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## Operational Policy Statement

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### ***Follow-up Programs under the Canadian Environmental Assessment Act***

Original: October 2002

Update: December 2011

#### **Purpose**

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This operational policy statement provides direction for federal authorities and proponents regarding follow-up programs under the *Canadian Environmental Assessment Act* (the Act).

Key considerations in the design and implementation of such follow-up programs are also presented.

#### **Definition**

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The Act defines “follow-up program” as 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.*

#### **Compliance Monitoring vs. Follow-up**

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Compliance monitoring verifies whether required mitigation measures were implemented.

A follow-up program, on the other hand, determines the accuracy of the conclusions of the environmental assessment and the effectiveness of the mitigation measures.

Compliance monitoring on its own does not satisfy the requirements for a follow-up program.

#### **Why Use a Follow-up Program?**

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A follow-up program is used to:

- verify predictions of environmental effects identified in the environmental assessment;
- determine the effectiveness of mitigation measures in order to modify or implement new measures where required;
- support the implementation of adaptive management measures to address previously unanticipated adverse environmental effects;
- provide information on environmental effects and mitigation that can be used to improve and/or support future environmental assessments including cumulative environmental effects assessments; and
- support environmental management systems used to manage the environmental effects of projects.

## **Legislative Requirements**

### ***Sections 16, 17 and 38***

Follow-up programs are mandatory for all projects assessed by a comprehensive study, mediation or review panel, but discretionary for projects assessed by screening.

Sections 16, 17 and 38 of the Act specifically address follow-up programs.

### ***Screenings***

Responsible authorities shall consider whether a follow-up program is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.

### ***Comprehensive Studies, Mediations and Assessments by Review Panels***

Follow-up programs are mandatory. As part of the assessment, a responsible authority shall design a follow-up program for the project and ensure its implementation.

### ***Design and Use of a Follow-up Program***

A responsible authority is not limited by its own departmental legislation when designing and implementing a follow-up program.

A federal authority that proposes certain measures for a follow-up program is obliged to assist in their implementation if asked to do so by a responsible authority.

A responsible authority may delegate any part of the design and implementation of a follow-up program to any person, body or jurisdiction (e.g., province, Aboriginal self-governing body).

The results of a follow-up program may be used for implementing adaptive management measures and improving the quality of future environmental assessments.

### ***Sections 55-55.5 – Canadian Environmental Assessment Registry***

The purpose of the Registry is to facilitate public access to information and records relating to environmental assessments conducted under the Act and provide notice of the assessments in a timely manner. The Registry consists of two complementary components; a project file and internet site. A responsible authority is required to take the following steps.

- Post a notice on the Internet site stating whether a follow-up program is appropriate following a screening.
- Include a description on the Internet site summarizing any follow-up program, or an indication of how a full description of the program and its results may be obtained.
- Include a description on the Internet site summarizing the results of the follow-up program or how a full description of the results may be obtained.
- Include any records relating to the need for, design of or implementation of any follow-up program in the project file.

## **Roles and Responsibilities**

### ***Proponent***

A responsible authority may require the proponent to plan a follow-up program during the environmental assessment and to carry out its implementation.

### ***Responsible Authority***

A responsible authority shall design, or delegate the design of, the follow-up program and ensure its implementation. For comprehensive studies, the Canadian Environmental Assessment Agency (the Agency) ensures that the elements of a follow-up program are defined in the proponent's environmental impact statement, but it is the RA that designs and ensures implementation of the follow-up program<sup>1</sup>.

For a project that has undergone a comprehensive study, a responsible authority may need to factor in the Minister of the Environment's environmental assessment decision statement under section 23 of the Act, if that statement sets out requirements for a follow-up program.

A responsible authority may request assistance from appropriate federal authorities or from other jurisdictions to identify which predictions of environmental effects require follow-up, especially for areas outside a responsible authority's expertise.

In cases of projects where there will be a follow-up program and there are multiple responsible authorities, the federal environmental assessment coordinator will coordinate the responsible authorities as they determine among themselves the design and means to implement the follow-up program.

