

THE PROVISIONS **OF** THE POLICY OF THE

GOVERNMENT **OF CANADA**

ESTABLISHING

THE FEDERAL **ENVIRONMENTAL** ASSESSMENT AND REVIEW **PROCESS**

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On Thursday, March 14, 1974, the then Minister of the Environment, the Honourable Jack Davis, announced in the House of Commons the adoption of a Policy, by the Government of Canada, whereby "beginning April 1, 1974 federal government projects will be screened to ensure that they do the least possible damage to our natural environment".

The Policy required that:

- 1. An environmental assessment and review process be established within the federal government to ensure that departments and agencies:**
 - a) take environmental matters into account throughout the planning and implementation of projects, programs and activities initiated by the department or agency, or for which federal funds are solicited or for which federal property is required;**
 - b) undertake or procure an assessment of potential environmental effects on time before commitments or irrevocable decisions are made for all undertakings which may have an adverse effect on the environment;**
 - c) submit the assessments made for all major undertakings that will have a significant effect on the environment to the Department of the Environment for review;**
 - d) incorporate the results of environmental assessments and reviews in the design, construction, implementation and operation of projects, giving environmental problems the same degree of consideration as that given to economic, social, engineering and other concerns; and**
 - e) include in program forecasts and annual estimates the funds necessary to carry out the intent of this policy and program**
- 2. Proprietary crown corporations and regulatory agencies be invited to participate in the environmental assessment and review process.**
- 3. The Minister of the Environment in cooperation with other Ministers establish:**
 - a) a procedure for administering the environmental assessment and review process including arrangements for the public to comment on the environmental issues, with provision for public meetings when appropriate;**
 - b) an Environmental Assessment Panel consisting of qualified personnel from within the Department of the Environment, with arrangements for the appointment of a member of a department whose case is under review for the period of that review, and with terms of reference;**

- c) in special cases, an Environmental Review Board external to the government service; and
 - d) a procedure for cooperating with provinces and territories in the undertaking and reviewing of environmental assessments of projects of mutual concern.
4. The Interdepartmental Committee on the Environment review the environmental assessment and review process at the end of its first year of operation and make such recommendations to Cabinet through the Minister of the Environment as it deemed appropriate.
5. An Environmental Assessment Panel be established, with the following composition and functions:
- a) Composition

The Environmental Assessment Panel would be made up of especially qualified personnel from within the Department of the Environment. A department whose prediction statement is before the Panel could also appoint a member for the period of time that their case is under review.
 - b) Functions
 - i) to administer this environmental assessment program
 - ii) to issue guidelines and provide advice on methodology for departments, agencies and others carrying out environmental assessments and preparing prediction statements.
 - iii) to determine the completeness and acceptability of the environmental prediction statements submitted to it.
 - iv) to require submitting departments or agencies to provide background information from their studies so that the Panel can carry out its responsibilities.
 - v) to obtain such information and expert opinion as it requires for the analysis of the prediction statements submitted to it.
 - vi) to make the environmental prediction statements submitted for review available to the public (unless otherwise directed by the Minister of the responsible department in consultation with the Minister of the Environment) and to provide sufficient time for public response, recognizing the need to avoid unnecessary delay in completing the review.
 - vii) to evaluate the environmental prediction statement and identify the deficiencies in the assessment, if any; to determine the adequacy and appropriateness of the measures proposed to mitigate and ameliorate the adverse effects and enhance the benefits; and to draw conclusions.

- viii) to make appropriate recommendations to the Minister of the Environment.

PROCESS AMPLIFICATIONS

In early 1977, at the end of the third year of operation of the Environmental Assessment and Review Process (EARP), there was an identified need to introduce certain modifications to the provisions of the Process. Due, in the main, to the experience gained in the administration of the Process and the review by the Interdepartmental Committee on the Environment, it was felt that it would be advantageous to define certain terms, to adjust certain existing provisions and to provide for the allocation of environmental assessment costs as between the federal government and project proponents.

Consequently the provisions of the Policy were broadened to include the following items.

