

no. 11

THE FEDERAL ROLE IN ENVIRONMENTAL ASSESSMENT

FOR PRESENTATION AT THE

CIRL CONFERENCE

ON NATURAL RESOURCES LAW

17 - 20 APRIL, 1985

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INTRODUCTION

THE OBJECTIVE OF THIS PAPER IS TO SET OUT A NUMBER OF COMMON CONCERNS ABOUT ENVIRONMENTAL IMPACT ASSESSMENT (EIA) PROCEDURES IN THE CONTEXT OF THE CANADIAN FEDERAL EIA PROCESS WITH PARTICULAR REFERENCE TO FEDERAL AND PROVINCIAL RESPONSIBILITIES, TO INDICATE WHAT IS BEING OR COULD BE DONE ABOUT THEM AND TO INVITE DIALOGUE AIMED AT FURTHER IMPROVEMENTS. THE CANADIAN FEDERAL APPROACH IS BASED ON A JUDGEMENT THAT IS SHARED BY MUCH OF THE INDUSTRIALIZED WORLD AND BY A SIGNIFICANT PROPORTION OF THE DEVELOPING WORLD. THAT JUDGEMENT IS THAT EIA IS AN ESSENTIAL ELEMENT IN THE PLANNING OF ECONOMIC DEVELOPMENT INITIATIVES. IT HELPS AVOID POTENTIALLY SERIOUS ENVIRONMENTAL AND RELATED SOCIAL PROBLEMS WHICH COULD GREATLY REDUCE THE VALUE OF APPARENT ECONOMIC PROGRESS. GOOD EIA RESULTS IN GOOD DEVELOPMENT AND MAKES GOOD ECONOMIC SENSE.

THE EARP

THE FEDERAL ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS (EARP) IS A CABINET-ORDERED ADMINISTRATIVE PROCESS APPLICABLE TO PROPOSED FEDERAL GOVERNMENT INITIATIVES OR PRIVATE SECTOR UNDERTAKINGS FOR WHICH THE FEDERAL GOVERNMENT HAS A DECISION MAKING RESPONSIBILITY.

THE EARP IS A SELF ASSESSMENT PROCEDURE IN THAT THE GOVERNMENT AGENCY WITH THE MAIN DECISION-MAKING RESPONSIBILITY IN EACH INSTANCE UNDERTAKES THE PRELIMINARY SCREENING AND, IF NEEDED, MORE DETAILED

INITIAL ASSESSMENT OF THE PROPOSED ACTIVITY. HOWEVER, WHERE, IN THE OPINION OF THAT AGENCY, THERE WILL BE OR ARE LIKELY TO BE SIGNIFICANT ENVIRONMENTAL EFFECTS THE PROJECT MUST BE REFERRED TO THE MINISTER OF THE ENVIRONMENT FOR A PUBLIC REVIEW BY AN INDEPENDENT PANEL APPOINTED BY HIM OR HER. THE REVIEW IS ORGANIZED AND LOGISTICAL SUPPORT INCLUDING, USUALLY, A PANEL CHAIRMAN, IS PROVIDED BY THE FEDERAL ENVIRONMENTAL ASSESSMENT REVIEW OFFICE (FEARO), A SMALL AGENCY WHICH REPORTS DIRECTLY TO THE ENVIRONMENT MINISTER. HISTORICALLY, ONLY A VERY SMALL PERCENTAGE OF PROJECTS UNDERGOING INITIAL ASSESSMENT HAVE BEEN REFERRED FOR PUBLIC REVIEW

UPON COMPLETION OF THE REVIEW THE PANEL PROVIDES A REPORT TO THE MINISTER OF THE ENVIRONMENT AND TO THE INITIATING MINISTER, I. E. THE MINISTER RESPONSIBLE FOR THE AGENCY PROPOSING TO UNDERTAKE OR AUTHORIZE THE PROJECT. THE REPORT, WHICH IS MADE PUBLIC, CONTAINS THE RECOMMENDATIONS OF THE PANEL. THESE ARE NOT BINDING BUT PURELY ADVISORY. HOWEVER, THE INITIATING MINISTER IS EXPECTED TO OUTLINE PUBLICLY HIS RESPONSE TO THE REPORT BEFORE ESTABLISHING THE CONDITIONS UNDER WHICH THE PROJECT MIGHT PROCEED.

LEGAL BASIS FOR THE EARP

IN THE SPRING OF 1984, COINCIDENTAL WITH THE TENTH ANNIVERSARY OF THE ESTABLISHMENT OF THE PROCESS UNDER A GENERALLY WORDED CABINET DECISION, THE FEDERAL ENVIRONMENTAL ASSESSMENT REVIEW OFFICE (FEARO) COMPLETED A CABINET-ORDERED REVIEW OF THE OPERATION OF THE EARP AND MADE RECOMMENDATIONS FOR IMPROVEMENTS TO THE ENVIRONMENT MINISTER WHO

SUBMITTED THEM TO THE CABINET. THE RESULT WAS APPROVAL ON JUNE 21, 1984 OF AN ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS GUIDELINES ORDER UNDER AUTHORITY OF THE GOVERNMENT ORGANIZATION ACT, 1979, COVERING IMPLEMENTATION OF THE PROCESS. THAT ACT GIVES THE MINISTER OF THE ENVIRONMENT THE RESPONSIBILITY TO INITIATE, RECOMMEND AND UNDERTAKE PROGRAMS, AND COORDINATE PROGRAMS OF THE GOVERNMENT OF CANADA THAT ARE DESIGNED INTER ALIA.

"TO ENSURE THAT NEW FEDERAL PROJECTS, PROGRAMS AND ACTIVITIES ARE ASSESSED EARLY IN THE PLANNING PROCESS FOR POTENTIAL ADVERSE EFFECTS ON THE QUALITY OF THE NATURAL ENVIRONMENT AND THAT A FURTHER REVIEW IS CARRIED OUT OF THOSE PROJECTS, PROGRAMS, AND ACTIVITIES THAT ARE FOUND TO HAVE PROBABLE SIGNIFICANT ADVERSE EFFECTS, AND THE RESULTS THEREOF TAKEN INTO ACCOUNT. "

IT IS OF INTEREST TO NOTE THAT WHILE WHAT HAS BEEN ESTABLISHED ARE CALLED GUIDELINES THE CABINET DECISION WHICH RESULTED IN THE ORDER MAKES IT CLEAR THAT THE AFFECTED PARTS OF GOVERNMENT ARE TO REGARD THEM AS MANDATORY. AS BEFORE, PROPRIETARY CROWN CORPORATIONS AND INDEPENDENT REGULATORY BODIES ARE ENCOURAGED, NOT ORDERED, TO APPLY THEM

THE MAIN THRUST OF THE GUIDELINES ORDER IS TO REQUIRE GOVERNMENT DEPARTMENTS TO CONDUCT THEIR SCREENING AND INITIAL ASSESSMENT ACTIVITIES IN A MORE SYSTEMATIC, OPEN AND DOCUMENTABLE FASHION. MORE DETAILED INSTRUCTIONS TO ASSIST DEPARTMENTS TO DEVELOP PROCEDURES

APPROPRIATE TO THEIR INDIVIDUAL PLANNING AND MANAGEMENT SYSTEMS HAVE BEEN DEVELOPED BY FEARO AND THE KEY DEPARTMENTS AFFECTED. THE HALLMARKS ARE BREVITY, SIMPLICITY AND OPENNESS.

FEDERAL-PROVINCIAL COOPERATION

BECAUSE CANADA IS A FEDERAL STATE, IT WAS RECOGNIZED FROM THE OUTSET THAT THE CONCERNS AND RESPONSIBILITIES OF THE PROVINCES MUST BE TAKEN INTO ACCOUNT IN THE OPERATION OF A FEDERAL EARP.

