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DOE'S CEAA HANDBOOK

Environment Canada - Environnement Canada

February 1995



DOE's CEAA handbook : departmental guidance for
or the Canadian Environmental Assessment Act
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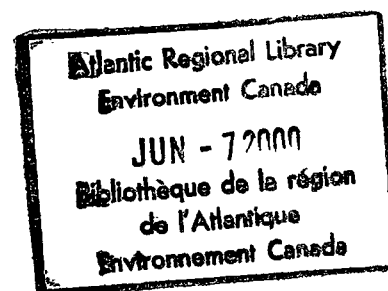


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TABLE OF REVISIONS

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1.2	revision of Appendices J and K	App. J & K	Feb 1/96
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TABLE OF CONTENTS

PART I - INTRODUCTION

Letter from the Deputy Minister	i
Purpose	ii
Executive Summary	iii

PART II - GUIDANCE FOR DOE'S MAJOR RESPONSIBILITIES

1.0 DOE'S EA MANAGEMENT FRAMEWORK	1-1
1.1 Overview	1-1
1.2 DOE Regional Roles	1-3
1.3 Headquarters Roles	1-5
1.4 Regional EACC Terms of Reference	1-8
1.5 National EACC Terms of Reference	1-9
1.6 Environmental Assessment Steering Committee Terms of Reference	1-10
2.0 A COMPARISON OF THE ROLES OF DOE AND THE AGENCY UNDER CEAA	2-1
3.0 AN OVERVIEW OF CEAA FROM DOE'S PERSPECTIVE	3-1
3.1 Introduction	3-1
3.2 What is the Canadian Environmental Assessment Act?	3-2
3.3 What is the purpose of CEAA?	3-3
3.4 What is a Federal Authority?	3-5
3.5 What is a Responsible Authority?	3-5

3.6	When will the Act apply?	3-7
3.7	What is CEAA's definition of a project?	3-7
3.8	What are CEAA's key regulations?	3-8
3.9	How do CEAA's triggers compare with the EARPGO's?	3-19
3.10	What are DOE's responsibilities under CEAA?	3-21
3.11	Does CEAA involve the public?	3-22
3.12	What is the Public Registry?	3-23
3.13	What happens to projects undergoing EARPGO assessments when CEAA is proclaimed?	3-24
4.0	POLICY DIRECTIVE ON THE IMPLEMENTATION OF CEAA	4-1
4.1	Introduction	4-1
4.2	Principles	4-1
4.3	Mandatory Policy Statements	4-2
4.4	Interpretational Policy Statements	4-4
4.5	Operational Policy Statements	4-6
5.0	DOE AS A FEDERAL AUTHORITY	5-1
5.1	Introduction	5-1
5.2	Statutory Basis for DOE's Role as a Federal Authority	5-2
5.3	Interpretation of DOE's Responsibilities as a Federal Authority	5-4
5.4	DOE's Role as an Advocate	5-6
6.0	DOE AS A RESPONSIBLE AUTHORITY	6-1
6.1	Introduction	6-1
6.2	What is a Responsible Authority?	6-2

6.3	When will DOE be a Responsible Authority?	6-2
6.4	DOE's Screening Responsibilities	6-4
6.5	DOE's Screening Checklist	6-27
6.6	DOE'S CEAA Screening Summary Form	6-29
6.7	DOE'S Standard Form for CEAA Exclusions	6-31
7.0	DOE GUIDANCE ON PUBLIC PARTICIPATION	7-1
7.1	Introduction	7-1
7.2	Statutory Requirements	7-2
7.3	Involving the Public	7-3
7.4	Examples of Public Participation Programs	7-10
8.0	DOE'S PARTICIPATION AS AN EXPERT AT REVIEW PANELS AND MEDIATIONS	8-1

PART III - DOE's OPERATIONAL GUIDANCE

9.0	THE PUBLIC REGISTRY - A DOE PERSPECTIVE	9-1
9.1	Introduction	9-1
9.2	An Overview of the Public Registry	9-1
9.3	Public Registry Components	9-3
9.4	DOE's Public Registry	9-5
10.0	DOE'S COMMUNICATION APPROVAL PROCESS	10-1
10.1	Briefing Notes	10-1
10.2	Questions and Answers	10-2
10.3	Ministerial Correspondence	10-3

APPENDIX A -	The <i>Canadian Environmental Assessment Act</i>
APPENDIX B -	Law List
APPENDIX C -	Agency Annotated Law List
APPENDIX D -	Inclusion List
APPENDIX E -	Comprehensive Study List
APPENDIX F -	Exclusion List
APPENDIX G -	Legislation Administered by DOE
APPENDIX H -	EARP Caselaw relating to CEAA
APPENDIX I -	Glossary of Terms
APPENDIX J -	Contact List (EACC)
APPENDIX K -	Contact List (Agency)
APPENDIX L -	Contact List of Federal Departments
APPENDIX M -	Case Studies
APPENDIX N -	Multiple Choice Exercises
APPENDIX O -	Cost Recovery Policy
APPENDIX P -	Libraries/Depositories of Public Registry Information
APPENDIX Q -	Areas of Canada Designated as Officially Bilingual
APPENDIX R -	List of Reference Documents
APPENDIX S -	Accessing DOE's Electronic Bulletin Board
APPENDIX T -	Non-CEAA Project Reviews
APPENDIX U -	Environmental Assessment of Policies and Programs

LIST OF APPENDICES

- APPENDIX A - *The Canadian Environmental Assessment Act*
- APPENDIX B - Law List
- APPENDIX C - Agency Annotated Law List
- APPENDIX D - Inclusion List
- APPENDIX E - Comprehensive Study List
- APPENDIX F - Exclusion List
- APPENDIX G - Legislation Administered by DOE
- APPENDIX H - EARP Caselaw relating to CEAA
- APPENDIX I - Glossary of Terms
- APPENDIX J - Contact List (EACC)
- APPENDIX K - Contact List (Agency)
- APPENDIX L - Contact List of Federal Departments
- APPENDIX M - Case Studies
- APPENDIX N - Multiple Choice Exercises
- APPENDIX O - Cost Recovery Policy
- APPENDIX P - Libraries/Depositories of Public Registry Information
- APPENDIX Q - Areas of Canada Designated as Officially Bilingual
- APPENDIX R - List of Reference Documents
- APPENDIX S - Accessing DOE's Electronic Bulletin Board
- APPENDIX T - Non-CEAA Project Reviews
- APPENDIX U - Environmental Assessment of Policies and Programs
- APPENDIX V - Assessing Cumulative Environmental Effects and Socio-Economic Effects



MESSAGE FROM THE DEPUTY MINISTER

The Canadian Environmental Assessment Act (CEAA) and its four key regulations were proclaimed on January 19, 1995. The Act sets out the requirements for the environmental assessment of projects that involve federal decision making.

DOE's CEAA Handbook provides guidance for the departmental implementation of the CEAA, which is based, in part, on experience gained under the Environmental Assessment Review Process Guidelines Order. The Handbook has been designed to complement the broad federal government guidance material developed by the Canadian Environmental Assessment Agency. It is a dynamic document and will be revised over time to reflect future amendments to the Act, as well as experience gained through its implementation.

I trust that you will use it to ensure consistency and predictability of DOE's approach to fulfilling its obligations under the CEAA. Exemplary compliance and high quality work across the Department will be critical in helping the Minister advocate the principles of environmental assessment more broadly in government.

Environment Canada has a leadership role to play in terms of embracing the principles of the Act. Open and frequent communication among all levels and regions of the Department will go a long way toward helping achieve this most important objective. You will note that an updated version of the Department's Management Framework is included in the Handbook to help in that regard. As well, members of the Environmental Assessment Branch in headquarters and the Regional Environmental Assessment Coordinators who can help explain and interpret the contents of this Handbook are listed in Appendix J. I encourage you to contact them to ensure that the Department can continue to be proud of its performance in the area of environmental assessment.

In closing, I am also pleased to inform you that the Handbook is available electronically, an environmentally friendly format, which will facilitate regular updates. I trust that the Handbook, in both of its formats, will become a well-used reference tool for managers and practitioners across the entire Department.



Mel Cappe



PURPOSE

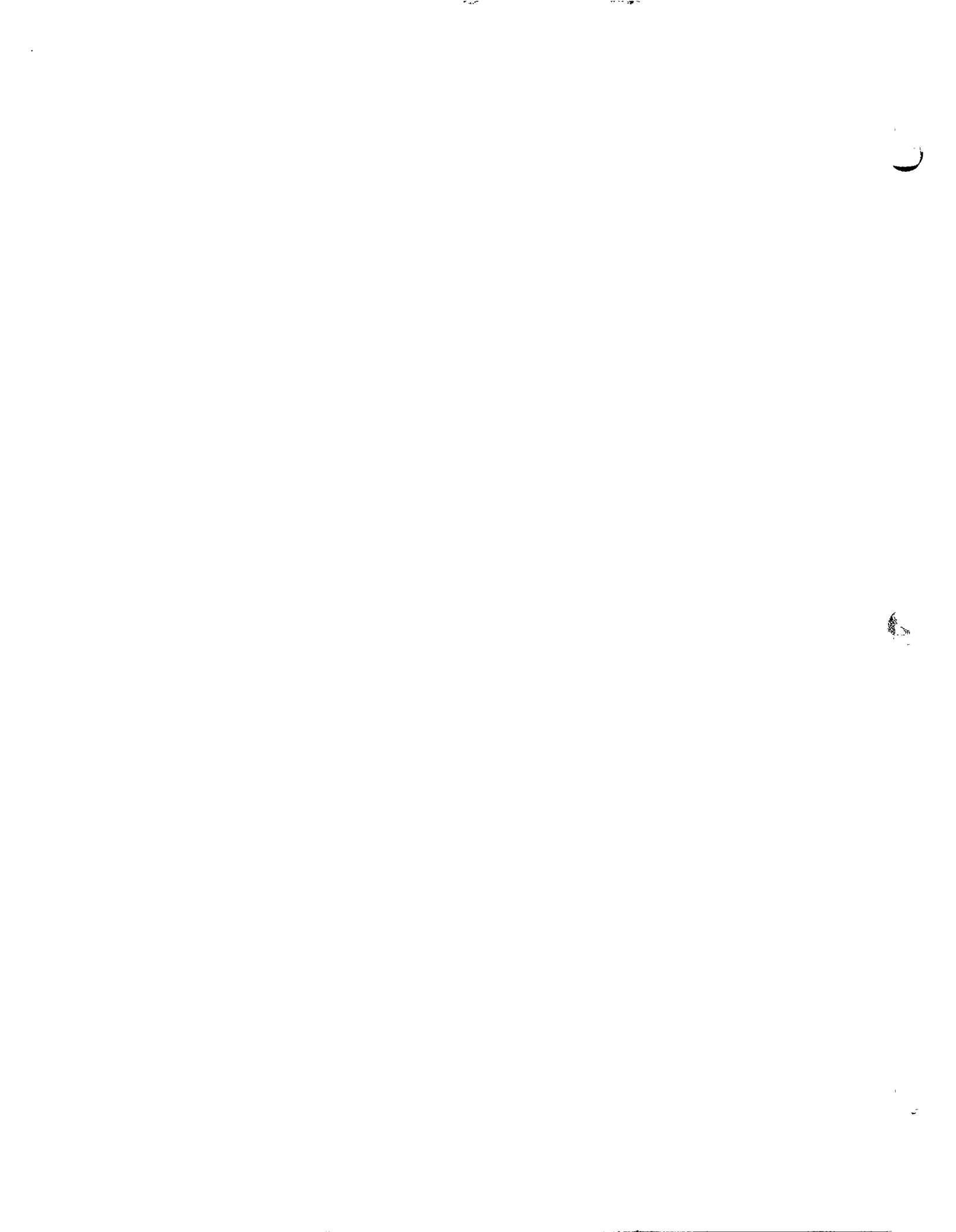
The purpose of *DOE's CEAA Handbook* is to ensure that the requirements of the Canadian Environmental Assessment Act are met by the Department in a manner which is both consistent and predictable. This goal is particularly important in light of the fact that other government departments, agencies and the Canadian public in general will look to DOE to serve as a role model for how best to carry out the environmental assessment process as required by the new Act.

Though it has been designed for use by DOE staff as a day-to-day reference tool, *DOE's CEAA Handbook* is also intended to be used in conjunction with the delivery of Departmental training in preparation for CEAA. The case studies and multiple choice questions provided in the Appendix as well as the Overview Section which includes practical illustrations will serve as useful tools for all regions in their follow-up training of staff unfamiliar with CEAA or with the field of environmental assessment as a whole.

The Handbook has been designed to focus on those areas of the Act with which it is anticipated that the Department will spend most of its time and energy. Readers are referred to the interdepartmental guidance provided by the Agency for details on aspects of the Act with which DOE will less frequently be involved, such as Panels and Mediation.

DOE's CEAA Handbook will evolve as the Department gains experience with the Act, as new regulations are passed respecting the process and as decisions are tabled with respect to future court challenges.

At no time is the Handbook intended to be exhaustive, however, since supplementary documents which help to serve this purpose have been prepared by the Canadian Environmental Assessment Agency for the interdepartmental audience. A list of these documents has been included in the Appendix.



EXECUTIVE SUMMARY

DOE's CEAA Handbook is a comprehensive guide for use by the Department in fulfilling its responsibilities under the Canadian Environmental Assessment Act.

DOE's CEE Handbook is divided into four distinct parts:

- Part I : Introduction;
- Part II : Guidance for DOE's Major Responsibilities;
- Part III: DOE's Operational Guidance; and
- Part IV : Appendices.

Part I, the Introduction, of which this Executive Summary is a component, presents the format and the purpose of the document. It includes the Deputy Minister's letter which formally introduces the document to the Department.

Part II, Guidance for DOE's Major Responsibilities, provides at the outset, material which the reader requires to put the Department's responsibilities in the proper perspective. *DOE's EA Management Framework* outlines Departmental reporting relationships and responsibilities which reflect DOE's Regional Integration Exercise. The section on *The DOE vs Agency Division of Responsibilities* highlight what DOE (vs the Agency) is responsible for under the new Act. The *Overview of CEAA* provides readers with a summary of the Act, with particular emphasis on how it affects DOE. Finally, *DOE's CEAA Policy Directive on the Implementation of CEAA* is included to ensure that DOE's delivery of its environmental assessment program is done in an exemplary and consistent manner.

