

The Federal Environmental Assessment and Review Process

Federal Environmental Assessment
Review Office



Canada

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THE FEDERAL ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS

WHAT IS THE ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS?

The Environmental Assessment and Review Process is an important planning tool for predicting the potential environmental consequences of proposals that require a federal government decision. It is a means to identify unwanted effects before they occur and determine appropriate mitigation measures. It offers an opportunity to alter or abandon plans if major negative effects cannot be moderated.

The Environmental Assessment and Review Process (EARP) deals with the physical and biological aspects of development proposals: air, land, water, plants, animals and people. Its scope covers the potential environmental and directly related social effects of proposals; that is, effects that could bring adverse changes to the natural environment and the directly resulting effects that these changes could have on people.

EARP was established by the federal Cabinet in 1973 and adjusted by Cabinet decision in 1977. On June 22, 1984, the process was strengthened and updated when the Environmental Assessment and Review Process Guidelines were issued by an Order in Council under the Government Organization Act.

This Guidelines Order is now the authority for the process. It reaffirms those aspects of the original policy and procedures that had proved their worth and incorporates others that had been introduced over the years. The process is now more orderly, consistent and visible. Roles and responsibilities are more precisely defined and public participation is reconfirmed as an essential element of the process from beginning to end.

EARP is a planning process, rather than a regulatory one. This reflects the judgment that environmental assessment should be undertaken very early in the decision-making process in company with initial economic and engineering studies.

The process is administered by the Federal Environmental Assessment Review Office (FEARO).

TO WHOM DOES IT APPLY?

The EARP Guidelines Order applies to all departments, boards and agencies of the federal government. Parent corporations (mostly former proprietary Crown corporations) are expected to make EARP a part of their corporate policies, unless this is not possible under their legislation. Organizations that deal with the regulation of certain activities also apply the process, unless this would cause a duplication of their procedures or unless legislation does not allow them to base their decisions on environmental factors. To simplify this description of EARP, the term department is used to refer to all these organizations.

A department with the authority to make a decision about a proposal is called the initiating department or initiator, while the private sector organization or the department that intends to undertake the proposal is called the proponent. A single department may play both roles.

WHEN IS EARP USED?

EARP is used when a department:

- intends to undertake any proposal of its own; or
- has the authority to make a decision about a proposal of another organization that:
 - might have an environmental effect on an area of federal government responsibility,
 - would require federal government financial commitment, or
 - would be undertaken on lands administered by the federal government, including the offshore.

Departments are also expected to ensure that Canadian activities do not bring about adverse effects in other countries.

When the decision-making authority for a proposal rests with, or is shared with, a province or territory, and there is federal involvement, EARP can be applied cooperatively with provincial or territorial planning, resource management, or environmental assessment processes. The intent is that both federal and provincial/territorial requirements be met without duplication.

HOW DOES IT WORK?

INITIAL ASSESSMENT

Process

Initial assessment is the first step in the process, encompassing everything a department does to determine what, if any, potential adverse environmental effects a proposal may have. It begins with an examination of potential environmental effects and public concerns carried out by the department that has the decision-making authority for the proposal being examined. This initial examination may lead to an additional detailed study.

Initial assessment involves not only the determination of environmental effects of any proposal but also the determination of their significance. Public consultation can be an important factor in this stage of the process.

In keeping with the self-assessment nature of the process, initial assessment decisions are made by the department that has the decision-making authority for the proposal being examined.

However, a department is not entirely on its own during an initial assessment, for it can seek information or expert advice from other departments with relevant expertise.

Decisions

A number of initial assessment decisions can be made. Two of these are straightforward: automatic exclusion from study and automatic referral for public review. Exclusions are those types of proposals that would not produce any adverse environmental effects and can go ahead without assessment. Automatic referrals are those types of proposals that could produce significant adverse environmental effects and, therefore, must be referred to the Minister of the Environment for public review by an independent panel.