CONSEQUENTLY, IN THE 1984 GUIDELINES ORDER, IN REGARD TO A PUBLIC REVIEW FEARO IS REQUIRED, WHERE NEEDED, TO NEGOTIATE COOPERATIVE FEDERAL-PROVINCIAL OR TERRITORIAL ARRANGEMENTS. COOPERATIVE REVIEWS BETWEEN JURISDICTIONS ARE INTENDED TO AVOID DUPLICATION, REDUCE COSTS AND TO EXPEDITE THE DECISION-MAKING PROCESS. MOST OF THE PUBLIC REVIEWS CONDUCTED BY ENVIRONMENTAL ASSESSMENT PANELS HAVE INVOLVED VARYING DEGREES OF FEDERAL/PROVINCIAL COOPERATION RANGING FROM CO-CHAIRMANSHIP OR JOINTLY APPOINTED SINGLE CHAIRMEN THROUGH APPOINTMENT OF PROVINCIAL MEMBERS TO A FEDERAL PANEL OR VICE VERSA OR SIMPLY TO FEDERAL OR PROVINCIAL MONITORING OF OR INTERVENTION IN HEARINGS CONDUCTED BY THE OTHER LEVEL OF GOVERNMENT. BECAUSE OF THE IMPORTANCE OF FEDERAL PROVINCIAL COOPERATION IN THE ENVIRONMENTAL/RESOURCE MANAGEMENT FIELD, LET ME CITE SOME EXAMPLES TO ILLUSTRATE CURRENT PRACTICE.

SEVERAL OF THE REVIEWS NOW UNDERWAY ARE BEING CONDUCTED BY PANELS JOINTLY APPOINTED BY FEDERAL AND PROVINCIAL GOVERNMENTS AND OPERATING UNDER TERMS OF REFERENCE NEGOTIATED BY THEM BECAUSE THE REPORTS RESULTING FROM THESE REVIEWS ARE PURELY ADVISORY THEY CAN BE DEVELOPED WITHOUT REGARD FOR JURISDICTIONAL DIVISIONS THUS PROVIDING A HOLISTIC VIEW OF THE SOCIAL AND ENVIRONMENTAL IMPACT OF A GIVEN PROJECT. IN FACT, SOME JOINT ENVIRONMENTAL REVIEWS, E.G. WEST COAST OFFSHORE DRILLING, HAVE BEEN UNDERTAKEN ON PROPOSALS INVOLVING SPECIFIC JURISDICTIONAL DISPUTES BUT WITHOUT PREJUDICE TO THE RESULTS OF THOSE DISPUTES. MOREOVER EITHER GOVERNMENT CAN ENSURE THAT A PANEL ADDRESSES ISSUES OF PARTICULAR CONCERN TO THAT GOVERNMENT BY IDENTIFYING SUCH ISSUES IN THE TERMS OF REFERENCE.

THE DEGREE OF FEDERAL OR PROVINCIAL PARTICIPATION IN EACH CASE HAS GENERALLY REFLECTED THE EXTENT TO WHICH MAJOR DECISIONS RELATED TO THE PROJECT HAVE HAD TO BE TAKEN BY THE FEDERAL OR PROVINCIAL AUTHORITIES. THUS THE PANEL ASSESSING THE EXPANSION OF THE VANCOUVER AIRPORT, A CLEARLY FEDERAL RESPONSIBILITY BUT WITH IMPACTS ON PROVINCIAL RESPONSIBILITIES, IS FEDERALLY CHAIRED AND SUPPORTED BUT HAS AMONG ITS MEMBERS A PROVINCIAL NOMINEE. AT THE OTHER END OF THE SPECTRUM ARE THE PANELS WHICH ASSESSED THE ARCTIC PILOT PROJECT SOUTHERN TERMINALS IN QUEBEC AND NOVA SCOTIA. THESE WERE PROVINCIALY CHAIRED AND SUPPORTED BUT CONTAINED FEDERAL NOMINEES. IN BETWEEN THESE ARE PANELS DEALING WITH PROJECTS ON WHICH BOTH GOVERNMENTS HAVE SUBSTANTIVE DECISIONS TO MAKE. THE FOLLOWING ARE SOME EXAMPLES.

THE LEPREAU II NUCLEAR GENERATING PROJECT IN NEW BRUNSWICK IS BEING PLANNED BY A JOINT FEDERAL/PROVINCIAL CROWN CORPORATION, MARITIME NUCLEAR LTD., AND IF BUILT, IS TO BE OPERATED BY THE N.B. POWER COMMISSION, A PROVINCIAL UTILITY. SUBSTANTIAL FINANCIAL CREDITS FROM THE FEDERAL GOVERNMENT WILL BE NEEDED FOR THE PROJECT TO PROCEED. THUS BOTH GOVERNMENTS HAVE MAJOR DECISIONS TO MAKE CONCERNING LEPREAU AND FULLY JOINT ASSESSMENT WAS SEEN AS APPROPRIATE. ACCORDINGLY, THE TERMS OF REFERENCE WERE DEVELOPED BY FEARO AND THE PROVINCE IN CONSULTATION WITH THE FEDERAL ENERGY DEPARTMENT AND WERE ISSUED JOINTLY BY THE FEDERAL AND PROVINCIAL MINISTERS OF THE ENVIRONMENT. EACH LEVEL OF GOVERNMENT SELECTED TWO PANEL MEMBERS, ONE OF WHOM SERVES AS A CO-CHAIRMAN. COSTS OF THE REVIEW ACTIVITIES ARE SHARED BETWEEN THE TWO GOVERNMENTS AND BOTH PROVIDE PERSONNEL FOR THE PANEL SECRETARIAT. PRESS RELEASES ETC. ARE JOINTLY PREPARED AND RELEASED. THE REVIEW IS BROAD AND DEALS WITH SOCIO-ECONOMIC IMPACTS AT THE REQUEST OF THE PROVINCE. THE PANEL'S REPORT WILL BE SUBMITTED TO BOTH ENVIRONMENT MINISTERS AND THE FEDERAL ENERGY MINISTER.

- IN NOVA SCOTIA, THE VENTURE OFFSHORE GAS DEVELOPMENT PROJECT WAS SIMILAR EXCEPT THAT SOCIO-ECONOMIC ISSUES DID NOT FORM PART OF THE PANEL'S MANDATE. A SEPARATE SOCIO-ECONOMIC PANEL WAS APPOINTED BY THE FEDERAL MINISTER OF ENERGY, MINES AND RESOURCES AND THE GOVERNMENT OF NOVA SCOTIA. THIS ARRANGEMENT PRESENTED A NUMBER OF ADMINISTRATIVE DIFFICULTIES AND CAUSED CONFUSION AMONG THE PUBLIC DESPITE EFFORTS BY THE TWO PANELS TO HOLD JOINT HEARINGS AND COORDINATE THEIR ACTIVITIES. IT IS OUR JUDGEMENT THAT THE USE OF

ONE PANEL IS MORE EFFICIENT PROVIDED THAT THE PANEL HAS MEMBERS COMPETENT TO ADDRESS THE BREADTH OF ISSUES IDENTIFIED IN THE TERMS OF REFERENCE.