These sections set the stage for the heart of the document, *DOE as a Federal Authority*, as well as a section on *DOE as a Responsible Authority*. A short section on *DOE as an Expert Witness* has been included due to the importance of this role for the Department. The guidance provided in these sections will be expanded upon as the Department gains experience with the new Act.

Part III, DOE's Operational Guidance outlines the steps that must be taken in order for the Department to put its policies into practice. It includes sections on the **Public Registry** and on **Departmental correspondence**.

Finally, for ease of reference, *DOE's CEAA Handbook* includes an extensive **Appendix** of documents, such as the Act itself and its four key regulations, which DOE's EA practitioners should keep close at hand. Also included are documents specifically requested by DOE Regional staff, such as Departmental contact lists and a comprehensive list of the legislation administered by DOE.

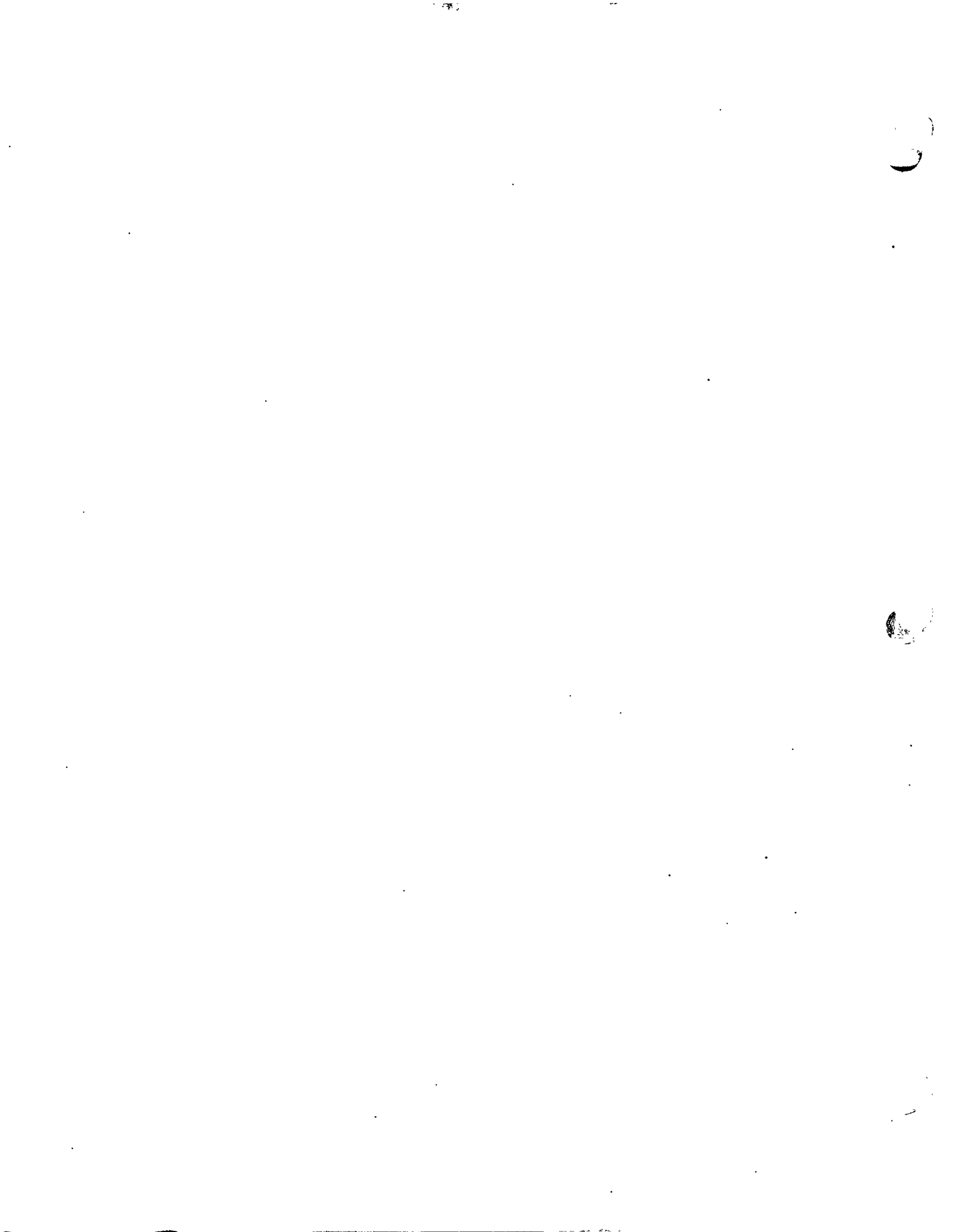
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SECTION 1.0 - TABLE OF CONTENTS

1.0 DOE'S EA MANAGEMENT FRAMEWORK	1-1
1.1 Overview	1-1
1.2 DOE Regional Roles	1-3
1.2.1 Regional Director General	1-3
1.2.2 Regional Responsibilities	1-3
1.3 Headquarters Roles	1-5
1.3.1 Deputy Minister	1-5
1.3.2 All Assistant Deputy Ministers	1-5
1.3.3 Assistant Deputy Minister, Environmental Protection Service .	1-6
1.3.4 National Programs Directorate (Environmental Assessment Branch)	1-6
1.4 Regional EACC Terms of Reference	1-8
1.5 National EACC Terms of Reference	1-9
1.6 Environmental Assessment Steering Committee Terms of Reference	1-10



1.0 DOE'S EA MANAGEMENT FRAMEWORK

1.1 Overview

DOE must ensure that it meets the requirements of the CEAA in a manner "which is both consistent and predictable". The Environmental Assessment Management Framework delineates how DOE will effectively conduct the business of EA within DOE.

The Framework is designed to ensure that DOE responsibilities as a Responsible Authority and Federal Authority are met. It clarifies the EA responsibilities of the Agency, DOE-HQ and DOE Regions as required in order to reflect regional integration and was signed by the Deputy Minister on March 11, 1994.

In summary, DOE-HQ has the responsibility of ensuring the national consistency of the EA program across the Department through the development of corporate approaches as well as national policies and procedures whereas the Regions have the responsibility of focusing on program delivery. The responsibility for EA compliance is a responsibility which is shared between all of the ADM's and RDG's within the Department.

Refer to the following section for a comparison of the roles and responsibilities of DOE and the Agency with respect to the Act.

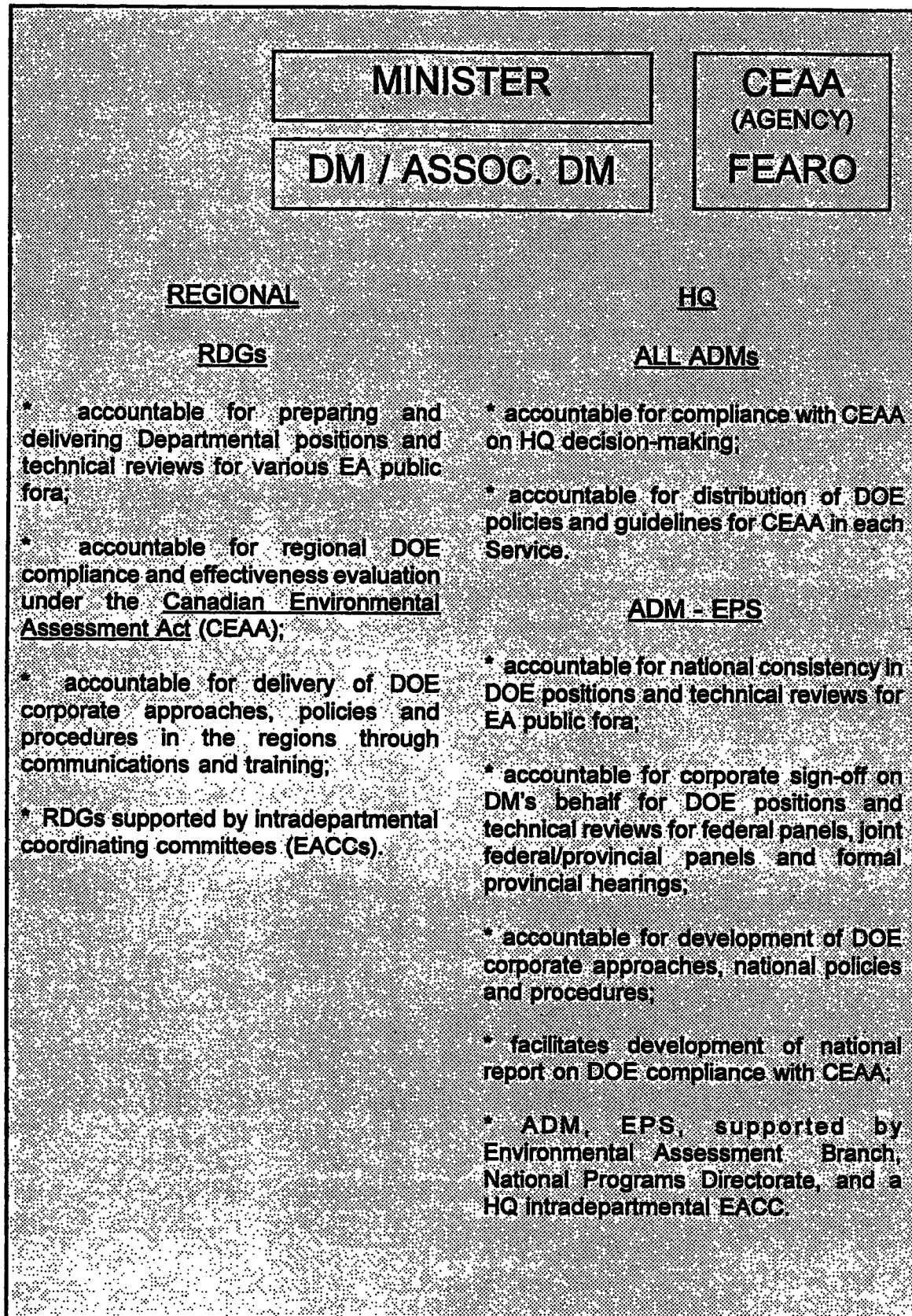


Figure 1-1: DOE's Management Framework for Environmental Assessment

1.2 DOE Regional Roles

1.2.1 Regional Director General

The Regional Director General is accountable for:

- regional DOE compliance with the CEAA
- the development and delivery of DOE positions to various EA public fora
- delivery of DOE corporate approaches, policies and procedures in the regions through communications and training
- assessments of DOE projects (may involve screenings, comprehensive studies, class assessments)
- forwarding recommendations to the ADM-EPS regarding the need to develop and modify CEAA regulations
- regional corporate coordination of the EA program and liaison with OGDs, the Agency and the provinces as necessary regarding DOE's EA program.

1.2.2 Regional Responsibilities

As Responsible Authority under CEAA, the Regions, with the assistance of the regional EACC's, are responsible for:

- Public Registry listing of assessments where DOE is a Responsible Authority
- full compliance with all CEAA requirements
- intra-departmental coordination and regional inter-departmental participation in EA activities
- liaising with HQ, program, Correspondance, Briefing and other departmental units when required
- liaising with the Agency and OGD's and other parties where appropriate

During a mediation/panel review:

- coordinates Departmental review of the EIS
- strategic role in actioning Departmental decisions throughout the review
- upon receipt of a mediation/panel report, coordinates Departmental input to the federal response document in collaboration with HQ

Beyond the role of Responsible Authority, the Regions are responsible for:

- providing specialist information to other RA's upon request
- assisting in the development, and ensuring implementation of national policies and guidelines within their respective regions
- development and delivery of educational/training materials, consistent with HQ national policies and guidelines and Agency procedures
- liaises with HQ, Program, Correspondence, Briefing and other departmental units when required
- liaises with the Agency, OGD's and other parties where appropriate
- develops Departmental positions for approval by the RDG in consultation with HQ

With respect to Departmental involvement in non-CEAA and other activities:

- coordinates Departmental involvement and represents the Department before panels or equivalent
- provides information and advice on Departmental positions

1.3 Headquarters Roles

1.3.1 Deputy Minister

The Deputy Minister is responsible for:

- the EA Management Framework
- Departmental EA positions to CEAA or non-CEAA public fora and DOE responses to mediation/panel reports
- advising the Minister on issues involving DOE perspectives, including those relative to the Agency
- referring matters to the Minister, as appropriate

1.3.2 All Assistant Deputy Ministers

All Assistant Deputy Ministers are accountable for:

- compliance with CEAA on HQ decision-making
- distribution of Departmental policies and guidelines for CEAA within HQ and National Institutes
- advising an supporting Regional EA staff on relevant scientific and policy issues related to the specialist and initiating roles of the region
- development and maintenance of national guidelines for the provision of specialist information on relevant science

1.3.3 Assistant Deputy Minister, Environmental Protection Service

The Assistant Deputy Minister, Environmental Protection Service is accountable for:

- facilitating overall Departmental CEAA compliance
- corporate sign-off on the Deputy Minister's behalf for Departmental positions and technical reviews for federal mediations/panels, joint panels and formal non-federal hearings
- making recommendations to the Deputy Minister on matters regarding the approval of class screening standards, the results of comprehensive studies, and the referral of projects to panel review or mediation (based on collaboration with appropriate RDG)
- development and dissemination of DOE corporate EA approaches, national policies and procedures in consultation with the regions
- corporate coordination of both project and policy EA in DOE in consultation with the regions
- development of departmental positions in consultation with the Regions

1.3.4 National Programs Directorate (Environmental Assessment Branch)

The National Programs Directorate, through the Environmental Assessment Branch and with the assistance of the National EACC:

- develops DOE national approaches, policies and procedures
- develops, in consultation with the Agency and all Departmental units, operational and policy documents that form the basis of HQ and regional training initiatives
- provides a window to Legal Services and any necessary clarification of CEAA related issues
- verifies national conformity of policies, procedures, assessments and DOE positions for mediations and panel reviews including non-CEAA related activities