If a department neither automatically excludes a proposal from study nor automatically refers it for public review, the decision will be to proceed with the proposal, abandon the proposal or refer it for public review. For those projects that are neither abandoned nor referred for public review, an important component of the initial assessment stage is the identification of

appropriate mitigation measures and the incorporation of these measures into the project design.

After a decision has been made, there must be public access to information about the proposal and the decision and an opportunity to respond to this information before the proposal is carried out.

Responsibilities

Each department must ensure that initial assessments are carried out and that all initial assessment recommendations are incorporated into the proposal. The necessary budgetary arrangements must be made and written procedures established to carry out initial assessments. A department must regularly give information on its initial assessment decisions to FEARO for publication. Any federal-provincial, territorial, or international agreements a department makes must reflect the principles of EARP. Additionally, initiating department must ensure that the public has access to its initial assessment decisions on request.

When requested, departments such as Environment, Fisheries and Oceans, Indian and Northern Affairs, and Energy Mines and Resources with specialist knowledge or responsibilities to provide initiators with available data, information, advice about potential impacts and regulatory requirements. They are also expected to advocate protection of interests for which they are responsible.

FEARO, as part of its responsibility for EARP, assists departments with initial assessment by furnishing procedural guidelines and advice, and has published the "Guide for Initial Assessment Under The Federal Environmental Assessment and Review Process." The Office regularly publishes a list of initial assessment decisions of the initiating departments in its "Bulletin of Initial Assessment Decisions."

PANEL REVIEWS

When initial assessment leads to the decision that a proposal's adverse environmental and directly related social effects are significant or that public concern is such that a public review is desirable, the Minister of the initiating department refers the proposal to the Minister of the Environment for a public review by an environmental assessment panel.

Public reviews of proposals may differ in type and focus, but two characteristics are always present:

- the proposal undergoes detailed examination by an independent panel, with opportunity for public involvement, including comment on the review documents and participation in public hearings;
- each panel has a specific mandate, describing the nature and scope of the review. The scope of a public review may include, at the direction of the initiating Minister and the Environment Minister, such matters as the general socio-economic effects, assessment of technology, and the need for the proposal.

The nature of the proposal and the scope of the review will be specified in the terms of reference issued by the Minister of the Environment. Most often, a specific project, for example a new airport, is examined and the panel recommends whether the project should proceed, and if so, under what terms and conditions.

In some cases, a panel may be limited to recommending terms and conditions for the project. Such reviews, known as environmental design reviews, would normally occur only if the Government decides that it is in the national interest for a proposal to proceed or when the proposal has been subject earlier to an area-wide or a concept review. An area-wide review considers whether a certain type of activity is environmentally acceptable in a large area, for example, exploratory hydrocarbon drilling in a previously unexplored region of the offshore. The concept or generic review assesses the environmental implications of a new concept or technology.

Panels

Panel members are appointed by the Minister of the Environment for the duration of the panel review. There are certain requirements to ensure objectivity and competence. Members must be free of potential conflicts of interest or political commitments and have special knowledge or relevant experience that is useful for reviewing the anticipated effects.

Normally, a panel is chaired by the Executive Chairman of FEARO or a delegated representative. When there is a joint review with a province or territory, the panel may be co-chaired by persons appointed by the two governments involved.

Panels are supported by a secretariat from the staff of FEARO. Administrative and financial arrangements for panels are managed by FEARO.

Panel Procedures and Activities

Each panel establishes and publishes its own operating procedures, based on FEARO's publication "Procedures and Rules for Public Meetings".

FEARO's procedures and rules help ensure consistency in policy and procedure between reviews. They may be varied for a federal-provincial review or in special circumstances, for example, when the Office negotiates provincial or territorial participation in a review, federal participation in a provincial review, or participation in any other co-operative study of a proposal.