1. DEFINITIONS

- a) Environmental Baseline Studies are projects undertaken to acquire Environmental Baseline Information which has been defined as a description of environmental properties and processes within a specifically defined area taking into account the dynamic and inter-active nature of ecosystems, which will allow the identification of possible environmental impacts resulting from any anticipated intrusion by man within a specified time-frame, to meet the requirements of the EARP.
- b) Accelerated Baseline Studies are special cases that will arise when an unforeseen undertaking disrupts previously established programs of baseline studies so that a need is created for an accelerated pace of work or for more detailed baseline data than was originally planned.
- c) Environmental Evaluation Reports. The environmental evaluation reports required by the EARP consist of an appraisal of the effects that the proposed project might have on the biological regime and the physical and socio-economic environment. Thus, baseline data is combined with knowledge of the project itself and such site-specific environmental studies as required.
- d) Government Expertise is the set of skills and capabilities acquired by government in the course of conducting scientific research. Some of these skills and capabilities are unique to the government.
- e) Assessment Procedure. This consists of assessing the adequacy and accuracy of the statement itself and the rendering of advice to Ministers with respect to the project. The advice will range from a recommendation that Ministers allow the project to proceed, with or without stipulations, to a recommendation for outright refusal.

f) Surveillance

i) Proponent Inspection and Reporting

This consists of submitting plans and operational information, conducting planned repetitive tests and inspections of effluents, emissions, wastes and environmental conditions as indicated in the stipulations resulting from the assessment procedure in addition to those required by law. These stipulations are a condition of acceptance and they could cover both construction and operation of the project.

ii) Verification and Enforcement

This consists of routine policing of the performance of the proponent with respect to the stipulations. This is accomplished by the government reviewing the data submitted under f (i), conducting inspections of the location from time-to-time and taking and testing of samples as far as necessary.

iii) Monitoring Studies

These consist of the observation of those environmental systems and components likely to be affected by the activity in question. These studies are conducted as the need arises after a project has been completed and/or is in operation. The intention is to test the predictions and to improve the quality of baseline information.

2. PROCESS ADJUSTMENTS

The Process was adjusted with regard to:

- A) the appointment of panel members from organizations other than the Department of Fisheries and the Environment and the initiating department by:**
- i) the Chairman of the Environmental Assessment Panel who may select panel members from within the federal Public Service in agreement with the representative from the department initiating the project and with the other department whose expertise is desired; and**
 - ii) the Minister of Fisheries and the Environment who may appoint panel members from outside the federal Public Service in an agreement with the Minister of the initiating department;**
- B) strengthening the existing review mechanism to provide the Minister of Fisheries and the Environment with sufficient information on federal projects assessed by the initiating departments themselves to evaluate the effectiveness of this phase of the Environmental Assessment Process; procedures for implementation will be developed**

jointly with each department and agency significantly involved with the Process; and

- C) ensuring that federal departments and agencies provide information on, and seek public response to their projects early in the planning stage before vital decisions are taken that may be difficult to alter regardless of public opinion.

3. **COSTS ALLOCATION**

With respect to the allocation of environmental assessment costs as between the federal government and project proponents the following conditions are to apply:

- a) where practicable, the allocation of financial responsibility be made in accord with the principle that the polluter, or potential polluter pays; and, that consequently, where government services are provided in support of a specific project, the proponent should bear those costs that are clearly incremental to a department's normal budgetary expenditures;
- b) to avoid the practical problems that could possibly result from the polluter-pay principle, the guidelines for the allocation of financial responsibility be as follows:
- i) as defined in Section 1 above, the federal government would bear the costs of:
 - baseline studies
 - the assessment procedure
 - verification and enforcement
 - monitoring studies
 - ii) as defined in Section 1, the proponent should bear the costs of:
 - preparing the environmental evaluation reports
 - any expertise unique to the government that is required to prepare these reports
 - proponents inspection and reporting
 - iii) the government and the proponent share the cost of accelerated baseline studies, as defined in Section 1, the incremental cost caused by acceleration being charged to the proponent.
- c) initiating departments are to apply, to the extent practical, the concept that, costs for which a proponent would be ultimately responsible should not be incurred without a guarantee from the proponent that full payment will be forthcoming within the fiscal year in question, and on the understanding that applications not be processed until all outstanding costs have been recovered.