- liaises with central agencies including OGD's to communicate Departmental positions and facilitate DOE input to federal responses to panels/mediations on behalf of or in cooperation with the regions
- chairs the National EACC as a means of ensuring timely issues identification, resolution and information sharing
- responsible for reporting mechanisms, supporting the DM and the Minister
- assists in actioning decisions and positions made at the Regional level, including requests for legal interpretation and guidance and processing 'Early Warning' notes for the DM and the Minister
- ensures consistent information sharing mechanisms between and among the regions and HQ

1.4 Regional EACC Terms of Reference

Under the new Management Framework, the regional **Environmental Assessment Coordinating Committee's (Regional EACC's)** are responsible for facilitating the regional delivery of DOE's EA program through:

- 1. inter and intra-departmental coordination to facilitate compliance with the EARPGO and CEAA and the development of Departmental positions and technical reviews for EA public fora;**
- 2. supporting the RDG in managing the development and delivery of Departmental positions and technical reviews, including facilitating HQ consultation;**
- 3. effective liaison and consultation as required between DOE region and FEARO/the Agency regional offices regarding EA process matters**
- 4. provision of timely advice to the RDG and other regional management on EARPGO/CEAA responsibilities;**
- 5. information exchange between the Department's Regional program delivery components, other regions and the HQ corporate management (EAB);**
- 6. dissemination of EA information and advice to DOE Regional EA practitioners and staff in the following areas:**
 - 1) EA related regulations administered by DOE;**
 - 2) technical and scientific aspects of EA;**
 - 3) legal responsibilities under the CEAA; and,**
 - 4) corporate EA approaches, policies and procedures;**
- 7. to work closely with the National EACC to achieve an effective and nationally consistent EA program in DOE;**
- 8. to be a focal point for the development of teams for internal coordination of FA and RA roles;**
- 9. to be a coordination point for the reporting of EA matters including major project summaries and regular complinaces**

1.5 National EACC Terms of Reference

The objectives and responsibilities of the **National Environmental Assessment Coordinating Committee (EACC-NAT)** as they apply to environmental assessment activities are designed to achieve:

- 1. positioning of Environment Canada (DOE) to comply with the EARPGO and CEAA, as appropriate;**
- 2. effective information exchange between Headquarters and the program delivery components of the Regions as well as between Headquarters and the Environmental Assessment Steering Committee;**
- 3. effective liaison and consultation as required between DOE Headquarters and FEARO/the Agency regarding Environmental Assessment process matters;**
- 4. development of national DOE guidance related to scientific, technical, policy and process aspects of project assessments and public reviews;**
- 5. input as required to review of departmental submissions and positions relating to assessments by Review Panels with advice to the Assistant Deputy Minister of Environmental Protection on key DOE issues;**
- 6. effective provision of information and advice to DOE, OGDs and involved agencies on:**
 - 1) regulatory instruments administered by DOE;**
 - 2) technical and scientific aspects of EA;**
 - 3) DOE's legal responsibilities under EARP and CEAA;**
- 7. assist with identification and prioritization of emerging EA issues in a national leadership capacity.**

1.7 Environmental Assessment Steering Committee Terms of Reference

1. The Environmental Assessment Steering Committee membership will consist of:

- the HQ and Regional Directors of the environmental assessment (EA) program areas
- the HQ DG of National Programs- as Committee chairperson

2. The Environmental Assessment Steering Committee mandate will be:

- to discuss strategic EA issues and recommend solutions to those issues which reflect the concerns and realities of all regions of the Department
- to discuss and develop well-defined, informed approaches to operational problems which have a national scope (ie. chloramine issue)
- to provide strategic direction to the National and Regional Environmental Assessment Coordinating Committees
- to provide a direct link to senior levels of the Department (RDGs, ADMs) in terms of recommendations and advice on EA related issues

3. The Environmental Assessment Steering Committee modus operandi:

- teleconferences of one hour, to be held on the last Thursday of each month, at 1:00pm EST
- frequency of teleconference meetings will be adjusted as appropriate to reflect need
- a meeting of all Committee members will be held at one location on an annual basis

Environmental Assessment Steering Committee Members (Feb. 1995)

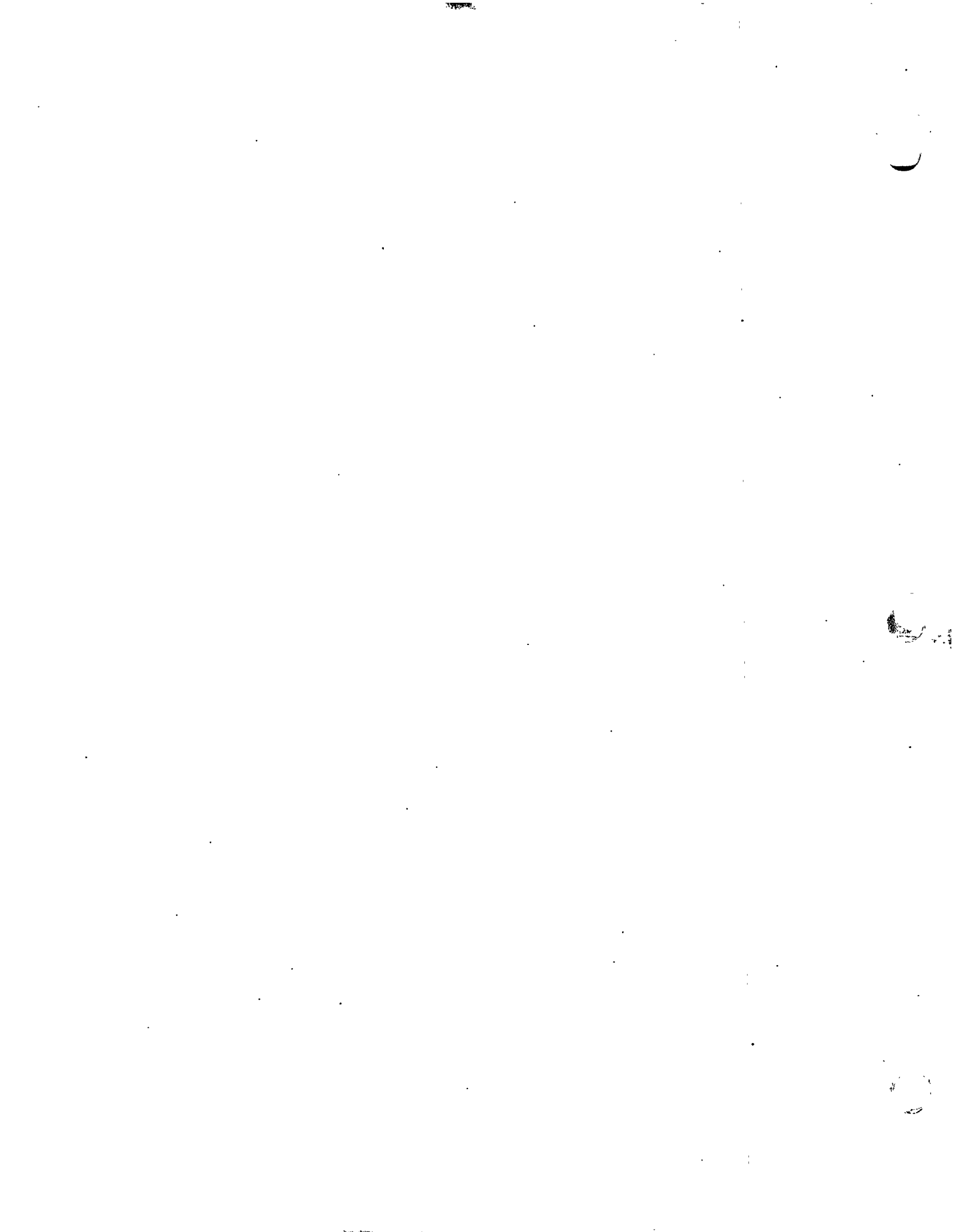
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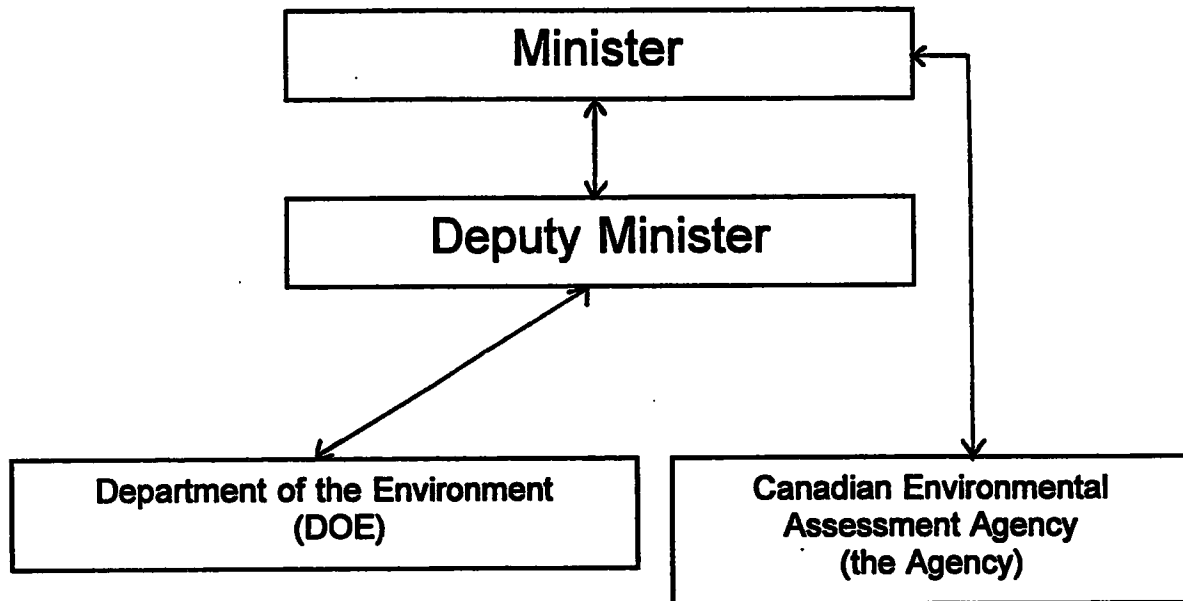
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2.0 A COMPARISON OF THE ROLES OF DOE AND THE AGENCY UNDER CEAA



The Department of Environment and the Canadian Environmental Assessment Agency (the Agency) have distinct, yet complementary roles which they perform at arm's length from one another in support of the Canadian Environmental Assessment Act (CEAA).

Though DOE and the Agency are ultimately accountable to the Minister of the Environment, their roles are quite different. The Agency performs a process administration function for the whole of the federal government whereas DOE, like many other departments and agencies, has specific responsibilities to fulfil in compliance with CEAA. The Minister is accountable in two contexts. These dual accountabilities must be kept clear and distinct in order to avoid confusion and duplication of effort. The following chart and narrative are presented to delineate and contrast the major roles and responsibilities of DOE and the Agency under CEAA.

DOE

AGENCY

Responsibilities:

Responsible for fulfilling its legal requirements pursuant to CEAA and consistent with procedural guidelines developed by the Agency.

Responsible for the government wide administration of the federal environmental assessment process under CEAA as well as the development of procedural guidelines to be used by all departments and agencies to which CEAA applies.

Reporting Relationships:

Reports indirectly to the Minister through the Deputy Minister. Acts as advisor to the Minister of the Environment, through the Deputy Minister, on the operational aspect of the environmental assessment of DOE projects and on the administration of the process within DOE.

Reports directly to the Minister. Advises and assists the Minister in performing the duties and functions conferred on the Minister by the Act. Advises the Minister on the administrative aspects and requirements of the environmental assessment process across the federal government.

Roles:

Has two fundamental roles under CEAA: the role of **specialist or expert Federal Authority (FA)** and the role of **Responsible Authority (RA)**.

As an FA, DOE provides scientific, technical and regulatory information and data within its mandate and related to the environmental assessment of proposed projects, on request and consistent with s.12(3) of the Act, to the RA or to a mediator or review panel, to the Minister and in certain cases, to other jurisdictions.

Provides related scientific, technical and regulatory information within its mandate, at request of Minister, on issues not subject to federal environmental assessment

Has the fundamental role of being the **focal point** for the administration of the CEAA process across the federal government- the implementation of which it examines and evaluates in an independent manner. Provides information to all departments and agencies on their respective responsibilities under CEAA to ensure that the process is clearly understood and consistently implemented.

DOE

AGENCY

Screenings:

As an RA, ensures that environmental assessments of its proposed projects are performed, according to CEAA and in an exemplary manner, as early as possible in the planning stages of projects and before irrevocable decisions are made. Considers the screening report and the public response to the proposal prior to making a decision with respect to the future of the proposal.

In this respect, DOE has the same responsibilities as other departments and agencies when in the role of an RA.

Class Screenings:

Designs, as appropriate, class screening reports, which when approved are used as a models for the screening of other DOE projects in the same class, with adjustments made as needed to consider local circumstances and cumulative environmental effects.

Provides, on request and in an exemplary manner, scientific information/data and comments related to DOE's mandate, on the draft class screening reports of other RAs.

Provides departments and agencies with procedural guidelines for the screening of proposals but does not advise on actual screening decisions.

Assists RAs in the provision of information related to proposals to the public and the solicitation of public response to those proposals.

Makes draft class screening reports received from RAs available to the public for comment.

Declares, when appropriate, such drafts as official class screening reports following publication of the report in Canada Gazette and following its review of the draft and its consideration of public comments on the report.

DOE

AGENCY

Comprehensive Studies:

Prepares comprehensive study report for projects for which it is an RA, where required by regulation and where immediate referral by Minister to panel review or mediation not appropriate. Provides completed comprehensive report to the Agency and to the Minister.

As an FA, reviews the comprehensive study reports prepared by other RAs before, and possibly after, the reports are submitted to the Agency and the Minister.

Makes decisions with respect to the future direction of projects where comprehensive study report was referred back to DOE by the Minister.

Transboundary Environmental Effects:

Provides, at the Agency's request, scientific information/data related to DOE's mandate on the possible environmental effects on another jurisdiction (ie. province, country, lands of federal interest such as native reserves) of a proposed project as needed to support the Minister in making a decision with respect to a project (ie. whether to proceed to mediation or review panel) which has transboundary effects but which does not have a s.5 trigger.

