



Environment Canada
Environnement Canada

Collaborative S&T Positions Policy

Managers and Applicants Guides



Science & Technology

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S&T Management Committee Report No.

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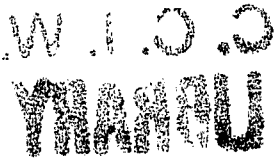


Collaborative Science and Technology Positions Policy

Science and Technology Management Committee

Report n°2

January 1999



The S&T Management Committee

The S&T Management Committee is chaired by the Assistant Deputy Minister of the Environmental Conservation Service. Its members are S&T managers and other individuals from all the Services and Regional Offices. The Committee addresses cross-cutting issues and supports the S&T Executive Committee by building consensus and developing advice on the management of S&T within the Department.

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A Policy on the Approval and Management of Collaborative R&D/Teaching Positions for S&T Professionals Employed by Environment Canada

1. General Statement

Environment Canada encourages its S&T professional staff to seek and accept appointments in collaborative R&D/Teaching positions as a means of collaborating with other agencies, aiding in the training of students, and furthering the department's R&D in priority areas.

The department recognizes the advantages of collaborative positions to: the department, the collaborating agency, the student and the S&T professional and will endeavour to assist as best it can in establishing such linkages.

2. Approvals Process

The Institute Director (or the Director of the your establishment who is authorized to approve collaborative positions - list of positions attached) will review applications for approval of collaborative positions and approve (or deny) these applications using the following criteria as general guidance:

- i) Benefit - does the proposed collaborative activity have a tangible benefit to the department?
- ii) Mandate - is the proposed area of collaboration in agreement with the department's mandate?
- iii) Importance - is the proposed collaboration in an area of importance to the department, or is the proposed collaboration in an area in which the department wishes to develop new expertise and capability for future purposes?
- iv) Productivity - does the applicant have an acceptable level of productivity in the proposed area of collaboration?
- v) Remuneration - if there is remuneration, the application will be forwarded to the DG Human Resources for review from a conflict of interest perspective.

3. Approvals / Renewals / Appeals

The approval of a collaborative position will be for a term of no more than three years or until the current appointment expires, whichever comes first, and may be rescinded by the delegated authority if the above criteria are not met after a reasonable time period.

S&T staff will be permitted to grieve the decision regarding their collaborative position in cases of dispute.

4. Criminal Code / Conflict of Interest

All S&T professionals applying for collaborative positions shall familiarize themselves with the Criminal Code Section 121(1) and with the Conflict of Interest and Post-Employment Code as it applies to civil servants receiving benefits from an organization that has dealings with the Government of Canada.

**LIST OF ENVIRONMENT CANADA POSITIONS
DELEGATED TO APPROVE S&T COLLABORATIVE POSITIONS**

RDG, Atlantic
RD EC
RD EP
RD AE

RDG, Quebec
RD EC
RD EP
RD AE
Directeur, Centre Saint-Laurent

RDG, Ontario
RD EC
RD EP
RD AE

RDG, Prairie and Northern
RD EC
RD EP
RD AE

RDG, Pacific and Yukon
RD EC
RD EP
RD AE

ADM, EPS
DG, Environmental Technology Advancement
Director, River Road Environmental Technology Centre

ADM, AES
DG, Atmospheric and Climate Science
Director, Air Quality Research
Director, Climate Research
Director, Environmental Adaptation Research
DG, Atmospheric Environment Prediction
Director, Meteorological Research

ADM, ECS
DG, Ecosystems Science
Executive Director, NWRI
DG, Canadian Wildlife Service
Director, NWRC

MANAGER'S GUIDE

Policy and Approvals: Collaborative Positions for S&T Professionals

**Environment Canada
January 1999**

Environment Canada Policy and Approvals:

Collaborative Positions for S&T Professionals

1. Introduction

This manager's guide is designed to assist you in understanding Environment Canada's *policy* regarding collaborative positions (see **Appendix 1**), the *criteria for their approval* and the *administrative procedures* that accompany this policy. Inevitably, it will not answer all your questions in which case you should ask for clarification. Otherwise, you should exercise your judgement but record the rationale for your decision

2. Definition and Scope

A collaborative position is defined as being - "*a post, position or appointment with an organization outside the Government of Canada in which the individual collaborates with the staff and/or students of that organization toward a common end which will benefit the organization and the Government of Canada.*"

Typically, such positions will be *without remuneration*. This policy deals with such positions. If in fact the position *involves remuneration*, the DG Human Resources will review the application for a collaborative position from a conflict of interest perspective.

The most frequent positions that will fall under this policy are collaborative positions with universities - adjunct professorships, research associates, honorary research associates, etc. There are other possibilities including collaborative positions with a National Centre of Excellence, an independent research institute, or post-secondary educational institutes other than universities. This is neither an exhaustive nor an exclusive list; the definition above should be your guidance as to whether the proposed position is a *collaborative position* for the purposes of the department's policy and approval.

