THE CANADIAN GUIDE TO

ENVIRONMENTAL ASSESSMENT ABROAD

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Federal Environmental Assessment Review Office

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ENVIRONMENTAL ASSESSMENT: A SUMMARY 1970193

The purpose of this document is to provide a short, current, and accurate reference for Canadians that describes major features of environmental assessment practice abroad in jurisdictions with reasonably long experience doing environmental assessments.

The United States' ***Na tional Environmental Policy Act (NEPA)*** (1970) created the world's first environmental assessment system. In the United States, NEPA gave the environment a new prominence in decision-making, and created new methods and procedures for the government, the developer, and the concerned public. By 1980, environmental assessment had become an accepted procedure for the federal government. Likewise, most states developed their own environmental assessment systems which were strongly influenced by NEPA. NEPA also influenced leaders in other countries who were concerned about the environmental price of development. Within a decade, various industrialized democracies had environmental assessment procedures that included central features of the American experience.

In 1973, the Government of Canada created the federal Environmental Assessment and Review Process (EARP). The province of Ontario became the world's second government to pass environmental assessment legislation, the ***Environmen ta/ Assessment Act*** of 1975. Quebec followed in 1978 with major amendments to the ***Environment Quality Act.*** During the early 1980s, most other provinces passed environmental assessment acts or similar legislation. In 1984, the federal government issued an Order in Council, the ***Environmental Assessment and Review Process Guidelines (EARP) Order,*** which more clearly defined roles and responsibilities. But by the mid-1980s, the public had become very concerned about the environment and demanded more dramatic change. In 1989, a new sense of urgency was injected into the debate about reforming the federal process because the Federal Court ruled that the ***EARP Guidelines Order*** is not a voluntary guideline but a binding law of general application. In June 1990, the federal Minister of the Environment tabled a Bill in the

House of Commons to establish in law the federal environmental assessment process. Parliament passed the Bill and the Canadian *Environmental Assessment Act* became law. When he tabled the Bill, the Minister also announced that in the future, new federal policy initiatives requiring Cabinet approval would also be assessed for environmental effects.

In the mid-1970s, Australia and New Zealand adopted environmental assessment procedures. In February 1992, Commonwealth and State governments in Australia adopted an intergovernmental agreement to coordinate and to harmonize environmental management between and among the different levels of government. In 1991, New Zealand passed the Resource *Management Act,* which fundamentally reorganizes how the country deals with overall resource management, including the role of environmental assessment.

In the 1970s, Japan created the world's most strict pollution-control system. During the late 1970s and early 1980s, an intense debate occurred on how to establish more systematic and binding ways to do environmental assessment. In the end, Japan decided not to pass an environmental assessment act, and opted for a more decentralized approach based on a general guideline and a series of specialized ministerial guidelines, coupled with ordinance and guidelines of prefectures and cities.

Similar events were occurring in Europe. Some countries such as Great Britain, West Germany, and Denmark required specified environmental issues to be addressed in their planning procedures. In 1976, France passed Europe's first environmental assessment legislation, the Law on the Protection of Nature. The Netherlands was working on sophisticated new policy initiatives. The key event was the European Council's adoption of the Directive of June 27, 1985, which required Member States of the European Community to assess prescribed projects for environmental effects using most major procedural elements associated with environmental assessment. Within three years, each Member State was to integrate into it's decision making all of these procedural features.

This was a major challenge. Some Members had payed little attention to the environment. Others had, but only as one item to be considered in their existing permitting procedures. Nonetheless, all Member States and most other west European countries now have procedures for the environmental assessment of projects that could have significant environmental effects.

Environmental issues are now being integrated into public policy by most countries. Although the core concepts have been used and much of the terminology is similar, environmental assessment has adapted itself to the special needs, legal systems, institutions and social values of each country. For example, in North America there is usually a single, separate decision path for environmental assessment. Elsewhere, environmental assessment is only one part of various sectoral permitting processes, and the impact study is just one of a series of documents a competent authority requires when deciding whether or not to grant a licence or permit. There is contrast between North American concern about correct procedure and Japanese concern about technological capacity to combat environmental effects. In short, while environmental assessment methods are similar in all countries, they are never identical in any two.

PREFACE

All of the countries included in this text are industrialized democracies. Because of time limitations, it was decided at the outset to limit the number of countries and other jurisdictions to those with reasonably long experience doing environmental assessments. This limitation should not be interpreted to mean good work is not being done elsewhere. Since the document is about environmental assessment practice outside Canada, there is, of course, no chapter on Canadian practice. Lastly, a decision was made not to include international agencies such as the World Bank that have also done important work developing and applying environmental assessment methods.

Each section is organized in the same way. First, there is a summary of the origins of environmental assessment. This is followed by a comment on the legal authority requiring an environmental assessment, the major agencies involved in the environmental assessment process, and any special features or observations. Lastly, the text outlines the steps in the environmental assessment process from the conception of a proposal to the final decision.

To ensure that the descriptions are accurate and current, they have been based for the most part on official or semi-official documents. In addition, the draft text of each section was reviewed by at least one very knowledgeable individual in the country or agency. Their comments were integrated into this document.

Two printed sources deserve special mention. They are ***Environmental Policy and Impact Assessment in Japan*** by Brendan Barrett and Riki Therival, which contains much detailed information available nowhere else in a western language and the ***EIA Newsletter*** from the E.I.A. Centre at the University of Manchester which was the source of certain critical fragments of the text.

Many people have contributed to this work: first, its prime mover, Martin Green of the Federal Environmental Assessment Review Office (FEARO) who had the idea of this publication and supported it throughout, Stephen Hazell, also of FEARO, Fiona Walsh of the University of Manchester (England), whose assistance in the start-up was critical and who reviewed the chapter on Great Britain, Professor Bernice Goldsmith of Concordia University (Montreal), and Eden Coley of the University of Regina. Then there are the people who kindly reviewed individual sections: Rob Fowler of Australia, David Noble of the European Community, Georges Guignabel of France, Dieter Wagner of Germany, Chouei Konda of Japan, Hans van Zijst of the Netherlands, Lindsay Gow of New Zealand, Terje Lind of Norway, and Elisabeth Blaug and C.P. Wolfe of the United States.

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A UNITED STATES OF AMERICA

THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The United States became the first country to establish an environmental assessment process when President Richard M. Nixon signed into law (1970) the *National Environmental Policy Act (NEPA)*. Many of NEPA's core features set standards followed by other countries, e.g. the expectation that the public should be informed and involved, and the basic contents of an assessment study (a description of the environment and the project, the project's effects on the environment and mitigation measures, and management of residual effects).

In the 1970s, the American process experienced start-up difficulties. This included frequent court challenges over procedures which tied up development, poorly written environmental impact statements (EISs) containing encyclopedic descriptions but little or no interpretation, and a widely held view that environmental assessment was an inconvenient add-on. Court decisions tended to give NEPA a broader interpretation than Congress had intended. Litigation has, however, declined significantly from 189 cases in 1974 to 71 in 1986. By 1980, NEPA had become a recognized part of American government procedure.

