gouvernement fédéral	Rôle important du gouvernement fédéral
Suivi et contrôle	Ne sont pas clairement requis	Plans requis et faisant partie de l'évaluation; le promoteur doit les mettre en oeuvre
Administration	Bureau fédéral d'examen des évaluations environnementales, subordonné à Environnement Canada	Agence canadienne d'évaluation environnementale, indépendante de tout ministère ou agence du gouvernement fédéral
Évaluation et obligation de rendre des comptes	Absence de processus systématique	Processus soutenu d'évaluation et de reddition des comptes

2. Changements découlant des règlements, des décrets et des lignes directrices

Aspect	Processus actuel	Processus proposé
Liste d'exclusion	Dressée par certains ministères sans consultation publique	Liste pour l'ensemble du gouvernement dressée après consultation publique
Évaluations par catégorie	Non pratiquées	Pratiquées
Évaluations environnementales obligatoires	Inexistantes	Liste de projets assujettis à une évaluation environnementale obligatoire
Procédures	Aucune précision	Précisions

3. Modification découlant d'une décision du gouvernement

Aspect	Processus actuel	Processus proposé
Considération des questions environnementales dans les décisions du Cabinet relatives aux politiques et aux programmes	Inégale, laissée à la discrétion des autorités	L'évaluation environnementale doit en faire partie – une déclaration sera faite à cet effet
Appui financier aux participants	Selon les circonstances	Programme établi
Terres indiennes où n'existe aucune autorité décisionnelle du gouvernement fédéral	Exemptées	Les négociateurs en matière de revendications territoriales et de gouvernement autonome doivent respecter le processus d'évaluation

Septembre 1990

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

6. EXAMEN PUBLIC, MÉDIATION ET COMMISSIONS D'EXAMEN

La Loi canadienne sur l'évaluation environnementale prévoit deux possibilités (la médiation et les commissions d'examen) pour l'étude publique des grands projets susceptibles d'avoir des répercussions environnementales importantes ou qui soulèvent de graves préoccupations dans la population.

Aux termes de la loi, seul le Ministre de l'Environnement peut exiger l'étude publique d'un projet. Toutefois, une autorité responsable peut recommander au Ministre d'entreprendre une telle étude.

MÉDIATION

La médiation est la solution indiquée si toutes les parties intéressées sont prêtes à y participer et si l'on croit qu'il est possible d'arriver à un consensus.

On aura vraisemblablement recours à ce processus lorsque le nombre des parties intéressées et facilement identifiables sera limité. Pour en arriver à une médiation satisfaisante, le nombre et la portée des questions environnementales à l'étude devront être limités également.

Le Ministre de l'Environnement nommera le médiateur. Celui-ci sera appelé à assister et conseiller les participants, mais il **ne** prendra **pas** de décisions pour eux.

Lorsque les parties intéressées seront arrivées à un consensus, le médiateur fera part des résultats et des recommandations au Ministre de l'Environnement et à l'autorité responsable du projet.

La médiation présente de nombreux avantages. Elle tient compte des préoccupations de la population locale et permet d'économiser du temps et des ressources. En outre, les personnes engagées dans un projet et celles qui s'y intéressent le plus peuvent communiquer directement entre elles.

COMMISSIONS D'EXAMEN

Ainsi que le précise le décret des lignes directrices en vigueur, une commission d'examen est un organisme consultatif plutôt que décisionnel.

Le Ministre de l'Environnement établira une commission dont il nommera les membres et le président, et il fixera le mandat de la commission.

Les commissions d'examen relèveront de l'Agence pour leur soutien logistique et technique, mais elles seront indépendantes du gouvernement pour mener leurs délibérations.

Les commissions auront l'autorité de citer des témoins à comparaître, mais l'étude effectuée par une commission restera un processus informel visant à examiner les répercussions qu'un projet pourrait avoir sur l'environnement. Une commission pourra exiger du promoteur d'un projet que des études soient effectuées et que des rapports lui soient remis pour l'aider dans ses délibérations. Les commissions tiendront des audiences et examineront les documents qui leur seront présentés, et jusqu'à ce qu'elles soient satisfaites de l'énoncé des effets environnementaux, elles pourront refuser de poursuivre les audiences.

Après avoir formulé ses conclusions, la commission soumettra ses recommandations au Ministre de l'Environnement et à l'autorité responsable. Le Ministre de l'Environnement publiera le rapport et l'autorité responsable devra rendre publique sa réaction aux recommandations de la commission.

Dans certains cas, la commission pourra conduire un examen de concert avec une autre instance. Le Ministre de l'Environnement nommera alors un président et un coprésident, de même qu'un ou plusieurs membres de la commission, ou il approuvera leur nomination. Le Ministre définira également le mandat de la commission ou il le sanctionnera.

(Pour de plus amples renseignements sur les commissions mixtes ou les commissions substituts, voir la fiche d'information « Pour une action concertée ».)

Septembre 1990

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

7. ÉVALUATION ENVIRONNEMENTALE DES POLITIQUES ET DES PROGRAMMES

Au nombre des principaux éléments de la réforme, le gouvernement procède à l'élaboration d'un processus novateur et grandement amélioré d'évaluation environnementale de toutes ses nouvelles politiques et de ses nouveaux programmes. Il s'agit d'accorder une attention plus systématique aux conséquences environnementales des décisions relatives aux politiques et aux programmes majeurs. Compte tenu de leur portée très vaste, ces évaluations nécessitent des procédures très différentes de celles qui se rapportent à l'évaluation des projets. Aux termes du nouveau processus, les ministres ont décidé que les incidences environnementales de toutes les politiques et de tous les programmes proposés seront envisagées avant que des décisions ne soient prises.

La décision d'évaluer les politiques et les programmes correspond à une des recommandations découlant des consultations publiques de grande envergure sur la réforme de l'évaluation environnementale et des travaux du Groupe de travail national sur l'environnement et l'économie de 1988.

Le Ministre de l'Environnement conseillera les autorités responsables dans l'évaluation des éventuelles répercussions environnementales de leurs politiques et de leurs programmes.

EXAMEN PUBLIC DES DÉCISIONS CONCERNANT LES POLITIQUES ET LES PROGRAMMES

Le gouvernement a décidé que, lorsqu'une nouvelle politique ou un nouveau programme sera publié, un énoncé en précisant les répercussions environnementales serait publié également. Cette occasion offerte au public d'examiner les conséquences possibles d'un projet proposé peut être renforcée par le comité permanent de la Chambre des Communes sur l'Environnement qui peut demander à tout ministre de comparaître pour expliquer les incidences environnementales de toute nouvelle politique ou de tout nouveau programme.

EFFICACITÉ

L'évaluation environnementale systématique des énoncés de politiques et de programmes présente deux grands avantages. Premièrement, elle permettra de déterminer toute répercussion environnementale pouvant résulter de l'adoption d'une nouvelle politique ou d'un nouveau programme, et elle donnera la possibilité d'atténuer de telles répercussions. Deuxièmement, les projets proposés dans le cadre d'une **saine politique environnementale** seront mieux conçus pour réaliser l'objectif du développement durable.

Septembre 1990

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

7. ENVIRONMENTAL ASSESSMENT OF POLICIES AND PROGRAMS

As a key element of the reform package, the government is establishing a much enhanced and progressive environmental review process for all of its new policies and programs. What is required is more systematic attention to the environmental consequences of major policy and program decisions. Given their very broad scope, such assessments will require very different procedures from those used in project assessments. Under the new process, Ministers have decided that the environmental implications of all proposed policy and program initiatives will be considered before decisions are made.

The decision to assess policies and programs was one of the recommendations that arose from the extensive public consultations on environmental assessment reform and from the 1988 National Task Force on Environment and Economy.

The Minister of the Environment will provide advice to assist responsible authorities in assessing the potential impacts of their policies and programs on the environment.

PUBLIC SCRUTINY OF POLICY AND PROGRAM DECISIONS

The government has decided that a statement of the environmental implications of each new policy and program will be made public when the new policy or program is announced. This opportunity for public scrutiny can be reinforced by the House of Commons' Standing Committee on the Environment which can request any Minister to appear before it to explain the environmental implications of any new policy or program.

EFFECTIVENESS

The routine environmental assessment of policy and program proposals has two main advantages. First, it will identify any environmental consequences that could be expected as a result of adopting a new policy or program initiative and provide an opportunity to mitigate such consequences. Second, projects proposed within the framework of an *environmentally-sound policy* will be better designed to achieve the objective of sustainable development.

September 1990

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

8. POUR UNE ACTION CONCERTÉE

Nombre de projets relevant d'une décision fédérale nécessitent également des décisions d'autres instances, y compris des gouvernements provinciaux, des gouvernements étrangers et des organismes créés en vertu d'un accord de revendication territoriale ou d'une loi sur l'autonomie gouvernementale des Autochtones.

