

No. 14

Sustainable Reform

The Challenge of Reform - Conference '88

November 29, 1988

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Federal Environmental Assessment

Review Office

SUSTAINABLE REFORM

**Notes for a talk at the first  
federal real property conference:**

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## POLICY REFORM

I want to focus on the conference's theme of reform

When I get a chance, I enjoy watching the British TV program "Yes, Prime Minister", where one of the key missions of the public servants is to fight proposals for reform with all the skill and imagination they can muster, usually with frightening success.

While it may be amusing to perpetuate this classic image of public servants with both their heads and feet stuck in the sand, we are finding in Canada that the challenge of reform is, in fact, stimulating and rewarding for both public servants and the public being served.

Your domain of real property management is undergoing unprecedented reform much of it relating to changing responsibility and accountability of managers and much of it relating to financially and socially responsible stewardship of our real property resource.

The domain of environmental assessment is also undergoing significant reform - also aimed at enhanced public accountability and sensitive stewardship - through the proposed legislative improvements of the federal Environmental Assessment and Review Process (EARP).

Since you are going to be accountable for implementing the reformed EARP, the timing couldn't be better for us to discuss incorporating the principles of environmental assessment into the new regime of real property management within your organizations.

Another area of policy reform we need to be aware of in managing real property is that of archaeological heritage. I am sure many of you have wondered what to do when an excavation in one of your prize building lots turns up a shard of pottery or a human bone. To bring order and predictability to decisions in these situations, the Department of Communications, in cooperation with FEARO and Environment Canada as well as with agencies such as DIAND, Transport and the Museum of Civilization is consulting widely on the prospect of policy reform. One element under consideration is the potential cost-effectiveness of using EARP, where appropriate, as a mechanism for implementing the new policy.

## ATTITUDINAL REFORM

Before going into detail about EARP, its reform proposals and how they might affect you, it's worth taking a quick look at a couple of other remarkable reformations taking place in Canada and around the world. These are reforms of attitude. One is the new way we are thinking about our environment. We are becoming a bit frightened about how it is changing. We are realizing that our decision-making as public servants can affect it and that before we take decisions we need to be very careful to determine the extent to which the environment can tolerate what we are about to do to it. Not only tolerate in today's terms, but also in terms of the needs of future generations.

**There is a new ethic which recognizes the environment as the determinant of economic change, rather than the historical ethic of the economy being the determinant of environmental change, followed by the application of band-aids to the inevitable environmental wounds.**

**This is the ethic of "Sustainable Development", a term of which some of you may already be tiring. It is the new watchword around which the long awaited integration of environmental and economic thinking is taking place. It is a term those of you making real property management decisions will soon begin to incorporate into your project planning.**

**The second attitudinal reform important in setting the context of EARP reform has really been going on for many years. It is still viewed often with .trepidation and even resentment by many public service decision-makers. It has to do with consultation particularly public consultation. We consider public involvement to be an essential element of successful environmental assessment. Those who might be affected by a proposal have a right to know about it and have a right to influence the decision about it, including the fundamental decision of. whether to proceed with it at all.**

**The openness in planning necessary to achieve this is tough for most of us and these days it is made more tough by having to find ways to consult with interests and values that cannot speak for themselves, such as the intrinsic value of ecosystems and the needs of future generations.**

**To illustrate the importance of consultation, when people in agencies such as yours come to FEARO, seeking advice about the implementation of EARP for specific proposals and worry about whether a public review may be needed, we usually talk along the following lines:**

**Have you identified the interests and values your proposal might affect?**

**Have you provided them with timely and adequate information?**

**What problems were identified?**

**What steps have you taken to resolve them?**

**What problems are still outstanding?**

**Are there any communication impediments among the stakeholders?**

**The responses usually enable us to identify quickly the appropriate next steps, which almost always involve improved communication.**

#### **EARP**

**Most of you will be at least vaguely familiar with EARP. It has been with us since 1974 as government policy and was given enhanced legislative authority in 1984 through an Order-in-Council under the Government Organization Act (1979).**

The concept and the essence of EARP is very simple. It requires us to understand and consider the effects on the environment of what we are about to do before we decide to do it.