Reviews comprehensive study report for procedural compliance with the Act.

Publishes notice, facilitates public access to and receives public comments on comprehensive study report.

Advises Minister on the next steps in the EA process, as appropriate, such as whether to proceed to mediation or public review or to refer project back to the RA for action.

Gathers, at the request of the Minister, scientific information/data from within and outside of the federal government as needed to make a sound decision with respect to the possible environmental effects of a proposed project on another jurisdiction.

Gauges, at the request of the Minister, public concern regarding such a proposed project.

Mediations and Panels:

Refers projects for which it is an RA to Minister for subsequent referral to mediation or review panel, where, taking into account appropriate mitigation measures, there is uncertainty with respect whether project is likely to have significant adverse environmental effects or where significant adverse environmental effects of project are likely, or where public concerns warrant such a referral.

Provides representation at panels and for mediators in order to respond to questions within areas of DOE's mandate. Reviews mediation or panel reports to determine implications for DOE activities and policies and assists the RA in deciding how to deal with mediation or panel recommendations in areas which fall within the mandate of DOE.

Harmonization:

Promotes consistency and harmonization within DOE to deliver on responsibilities in a nationally consistent manner. Participates, when appropriate, in the EA processes of other jurisdictions (e.g. provincial or land-claims processes).

Provides administrative support and process advice for mediators and review panels, including arranging for appointment of mediators, panel members and secretariats and supporting the development of terms of reference for both mediators and review panels.

Acts as the link between the mediator or panel and government while ensuring that its independence from government is respected and maintained. Advises on the co-ordination and development of the federal response to a mediation or panel report.

Promotes uniformity and harmonization of environmental assessment processes across Canada at all levels of government including the negotiation and co-ordination of federal/provincial review of projects.

Negotiates and administers, on behalf of the Minister, agreements, arrangements or MOUs with other jurisdictions such as those required for the establishment of joint review panels.

DOE

AGENCY

Research:

Pursues and promotes scientific research in areas within its mandate. Uses expertise, information/data gained from this research in the process of its own environmental assessments.

Contributes this scientific information/data in its role as an FA, on request, toward the environmental assessments which are the responsibility of other departments, agencies or jurisdictions.

Public Participation:

Ensures, in an exemplary manner and where deemed appropriate in the circumstances, that the public is given the opportunity to participate in the screening of a project for which DOE is an RA.

Provides the public with the opportunity to examine and comment on screening reports and records of projects maintained on the public registry for which DOE is an RA.

Advises the public of the decision made with respect to the future of the project following the environmental assessment as set out in s. 38(2) of the Act.

Promotes or conducts research in matters of environmental assessment and encourages the development of related techniques and practices, including testing programs, alone or in cooperation with other departments, agencies or organizations. At the request of the Minister, provides administrative support for any research or advisory body the Minister establishes in the area of environmental assessment.

Encourages an opportunity for public participation in the federal environmental assessment process as a whole through education and guidance delivered to departments and agencies with respect to the importance of public involvement.

Provides the public with access to the completed comprehensive study (s. 22), mediation and panel reports (s. 36) on behalf of the Minister.

DOE

AGENCY

Public Registry:

Maintains a record on the public registry for its project assessments (screenings and comprehensive studies), from the start of the assessment until completion of any follow-up program, when in the role of an RA.

Ensures convenient public access to copies of all records noted on the public registry and related to the screening or comprehensive study of projects for which DOE is an RA.

Training:

Provides departmental specific information, guidance and training on CEAA across DOE in a manner which ensures consistent application of the Act across the Department.

Maintains the Federal Environmental Assessment Index (FEAI), the national database of information on assessments conducted under the Act.

Maintains a public registry for projects subject to mediation or panel review.

Ensures convenient public access to all records on the public registry related to panels and mediations of projects.

Provides information or training to all departments and agencies in order to facilitate the carrying out of environmental assessments under the Act.

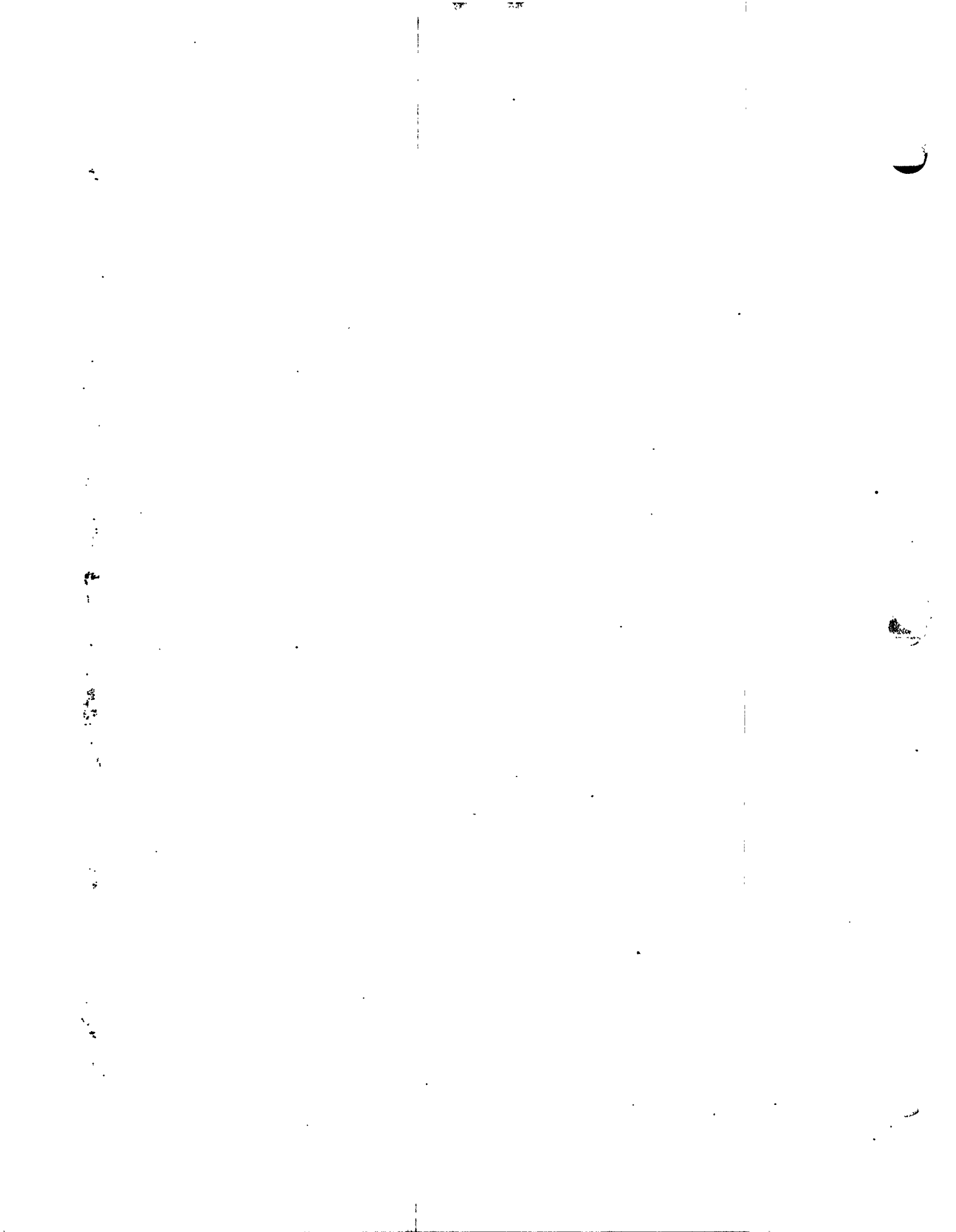
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SECTION 3.0 - TABLE OF CONTENTS

3.0 AN OVERVIEW OF CEAA FROM DOE'S PERSPECTIVE	3-1
3.1 Introduction	3-1
3.2 What is the Canadian Environmental Assessment Act?	3-2
3.3 What is the purpose of CEAA?	3-3
3.4 What is a Federal Authority?	3-5
3.5 What is a Responsible Authority?	3-5
3.6 When will the Act apply?	3-7
3.7 What is CEAA's definition of a project?	3-7
3.8 What are CEAA's key regulations?	3-8
3.8.1 DOE's Annotated Law List	3-10
3.9 How do CEAA's triggers compare with the EARPGO's?	3-19
3.9.1 CEAA's Transboundary Provisions	3-20
3.10 What are DOE's responsibilities under CEAA?	3-21
3.11 Does CEAA involve the public?	3-22
3.12 What is the Public Registry?	3-23
3.13 What happens to projects undergoing EARPGO assessments when CEAA is proclaimed?	3-24



3.0 AN OVERVIEW OF CEAA FROM DOE'S PERSPECTIVE

3.1 Introduction

The purpose of this section of the Handbook is to highlight key aspects of the Canadian Environmental Assessment Act (CEAA) from a DOE perspective. This overview provides answers to the questions which will be most often asked by DOE staff who are unfamiliar with CEAA and its implications to the Department.

When appropriate, exercises designed to focus the reader's attention on details which are fundamental to a solid understanding of the Act are highlighted as follows:

EXERCISE:

To gain a thorough understanding of CEAA, try reading through the Act several times- each time from a different perspective. Putting yourself in the shoes of the Minister, the Agency, a member of DOE with program-specific responsibilities or a member of the general public, for instance, will enable you to gradually develop a good understanding of the Act by allowing you to concentrate only on those sections of CEAA which relate to your current 'perspective'.

Important points are similarly highlighted as 'Notes' throughout this section in order to draw attention to parts of the Act which, if overlooked, could lead to unnecessary confusion.

Readers should supplement the information provided in this section by referring to the more detailed sections of this Handbook as well as to the Agency's document entitled *'The Responsible Authority's Guide to the Canadian Environmental Assessment Act'*. In addition, DOE's *EARP/CEAA Transition Document* will be a helpful reference for those readers who are entering CEAA with a working knowledge of the Environmental Assessment Review Process (EARP) Guidelines Order.

Finally, it is important to be aware that this overview section must not be quoted for legal purposes- such references must be drawn directly from the Act in consultation with Justice counsel.

3.2 What is the Canadian Environmental Assessment Act?

The Canadian Environmental Assessment Act, or CEAA, is an Act which establishes a federal environmental assessment process. CEAA applies only to projects for which the federal government has some decision-making responsibility. Projects for which the federal government has no such involvement and for which the transboundary provisions of CEAA do not apply, do not trigger the Act. However, an environmental assessment under another jurisdiction, such as that of a provincial or municipal level of government, may be required in these cases.

The new Act replaces the EARP Guidelines Order and in doing so, provides much needed clarification of the federal environmental assessment process.

NOTE:

When unsure of how a section of CEAA should be interpreted, make a habit of referring to the Preamble as well as the relevant definitions in the Interpretation section (s.2) of the Act to obtain the proper perspective to the section in question. The purposes of the Act, set out in s.4, are also helpful.

For further guidance, refer also to EARPGO caselaw. A summary of EARPGO caselaw which is likely to remain relevant under CEAA is included as an appendix to this document.

Unlike the EARPGO, (which provided for two types of environmental assessments- Initial Assessment and Panel Review) CEAA provides for four types of environmental assessments- Screening, Comprehensive Study, Mediation and Panel Review. The details and requirements of these four types of environmental assessments are covered in the Agency's *'The Responsible Authority's Guide to the Canadian Environmental Assessment Act'*.

3.3 What is the purpose of CEEA?

The purpose of CEEA is clearly set out in s.4:

- to ensure that the environmental effects of projects are identified and receive careful consideration before 'Responsible Authorities' take actions in connection with them;
(as required under the Act, DOE must ensure that such careful consideration, in the form of an environmental assessment, takes place in cases where they are in the role of a 'Responsible Authority'; DOE also must provide specialist or expert information or knowledge upon request by other 'Responsible Authorities')
- to encourage 'Responsible Authorities' to take actions that promote sustainable development and thereby achieve or maintain a healthy environment and a healthy economy;
(DOE is developing and promoting a sustainable development framework on behalf of the federal government)
- to ensure that 'Responsible Authorities' carry out their responsibilities in a coordinated and efficient manner in order to eliminate duplication in the process;
(this is an amendment introduced in Bill C-56, which is a reference to the concept of 'one project, one assessment' and the recognition of efficiency in harmonization as an underlying purpose).
- to ensure that projects which are to be carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out;
(environmental assessments under CEEA must always consider the effects projects may have on neighbouring jurisdictions (e.g. province, territory, reserve, country); this objective is also a reference to the transboundary provisions of the Act (s.46-48), which deal with projects which do not trigger CEEA and which do not involve any manner of federal involvement but which may have significant adverse environmental effects across boundaries (e.g. provincial, international, lands of federal interest); DOE's environmental expertise role may be called upon to support the Minister in relation to these provisions)
- to ensure an opportunity for public participation throughout the environmental assessment process;
(DOE's policy is to encourage participation of the public through all phases of its environmental assessments)

The purpose of CEAA as set out in s.4 contains terminology taken directly from the Interpretation Section of the Act (s.2). Several of the definitions set out in s.2 are fundamental to an understanding of the Act, and how it is to be applied. For this reason, they are highlighted here.

NOTE:

According to the Act, 'environment' means the components of the Earth, and includes:

- (a) land, water and air, including all layers of the atmosphere,
 - (b) all organic and inorganic matter and living organisms, and
 - (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).
-

NOTE:

According to the Act, 'environmental effect' means, in respect of a project,

- any change that the project may cause in the environment, including any effect of any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and
 - any change to the project that may be caused by the environment, whether any such change occurs within or outside Canada.
-

3.4 What is a Federal Authority?

A Minister, an agency of the Government of Canada, a department (such as DOE) or any other body prescribed under a regulation of the Act are considered to be Federal Authorities under CEAA. The Act provides a more detailed definition for a Federal Authority (FA), therefore readers should refer to s.2 to review the definition in full.

An FA which may have specialist information or knowledge relevant to an environmental assessment (such as information on migratory birds or on water quality) is referred to as an 'expert' or 'specialist' FA. The role that the expert or specialist FA plays under CEAA is comparable to the role that the 'specialist department' had under the EARPGO. Details on DOE's Role as an FA can be found in Section 5.0 of this Handbook.