During the Reagan Administration (1980-88), there was a cut back in programs that would have triggered NEPA application. Furthermore, the field of environmental law became better established and codified, and generally more limited in its application. Although the courts tended to limit NEPA's role in federal decisions, it did extend its influence to other jurisdictions and authorizations. Consistency with NEPA still remains a major criterion in federal decisions.

The purpose of NEPA is to coordinate federal activities in order to

- "fulfil the responsibilities of each generation as trustee of the environment for the succeeding generation";
- "assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings";
- preserve the cultural and natural heritage;
- achieve a balance of development and resources to permit high living standards; and
- use a systematic, interdisciplinary approach that integrates the natural and social sciences, and environmental design in planning and decision making.

NEPA created the Council on Environmental Quality (CEQ) in the Executive Office of the President. The President may appoint up to three members headed by a Chairman. At present the Council has only a Chairman. CEQ has a staff of just under 40 people. Its responsibilities are to prepare an annual *Environmental Quality Report* on the state of the environment, to oversee NEPA's application, and to advise the President on national environmental policies. On the basis of the framework contained in NEPA, CEQ prepared guidelines in 1973 to implement the Act. The guidelines were amended and reissued as a regulation in 1978. This regulation forms NEPA's procedural core.

NEPA applies to all agencies of government except Congress and any of its institutions, the judiciary, and the President, including his staff. Pursuant to the Regulation of 1978, all federal agencies were to prepare a categorical exclusion list of actions that normally have no environmental effects, and procedures tailored to the agency's mission. Thus, even such entities as the Securities and Exchange Commission and the Central Intelligence Agency prepared NEPA procedures. These documents were submitted to CEQ for its approval. When CEQ did approve, the document appeared in the *Federal Register.* This work was largely completed by 1980.

The NEPA Process: The Regulation of 1978

NEPA applies to all federal agencies. Duplication with state and local procedures is to be eliminated by joint public hearings, joint preparation of environmental assessment, and the adoption of all or relevant parts of their environmental assessments for federal assessments.

Throughout the NEPA process, the lead agency must consult state and local government agencies, Indian tribes, and the public. A cooperating agency is any other federal agency which has a jurisdictional responsibility by law for an action, or special expertise with respect to an environmental issue. A state or local agency, or on a reservation, an Indian tribe, may become a cooperating agency.

When there is more than one federal agency involved, a lead agency is to prepare or supervise the preparation of an EIS. Should agencies be unable to decide among themselves which is the lead agency, the CEO decides.

The Regulation establishes three classes of action: those that are categorically excluded from further NEPA review; those that require an environmental assessment (EA); and those that require an EIS.

The EA has become a key link in NEPA. It is a planning device. The EA addresses needs, alternatives, the project, the environment, and the project's environmental effects and mitigating measures. It contains sufficient data to determine whether or not a project requires an EIS because it has potentially significant environmental effects, and to facilitate the preparation of an EIS should one be needed. The EAs relative importance can be seen in the decrease in the numbers of EISs being done. Between 1979 and 1991, 9069 EISs were prepared, but the annual number has consistently declined.

An EIS is to be analytic rather than encyclopedic. It is normally expected to be 150 pages

or less, but may contain up to 300 pages for proposals of unusual scope or complexity. The lead agency is to focus on significant environmental issues, all reasonable alternatives (including the no action alternative) that are consistent with its authority, and the reduction of paperwork and extraneous background data.

In addition to the project-specific EIS, a federal agency must do a programmatic EIS before making a decision on a major program or plan with significant environmental effects. It may be broad in scope and then be followed by site-specific EISs or EAs prepared later. The process of preparing a broad EIS and using information it generates in subsequent more focused NEPA documents is called tiering. Although there is nothing to prevent an agency from doing an EIS for a government-wide policy, none has yet been done.

Following are the steps which may be followed in a typical environmental assessment:

- As early as possible in planning, the lead agency should apply NEPA. First, it should decide whether its proposal is on its exclusion list or requires an EIS. If it is not certain, the lead agency does an EA. The EA is reviewed by cooperating agencies, and if required, the potentially affected publics are consulted.

- When the responsible official finds there are no significant effects or the project is modified to eliminated them, the official issues and makes public a Finding of No Significant Impacts (FONSI). Although both the EA and the FONSI are public documents, they are not filed in a central location.

- When an EIS is needed, the lead agency places a Notice of Intent in the *Federal Register,* and begins the scoping process. The lead agency invites federal, state and local agencies, any affected Indian tribe and other interested parties to identify significant issues for in-depth assessments in the EIS. The lead agency also seeks to find related or similar assessments, and meets the public when and if necessary

- When it has completed the draft EIS, the lead agency distributes the document for review to participants in the scoping exercise and files it with the Office of Federal Activities in the Environmental Protection Agency (EPA). Each week it publishes in the *Federal Register* a list of EIS titles it has received. The draft EIS must be circulated for at least *45* days for public comment and review.

- After it has received comments from interested parties, the lead agency uses relevant input to revise the final EIS or explain why the comments do not warrant further agency response. All comments must accompany the final EIS.

- The final EIS is circulated again. A copy is also filed with the EPA. Again the EPA includes the EIS's title in its weekly list in the *Federal Register.*

- When a cooperating agency has a major disagreement with the lead agency's EIS that involves potentially important adverse environmental effects, the two first try to reach an informal agreement. If this fails, the lead agency may refer its comments to the CEQ. If CEQ accepts the referral, it has several options. Generally it publishes its findings and recommendations on the issue and parties accept its conclusion. In an extraordinary case involving a matter of national importance, CEQ does have the power to submit the referral to the President for his action.

- After the final decision is taken, the responsible official must sign a Record of Decision (ROD). A ROD is a concise public document which gives the rationale for the preferred alternative, a description of mitigation measures which make the selected alternative environmentally acceptable, and any applicable enforcement or monitoring programs also acceptable.

CALIFORNIA

Many states and larger cities (e.g. New York City) have developed their own environmental assessment process based on the federal model.

Under the ***California Environmental Quality Act,*** government agencies must do environmental assessments following similar procedures created under NEPA. They must prepare an environmental impact report (EIR) for proposed actions.

They are also required by regulation to prepare programmatic or generic **EIRs** for policies, plans, and programs. State agencies prepare program **EIRs** for related activities that are linked geographically, a logical part of a series of planned actions, plans that govern a continuing program, or part of a series of actions affected by the same agency that have similar environmental effects and can be mitigated in similar ways.

Program **EIRs** have advantages. They provide a more exhaustive consideration of alternatives, as well as an opportunity to consider cumulative effects and to limit the repetitive study of policy-related issues. Their greatest use is to apply program parameters to individual projects by identifying alternatives and mitigating resources. When an agency does an initial study for a project, it may decide that project's environmental effects are adequately addressed in the program EIR. In a process called tiering, it incorporates by reference relevant data in the program EIR.

The most common application of program **EIRs** is to do them with general city and county plans. Municipalities are encouraged to combine their comprehensive planning processes with the program EIR process.

B. EUROPE

THE EUROPEAN COMMUNITY

European leaders first began to consider a Community-wide environmental assessment policy in the mid-1970s. After protracted negotiations involving the Commission and the Council of Ministers, coupled with a debate in the European Parliament, the Council adopted its Directive of June 27, 1985.