3. Policy and Rationale

Why is this policy and approval necessary? The answer is quite simple. Two basic Government of Canada policies require that individuals who accept positions outside their government employment must;

- i) seek "written consent from the head of the branch of government that employs them"
- ii) ensure that their actions will not put them in a real or apparent Conflict of Interest situation

The consequences of not having written consent for a collaborative position are, in theory, quite substantial. Anyone receiving a commission, reward, advantage or benefit of any kind, directly or indirectly from an agent (read university, National Center of Excellence, etc.) having dealings with the government who has not received written consent from his/her employer is in violation of the Criminal Code and could be charged. Further, the employee may be found to have infringed the Conflict of Interest and Post-Employment Code and may be subject to disciplinary measures, up to and including termination of employment.

In this regard, you must read and understand clearly the excerpts from the Criminal Code and the Conflict of Interest and Post-Employment Code for the Public Service that are attached to this guide as Legal Background Documents in **Appendix 2**.

4. Administrative Procedures

The administrative procedures that accompany this policy are designed to be as simple and straightforward as possible. The steps which your staff should take are as follows:

- i) when he/she is approached by an outside organization to be appointed to a collaborative position - he/she should make it clear to the proponent that written consent will be needed from his/her employer.
- ii) obtain the details about the collaborative position, what it consists of, what it will accomplish for the proponent organization, what benefits will accrue to Environment Canada, and any benefits to students, volunteers, etc.

- iii) fill out the attached *Application for Collaborative Position Approval*.
- iv) forward it to his/her Institute Director, or the Director of the establishment who is authorized to approve collaborative positions.
- v) when approved, proceed with finalizing the collaborative position with the proponent organization.
- iv) update the request every three years.

You will likely be asked questions by your staff at any one of the steps listed above. Some of these questions may be answered by the following Frequently Asked Questions - S&T Professionals. You should acquaint yourself with these questions and answers. Another set of Frequently Asked Questions and Answers has been prepared for your benefit.

5. Frequently Asked Questions - S&T Professionals

- i) **Q.** I am an adjunct professor now, what do I do?
A. The procedure is the same, except that the approval follows your appointment as an adjunct professor.
- ii) **Q.** I have two adjunct positions, do I need to fill out an application for each?
A. No. One application is appropriate, naming both positions, with the requisite information.
- iii) **Q.** Will I need to make a Conflict of Interest declaration?
A. This approval process constitutes the conflict of interest declaration for collaborative positions for Environment Canada S&T professionals.
- iv) **Q.** My collaborative position pays me for lecturing to undergraduate students. What should I do?
A. Prior to accepting, fill out the application form for the collaborative position and submit it. The application will be

reviewed by the DG Human Resources from a conflict of interest perspective.

- v) **Q.** What should I do if I gain approval to accept an adjunct position and a year later I am asked to teach a university course for which I would be paid a stipend by the university?
- A.** The DG Human Resources will review the application from a conflict of interest perspective.
- vi) **Q.** If I receive approval for my collaborative position, then I guess I can quit worrying about being in conflict of interest for the position?
- A.** Right. However, if circumstances change in respect of the collaborative position, you must seek appropriate approval.
- vii) **Q.** I already have the previous Director's written permission for my collaborative position, do I need to have your written consent as well?
- A.** Yes, unfortunately at the time your consent was given the Deputy Minister had not yet delegated the authority for approval to Directors. Consequently, although the former Director gave you written consent, he had no authority to do so under the Conflict of Interest and Post-Employment Code.
- viii) **Q.** When I was approached to be part of the XYZ National Center of Excellence I made a Conflict of Interest declaration and was given written consent by the DG HR to become a principal investigator in the NCE. Will I have to get written consent again?
- A.** No. The DG HR had the authority at the time, and there is no reason to re-apply.
- ix) **Q.** My adjunct professorship at University Y is an agreement between myself and the university. It has nothing to do with Environment Canada. Besides, I don't receive any pay for it and I do it on my own time. Why should I have to seek approval? And what happens if I do not seek approval?
- A.** First and foremost you are an employee of the Government of Canada. Receiving approval to accept a collaborative

position means that you will inevitably spend time away from your work place collaborating on some project, supervising students, etc. *while still receiving pay from your employer.* While this may ultimately advantage your employer, it is not unreasonable that your employer should have the opportunity to approve of your collaborative position.

Read Section 121(1) of the Criminal Code. It clearly applies to anyone who accepts "pay" but it also uses the words "benefit" or "advantage." The basic purpose of this clause of the Criminal Code is to address fraudulent activity on behalf of civil servants. One presumes that serving as an adjunct professor without remuneration is not a fraudulent activity. Nonetheless, by supervising graduate students, writing joint papers, and sharing their research results a scientist gains an *advantage* over his peers who do not have such a position. Clearly there is *increased prestige*, and an *increased probability of promotion* - all of which could be interpreted as an *advantage*. Interpreted strictly, unless the individual has written consent from his/her employer to accept such an appointment, then the individual is in violation of the Criminal Code and could be charged. Supreme Court rulings in such matters have indicated that the courts do not consider that "seeking written consent" is a particular burden for a civil servant.