Normally a panel holds public meetings to determine the scope and importance of issues, then gives guidelines to the proponent for the preparation of an Environmental Impact Statement (EIS). The EIS describes the proposal and its potential effects. Later, an additional series of meetings-the public hearings-is held to focus on the EIS

Throughout the review, the panel secretariat disseminates information about panel activities and the review process. This is done through personal contact, letters, press releases, advertisements, libraries and information centres. The public is encouraged to contact the secretariat for information, to make submissions to the panel, and to participate in the public meetings.

The Environmental Impact Statement

The full environmental implications of the proposal are normally contained in one document known as the Environmental Impact Statement.

An EIS usually:

- describes the proposal,
- shows the need for the proposal and identifies alternatives,
- describes the present environment, resource use, and social patterns,
- predicts potential impacts, and
- indicates how the adverse impacts will be reduced or avoided altogether.

The EIS states where the proposed development will occur, how long it will last, how it can be carried out, and the preferred way to do this. The EIS also describes how adverse impacts can be avoided and minimized.

The EIS is submitted to the panel and made public. Indeed, all submissions to a panel during this, or any other part of the review, become public information and are maintained on a public file. The panel also allows sufficient time—usually a minimum of 60 days—for review participants to examine and comment on the information it receives before the public hearings.

If the information in an EIS is adequate, the panel proceeds to hold public hearings. If the EIS is deficient, the panel requests more information and the hearings are delayed until the material is received and reviewed.

The Public Meetings

Public meetings held by panels, fall into two general categories:

special meetings to seek public input on issues requiring further study during the review. These may be “scoping sessions” to help identify important issues and concerns that should be dealt with in the EIS or meetings to receive comments on draft guidelines for the preparation of an EIS;

hearings to provide the principal opportunity for public comment on the proposal, once an EIS has been submitted to the panel.

The hearings are public forums for the expression of views of the environmental effects of the proposal and are held in the areas that may be affected by the proposal. To encourage the broadest public participation, they are as informal and flexible as practicable. No one is subpoenaed to appear before the panel or asked to take an oath that his or her statements will be true. There is no cross-examination in the legal sense and no need for participants to be accompanied by legal counsel. However, the panel may ask questions of any participant and may allow other participants to ask questions through the panel chairman.

Participation in the hearings, not only by the specialists hired by the panel but by the public as well, is vital to the review. A panel obviously needs technical and scientific analyses from experts but it also needs to hear from people who could be affected by the proposal, particularly those who live near the proposed site. Although an impact may not appear significant to the experts, it may be so for people living and working near the site. Local residents may have information and insights not available to an outsider.

The Panel Report

When the public hearings have finished, the panel must write a report for the Minister of the Environment and the Minister of the initiating department and, in the case of joint reviews, for additional ministers or organizations that may also be involved. A panel’s report, which is always made public, is advisory; the Ministers make the final decisions.

A report usually contains:

- a brief description of the proposal,
- the characteristics of the proposed site and impacted areas,
- the potential impacts,
- comments, issues and analysis, and
- conclusions and recommendations.

The initiator decides to what extent panel recommendations must be adopted before the proposal can proceed. These are incorporated into the design, construction and operation of the proposal. The initiator must see that decisions on suitable implementation, inspection and monitoring programs are carried out. Interdepartmental committees, sometimes containing representatives from provinces or territories and the private sector, may be established to direct the implementation of the proposal.

The proponent must make certain that any post-assessment monitoring, surveillance and reporting, laid down as conditions for proceeding with the proposal, are undertaken.

Decisions stemming from the panel’s recommendations must be made public. The initiator decides how this is done.

WHAT DOES FEAR0 DO?

The Federal Environmental Assessment Review Office oversees EARP, as applied throughout the Government of Canada, on behalf of the Minister of the Environment. The Office is headed by an Executive Chairman who reports to the Minister. Though FEAR0 receives administrative support from Environment Canada, it maintains an independent relationship with the department. This is necessary because Environment Canada can be a proponent or an initiator in a public review and is almost always an active participant in reviews.