In 1985, there was a wide range of methods through which Member States approached (or ignored) environmental issues. Only France had environmental assessment legislation (1976). The Netherlands had. been developing creative environmental impact assessment (EIA) policy and methods. In Great Britain, Denmark, and West Germany, environmental issues were considered when making decisions. The concept of environmental impact assessment (EIA) was new in most other States. In contrast to the United States and Canada, European countries have integrated planning and permitting processes to licence development projects rather than have a separate procedure for environmental assessment. A project's EIA is added to other designated studies and information to be considered by a competent government authority when deciding whether or not to permit a project to proceed. The inclusion of transboundary effects was a particulary sensitive issue when drafting the Directive.

The Directive offered a major challenge to European legislators and officials because its main features must be integrated with the same level of rigour into twelve different and complex constitutional, legal, planning, and administrative systems for a wide range of major industrial facilities and development projects. To ensure fair economic competition among Member States, the systematic implementation of environmental assessment must be done with equal rigour in all countries. This poses a special challenge to planning agencies.

The Directive required all Member States to develop procedures within three years to carry it out. Environmental assessment legislation, regulations, etc. has appeared in most Member States:

- **Belgium - The** Decree of September 11, 1985, in Wallonia; the Administrative Order of September 1, 1991, in Flanders; Brussels-Capital Region has no legally binding procedure.

- Denmark - The Executive Order of June 23, 1989, which amended the National and Regional Planning Act, the Regional Planning Act for the Metropolitan Region and the Environmental Protection Act.

- France - Law on the Protection of Nature (1976) and the Implementation Decree (1977) (pp. 13).

- Germany - The Act on the Implementation of the Council Directive of 27 June 1985 on the Assessment of the Effects of Certain Public and Private Projects on the Environment (February 12, 1990) amends 15 federal acts to implement the Community Directive (pp. 17).

- Great Britain - Under the *European Communities Act (1972)* minsters may supplement legislation without an act of Parliament. Most planning processes were amended by 17 regulations to accommodate the EC Directive. The most important is the ***Town*** *and Country Planning (Assessment of Environmental Effects) Regulations 1988* (pp. 20).

- Greece - The Law for the Environment (1986) and the implementing Ministerial Decision of October 10, 1990.

- Ireland - 12 regulations (1988-90). The principal regulations were the *European*

Communities (Environmental Impact Assessment) ***Regulations*** *7 989;* and the *Local Government (Planning and Development) Regulations 7* 990.

- Italy - Presidential Decrees of August 10 and of December 28, 1988. No EIA legislation.

- Luxembourg - No EIA legislation or other legally binding requirements.

- Netherlands - An amendment of the General Environmental Protection Act (1986) and the General Administrative Order (1987) (pp. 24).

- Portugal - The Decree Law Instituting the National System of Environmental Impact Assessment (June 6, 1990)

- Spain - Royal Legislative Decrees of 1986 and of 1988. No EIA legislation.

Member States have applied the Directive quite differently. The Netherlands, with its experience in innovative EIA methods, has a sophisticated EIA regime. Others continue to grapple with EIA concepts, meshing them with existing procedures, and continue to develop the needed professional skills. The greatest challenge has been applying the Directive "...to all projects likely to have significant environmental effects (Article 2, Section 1)". There have also been difficulties with the development of public consultation methods and building public concerns into decisions.

Within the Community's Directorate General Xl of Environment, Nuclear Safety and Civil Protection, Division B2 is responsible for EC-wide EIA policy and technical advice. It has four areas of activity:

1) The Directive's implementation by Member States, support of EIA training, writing the Directive's five-year review, and preparation of any amendments to the Directive arising

from that review.

2) The development of a proposed new directive for policy and program assessment, and the integration of environmental assessment/evaluation into Community financial plans, such as structural funds, to narrow the gap between rich and poor regions.

3) Providing advice within the Commission, responding to individual complaints, parliamentary questions, etc.

4) The implementation of EIA at the international level, e.g. the amendment of the Directive's transboundary provision to reflect the ECE's Convention on EIA in a Transboundary Context, which the Community signed.

Contents of the Directive of June 27, 1985:

- **The** private and public projects likely to cause significant environmental effects must be assessed for potential impacts. Member States must adopt all measures necessary to ensure such assessments.

- The assessment must include impacts on the biophysical environment including man, and material assets and cultural heritage. Two classes of public and private projects that must or may be submitted to an assessment are listed in two annexes (See below).

- The developer carries out a study that includes a description of the existing environment, the project's effects, and mitigating measures. Public authorities that have information the developer needs must supply it to the developer.

- Member States must designate environmental authorities, who are given an opportunity to express a view on the request for development consent. States

shall ensure that the concerned public can express its opinion before a project's initiation. Where there could be transboundary impacts, information must be made available at the same time to the nationals of other affected States. States are to develop bilateral mechanisms for information exchange.

- When the competent authority makes a decision, it must inform the concerned public of the decision, its rationale, and any relevant conditions.

- The Directive shall not impinge on existing legal practice with regard to commercial secrets and safeguards to public interest.

- A State may exempt a project in exceptional circumstances, but must also make public this decision, along with its reasons, and inform the Commission prior to granting consent.

- The Directive was to have been implemented by all Member States within three years. Within five years the Commission is to prepare a public report for the European Parliament and the Community's Council.

- Annexes I and II define the scope of application.

- Annex I. Projects that must be assessed:
    1. Crude-oil refineries and major coal gasification and liquefaction installations
    2. Major fossil-fuel power stations and all nuclear reactors
    3. Permanent storage installations for radioactive waste
    4. Integrated cast-iron and steel installations
    5. Asbestos extraction and processing works; major works for the production of asbestos products
    6. Integrated chemical installations
    7 Major highway and railway construction

8. Major trading ports and inland waterways
9. Disposal of toxic and dangerous wastes.

- Annex II. Projects whose environmental assessment is at the States' discretion, but subject to the overriding requirement to submit to assessment all projects likely to have significant environmental effects. Member States may set thresholds or criteria for selecting which projects should routinely be subjected to an EIA:

  1. Agriculture - 8 types of agricultural and marine development
  2. Extractive Industries - 13 types of extraction and processing
  3. Energy Industry - IO types of energy transportation and the construction of energy installations
  4. Processing metals - 11 types of metal foundries and manufacture using metals
  5. The manufacture of glass
  6. Chemical industry - the use, production and storage of chemicals
  7. Food industry - 9 types of food manufacturing
  8. Textile, leather, wood and paper industries - 6 types of related manufacturing
  9. The rubber industry
  10. Infrastructure projects - 10 types of industrial, urban, transportation and recreation development projects
  11. Other projects - 10 types involving recreation, waste management, and the manufacture of explosives and bullets.
  12. Major modification to projects in Annex I

FRANCE

France was the first European country to pass an environmental assessment act. The Law on the Protection of Nature (1976) requires private- and public-sector proponents to conduct an environmental assessment for projects that could have adverse environmental effects. The key purposes of the law are to ensure that project proponents consider the environment when planning a project, to help authorities make better decisions, and to inform the public of the project's potential environmental effects.