What happens if you do not seek written consent? If the department encourages its staff to seek adjunct professorships or some similar form of collaborative position, it is most unlikely that the department would request that criminal charges be brought against you. However, this does not mean that a private individual might not request the RCMP to lay charges against you for reasons unknown. The risk is small, but it is not zero. Failure to do so would be contrary to the Conflict of Interest and Post-Employment Code and could result in disciplinary measures being taken against you. That is why the department has adopted this policy, hoping to avoid such situations for its staff.

- x) **Q.** My brother is a lawyer and says that I would never be convicted under Section 121(1) of the Criminal Code. Why am I having to do this?
- A.** The department's legal advice was that a staff member could be *charged* and convicted under the Criminal Code.

Being charged would not be a pleasant circumstance for the employee or the department - this is why the department is implementing this policy. The law has been there a long time, and an employee could always request written consent from the Deputy Minister or more recently the DG HR. What is new is the realization that without written consent, an unsuspecting staff member could actually be in violation of the Criminal Code.

xi) **Q.** My colleague in department X is an adjunct professor at the same university as myself. He has not had to seek approval for his appointment. Why do I have to seek approval?

A. To avoid the risk of being found to have infringed the Criminal Code and the Conflict of Interest and Post-Employment Code. This is being done for your protection. We expect other science-based departments to implement stricter compliance in the near future.

xii) **Q.** What happens if I am approved in a collaborative position and I am part of a team that generates a very valuable piece of intellectual property? What is my position legally with respect to the ownership of this intellectual property (IP)?

A. This should be clarified prior to undertaking any research or the collaborative position, and should be the subject of an agreement between the government and the other interested parties.

xiii) **Q.** Why doesn't the government have an intellectual property policy that covers their staff who are adjunct professors?

A. The government has a valid IP policy for you as an employee working on government premises. The question arises when you are an adjunct working on university property. NSERC is attempting to have the principle adopted that the IP should be governed by the policy of the organization where the IP was developed. This has not been universally accepted. NCEs sign individual IP agreements with individual investigators. This is the appropriate course of action. Individual agreements between the government, the university and investigators should be negotiated if you have reason to believe that IP may be involved in your collaborative work.

xiv) **Q.** I have read the departmental policy and it mentions that one of the criteria for approval is that I must have an "acceptable level of productivity". What does this mean and why is this a criteria?

A. The department wants the staff who are appointed to collaborative positions to be productive individuals who are capable of representing the department well within the collaborating agency. In addition, your substantive position should not unduly suffer due to the requirements of the collaborative position. In brief, it is a safeguard for the department and the collaborating agency.

xv) **Q.** What if my circumstance is different from the situations outlined in this guide?

A. No policy/administrative procedure can cover every possible case. The policy has flexibility. Your Director will determine whether he/she has authority to approve or whether the DG HR is the appropriate authority. However, it will be necessary to document unusual cases completely and carefully.

xvi) **Q.** What happens if I am not granted approval for my collaborative position?

A. If you are not approved to accept a collaborative position your Director will have given you an explanation for why approval is denied. You have two clear options: a) to not seek the collaborative appointment or resign from it if it already exists or, b) to grieve your case according to the normal procedure.

6. Frequently Asked Questions - Managers

i) **Q.** Why do I have to approve adjuncts and other collaborative positions?

A. You have been given the authority to undertake this approval process because you know the S&T staff, their work plans, and how the department will benefit from the proposed collaborative position. This is not typically the

case for managers in positions above you. Additionally, it will be quite simple for you to seek additional information, speak with the university department chair if necessary, and ultimately meet with the individual staff member if that is required.

- ii) **Q.** This seems like a great deal of work for no real purpose. Surely the government realizes that it gains a tremendous benefit from its staff being appointed as adjunct professors.

A. This is being done for their protection. It was only realized recently that without "written consent" the employee could be charged with a violation of the Criminal Code and possibly subject to disciplinary measures under the Conflict of Interest and Post-Employment Code. This is not something that the department wants to happen - particularly as it encourages staff to accept adjunct professorships. Consequently, it is taking this action. Changes in the Criminal Code and the Conflict of Interest and Post-Employment Code are not easily made, and it is good management practice to know which employees are in adjunct positions anyway.
- iii) **Q.** What do I do if I am aware of someone who has not divulged his/her adjunct professorship, and upon approaching them about this matter they tell me they have no intention of seeking permission for something that is not the government's business.

A. Send the staff member a short memo outlining that the lack of approval places the employee in a conflict of interest position which may subject him/her to disciplinary measures and a potential charge under the Criminal Code.
- iv) **Q.** What if I, as a Director, want to apply for an S&T collaborative position. To whom should I submit my application?