3.5 What is a Responsible Authority?

Under CEAA, a Responsible Authority (RA) is an FA which has a decision making responsibility with respect to a proposal which meets the definition of a 'project' under the Act, and so, must ensure that an environmental assessment of the project takes place. Details on DOE's Role as an RA can be found in Section 6.0 of this Handbook.

DOE will most often find itself in the role of an RA under conditions similar to those in which it became an 'Initiating Department' under the old EARPGO- such as when it is the proponent of a project (e.g. when it proposes to construct a scientific data collection instrument and enclosure near a water body), when it issues a permit or licence (e.g. a prescribed permit under the Migratory Birds Regulations), when it sells, leases or otherwise disposes of federal lands or any interests in those lands to allow a project to take place (e.g. lease of a National Wildlife Area) or when it provides funds for a project (e.g. the Environmental Partners Fund).

As an RA, DOE must ensure that an environmental assessment of a proposed project is done as early in the planning stages of the project as possible and before irrevocable decisions are made. Based on the assessment, DOE must then take a course of action (make a decision) with respect to the future of the project.

The decision should be based on the answers to these questions:

- *Is the project likely to cause significant adverse environmental effects after implementation of appropriate mitigation measures?*
 - if not, the RA can exercise any power or perform any duty or function (e.g. proceed with a project for which it is the proponent, grant land or funds to a project or issue a licence or permit for the purposes of the project) which would permit the project to be carried out
 - if so, the RA can exercise any power or perform any duty or function which would permit the project to be carried out, **only** if deemed appropriate by the RA following the outcome of further review by mediation or review panel; proceed to the following question
- *Should the project be referred to the Minister for subsequent referral to a mediator or review panel based on:*
 - uncertainty regarding the environmental effects, even when appropriate mitigation measures are considered;
 - need to determine the potential for justification of the significant adverse environmental effects which are likely to be caused by the project; or
 - public concerns which warrant such a referral.

Under CEAA, DOE can expect on occasion to find itself as one of multiple RAs associated with a project. When this happens, it is up to the group of RAs to agree amongst themselves on the manner in which to perform their duties under the Act. Whether or not it assumes the lead, DOE should be aware that **the responsibility for making a decision on the environmental assessment for which they are an RA can not be delegated.** In cases in which the members of the group of RAs fail to come to an agreement with respect to which RA will take the lead, the Agency can advise on the allocation of duties and functions amongst the group.

NOTE:

Under CEAA, the sole RA for a project or the 'lead' RA for a project will be required to maintain an entry of the project on the Federal Environmental Assessment Index. This Index, a component of the Public Registry system, is an electronic listing of all environmental assessments conducted by all RAs under CEAA. The Public Registry is discussed in another section of this document.

3.6 When will the Act apply?

NOTE:

The questions which must be asked to determine whether a proposal requires an environmental assessment under CEAA are:

- Is there a trigger? (in which case there is federal involvement)
 - Is there a project?
 - Is the project excluded from the Act?
-

To determine whether an environmental assessment is required of a proposal, these basic questions must be asked. To answer these questions, the reader must first become familiar with the Act's triggers, its definition of a project and its four key regulations.

3.7 What is CEAA's definition of a project?

CEAA specifies that the subject of an environmental assessment must be a 'project'. The Act defines the following two types of projects:

- any proposed undertaking in relation to a physical work such as construction, operation, modification, decommissioning, abandonment, or other undertaking (e.g. construction of a bridge, abandonment of a mine);
- any proposed physical activity NOT in relation to a physical work prescribed by the Inclusion List Regulation. The Inclusion List, one of four key regulations associated with the Act, is discussed below.

This definition is important because determining whether or not a proposal is actually a project according to CEAA is one of the questions which must be asked to determine whether the Act applies.

3.8 What are CEAA's key regulations?

There are four regulations which are fundamental to CEAA. These regulations, which are included as appendices of this Handbook are:

- 1) Law List** a list of regulatory provisions from statutes or regulations, which provide the authority for licenses or permits, which, in cases where a project exists and when exercised by an FA, trigger the Act (e.g. issuing of an International Rivers Improvement Act permit)

- 2) Inclusion List** a list of physical activities not associated with a physical work which are deemed to be projects under the Act; (e.g. eiderdown collection from migratory birds)

- 3) Exclusion List** a list of projects considered to be environmentally benign in nature, for which an environmental assessment is not required (e.g. routine maintenance)

- 4) Comprehensive Study List** a list of projects which could generally be expected to result in significant adverse environmental effects and/or significant public concern which require a comprehensive study (e.g. the proposed construction, decommissioning or abandonment of a canal or lock in a wildlife area or in a migratory bird sanctuary)

NOTE:

Provisions on the Inclusion List are drawn primarily from the Law List. In order for a **physical activity** to be considered to be a project under the Act, the provision which regulates the physical activity must be on the Law List and the activity itself must be on the Inclusion List.

The following example uses an activity with which DOE is familiar in order to illustrate this relationship:

The removal or damaging of vegetation, the carrying on of agricultural activities or the disturbance or removal of soil in a wildlife area that requires a permit under s.4 of the Wildlife Area Regulations is a physical activity listed as an entry on the Inclusion List.

The provision which regulates (gives the Minister the authority to issue permits for) this physical activity is s.4 of the Wildlife Area Regulations. S.4 of the Wildlife Area Regulations is an entry on the Law List.

Phase II of the Inclusion List will consider the addition of physical activities related to the proponent, land and funding triggers.

DOE's Annotated Law List, a narrative version of the Law List which includes only those entries for which DOE is responsible, is presented over the next pages.

3.8.1 DOE's Annotated Law List

CANADA WILDLIFE ACT

Wildlife Area Regulations

- s.4 The Minister may, on application, issue a permit to any person authorizing that person to carry on an activity described in section 3 in any wildlife area where that activity will not interfere with the conservation of wildlife.
SOR/82-871, s.1

Minister may issue a permit to carry on an otherwise prohibited activity in a wildlife area (damaging or removal of vegetation, carrying on of agricultural activity, and the disturbance or removal of soil).

CANADIAN ENVIRONMENTAL PROTECTION ACT

- s.63(1) Subject to subsection (2), the Governor in Council may make
- (a) regulations recommended by the Minister on the basis referred to in paragraph 61(1)(a) if the Governor in Council is satisfied that the country referred to in that paragraph has granted Canada substantially the same rights with respect to the prevention or control of air pollution as are granted to that country under this Part;
 - (b) regulations recommended by the Minister on the basis referred to in paragraph 61(1)(b); and;
 - (c) regulations for carrying out the purposes and provisions of this Part.

Minister recommends site-specific regulations to the G. in C. to deal with sources of international air pollution.

Figure 3-1(a) - DOE's Annotated Law List

CANADIAN ENVIRONMENTAL PROTECTION ACT

s.71(1) Subject to subsection (2) and (3), the Minister may grant any permit required by this Part on receipt of an application

- (a) in the prescribed form;
- (b) containing such information as may be prescribed or required by the Minister for the purpose of taking into account any factor referred to in subsection 72(1);
- (c) accompanied by the prescribed fee; and
- (d) containing proof that notice of the application was published in a newspaper of general circulation in the vicinity of the loading, dumping or disposal described in the application

Minister may grant any permit required under Ocean Dumping provisions of the Act.

s.72(4) The Minister may suspend or revoke a permit or vary terms and conditions where, having regard to the factors specified in Part III of Schedule III or in any report of a board of review established under subsection 89(3) or(4), the Minister considers it advisable to do so.

Minister may vary or suspend an ocean dumping permit.

Figure 3-1(b)- DOE's Annotated Law List

CANADIAN ENVIRONMENTAL PROTECTION ACT

Federal Mobile PCB Treatment and Destruction Regulations

s.11 No person shall operate a mobile PCB destruction system or mobile PCB treatment system unless the person provides the Minister with information on the design and performance of the system that demonstrates that the system is capable of meeting the standards set out in sections 5 to 9 and is authorized by the Minister in writing to operate the system.

Minister may authorize operations of mobile PCB destruction or treatment system.

12(1) A person may, with the written permission of the Minister and subject to such terms and conditions as the Minister may impose, conduct a test of a mobile PCB destruction system or mobile PCB treatment system for the purposes of providing the Minister with the information referred to in s.11.

Minister may grant permission to conduct a test of a mobile PCB destruction or treatment system.

Figure 3-1(c) - DOE's Annotated Law List

FISHERIES ACT

36(5) The Governor in Council may make regulations for the purpose of paragraph 4(b) prescribing

- (a) the deleterious substances or classes thereof authorized to be deposited;**
- (b) the waters or places or classes thereof where any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;**
- (c) the works or undertakings or classes thereof in the course or conduct of which any deleterious substances or classes thereof are authorized to be deposited;**
- (d) the quantities or concentrations of any deleterious substance or classes thereof referred to in paragraph (a) that are authorized to be deposited;**
- (e) the conditions or circumstances under which and the requirements subject to which any deleterious substances or classes thereof referred to in paragraph (a) or any quantities or concentrations of those deleterious substances or classes thereof are authorized to be deposited in any waters or places or classes thereof referred to in paragraph (b) or in the course or conduct of any works or undertakings or classes thereof referred to in paragraph (c).**

The Governor in Council may make regulations for authorizing certain deposits. (DOE will have a role as a Responsible Authority when regulations are signed by both the Ministers of DFO and DOE).

Figure 3-1(d) - DOE's Annotated Law List

INTERNATIONAL RIVER IMPROVEMENTS ACT

International River Improvements Regulations

s.10(1) Where an applicant for a licence has supplied all the information required by these Regulations the Minister may

- (a) issue to him a licence for a period not exceeding 50 years; and
- (b) upon the expiration of any licence issue a further licence for a period not exceeding 50 years.

Minister may issue licence for construction, operation of an international river improvement project.

s.12 Upon the request of a licensee, his heirs, executors, administrators, successors or assigns, the Minister may vary the terms and conditions of a licence.

On request, the Minister may vary terms and conditions of the licence.

Figure 3-1(e) - DOE's Annotated Law List

MIGRATORY BIRDS CONVENTION ACT

Migratory Birds Regulations

s.4(1) The Minister may issue with such conditions as he considers reasonable, any permit referred to in Schedule II.

Minister may issue any permit referred to in Schedule II. Inclusion List contains only scientific, eiderdown collection and airport kill permits involving endangered species of migratory birds.

s.33 No person shall introduce into Canada for the purpose of sport, acclimatization or release from captivity a species of migratory bird not indigenous to Canada except with the consent in writing of the Director.

Director's consent required to introduce a foreign species of migratory bird.

35(2) Subsection (1) does not apply to the deposit of a substance of a type, in quantity and under conditions authorized by

(b) the Minister for scientific purposes.

Minister is required to authorize the deposit of oil, oil wastes or any other substance harmful to migratory birds in waters or in any other area frequented by migratory birds for scientific purposes.

Figure 3-1(f) - DOE's Annotated Law List

MIGRATORY BIRDS CONVENTION ACT

Migratory Birds Regulations

s.36 Notwithstanding anything in these Regulations, the Minister may issue to any person a special permit to

- (a) kill, capture or possess any migratory birds; and
- (b) collect and possess carcasses, eggs or nests of any migratory birds.

Minister may issue special permit to kill or capture migratory birds or collect or possess carcasses, eggs or nests of migratory birds.

Migratory Bird Sanctuary Regulations

s.9(1) The Minister may issue, or authorize any person to issue any permit referred to in these regulations.

Minister may issue any permit referred to in these regulations (specifically disturbing, destroying or taking bird nests, or carrying on any activity harmful to migratory birds, eggs, nests or habitat in a migratory bird sanctuary).

Figure 3-1(g) - DOE's Annotated Law List

Test your understanding of CEEA's definition of a project as well as how the Inclusion List Regulation comes into play in the process by trying the following exercise.

EXERCISE: Answer the following questions to determine which of the following is a project according to CEEA.

	Proposed undertaking or activity	Undertaking related to a physical work?	On inclusion List?	Project?
1)	construction of a dam	_____	_____	?
2)	testing of a mobile PCB destruction system	_____	_____	?
3)	dredging of a natural navigable riverbed	_____	_____	?
4)	collection of eggs of migratory birds for scientific purposes	_____	_____	?

Additional multiple choice questions as well as case studies (and their answers) can be found in the Appendix. Use the following checklist (Figure 3-2) to help you work through these exercises and case studies.

This checklist should be referred to whenever the Act's applicability is in question.

1. IS THERE A TRIGGER?

(ie. Is a federal authority the proponent of the proposed project or is there a land, money, or Law List Regulation trigger? Refer to s.5)

If yes, continue.

If no, **CEAA DOES NOT APPLY. Exit.**

(subject to Minister's discretion based on transboundary provisions of the Act, s.46-48)

2. IS THERE A PROJECT?

a) Is it an undertaking in relation to a physical work?

(i.e. construction, operation, modification, decommissioning, abandonment or any other physical undertaking)

- OR -

b) Is it a physical activity listed on the Inclusion List Regulation?

If yes to either a) or b), **THERE IS A PROJECT. Continue.**

If no to both a) and b), **CEAA DOES NOT APPLY. Exit.**

3. IS THE PROJECT EXCLUDED FROM THE ACT?

(Refer to Exclusion List Regulation)

If yes, **CEAA DOES NOT APPLY. Exit.**

If no, **PROJECT IS SUBJECT TO AN ENVIRONMENTAL ASSESSMENT UNDER CEAA, subject to emergency exclusion (s.7).**

Figure 3-2 - Does the Act Apply?

3.9 How do CEAA's triggers compare with the EARPGO's?

Section 5 of CEAA states very clearly that an environmental assessment is required before a federal authority exercises one of the following powers or performs one of the following duties:

- where a federal authority is the proponent of a project and does anything which commits it to carrying out the project, in whole or in part;
- where a federal authority provides financial assistance in a manner prescribed under s.5(1)(b) to the proponent for the purpose of the project to be carried out, in whole or in part;
- where a federal authority sells, leases or disposes of federal lands or any interests in those lands for the purpose of allowing a project to be carried out, in whole or in part;
- where a federal authority issues a permit or licence, or grants an approval prescribed by the Schedule I of the Law List for the purpose of allowing the project to be carried out, in whole or in part; or where the **Governor-in-Council** issues a permit or licence, or grants an approval prescribed by the Schedule II of the Law List for the purpose of allowing the project to be carried out, in whole or in part.