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<sup>1</sup> Since July 2010, the Agency has assumed responsibility for conducting comprehensive studies, except for those regulated by the National Energy Board and the Canadian Nuclear Safety Commission. Following the Minister's environmental assessment decision statement (s 23), the project is referred to the lead responsible authority for action under section 37.

A responsible authority may also include conditions in authorizations, permits, contracts, leases or other binding documents with the proponent. These conditions can relate to specific mitigation and follow-up measures, environmental thresholds, or reporting and compliance monitoring schedules. In many cases, conditions from other federal authorities may also be included in these binding documents. The ultimate responsibility to enforce those conditions, however, rests with the responsible authority(ies).

Financial assurances may also be a valuable tool for ensuring the implementation of the follow-up program and of any additional mitigation measures determined to be necessary during the follow-up program.

Responsible authorities must ensure, after making their environmental assessment decision under either section 20 or section 37 of the Act, that they continue to monitor the status of the projects and the design and implementation of the associated follow-up program.

Responsible authorities must also ensure that they fulfill all related Registry requirements, including those pertaining to posting follow-up program notices and results on the Internet site.

### ***Federal Authority***

A federal authority in possession of specialist or expert information or knowledge with respect to a project shall, on request, make available that information or knowledge to the responsible authority(ies), mediator or review panel.

Where requested, a federal authority may assist in the design of a follow-up program and the analysis of generated information.

A federal authority shall provide assistance requested by a responsible authority in ensuring implementation of a follow-up program when implementation of the follow-up program has been agreed upon by the federal authority and the responsible authority.

### ***Federal Environmental Assessment Coordinator***

The federal environmental assessment coordinator is responsible for coordinating the participation of the responsible authorities and federal authorities in the environmental assessment process, including follow-up programs, for projects where a screening or comprehensive study is required.

This role includes coordinating responsible authorities in their fulfillment of Registry obligations during the environmental assessment, including those related to the follow-up program.

### ***Other Jurisdictions***

Provinces and territories, their agencies and Aboriginal jurisdictions established under land claims agreements or pursuant to legislation related to self-government may have a role to play in the design and implementation of a follow-up program.

Cooperative agreements between the federal government and provincial/territorial governments require close coordination to maximize efficiency and minimize duplication of effort. These obligations extend to the design and implementation of any follow-up program.

## ***Considerations for Developing a Follow-up Program***

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The following examples illustrate circumstances that may warrant a follow-up program. These circumstances should also be considered in the design of any follow-up program.

### ***Environmentally Sensitive Area/Valued Ecosystem Components***

- The site of a proposed project or its potential area of influence is considered to be environmentally sensitive. For example, it is known to contain critical ecosystem components, or it is known to contain ecosystem components highly valued by society.

### ***Protected Areas or Areas under Consideration for Protection***

- The site of a proposed project or its potential area of influence is an area of land and/or sea dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means. For example, the potential adverse effects of a project on the ecological integrity of a national park may warrant a follow-up program.

### ***Public Concerns***

- There is a need to address relevant project-related issues of public concern.

### ***Accuracy of Predictions***

- It is appropriate to verify that the environmental assessment predictions were accurate. For example, a follow-up program could verify whether there are any adverse environmental effects that were not addressed in the assessment.

### ***Effectiveness of Mitigation Measures***

- There is a need to verify that mitigation measures were effective in successfully addressing the predicted environmental effects.

#### ***New or Unproven Techniques and Technology***

- The environmental effects of a project were assessed using new or unproven analytical or modelling techniques.
- The proposed project involves technology or mitigation measures that are new or unproven.

#### ***Cumulative Environmental Effects***

- Cumulative environmental effects assessment is an important or contentious component of the environmental assessment.

#### ***Nature of Project***

- There is limited experience implementing the type of project being proposed in the environmental setting under consideration.
- The nature or scale of the project is such that specific types of environmental effects warrant careful monitoring (e.g., air emissions, wastewater discharges, erosion).