The implementation of EARP is less simple but can be made very streamlined and efficient if we're smart about it. More importantly, it is now very clear that conscientious environmental assessment integrated into the planning stages of a proposal results in a more cost-effective proposal with fewer implementation headaches, cost overruns and time delays and a greater level of public acceptance. Careful planning pays dividends and environmental assessment is a necessary element of careful planning.

One of the tricky things about EARP is that it applies to everything we do. All decisions made by the federal government are, theoretically, subject to EARP. If we think about environmental assessment as detailed environmental studies, endless consultation, thick reports and sometimes public hearings, then the image is indeed daunting.

But that is a distorted image and one which has in the past caused federal decision-makers to be less than enthusiastic about embracing EARP as a useful planning tool.

#### COST-EFFECTIVENESS

It is more appropriate to think of the process as a continuum which demands only the level of assessment effort warranted by each case or type of activity. Many of you will have a range of routine activities for which even the greenest imaginations could not identify environmental implications. For such activities, EARP is fully satisfied by your listing them as environmentally benign exclusions and thereafter not assessing them individually.

Likewise, there may be a number of categories of activity which could cause environmental problems, but that you have learned how to implement routinely in an environmentally acceptable way. For these, it is usually sufficient to carry out a single environmental assessment for the entire category of activity, thereafter simply implementing any similar activity according to the results of the categorical assessment, without further investigative effort.

This type of streamlining is possible for most aspects of EARP implementation and we urge you to make it as cost-effective as you can. The best environmental assessment is one which applies the least effort to achieve the needed result. The needed result is a thorough understanding of the effects of the proposal and of the acceptability to society of those undesirable effects not susceptible to mitigation.

A concept which has helped enormously in recent years to streamline assessments is called "scoping". Much has been written on it but, essentially, it is the identification of the real issues, and their boundaries so that subsequent assessment focusses only on what is important rather than on studying long shopping lists of factors that may or may not be relevant.

### HELP IS AT HAND

**FEARO has devoted a lot of effort over the years helping departments get the most out of EARP with the least effort.**

**We have developed manuals and guidelines on screening, initial assessments and public reviews. We are just completing a major work on public consultation techniques which we will soon be distributing to your departments.**

**We have funded independent consultants to work directly with departments to develop effective internal management frameworks for implementing EARP.**

**We have comprehensive training programs for both senior managers and line officers in government departments which we give at least 10 times each year throughout the country.**

**We chair an Interdepartmental Committee on Environmental Assessment which meets regularly to discuss policy and EARP implementation issues. It also has several subcommittees that develop new methods and tools for use by all departments.**

**We support and manage the Canadian Environmental Assessment Research Council (CEARC) which is now an internationally respected focal point for the advancement of the state-of-the-art of environmental assessment in Canada.**

**And we have a small but effective regional organization, largely based here in the national capital (except for our Vancouver office). The regional offices are geared to providing process advice and assistance to federal agencies and to creating linkages with the provinces and territories on environmental assessment process matters to help avoid duplication and confusion where projects affect more than one jurisdiction.**

**I am mentioning all this not only to let you know FEARO does more than run panel reviews, but also to assure you that even though you are accountable for EARP implementation within your organizations, there is a lot of help available to make the burden lighter. Help in understanding ecological issues and in scientific study methods is available as well from agencies such as Environment Canada and Fisheries & Oceans.**

### EARP REFORM

**In the spring of this year FEARO completed an exhaustive (and exhausting) review of EARP which included a green paper on reform options and extensive interdepartmental, intergovernmental and nation-wide public consultations. As a result, a number of important reforms have been proposed which reflect the concerns expressed by those we consulted. These are listed in the Environment Minister's October 20 announcement which has been made available to you. I will highlight a few of the key elements:**

- 1. EARP will become law and its implementation therefore mandatory, but with retention of the important principle of self-assessment. One of the side**

benefits we expect of this is it will be easier for departments to protect internal resources for EARP implementation.