- A 1983 FEDERAL/B. C. MEMORANDUM OF AGREEMENT CALLED INTER ALIA FOR A JOINT FEDERAL-PROVINCIAL PUBLIC REVIEW OF THE ENVIRONMENTAL AND RELATED SOCIO-ECONOMIC EFFECTS OF A RENEVED PROGRAM OF PETROLEUM EXPLORATION OFF B. C. 5 NORTHERN COAST. THE REVIEW IS TO BE HELD WITHOUT PREJUDICE TO THE ULTIMATE OWNERSHIP OF THE RESOURCE, WHICH REMAINS IN DISPUTE, AND IS TO BE MANAGED WITHIN A JOINT FRAMEWORK ESTABLISHED UNDER THE PROVINCIAL ENVIRONMENT MANAGEMENT ACT AND THE FEDERAL EARP. THE TERMS OF REFERENCE WERE DEVELOPED JOINTLY BY FEARO, THE CANADA OIL AND GAS LANDS ADMINISTRATION AND THE B. C. MINISTRIES OF ENVIRONMENT AND OF ENERGY, MINES AND PETROLEUM RESOURCES AND ISSUED JOINTLY BY THE FEDERAL AND PROVINCIAL ENVIRONMENT MINISTERS. IT WAS ORIGINALLY INTENDED THAT EACH
- GOVERNMENT WOULD APPOINT TWO PANEL MEMBERS AND AGREE ON A SINGLE JOINTLY APPOINTED CHAIRMAN. IN ACTUAL FACT, ALL FIVE MEMBERS WERE JOINTLY AGREED UPON AND APPOINTED. THERE IS EQUAL PARTICIPATION BY BOTH GOVERNMENTS IN SUPPORTING THE WEST COAST REVIEW, INCLUDING PANEL SECRETARIAT RESPONSIBILITIES, AND FULL SHARING OF ALL COSTS. THE PROCESS HAS WORKED WELL TO DATE. HOWEVER, MAINLY BECAUSE OF POTENTIALLY SERIOUS DELAYS IN AGREEING ON A JOINT CHAIRMAN BUT ALSO BECAUSE WE REGARD PROFESSIONAL CHAIRMANSHIP AS IMPORTANT IN PROMTING CONSISTENT AND FAIR PRACTICES, WE IN FEARO CONSIDER THAT CO-CHAIRMANSHIP OFFERS A BETTER MDEL.

- OTHER EXAMPLES INVOLVE ONE GOVERNMENT PLAYING A LEADING ROLE AND MANAGING THE REVIEW WHILE AT THE SAME TIME ENSURING THAT THE ENVIRONMENTAL AND RELATED CONCERNS OF THE OTHER GOVERNMENT ARE FULLY UNDERSTOOD, CONSIDERED AND REFLECTED IN THE REVIEW FOR INSTANCE, ALL FEDERAL EARP PANELS IN BRITISH COLUMBIA (EXCEPT THE OFFSHORE EXAMPLE) CONTAIN ONE PROVINCIAL PANEL MEMBER AND THE PROVINCE NORMALLY PARTICIPATES AS AN INTERVENOR AT THE GUIDELINE SETTING AND PUBLIC HEARING PHASES OF THE REVIEWS.

IN VIEW OF THE EVOLVING SITUATION IN CANADA'S NORTH, IT IS REASONABLE TO EXPECT THAT THE TERRITORIAL GOVERNMENTS WILL BE INCREASINGLY INTERESTED IN PLAYING A ROLE IN THIS FIELD AKIN TO THE PROVINCES SOUTH OF 60°. SIMILARLY, LAND CLAIMS NEGOTIATIONS, AS DEMONSTRATED BY THE COPE AGREEMENT, ARE RESULTING IN LARGER ROLES FOR NATIVE COMMUNITIES IN MANAGING ENVIRONMENTAL ASSESSMENT PROCEDURES. EARP'S FLEXIBILITY SHOULD BE SUFFICIENT TO ACCOMMODATE BOTH OF THESE DEVELOPMENTS.

IT IS APPROPRIATE ALSO TO NOTE THAT THE GUIDELINES ORDER REQUIRES FEDERAL GOVERNMENT AGENCIES TO TAKE INTO ACCOUNT ENVIRONMENTAL IMPACTS EXTERNAL TO CANADA. THIS MAY OR MAY NOT BE DONE THROUGH THE EARP PUBLIC REVIEW PROCESS. THAT DECISION IS FOR THE INITIATOR TO MAKE.

THE NEED FOR IMPROVEMENTS

NOT SURPRISINGLY ENVIRONMENTAL ASSESSMENT, WHETHER FEDERALLY, PROVINCIALY OR JOINTLY MANAGED, HAS OVER THE YEARS GIVEN RISE TO

CONCERNS OVER SUCH MATTERS AS COSTS, UNCERTAINTY AS TO DATA AND RESEARCH REQUIREMENTS, POTENTIAL REGULATORY DUPLICATION AND DELAYS.

COSTS AFFECTING THE ECONOMICS OF A PROPOSED ACTIVITY ARE OF CONCERN TO ALL DEVELOPERS. IT FOLLOWS THAT EVERY EFFORT MUST BE MADE BY ADMINISTRATORS SUCH AS FEARO TO ENSURE THAT INFORMATION REQUIREMENTS AND OTHER OBLIGATIONS IMPOSED UPON PROPONENTS ARE REASONABLE AND RESTRICTED TO THOSE NECESSARY TO THE CONDUCT OF A RESPONSIBLE AND ADEQUATE REVIEW

OBVIOUSLY THE COLLECTION AND ANALYSIS OF ENVIRONMENTAL AND RELATED SOCIAL DATA AND, IN THE CASE OF FORMAL PUBLIC REVIEWS, THE APPOINTMENT OF A PANEL AND THE CONDUCT OF HEARINGS CARRY A COST IN BOTH TIME AND MONEY. SUCH COSTS MUST, HOWEVER, BE WEIGHED AGAINST THE CONSIDERABLE COSTS THAT CAN BE INCURRED IF MITIGATING MEASURES INVOLVING SIGNIFICANT REDESIGN HAVE TO BE INTRODUCED AFTER THE CONSTRUCTION OF THE PROJECT IS UNDERWAY OR EVEN COMPLETED BECAUSE OF THE EMERGENCE OF UNANTICIPATED ENVIRONMENTAL DAMAGE AND/OR STRONG PUBLIC OPPOSITION. UNDERLYING SUCH MORE OBVIOUS COSTS ARE THE COSTS IN LOST OPPORTUNITIES, SLOWED NATURAL PRODUCTIVITY, REDUCTION IN AMENITIES AND EVEN HEALTH RISKS THAT CAN RESULT FROM INSENSITIVELY DESIGNED PROJECTS. AS A GENERAL COMMENT ON THE COSTS OF ENVIRONMENTAL ASSESSMENT, IT SHOULD BE NOTED THAT IN THE CANADIAN EXPERIENCE THESE COSTS ARE USUALLY LESS THAN 0.5% OF THE CAPITAL COST OF PROJECT.

IT SHOULD ALSO BE STRESSED THAT ONE OF THE OBJECTIVES OF THE EARP IS TO FACILITATE AND PLACE IN A CONSTRUCTIVE CONTEXT PUBLIC INPUT TO GOVERNMENT DECISION-MAKING. THE CONCERNS OF SOCIETY AT LARGE MUST BE TAKEN INTO ACCOUNT WHEN DEALING WITH POSSIBLE CHANGES IN THE NATURAL ENVIRONMENT. RESOURCE MANAGERS, WHETHER PRIVATE OR PUBLIC ARE EXPECTED TO BE RESPONSIBLE STEWARDS. PEOPLE AFFECTED BY A PROPOSED ACTIVITY HAVE A RIGHT TO BE HEARD AND IN A SETTING IN WHICH THEY CAN HAVE A REASONABLE EXPECTATION THAT THEIR VIEWS WILL BE SERIOUSLY CONSIDERED. MOREOVER, IN FEARO'S EXPERIENCE, INFORMATION DERIVED FROM LOCAL KNOWLEDGE CAN BE VERY VALUABLE IN DECIDING ON PROJECT DESIGN, TIMING AND MANAGEMENT. DOING THIS WELL TAKES EFFORT AND SKILL BUT IT CAN REASONABLY BE CHARACTERIZED AS ONE OF THE LEGITIMATE COSTS OF DOING BUSINESS IN TODAY'S WORLD.