Il existe un sérieux risque de chevauchement et de confusion lorsque les parties concernées ne veulent pas collaborer. En revanche, la coopération assure l'efficacité du processus, empêche le dédoublement des tâches et réduit les coûts pour **toutes** les parties et tous les intéressés.

La loi prévoit plusieurs mécanismes visant à éviter le chevauchement et l'inefficacité et à réaliser une coopération et une coordination plus étroites entre les parties intéressées qui ont des responsabilités envers le même projet.

COOPÉRATION

La loi permet à une autorité responsable de collaborer avec une autre partie intéressée ou une autre instance dans la préparation d'évaluations environnementales initiales ou d'études obligatoires. Elle exige que l'autorité responsable assure le contrôle de la qualité de toutes les évaluations ainsi réalisées. Toutefois, la loi ne permet pas à l'autorité responsable de déléguer ses pouvoirs décisionnels.

Ainsi, les autorités fédérales pourront travailler en relation étroite avec d'autres parties ou instances, évitant ainsi le plus possible le chevauchement et la confusion, sans pour autant sacrifier les valeurs environnementales.

COMMISSIONS MIXTES

Afin de réduire encore le risque de chevauchement des processus, la loi donne au Ministre de l'Environnement l'autorité de former une commission d'étude mixte lorsqu'une autre partie ou une autre instance a la responsabilité de veiller à ce que soit réalisée une étude environnementale publique d'un projet.

L'autre partie intéressée peut être un gouvernement provincial, un gouvernement étranger, un groupe formé en vertu d'un accord sur les revendications territoriales globales des Autochtones ou un organisme fédéral de réglementation.

Afin de constituer une commission d'étude mixte, le Ministre doit pouvoir :

- nommer le président ou le coprésident, de même qu'un ou plusieurs membres de la commission ou approuver leur nomination;
- définir ou approuver le mandat de la commission;
- offrir au public une occasion raisonnable de participer;
- recevoir et publier le rapport de la commission.

COMMISSIONS SUBSTITUTS

Toujours en vue d'éviter le chevauchement, et dans l'intérêt de toutes les parties en cause, lorsqu'une autre autorité fédérale a la responsabilité de réaliser un examen environnemental public portant sur un projet, le Ministre de l'Environnement peut, en vertu de la Loi canadienne sur l'évaluation environnementale, déclarer que cet examen constitue un substitut acceptable des travaux d'une commission d'examen en vertu de la Loi canadienne sur l'évaluation environnementale. L'Office national de l'énergie est un bon exemple de commission substitut.

Le Ministre de l'Environnement peut aussi désigner une ou plusieurs personnes qui pourraient faire partie de la commission substitut.

Avant d'approuver la substitution, le Ministre doit s'assurer que :

- l'évaluation satisfera aux exigences de l'évaluation environnementale, telles que définies dans la Loi canadienne sur l'évaluation environnementale;
- le public aura l'occasion de participer à l'évaluation;
- le rapport lui sera soumis et qu'il sera publié.

ACCORDS AVEC LES PROVINCES ET LES PAYS ÉTRANGERS

Dans les accords en matière de programmes conclus avec les provinces ou des gouvernements étrangers il sera stipulé que, conformément aux modalités de l'accord, une évaluation environnementale doit être effectuée avant la réalisation de tout projet découlant de l'entente. L'évaluation peut être effectuée selon les procédures établies par l'autre instance. Ces conditions s'appliquent en l'absence de pouvoir décisionnel précis du gouvernement fédéral pour chacun des projets en vertu de l'accord.

ENTENTES ADMINISTRATIVES AVEC LES PROVINCES

La loi prévoit la conclusion d'ententes fédérales-provinciales aux fins de consultation, de coordination et d'échange d'informations portant sur les programmes d'évaluation environnementale en général et sur l'évaluation de projets particuliers d'intérêt commun.

Septembre 1990

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

10. PARTICIPATION DU PUBLIC ET AIDE FINANCIÈRE AUX PARTICIPANTS

PARTICIPATION DU PUBLIC

Le gouvernement canadien estime qu'il est fondamental de faire appel à la participation de la population pour bien concilier les impératifs du développement économique et de la protection de l'environnement.

La Loi canadienne sur l'évaluation environnementale permettra au public de participer plus étroitement à **toutes** les étapes de l'évaluation des projets. En vertu de cette loi, on favorisera la participation de la population de diverses façons.

1. Notification rapide

Les autorités responsables devront renseigner la population sur les grands ouvrages à l'étude, au moyen de registres publics et de publicité dans les journaux, au tout début du processus d'évaluation. La population sera alors appelée à faire part de ses observations. L'Agence définira le temps alloué pour recevoir commentaires et informations.

2. Registres publics

Dans le cadre de chaque projet, on tiendra un registre public regroupant les rapports, les documents d'appui et toute information servant à l'évaluation du projet et précisant le plan d'action à adopter après l'évaluation. Le public aura plein accès à ces registres. Les dispositions de la Loi sur l'accès à l'information s'appliqueront à toute information confidentielle.

3. La médiation

Des représentants de groupes d'intérêt public directement intéressés à un projet à l'étude ou directement touchés par un tel projet participeront à la médiation.

4. Audiences publiques

Les commissions d'examen devront tenir des audiences publiques afin de permettre à la population d'exprimer ses vues et ses recommandations.

5. Prise en compte de l'opinion publique

La loi prévoit que l'autorité responsable tiendra compte des commentaires du public avant de prendre une décision au sujet d'un grand projet ayant fait l'objet d'une évaluation environnementale. Les rapports au Ministre de l'Environnement qui découlent d'une étude obligatoire, d'une médiation ou des travaux d'une commission doivent faire état de la réaction du public.

6. Rapports et suivi rendus publics

Lorsque le Ministre reçoit un rapport d'évaluation, le public doit en être informé par les journaux ou tout autre moyen approprié, et le rapport doit être mis à la disposition du public.

Si une autorité responsable détermine qu'un tel projet peut aller de l'avant, elle doit informer le public de ses décisions et lui donner des précisions sur toute mesure d'atténuation, l'étendue de l'adoption des recommandations du rapport de médiation ou de la commission, de même que le programme de suivi.

7. Rapport annuel

Le Ministre de l'Environnement devra présenter un rapport annuel au Parlement sur la mise en oeuvre du processus dans l'ensemble du gouvernement.

AIDE FINANCIÈRE AUX PARTICIPANTS

Un programme d'aide financière aux participants est prévu afin d'aider la population à participer à la médiation et aux travaux des commissions d'étude.

Le but du programme d'aide financière est d'améliorer l'efficacité des examens publics en rehaussant la qualité de la participation. Il contribuera à assurer l'équilibre et l'objectivité de la prise de décisions en favorisant la préparation et la présentation de vues éclairées auxquelles les décideurs n'auraient peut-être pas accès autrement.

Les sommes consenties dans le cadre de ce programme d'aide financière seront précisées en fonction du nombre d'examens publics en cours ou envisagés. Les fonds ont pour but de suppléer aux programmes d'aide ou aux services offerts par d'autres organismes publics ou privés et non de les dédoubler.

Les critères suivants serviront à l'étude des demandes :

Intérêt direct
Les participants doivent être directement touchés par le projet à l'étude ou représenter les personnes en cause. Sinon, ils doivent avoir un intérêt particulier quant aux éventuelles répercussions sur la santé ou aux effets socio-économiques du projet.

Lien légitime
Les participants doivent démontrer l'existence d'un lien légitime avec l'intérêt public qui sera représenté.

Besoins
La priorité sera accordée à ceux qui ont le plus besoin d'aide pour préparer et présenter leurs opinions. Les participants doivent également démontrer qu'ils sont prêts à investir de leur temps et de leurs ressources.

Qualité de la présentation
La priorité sera accordée aux candidats dont la présentation sera exceptionnelle et originale.

Collaboration
On favorisera le regroupement de plusieurs organismes pour faire une présentation.

Double emploi
Les études qui font double emploi ou les documents qui ont été présentés ailleurs, à une autre commission d'enquête par exemple, ne seront pas subventionnés.

Programme d'activités
Les candidats doivent exposer un programme d'activités clair et précis. La demande doit être conforme aux modalités du mandat prévu pour l'étude.

Traitement équitable
Les demandes représentant des points de vue opposés sur une question seront traitées de façon équitable.

Les fonds peuvent servir à financer les aspects suivants :
- honoraires professionnels;
- rémunération pour la recherche et la préparation;
- déplacements et hébergement;
- acquisition de documentation de base;
- collecte et diffusion d'information;
- ateliers;
- services de comptabilité et de vérification;
- location de bureaux et de matériel;
- fournitures, téléphone, publicité pour les réunions;
- traduction.

L'Agence consentira les fonds projet par projet.