The manner of applying the law is contained in the Implementation Decree of October 12, 1977, France has a comprehensive approvals system for projects that could have adverse environmental effects. The decree adds a project's environmental assessment to the other issues that must be considered by government administrators who manage the various processes and decide whether a project may proceed. These processes have different procedures and are based on various legal instruments (laws, codes, decrees, etc.): e.g. the Code for Urban Planning, Forestry Code, Mining Code, the Code Concerning the Public Domain of Rivers and inland Shipping, the Rural Code.

Public access to the approval process was broadened by the Law of July 12, 1983, on the Democratization of Public Enquiries and the Protection of the Environment. The procedures for public access were defined in the Application Decree of April 23, 1985. The public may consult the project file, meet with the Investigation Commissioner, participate in public meetings, and make counter proposals to actions in the project file.

France is divided into 95 administrative departments. Each department is headed by a prefect, a powerful representative of the central government who is appointed by presidential decree and has wide executive powers. The prefect makes the final decision on most projects which are influenced by the findings generated during the approval processes, and which include an environmental assessment along with other designated

information.

Administrative tribunals in the French government appoint a neutral investigation commissioner who manages public access to project files and to which opponents may appeal an administrative decision. The Council of State is the highest court of appeal for tribunals in the French administrative legal system.

The implementation decree created two levels of study: impact assessment studies for projects with potentially moderate or major effects, and notices of environmental impacts for certain designated small projects with potentially minor effects. The implementation decree introduced a general requirement to assess all projects. This requirement is limited only by a project's physical and financial thresholds (6,000,000 francs or $1,410,000 Canadian) and not by its environmental sensitivity. The impact assessment study for a project should include a baseline information study, an impact assessment, a justification for the preferred option and mitigating measures. Although the implementation decree does not set out either general guidelines that are legally binding or project-class guidelines, process administrators have prepared advisory procedural manuals to help proponents prepare their impact assessment studies.

The Implementation Decree of 1977 empowered the minister responsible for the environment to intervene either by his own initiative or in response to a request from the public. The minister has no formal authority to assume jurisdiction over the management of a project or to delay the approval process. However, the minister may make comments on a project's effects and these comments can influence the final decision.

The number of studies conducted annually under the law is between 5,000 and 6,000. About two-thirds are done by private-sector proponents. An approximate sectoral breakdown is as follows: industrial activities - 2,000; agricultural activities - 1,000 to 1,500; quarries - 500; transportation infrastructure - 500; urban development - 300; energy production and transmission - 100; sewage and water treatment - 100; tourism - 50.

Critics of the studies often claim that the quality of the studies is inadequate, that procedures are fragmented and difficult to follow, and that the public does not receive an adequate opportunity to participate meaningfully in the process.

Major steps in a typical environmental assessment within most French approval processes:

- The proponent prepares and submits its environmental assessment to the authority of the government agency responsible for managing the specific approval process.

- The authority submits the environmental assessment for review to other government agencies with an interest in the project. The Department of the Environment and its regional offices may be consulted on environmental issues.

- The authority examines the environmental assessment and its technical review along with other pertinent information in the project file needed to make a decision.

- The authority makes the project file available to the public in the 'area affected by or located near the project.

- The responsible administrative tribunal appoints a neutral investigation commissioner who manages public access to the project file. The commissioner may require more information from the project proponent and visit the project site. With the consent of the prefect, the investigation commissioner may also hold public meetings. The written comments received from the public regarding the project are added to the project file.

- At the end of the enquiry the investigation commissioner prepares and submits to the prefect a report containing a synthesis of the contents of the file and his own conclusions.

- The prefect must consider all aspects of the project and decide whether or not the project should proceed and, if so, with what mitigating conditions. However, for larger designated projects, the responsible minister himself may be empowered to make the decision whether or not the project should proceed.

- Opponents to a project may appeal the decision through administrative tribunals, including the Council of State. The tribunals strike down a decision only when the proponent's impact assessment study is deemed inadequate.

GERMANY

Under the German constitution, the federal government passes framework legislation for most matters requiring an environmental assessment and each of its 16 states (*Länder*) passes specific legislation and adopts procedures to actually implement the federal laws. To implement the EC Directive, the federal government passed the Act on the Implementation of the Council Directive of 27 June 1985 on the Assessment of the Effects of Certain Public and Private Projects on the Environment (EIA Act) (1990). The EIA Act caused no significant change to German administrative law. It integrated environmental assessment into existing permitting procedures by amending fourteen federal statutes (listed below) and did not create an independent procedure. The Act determines whether or not a project is subject to an EIA and what minimum requirements must be met in carrying out an EIA. A project's environmental effects constitute only one issue a competent authority must consider, and are not the sole determinant in the authority's decision. Authorities continue to base their decisions on all of the required information, as well as the broad implications of the project, which must be assessed under all statutes.

The Act applies to all projects in the Directive's Annex I (mandatory)(p. 11) and many in Annex II (optional) (p. 12). Furthermore, it applies not only to new projects but also to "...considerable alterations of a plant as far as they have significant environmental effects". The majority of EIAs are done for major alterations, rather than new projects. An environmental impact assessment (EIA) includes the identification, description, and assessment of effects on: human beings, animals and plants, soil, water, air, climate and landscape, including individual interaction that may occur, and cultural goods and other material assets.

The Act is considered a partial and pre-codification of the long-term goal of a Federal Environmental Code.

Summary of requirements under the Act:

- The developer informs the competent authority about a planned project. The competent authority discusses with and informs the developer about the probable scope of the assessment (subject, extent and methods), and the type and scope of documents the developer will probably have to submit. The competent authority may also ask other authorities, experts, and third parties to comment on the proposal. The competent authority makes available to the developer relevant information that may have been generated.

- As early as possible, the developer submits to the authority: a description of the project and the environment; reasonable alternatives for which an assessment may have been needed; the types of emissions and residual substances; a description of significant environmental effects; proposed mitigation measures.

- The competent authority distributes all information needed to grant permission (including the EIA) for comment to other authorities with an interest in the project.

- Should the project have possible transboundary effects on an EC Member State, its authorities are informed at the same time as those in Germany. This requirement also applies to neighbouring states which are not EC member on the basis of reciprocity and equivalence.

- The competent authority holds public hearings on the developer's information.

- The competent authority prepares a summary report of the project's environmental effects to be considered as part of the licensing process.

- When there are parallel procedures, the State assigns to one authority the

responsibility for scoping and summarizing the environmental effects. All authorities then prepare an overall assessment of the environmental effects for use with other required information to decide whether or not to grant permission for the project to proceed. Likewise, in two- and three-stage licensing procedures, an environmental assessment procedure must be adapted so that an environmental assessment is done as early as possible and throughout the permitting process without duplication.

- The competent authority informs the public of its decision, including individuals who are known to the competent authorities.