IT SHOULD BE ADDED THAT IT HAS ALSO BEEN FEARO'S EXPERIENCE THAT THE TECHNICAL QUALITY OF PLANNING AND DESIGN HAS OFTEN BEEN ENHANCED BY THE DEMANDS OF A PUBLIC REVIEW SETTING SOMETIMES EVEN TO THE POINT THAT SUCH REVIEWS MAY WELL PROVE COST-EFFECTIVE FOR INDUSTRY IN THE LONGER TERM, QUITE APART FROM THEIR ENVIRONMENTAL BENEFITS. MOREOVER, WHEN THE RESULTS OF WORK UNDER THE EARP HAVE BEEN INCORPORATED INTO PROJECT PLANNING AND DESIGN, PROPONENTS HAVE HAD GREATLY INCREASED CONFIDENCE ABOUT THE LONG TERM ACCEPTABILITY OF THEIR PROJECTS TO GOVERNMENT AND TO SOCIETY GENERALLY.

IT IS OUR EXPERIENCE THAT INDUSTRY IS SUPPORTIVE OF ENVIRONMENTAL ASSESSMENT ACTIVITIES AS LONG AS THE INFORMATION DEMANDS ARE

REASONABLE, DUPLICATION IS AVOIDED AND A CLEAR, TIMELY DECISION RESULTS. THESE ARE NOT UNREASONABLE CONDITIONS, AND FEARO IS MAKING A CONSIDERABLE EFFORT TO MEET THEM

FOR EXAMPLE, FEARO WAS A PRIME INITIATOR AND SUPPORTER OF A TWO YEAR , PROJECT INVOLVING REPRESENTATIVES FROM ACROSS CANADA DRAWN FROM INDUSTRY, UNIVERSITIES, AND FEDERAL AND PROVINCIAL GOVERNMENTS. THE PROJECT CULMINATED IN A REPORT ENTITLED "AN ECOLOGICAL FRAMEWORK FOR ENVIRONMENTAL IMPACT ASSESSMENT IN CANADA."

A CENTRAL OBJECTIVE OF THIS PROJECT WAS TO IDENTIFY WAYS IN WHICH THE TRULY CRITICAL FACTORS, PARTICULARLY FROM A SCIENTIFIC POINT OF VIEW COULD BE IDENTIFIED FOR INCLUSION IN THE PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS (EIS) THEREBY REDUCING REQUESTS FOR THE PRODUCTION OF MARGINAL, QUESTIONABLE AND RELATIVELY UNIMPORTANT DATA. STATED MORE CRUDELY, WE WANTED TO ELIMINATE HOBBY-HORSE INFORMATION DEMANDS AND WHAT SOME HAVE CALLED THE TELEPHONE BOOK SYNDROME.

THE PROJECT WAS LED BY DR. GORDON E. BEANLANDS AND PETER N. DUINKER. IT CULMINATED IN A REPORT PUBLISHED IN 1983 UNDER THE JOINT SPONSORSHIP OF THE INSTITUTE FOR RESOURCE AND ENVIRONMENTAL STUDIES, DALHOUSIE UNIVERSITY, HALIFAX & FEARO.

AN IDEA OF THE PROJECT'S SCOPE CAN BE OBTAINED IN THE FOLLOWING EXCERPT FROM THE EXECUTIVE SUMMARY OF THE REPORT.

"BY DESIGN, THE PROJECT INVOLVED THE ACTIVE PARTICIPATION OF ENVIRONMENTAL SCIENTISTS WHO CONDUCT IMPACT ASSESSMENT STUDIES AND THOSE WHO ARE RESPONSIBLE FOR THE ADMINISTRATION OF ASSESSMENT PROCEDURES IN CANADA. PARTICIPANTS IN 10 REGIONAL WORKSHOPS, HELD ACROSS THE COUNTRY, INCLUDED PERSONNEL FROM THE FEDERAL AND PROVINCIAL GOVERNMENTS, REPRESENTATIVES OF INDUSTRIAL PROPONENTS, CONSULTANTS AND MEMBERS OF THE UNIVERSITY COMMUNITY - SOME 150 PEOPLE IN TOTAL. THE PROJECT ALSO INCLUDED A COMPREHENSIVE REVIEW OF LITERATURE PERTINENT TO SCIENTIFIC AND ECOLOGICAL INPUTS TO ENVIRONMENTAL IMPACT ASSESSMENT. THIS REPORT PRIMARILY REFLECTS THE OPINIONS AND SUGGESTIONS EMANATING FROM THE WORKSHOPS COUPLED WITH THE STATE-OF-THE-ART IN ASSESSMENT STUDIES AS PRESENTED IN THE SCIENTIFIC WRITINGS.

"OTHER PROJECT ACTIVITIES INCLUDED: (I) EXTENSIVE CONSULTATIONS WITH EXPERTS IN THE UNITED STATES AND EUROPE, (II) A REVIEW OF SOME 30 SELECTED ENVIRONMENTAL IMPACTS ASSESSMENTS FROM ACROSS CANADA AND (III) AN IN-DEPTH EVALUATION OF TWO IMPACT ASSESSMENTS RECENTLY COMPLETED, INVOLVING DETAILED REVIEWS OF DOCUMENTS AND INTERVIEWS WITH KEY PERSONNEL. "

ONE OF THE MORE IMPORTANT RESULTS OF THE WORK WAS TO POINT OUT WHAT MIGHT SEEM LIKE THE LOGICAL AND THE OBVIOUS IN A SCIENTIFICALLY CREDIBLE WAY. BEANLANDS AND DUINKER SAID IN EFFECT, IF AN ECOSYSTEM COMPONENT IS NOT "VALUED", DO NOT WASTE TIME STUDYING IT. SPEND TIME EARLY ON FINDING OUT WHAT IS OF VALUE TO PEOPLE AND FOCUS ON THAT.

DISCARD DEMANDS TO STUDY EVERYTHING BECAUSE IT IS THERE. BUT ONCE YOU DO DECIDE WHAT TO STUDY, DO IT IN A SCIENTIFICALLY DEFENSIBLE WAY. WE ARE NOW TESTING OUT PROCEDURES, EXAMINING NEW METHODOLOGIES AND ENCOURAGING RESEARCH AIMED AT ENABLING THIS TO HAPPEN IN A PUBLICLY CREDIBLE MANNER. IT IS NOT AS EASY AS IT SOUNDS.

THERE ARE FEW THINGS MORE SUBJECTIVE IN LIFE THAN VALUES. WHAT IS SEEN AS IMPORTANT BY ONE PERSON WILL NOT NECESSARILY BE SO PERCEIVED BY ANOTHER. THIS CAN BE TRUE EVEN AMONG SIMILARLY TRAINED PROFESSIONALS. THE POTENTIAL FOR DIFFERENCES OF VIEW INCREASES DRAMATICALLY AS THE CULTURAL SETTING, WORK SITUATION AND PERSONAL BACKGROUNDS OF INDIVIDUALS GROWS MORE VARIED. WHAT BEANLANDS AND DUINKER CALLED "VALUED ECOSYSTEM COMPONENTS" (VEC'S) MUST BE THE PRIME TARGETS OF AN ENVIRONMENTAL ASSESSMENT BUT DETERMINING WHAT IS VALUED IS THE CHALLENGE. A GROUP OF SCIENTISTS OFFERING PROFESSIONAL ADVICE IN A GIVEN ENVIRONMENTAL REVIEW MAY DISAGREE AMONG THEMSELVES, USUALLY FAVORING THEIR OWN DISCIPLINES AND FIELDS OF INTEREST. NORMALLY, HOWEVER, THEY CAN REACH SOME MEASURE OF COMPROMISE. THE AFFECTED PUBLIC MAY DISAGREE ENTIRELY BASED SOMETIMES ON WHAT THE SCIENTISTS WOULD CALL MISCONCEPTIONS. MANY PRIVATE CITIZENS ARE THOROUGHLY SCEPTICAL OF THE ASSURANCES GIVEN BY SCIENCE, ESPECIALLY GOVERNMENT OR INDUSTRY SCIENCE, DESIGNED TO REASSURE THEM ABOUT THE EFFECTS OF THIS OR THAT SUBSTANCE OR ACTIVITY. WHAT AN EXPERT MIGHT SINCERELY DISMISS AS A MINOR RISK MAY LOOM VERY LARGE TO PERSONS WHOSE INTERESTS ARE DIRECTLY AFFECTED. SOME WOULD CONSIDER THE STATE OF THE NUCLEAR INDUSTRY IN THE UNITED STATES AS AN EXAMPLE OF THIS SITUATION.