#### ***Limited Scientific Knowledge***

- The scientific knowledge used to predict the environmental effects of the proposed project is limited.

### **Designing the Elements of a Follow-up Program**

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The nature and complexity of a follow-up program should be appropriate to the scale

of the project, and to the sensitivity and complexity of the associated issues.

#### ***Timing of Baseline Data Collection and Program Design***

To maximize the value of a follow-up, the design of a follow-up program should be undertaken early in the environmental assessment of a project. In many cases, a quick start on the design of a follow-up program and the establishment of pre-project baseline data are important to reassure both the public and decision makers that the key environmental issues are, and will continue to be, well managed. In designing a follow-up program, linkages should be made to other sources of information, including regional data collection, effects monitoring and other follow-up programs, as applicable.

Since it is usually necessary to establish a baseline against which follow-up results can be compared, the systematic collection of appropriate data needs to start well in advance of project implementation. If project implementation is likely to begin shortly after approval, the follow-up program should be fully designed and a reliable baseline established during the environmental assessment phase of the project.

#### ***Complexity and Scope of a Follow-up Program***

In some cases, a complete follow-up program for a project can be relatively simple. For example, when verifying the effectiveness of mitigation measures, a follow-up program could include evaluating whether the re-vegetation of a site was successful.

In the case where a project is associated with large-scale environmental change or if it affects a sensitive environment, a follow-up

program could be quite complex, involving elements that address a number of environmental components over extended periods of time.

### ***Public Involvement***

Interested members of the public may be involved in the design and implementation of a follow-up program, as appropriate. Results of the follow-up program should be conveyed to them. This is particularly important for large and potentially controversial projects.

### ***Other Considerations***

In developing a follow-up program, the following questions should be asked:

- What is the primary purpose of the program?
  - ⇒ Is it to verify the accuracy of the predictions regarding the type and extent, and severity of environmental effects that may occur?
  - ⇒ Is it to verify that mitigation measures are effective and adequate?
  - ⇒ Is it both of the above?
- Based on the purpose of the program, what should be measured? How? When? Where? How often?
- Will the proposed measurement techniques be able to distinguish between changes resulting from the project and changes resulting from other factors?
- How long should the program continue?
- Is the information being collected in the most efficient manner possible?
- Are the relative roles of the proponent, responsible authority(ies), federal

authority(ies) and other agencies clear in relation to the program?

- How will the results be disseminated?

## **Taking Action as a Result of a Follow-up Program**

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A follow-up program creates an information base for determining whether systems (both physical and procedural) for mitigating adverse environmental effects of a project work as intended. Follow-up is an integral step of any adaptive management approach to project implementation.

A responsible authority should be prepared to take actions based on follow-up results that will allow environmental assessment conclusions and commitments to be respected throughout the life cycle of a project.

As an example, when the follow-up program indicates that environmental performance is below a predetermined threshold or when new issues arise, corrective action should be undertaken to prevent further impacts. Such action may be as simple as repairing a failed piece of equipment or as complex as implementing a major modification or redesigning an existing system to improve its environmental performance.

Where a follow-up program is required as part of a regulatory approval, failure to implement the program properly could result in non-compliance with the regulatory approval.

When an action or change has been implemented, it is important to continue the follow-up program to ensure that the anticipated response has been achieved. An ideal follow-up program will be designed so any unanticipated adverse environmental

effects that are discovered can be mitigated. This will normally require the insertion of conditions (regarding follow-up programs and the implementation of mitigation measures deemed necessary because of a follow-up program) in the relevant permit, licence, contract or other binding legal document.

ISBN: 978-1-100-19750-0

This document has been issued in French under the title: *Programmes de suivi en vertu de la Loi canadienne sur l'évaluation environnementale*.

## **Additional Information**

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

### **Head Office:**

<http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=7E586DFE-1>

### **Regional Offices:**

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

Additional Agency policies and guidance can be found on the Agency's Web site at: [www.ceaa-acee.gc.ca](http://www.ceaa-acee.gc.ca)

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Catalogue No.: En106-78/2011E