Septembre 1990

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

11. LE MINISTRE, LE GOUVERNEUR EN CONSEIL ET L'AGENCE

LE MINISTRE DE L'ENVIRONNEMENT

La Loi canadienne sur l'évaluation environnementale donne au Ministre de l'Environnement des pouvoirs accrus et un meilleur contrôle du processus d'évaluation.

1. Commissions d'examen et médiation

À la suite d'une demande soumise par une autorité responsable ou après consultation avec cette dernière, le Ministre peut renvoyer un projet à une commission d'examen ou à la médiation. Pour ce faire, il doit estimer que le projet pourrait présenter d'importantes menaces pour l'environnement ou qu'un examen public est justifié par l'intérêt que la population porte au projet. Le Ministre peut également :

- nommer le président et les membres d'une commission ou le médiateur et définir le mandat;
- établir les critères régissant la nomination des membres d'une commission et des médiateurs;
- s'il y a lieu, mettre fin à la médiation et renvoyer le projet à une commission d'examen;
- approuver la désignation d'un autre organisme fédéral ou autochtone pour remplacer une commission d'examen dans certaines circonstances particulières. Le Ministre peut également préciser les critères s'appliquant à la substitution.

2. Effets environnementaux hors frontières

Le Ministre peut, de sa propre initiative ou à la demande d'une ou de plusieurs instances ou parties intéressées, constituer une commission d'examen public pour évaluer les répercussions environnementales hors frontières qu'un projet peut avoir sur les terres fédérales, provinciales, étrangères ou celles appartenant à des Indiens.

Il peut s'agir de projets réalisés dans une province et susceptibles d'avoir des répercussions environnementales graves dans une autre province, sur des terres fédérales ou appartenant à des Indiens, ou encore à l'extérieur du pays. Il peut s'agir aussi de projets entrepris sur une réserve ou sur d'autres terres indiennes, susceptibles de nuire à l'environnement ailleurs.

Il faut que les effets environnementaux hors frontières et les effets environnementaux connexes prévisibles soient négatifs et graves pour que le Ministre exerce ce pouvoir discrétionnaire.

Lorsque la commission d'examen est nommée, ou suite au rapport de cette dernière, le Ministre peut émettre une ordonnance interdisant au promoteur de poursuivre le projet. Les travaux ne peuvent reprendre avant que l'évaluation soit terminée et le Ministre doit établir que le projet peut être réalisé à sa satisfaction.

Le procureur général du Canada peut demander à un tribunal relevant de l'instance appropriée d'émettre une injonction, lorsqu'il y a lieu de croire qu'une ordonnance ministérielle a été enfreinte ou risque de l'être.

3. Divers

La loi confère également au Ministre les pouvoirs suivants :

- émettre des lignes directrices pour aider les autorités responsables;
- constituer des groupes consultatifs;
- conclure des ententes avec les provinces visant la coordination et la consultation ainsi que l'échange d'information;
- entrer en consultation et collaborer avec d'autres gouvernements;
- effectuer des travaux de recherche, jouer le rôle de conseiller, établir des modes de fonctionnement et créer des programmes de formation.

LE GOUVERNEUR EN CONSEIL

Aux termes de la Loi, le Gouverneur en conseil a le pouvoir d'établir des règlements portant sur :

- les procédures et les critères d'évaluation environnementale, y compris la tenue d'études environnementales obligatoires, de médiation et d'examens par des commissions mixtes;
- les listes d'études environnementales obligatoires et de projets exclus;
- les répertoires d'autorités de réglementation visées par la loi;
- la préparation et l'exécution de programmes de suivi;
- la diffusion auprès du public de renseignements touchant les projets et leur évaluation;
- les procédures régissant les commissions substituts;
- des règlements sectoriels particuliers portant, entre autres, sur les sociétés d'État, les réserves indiennes et les activités commerciales internationales.

L'AGENCE CANADIENNE D'ÉVALUATION ENVIRONNEMENTALE

L'Agence canadienne d'évaluation environnementale contribue à assurer que le processus d'évaluation soit efficace, efficient, juste et ouvert.

L'Agence canadienne d'évaluation environnementale constituée par la loi a pour objectifs :

- de conseiller et assister le Ministre dans l'exercice de ses fonctions;
- d'administrer le processus d'évaluation environnementale, tel que défini par la loi et les règlements;
- de promouvoir l'uniformisation de l'évaluation environnementale;
- de promouvoir la recherche sur les évaluations environnementales.

L'Agence sera administrée par un président, nommé par le Gouverneur en conseil, qui relèvera directement du Ministre de l'Environnement.

L'Agence devra, entre autres responsabilités,

- conseiller le Ministre quant à l'opportunité de renvoyer un projet à une commission d'examen ou à la médiation, faire des recommandations concernant la nomination des médiateurs et les membres des commissions ainsi que la définition des mandats et fournir des services administratifs aux commissions et aux médiateurs;
- conseiller le Ministre sur les solutions de remplacement concernant les processus d'évaluation environnementale et les audiences publiques;
- appuyer les examens publics;
- conseiller les autorités responsables quant à leur rôle et leurs responsabilités aux termes de la Loi;
- effectuer des études, négocier des accords portant sur les commissions d'examen mixtes, fournir des services administratifs aux équipes de recherche ou aux organismes consultatifs et offrir des services de renseignements et de formation aux autres ministères;
- examiner la mise en oeuvre du processus d'évaluation environnementale à l'échelle du gouvernement et en rendre compte au Ministre.

Septembre 1990

Bureau fédéral d'examen des évaluations environnementales
Federal Environmental Assessment Review Office

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

FICHES D'INFORMATION

LA RÉFORME DU PROCESSUS D'ÉVALUATION ENVIRONNEMENTALE

1. Principales améliorations apportées par la réforme du processus d'évaluation environnementale.
2. Aperçu de la réforme du processus d'évaluation environnementale.
3. Points saillants de la Loi canadienne sur l'évaluation environnementale.
4. Comparaison entre le processus actuel d'évaluation environnementale et le processus proposé.
5. Le processus (organigramme compris).
6. Examen public : médiation et commissions d'examen.
7. Évaluation environnementale des politiques et des programmes.
8. Pour une action concertée.
9. Principes régissant la préparation de règlements spéciaux en matière de procédure.
10. Participation de la population et aide financière aux participants.
11. Le Ministre, le Gouverneur en conseil et l'Agence.
12. Répercussions sur d'autres lois du Parlement.
13. Cas particuliers non visés par la loi.

Canada

Federal Environmental Assessment Review Office
Bureau fédéral d'examen des évaluations environnementales

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

FACT SHEETS

FEDERAL ENVIRONMENTAL ASSESSMENT REFORM

1. Key Advances of Reforms Over Current Environmental Assessment and Review Process
2. Overview of Environmental Assessment Reform Package
3. Highlights of the Canadian Environmental Assessment Act
4. Comparison of Current and Proposed Environmental Assessment and Review Processes
5. The Process (including flow chart)
6. Public Review – Mediation and Panel Reviews
7. Environmental Assessment of Policies and Programs
8. Working with Others
9. Principles Governing the Development of Special Procedural Regulations
10. Public Participation and Participant Funding
11. The Minister, the Governor-in-Council and the Agency
12. Impacts on Other Acts of Parliament
13. Exclusion of Special Cases

Canada

Bureau fédéral d'examen des évaluations environnementales
Federal Environmental Assessment Review Office

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

5. LE PROCESSUS

Par autorité fédérale, la Loi canadienne sur l'évaluation environnementale entend :
- un ministre fédéral de la Couronne;
- une agence du gouvernement du Canada;
- un ministère ou un établissement public, tels que définis aux annexes I ou II de la Loi sur la gestion des finances publiques;

Chacune de ces autorités fédérales sera chargée de l'évaluation environnementale des projets à propos desquels elle est appelée à prendre des décisions. Il incombe donc aux autorités fédérales de faire appel à la population intéressée et de tenir compte des commentaires de la population dans le processus décisionnel.

Dans le cadre de ce processus d'auto-évaluation, des mesures devront également être prises afin que les effets environnementaux de chaque projet soient définis **le plus tôt possible, au stade de la planification**. Ainsi, les facteurs écologiques auront la place qui leur revient dans la prise de décisions, tout comme les facteurs économiques, sociaux et politiques.

Le processus a pour objet de sensibiliser davantage tous les milieux gouvernementaux aux questions écologiques et à leurs responsabilités face à l'environnement. Il vise à satisfaire les besoins actuels de la société sans compromettre la capacité des générations à venir de satisfaire les leurs.

LA PORTÉE DE L'ÉVALUATION ENVIRONNEMENTALE

De nombreux facteurs interviendront afin de déterminer si un projet est acceptable ou non sur le plan environnemental, notamment :
- les modifications que le projet peut apporter à l'environnement, y compris les répercussions de tels changements sur la santé et les conditions socio-économiques;
- les effets environnementaux cumulatifs pouvant découler de la réalisation d'un projet entrepris de concert avec d'autres projets;
- les mesures visant à atténuer les conséquences environnementales du projet;
- les commentaires et les préoccupations de la population;
- dans le cadre de projets qui feront l'objet d'une étude environnementale obligatoire, d'une médiation ou d'un examen par une commission, on devra également prendre en compte le but du projet, les autres solutions permettant de le réaliser, les mesures visant à assurer le suivi ainsi que les répercussions du projet sur la durabilité des ressources renouvelables.

