

# Second Follow-up to the Regulatory Process Compliance Review

**November 2004**

### **Report Clearance Steps**

Follow-up process initiated	February 2004
Report completed	July 2004
Follow-up report approved by Departmental Audit and Evaluation Committee	November 4, 2004

### **Acronyms used in the report**

AEB	Audit and Evaluation Branch
CEPA	Canadian Environmental Protection Act
CMRR	Committee on Managing Resources and Results
DAEC	Departmental Audit and Evaluation Committee
DRACC	Departmental Regulatory Affairs Coordinating Committee
EACSR	External Advisory Committee on Smart Regulation
EC	Environment Canada
PAC	Policy Advisory Committee
PCO	Privy Council's Office

## New Follow-up Process

As of the May 23<sup>rd</sup> (2003) meeting of the Departmental Audit and Evaluation Committee (DAEC) a new approach to follow-ups is being taken. While the practice in the past had been for the Audit and Evaluation Branch (AEB) to conduct follow-ups, it is now the responsibility of the relevant program managers to conduct follow-ups to recommendations resulting from audits or evaluations on their own programs. This information is provided in table format in Appendix 1 of this report. The information provided by program managers has been reviewed by the AEB and a brief context (below) accompanies their program response. This report also outlines AEB's reaction to the program response.

## Context

This is the second follow-up that is being conducted on the Regulatory Process Compliance Review, which was completed in 2000. The follow-up to the Regulatory Process Compliance Review is being done to determine the adequacy, effectiveness and timeliness of management action taken to implement the recommendations made in the initial Review. Follow-ups are important, as they give senior management a crucial indicator as to the implementation rate of recommendations and adjustments made in relation to the management responses.

## Current Status

The first follow-up, conducted in 2002, revealed that three areas required further attention. These include:

- The assessment of the Departmental Regulatory Affairs Coordinating Committee's (DRACC) role in coordinating departmental priority setting;
- Initiating a comparative analysis of the projected effects of a regulation with actual post implementation experience; and,
- The development of a departmental complaints resolution mechanism.

The operational environment with respect to regulations has been changing across the federal government with active involvement from this department.

Over the last year and a half, the Government's Smart Regulation Strategy, announced in the 2002 Speech from the Throne, has built upon the progress achieved under the Regulatory Process Management Standards, and, to a large extent has also replaced it. The goal of the Smart Regulation strategy is "...to accelerate reforms in key areas to promote health and sustainability, to contribute to innovation and economic growth, and to reduce the administrative burden on business." In helping to pursue this strategy, the External Advisory Committee on Smart Regulation (EACSR) has been mandated to recommend areas where government needs to improve, expand, or possibly redesign its regulatory approach to create and maintain a Canadian advantage.

The EACSR was established in February 2003, and Environment Canada (EC) has been supporting its work since its outset. The EACSR has recently submitted its final report entitled "Smart Regulation: A Regulatory Strategy for Canada". We expect this document to advocate a substantial transformation of the government's current regulatory policy and processes.

This follow-up revealed that the assessment of DRACC's role was partially addressed due in part to the broader changes taking place within the federal government and by the fact that new Terms of Reference have yet to be formally adopted.

Members of DRACC met on March 26, 2004, and agreed to re-focus its activities. This included a decision to re-cast the committee as a forum for discussion and coordination of regulatory policy issues. New Terms of Reference for DRACC are to be drafted and presented to members for approval in fall 2004.

The recommendation on the comparative analysis of the projected effects of regulations with actual post implementation experience has been addressed.

The final recommendation on the development of a departmental complaints resolution mechanism has been partially addressed. A complaints resolution mechanism exists under the Canadian Environmental Protection Act (CEPA); however, other pieces of legislation do not contain such a mechanism (e.g. Species at Risk Act).

The report entitled "Smart Regulation: A Regulatory Strategy for Canada" put forward by the EACSR makes recommendations on departmental recourse mechanisms. The report suggests a number of options to address a complaints resolution mechanism either on a government-wide or departmental level; these include the creation of an independent third party panel or the appointment of a regulatory ombudsman. While these suggestions would respond to EC's need for a complaints resolution mechanism we are unable to determine when and how these recommendations might be acted upon. Given this, the department is still open to criticism for not complying with the current Regulatory Process Management Standards.

## Risks

The actions taken in responding to the recommendations and suggestions made in the Review have been effective in reducing the risk posed to the Department as it pertains to the initial recommendations. Where recommendations have not been fully implemented, the situational context has changed and adjustments appear imminent.

In the case of the assessment of DRACC's role little risk remains given that new Terms of Reference are to be drafted in fall 2004. However, until such a time as the new EACSR recommendations are implemented, the Department is not in full compliance with the existing complaints resolution component under the Regulatory Process Management Standards of the Government of Canada's Regulatory Policy.