Acts amended by or included under the EIA Act:

- Act on Regional Planning
- Federal Emission Control Act
- Waste Avoidance and Waste Management Act
- Atomic Energy Act
- Federal Water Act
- Federal Nature Conservation Act
- Federal Act on Trunk Roads
- Federal Waterways Act
- Federal Passenger Transport Act
- Federal Air Traffic Act
- Act on the Consolidation of Farmland
- Federal Act on Mining
- Federal Railways Act
- Act on the Construction and the Operation of Testing Installations for Testing Technologies for Track-bound Transport

GREAT BRITAIN

The ***European Communities Act*** (12) authorizes ministers to implement new EC policies without a new Act of Parliament by promulgating regulations that supplement existing British legislation. Since 1947, Great Britain has had a town and country planning system to approve applications that involve the development of lands. The approval process included specific environmental requirements. No separate environmental assessment procedure was created to carry out the EC Directive of June 27, 1985. Rather, environmental assessment has been integrated by regulation into existing regulatory/planning procedures. The main link between the local authorities and the central government in England is the Department of the Environment. Elsewhere the local authorities deal with the Scottish and Welsh Offices of the Department of the Environment and the Department of the Environment for Northern Ireland.

Sixty per cent of the 472 environmental assessments done between July 1988, and December 1990, were carried out under the 1988 ***Town and Country Planning (Assessment of Environmental Effects) Regulations*** (SI 1199). The Regulation's key provision is that "the local planning authority...shaii not grant planning permission pursuant to an application to which this Regulation applies unless they have first taken the environmental information into consideration." As with the EC Directive, the Regulation created two schedules of projects (p. 11): those which always require an environmental statement (ES) (Schedule I), and those which the local planning authority may deem to require an ES because the project could have effects "by virtue of factors such as its nature, size and location" (Schedule ***2). The*** regulation contains a check list prepared by the Department of the Environment to provide a rough framework for doing an environmental assessment (Schedule 3). Information may be classified under the following headings: project description, the existing environment, the project's environmental effects, mitigating measures, and risks of accidents and hazardous developments. When the planning authority is dissatisfied with the developer's information,

it may ask for supplementary information.

To conform with the EC Directive for cases not covered by this Regulation, special regulations have required environmental assessment under other Regulations (see below).

Summary of the process under the *Town and Country Planning (Assessment of Environmental Effects) Regulations 1988* (SI No. 1199):

- The developer should consult the local planning authority to ascertain which Schedule its project falls in, whether the authority may ask for information for projects in Schedule 2, and what reasons the authority could have for requesting additional information. The developer should present a summary document that identifies the project's site, describes the project and its effects, and any other information the developer deems appropriate.

- If a developer does not submit an ES for a proposal in Schedule 1, the authority may not proceed with the application process. If an authority asks for an ES, and the developer refuses or fails to prepare one, the authority must reject the application. If the developer disagrees with an authority that an ES is required, he may apply to the Secretary of State for the Environment who would review documentation, and then concur or reject the authority's decision.

- When an ES is required, the authority informs government agencies with specialized environmental expertise (e.g. the Countryside Commission, the English Nature Conservancy Council, etc.). These bodies consult with the developer to determine if they already possess information that would be useful to the developer so they can provide him with it. They do not have to undertake new information-gathering studies, and may make a reasonable charge for making the information available to the developer.

- When an ES is submitted, the public must be informed and the ES made available along with other planning documents for public scrutiny and comment.

- The planning authority decides whether or not a developer's project may proceed. Although the Secretary of State for the Environment can intervene in granting permission, the power is used only for a small number of projects with national or regional importance.

- Opponents to a project can may appeal to the courts for non-compliance with regulations. To date, British judges have found for the applicant only when a planning authority has failed to comply with a statutory requirement. The judges have not questioned the merits of the actual decision.

British Environmental Assessment Regulations:

- ***Town and Country (Assessment of Environmental Effects) Regulations*** (SI No. 1199)
- ***Environmental Assessment (Scotland) Regulations 1988*** (SI No. 1221)
- ***The Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988*** (SI No. 1218)
- ***The Environmental Assessment (Afforestation) Regulations 7988*** (SI No. 1207)
- ***The Land Drainage Improvement Works (Assessment of Environmental Effects) Regulations 7988*** (SI No. 1217)
- ***The Highways (Assessment of Environmental Effects) Regulations 7988*** (SI No. 1241)
- ***The Harbours Works (Assessmen t of En vironmen tal Effects) Regulations 1988*** (Sl No. 1336) and ***(No. 2)*** 7990 (Sl No. ***424)***
- ***Town and Country {General Developmen t) (Scotland) Amendment Order 1988*** (SI ***No.*** 977) and No. 2 ***Order 1988*** (SI No. 1249)
- ***Town and Country Planning General Development Order 7988*** (SI No. 1988)

- ***The Electricity and Pipeline*** *Works (Assessment of Environmental Effects) Regulations 1990 (Sl No. 442)*
- *The Roads (Assessment) of Environmen* ***tal Effec ts)*** *Regulations (Northern Ireland) 1988* **(SR No.** *344)*
- ***The Planning (Assessment of*** *En vironmen* ***tal*** *Effects) Regulations (Northern* ***Ireland)*** *7989* **(SR No.** *20)*
- *The Environmen* ***tal*** *Assessment (A fforestation) Regulations (Northern* ***Ireland)*** *7989* **(SR No.** *226)*
- *The Harbour Works (Assessment of Environmental Effects) Regulations (Northern Ireland) 1990* (SR No. 181)
- *The Environmental Assessment (Flood* ***Relie*** *f Work) Regulations (Northern* ***Irelan d)***
- *The* ***Environmental Assessment*** *(Discharges to Water) Regulations (Northern* ***Irelan d)***

NETHERLANDS

An amendment to the General Environmental Protection Act (1986) and a pursuant General Administrative Order (1987) requires that an environment impact assessment (EIA) be conducted for classes of developmental and industrial projects, and plans specified on a prescribed list. The list includes all undertakings in Annex I to the EC Directive (pp. 11), and most undertakings in Annex II (p. 12). If **a project** is in an environmentally vulnerable area, an EIA must be carried out. Since the impact assessment is to be meshed with other permitting procedures, an environmental impact statement (EIS) is not just a report, but part of the application for a licence or draft plan.

The Minister of Housing, Physical Planning and Environment and the Minister of Agriculture, Nature Preservation and Fisheries are responsible for the General Environmental Protection Act.

The competent authority is the government agency responsible for deciding whether the project should proceed under the planning legislation. Competent authorities are listed below. The project initiator is a government or private entity that wishes to carry out an undertaking subject to a decision by the competent authority.

The Environment Impact Assessment Commission established under the act is a group of 185 experts from various environmental areas and related fields. They are appointed by the Crown. For each project, the Commission's chairman or his deputy forms a three to six member working group. The members of the group, who must be free of conflict of interest, are selected from the Commission's inventory of experts according to the areas to be affected by the project.

Environmental effects include those on people (public health), flora, fauna, commodities, water, soil, air, cultural and historical heritage, nature and landscape. When preparing an

EIA, the initiator must assess reasonable alternatives and present its conclusions so that a useful analysis can be made. The EIA must address direct, indirect, secondary, cumulative, and synergistic impacts. Cumulative impacts arise purely from successive impairment or pollution of the environment, while synergistic impacts interact to produce an even greater impact. The techniques and methods used must be presented in a way that their calculations and results can be checked for reliability. The EIA must also indicate the degree of uncertainty (risk) associated with the results.