These triggers, (with some qualifications) are roughly analogous to those of the EARPGO Guidelines Order.

One notable exception is that CEAA's land trigger, ss. 5(1)(c), narrows the scope of the comparable EARPGO trigger. Whereas the EARPGO's land trigger catches all projects proposed to be located on federal lands, CEAA's land trigger requires that an environmental assessment be performed only for cases where federal land is granted (e.g. sold, leased or otherwise disposed of) for the specific purpose of enabling a project to be carried out, in whole or in part.

Under CEAA then, projects to take place on federal land and which do not happen to activate any of the Act's other triggers, will not require an environmental assessment unless the FA explicitly sells, leases or disposes of the lands or any interests in those lands to allow the project in question to take place.

The Act's s.5(1)(d) is a trigger which has provided additional clarity beyond the comparable EARPGO s.6(b) trigger- the trigger which gave rise to the concept of the Affirmative Regulatory Duty (ARD) following the Supreme Court decision regarding the Oldman River Dam case.

NOTE:

DOE should be aware that certain National Wildlife Areas and Migratory Bird Sanctuaries are managed but not owned by the federal government. Land managed by the federal government does not have the potential to become a 'land trigger' for application of the Act.

Furthermore, to ensure that all projects on federal land leased from DOE are subject to CEAA, leases should include an agreement that projects to take place on the land over the period of the lease will be subject to a federal environmental assessment.

Of significance to DOE is the fact that s.5(1)(d) of CEAA refers to the Law List- a regulation which effectively replaces the test for an ARD required under the Guidelines Order. The complete Law List and the complete annotated Law List are included as an appendix to the Handbook. An annotated list of DOE's Law List provisions is included in Section 3.8.1.

3.9.1 CEAA's Transboundary Provisions

DOE should also be aware of the Minister's discretionary decision-making powers with respect to transboundary and related environmental effects which are additional 'discretionary' triggers into the Act. No such provision was provided under the EARPGO.

Sections 46-48 of the Act set out these powers such that:

- where the Minister is concerned that a project is likely to cause significant adverse environmental effects either outside Canada, in another province or on lands of federal interest (such as Indian reserves),
- and where the project doesn't have a s.5 trigger,

- and where no power, duty or function is conferred by or under any other Act of Parliament or regulation is to be exercised or performed by an FA in relation to that project,

the Minister of the Environment may nonetheless refer the project to a mediator or review panel for an environmental assessment of the transboundary environmental effects of the project.

The Act provides that the Agency could designate RA responsibilities for projects for which assessment is invoked based on one of the transboundary provisions. In such cases, DOE can expect to be called on to provide support to the Minister and the Agency in its role as an expert or specialist FA.

NOTE:

It is important to note that the gateway into the Act by way of s.46 through s.48 is very narrow, so much so that it is expected that these provisions will rarely be used.

Furthermore, s.46(2), s.47(2) and s.48(3) provide the means for the Minister and the governments of all interested provinces to agree on a manner of conducting an assessment of the transboundary environmental effects of the project other than by mediation or review panel under CEEA.

3.10 What are DOE's responsibilities under CEEA?

DOE has two key roles and responsibilities under the new Act. DOE will have Responsible Authority (RA) obligations for those projects for which it has a decision to make, and Federal Authority (FA) obligations for projects where an RA requests specialist knowledge or information from DOE in order to complete an environmental assessment of a project.

These two roles roughly correspond with the 'Initiator' and 'Expert Department' roles which DOE had under the EARPGO. As under the Guidelines Order, DOE can expect to be most often in the role of an FA, providing specialist information or knowledge to other government departments in their role as RA for a project.

NOTE:

Unlike under the EARP Guidelines Order, the Act does not explicitly make reference to the role that certain departments, such as DOE, have in advocating protection of the interests for which they are responsible.

However, there is nothing in CEAA which prevents this type of proactive approach. The authority for this function comes from DOE's parent legislation, the DOE Act. Therefore a certain degree of advocacy is implicit to support its role as an environmental advocate for projects subject to assessment under CEAA.

DOE is ultimately accountable to the Minister in fulfilling its legal requirements as an FA and as an RA, consistent with procedural guidelines developed by the Agency. Reporting through the Deputy Minister, DOE is accountable to the Minister on the operational side of the EA of projects triggered by DOE and on the administration of the environmental assessment process within DOE.

Readers should refer to the Section 2.0 of the Handbook, entitled '*A Comparison of the Roles of DOE and the Agency under CEAA*' for a detailed account of how DOE and the Agency support the Minister respectively.

3.11 Does CEAA involve the public?

Yes! One of the underlying principles of CEAA is to ensure an opportunity for public participation in the environmental assessment process. The Act gives the RA the discretion to involve the public throughout all phases of the environmental assessment of a project.

Accordingly, DOE's policy is to openly involve the public early on and throughout all stages of its assessments. Though public involvement is facilitated through convenient public access to information through the Public Registry, the public must be notified upon completion of each environmental assessment report.

Specifically, the provision of public notice which is addressed in s. 38(2) of the Act, requires that after the environmental assessment report is completed, the RA must provide public notice of its course of action in relation to the project (in other words, its decision made under s.20(1)(a) or 37(1)(a)). This obligation to advise the public cannot be met (at the present time) by filing an entry on the Public Registry.

NOTE:

Refer to Section 7 - DOE Guidance on Public Participation, for Departmental guidance on methods for public involvement and notification which will be of assistance in complying with this requirement.

Readers should also refer to the document entitled *'Public Involvement - Planning & Implementing Public Involvement Programs'*, (more commonly known as the Praxis Manual), as well as the Agency's manual on *'Public Involvement in Environmental Assessment'*.

3.12 What is the Public Registry?

CEAA requires that each RA maintain a public registry of all of the information on which the environmental assessment of a project is based. The public registry must contain all records produced, collected or submitted with respect to the environmental assessment of the project, including **but not limited to:** the screening or comprehensive study report, any public comments submitted, any records produced requiring mitigation measures or as part of a follow-up program and any terms of reference for mediation or panel review.

NOTE:

Readers should be aware that CEAA's definition of a record is very broad. According to the Act, a 'record' includes:

- any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof.
-

DOE's specific approach to meeting the requirements of the Public Registry system is outlined in Section 9.0 of this document.

Readers requiring more detailed guidance on how the Public Registry system works as well on the division of the associated roles and responsibilities should refer to the Agency's User Guide to the Public Registry entitled '*The Responsible Authority's Filing System of the Federal Environmental Assessment Index*'.

NOTE:

Under CEAA, DOE will find itself in the role of a Federal Authority (FA) more often than that of a Responsible Authority (RA). Strictly speaking, an FA has no Public Registry obligations. However, DOE should be aware that information or data it provides as an FA will ultimately be noted on the Federal EA Index, (the electronic component of the Public Registry system) by the lead RA for the project. For this reason, the information or data that DOE supplies as an FA and which will ultimately be available to the public should always be well documented.

As mentioned earlier, where more than one RA is involved in a project, a lead RA must be chosen. The lead must establish and maintain a record of the project on the Federal EA Index. However, all RAs involved in the project must provide convenient public access to records which they produced or provided as noted on the Federal EA Index.

3.13 What happens to projects undergoing EARPGO assessments when CEAA is proclaimed?

CEAA provides transitional provisions to address the transition from the EARPGO to the new Act in those cases where projects were undergoing EARPGO assessments when CEAA was brought into force. DOE should be aware of these provisions (s.74), which are summarized here:

- the EARPGO will continue to apply to a proposal already referred to a panel for public review where the panel has already been established;
- the EARPGO will continue to govern ongoing environmental screenings or initial assessments until their completion. Subsequent Ministerial referrals for public review, however, will be to mediation and/or review panel

established under CEAA;

- an environmental screening or an initial assessment completed under the EARPGO may be used by an RA, under limited circumstances, for the purposes of a screening or comprehensive study under CEAA; and
- the application of CEAA to existing physical works which were constructed or which commenced prior to the enactment of the EARPGO (June 22, 1984) shall be limited to certain licences, permits or approvals involving a modification, decommissioning, abandonment or other project alteration. (for questions relating to physical works which fall into this category, contact HQ Legal Services through your regional environmental assessment contact-see Appendix for appropriate contact in your region).

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SECTION 4.0 - TABLE OF CONTENTS

4.0 POLICY DIRECTIVE ON THE IMPLEMENTATION OF CEEA BY ENVIRONMENT CANADA	4-1
4.1 Introduction	4-1
4.2 Principles	4-1
4.3 Mandatory Policy Statements	4-2
4.4 Interpretational Policy Statements	4-4
4.5 Operational Policy Statements	4-6

3

4

5

4.0 POLICY DIRECTIVE ON THE IMPLEMENTATION OF CEAA BY ENVIRONMENT CANADA

4.1 INTRODUCTION

- 1. This policy directive was developed in response to the recognized need to ensure nationally consistent delivery of the environmental assessment program under the federal Canadian Environmental Assessment Act (CEAA or the "Act").**
- 2. The CEAA will replace the current legislative regime of the *Environmental Assessment and Review Process (EARP) Guidelines Order*, except for ongoing assessments. The implementation of this new policy directive will commence upon proclamation of the CEAA.**
- 3. This policy directive will evolve as experience is gained in applying environmental assessment (EA) under the Act and the Department responds to new EA challenges and court interpretations with respect to the CEAA.**
- 4. DOE and the Canadian Environmental Assessment Agency (the "Agency") have distinct roles in support of the Minister of the Environment in the context of CEAA. Elucidation of these roles is provided by the DOE Management Framework for Environmental Assessment issued by the Deputy Minister in March 1994. This policy directive reflects the roles and responsibilities of the Department outlined therein.**

4.2 PRINCIPLES

- 1. The Canadian Environmental Assessment Act is mandatory federal legislation for federal authorities. As a federal authority, DOE must comply with the requirements of the CEAA.**
- 2. The Minister of the Environment has overall responsibility for the administration of CEAA. The Department will provide technical and scientific support and department specific process support to the Minister,**

in accordance with its mandate and in accordance with its roles outlined in the Environmental Assessment Management Framework.

3. DOE recognizes the focus of its mandate under the Department of the Environment Act (DOE Act) as environmental steward and advocate and the unique roles and responsibilities that this entails in a federal environmental assessment context.

This policy directive is organized into three types of statements:

- 1) mandatory requirements,
- 2) interpretational (discretionary) policies, where there is some latitude beyond a core level of responsibility, and
- 3) operationally oriented policies that set out the national guidance on implementation of specific aspects of the Act.

Each statement is accompanied by a rationale.

4.3 MANDATORY POLICY STATEMENTS

1. ***DOE will strive to ensure that all requirements of the CEAA are fully implemented.***

In support of its Minister, DOE will ensure that its "house is in order" and take the lead in demonstrating exemplary compliance with the Act throughout the federal government. This is consistent with the exercise of its role to promote EA as a pollution prevention tool to anticipate and prevent the degradation of environmental quality. DOE will make every effort to meet or exceed these requirements as a model for encouraging and promoting the integration of environmental factors into planning and decision-making in support of sustainable development.

DOE will ensure that all of its assessment activities and decisions are carried out and that they are scientifically and legally sound.

2. ***DOE will continue to adhere to the requirements of the "EARP Guidelines Order" for ongoing projects subject to the transitional provisions of the Act.***

Under the transitional provisions (section 74) of the Act, projects already undergoing environmental assessment pursuant to the EARP Guidelines Order will complete the screening stage within the EARPGO. DOE will confirm the status of its ongoing assessments at the time of proclamation of the Act to ensure that appropriate legislative regimes are being applied.

- 3. DOE acknowledges the Canadian Council of Ministers of the Environment (CCME) principles for cooperation and will support the development of bilateral harmonization agreements in environmental assessment by fulfilling its responsibilities as required. DOE will also participate in the broader Environmental Management Framework (EMF) initiative looking into the potential for one EA process for Canada.***

DOE will actively participate in federal-provincial environmental assessments, for which it has responsibilities, consistent with the CCME principles and the bilateral harmonization agreements. DOE can use this opportunity to further influence environmentally sound decision making beyond the federal spectrum.

DOE will encourage and utilize "one-window" federal contact points established by the Agency in specific provinces. DOE will encourage the use of federal interdepartmental EA committees in each region to facilitate federal coordination of responsibilities. This will also be facilitated through the "One federal assessment" regulation being developed for CEAA. The mechanism provided through bilateral harmonization agreements will provide effective interface with appropriate provincial agencies and processes.

- 4. DOE will cooperate and work with the new Canadian Environmental Assessment Agency (the "Agency") on procedural requirements and the development or amendment of regulations under the Act.***

DOE will advise and consult the Agency regarding procedural and scientific requirements of the Act in support of the Minister (e.g. comprehensive study reports, class screenings).

DOE will work with the Policy and Regulatory Affairs component of the Agency regarding policy responses to issues under the Act as well as provide DOE input to new and revised regulations under the Act. This can include advice on the need for certain regulations, or other non-

regulatory options.

On operational matters regarding the administration of panel reviews or mediation, DOE will liaise with the operational component of the Agency, as appropriate relative to DOE projects or DOE positions or interventions.

DOE will advise and consult the Agency and Department of Justice (DOJ) regarding new legal interpretations from court decisions that may affect DOE's requirements with respect to the Act.

4.4 INTERPRETATIONAL POLICY STATEMENTS

- 1. For those aspects of the CEEA for which there may be some discretion in terms of implementation, DOE will exercise its discretion in a manner that reflects the environmental responsibilities and priorities of the Minister of Environment.***

This is fully consistent with the Department's mandate under the DOE Act which explicitly imposes a duty on the Minister to ensure that federal projects, programs and activities are assessed for environmental impacts, and also empowers the Minister to promote the protection and enhancement of environmental quality. DOE will perform a leadership function in terms of embracing the principles of the Act, rather than simply meeting minimum legal or process requirements. Responsible managers will exercise their judgement on a case-by-case basis in applying this principle. Programs will be encouraged to be nationally consistent in their interpretation of all provisions of the Act.