## Future Actions

A decision is required to determine whether to accept the risk of not having a comprehensive complaints resolution mechanism as required under the current Regulatory Process Management Standards and whether to take no action in anticipation of the creation of ombudsmen within departments as proposed under the Smart Regulations.

No future follow-ups are recommended.

## Management Response

Environment Canada has partially complied with the RPMS recommendation to establish a comprehensive departmental complaints resolution (a.k.a. dispute settlement) mechanism. The original recommendation was for EC to establish a “comprehensive departmental complaints resolution mechanism” under the direction of DRACC by March 31, 2001.

This question was also addressed in the recent report of the External Advisory Committee on Smart Regulation. (See pages 62-3.) Among the options discussed (but not considered in detail) by the Committee were an independent third party review panel able to issue non-binding recommendations, the appointment of a regulatory ombudsman (“either within individual departments or for the government as a whole”) with investigative powers, and the locating of a recourse function within a central agency like PCO. In its final analysis, the Committee makes a very general recommendation in this area and suggests that different models should be assessed and ‘piloted’ before such a function is institutionalised.

EC has taken a number of actions to establish recourse and resolution processes in some areas. For example, a dispute-settlement process exists under sections 333-341 of CEPA 1999 enabling the establishment of a board of review where a person has filed a notice of objection. There is no equivalent provision under SARA. In addition, the consultation process that is normally followed in developing and refining regulatory proposals (e.g. pre-Gazette stakeholder discussions and formal consultations following Gazette Part I notification) is intended to address stakeholder concerns before they escalate into “disputes”.

The question of settlement or resolution of disputes and the appropriate mechanisms to achieve it is an important one, and requires further discussion and consideration.

In considering the department's ongoing work to develop and advance the Competitiveness and Environmental Sustainability Framework and its contribution to the government's response to the EAC report, EC should investigate its current complaint and dispute-settlement mechanisms with a view to considering whether additional measures are needed. Either (or both) of these initiatives may produce options to help the department meet its future audit requirements.

## DAEC Decision

DAEC discussed the various options presented by the External Advisory Committee on Smart Regulations on complaint resolution mechanisms; on which the government has not yet made a decision on, and noted the need to have an interim measure in place. DAEC asked the Departmental Regulatory Affairs Coordinating Committee to report back to EMC on an interim measure, possibly modelled on the existing mechanism under CEPA.

APPENDIX 1

PROGRAM RESPONSE:

SECOND FOLLOW-UP TO THE REGULATORY PROCESS COMPLIANCE REVIEW

RECOMMENDATION 1			
Addressed <input type="checkbox"/> Partially Addressed <input checked="" type="checkbox"/> Not Addressed <input type="checkbox"/>			
INITIAL RECOMMENDATION	INITIAL MANAGEMENT RESPONSE	ACTIONS TAKEN TO DATE	ACTION PLAN
<p>The Management, Administration and Policy Table should, by March 31, 2001, assess the effectiveness of DRACC in co-ordinating departmental priority-setting.</p>	<p><b>Agreed</b> -The MAP Table has not assessed the effectiveness of DRACC in co-ordinating departmental priority setting. A progress report was made to EMB in February 2001 but there has been no formal assessment of the DRACC. Although there has been discussion of approaching MAP for new terms of reference (TOR) for DRACC and a paper prepared concerning the future of the regulatory function at EC, neither of these initiatives has been formally followed through.</p> <p>A priority setting mechanism has been established which has screening criteria that helps to set regulatory priorities. The mechanism has been effective in reducing the number of priorities but the list of priorities that are chosen to deliver on is still remains too large to be implemented.</p>	<p>Members of DRACC met on March 26, 2004, and agreed to re-focus its activities. This included a decision to re-cast the committee as a forum for discussion and coordination of regulatory policy issues. Individual services will take the lead in setting their own regulatory priorities, using existing departmental coordination mechanisms (e.g. Policy Brief) as necessary.</p> <p>The general consensus was that DRACC's early success in priority-setting was linked to the need for a department-wide priority-setting mechanism for the large volume and uncertain timing of regulations made under the <i>Canadian Environmental Protection Act</i>, 1999, and the resulting demand on common regulatory services (i.e. enforcement, communications, legal and economic analysis). In the view of committee members, individual services are now better-equipped to set their own priorities and streamline their need for common service support.</p>	<p>New Terms of Reference for DRACC to be drafted and presented to members for approval.</p>