When an EIA must be done for a project requiring more than one licence, an EIA coordinating body may be created to avoid duplication. Coordination is usually done by the Provincial Executive. The coordinating body may require the full cooperation of competent authorities and advisors.

On July 9, 1992, the Cabinet authorized the Minister for the Environment to seek advice from the EIA Commission on methods to assess national policy documents that involve potentially major environmental effects. The legal basis for the new assessment mechanism will be an executive order signed by the Prime Minister.

Steps in the environmental impact assessment process for projects:

- The initiator begins the process by announcing an intention to carry out an undertaking which requires an EIA and submitting a notification of intent to the competent authority.

- The environmental impact statement (EIS) guidelines are prepared during a scoping exercise. The participants include the initiator, involved government agencies, the EIA Commission, and other interested parties, The initiator's guidelines indicate what must be studied, including alternatives. The competent authority must inform the public of the project as early as possible.

- The proponent prepares and submits the EIS for review by the competent authority. The competent authority then decides whether the EIS is acceptable. Normally the competent authority has at least six weeks to review the EIS.

- If the competent authority accepts the EIS, it makes public all documentation, and holds a public hearing.

- The competent authority distributes the EIS to the EIA Commission and to the designated agencies and authorities for a technical review. The Commission checks the document against legislation, regulations and the guidelines given in the preliminary phase to evaluate whether the EIS is accurate and complete. The Commission also reviews the recommendations and comments from the technical and public review.

- On the basis of the project EIS, its technical review, the results of the public inquiry, and the review by the EIA Commission, the competent authority decides whether or not the project should proceed and determines may require mitigation measures and monitoring procedures.

- The incorporation of an EIA into existing decision-making procedures does not mean that there are new, separate appeal procedures against a decision. The public and/or government agencies may only appeal a decision in the administrative or civil courts on the grounds that the competent authority had accepted a poorly prepared EIS.

Competent authorities:

- Municipalities
- Water boards
- Provinces

- Ministry of Defence
- Ministry of Economic Affairs
- Ministry of Agriculture, Nature Preservation and Fisheries
- Ministry of Housing, Physical Planning and Environment
- Ministry of Transport and Public Works

NORWAY

Norway's Prime Minister, Gro Harlem Brundtland, chaired the World Commission on Environment and Development. The Commission's Report, Our ***Common Future*** (1987), advanced the concept of sustainable development. The Commission recommended environmental assessment as a tool to achieve this end.

Norway's EIA process was created (1989) by regulations under the Planning and Building Act. Its purpose is to ensure the assessment of possible effects on the biophysical environment, the natural resources, and the community. The developer must submit a notification to the appropriate competent ministry or authority (listed below) who has the power to grant authorization. The notification describes the environment, the project, alternatives considered, predicted effects, and planned mitigating measures. It must also include a program for further studies should the competent authority deem them necessary. A notification must be done for projects on a prescribed list which includes many of those classes in Annex I of the EC's Directive (p. 11), plus some that involve special environmental issues for Norway. The government may not exempt projects on the list. The Minister of the Environment may also designate special cases to be subject to the process when the nature, extent, and significance of the project's effects are believed to be particularly serious or uncertain.

Since the EIA process is new, developers and government agencies are still learning how to implement and participate in it. The government is also considering the introduction of local planning procedures for projects that are smaller than those in Annex I of the EC's Directive, but have potentially significant local effects.

Process Steps:

- The developer submits to the competent authority a notification of his project if it

is on the prescribed list.

- The competent authority circulates the notification for comment to regional and local authorities, ministries with an interest in the project, and the public.

- On the basis of these comments, the competent authority consults with the Ministry of the Environment and decides whether the project may proceed according to the plans in the notification, or whether an environmental impact statement (EIS) is needed.

- When an EIS is needed, the competent authority issues project-specific guidelines which the developer uses to prepare the EIS. The developer then submits the EIS to the competent authority.

- The EIS is circulated to regional and local authorities, and ministries with an interest in the project.

- The competent authority must hold a public meeting and consult with the Ministry of the Environment.

- If the competent authority decides the EIS meets its guideline requirements, it issues a Notice of Approval. This could include conditions on monitoring plans and post-project analysis.

Competent authorities:

- The Ministry of Petroleum and Energy
- The Ministry of Transport
- The Ministry of Defence
- The Ministry of Local Government

- The Ministry of Industry
- The Ministry of Agriculture
- The Ministry of Fisheries
- The Ministry of Environment

C. THE PACIFIC RIM

AUSTRALIA: THE INTERGOVERNMENTAL AGREEMENT ON THE ENVIRONMENT

The Commonwealth of Australia is a federal state in which jurisdiction over activities such as natural resource management, transportation and environment is either shared by the Commonwealth and State governments or is solely a State responsibility. At the October 1990, premiers' conference, leaders agreed on a wide-ranging reform agenda to develop a more efficient and competitive economy by enhancing intergovernmental cooperation and consistency, and by eliminating duplication, overlap, and inconsistencies. When necessary, the Commonwealth government assumes a coordinating role.

Environmental assessment is an activity shared by the Commonwealth and State governments. Since diverse procedures have evotved in each jurisdiction, the Commonwealth and State governments are developing arrangements to adopt a uniform, national approach. As part of the Intergovernmental Agreement on the Environment (the Agreement) adopted by the Commonwealth and State governments in February 1992, leaders agreed upon a cooperative approach to environmental management. This process would better define roles, limit duplication, and give more certainty to private and government decision-makers. Under the Agreement, Commonwealth and State governments have also agreed that when there is uncertainty or duplication of interests, the levels of government will seek an agreement to coordinate and harmonize actions. Disagreements concerning these issues will be resolved at the level of the first ministers.

The Agreement addresses various aspects of environmental management, many of which have direct relevance to environmental impact assessment (EIA). All levels of government will strive to ensure that their policies, programs, and projects consider sustainable development. The present generation must ensure that the health, diversity, and

productivity of the environment is maintained and enhanced for future generations. Assessments should be cost-effective. Environmental factors should be included in the valuation of assets and services and their life-cycle costs.

In resource management, the levels of government agree that policy, legislative, and administrative frameworks will include comparable data, the assessment of regional cumulative effects, consultation with affected individuals, and the consideration of significant effects. The development and administration of the policy will remain the responsibility of State and local governments.

The Agreement envisages that a general framework agreement will be negotiated concerning the administration of the EIA process so that a proposal affecting more than one jurisdiction will be assessed in accordance with agreed arrangements. If the States amend or introduce legislation to produce essentially similar EIA systems and they accommodate Commonwealth needs, the Commonwealth may approve and accredit a State's process and procedures and accept the results or the State's system. Conversely, a State may approve and accredit the Commonwealth government's system.

The broad features of the proposed framework have already been identified by the Australian and New Zealand Conservation Council (ANZECC), a body composed of Commonwealth and State environment ministers in the *Statement of* ***National Principles*** *and Practice of Environmental Impact Assessment in Australia* (October 1991).

Under the proposed EIA framework agreement, all Commonwealth and State policies, programs, and projects should include an assessment of environmental, cultural, economic, social, and health factors. EIA processes are to be based on the following principles:

- The process will apply to both private and public-sector proposals.