Requirements that may be subject to flexible interpretation under the Act include, among others, the consideration of cumulative effects, the use of class assessments, the need for and requirements of follow-up programs, opportunities for public participation, and socio-economic analysis.

An environmental assessment training plan and guidance materials will be put in place within the Department to inform and instruct DOE officers on the procedures to be followed with respect to the above referenced requirements. These guidance materials will be updated as new regulations are developed and more is experience gained.

- 2. For those aspects of the CEEA for which there is currently some uncertainty in concept or practice, DOE will utilize criteria based on current departmental, national and international scientific knowledge, methods and environmental priorities.**

The CEEA uses terminology such as "significance", "sustainable development", and "cumulative effects", for which the scientific or quantifiable basis is not consistent in practice. No absolute criteria have been developed, thus case-by-case variability can be high. DOE will utilize its best available interpretive techniques recognizing that these will continue to evolve through experience gained under the Act, through caselaw, and elsewhere.

DOE will encourage and facilitate scientific research in support of putting these concepts into practice.

- 3. DOE will determine the scope of the assessment of its projects in light of its mandate, other federal responsibilities, and with due consideration of the concerns and responsibilities of non-federal jurisdictions.**

DOE will fulfil its Responsible Authority (RA) duties and define the scope of its assessments appropriately, giving due consideration to other jurisdictions such as provinces or First Nations and being consistent with precedents established through caselaw. Where another jurisdiction is affected by the project, DOE will seek to establish a bilateral review mechanism with the other non-federal EA processes, in the spirit of applicable harmonization agreements.

- 4. DOE will facilitate opportunities for public participation in the development and review of environmental assessments with respect to its project decisions and will provide convenient access to the information on which those assessments are based.**

To the extent required and as appropriate, DOE will consult the public with respect to its environmental assessments through various mechanisms such as stakeholder groups, response to letters of interest, solicited input, or proactive consultation through public meetings, etc. DOE will allocate appropriate time within the specific project assessments to adequately consider and address any public concerns brought forward.

Whereas DOE is required to provide convenient public access (through the public registry) to the information on which its assessments are

based, relevant information and screening reports will be shared directly with interested parties.

4.5 OPERATIONAL POLICY STATEMENTS

- 1. DOE will provide its expert knowledge and/or information to Responsible Authorities (RAs) upon request.**

DOE will continue to provide expert knowledge to an RA under the CEAA (and to the lead initiating department under EARP) acting as an advocate for those issues falling within its mandate.

The proposed regulation on the "One federal assessment" approach describes the requirement for the "triggered federal authority" to approach other FAs early in the planning stages of a project to determine their interest in a project. DOE will determine its interest in a project as requested and fulfil its responsibilities as federal authority or specialist as required .

- 2. DOE will provide its positions, expert knowledge and/or information at public review panels or mediation processes and respond to questions within its mandate.**

DOE will continue to appear and/or intervene at public review and mediation fora and joint federal-provincial reviews consistent with its mandate.

Where DOE is called upon to provide evidence or expert testimony at such fora, the appropriate DOE representative will be authorized to respond only to questions within DOE's mandate and on behalf of the Department.

The expert advice provided will be well substantiated including suitable recommendations regarding concerns raised by DOE (DOE position) and this advice will be supported by appropriate experts. Good communications with the RA will be maintained. Personal opinions should be avoided.

DOE may choose whether or not to appear as an expert at processes other than federal or joint EA processes and will make this decision on a

case by case basis. RDGs should make this decision regionally.

- 3. DOE will evaluate and consider the nature and extent of public concern relative to its assessments and advise the Minister on the merits of continuing the EA process based on these concerns.***

When DOE is an RA, it will consider public concerns and will ensure inclusion of appropriate documentation in the records. Where, in the judgement of the responsible manager and/or senior manager, a matter should be referred to the Minister under subparagraph 20(1)(c)(iii), 23(b)(3) or section 25(b), an appropriate analysis and recommendation will be forwarded through EA Management operational procedures. DOE will develop general criteria in its guidance to assist managers in assessing public concerns.

- 4. DOE will provide appropriate recommendations to the Minister in support of his or her decision-making responsibilities where significant adverse environmental effects may be justified.***

Where DOE as a RA has a decision to take regarding the report of a panel review, mediation, or comprehensive study under section 37, DOE will advise the Minister as to the relevant considerations that bear upon this decision.

It is particularly important where the project is likely to cause significant adverse environmental effects that potentially "can be justified in the circumstances" (subparagraph 37(1)(a)(ii)). The decision to justify is strictly a Ministerial decision which could resist challenge so long as relevant considerations form its basis and the Minister has exercised the discretion fairly and objectively. DOE will provide information and recommendations as to specific DOE issues raised during the assessment that are relevant to this determination. FEARO is developing further guidance for departments on criteria for RAs wishing to "justify in the circumstances".

- 5. DOE will provide scientific and technical support to the Minister regarding CEAA provisions that confer Ministerial discretion.***

DOE will provide information support to the Minister to facilitate decision making under section 28 of the Act with respect to either potential adverse environmental effects of a project, or public concerns that relate to that project.

DOE will also support the Minister to facilitate decision making under the

transboundary provisions (46-48) of the Act. DOE will also advise the Minister as to powers conferred under its Acts or regulations, or on other manners of conducting assessments of the effects of projects for which DOE is an RA.

6. *DOE will support the Minister and Deputy Minister with respect to reporting on DOE's activities under the Act.*

DOE will provide to the Minister and Deputy Minister an annual internal "Activity Report" on its EA program and related compliance. This report will be developed through collaboration among the regions and headquarters EA managers.

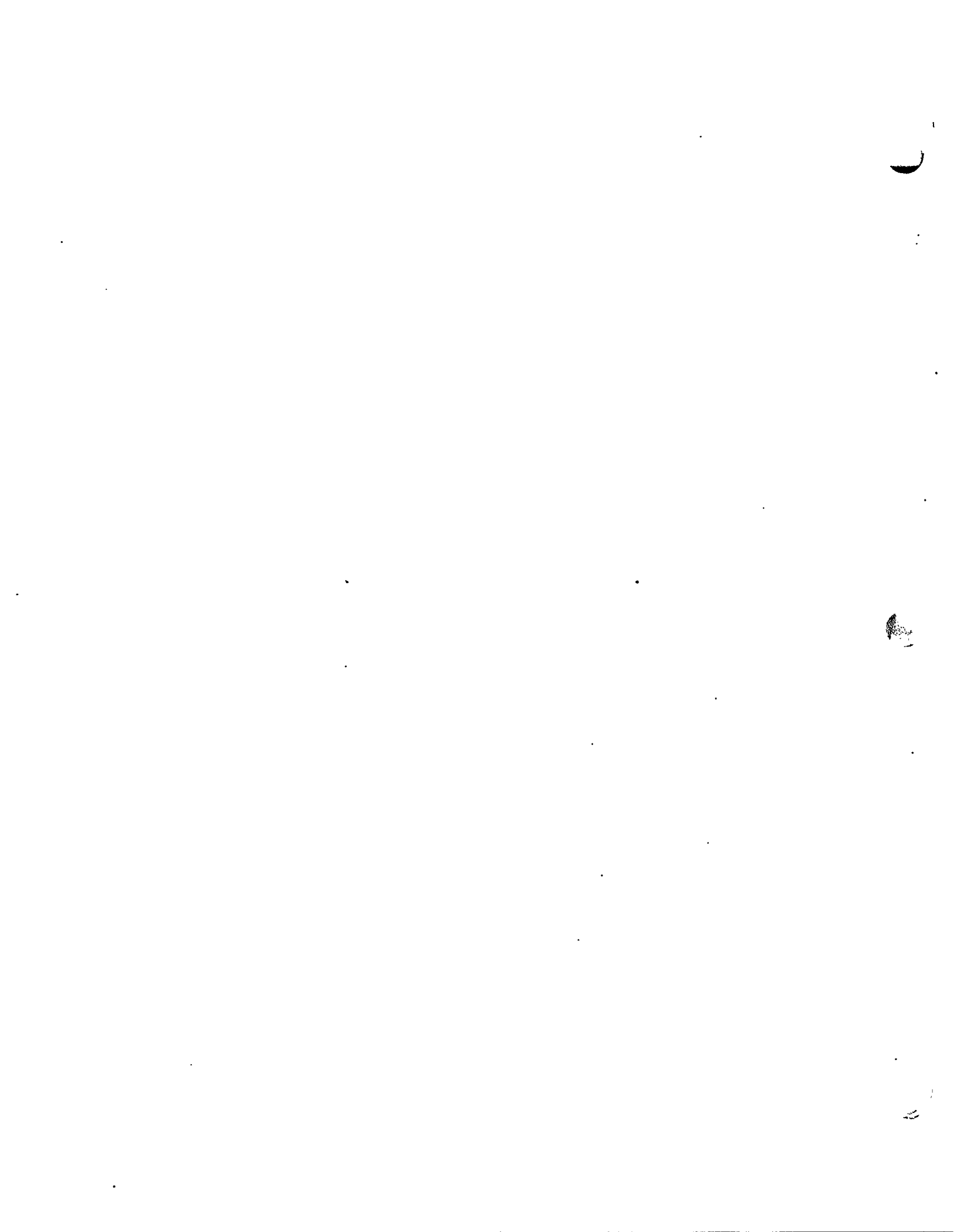
DOE will provide scientific and technical support and information relative to DOE's statutory and regulatory responsibilities, as appropriate in the context of the five-year review and annual reports to the House of Commons as required under section 72.

AUTHORITY

Canadian Environmental Assessment Act; Statutes of Canada 1992, Chapter 37, 54 p.

***Environmental Assessment and Review Process Guidelines Order*,
SOR/DOCS 84-467.**

Department of the Environment Act; R.S., chapter 14 (2nd Supp.), s.2., 3 p.



SECTION 5.0 - TABLE OF CONTENTS

5.0 DOE AS A FEDERAL AUTHORITY UNDER CEEA	5-1
5.1 Introduction	5-1
5.2 Statutory Basis for DOE's Role as a Federal Authority	5-2
5.3 Interpretation of DOE's Responsibilities as a Federal Authority	5-4
5.3.1 Timing	5-5
5.3.2 Qualification	5-5
5.3.3 Referrals	5-5
5.3.4 Cost Recovery	5-6
5.4 DOE's Role as an Advocate	5-6

3

3

3

5.0 DOE AS A FEDERAL AUTHORITY UNDER CEAA

5.1 Introduction

Environment Canada's environmental assessment responsibilities as governed by the Canadian Environmental Assessment Act will continue (with minor changes) as under the previous EARP Guidelines Order.

Under CEAA, the Department has two distinct roles which are comparable to those which it has under the EARPGO. These two roles remain fundamental to the environmental assessment process. They are:

- **Responsible Authority (RA)** which must undertake assessments on its own projects, or make project decisions; and,
- **Federal Authority (FA)** which must provide specialist or expert information or knowledge on environmental areas within its mandate (at the request of an RA); this role is comparable to the 'Specialist' role that the Department has under the EARPGO.

The importance of the 'Specialist' or 'Expert Department' role under the EARPGO and its contribution toward the decision ultimately made by an initiating department was stated clearly in Justice Cullen's decision on the Fixed Link project (Friends of the Island Inc. v. Minister of Public Works et al, Federal Court of Canada, Trial Division, decision of August 12, 1993). The judgement is likely to have continued relevance under CEAA.

Justice Cullen formally recognized the importance of the s. 19 advisory function, characterizing it as "a heavy responsibility..." given to departments by Parliament "...so that each one has to examine the project from their own individual perspective." Referring to the advocacy role set out at paragraph 19(1)(b) of the EARP Guidelines Order, Justice Cullen wrote "One has to realize this is a strong check on any initiating department because it must... advance the interests which they are obliged to protect".

Given that the courts have clearly recognized the importance of the advisory role of the 'Specialist' or 'Expert Department' under the EARP Guidelines Order, this guidance document will focus on the Department's comparable role as a

Federal Authority under the new Act. It will also include a brief discussion of the Department's broader role as an advocate for the protection of the environment under the DOE Act.

5.2 Statutory Basis for DOE's Role as a Federal Authority

Environment Canada's guiding legislation is the DOE Act. This Act defines the Department's mandate as well as the powers, duties and functions of the Minister. Additionally, DOE is responsible for a variety of statutes, regulations, guidelines, codes of practice, agreements and on-going programs and policies designed to protect the environment for present and future generations of Canadians.

The basis that the DOE Act and the Canadian Environmental Assessment Act provide for the Department's roles in the environmental assessment process are discussed in the following sections.

i. The Department of Environment Act

The Department of Environment Act (DOE Act) is the legislation upon which Environment Canada was founded. Sections 4, 5 and 6 of the Act have particular relevance to the federal environmental assessment process.

Section 4 of the Act outlines the extent of the powers, duties and functions of the Minister of the Environment. Matters not assigned to other government departments (which are listed in s. 4 of the DOE Act as a minimum and broadly interpreted) delineate DOE's mandate. Of these Ministerial obligations, several are particularly relevant to DOE's role as a Federal Authority under CEAA. They are:

- . the preservation and enhancement of the quality of the natural environment, including water, air and soil quality;
- . renewable resources, including migratory birds and other non-domestic flora and fauna;
- . water; and,
- . the coordination of the policies and programs of the Government of Canada respecting the preservation and enhancement of the quality of the natural environment.

Section 5 of the DOE Act provides details on how the Minister is to fulfil the obligations set out in Section 4, as follows:

The Minister, in exercising his powers and carrying out his duties and functions under section 4, shall

- a) *initiate, recommend and undertake programs, and coordinate programs of the Government of Canada that are designed*
 - i) *to promote the establishment or adoption of objectives or standards relating to environmental quality, or to control pollution,*
 - ii) *to ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs, and activities that are found to have probable significant adverse effects, and the results thereof taken into account, and*
 - iii) *to provide to Canadians environmental information in the public interest;*
- b) *promote and encourage the institution of practices and conduct leading to the better preservation and enhancement of environmental quality, and cooperate with provincial governments or agencies thereof, or any bodies, organizations or persons, in any programs having similar objects; and*
- c) *advise the heads of departments, boards and agencies of the Government of Canada on all matters pertaining to the preservation and enhancement of the quality of the natural environment.*

Finally, Section 6 of the DOE Act authorizes the Minister to enact guidelines for use by federal departments, boards and agencies. This section provided the basis for the EARP Guidelines Order- the predecessor to CEEA.