2. **FEARO would be established in law as an independent agency for process administration, reporting to the Environment Minister. It would have the added responsibility to determine the need for public reviews. This is a very significant change which we believe will encourage departments to resolve environmental issues openly and early to reduce the need for formal reviews.**
3. **A funding program would be established to assist intervenors to prepare for public hearings. This will help ensure the advice resulting from the consultative process is meaningful and constructive rather than confrontational and rhetorical.**
4. **One of the most exciting areas of reform is the provision for a mediation capability in the Process to help resolve environmental disputes before they become major headaches, possibly reducing the need for full scale reviews in certain circumstances.**

**There are other proposed reforms of a more detailed nature, many of which will come in the form of regulations aimed at making process implementation by departments more consistent, efficient and accountable.**

**As for their status, the reform proposals had been forwarded by the Cabinet Committee on Social Development to the Priority and Planning Committee of Cabinet for approval at the time of the election call. While Ministers decided to announce the Government's intent to institute the reforms, as evidenced by the press release you have, formal approval of the Memorandum to Cabinet has not yet occurred. Since our Minister was a casualty of the election, we will now await the appointment of his successor before such approval can again be sought.**

#### **IMPLEMENTATION**

**Returning now to the theme of reform of real property management and to how to incorporate EARP into the new frameworks being established, I wish to set out a few concluding and summarizing thoughts.**

- Under both the existing Order-in-Council and the proposed reforms, all activities over which real property management officials have a decision-making responsibility are subject to the EARP. This includes projects initiated directly by a department, as well as private sector undertakings for which an explicit federal decision is needed for it to proceed.**

**A primary obligation of real property managers under EARP is to ensure there is a system or procedure in place which enables (requires) routine internal consideration of the environmental effects of decisions, before they are taken. If there is already a mechanism set up, such as a Land Use Advisory Committee, or Treasury Board Advisory Committee it should be used to avoid duplication.**

Often you will be able to integrate your needs with those of provincial or territorial assessment processes where there are joint responsibilities. This works well, (a) if there is basic equivalency of process (an issue we are now discussing with the provinces) and, (b) if you retain accountability for any decisions about the environmental acceptability of the proposal. There are many ways of getting to the answers. EARP simply requires environmental consideration be given; it does not specify how that should happen, beyond a few basic details - that is up to individual agencies.

It is essential that the Process be implemented as early as possible in the planning of activities and that the interested and affected public is kept informed of the progress of the assessment, so they can contribute their perspectives whenever appropriate.

The implementation should be kept adequately documented i.e. the proper "paper trail" should be laid down as insurance against future challenge or criticism and for audit purposes.

Early attention should be given to the identification of undertakings that may be appropriate for a list of exclusions to avoid unnecessary consideration of benign activities. In this same vein, thought should be given to the identification of categories or classes of activities which might be subjected to an environmental impact assessment (and even a public review) to qualify them for subsequent streamlined treatment as falling within a "cleared" category.

In most organizations, it is desirable to establish a responsibility centre for EARP-related decisions and internal operational policy development. Such a body is usually costeffective through its ability to identify environmental issues and the most streamlined way through the EARP requirements to address them. Our vision of EARP is not of it as an additional burden to decision-making, but as a sensible tool for good planning with a relatively small core of dedicated resources to keep it all together.

## **CONCLUSION**

In this time of significant reform for you and, hopefully, soon for us, it is appropriate to consider the value of EARP as an effective planning tool for real property management decisions. I am very pleased to have had this opportunity to discuss it with you and will be more pleased to hear from you in the coming months as you move towards an environmentally sustainable reform of real property management.

**END**