- Authorities are responsible for informing proponents of the types of projects that will require an EIA and the respective level of assessment needed.

- Authorities will provide guidance on the criteria for environmental acceptability, including sustainable development, health, relevant national standards and guidelines, protocols, regulations, etc.

- Authorities will provide proposal-specific guidelines or a clearly-defined process outline for the preparation of an EIA. These directions allow the incorporation of public concerns.

- Authorities and the proponent will agree on time schedules so that the assessment process can begin early in the planning of a proposal.

- The level of assessment will correspond to the potential environmental effects of the proposal and public interest.

- Proponents will be responsible for preparing the EIA study.

- Except when there are legitimate reasons for confidentiality, there will be full disclosure of all information related to the proposal and the EIA.

- Adequate public consultation on the potential environmental effects of a project is required before a decision is made.

- Mechanisms must be available to resolve disputes during the assessment process.

- The EIA process will provide a basis for setting environmental conditions, establishing environmental monitoring programs and developing industrial guidelines.

The **existing procedures will remain in place** until superseded bv the new statutes. These **procedures** are **summarked below.**

AUSTRALIA= COMMONWEALTH GOVERNMENT

The ***Environment Protection (Impact of*** *Proposals) Act (****1974****)* and its ***Administrative*** *Procedures (****7****9****75****)* apply to Commonwealth projects, State projects directly funded by the Commonwealth, and all state or private projects that require an approval from the Commonwealth government.

The procedures provide for a commission of inquiry to direct the preparation of an environmental impact statement (EIS) by the proponent, hold public hearings, and to submit its own recommendations to the Minister of Arts, Heritage and Environment. However, there have only been three commissions, the last of which completed its work in 1978.

Steps in the Commonwealth's environmental assessment process:

- Commonwealth agencies decide on the significance of environmental effects of their own projects. If there are no significant effects, the project may proceed.

- If the action minister (i.e. responsible minister) decides a project may have significant effects, the project is submitted to the Minister of Arts, Heritage and Environment (the Minister). Officials of the Department of Arts, Heritage and Environment (the Department) can decide that an EIS is not required, but only the Minister can decide that an EIS is required.

- The proponent and the Department will determine the contents of the EIS. The proponent prepares the draft EIS and makes it available for public comment.

- The Minister may establish a commission of inquiry. The commission arranges for the technical review of the EIS. During its public hearings, the commission uses

quasi-judicial procedures.

- The Commission submits its recommendations to the Minister and the proponent.

- Using information from the EIS, the technical review arranged by the commission, and the public review, the Minister, or the Department on the Minister's behalf, may make suggestions or recommendations to the action minister or his department concerning conditions to protect the environment.

The States of Victoria and South Australia, and the Territory of Northern Australia have procedures similar to those of the Commonwealth Government.

NEW SOUTH WALES

The process created by the *Environmental Planning and Assessment Act (7979)* in New South Wales is different from the processes of the Commonwealth and other States because it links EIA to the State's land-use planning process.

- An environmental impact statement (EIS) must be submitted along with an application for public and private projects designated by regulation to the appropriate consent authority (i.e. the local council, public authority, or Minister or Director of Environment and Planning).

- The consent authority must inform the affected public and other consenting authorities with an interest in the application. The development application and the EIS must be made public for not less than 30 days. If there are potential adverse environmental effects, a project may not proceed until the EIS is reviewed.

- Members of the public may submit written comments to the consenting authority. The Department reviews the EIS and any related documents and reports its findings and recommendations to the consent authority. The report is then made public.

- If an EIS is not required, the applications for non-designated projects should also address environmental issues.

- The Minister has the power to "call in" (i.e. refer) any project, designated or non-designated, for a public inquiry when it is in the public interest to do so.

- When deciding whether and under what conditions a project should proceed, the

consent authority takes into account the EIS, the findings of the commission and advice from the Minister or Director of Environment and Planning.

- An applicant may appeal the determination of the consent authority to the Land and Environment Court.

NEW ZEALAND

Environmental assessment may be addressed under ***two*** acts: the ***Environment Act*** (1986) and the ***Resource Management Act*** (1991).

The *Environment Act* created an independent Parliamentary Commissioner for the Environment with wide powers to investigate policies or projects that may cause environmental damage and to advise Parliament on preventative measures. Although the office is not mentioned in the ***Resource Management Act,*** the Commissioner has separate and independent powers to investigate and review assessment information generated under this Act.

The ***Resource Management Act*** replaces fifty-nine resource and planning statutes. Its underlying philosophy is to achieve sustainable management using only as much regulatory control as is necessary to achieve specific outcomes. Since the Act is based on sustainable management of natural and physical resources, environmental issues are to be integrated with other decisions and systems. At present, a transition regime is necessary because the Act's sweeping changes will take up to five years to complete.

Sustainable management is defined as the use, development, and protection of natural resources so that people can provide for their social, economic, and cultural well-being while (a) sustaining resources to meet the foreseeable needs of future generations; (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and (c) avoiding, remedying or mitigating any adverse effects on the environment.

The term "environment" includes: (a) ecosystems and their constituent parts, including people and communities; (b) all natural and physical resources; (c) amenity values; (d) the social, aesthetic and cultural conditions which affect matters in section (a) to (d). And "effect" includes: consequences that may be positive or negative, temporary or

permanent, cumulative, and by nature of any risk.

All decision makers must promote sustainable management, and in doing this, must consider matters of national importance, i.e. the preservation of the coastal environment, wetlands, lakes, etc.; the protection of outstanding natural features and landscapes; the protection of significant indigenous vegetation and habitats of indigenous fauna; and the relationship with the Maori people, and their culture and traditions with their ancestral lands, water, sites, etc.

The planning system has three levels: national government, fourteen ecosystem-based regional councils, and districts. Decisions at all levels must be consistent with the principles of sustainable management, and consider all environmental effects.

The national government will prepare national policy statements on matters of national importance ranging from the very general to particular matters, e.g. enhancing aspects to the global or national environment to a specific issue or site. Once the statement has been prepared, the public is notified, and a Board of Inquiry appointed to hear public concerns. The Board produces a report containing its recommendations for the Environment Minster. The Governor General, on the Minister's advice, promulgates the policy by an Order in Council and it becomes legally binding. The provision for national policy statements will be used sparingly.

The national government also sets standards by regulation for noise, contaminants, water, and air quality.

The policies and plans of regional and district councils must be consistent with the national policies and standards.

Each regional council must prepare a regional policy statement of the region's major resource management issues, and policies by which these can be practically effected

within the ambit of sustainable management. Since these statements do not have the power to implement the policies, regional and district councils must prepare plans to deal with issues over which they have a lead responsibility, such as regional land use, soil conservation, water quality, hazardous substances, and contaminants. The regional authorities must consult with the Minister for the Environment and other interested ministers, local authorities and Maori communities during the preparation of changes to regional policy statements and plans. The plan will create new regulatory instruments for issuing resource consents. The measures in regional and district policies and plans will be decided on after consideration of reasonable alternatives. Regional plans will deal with natural resource management (water, soil, the coast, contaminants, air quality).