RECOMMENDATION 1			
Addressed <input type="checkbox"/> Partially Addressed <input checked="" type="checkbox"/> Not Addressed <input type="checkbox"/>			
INITIAL RECOMMENDATION	INITIAL MANAGEMENT RESPONSE	ACTIONS TAKEN TO DATE	ACTION PLAN
		<p>This re-orientation of DRACC will enable it to concentrate on broad policy matters with a direct impact on regulation, e.g. the government's Smart Regulation initiative.</p> <p>Supporting documents:</p> <ul style="list-style-type: none"> <li>• DRACC October 2003 meeting agenda</li> <li>• DRACC March 2004 meeting agenda</li> <li>• Deck presentation "Future Directions for DRACC"</li> </ul>	

RECOMMENDATION 4			
Addressed ✓		Partially Addressed ☐	Not Addressed ☐
INITIAL RECOMMENDATION	INITIAL MANAGEMENT RESPONSE	ACTIONS TAKEN TO DATE	ACTION PLAN
During the first year of DRACC's mandate, the chair should initiate comparative analyses of the projected effects of a regulation with actual post-implementation experience.	<p><b>Agreed</b> -DRACC has not initiated a comparative analysis of the projected effects of a regulation with actual post-implementation experience. No formal approach has been established to evaluate the effectiveness of regulations.</p> <p>Nonetheless, there has been an effort to do some analysis of the projected effects of a regulation against post implementation experience by the Regulatory and Economic Analysis Branch (REAB). A TOR was developed for the projects and a consultant retained to do the analysis, but the initiative stalled. There has also been an analysis of Canadian, US and international information related to competitiveness impacts of regulations, but this analysis assesses the consistent overestimation of the costs of regulations by industry and does not focus on the effects of the regulations. There is also work ongoing on a case study that is being done on Pulp and Paper regulations to compare the original anticipated competitiveness impacts</p>	<p>Over the last year, EC has conducted ex-post analyses on the following regulations:</p> <ul style="list-style-type: none"> <li>• Pulp and paper regulations – two studies: one for Atlantic Canada; one for all of Canada;</li> <li>• Sulphur in fuel regulations;</li> <li>• Liability of Financial Institutions and Ozone Depleting Substances (the latter ongoing).</li> </ul> <p>The following studies have been launched and are ongoing:</p> <ul style="list-style-type: none"> <li>• Overview of the economic impacts of EC regulations;</li> <li>• Assessment of economic information gathering under CEPA (for retrospective and prospective purposes).</li> </ul> <p>As well, an initiative that supports EC's interventions to the EACSR has now been launched to attempt to quantify the actual costs of regulation, inspired by annual reports to this effect from the US Office of Management and Budget.</p> <p>Supporting documents:</p> <ul style="list-style-type: none"> <li>• EC Smart Regulation Perspectives paper</li> </ul>	<p>The Department will complete its initiative to determine the cost of environmental regulations in support of the Smart Regulation initiative.</p> <p>EC will also participate actively in the government response to the report of the EACSR, which is now expected in the fall.</p>

RECOMMENDATION 4			
Addressed ✓		Partially Addressed ☐	Not Addressed ☐
INITIAL RECOMMENDATION	INITIAL MANAGEMENT RESPONSE	ACTIONS TAKEN TO DATE	ACTION PLAN
	of the 1992 Pulp and Paper Regulations with actual results. It will review the estimated impacts of industry and government, and compare and assess them with the actual cost and competitiveness impacts.	<ul style="list-style-type: none"> <li>• EC Smart Regulation Compendium paper</li> <li>• Preliminary EC response to EACSR "Draft Blueprint" (e-mail message from Stephen McClellan to EACSR Executive Director France Pégeot, 19/2/04)</li> </ul>	

RECOMMENDATION 5			
Addressed <input type="checkbox"/>		Partially Addressed <input checked="" type="checkbox"/>	Not Addressed <input type="checkbox"/>
INITIAL RECOMMENDATION	INITIAL MANAGEMENT RESPONSE	ACTIONS TAKEN TO DATE	ACTION PLAN
A comprehensive departmental complaints resolution mechanism should be established under the direction of DRACC by March 31, 2001.	<b>Agreed</b> -DRACC has not developed a complaint resolution mechanism. As well, there has been no assessment of what would comprise a complaint resolution mechanism or a request for support in the development of one from PCO and TBS. The EC web site does however contain contact names of regulatory staff, which allows clients access to an EC manager should they have any concerns or problems with a regulation. The department has approached PCO and TB about this requirement and now awaits central agency guidance.	A complaints resolution process exists under sections 333-341 of CEPA, which sets out procedures for establishing and conducting boards of review in response to notices of objection.	Notwithstanding the foregoing, EC has had an opportunity to review and respond to a number of early drafts of the EACSR report, entitled <i>A Blueprint for Smart Regulation in Canada</i> , which is to be submitted to the government this summer.  Among the proposed recommendations are establishment of regulatory "ombudsmen" in each department, and some form of central oversight mechanism to ensure continual process improvements and address complaints from stakeholders. We have expressed support for these initiatives, subject to a better understanding of related resource and capacity issues.