HOW THEN DO WE BALANCE THE NEED FOR A FOCUSED EFFICIENT IDENTIFICATION OF WHAT REALLY MATTERS AIMED IN PART AT FASTER, LESS EXPENSIVE MORE EFFECTIVE PROJECT ASSESSMENTS AGAINST THE NEED TO INVOLVE THOSE WHO ALTHOUGH DIRECTLY AFFECTED MIGHT IN AN EARLIER SIMPLER AGE HAVE BEEN LEFT OUT OF THE DECISION-MAKING PROCESS? HOW DO WE AVOID EMOTIONAL CONFRONTATIONS THAT GENERATE MORE HEAT THAN LIGHT AND YET TRY TO COMBAT THAT WORRYING CANCER - LACK OF PUBLIC CONFIDENCE IN THE INSTITUTIONS OF OUR SOCIETY - THAT CAN DO SO MUCH HARM IF IGNORED? HOW DO WE MEET THESE COMPETING NEEDS IN A TIME FRAME THAT ENABLES GOOD BUSINESS JUDGEMENTS TO BE MADE IN A WORLD OF RAPIDLY FLUCTUATING MARKETS, COSTS AND PRICES?

THE SHORT, PERHAPS GLIB, YET HONEST ANSWER IS "IMPERFECTLY AND PAINFULLY BUT HOPEFULLY BETTER AND BETTER". THE KEY IS RECOGNIZING THAT WHATEVER SYSTEM IS PUT IN PLACE, IT MUST BE AS CREDIBLE AS POSSIBLE TO ALL THOSE INVOLVED, I.E. ENTREPRENEURS, POLITICAL LEADERS, TECHNICAL EXPERTS INSIDE AND OUTSIDE GOVERNMENTS, AFFECTED COMMUNITIES, NATIVE PEOPLES, SPECIAL INTEREST GROUPS ETC. CIRCUSES ARE OUT. LARGELY CONFIDENTIAL TRADE-OFFS BEHIND CLOSED DOORS ARE OUT. ENORMOUS LAUNDRY LISTS OF DATA COLLECTION AND RESEARCH ARE OUT. BACK OF THE ENVELOPE "GUESSTIMATES" ARE OUT. IT HAS TO BE POSSIBLE TO CONDUCT A MAJOR ENVIRONMENTAL ASSESSMENT IN A WAY THAT IS OPEN, CANDID, RESPONSIVE, THOROUGH AND DEMONSTRABLY FAIR AND YET ORDERED, DISCIPLINED, TIMELY, FOCUSED AND TIGHTLY MANAGED. THAT IS A MAJOR OBJECTIVE OF THE NEW EARP. THAT IS FEARO'S PRINCIPAL GOAL.

CANADIAN ENVIRONMENTAL ASSESSMENT RESEARCH COUNCIL

RECOGNIZING THE NEED TO CONTINUE THE WORK BEGUN IN THE STUDY CITED ABOVE, THE AUTHORS OF THE REPORT RECOMMENDED:

"THAT AGENCIES ADMINISTERING ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURES IN CANADA EACH ESTABLISH A SMALL COMMITTEE OF EXPERTS TO PROVIDE ADVICE ON SCIENTIFIC MATTERS RELATED TO ENVIRONMENTAL ASSESSMENT. "

IN RESPONSE TO THAT RECOMMENDATION, THE FEDERAL MINISTER OF THE ENVIRONMENT IN JANUARY 1984, ANNOUNCED THE FORMATION OF A CANADIAN ENVIRONMENTAL ASSESSMENT RESEARCH COUNCIL (CEARC) WHICH, UNDER THE AUSPICES OF FEARO, WILL ADVISE GOVERNMENTS, INDUSTRY, AND UNIVERSITIES ON WAYS TO IMPROVE THE SCIENTIFIC TECHNICAL, AND PROCEDURAL BASES FOR ENVIRONMENTAL IMPACT ASSESSMENT. CEARC INCLUDES AMONG ITS MEMBERS KNOWLEDGEABLE PERSONS WITH A VARIETY OF DISCIPLINES DRAWN FROM THE SECTORS OF SOCIETY THAT PARTICIPATED IN THE WORKSHOPS THAT LED TO ITS FORMATION, I. E. ACADEMICS, CONSULTANTS, INDUSTRY, FEDERAL AND PROVINCIAL GOVERNMENTS.

MORE SPECIFICALLY CEARC WILL

- ADVISE GOVERNMENT, INDUSTRIAL, AND ACADEMIC RESEARCH ORGANIZATIONS;**
- IDENTIFY PRIORITIES AMONG RESEARCH NEEDS;**
- PROMOTE STATE OF THE ART REVIEWS OF RELEVANT RESEARCH TOPICS; AND**
- ENCOURAGE THE DEVELOPMENT OF MULTI-SECTORAL APPROACHES TO RESEARCH PROBLEMS OF COMMON CONCERN.**

FEARO IN TURN WILL DISTRIBUTE CEARC CONCLUSIONS AND RECOMMENDATIONS WIDELY AND ENCOURAGE CO-OPERATIVE PROJECTS BASED ON THEM

SOME OF THE RESEARCH THEMES CURRENTLY UNDER CONSIDERATION BY THE COUNCIL INCLUDE:

- (A) SCIENTIFIC PROTOCOLS FOR THE PREDICTION OF CHANGE AND ENVIRONMENTAL MONITORING;**
- (B) RISK ANALYSIS AND THE MANAGEMENT OF UNCERTAINTY;**
- (C) PROCEDURES AND METHODOLOGY FOR INFORMATION MANAGEMENT AND DECISION-MAKING;**
- (D) IDENTIFICATION OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES;**
- (E) MITIGATION AND COMPENSATION; AND**
- (F) POST-PROJECT EVALUATION.**

IT WILL BE RECOGNIZED THAT SOCIAL IMPACT ASSESSMENT IS AN IMPORTANT COMPONENT OF THESE ACTIVITIES AND CEARC HAS ALREADY SPONSORED A SUCCESSFUL WORKSHOP IN THIS AREA.

FEARO HAS BEEN GIVEN \$500,000 ANNUALLY TO SUPPORT CEARC. MOST OF THESE FUNDS ARE FOR PROMOTING WORKSHOPS OR AS SEED MONEY TO ENCOURAGE BETTER ENDOWED CORPORATIONS, DEPARTMENTS OR INSTITUTIONS INSIDE AND OUTSIDE GOVERNMENT TO UNDERTAKE PROJECTS IN AREAS IDENTIFIED BY CEARC. SOME OF THE FUNDS HAVE BEEN EARMARKED FOR UNIVERSITY FELLOWSHIPS.

THE OVER-RIDING OBJECTIVE OF THESE ACTIVITIES IS TO IMPROVE THE EFFICIENCY AND QUALITY OF ENVIRONMENTAL ASSESSMENT, I. E. TO ENSURE THE BEST POSSIBLE ADVICE IS GIVEN TO DECISION MAKERS IN A TIMELY, EFFICIENT MANNER. IT IS TOO EARLY TO JUDGE THE SUCCESS OF THESE EFFORTS BUT THERE CAN BE NO DOUBT OF THE NEED FOR THEM

PLANNING AND PUBLIC REVIEWS

FEARO REVIEW PANELS HAVE ON OCCASION ENCOUNTERED SITUATIONS UNDER WHICH RESPONSIBLE CONCLUSIONS AND RECOMMENDATIONS WERE VIRTUALLY IMPOSSIBLE TO REACH IN THE ABSENCE OF BASIC LAND USE AND OTHER RESOURCE MANAGEMENT POLICIES. OBVIOUSLY A POLICY REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT OPERATES LESS WELL IN A VACUUM AND SHOULD IDEALLY BE IMPLEMENTED IN SUPPORT OF OTHER LAND AND RESOURCE MANAGEMENT POLICIES. IN OTHER WORDS, WHERE THERE IS GOOD PLANNING, ENVIRONMENTAL ASSESSMENT ACTIVITIES WORK BEST.