1. Les projets exclus

Une liste d'exclusion sera dressée en consultation avec la population. Elle englobera les projets qui ne constituent pas une menace pour l'environnement ou dont les effets environnementaux sont négligeables. Au nombre de ces projets, citons :
- les travaux de rénovation simples,
- les activités courantes,
- l'achat de matériel,
- les travaux de construction d'envergure modeste,
- les études d'ingénierie,
- les travaux scientifiques réalisés sous contrôle.

Il ne sera pas nécessaire d'évaluer les projets inscrits sur cette liste, et l'autorité responsable aura le pouvoir de prendre directement une décision les concernant.

Canada

2. Les études environnementales obligatoires

Tout projet qui présente un risque important de dommage à l'environnement sera inscrit sur une liste officielle et fera l'objet d'une étude environnementale obligatoire qui englobera les résultats des consultations publiques. Il s'agira, pour la plupart, de méga-projets qui soulèvent généralement beaucoup de préoccupations dans la population, notamment :
- les grands travaux d'exploitation du pétrole et du gaz;
- les mines d'uranium;
- les grands ouvrages hydroélectriques;
- les grandes installations militaires;
- les grandes installations transfrontières, comme les routes, oléoducs et lignes à haute tension;
- les grandes usines.

L'autorité responsable doit étudier les répercussions environnementales d'un projet et préparer un rapport d'étude environnementale obligatoire. Le rapport est soumis au Ministre de l'Environnement qui décidera de l'opportunité de référer le projet à une commission d'étude ou à la médiation ou de demander à l'autorité responsable de prendre les décisions finales à ce sujet.

3. Examen préalable

Si un projet ne figure pas sur la liste d'exclusion ou celle des études environnementales obligatoires, il fera l'objet d'un examen préalable visant à cerner ses répercussions éventuelles sur l'environnement, les mesures d'atténuation requises, s'il y a lieu, ou tout autre genre d'évaluation nécessaire.

4. Les évaluations par catégorie

Les projets courants, itératifs ou jugés sans conséquence fâcheuse et ceux dont il est possible d'atténuer les effets dans des conditions connues, peuvent être évalués en tant que catégorie. Le cas échéant, il faut qu'une évaluation type soit déclarée « modèle » pour tout projet appartenant à cette catégorie, et tout écart dans l'évaluation des projets particuliers ne peut survenir que pour tenir compte des circonstances locales et des effets cumulatifs.

Les évaluations par catégorie peuvent porter sur diverses activités, entre autres :
- le dragage;
- l'installation de caniveaux;
- l'entretien des routes;
- le remplacement des rails et des traverses;
- la reconstruction d'installations sur le même emplacement.

L'Agence canadienne d'évaluation environnementale déterminera quels rapports d'évaluation peuvent servir aux évaluations par catégorie, et publiera le titre de ces rapports dans la **Gazette du Canada**.

MÉDIATION ET COMMISSION D'EXAMEN

Il existe deux genres d'examen public pour les projets susceptibles de constituer une menace sérieuse pour l'environnement et soulevant de graves préoccupations dans la population.

On peut avoir recours à la médiation lorsque les parties intéressées ou en cause sont prêtes à essayer d'en arriver à un consensus sur la détermination et le contrôle des effets environnementaux d'un projet. Les cas qui ne se prêtent pas à la médiation feront l'objet d'une étude approfondie par une commission. (Voir la fiche d'information « Examen public – médiation et commissions d'examen ».)

À la suite d'une étude environnementale obligatoire, le Ministre de l'Environnement déterminera s'il faut nommer un médiateur ou une commission d'examen. Après réception du rapport d'un médiateur ou d'une commission d'examen, l'autorité responsable décidera du sort du projet. Si la tentative de médiation échoue, le Ministre de l'Environnement pourra nommer une commission d'examen.

LE PROGRAMME DE CONTRÔLE

En vue d'assurer l'efficacité du nouveau processus, on mettra sur pied des programmes de rétroaction.

1. Programmes de suivi

Les rapports finals d'évaluation doivent proposer un plan de suivi visant à :
- vérifier l'exactitude des prévisions de l'évaluation environnementale;
- évaluer l'efficacité des mesures adoptées en vue d'atténuer les répercussions d'un projet.

Ces plans doivent être mis à la disposition de la population.

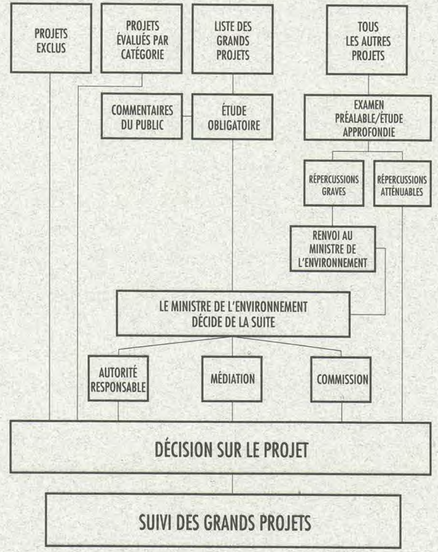
2. Processus d'évaluation

L'Agence canadienne d'évaluation environnementale peut examiner la mise en oeuvre du processus d'évaluation environnementale dans l'ensemble des milieux gouvernementaux et rendre compte de ses conclusions au Ministre.

3. Rapports annuels

Le Ministre soumettra un rapport annuel au Parlement sur l'application de la loi et les activités de l'Agence.

ÉTAPES DU NOUVEAU PROCESSUS D'ÉVALUATION



Septembre 1990

Federal Environmental Assessment Review Office
Bureau fédéral d'examen des évaluations environnementales

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

5. THE PROCESS

Under the Canadian Environmental Assessment Act, a "federal authority" is defined as:
- a federal Minister of the Crown;
- an agency of the Government of Canada;
- a department or departmental corporation set out in Schedule I or II of the Financial Administration Act;

Each federal authority will be responsible for conducting environmental self-assessments for projects for which they have decision-making responsibility. The responsibility will, therefore, be on federal authorities to consult with the interested public and incorporate public comments into their decisions.

The self-assessment process will also require that environmental effects for every project be determined as *early in the planning stages as practicable.* This, in turn, will ensure that environmental factors are incorporated in decisions in the same way that economic, social and political factors have traditionally been incorporated.

The process will enhance a sense of environmental awareness and stewardship throughout the government. The focus will be on meeting present needs without compromising the ability of future generations to meet their needs.

SCOPE OF ENVIRONMENTAL ASSESSMENT
A range of factors will be used to determine whether or not a project is environmentally acceptable. They include:
- the changes that the project may cause in the environment, including the effects of such changes on health and socio-economic conditions;
- cumulative environmental effects that may result from the project in combination with other projects;
- measures to mitigate the environmental effects of the project;
- comments and concerns of the public;
- for projects requiring mandatory study or mediation or a panel review, the purpose of the project, alternative ways to carry out the project, follow-up measures and effects on the sustainability of renewable resources.

1. Exclusions
An exclusion list will be compiled, with public input. It will include projects known not to pose any risk of harm to the environment or for which environmental effects are negligible. Examples include:
- simple renovations,
- routine operations,
- purchasing supplies,
- minor construction,
- engineering studies,
- controlled scientific studies.

Projects on the exclusion list will not require assessment. The responsible authority will be able to proceed directly to a project decision.

Canada

2. Mandatory Study
Projects that pose a potentially significant risk of harm to the environment will be published on an official list and will require a mandatory study, which will include the results of public consultation. Projects on the mandatory study list will tend to be large-scale projects that often generate considerable public concern such as:
- large oil and gas developments,
- uranium mines,
- major hydro-electric developments,
- large military installations,
- major transboundary linear facilities, e.g. highways, pipelines and high voltage transmission lines,
- large industrial plants.

The responsible authority must study the environmental effects of a proposal and compile a mandatory study report. The report will be submitted to the Minister of the Environment who will determine whether a public review by panel or mediation is warranted or whether the project can be referred back to the responsible authority for final project decisions.

3. Screening
If a project is not on the exclusion or mandatory study lists, it will be screened to determine possible environmental effects, what, if any, mitigating measures are required and what further assessment is needed.

4. Class Assessments
Where a type of project is routine and repetitive in nature and is known not to cause significant or unmitigable effects, it may be assessed as a class. In such a case, a prototype assessment could be declared to be a model for any project falling in that class and changes to individual project assessments would be made only to take into account local circumstances and cumulative effects.