A. Your application should be submitted to your Director General.

7. Criteria for Approval of Collaborative Positions

The departmental policy (see **Appendix 1**) outlines four criteria for the approval of a collaborative position. These will be reviewed with some examples and guidance for their use.

First and foremost, collaborative positions are encouraged by the department and it is anticipated that denial of a request for approval will be a rare event.

A form for the "Evaluation of Criteria for Collaborative Positions" has been provided for your use in evaluating applications. It is provided as an attachment to this manual. Guidance with respect to grading criteria is provided on this form. Also provided as an attachment is a draft "Approval" letter for your use in responding to the applicant.

Benefit: Although the department wishes its staff to become involved in collaborative positions, it also expects that these arrangements will bring some benefit to the department. These benefits might include;

- i) access to capable young *students* who might be recruited into the department for summer work terms, postdoctoral fellowships or term or indeterminate positions.
- ii) access to advanced *knowledge* through contact with other S&T professionals, university staff attendance at lectures, seminars, workshops, conferences, etc.
- iii) use of specialized *facilities or equipment* which Environment Canada does not have at the present time.
- iv) assistance in an Environment Canada project (typically, but not exclusively R&D) by staff and/or students of another organization.

You will be responsible for assessing the benefit to the department of the collaborative position proposed. Unless it is patently obvious that the value of the benefit is substantial, a short note documenting the rationale for your decision is appropriate for those who might follow you and for records purposes.

Mandate: Quite bluntly the department does not wish to have its staff do the work of Statistics Canada, Agriculture and Agri-Food Canada or Health Canada. The department's mandate is sufficiently broad to permit a wide variety of collaborative positions in the environmental area without infringing on the mandated area of another department. This does not mean to say that work on a joint project through a university might not have significant benefits to the Canadian Forestry Service for example. However, it is expected that Environment Canada staff would be dealing with the environmental aspects of such a project (climate change, hydrology, UVB impacts, pollutant measurements, wildlife impacts, freshwater biota, etc.) not the direct forest aspects.

This does not preclude a departmental staff member from requesting permission to accept a collaborative position that may not meet the criteria in this policy. For example, an engineer might be asked to offer a course in "Strength of Materials" at a local junior college for which he/she will be remunerated. This does not fall within the department's mandate, is not a priority area, and is not likely to be valuable for recruiting students. Hence it is unlikely that approval will be given to undertake such work during working hours. The individual should be encouraged to make a Conflict of Interest declaration to gain consent to take on this position outside working hours.

Importance: The collaborative position should address an area of importance for the department or an area in which the department wishes to develop new expertise and capability for future purposes. Although molecular biology may not be an area of priority for Environment Canada there is little question that DNA sequencing of various wildlife species is a technique which has tremendous value in the wildlife area. For a Wildlife staff member to be involved in a collaborative program with a university that permitted the use of DNA sequencing equipment, and the supervision of graduate students would unquestionably be an acceptable area of endeavour.

Similarly, a collaborative position with a university group conducting basic research on endocrine disrupters would be highly valuable to the department because of its relationship to a priority research area for Environment Canada.

Inevitably, because the department does not maintain a detailed list of what is and what is not important, you will have to exercise some judgment with respect to what is and what is not *important* in your own area of endeavour, and what are the areas where *future expertise/capability* are needed. Again, if these are not quite obvious across the department, it would be best to record the rationale for your decision.

Productivity: This criteria is a simple one. Basically, has the applicant had an acceptable level of productivity in his/her area of endeavour and would they be acceptable to a collaborative organization. While this will in all likelihood be the case, it is conceivable that there will be occasions in which the collaborative organization has been overly impressed with an individual but does not know their circumstance in depth. This criteria is designed to permit the department to deny approval. The individual should be encouraged to make a Conflict of Interest declaration to gain consent to take on this position outside working hours.

Appendix 1

A Policy on the Approval and Management of Collaborative R&D/Teaching Positions for S&T Professionals Employed by Environment Canada

1. General Statement

Environment Canada encourages its S&T professional staff to seek and accept appointments in collaborative R&D/Teaching positions as a means of collaborating with other agencies, aiding in the training of students, and furthering the department's R&D in priority areas.

The department recognizes the advantages of collaborative positions to: the department, the collaborating agency, the student and the S&T professional and will endeavour to assist as best it can in establishing such linkages.

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The Institute Director (or the Director of the establishment who is authorized to approve collaborative positions - list of positions attached) will review applications for approval of collaborative positions and approve (or deny) these applications using the following criteria as general guidance:

- i) Benefit - does the proposed collaborative activity have a tangible benefit to the department?
- ii) Mandate - is the proposed area of collaboration in agreement with the department's mandate?
- iii) Importance - is the proposed collaboration in an area of importance to the department, or is the proposed collaboration in an area in which the department wishes to develop new expertise and capability for future purposes?
- iv) Productivity - does the applicant have an acceptable level of productivity in the proposed area of collaboration?
- v) Remuneration - if there is remuneration, the application will be forwarded to the Director General, Human Resources for review from a conflict of interest perspective.