NONETHELESS IN THE REAL WORLD, DEVELOPMENT POLICY VACUUMS OR NEAR VACUUMS DO EXIST AND TO ADDRESS THIS PROBLEM, AT LEAST IN PART, A SPECIAL TYPE OF PANEL REVIEW IS EVOLVING UNDER THE EARP. IT IS THE REGIONAL OR CONCEPT REVIEW WHICH IS MOST CLEARLY ILLUSTRATED IN THE WORK DONE BY THE BEAUFORT SEA PANEL.

RATHER THAN SIMPLY REVIEW A SPECIFIC PROPOSAL, THIS PANEL WAS ASKED TO EXAMINE THE BROAD ENVIRONMENTAL AND SOCIOECONOMIC IMPLICATIONS OF A VERY LARGE SCHEME FOR HYDROCARBON PRODUCTION AND TRANSPORTATION IN THE BEAUFORT SEA IN CANADA'S WESTERN ARCTIC.

OVER FORTY EXPLORATION COMPANIES HAVE BEEN CONCERNED WITH THIS AREA AND ON THEIR BEHALF THREE COMPANIES, DOME, GULF AND ESSO, AGREED TO ACT AS PROPONENTS AND TO COMPLETE THE NECESSARY ENVIRONMENTAL IMPACT STATEMENT FOR THE REVIEW

THE RESULT, INVOLVING PUBLIC MEETINGS IN ALMOST TWO DOZEN NORTHERN COMMUNITIES AND EXTENSIVE SCIENTIFIC AND TECHNICAL DOCUMENTATION, IS A COMPREHENSIVE REPORT WHICH NOT ONLY OUTLINES A MEASURED APPROACH TO DEVELOPMENT BUT ALSO IDENTIFIES WHAT NEEDS TO BE PUT INTO PLACE BY GOVERNMENT AND INDUSTRY BEFORE THE NECESSARY APPROVALS ARE GIVEN. WHILE SPECIFIC COMPONENTS OF THE PROPOSED DEVELOPMENT WILL REQUIRE FURTHER EXAMINATION AND WHILE GOVERNMENT IS NOT BOUND BY THE PANEL'S RECOMMENDATIONS THE REPORT WILL GREATLY ASSIST GOVERNMENT AND INDUSTRY IN PLANNING AND PREPARING FOR NORTHERN DEVELOPMENT. THE OPEN RESPONSIVE MANNER IN WHICH THE PANEL CONDUCTED THE REVIEW INCREASES THE CHANCES THAT THE REPORT WILL BE BROADLY ACCEPTABLE. INITIAL REACTIONS SUPPORT THIS EXPECTATION.

ONE OF THE PROBLEMS WHICH THOSE UNDERTAKING ENVIRONMENTAL ASSESSMENT MUST FACE, ESPECIALLY WHERE MINIMAL RESOURCE PLANNING HAS OCCURRED, ARE UNCERTAINTIES ABOUT THE INFORMATION THAT OUGHT TO BE COLLECTED, ANALYSED AND PRESENTED IN A GIVEN REVIEW THE WORK STIMULATED BY CEARC IS AIMED IN PART AT THIS PROBLEM

IN A PROCEDURAL SENSE UNDER THE EARP THE WAY TO REDUCE UNCERTAINTY ABOUT THE INFORMATION REQUIREMENTS FACED BY PROPONENTS IS TO SHARPEN

WHAT WE CALL GUIDELINES FOR ENVIRONMENTAL IMPACT STATEMENTS (EIS). THESE ARE ISSUED BY PANELS TO PROPONENTS TO INDICATE WHAT SHOULD BE INCLUDED IN THE EIS. IT WAS NOTED IN THE EARLIER DISCUSSION OF THE "BEANLANDS REPORT" THAT PARTICULAR ATTENTION IS BEING GIVEN TO "SHARPENING" THE REQUEST FOR SCIENTIFIC DATA BY RESTRICTING SUCH REQUESTS TO ONLY THE MORE SIGNIFICANT MATTERS.

AS THE PRACTICE OF EIA HAS EVOLVED, HOWEVER, IT HAS BECOME GENERALLY RECOGNIZED THAT AN ADEQUATE ASSESSMENT MUST RECOGNIZE SOCIAL OR SOCIO-ECONOMIC EFFECTS ARISING DIRECTLY OUT OF ENVIRONMENTAL CHANGES CAUSED BY THE PROPOSED ACTIVITY.

SUCH EFFECTS MAY BE EVEN MORE DIFFICULT TO IDENTIFY THAN THE MORE OBVIOUS AND CONVENTIONAL BIO/PHYSICAL RAMIFICATIONS. CERTAINLY, AS ALREADY NOTED, THEY TEND TO BE MORE AFFECTED BY VALUE JUDGEMENTS. IN MANY INSTANCES IT IS VIRTUALLY IMPOSSIBLE FOR CERTAIN SOCIAL EFFECTS TO BE IDENTIFIED BY PERSONS OTHER THAN RESIDENTS OF THE AREA AFFECTED BY THE PROPOSED PROJECT. AT THE VERY LEAST COMMENT BY SUCH PERSONS IS NEEDED IF REASONABLE VALUE JUDGEMENTS ARE TO BE MADE.

CONSEQUENTLY IT HAS BECOME INCREASINGLY COMMON FOR EARP PANELS TO HOLD PRE-HEARING MEETINGS IN APPROPRIATE LOCATIONS TO "SCOPE" THE PARAMETERS OF A REVIEW ON SUCH OCCASIONS ALL INTERESTED PERSONS, INCLUDING THE PROPONENTS, CAN INDICATE THE ISSUES, BOTH SCIENTIFIC AND SOCIAL, THAT THEY FEEL SHOULD BE ADDRESSED OR, EQUALLY IMPORTANTLY, NEED NOT BE ADDRESSED IN THE ASSESSMENT.

PANELS SUBSEQUENTLY TAKE THESE SUGGESTIONS INTO ACCOUNT IN THE FORMULATION OF THE GUIDELINES FOR PREPARATION, BY THE PROPONENT, OF THE EIS. IN MOST CASES DRAFT GUIDELINES ARE ALSO CIRCULATED FOR PUBLIC COMMENT IN ADVANCE OF ISSUANCE TO THE PROPONENT AND MAY BE THE SUBJECT OF FURTHER PUBLIC MEETINGS. THE TREND IS TOWARDS THESE GUIDELINES BECOMING MORE AND MORE FOCUSED AS OUR EXPERIENCE WITH SCOPING GROWS. EVENTUALLY WE EXPECT THAT GUIDELINES WILL EVOLVE INTO LISTS OF FACTORS OF VALUE TO BE EXAMINED, RATHER THAN DETAILED QUESTIONS WITH PRESCRIBED METHODOLOGY.

A MAJOR CHALLENGE IN THE CONDUCT OF PUBLIC REVIEWS IS FINDING IN EACH INSTANCE A REASONABLE BALANCE BETWEEN THE AFFECTED PUBLIC'S DESIRE THAT ALL CONCERNS, REAL OR PERCEIVED, BE THOROUGHLY ADDRESSED AND THE PROPONENT'S DESIRE TO AVOID THE COSTS AND DELAY ENTAILED IN OBTAINING AND ANALYSING DATA THAT MAY PROVE MARGINAL TO THE APPROVAL PROCESS. THE KEY TO MEETING THIS CHALLENGE IS IMPROVING OUR CAPACITY TO IDENTIFY EARLY IN A REVIEW THAT WHICH IS TRULY IMPORTANT. BOTH THE WORK ENCOURAGED BY OUR ASSESSMENT RESEARCH COUNCIL (CEARC) AND OUR "ON THE JOB" EXPERIENCE IN SPECIFIC REVIEWS ARE BEING USED TO INCREASE OUR SKILLS IN THIS VITAL AREA.