Class assessments may be used for such activities as:
- dredging,
- culvert installations,
- highway maintenance,
- rail and tie replacement,
- rebuilding of facilities on the same site.

The Canadian Environmental Assessment Agency will determine which assessment reports can be used for class assessments, and publish the names of the reports in the Canada Gazette.

MEDIATION AND PANEL REVIEW
Two options exist for public review of projects which pose significant risks to the environment and about which the public has serious concerns.

Mediation can be used in cases where those involved in, and affected by, a project are willing to attempt to reach a consensus on the identification and control of its environmental effects. Cases which are not amenable to mediation will be subject to a full panel review. (See fact sheet on 'Public Review' for more information.)

Following mandatory study, the Environment Minister will determine whether a mediator or a panel should be appointed. Following receipt of a report from a mediator or a panel, the responsible authority will determine the fate of a project. If a mediation effort fails, the Environment Minister has the option of appointing a panel.

MONITORING PROGRAM
Feedback programs will be implemented to ensure the new process is effective. They will include:

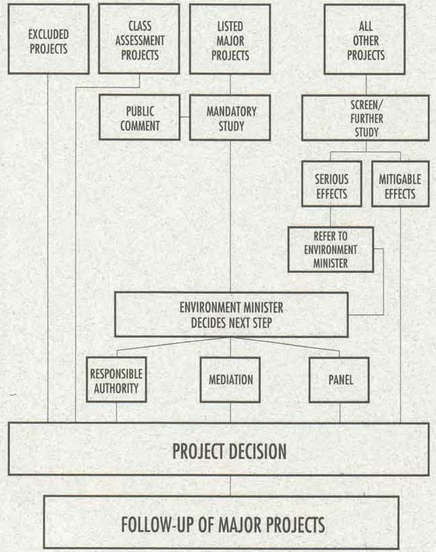
1. Follow-up Programs
Final assessment reports will include a follow-up plan designed to:
- verify the accuracy of the EA predictions;
- determine the effectiveness of measures to mitigate the environmental effects of the projects.

Such plans must be made available to the public.

2. Process Evaluation
The Canadian Environmental Assessment Agency may examine and report to the Minister on the implementation of the environmental assessment process across government.

3. Annual Reports
The Minister will submit an annual report to Parliament on the activities of the Agency and on the administration and implementation of the Act.

STEPS IN REFORMED ASSESSMENT PROCESS



September 1990

Bureau fédéral d'examen des évaluations environnementales
Federal Environmental Assessment Review Office

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

3. POINTS SAILLANTS DE LA LOI CANADIENNE SUR L'ÉVALUATION ENVIRONNEMENTALE

La Loi canadienne sur l'évaluation environnementale (LCEE) est la pierre angulaire de la réforme amorcée par le gouvernement fédéral en matière d'évaluation environnementale.

La loi expose les dispositions légales, définit les règles de base et favorise une démarche efficace et équilibrée en ce qui a trait au processus d'évaluation environnementale. En outre, elle fournit à la population la possibilité de participer au processus pour influencer le gouvernement dans ses décisions.

La loi peut être divisée en sept parties :

DÉFINITIONS

Les premiers articles de la loi donnent une définition des principaux termes et énoncent l'objet de la loi; ils portent donc sur :

- la définition de termes principaux, comme « environnement », « effet environnemental », « évaluation environnementale », « projet », « autorité fédérale », « autorité responsable » et « programme de suivi »;
- l'énoncé de l'objet de la loi, soit :
  - permettre aux autorités responsables de décider de tout projet susceptible d'avoir des effets environnementaux négatifs importants en se fondant sur un jugement éclairé quant à ces répercussions;
  - inciter ces autorités à favoriser à la fois la santé de l'économie et la salubrité de l'environnement dans la mise en oeuvre du projet;
  - faire en sorte que les projets entrepris au Canada n'aient pas de répercussions environnementales graves dans des territoires qui ne relèvent pas de la même instance que celui où ils sont réalisés.

ÉVALUATION ENVIRONNEMENTALE DES PROJETS

La loi précise également quand une évaluation environnementale doit être effectuée, qui en est responsable, quel doit être le calendrier des travaux et la portée de l'évaluation.

- La loi s'applique à tout projet qui relève de la compétence du gouvernement fédéral à titre de promoteur, de gestionnaire du territoire, d'organisme chargé d'accorder des subventions ou d'organisme de réglementation (les lois assujetties à la LCEE seront définies par voie de réglementation).
- L'évaluation doit être effectuée le plus tôt possible à l'étape de la planification.
- Il incombe à l'autorité fédérale appelée à prendre une décision sur un projet de veiller à l'exécution de l'évaluation environnementale.
- Lorsqu'il y a plusieurs autorités responsables, celles-ci doivent s'entendre sur la meilleure façon d'assumer leurs responsabilités en matière d'évaluation environnementale.
- L'évaluation doit prendre en considération :
  - les répercussions environnementales, y compris les effets cumulatifs d'un projet ainsi que leur importance;
  - les préoccupations et les commentaires de la population;
  - les mesures d'atténuation.
- S'il est nécessaire d'entreprendre une étude environnementale, une médiation ou une étude publique approfondie (notamment pour les grands projets), il faut aussi tenir compte des facteurs suivants :
  - le but du projet;
  - les autres façons de réaliser le projet;
  - le programme de suivi;
  - la notion de durabilité à l'intention des générations à venir, certaines ressources renouvelables étant susceptibles d'être fortement touchées par le projet.
- Lorsqu'un projet fait l'objet d'une étude environnementale obligatoire, d'un examen mené par une commission ou d'une médiation, aucune action ou décision fédérale ne peut être prise en vue d'autoriser le projet avant la fin de l'évaluation.

Canada

ÉVALUATIONS INITIALES ET ÉTUDES ENVIRONNEMENTALES OBLIGATOIRES

Certains articles de la loi portent sur les premières étapes de l'évaluation environnementale.

- Une liste d'études environnementales obligatoires sera établie, décrivant les principaux projets susceptibles d'avoir d'importantes répercussions négatives sur l'environnement. Une liste des projets exclus, où sont énumérés tous les projets gouvernementaux n'ayant que de faibles répercussions sur l'environnement et qui sont exemptés d'une évaluation environnementale, sera également dressée, en collaboration étroite avec la population.
- Tout projet ne figurant pas sur la liste d'études environnementales obligatoires ou sur la liste des projets exclus sera évalué séparément par l'autorité responsable. Un rapport sommaire des résultats de chaque évaluation est exigé.
- Les projets courants ou semblables à des projets ayant fait l'objet d'évaluations par le passé et dont les répercussions sur l'environnement sont bien connues peuvent être évalués en tant que catégorie.
- Lorsque l'autorité responsable, à la suite d'une auto-évaluation, détermine qu'un projet ne figurant pas sur la liste d'études environnementales obligatoires :
  - n'aura pas de conséquences importantes pour l'environnement, ou que les effets envisagés peuvent être atténués, l'autorité peut entreprendre le projet en s'assurant de la mise en place de toute mesure d'atténuation nécessaire;
  - causera d'importants dommages qui ne peuvent être atténués ou fait l'objet de graves préoccupations dans la population, le projet doit être soumis au Ministre de l'Environnement qui le renvoie à une commission d'étude ou à la médiation;
  - entraînera des conséquences graves qui ne peuvent être ni atténuées ni justifiées, le projet doit être abandonné.
- L'autorité responsable doit prendre en considération tout commentaire de la population portant sur l'évaluation environnementale d'un projet.
- L'évaluation des projets inscrits sur la liste des études environnementales obligatoires se déroulera selon les procédures arrêtées dans les règlements concernant les avis publics et la consultation de la population, et un rapport de l'étude environnementale obligatoire sera préparé. Le Ministre de l'Environnement décidera de la nécessité d'un examen public ou d'une médiation concernant ces projets.

POUVOIRS D'APPRÉCIATION

La loi précise en outre que l'autorité responsable doit soumettre au Ministre de l'Environnement, pour fins d'examen public ou de médiation, tout projet susceptible d'avoir des effets environnementaux négatifs importants, ou encore abandonner le projet si les conséquences envisagées semblent inacceptables.

À tout moment, si le Ministre de l'Environnement estime qu'un projet aura d'importantes répercussions environnementales négatives ou si les préoccupations de la population le justifient, le Ministre peut amorcer une étude publique ou une médiation.

MÉDIATION OU EXAMEN PAR UNE COMMISSION ET REGISTRES PUBLICS

Des précisions sur la médiation et le fonctionnement des commissions d'examen sont données dans d'autres articles; ceux-ci renferment des dispositions sur l'audition des témoins, l'étude des recommandations, les commissions mixtes, les évaluations par une autre autorité, les commissions d'examen sur les répercussions hors frontières et les registres publics.