3. Approvals / Renewals / Appeals

The approval of a collaborative position will be for a term of no more than three years or until the current appointment expires, whichever comes first, and may be rescinded by the delegated authority if the above criteria are not met after a reasonable time period.

S&T staff will be permitted to grieve the decision regarding their collaborative position in cases of dispute.

4. Criminal Code / Conflict of Interest

All S&T professionals applying for collaborative positions shall familiarize themselves with the Criminal Code Section 121(1) and with the Conflict of Interest and Post-Employment Code as it applies to civil servants receiving benefits from an organization that has dealings with the Government of Canada.

**LIST OF ENVIRONMENT CANADA POSITIONS
DELEGATED TO APPROVE S&T COLLABORATIVE POSITIONS**

RDG, Atlantic

RD EC

RD EP

RD AE

RDG, Quebec

RD EC

RD EP

RD AE

Directeur, Centre Saint-Laurent

RDG, Ontario

RD EC

RD EP

RD AE

RDG, Prairie and Northern

RD EC

RD EP

RD AE

RDG, Pacific and Yukon

RD EC

RD EP

RD AE

ADM, EPS

DG, Environmental Technology Advancement

Director, River Road Environmental Technology Centre

ADM, AES

DG, Atmospheric and Climate Science

Director, Air Quality Research

Director, Climate Research

Director, Environmental Adaptation Research

DG, Atmospheric Environment Prediction

Director, Meteorological Research

ADM, ECS

DG, Ecosystems Science

Executive Director, NWRI

DG, Canadian Wildlife Service

Director, NWRC

Appendix 2

Legal Background Documents

Criminal Code, Section 121(1)

Everyone commits an offence who.....

being an official or employee of the government, demands, accept or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind, directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies on him.

Conflict of Interest and Post-Employment Code

N.B. These excerpts are for your convenience. Applicants should consult the full Conflict of Interest and Post-Employment Code.

The objects of this Code are to enhance public confidence in the integrity of employees of the Public Service:

- (a) by minimizing the possibility of conflicts arising between the private interests and public service duties of employees and providing for the resolution of such conflicts in the public interest should they arise.

Application

In keeping with the principles described below, each employee is responsible for taking such action as is necessary to prevent real, potential or apparent conflicts of interest. The employee is also required to observe any specific conduct requirements contained in statutes governing his or her particular department and the relevant provisions of legislation of more general application such as the *Criminal Code*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Financial Administration Act*, and the *Public Service Employment Act*.

Principles

Every employee shall conform to the following principles:

- (a) employees shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
- (b) employees have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;
- (c) employees shall not have private interests; other than those permitted pursuant to this code, that would be affected particularly or significantly by government actions in which they participate;
- (d) on appointment to office, and thereafter, employees shall arrange their private affairs in a manner that will prevent real, potential, or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of an employee and the official duties and responsibilities of that employee, the conflict shall be resolved in favour of the public interest;
- (e) employees shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the employee;
- (f) employees shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;
- (g) employees shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;
- (h) employees shall not directly or indirectly use, or allow use of, government property of any kind, including property leased to the government, for anything other than officially approved activities; and
- (i) employees shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Application for Collaborative Position Approval

Name: _____

Classification: _____

Location: _____

Telephone: _____

1. **Will *remuneration* be paid by the organization proposing this collaborative position? If so, the DG Human Resources will review your application from a conflict of interest perspective.**

2. **Position: What collaborative position is being proposed for approval?**

3. With what organization, university etc.

Organization Name: _____

Department: _____

Contact: _____

Telephone: _____

Fax: _____

email: _____

4. In a short paragraph outline the *benefits* that will accrue to Environment Canada by undertaking this collaborative relationship.

5. Explain how this collaborative position is in line with Environment Canada's *mandate*.

6. What area of current or emerging importance to Environment Canada will this collaborative position address?

7. Will this collaborative position involve the supervision of students? If so indicate the current number and their level (college, undergraduate, postgraduate - M.Sc., Ph.D.)

I hereby declare that I have read and understand the *Conflict of Interest and Post-Employment Code for the Public Service*, and I request that I be given written consent to accept the above-mentioned collaborative position.

Date _____

Signed

Evaluation of Criteria for Collaborative Positions

1. Benefit

On a scale of 1 to 5 where does this collaborative position fit with regard to benefit to the department?

1. ☐ 2. ☐ 3. ☐ 4. ☐ 5. ☐

Rationale (if necessary)

(N.B. Must be at 3 or above to meet criteria)

2. Mandate

Will the work performed in this collaborative position fit within the mandate of Environment Canada?

Fits ☐ Does not fit ☐

Rationale (if necessary)

(N.B. Must meet this criteria)

3. Importance

Will the work involved in this collaborative position involve **an area of importance** for the department or alternatively is it an **area where the department will need expertise and capability in the future.**

Area of Importance ☐ Future Expertise ☐ Neither ☐

Rationale (if necessary)

(N.B. Must be of current or future importance)

4. Productivity

Where would you rank the applicant in terms of productivity in the department.