AS EIS GUIDELINES BECOME LESS PRESCRIPTIVE, THE NEED TO ENSURE SCIENTIFIC QUALITY IN THE EIS DOES NOT DIMINISH. TO ADDRESS THIS NEED, WE ARE EXPERIMENTING WITH SPECIALLY SELECTED SCIENTIFIC ADVISORY GROUPS WHO ADVISE THE PROPONENT DIRECTLY DURING THE EIS PREPARATION, RATHER THAN LEAVING HIM ON HIS OWN, AS BEFORE.

DUPLICATION AND DELAYS

THE POSSIBILITY OF DUPLICATION WITH PROVINCIAL ASSESSMENT PROCESSES WAS ADDRESSED EARLIER. THERE EXISTS A SIMILAR POTENTIAL FOR DUPLICATION BETWEEN THE EARP AND FORMAL REGULATORY PROCESSES WITHIN THE FEDERAL STRUCTURE BUT IT IS NOT AS EXTENSIVE AS IS SOMETIMES ALLEGED. MOST OF THE FEDERAL REGULATORY PROCESSES PRE-DATE THE EARP OR DEAL WITH MATTERS THAT DO NOT HAVE AN ENVIRONMENTAL ASPECT AND THEREFORE DO NOT AND INDEED CANNOT REQUIRE SATISFACTORY EVIDENCE OF "ENVIRONMENTAL" ACCEPTABILITY AS A PRE-CONDITION OF THE ISSUANCE OF THE APPROPRIATE LICENSE OR PERMIT.

A NOTABLE EXCEPTION IS THE NATIONAL ENERGY BOARD WHICH, UNDER ITS ENABLING LEGISLATION, IS ASSIGNED REGULATORY POWERS WHICH INCLUDE THE LICENSING OF THE EXPORT OF OIL, GAS AND ELECTRICITY, THE ISSUANCE OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR INTERPROVINCIAL AND INTERNATIONAL PIPELINES AND INTERNATIONAL POWER LINES, AND THE SETTING OF JUST AND REASONABLE TOLLS FOR PIPELINES UNDER FEDERAL JURISDICTION.

UNDER THE BOARD REVIEW PROCEDURES THERE IS A STANDING REQUIREMENT FOR ENVIRONMENTAL IMPACT ASSESSMENT OF PROJECTS NEEDING BOARD APPROVAL. IF A GIVEN PROJECT HAS ALSO BEEN SUBJECT TO PUBLIC REVIEW UNDER THE EARP, CRITICISM CAN ARISE OVER APPARENT DUPLICATION.

THIS CONCERN FAILS TO UNDERSTAND THE ESSENCE OF THE EARP - IT WAS DESIGNED AND IS MOST EFFECTIVE AS A PLANNING TOOL, NOT AS A REGULATORY

DEVICE. AS SUCH IT SHOULD BE BROUGHT INTO PLAY AT THE EARLIEST OPPORTUNITY TO ASSIST IN IDENTIFYING POTENTIAL ENVIRONMENTAL PROBLEMS AND TO HELP DESIGN SOLUTIONS TO THEM SUCH AN APPROACH CAN ALSO CONTRIBUTE TO THE CONCEPT OF EARLY CONDITIONAL APPROVALS IN CASES WHERE GOVERNMENT DECIDES SUCH APPROVALS ARE DESIRABLE. IT ALSO ENCOURAGES BETTER PROJECT DESIGN AND ALLOWS FOR THE REQUIRED REGULATORY ACTIVITY TO OCCUR WITHOUT DUPLICATION BUT WITH THE BENEFIT OF SUBSTANTIVE, EARLY ENVIRONMENTAL PLANNING.

IN OTHER WORDS WHERE THERE IS A COMPREHENSIVE ENVIRONMENTALLY SENSITIVE DESIGN REQUIREMENT TO BE ADDRESSED EVENTUALLY, THE EARP SHOULD BE IMPLEMENTED AT THE CONCEPTUAL OR EARLIEST PLANNING STAGE WELL BEFORE THE PROPONENT HAS HIS DESIGN AND SUPPORTING TECHNICAL INFORMATION READY FOR AN APPLICATION TO THE REGULATORY AGENCY. STATED ANOTHER WAY, THE RESULTS OF EARP-RELATED WORK SHOULD BE BUILT INTO PROJECT DESIGN, NOT ADDED LATER WHICH IS MUCH MORE COSTLY. BY DOING THIS THE PROPONENT CAN HAVE REASONABLE CONFIDENCE THAT HIS DESIGN WILL MEET THE ENVIRONMENTAL REQUIREMENTS OF THE REGULATORY AUTHORITY.

THE ENVIRONMENTAL ASSESSMENT OF THE PROPOSED ACTIVITY, PARTICULARLY WHERE THERE HAS BEEN A PUBLIC PANEL REVIEW AND REPORT UNDER THE EARP, CAN BE TAKEN INTO ACCOUNT IN THE BOARD REVIEW BEARING IN MIND THE ADVISORY NON-REGULATORY NATURE OF THE EARP PANEL REPORT, IT DOES NOT COMPETE WITH THE BOARD'S DECISION BUT IT CAN REDUCE THE WORKLOAD FOR THE BOARD'S STAFF. MOREOVER, THE BOARD CAN COMPLEMENT THE EARP PROCESS BY ATTACHING THE RECOMMENDED MITIGATORY MEASURES AS CONDITIONS

TO THE ISSUANCE OF A CERTIFICATE WHICH THE BOARD HAS AUTHORITY TO ENFORCE.

IN AN EXTREME CASE WHERE AN ENVIRONMENTAL ASSESSMENT HAS IDENTIFIED UNACCEPTABLE IMPACTS WHICH PRESENT INSOLUBLE PROBLEMS, THE WOULD-BE PROPONENT COULD BE SPARED THE COST AND EFFORT INVOLVED IN FINALIZATION OF WHAT WOULD CONSTITUTE A FUTILE APPLICATION TO THE BOARD.

IN SUM THE MOST EFFECTIVE WAY TO AVOID POSSIBLE REGULATORY DUPLICATION IS TO TREAT THE EARP AS A PLANNING TOOL TO BE IMPLEMENTED AND TAKEN FULLY INTO ACCOUNT AT THE EARLIEST STAGE OF THE PLANNING PROCESS AT A TIME WHEN THE BASIC ECONOMIC, SOCIAL, ENGINEERING AND OTHER APPROPRIATE CONCERNS ARE BEING WEIGHED BY THE PROPONENT.

OBVIOUSLY, EARLY APPLICATION OF THE EARP, INCLUDING PUBLIC REVIEWS AS NEEDED, IS ALSO THE ANSWER TO CONCERNS OVER DELAYS WHETHER OR NOT A FORMAL REGULATORY PROCESS IS INVOLVED.

IN THE PAST ENVIRONMENTAL MATTERS HAVE SOMETIMES APPEARED AT THE BOTTOM OF THE CHECK LIST OF PREREQUISITES TO THE START OF CONSTRUCTION. WHEN THESE ARE RECOGNIZED BELATEDLY, PARTICULARLY IF A PROJECT IS REFERRED FOR A PUBLIC REVIEW SCHEDULES CAN BE SET BACK. FORTUNATELY MANY CORPORATIONS AND DEVELOPMENT-ORIENTED PARTS OF GOVERNMENT ARE NOW GIVING CONSIDERABLE ATTENTION TO THE WIDER AND LONGER TERM IMPACTS OF THEIR ACTIONS. WHERE A PROJECT IS A CANDIDATE FOR REFERRAL TO THE PUBLIC REVIEW STAGE UNDER THE EARP, THE REVIEW CAN

PROCEED IN PARALLEL WITH FINAL PLANNING AND BEFORE FINAL DESIGN. IF FOR ANY REASON THE PROPONENT SHOULD DECIDE TO CANCEL THE PROJECT OR WITHDRAW FROM THE REVIEW HE CAN DO SO DURING A REVIEW THEREBY MINIMIZING HIS DESIGN AND INFORMATION GENERATION COSTS.