- La loi précise dans quelles circonstances le Ministre est appelé à nommer un médiateur ou une commission pour étudier un projet.
- Les commissions tiennent des audiences publiques et soumettent leur avis à l'autorité responsable du projet et au Ministre de l'Environnement.
- Bien que les audiences publiques continuent d'être informelles, la commission a l'autorité de citer des témoins à comparaître et d'obtenir de l'information.
- À la suite des travaux de la commission ou de la médiation, la loi exige que l'autorité responsable informe la population de la ligne de conduite et de toute mesure d'atténuation adoptées ainsi que des dispositions qui sont prises pour donner suite aux recommandations de la commission ou à celles qui découlent de la médiation.
- Pour constituer une commission d'examen en collaboration avec une autre instance, le Ministre doit :
  - nommer le président ou le coprésident et un ou plusieurs membres de la commission, ou approuver leur nomination;
  - définir ou approuver le mandat;
  - offrir à la population une occasion raisonnable de participer;
  - recevoir et publier le rapport de la commission.
- En vertu de la loi, le gouvernement fédéral a un rôle de premier plan à jouer dans le cadre de l'évaluation environnementale de projets réalisés au Canada et susceptibles d'avoir des répercussions environnementales graves à l'étranger, bien que ces projets ne relèvent pas de la compétence fédérale.
- Chaque autorité responsable doit tenir un registre public regroupant tous les renseignements sur les évaluations environnementales dont elle est chargée.

ADMINISTRATION

Certains autres pouvoirs du Ministre de l'Environnement et du Gouverneur en conseil sont définis par un groupe d'articles de la loi.

- Le Ministre de l'Environnement peut :
  - établir des lignes directrices et des codes de pratique régissant le déroulement des évaluations;
  - constituer des équipes de recherche et des groupes consultatifs;
  - conclure des accords portant sur les évaluations;
  - fixer les critères régissant la nomination des médiateurs et des membres des commissions et ceux qui s'appliquent à la substitution des commissions d'examen par d'autres organismes fédéraux de réglementation.
- Le Gouverneur en conseil peut, par règlement, régir l'orientation et le contrôle du processus d'évaluation environnementale, notamment par l'établissement de règlements spéciaux établissant des processus d'évaluation environnementale particuliers aux sociétés d'État et aux commissions portuaires et tenant compte de la nature concurrentielle des activités de celles-ci, ainsi qu'à l'égard de projets d'aide aux pays en développement, en tenant compte du fait que de tels travaux s'effectuent à l'étranger.

L'AGENCE CANADIENNE D'ÉVALUATION ENVIRONNEMENTALE

Enfin, un groupe d'articles de la loi donnent des précisions sur les fonctions et les attributions de l'Agence, de même que sur la nomination de son président et de son personnel.

- En vertu de la loi, l'Agence canadienne d'évaluation environnementale a été créée pour :
  - conseiller et assister le Ministre dans l'administration du processus d'évaluation environnementale;
  - promouvoir l'uniformisation de la mise en oeuvre du processus partout au pays;
  - promouvoir la recherche;
  - fournir un soutien administratif à la médiation;
  - fournir un soutien administratif aux commissions d'évaluation environnementale.
- Le président de l'Agence est nommé par le Gouverneur en conseil et il relève du Ministre de l'Environnement.
- L'Agence relève du Ministre quant à la mise en oeuvre du processus à l'échelle du gouvernement fédéral.

Septembre 1990

Federal Environmental Assessment Review Office
Bureau fédéral d'examen des évaluations environnementales

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

3. HIGHLIGHTS OF THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT

The Canadian Environmental Assessment Act (CEAA) is the cornerstone of the federal government's environmental assessment (EA) reform package.

The Act outlines the legal process, establishes ground rules and creates an efficient, balanced approach for the EA process. In addition, it guarantees the public an opportunity to participate in the process and to influence government decision-making.

The Act can be divided into the following seven sections:

INTERPRETATION

This section defines key terms and states the purpose of the Act. It:

- defines key terms such as 'environment', 'environmental effect', 'environmental assessment', 'project', 'federal authority', 'responsible authority' and 'follow-up program';
- states the purpose of the Act, namely:
  - to ensure that project decisions by responsible authorities are based on an informed appreciation of the likely environmental effects;
  - to encourage project decisions by responsible authorities that promote and maintain a healthy environment and a healthy economy;
  - to ensure that projects in Canada do not cause serious environmental effects outside the jurisdictions in which they are located.

ENVIRONMENTAL ASSESSMENT OF PROJECTS

This section states when an EA must be carried out, who is responsible, its timing, and its scope. It says:

- the Act covers projects for which the federal government holds decision-making authority – as a proponent, as a land manager, as a provider of funding and as a regulatory authority (legislation to be covered by the CEAA will be specified by regulation);
- the assessment is to be completed as early in the planning stages as possible;
- a federal authority which has a decision to make on a project is responsible for the completion of the EA;
- where there is more than one responsible authority, they are to determine together the manner in which to carry out the EA;
- the assessment is to include consideration of:
  - environmental effects of a project, including cumulative environmental effects, and their significance,
  - public concerns and comments,
  - mitigating measures;
- if a mandatory study, mediation or full public review is required (i.e. for major projects), the following factors must also be considered:
  - purpose of the project,
  - alternative means of carrying out the project,
  - follow-up program,
  - sustainability for future generations of renewable resources that are likely to be significantly affected by the project;
- for projects undergoing a mandatory study, panel review or mediation no federal action or decision may be taken that would allow the project to proceed until the assessment is complete.

Canada

INITIAL ENVIRONMENTAL ASSESSMENTS AND MANDATORY STUDIES

This part of the Act deals with the initial stages of environmental assessment. It states:

- a mandatory study list will be issued describing major projects likely to have significant adverse effects on the environment; a government-wide exclusion list for environmentally-benign projects exempted from the EA process will be developed with full public consultation;
- all projects not on the mandatory study or exclusion lists are to be screened individually by the responsible authority. A report summarizing the results of each project screening is required;
- projects that are similar to previously assessed projects, routine in nature and well understood from an environmental point of view, can be screened as a class;
- where the responsible authority determines, through self-assessment, that a project:
  - will have no significant adverse environmental effects or that any such effects can be mitigated, the authority may proceed with the project, ensuring that any necessary mitigating measures are put in place;
  - will have significant adverse effects that may not be mitigable or has generated extensive public interest or concern, the project must be referred to the Minister of the Environment for mediation or a review panel.
  - will have significant adverse effects that cannot be mitigated and cannot be justified, the project must be abandoned;
- the responsible authority must take into consideration any comments of the public with respect to the environmental assessment of a project;
- assessments for projects on the mandatory study list will follow procedures specified in regulations and will require public notification and consultation, as well as a mandatory study report. The Minister of the Environment will determine the need for public review or mediation of these projects.

DISCRETIONARY PROVISIONS

This section of the Act states that a responsible authority may refer a project to the Environment Minister for public review or mediation at any time when it becomes apparent that the environmental effects will be significant, or may abandon the project and its assessment whenever the environmental effects appear unacceptable.

At any time, if the Environment Minister is of the opinion that a project will have significant adverse environmental effects, or if public concerns warrant it, the Minister may initiate a public review or mediation.

MEDIATION AND PANEL REVIEWS AND PUBLIC REGISTRIES

These sections of the Act outline how mediation and review panels will operate. They establish provisions for the hearing of witnesses, consideration of recommendations, joint review panels, substitute review panels, transborder review panels and public registries.

- The Act states under what circumstances the Minister may appoint a mediator or a panel to review a project;
- Panels are to hold public hearings and submit their advice to the responsible authority and to the Minister of the Environment;
- Public hearings will continue to be informal, but a panel has the power to subpoena witnesses and information;
- The Act requires the responsible authority, following mediation or a panel review, to advise the public of its course of action, of any mitigation measures being put in place and the extent to which the recommendations of the panel or mediation are being adopted;
- The Minister, in order to establish a review panel jointly with another jurisdictions must be able to:
  - appoint or approve the chair or co-chair and one or more of the panel members,
  - fix or approve the terms of reference,
  - afford the public an opportunity to participate,
  - receive and publish the panel's report;
- The Act establishes a substantial role for the federal government in the assessment of projects in Canada having serious adverse transborder environmental effects, but not otherwise falling under federal jurisdiction;
- Each responsible authority must establish a public registry containing the information relating to its project assessments.

ADMINISTRATION

These sections describe additional powers of the Minister of the Environment and the Governor-in-Council.

- The Minister of the Environment may:
  - issue guidelines and codes of practice on the conduct of assessment,
  - establish research and advisory groups,
  - enter into assessment agreements,
  - establish criteria for the appointment of mediators and panel members, and for the substitution of other federal regulatory bodies in place of panels;
- The Governor-in-Council may make regulations to guide and control the EA process, including, for example, special regulations to establish distinct EA processes for Crown Corporations and Harbour Commissions that reflect the competitive nature of their activities, and for foreign aid projects that reflect the fact that such projects are undertaken by foreign jurisdictions.