The Office provides departments with procedural guidelines for initial assessment (the Initial Assessment Guide) and assists them in developing their own initial assessment procedures. It may also assist initiating departments by providing information to the public on proposals and soliciting responses early in the planning process before decisions are taken.

FEAR0 regularly publishes summaries of initial assessment decisions, based on information it receives from departments, so that the public can receive notification of proposals that are being considered for their potential environmental implications. The Office also prepares an annual report to the Minister on the implementation of the process, which too is made public.

Once a proposal is referred for public review, FEAR0 drafts the panel's terms of reference for the Minister of the Environment, in consultation with the initiating department. It also assists in identifying potential panel members and when members are appointed by the Minister, FEAR0 makes the contractual arrangements with them.

FEAR0's Executive Chairman or delegated representative is normally the chairperson of a panel. The Office provides staff, as well as the logistical and administrative services needed for the panel's meetings and public information program. When a review is finished, the reviewed documents are kept in its library, which is open to the public.

FEAR0 is responsible for basic review procedures and may alter them in special circumstances or when there is a federal-provincial review. It provides other advice and assistance on procedural matters so that procedures and policy are consistent from review to review. FEAR0 also negotiates provincial or territorial participation in a review, federal participation in a provincial review or any other co-operative arrangements.

FEAR0 provides advice to the Minister of the Environment on environmental impact assessment matters and makes recommendations about the process. It administers the funding for the Canadian Environmental Assessment Research Council. The Council, made up of knowledgeable persons drawn from industry, the consulting and academic communities and government, was formed in 1984 to advise governments, industry and universities on ways to improve the scientific, technical and procedural basis for environmental assessment. The Council's secretariat is provided by FEAR0 and Environment Canada.

PUBLICATIONS AVAILABLE FROM FEAR0

- Bulletin of Initial Assessment Decisions (issued quarterly)
- Environmental Assessment and Review Process, Guidelines Order
- Initial Assessment Guide, Federal Environmental Assessment and Review Process
- Environmental Assessment Panels: Procedures and Rules for Public Meetings
- Register of Panel Projects (including a list of panel reports)

ADDRESSES AND TELEPHONE NUMBERS

FEAR0
13th Floor
Fontaine Building
Hull, Quebec
K1A 0H3

(819) 997-1000

FEAR0
Suite 510
750 Cambie Street
Vancouver, B. C.
V6B 2P2

(604) 666-243 1

APPENDIX A

GLOSSARY

AREA-WIDE REVIEW

Includes a number of proposals for a large area which may be at different stages of planning or based on different levels of scientific knowledge.

ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS (EARP)

The procedure used by federal departments to consider the full environmental implications of all proposals for which they have a decision-making authority.

ENVIRONMENTAL DESIGN REVIEW

Focuses on the appropriate environmental terms or environmental design parameters that should be used to keep adverse impacts at a minimum.

ENVIRONMENTAL IMPACT

The effect of an intervention on a community of plants, animals or humans and on the environment that they inhabit and with which they interact, including effects on human health and well-being.

ENVIRONMENTAL IMPACT ASSESSMENT

An activity to identify, predict and interpret the environmental impact of an action.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

A detailed documented assessment of the potential significant environmental consequences of any proposal that is produced by, or for, a proponent, in accordance with the information requested by an environmental assessment panel for a public review.

CONCEPT OR GENERIC REVIEW

Held very early in planning for a range of proposals dealing with new concepts or technologies.

DEPARTMENT

Under the Guidelines Order this means any department, board or agency of the Government of Canada, any parent corporation listed in Schedule C to the Financial Administration Act, and any regulatory body.

GUIDELINES ORDER

The Environmental Assessment and Review Process Guideline Order (P.C. 1984-2132 SOR/84-467 - June 22, 1984).