1. ☐ not acceptable 2. ☐ acceptable 3. ☐ highly acceptable

(N.B. Must meet acceptable or better)

Summary

Meets Criteria

☐

Does not meet Criteria

☐

**I authorize the applicant to accept
this collaborative position**

☐

**I deny the applicant's request and demand that
he/she desist from this collaborative position**

☐

Date _____

Name _____

Signature of Authorizing Officer _____

Summary Rationale (if necessary)

Draft Approval Letter

location
mm/dd/yy

name
position
organizational unit
location

Dear :

Re: Request for Approval of Collaborative Position

I am pleased to inform you that your application to accept a collaborative position with _____ has met all the necessary criteria under the department's policy.

This letter thus constitutes "written consent" for you to undertake the collaborative position. The approval is valid for a period of three years or until the collaborative position expires, whichever occurs first.

May I extend my best wishes to you in this collaborative position. I look forward to hearing of your progress with _____.

Sincerely,

Director

APPLICANT'S GUIDE

Policy and Approvals: Collaborative Positions for S&T Professionals

**Environment Canada
January 1999**

Environment Canada Policy and Approvals:

Collaborative Positions for S&T Professionals

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Why is this policy and approval necessary? The answer is quite simple. Two basic Government of Canada policies require that individuals who accept positions outside their government employment must;

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- ii) ensure that their actions will not put them in a real or apparent Conflict of Interest situation

The consequences of not having written consent for a collaborative position are, in theory, quite substantial. Anyone receiving a commission, reward, advantage or benefit of any kind, directly or indirectly from an agent (read university, National Center of Excellence, etc.) having dealings with the government who has not received written consent from his/her employer is in violation of the Criminal Code and could be charged. Further, the employee may be found to have infringed the Conflict of Interest and Post-Employment Code and may be subject to disciplinary measures, up to and including termination of employment.

In this regard, you must read and understand clearly the excerpts from the Criminal Code and the Conflict of Interest and Post-Employment Code for the Public Service guidelines that are attached to this guide as Legal Background Documents in **Appendix 2**.

4. Administrative Procedures

The administrative procedures that accompany this policy are designed to be as simple and straightforward as possible. The steps you should follow are:

- i) when you are approached by an outside organization to be appointed to a collaborative position - make it clear to the proponent that you will need written consent from your employer;
- ii) obtain the details about the collaborative position, what it consists of, what it will accomplish for the proponent organization, what benefits will accrue to Environment Canada, and any benefits to students, volunteers, etc.;
- iii) fill out the attached *Application for Collaborative Position Approval*;

- iv) forward it to your Institute Director, or the Director of your establishment who is authorized to approve collaborative positions;
- v) when written consent has been received, proceed with finalizing the collaborative position with the proponent organization.

5. Frequently Asked Questions - S&T Professionals

- i) **Q.** I am an adjunct professor now, what do I do?
A. The procedure is the same, except that the approval follows your appointment as an adjunct professor.
- ii) **Q.** I have two adjunct positions, do I need to fill out an application for each?
A. No. One application is appropriate, naming both positions, with the requisite information.
- iii) **Q.** Will I need to make a Conflict of Interest declaration?
A. This approval process constitutes the conflict of interest declaration for collaborative positions for Environment Canada S&T professionals.
- iv) **Q.** My collaborative position pays me for lecturing to undergraduate students. What should I do?
A. Prior to accepting, fill out the application form for the collaborative position and submit it. The application will be reviewed by the DG Human Resources from a conflict of interest perspective.
- v) **Q.** What should I do if I gain approval to accept an adjunct position and a year later I am asked to teach a university course for which I would be paid a stipend by the university?
A. The DG Human Resources will review the application from a conflict of interest perspective.
- vi) **Q.** If I receive approval for my collaborative position, then I guess I can quit worrying about being in conflict of interest for the position?

vii) **A.** Right. However, if circumstances change in respect of the collaborative position, you must seek appropriate approval.
Q. I already have the previous Director's written permission for my collaborative position, do I need to have your written consent as well?

A. Yes, unfortunately at the time your consent was given the Deputy Minister had not yet delegated the authority for approval to Directors. Consequently, although the former Director gave you written consent, he had no authority to do so under the Conflict of Interest and Post-Employment Code. was not in a legal position to do so.

viii) **Q.** When I was approached to be part of the XYZ National Center of Excellence I made a Conflict of Interest declaration and was given written consent by the DG HR to become a principal investigator in the NCE. Will I have to get written consent again?

A. No. The D/G HR had the authority at the time, and there is no reason to re-apply.

ix) **Q.** My adjunct professorship at University Y is an agreement between myself and the university. It has nothing to do with Environment Canada. Besides, I don't receive any pay for it and I do it on my own time. Why should I have to seek approval? And what happens if I do not seek approval?