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY

The duties and functions of the Agency and the appointment of its president and staff are elaborated in this section.

- The Act establishes the Canadian Environmental Assessment Agency to:
  - advise and assist the Minister in the administration of the environmental assessment process,
  - promote uniformity in the application of the process across Canada,
  - promote research,
  - support mediations,
  - support environmental assessment panels;
- The president of the Agency is a Governor-in-Council appointment and reports to the Minister of the Environment;
- The Agency will report to the Minister on the implementation of the process across the federal government.

September 1990

Bureau fédéral d'examen des évaluations environnementales
Federal Environmental Assessment Review Office

L'ÉVALUATION ENVIRONNEMENTALE FÉDÉRALE

nouvelles orientations

9. PRINCIPES RÉGISSANT LA PRÉPARATION DE RÈGLEMENTS SPÉCIAUX EN MATIÈRE DE PROCÉDURES

En vertu de la Loi canadienne sur l'évaluation environnementale (LCEE), une évaluation environnementale doit être effectuée pour tout projet dont le gouvernement fédéral est le promoteur ou sur lequel il exerce l'autorité décisionnelle, ou lorsque le projet doit être réalisé sur le territoire domanial. Une évaluation environnementale est également requise dans le cadre de demandes de subventions fédérales visant à financer un projet ou lorsqu'un projet pourrait avoir des répercussions sur un secteur de compétence fédérale.

Bien que ces dispositions s'appliquent dans la vaste majorité des cas, des problèmes peuvent surgir dans l'exécution du processus lorsque les projets sont réalisés sur le territoire domanial, comme les réserves indiennes, ou dans le cadre des programmes d'aide au développement mis sur pied à l'étranger. Des difficultés particulières surviennent également lors de l'octroi de crédits commerciaux par le gouvernement fédéral pour appuyer le commerce extérieur ou financer des activités commerciales au pays. Enfin, des problèmes sont propres à certaines sociétés d'État qui doivent faire concurrence au secteur privé.

De tels projets feront l'objet d'une évaluation environnementale, conformément au but exposé dans le projet de loi. Toutefois, en raison de circonstances particulières, ils seront assujettis à des règlements spéciaux en matière de procédure. L'élaboration de ces règlements sera effectuée de façon systématique, conformément à la politique de réglementation du gouvernement fédéral, et des consultations de grande envergure seront effectuées auprès des parties intéressées et du grand public.

Les principes suivants régiront l'élaboration de ces règlements spéciaux en matière de procédure :

TERRES INDIENNES

1. Tous les projets à réaliser sur des terres réservées aux Indiens devraient faire l'objet d'évaluations environnementales.
2. Une réglementation sera préparée qui prévoira l'évaluation des projets pour lesquels les principaux décideurs sont les premières nations.
3. La réglementation sera conforme au principe de la transmission de pouvoirs aux premières nations et, par conséquent, les responsabilités établies par ces règlements refléteront l'imputabilité précisée dans l'instrument de transmission.
4. La réglementation sera préparée en consultation avec les premières nations et en respectant la politique de réglementation ainsi que le Code du citoyen : équité en matière de réglementation.
5. La réglementation sera rédigée de manière à éviter que les premières nations soient défavorisées par rapport à la concurrence.
6. La réglementation s'efforcera de réduire au minimum le chevauchement de processus avec ceux d'autres instances.

AIDE EXTÉRIEURE

1. L'aide canadienne au développement international est soumise à la Loi canadienne sur l'évaluation environnementale.
2. L'évaluation environnementale de l'aide canadienne au développement international sera faite dans le respect de la souveraineté des États et conformément aux principes et pratiques du droit international.
3. L'évaluation environnementale sera un élément important de l'aide canadienne au développement international.
4. Les évaluations environnementales des projets canadiens d'aide au développement international seront à la disposition de la population canadienne.
5. Le Canada se prévaudra des exigences des pays bénéficiaires et d'autres organismes de développement internationaux et multilatéraux compétents en ce qui concerne les évaluations environnementales lorsque ces exigences sont conformes aux buts et objectifs fondamentaux des politiques environnementales canadiennes.
6. Le Canada encouragera et aidera les pays en développement à acquérir des compétences en matière d'évaluation environnementale et à réaliser de telles évaluations.
7. Les procédures de l'examen public d'un projet au Canada, exigé en vertu de la loi proposée, seront adaptées de manière à tenir compte du caractère étranger du projet.

APPUI AUX EXPORTATIONS CANADIENNES

1. La Société pour l'expansion des exportations et la Corporation commerciale canadienne ne seront pas exemptées de l'application de la loi proposée. Cependant, la préparation d'une réglementation établissant des procédures pour l'évaluation des projets auxquels ces sociétés fournissent un appui sera reportée à plus tard, et l'application de ce règlement sera également reportée jusqu'à ce qu'un consensus international soit obtenu, au moins pour l'incorporation de facteurs environnementaux dans les activités d'aide aux exportations de nos principaux concurrents internationaux.
2. La loi proposée devrait normalement s'appliquer à tout projet que ces deux sociétés pourraient entreprendre au Canada, comme la construction de bureaux.
3. La réglementation de procédures particulières qui est à l'étude pourrait permettre de dresser des listes de types de projet qui seraient refusés par les sociétés pour des motifs environnementaux, qui devraient faire l'objet d'une évaluation avant qu'un appui ne soit envisagé, qui seraient exemptés d'une évaluation en raison de leurs conséquences minimes pour l'environnement et de types de projets ou d'activités soumis à d'autres contrôles canadiens et pour lesquels les sociétés ne sont pas l'autorité responsable.

AUTRES SOCIÉTÉS D'ÉTAT

1. D'autres sociétés d'État figurant à l'annexe 3 de la **Loi sur l'administration financière** (sociétés en situation de concurrence commerciale) et les filiales qu'elles contrôlent fonctionneraient suivant une réglementation de procédures particulières qui tiendrait compte des circonstances propres à la situation de concurrence commerciale dans lesquelles elles se trouvent.
2. La réglementation envisagée pourrait contenir des dispositions autorisant une grande souplesse à la phase de l'examen préalable du processus, permettant s'il y a lieu, et en consultation avec l'Agence, de satisfaire à des processus provinciaux, territoriaux ou autres. Cette consultation ne serait nécessaire qu'une seule fois, lorsque la société soumettrait une politique de procédure d'évaluation environnementale au Ministre, pour examen et approbation en conformité avec le règlement. Pour les projets devant faire l'objet d'un rapport d'évaluation environnementale obligatoire conformément à la loi proposée (par exemple, des projets majeurs pour lesquels il y a lieu de considérer la nécessité d'un examen public ou d'une médiation), on établirait des exigences minimales en matière de procédure. On envisage que les sociétés d'État discuteraient de tels projets avec l'Agence cas par cas pour déterminer si une procédure provinciale ou autre ou encore une procédure mixte conviendrait, ou si la procédure fédérale ferait l'affaire. Les premiers objectifs seraient d'éviter le double emploi ainsi que toute ingérence inutile à l'endroit de la compétitivité de la société, tout en respectant l'esprit de la loi.
3. Les sociétés d'État qui exercent leurs activités à l'étranger et qui ne sont pas visées par des réglementations particulières relatives à l'aide ou aux exportations devraient employer des procédures semblables à celles qui régissent les projets d'aide, notamment une réglementation qui tienne compte de l'aspect de commerce international du projet et qui respecte la souveraineté des États bénéficiaires ainsi que les principes et pratiques du droit international.
4. En ce qui concerne de tels projets réalisés outre-mer, le Canada respectera les exigences d'évaluation des pays bénéficiaires et celles d'autres institutions internationales et multilatérales compétentes si ces exigences sont conformes aux objectifs énoncés dans la Loi canadienne sur l'évaluation environnementale.
5. Lorsque le processus nécessite qu'un projet à réaliser outre-mer fasse l'objet d'un examen public au Canada, les procédures de cet examen seront adaptées pour tenir compte de la nature étrangère du projet.
6. La population canadienne aura accès aux évaluations environnementales des projets réalisés au pays et outre-mer.