INITIAL ASSESSMENT

An examination of a proposal to determine if, and to what extent, there are potentially adverse environmental impacts and if public concern about the proposal is such that a public review is desirable, and if a public review is not needed, to identify appropriate environmental design and mitigation features to be incorporated into the project design.

INITIATOR or INITIATING DEPARTMENT

Any department that on behalf of the Government of Canada has to make a decision about a proposal.

PANEL

A group appointed by the Minister of the Environment to review a proposal that was referred by an initiator for public review.

PARENT CORPORATION

Corporations as listed in Schedule C to the Financial Administration Act.

PROPONENT

The organization intending to undertake a proposal for which the Government of Canada has a decision-making authority.

PROPOSAL

Any initiative, undertaking or activity for which the Government of Canada has a decision-making responsibility, in accordance with the Guidelines Order.

PUBLIC HEARING

An open public forum held by an environmental assessment panel to gather facts and concerns during a public review of a proposal.

ROLES AND RESPONSIBILITIES DURING INITIAL ASSESSMENT

Initiating Department

- establishes lists of proposal types for automatic exclusion and referral
- conducts initial assessments of proposals for which it has the decision-making authority
- determines if there are any adverse environmental impacts
- gives FEARO information about initial assessment decisions
- ensures all its federal-provincial, territorial, international agreements reflect the principles of EARP
- budgets for implementation of the Process

Other Departments

- give specialist advice and information to initiating departments
- are advocates for their own responsibilities

FEARO

- produces procedural guidelines for initial assessment
- upon request, assists initiating departments in providing information on and seeking public response to a proposal
- periodically prepares a report to the Minister of the Environment on implementation of the Process
- publishes a summary of public information supplied by departments on their initial assessment decisions

APPENDIX C

ROLES AND RESPONSIBILITIES DURING A PUBLIC REVIEW

Proponent

- prepares Environmental Impact Statement or other documents in accordance with panel guidelines
- submits EIS in quantity and languages needed
- conducts public information program
- provides officials and experts to make presentations and answer questions at public meetings and hearings

Initiating Department

- Minister consults with Minister of the Environment on terms of reference for panel
- ensures proponent fulfills review responsibilities
- provides officials and experts to make presentations and answer questions during public meetings and hearings

Other Departments

- provide specialist advice, information and experts
- are advocates for own responsibilities

Minister of the Environment

- appoints members of each environmental assessment panel
- consults with initiating Minister on terms of reference for a panel
- issues to panel and makes public the terms of reference that outline the scope of review

Panel

- examines environmental and directly related social effects of the proposal

- examines other aspects of proposal, if normal scope of review is expanded
- establishes and publishes detailed operating procedures
- may issue guidelines for preparation of EIS
- conducts public information program
- provides public access to information and allows time to study it before public hearings
- holds hearings that are public, non-judicial and informal, though structured
- may question review participants on the relevancy and content of information submitted
- prepares a report for the Minister of the Environment and the initiating Minister

FEA RO

- consults with initiator on a panel's terms of reference
- drafts terms of reference for Minister of the Environment
- identifies potential panel members
- makes contractual arrangements with panel members
- negotiates provincial or territorial participation in federal review or federal participation in provincial review
- Executive Chairman or delegate is usually chairperson of a panel
- provides secretariat, logistic and administrative services for panels
- provides written procedures, advice and assistance to panels on procedures and policy to ensure consistency between public reviews

**ROLES AND RESPONSIBILITIES AFTER A
PUBLIC REVIEW***Proponent*

- carries out monitoring, surveillance and post-assessment as required

Initiating Department

- makes panel report public
- decides extent to which panel recommendations are implemented
- decides manner in which decisions on proposal are announced
- ensures any decisions are incorporated into the design, construction and operation of proposal and that inspection and environmental monitoring programs are established

Other Departments

- decide extent to which recommendations affecting them are implemented

Minister of the Environment

- makes panel report public

FEARO

- distributes panel report
- maintains archives
- may make recommendations to the Minister of the Environment about the process