A. First and foremost you are an employee of the Government of Canada. Receiving approval to accept a collaborative position means that you will inevitably spend time away from your work place collaborating on some project, supervising students, etc. *while still receiving pay from your employer.* While this may ultimately advantage your employer, it is not unreasonable that your employer should have the opportunity to approve of your collaborative position.

Read Section 121(1) of the Criminal Code. It clearly applies to anyone who accepts "pay" but it also uses the words "benefit" or "advantage." The basic purpose of this clause of the Criminal Code is to address fraudulent activity on behalf of civil servants. One presumes that serving as an adjunct professor without remuneration is not a fraudulent activity. Nonetheless, by supervising graduate students, writing joint

papers, and sharing their research results a scientist gains an *advantage* over his peers who do not have such a position. Clearly there is *increased prestige*, and an *increased probability of promotion* - all of which could be interpreted as an *advantage*. Interpreted strictly, unless the individual has written consent from his/her employer to accept such an appointment, then the individual is in violation of the Criminal Code and could be charged. Supreme Court rulings in such matters have indicated that the courts do not consider that "seeking written consent" is a particular burden for a civil servant.

What happens if you do not seek written consent? If the department encourages its staff to seek adjunct professorships or some similar form of collaborative position, it is most unlikely that the department would request that criminal charges be brought against you. However, this does not mean that a private individual might not request the RCMP to lay charges against you for reasons unknown. The risk is small, but it is not zero. Failure to do so would be contrary to the Conflict of Interest and Post-Employment Code and could result in disciplinary measures being taken against you. That is why the department has adopted this policy, hoping to avoid such situations for its staff.

- x) Q. My brother is a lawyer and says that I would never be convicted under Section 121(1) of the Criminal Code. Why am I then having to do this?
- A. Your brother could be right that you would never be *convicted* under Section 121(1) of the Criminal Code. The department's legal advice was that a staff member could be *charged* and convicted under the Criminal Code. - but the case may never reach court. Being charged would not be a pleasant circumstance for the employee or the department - this is why the department is implementing this policy. The law has been there a long time, and an employee could always request written consent from the Deputy Minister or more recently the D/G HR. What is new is the realization that without written consent, an unsuspecting staff member could actually be in violation of the Criminal Code.
- xi) Q. My colleague in department X is an adjunct professor at the same university as myself. He has not had to seek approval for his appointment. Why do I have to seek approval?

- A. To avoid the risk of being found to have infringed the Criminal Code and the Conflict of Interest and Post-Employment Code. This is being done for your protection. We expect other science-based departments to implement stricter compliance in the near future.
- xii) Q. What happens if I am approved in a collaborative position and I am part of a team that generates a very valuable piece of intellectual property? What is my position legally with respect to the ownership of this intellectual property (IP)?
- A. This should be clarified prior to undertaking any research or the collaborative position, and should be the subject of an agreement between the government and the other interested parties.
- xiii) Q. Why doesn't the government have an intellectual property policy that covers their staff who are adjunct professors?
- A. The government has a valid IP policy for you as an employee working on government premises. The question arises when you are an adjunct working on university property. NSERC is attempting to have the principle adopted that the IP should be governed by the policy of the organization where the IP was developed. This has not been universally accepted. NCEs sign individual IP agreements with individual investigators. This is the appropriate course of action. for you to take if you are a member of an NCE. Or you might negotiate an individual agreements between the government, the university and investigators should be negotiated with the university where you are an adjunct if you have reason to believe that IP may be involved in your collaborative work.
- xiv) Q. I have read the departmental policy and it mentions that one of the criteria for approval is that I must have an "acceptable level of productivity". What does this mean and why is this a criteria?
- A. The department wants the staff who are appointed to collaborative positions to be productive individuals who are capable of representing the department well within the collaborating agency. In addition, your substantive position

should not unduly suffer due to the requirements of the collaborative position. In brief, it is a safeguard for the department and the collaborating agency.

xv) **Q.** What if my circumstance is different from the situations outlined in this guide?

A. No policy/administrative procedure can cover every possible case. The policy has flexibility. Your Director will determine whether he/she has authority to approve or whether the DG HR is the appropriate authority. However, it will be necessary to document unusual cases completely and carefully.

xvi) **Q.** What happens if I am not granted approval for my collaborative position?

A. If you are not approved to accept a collaborative position your Director will have given you an explanation for why approval is denied. You have two clear options: a) to not seek the collaborative appointment or resign from it if it already exists or, b) to grieve your case according to the normal procedure.

Appendix 1

A Policy on the Approval and Management of Collaborative R&D/Teaching Positions for S&T Professionals Employed by Environment Canada

1. General Statement

Environment Canada encourages its S&T professional staff to seek and accept appointments in collaborative R&D/Teaching positions as a means of collaborating with other agencies, aiding in the training of students, and furthering the department's R&D in priority areas.