Districts and cities must also develop plans for decisions over which they have jurisdiction (principally land use, subdivision, and noise). These plans must be consistent with national and regional plans and deal adequately with sustainable management and environmental effects. Plans will include provisions outlining environmental assessment requirements.

“Permissions” granted under previous legislation in the form of permits, licences, authorizations, approvals, rights, Orders in Council, or consents have become resource consents under the Act. There are five types of consents: land use consent, a subdivision consent, a coastal permit, a water permit, and a discharge permit. A consent authority could be the Minister of Conservation, a regional council, or a territorial authority.

Applications for a resource consent must include an assessment of a proposal’s environmental effects and mitigation measures. The developer must consult the affected public. The consent authority can ask for more environmental impact information and all environmental impact information will be a formal part of the material relevant to making a consent decision.

It is presumed there will be no hearing unless requested by one of the parties. Council

decisions can be appealed by a party to the Planning Tribunal. The Tribunal is an environmental court comprised of five judges and ten planning commissioners. In addition to determining appeals, it can issue enforcement orders to restrain, order compliance, mitigate, or compensate. Consent authorities may also call pre-hearing meetings to clarify, mediate, or facilitate the resolution of any matter at issue. There may be joint hearings when several resource consents are required from different agencies.

The Minister for the Environment may serve notice on the consent authority about any proposal he deems of national significance. He may establish a Board of Inquiry to review the proposal and to submit its recommendations to him. Likewise, the Parliamentary Commissioner of the Environment may investigate any policy, plan, or project, but has no special statutory powers to intervene in processes under the *Resource Management Act.*

The Act imposes the duty to monitor the state of the whole or any part of the environment, and also the duty of monitoring the suitability of the policy or plan. Monitoring is not enforcement, but a verification of whether objectives are working as intended and refinements can be made to policies and plans.

JAPAN

In the early 1970s, Japan developed the world's most stringent pollution-control laws and rigorously enforces them. Although several important laws were amended to require an environmental assessment for designated classes of projects, industry successfully opposed attempts to pass a general environmental assessment act in the late 1970s and early 1980s. After lengthy consultation, in April 1981, the government submitted to the Diet an environmental impact assessment bill, which died when the House of Representatives was dissolved. Following further study, the government of the day decided not to resubmit the bill. Instead, it drew from the bill's principles and ideas and established a set of general procedures by a Cabinet Decision, "On the Implementation of Environmental Impact Assessment" (August 28, 1984). Environmental assessment in Japan is now done under these general national guidelines based on the Cabinet Decision, the technical procedures of individual development ministries based on specific laws and ministerial guidelines, and at the lower levels of government, prefectural and city ordinances and guidelines. Overall, the system is comprehensive and decentralized. The procedures vary and can overlap.

Within the Japanese political system, the Prime Minister appoints the Minister of the Environment Agency (EA) to Cabinet. Although a Cabinet Minister, he does not have the same authority as senior ministers such as the Ministers of Finance, and International Trade and Industry (MITI), and may not introduce a Bill without their consent.

The EA is a small organization with a staff of 950. It is charged with planning and coordinating environmental policies. Competent ministries and agencies acting under the Cabinet Decision or their own legislation and guidelines may ask the EA to review their environmental impact statements (EISs). Between 1986 and 1991, the EA has reviewed 884 EISs under laws and ministerial guidelines and 10 of the 182 EISs it has received under the Cabinet Decision.

The features of the process created by the Cabinet Decision are similar to those required by the EC Directive of 27 June 1985 (pp. 7), i.e. the developer must prepare an environmental impact statement (EIS) to be submitted along with other information to the competent ministry empowered to grant an overall approval for a project. Public participation is limited to residents and corporations in the project area. Since the Cabinet Decision is not legally binding, the correct execution of procedures or the EIA's adequacy cannot be challenged in the courts.

The focus of environmental assessment in Japan is different from that in other developed countries. As a result of several dramatic incidents, a major concern in this intensively industrialized country is the grave danger posed by industrial pollution, coupled with the strong desire to conserve the natural environment. Ecosystem stability is not addressed unless ecosystem degradation poses a direct threat to human health. Furthermore, it has been noted that in contrast to their counterparts elsewhere, practitioners of environmental assessment in Japan tend to be less concerned with procedural detail than with the technological capacity to deal with environmental effects.

Effects to be considered under the Cabinet Decision's national EIA guidelines are air, water and soil pollution; noise and vibration; ground subsidence; offensive odours; topology and geology; flora and fauna; scenery and outdoor recreation. The assessment of socio-economic effects is not explicitly required. Little or no consideration is given to policy alternatives or cumulative effects. Most projects subject to the process are construction activities that may be prescribed with physical thresholds.

Under the Cabinet Decision, ministries and agencies issued technical guidelines for classes of projects (listed below), which follow the Cabinet Decision's procedures. In addition to the Cabinet Decision, various development ministries must do environmental assessments of their own projects for designated activities based on individual laws (e.g. Port and Harbour Law, the Public Water Areas Reclamation Law) and ministerial

guidelines (e.g. MITI's guidelines for power plant construction, the Ministry of Transport's guidelines for new bullet trunk railways construction). These procedures do vary. Physical thresholds may limit their scope of application.

Besides the national system, thirty-seven of the forty-seven prefectures and eleven major cities have their own local EIA processes. Generally, projects under these procedures are determined by prescribed thresholds. In contrast to the weak national regime, some local governments (e.g. Tokyo, Kawasaki) have enacted environmental assessment ordinances that provide for public involvement, the study of socio-economic effects, and monitoring. Since the national government partially finances local governments, central ministries can apply pressure when they perceive the need for a project.

A summary of the national EIA procedures under the Cabinet Decision:

- If a project is subject to the process, the developer assesses possible environmental effects.
- The developer compiles a draft EIS.
- The developer presents the draft EIS to prefect governors and mayors, makes it public and holds explanatory meetings for residents of the project area.
- Residents may send written comments to the developer, which the developer summarizes and presents to the governor and mayors.
- Within three months after receiving residents' opinion, the governor, in consultation with mayors, comments on the EIS from the perspective of pollution control and environmental conservation.
- The developer prepares the final EIS, and indicates revisions to draft EIS and

measures to deal with the opinions of the governor and residents.

- The developer makes public the EIS for one month.

- The developer submits the final EIS to the competent ministry or agency, which forwards it to the EA. If special environmental consideration is needed, the competent ministry or agency should seek the EA's views before licensing.

- On the basis of the final EIS, all other required information and, if needed, the EA's view, the competent authority grants the licence.

National Ministries and their Technical Guidelines Under the Cabinet Decision:

- Ministry of Construction
  - Dams and drainage projects
  - Roads
  - Land readjustment projects
  - Reclamation and landfill
- Environment Agency
  - Pollution prevention projects
- Ministry of Transport
  - Airports
  - Reclamation and landfill
- Defence Agency
  - Self-Defence Force airports
- Ministry of Health and Welfare
  - Waste dumping works
  - Water supply dams
- National Land Agency
  - Land development projects

- Ministry of Agriculture, Forestry and Fisheries
  - Reclamation and landfill
  - Land development for agriculture
  - Dams for agriculture
- Ministry of International Trade and Industry
  - Dams for industrial water
  - Land development projects
  - Pollution prevention projects