FINANCEMENT DES ACTIVITÉS COMMERCIALES INTÉRIEURES

1. Tous les projets pour lesquels une aide financière est demandée devraient être soumis à une évaluation environnementale conformément à l'objet de la loi proposée; autrement dit, le gouvernement fédéral prendra connaissance des incidences environnementales du projet et en jaugera l'importance avant de décider s'il approuve ou non le financement.
2. La réglementation concernant l'application de la loi proposée à de tels projets sera élaborée de concert avec tous les ministères et organismes fédéraux intéressés.
3. La loi reconnaîtra la nécessité de trouver un équilibre entre, d'une part, les coûts et les avantages environnementaux pour la génération actuelle et celles qui viendront et, d'autre part, les coûts et les avantages économiques liés à la réalisation des projets, compte tenu de la compétitivité commerciale, y compris au niveau international.
4. On élaborera des dispositions, comprenant des critères dont le public pourra prendre connaissance, concernant la protection des renseignements commerciaux confidentiels, les procédures de consultation publique, l'accès de la population aux documents sur l'évaluation environnementale, la justification des projets et les solutions de rechange.
5. La conclusion d'engagements contractuels entre le gouvernement fédéral et le promoteur d'un projet serait considérée comme un moyen adéquat de satisfaire à la responsabilité d'assurer le respect des modalités environnementales (y compris les plans de surveillance) fixées par l'autorité responsable du projet.
6. L'Agence canadienne d'évaluation environnementale fera diligence pour examiner la documentation qui lui est soumise.
7. Pour éviter le double emploi, on fera en sorte de coopérer avec les processus d'évaluation provinciaux, tout en préservant les responsabilités décisionnelles fédérales énoncées dans la loi proposée.
8. Les règlements tiendront compte de la participation financière des ministères et organismes fédéraux aux étapes de l'élaboration et de la mise en chantier d'un projet, par rapport à celle des autres autorités fédérales responsables.

QUESTIONS DE SÉCURITÉ NATIONALE

1. Tout projet soulevant des questions de sécurité nationale sera assujetti à une évaluation environnementale en vertu de la Loi canadienne sur l'évaluation environnementale.
2. Des règlements spéciaux en matière de procédure régiront la participation au processus d'évaluation ainsi que l'accès du public à l'information, lorsque cette participation ou cette information peuvent compromettre la sécurité nationale du Canada ou celle de ses alliés.
3. L'évaluation environnementale de tels projets sera rendue publique lorsque ceux-ci ne représenteront plus une menace à la sécurité nationale.
4. Le Gouverneur en conseil peut soustraire un projet aux exigences d'une évaluation environnementale en cas de circonstances spéciales relativement à la sécurité nationale.

Septembre 1990

Canada

Federal Environmental Assessment Review Office
Bureau fédéral d'examen des évaluations environnementales

FEDERAL ENVIRONMENTAL ASSESSMENT

new directions

9. PRINCIPLES GOVERNING THE DEVELOPMENT OF SPECIAL PROCEDURAL REGULATIONS

The proposed Canadian Environmental Assessment Act (CEAA) calls for environmental assessments (EA) to be done whenever the federal government is the proponent or decision-maker of a project or when the project is planned for federal lands. EA is also required when federal funding is sought for a project or when a project may have an effect on an area of federal jurisdiction.

While this coverage applies in the vast majority of cases, problems may arise when trying to implement the process where projects take place on federal lands like Indian reserves or when Canada offers international development assistance. Difficulties also arise in the special case of federal commercial credit in support of international trade or in financing domestic commercial activities. Finally, problems also arise for certain Crown Corporations that must compete in the private sector.

All such projects will be subject to EA in accordance with the stated purpose of the proposed Act. However, because of special circumstances they will be subject to special procedural regulations. These will be developed in a systematic fashion under the government's regulatory policy involving extensive consultations with stakeholders and the general public.

The following principles will govern the development of these special procedural regulations:

INDIAN LANDS

1. All projects proposed to be carried out on lands reserved for Indians should be subject to environmental assessment.

2. A regulation will be developed to provide for assessment of proposed projects where First Nations are the primary decision-makers.

3. The regulation will be consistent with the principle of devolution of authority to First Nations and therefore, accountability under these regulations will reflect the accountability outlined in the devolution instrument.

4. The regulation will be developed in consultation with First Nations and in accordance with the Regulatory Policy and Citizens' Code of Regulatory Fairness.

5. The regulation will be drafted in such a way as to avoid the placing of First Nations at a competitive disadvantage.

6. The regulation will minimize duplication of process with other jurisdictions.

FOREIGN AID

1. Canadian international development assistance is subject to the proposed Canadian Environmental Assessment Act.

2. Environmental assessment of Canadian international development assistance will respect the sovereignty of states and be conducted in accordance with the principles and practice of international law.

3. Environmental assessment will be an important element of Canadian international development assistance.

4. Environmental assessments of Canadian international development assistance will be made available to the Canadian public.

5. Canada will avail itself of the environmental assessment requirements of recipient countries and of other appropriate international and multilateral development institutions when they meet the basic goals and objectives of Canadian environmental policies.

6. Canada will encourage and assist developing countries to develop and implement an indigenous capacity for environmental assessment.

7. Modalities for the public review of a project in Canada, when required under the proposed Canadian Environmental Assessment Act, will be adapted to respect the foreign nature of the project.

SUPPORT FOR CANADIAN EXPORTS ABROAD

1. The Export Development Corporation and the Canadian Commercial Corporation will not be excluded from application of the proposed Act, but the drafting of procedural regulations governing the assessment of projects for which they provide export support will be postponed, and its application delayed until an international consensus has been achieved that provides for, at a minimum, the incorporation of environmental factors in export support activities of our major international competitors.

2. The proposed Canadian Environmental Assessment Act would apply normally to any project which these two corporations might undertake in Canada, e.g., the building of office accommodation.

3. The envisaged special procedural regulation could enable listings to be made of project types in which the corporations would decline an interest on environmental grounds, project types requiring assessments before support would be considered, project types to be excluded due to little environmental consequence, and project types or activities for which the corporations are not the responsible authority due to the projects being otherwise subject to Canadian controls.

OTHER CROWN CORPORATIONS

1. Other Crown Corporations listed in Schedule III to the *Financial Administration Act* (commercially competitive corporations) and their majority-owned subsidiaries would operate under special procedural regulations developed specifically to take into account their particular commercially competitive circumstances.

2. The envisaged procedural regulations would contain provisions allowing for considerable flexibility in the screening phase of the process including, as appropriate and in consultation with the Agency, complying with relevant provincial, territorial or other processes. This consultation would only be needed on a one-time basis with the corporation submitting to the Minister an environmental assessment procedural policy for consideration and endorsement in accordance with regulations. For projects listed pursuant to the proposed Act as requiring a mandatory environmental assessment report (i.e., major projects for which consideration needs to be given regarding the necessity of panel review or mediation) minimum procedural requirements will be established. It is envisaged that Crown Corporations would discuss such projects with the Agency on a case-by-case basis to determine whether a provincial or other procedure, or a joint procedure, or the federal procedure would be adequate. Prime objectives would be to avoid duplication, as well as undue interference with the competitiveness of the corporation, while respecting the spirit of the Act.

3. Crown Corporations operating outside Canada and not covered by special regulations applying to aid or to export support would be subject to procedures similar to those applying to aid projects, namely, the regulation will be sensitive to the international trade aspect of the project, will respect the sovereignty of recipient states, and be consistent with the principles and practice of international law.

4. Vis-à-vis such overseas projects, Canada will respect the assessment requirements of recipient nations and of other relevant international and multilateral institutions when they meet the purpose enunciated in the proposed Canadian Environmental Assessment Act.

5. Modalities for public review of a project in Canada, when required within the process, will be adapted to respect the foreign nature of overseas projects.

6. Canadians will have access to the environmental assessments of the domestic and overseas projects.

FINANCING DOMESTIC COMMERCIAL ACTIVITIES

1. All proposed projects which are candidates for federal financial support should be subject to environmental assessment in accordance with the purpose of the proposed Act, namely that the federal government will make itself aware of the environmental implications of the project and will consider the importance of those implications before deciding whether to approve the funding.

2. Regulations respecting the application of the proposed Act to such projects will be developed in consultation with all interested federal departments and agencies.

3. There will be recognition of the need to balance environmental costs and benefits for both present and future generations against economic costs and benefits, taking into account commercial competitiveness, including its international aspects.

4. Provisions, including publicly available criteria, will be developed regarding the safeguarding of commercially confidential information, procedures for public consultation, public access to environmental assessment materials, project justification and alternatives.

5. Contractual commitments between the federal government and a project proponent would be considered an adequate discharge of the responsibility to ensure compliance with the environmental terms and conditions, including monitoring plans, set by the responsible authority for the project.

6. Review of documentation by the Agency, as required, will be timely and expeditious.

7. Provision would be made to avoid duplication through cooperation with provincial processes, while retaining federal decision responsibilities set out in the proposed Act.

8. The regulations will take into account the extent of involvement of federal financing departments and agencies in a project's developmental and operational stages, relative to that of other federal responsible authorities.

MATTERS OF NATIONAL SECURITY

1. Projects relating to matters of national security will normally be subjected to environmental assessments under the Canadian Environmental Assessment Act.

2. Special procedural regulations will regulate participation in the assessment process and the availability of information to the public where such participation or information could compromise the national security of Canada or its allies.

3. Environmental assessments of such projects will be made public when they no longer present a risk to national security.

4. The Governor-in-Council may exempt a project from environmental assessment requirements in special cases of national security.

September 1990

Canada