The department recognizes the advantages of collaborative positions to: the department, the collaborating agency, the student and the S&T professional and will endeavour to assist as best it can in establishing such linkages.

2. Approvals Process

The Institute Director (or the Director of the your establishment who is authorized to approve collaborative positions - list of positions attached) will review applications for approval of collaborative positions and approve (or deny) these applications using the following criteria as general guidance:

- i) Benefit - does the proposed collaborative activity have a tangible benefit to the department?
- ii) Mandate - is the proposed area of collaboration in agreement with the department's mandate?
- iii) Importance - is the proposed collaboration in an area of importance to the department, or is the proposed collaboration in an area in which the department wishes to develop new expertise and capability for future purposes?
- iv) Productivity - does the applicant have an acceptable level of productivity in the proposed area of collaboration?
- v) Remuneration - if there is remuneration, the application will be forwarded to the DG Human Resources for review from a conflict of interest perspective.

3. Approvals / Renewals / Appeals

The approval of a collaborative position will be for a term of no more than three years or until the current appointment expires, whichever comes first, and may be rescinded by the delegated authority if the above criteria are not met after a reasonable time period.

S&T staff will be permitted to grieve the decision regarding their collaborative position in cases of dispute.

4. Criminal Code / Conflict of Interest

All S&T professionals applying for collaborative positions shall familiarize themselves with the Criminal Code Section 121(1) and with the Conflict of Interest and Post-Employment Code as it applies to civil servants receiving benefits from an organization that has dealings with the Government of Canada.

**LIST OF ENVIRONMENT CANADA POSITIONS
DELEGATED TO APPROVE S&T COLLABORATIVE POSITIONS**

RDG, Atlantic
RD EC
RD EP
RD AE

RDG, Quebec
RD EC
RD EP
RD AE
Directeur, Centre Saint-Laurent

RDG, Ontario
RD EC
RD EP
RD AE

RDG, Prairie and Northern
RD EC
RD EP
RD AE

RDG, Pacific and Yukon
RD EC
RD EP
RD AE

ADM, EPS
DG, Environmental Technology Advancement
Director, River Road Environmental Technology Centre

ADM, AES
DG, Atmospheric and Climate Science
Director, Air Quality Research
Director, Climate Research
Director, Environmental Adaptation Research
DG, Atmospheric Environment Prediction
Director, Meteorological Research

ADM, ECS
DG, Ecosystems Science
Executive Director, NWRI
DG, Canadian Wildlife Service
Director, NWRC

Appendix 2

Legal Background Documents

Criminal Code, Section 121(1)

Everyone commits an offence who.....

being an official or employee of the government, demands, accept or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind, directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies on him.

Conflict of Interest and Post-Employment Code

N.B. These excerpts are for your convenience. Applicants should consult the full Conflict of Interest and Post-Employment Code.

The objects of this Code are to enhance public confidence in the integrity of employees of the Public Service:

by minimizing the possibility of conflicts arising between the private interests and public service duties of employees and providing for the resolution of such conflicts in the public interest should they arise.

Application

In keeping with the principles described below, each employee is responsible for taking such action as is necessary to prevent real, potential or apparent conflicts of interest. The employee is also required to observe any specific conduct requirements contained in statutes governing his or her particular department and the relevant provisions of legislation of more general application such as the *Criminal Code*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Financial Administration Act*, and the *Public Service Employment Act*.

Principles

Every employee shall conform to the following principles:

- (a) employees shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
- (b) employees have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;
- (c) employees shall not have private interests; other than those permitted pursuant to this code, that would be affected particularly or significantly by government actions in which they participate;
- (d) on appointment to office, and thereafter, employees shall arrange their private affairs in a manner that will prevent real, potential, or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of an employee and the official duties and responsibilities of that employee, the conflict shall be resolved in favour of the public interest;
- (e) employees shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the employee;
- (f) employees shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;
- (g) employees shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;
- (h) employees shall not directly or indirectly use, or allow use of, government property of any kind, including property leased to the government, for anything other than officially approved activities; and
- (i) employees shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Telephone: _____

- 1. Will *remuneration* be paid by the organization proposing this collaborative position? If so, the DG Human Resources will review your application from a conflict of interest perspective.**
- 2. Position: What collaborative position is being proposed for approval?**

3. With what organization, university etc.

Organization Name: _____

Department: _____

Contact: _____

Telephone: _____

Fax: _____

email: _____

4. In a short paragraph outline the *benefits* that will accrue to Environment Canada by undertaking this collaborative relationship.

5. Explain how this collaborative position is in line with Environment Canada's *mandate*.

6. **What area of current or emerging importance to Environment Canada will this collaborative position address?**

7. **Will this collaborative position involve the supervision of students? If so indicate their current number and their level (college, undergraduate, postgraduate - M.Sc., Ph.D.)**

I hereby declare that I have read and understand the *Conflict of Interest and Post-Employment Code for the Public Service*, and I request that I be given written consent to accept the above-mentioned collaborative position.

Date _____

Signed