WITH REGARD TO UNNECESSARY DELAYS DURING THE PUBLIC REVIEW PHASE FEARO SEEKS TO APPLY THE LESSONS LEARNT FROM EACH REVIEW TO THE NEXT. ON EACH OCCASION THE PROCEDURES ARE FINE-TUNED TO EXPEDITE PROCEEDINGS COMMENSURATE, OF COURSE, WITH THE PRODUCTION OF RESPONSIBLE AND FULLY CREDIBLE RECOMMENDATIONS. MOST RECENTLY, FEARO HAS ISSUED A SET OF CORE PROCEDURES TO GOVERN PANEL REVIEWS. THESE ARE AIMED AT FOSTERING PREDICTABILITY, EFFICIENCY AND OPENNESS. THEY MAY BE MODIFIED IN SPECIFIC SITUATIONS AND IN ANY CASE WILL BE SUBJECT TO PERIODIC REVIEW THEY ARE NON-JUDICIAL IN CHARACTER BASICALLY TO ATTRACT BROAD PARTICIPATION, TO ALLOW FOR THE EASIER PRESENTATION OF SUBJECTIVE VALUE JUDGEMENTS ABOUT SCIENTIFIC AND SOCIAL MATTERS AND TO PROMOTE CONSENSUS BY MINIMIZING CONFRONTATION.

REFLECTING A NUMBER OF THE ISSUES DISCUSSED IN THIS PAPER, THE CORE PROCEDURES INCLUDE:

- AS APPROPRIATE, PRE-HEARING PUBLIC MEETINGS TO PROVIDE INFORMATION ON THE REVIEW PROCESS AND; TO "SCOPE" THE PARAMETERS OF THE REVIEW;**
- PRIOR ANALYSIS OF THE CRITICAL SCIENTIFIC ISSUES TO BE REVIEWED (BEANLANDS REPORT) AND IN THE CASE OF A PARTICULARLY COMPLEX**

PROJECT THE FORMATION OF A GROUP OF EXPERTS TO ADVISE THE PANEL ON THE SALIENT ISSUES TO BE ADDRESSED;

- THE RETENTION OF INDEPENDENT SCIENTIFIC AND TECHNICAL EXPERTS TO ADVISE BOTH THE PANEL AND PUBLIC PARTICIPANTS IN THE REVIEW

TARGET DATES ARE ALSO BEING INTRODUCED INTO PANELS' TERMS OF REFERENCE BUT THESE CAN PROVE UNREALISTIC IF ENVIRONMENTAL IMPACT STATEMENTS ARE OF POOR QUALITY AND HAVE TO BE SUPPLEMENTED.

THESE AND OTHER MEASURES SHOULD HELP AVOID UNREASONABLE DELAYS WITHOUT IMPAIRING THE CREDIBILITY OF THE PROCESS. HOWEVER, THE MOST SIGNIFICANT AND EFFECTIVE MEASURE TO AVOID UNNECESSARY DELAYS WILL ALWAYS BE THE EARLIEST POSSIBLE APPLICATION OF THE EARP BY THE INITIATING DEPARTMENT AND THE PROPONENT.

IT IS ALSO OUR EXPERIENCE THAT WELL MANAGED ENVIRONMENTAL ASSESSMENT CAN REDUCE DELAYS IN SECURING PROJECT APPROVALS. NOT ONLY CAN IT PROMOTE PUBLIC ACCEPTANCE OF A GIVEN PROJECT, BUT EARLY ENVIRONMENTAL ASSESSMENTS, PARTICULARLY THOSE INVOLVING PUBLIC REVIEWS, CAN ALSO CAUSE EARLY PROJECT PLANNING TO BE CARRIED OUT AT AN IMPRESSIVE LEVEL OF DETAIL AND QUALITY. THIS IN TURN OFTEN MEANS THAT PROJECTS ARE BETTER THOUGHT OUT RESULTING IN FEWER AND SHORTER DELAYS DURING CONSTRUCTION AND FEWER COST OVERRUNS. GOOD ENVIRONMENTAL ASSESSMENT IS GOOD PLANNING WHICH IS GOOD BUSINESS.

THE FUTURE

IT IS DIFFICULT TO SPEAK WITH PRECISION ABOUT THE FUTURE OF THE EARP BECAUSE THERE HAS NOT YET BEEN TIME FULLY TO IMPLEMENT THE IMPROVEMENTS CONTAINED IN LAST YEAR'S ORDER-IN-COUNCIL, MUCH LESS ASSESS THEIR EFFICACY. SOME GENERAL OBSERVATIONS CAN HOWEVER BE MADE.

THE PUBLIC REVIEW STAGE OF THE PROCESS WILL ALWAYS CONSTITUTE THE "TIP OF THE ICEBERG" IN IMPLEMENTING THE EARP. FROM PAST EXPERIENCE, IT IS REASONABLE TO EXPECT THAT THE PRELIMINARY SCREENING AND INITIAL ASSESSMENT CONDUCTED BY INDIVIDUAL DEPARTMENTS WILL CONTINUE TO DETERMINE FOR THE VAST MAJORITY OF PROPOSALS THAT THE PROJECT WILL BE ENVIRONMENTALLY BENIGN OR THAT ADEQUATE MITIGATORY MEASURES CAN BE READILY APPLIED. SUCH DETERMINATIONS OBTAIN THE REQUIREMENT FOR A PUBLIC REVIEW THE SYSTEMATIC, OPEN AND DOCUMENTABLE APPROACH TO THIS ACTIVITY REQUIRED UNDER THE GUIDELINES ORDER-IN-COUNCIL OF JUNE 1984, SHOULD, IF IT RESULTS IN BETTER ENVIRONMENTAL PLANNING AND FULLER EARLY PUBLIC CONSULTATION, REDUCE FURTHER THE NEED FOR FORMAL PANEL REVIEWS. THE ADMINISTRATIVE BURDEN OF THE EARP AS A WHOLE SHOULD BE FURTHER REDUCED BY THE CURRENTLY PLANNED INTRODUCTION OF LISTS OF EXEMPTIONS FROM THE APPLICATION OF THE EARP, I.E. PROJECTS FOUND TO BE ENVIRONMENTALLY BENIGN. THESE WOULD NOT HAVE TO BE ASSESSED. THE ACTIVITIES PROMOTED BY CEARC - THE RESEARCH COUNCIL - SHOULD MAKE BOTH THE INITIAL ASSESSMENT AND PUBLIC REVIEW STAGES OF THE EARP MORE ACCURATE AND MORE EFFICIENT.

ONE THING CAN BE SAID ABOUT THE FUTURE WITH CONSIDERABLE CONFIDENCE. THE PROBLEMS WHICH ENVIRONMENTAL IMPACT ASSESSMENT (EIA) IS DESIGNED TO ADDRESS WILL NOT GO AWAY. ACCORDINGLY THE CHALLENGE TO MAKE EIA AN EVER MORE EFFECTIVE AND EFFICIENT CONTRIBUTOR TO GOVERNMENT DECISION MAKING WILL REMAIN AND PERHAPS GROW THE APPROACHES OUTLINED IN THIS PAPER ARE DESIGNED TO MEET THIS CHALLENGE BUT TO WORK THEY WILL NEED THE COOPERATION OF ALL CONCERNED. INDUSTRY, ACADEMICS AND THE PUBLIC, NOT JUST GOVERNMENT ALONE.

WHAT IS ALSO NEEDED IS MORE OPEN DIALOGUE AMONG THE PARTICIPANTS IN EIA. THE CANADIAN EARP CONTINUES TO EVOLVE AND WE WHO ADMINISTER IT ARE ANXIOUS TO HEAR THE VIEWS OF ANYONE WHO CAN HELP US KEEP THAT EVOLUTION RELEVANT TO ALL PARTICIPANTS.