These sections of the DOE Act are important in that they provide guidance for DOE's role in giving specialist or expert information or knowledge as a Federal Authority under CEEA, by specifying the areas which are within the mandate of the Department. The complete list of DOE's regulations and mandate are included in the the Appendix

ii. The Canadian Environmental Assessment Act

CEAA clearly states that it is the responsibility of the RA to ensure that it has adequate information on which to base a screening decision, and that departments designated as Federal Authorities have a role in the provision of this information.

Specifically, CEAA s. 18(2) makes it clear that the RA must ensure that it has sufficient information on which to base a screening decision:

'Any available information may be used in conducting the screening of a project, but where a responsible authority is of the opinion that the information available is not adequate to enable it to take a course of action pursuant to subsection 20(1), it shall ensure that any studies and information that it considers necessary for that purpose are undertaken or collected',

and s. 12(3) states that a Federal Authority, when requested, must provide the information or knowledge which it possesses:

'Every federal authority that is in possession of specialist or expert information or knowledge with respect to a project shall, on request, make available that information or knowledge to the responsible authority or to a mediator or a review panel.'

The provision of such information or knowledge at the request of an RA is a legal imperative, and as such, a non-discretionary or 'core' function of DOE.

5.3 Interpretation of DOE's Responsibilities as a Federal Authority

Though s. 12(3) of the Act specifies that the **Federal Authority** shall provide information or knowledge to the RA or to the mediator or review panel '**on request**', Environment Canada should consider playing a pro-active role, as appropriate. As such, when first made aware of plans for a project to be assessed by another department, Environment Canada should consider informing the RA of the type of information or data which is in DOE's possession and which could support the environmental assessment, rather than wait for such a request to be made.

As a **Federal Authority** Environment Canada does not make a decision on the environmental acceptability of the RA's proposal. If, however, potentially significant adverse effects are identified, DOE should convey this information to the RA using

appropriate strength of delivery.

The Department should refrain from presenting information or data as 'advice'. Advice is a term which was used in the EARP Guidelines Order in reference to this area of responsibility, but which does not appear in CEAA. The information or data provided should, however, be presented to the RA in such a way that the views of the Department are clearly understood in order to ensure that the RA comes to a well informed conclusion regarding the future of the project.

5.3.1 Timing

To be most effective, information or data should be provided by Environment Canada as early in the project planning stage as possible. Information provided prior to (or soon after) the project is listed in the FEAI stage allows time for responsible authorities or proponents to modify their projects in order to incorporate mitigation measures.

This timing will also enable the Department to provide input into the scope of the Screening or Comprehensive Study so that these reports, when completed, include information and data within the mandate of Environment Canada. This approach will help minimize the need for redrafting of reports which do not consider areas of concern to the Department.

5.3.2 Qualification

Information or data provided by the Department in its role as a Federal Authority should be qualified such that it is clear that:

'This information is provided in the context of s.12(3) of the CEAA as part of the overall screening of this activity. Information and comments provided should not be construed as a fettering of the government's ability to make decisions and/or enforce any applicable regulations.'

The Department is accountable for providing the Responsible Authority with credible information which is supported by sound science.

5.3.3 Referrals

DOE may suggest contacts within other departments, agencies or the private sector for further information on environmental effects where the expertise does not reside within DOE, but where such information is deemed necessary for a thorough federal environmental assessment of a proposal.

5.3.4 Cost Recovery

The 'core' environmental assessment functions of DOE are those duties required, as a minimum, to fulfil its legally defined obligations under CEEA. DOE will provide information in its possession to the RA (or review panel or mediation). In cases where Environment Canada does not possess the information or data requested by an RA (or review panel or mediation) the responsible manager could contract for this information, where financial resources are available. This approach to gathering information and data is outside the Department's area of 'core responsibilities' and as such is an area where cost recovery is possible.

5.4 DOE's Role as an Advocate

Unlike the EARP Guidelines Order, the CEEA does not make reference to DOE's role as an environmental advocate. Advocacy remains, however, a very important role of the Department and one which influences how we perform in our role as a Federal Authority.

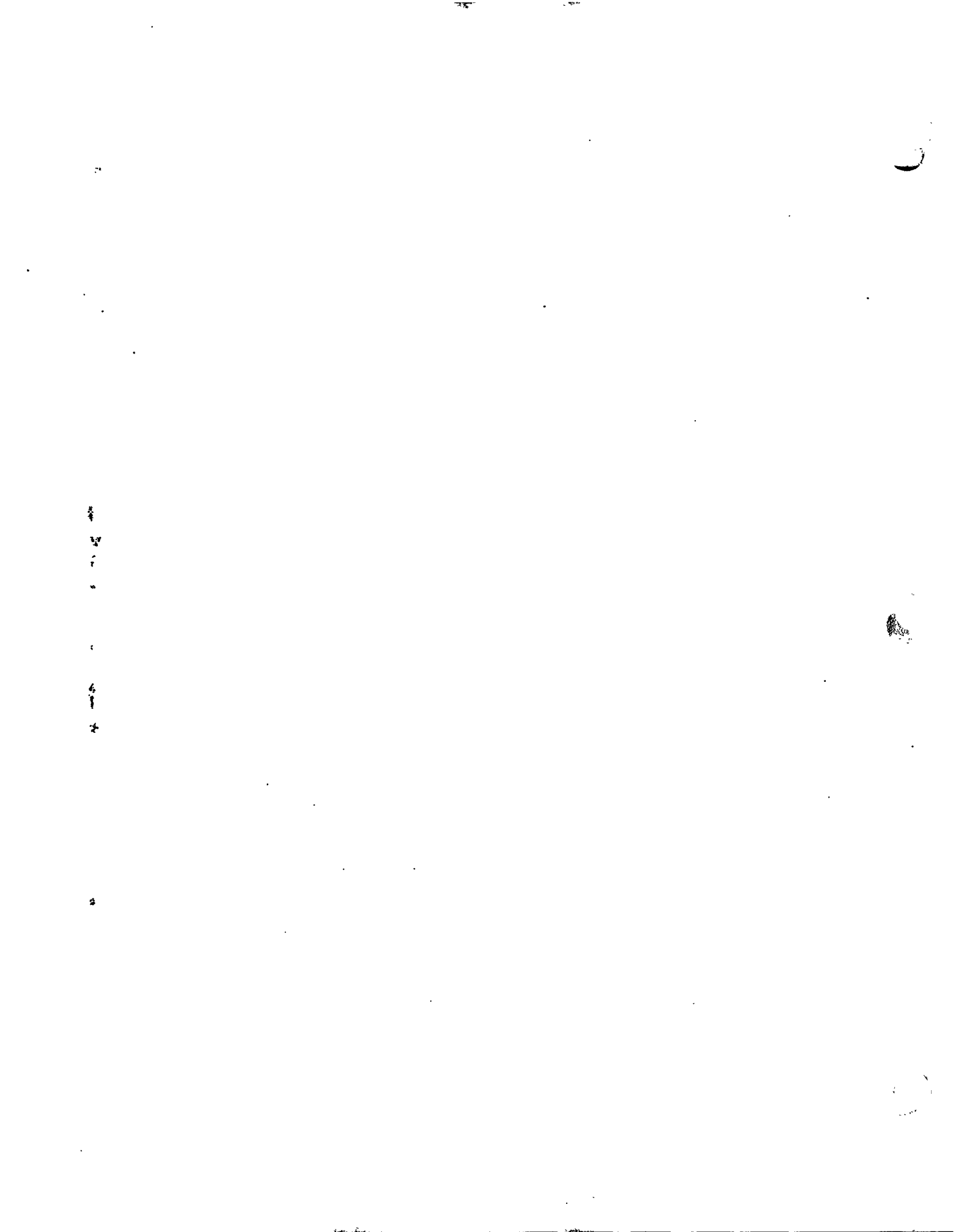
Environment Canada's role as an advocate for the protection of the environment is based primarily on the responsibilities set out in the DOE Act. Based on the Act, the Department must conduct itself in a manner which clearly reflects its mandate to protect the environment and in a manner which provides a credible model for other departments or agencies to follow.

The Department's advocacy responsibilities under the DOE Act may, arguably, give it the basis for getting involved, where appropriate, in the environmental assessment process of another department prior to an explicit invitation to provide input as a specialist or expert Federal Authority for the project. It may also be argued that it provides a basis for the Department's involvement in non-CEEA reviews.

Pro-active involvement in environmental issues can be cost effective in the long term. Such non-adversarial early intervention may reduce the requirement for the Department to fill a regulatory role later in the life of a project for which an environmental assessment was performed under the Act. It also gives DOE an opportunity for advancing the Department's agenda in priority areas (eg. pollution prevention, biodiversity, ozone depleting substances, climate change).

SECTION 6.0 - TABLE OF CONTENTS

6.0 DOE as a Responsible Authority	6-1
6.1 Introduction	6-1
6.2 What is a Responsible Authority?	6-2
6.3 When will DOE be a Responsible Authority?	6-2
6.4 DOE's Screening Responsibilities	6-4
6.5 DOE's Screening Checklist	6-27
6.6 DOE'S CEAA Screening Summary Form	6-29
6.7 DOE'S Standard Form for CEAA Exclusions	6-31



6.0 DOE AS A RESPONSIBLE AUTHORITY

6.1 Introduction

Before DOE can determine whether it is a Responsible Authority (RA) for a proposed project, it must first determine whether an environmental assessment is required under CEAA. This requires answers to a number of key questions.

NOTE:

The questions which DOE must ask to determine whether its involvement in a proposed project requires that an environmental assessment be performed are:

- Would DOE's involvement constitute a CEAA trigger?
- Does the proposed project meet CEAA's very specific definition of a 'project'?
- Is the project excluded from an environmental assessment under the Act?

Readers should refer to *Section 3.0 - An Overview of CEAA from DOE's Perspective* to review the details of these questions and their possible answers. This section (DOE as a Responsible Authority) focuses on DOE's RA responsibilities primarily with regard to screenings. Detailed discussion of DOE's responsibilities with respect to Comprehensive Studies or Public Reviews is not included here as it is anticipated that the Department will be involved in these areas relatively infrequently. Refer to the Agency's interdepartmental guidance entitled *The Responsible Authority's Guide to the Canadian Environmental Assessment Act* for details on the RA's responsibilities in these other areas.

6.2 What is a Responsible Authority?

Under CEAA, a Responsible Authority (RA) is a Federal Authority (FA) that, where required as a result of its proposed involvement in the project, must ensure that an environmental assessment is done as early in the planning stages of the project as practicable and before irrevocable decisions are made.

The Act further specifies that an RA must not exercise any power or perform any duty or function (such as provide funds for the project, sell, lease or otherwise dispose of federal land or any interest in those lands for the purpose of enabling the project, exercise a regulatory function which would allow the project to move forward, or act as a proponent for the project) before it makes a decision based on the EA of that project.

Though comparisons can be made between DOE's responsibilities as an RA and those that it has, or had, as an Initiating Department under the EARP Guidelines Order, there remain some significant differences between the two roles. These differences, especially those which affect DOE in particular are presented here.

NOTE:

Care has been taken not to reiterate the interdepartmental guidance prepared by the Agency- *The Responsible Authority's Guide to the Canadian Environmental Assessment Act*. This comprehensive guide addresses what needs to be done, when it must be done, and what decisions are required in order for all departments and agencies to consistently comply with the Act.

Readers well versed in the EARP Guidelines Order should also refer to *DOE's EARP/CEAA Transition Book* for a comparative perspective of the new Act.

6.3 When will DOE be a Responsible Authority?

DOE will find itself in the role of a RA much less often than it will be called on as an expert Federal Authority (FA) under CEAA. In this respect, the role of RA can be compared to the role of an Initiating Department under the EARPGO.

According to CEAA, DOE will become an RA when it exercises or performs one or more of the following powers, duties or functions in relation to an undertaking or activity which meets the CEAA definition of a project:

- when it proposes a project
(for example, when DOE proposes the construction of a Visitor Facility)
- when it grants money or any other form of financial assistance to a project
(for example, when DOE grants money to a province under the National Contaminated Sites Remediation Program (NCSRP) toward the clean up of a high-risk contaminated waste site; or when DOE grants money under the Environmental Partners Fund toward construction of a guided nature path)
- when it grants an interest in land, sells, leases or otherwise transfers control of land to enable a project to be carried out
(for example, when DOE leases land on a federally owned National Wildlife Area, to allow a project to take place)
- when it exercises a regulatory duty in relation to a project, such as issuing a permit or licence, that is included in the Law List prescribed in the CEAA regulations
(for example, when under s.11 of the Federal Mobile PCB Treatment and Destruction Regulations the Minister authorizes the operation of a mobile PCB destruction unit)

As an RA, DOE must ensure that an environmental assessment is done as early in the planning stages of the project as is possible. In other words, as soon as it is clear that the proposal meets CEAA's definition of a project and that its involvement (see the previous four bullets) triggers the Act, the RA must begin the environmental assessment process. The first thing the RA must do in this respect is to ensure that a record is entered on the Federal Environmental Assessment Index (FEAI) for the project.

Refer to *Section 9.0 - The Public Registry*, for more information on the RAs FEAI responsibilities in this respect.

NOTE:

DOE's Annotated Law List, a subset of the Law List Regulation which includes only those entries for which DOE is responsible, is included in *Section 3.0 - An Overview of CEAA from DOE's Perspective* of this document. DOE's proposed exercise of any entry on this Annotated Law List in relation to a project (such as the issuance of an *International River Improvement Act* licence) triggers CEAA. As a result, DOE will become a Responsible Authority for the related project.

The complete Law List Regulation is included in the Appendix, as are the Inclusion List, the Exclusion List and the Comprehensive Study List Regulations.

6.4 DOE's Screening Responsibilities

The following list of responsibilities includes only those which DOE must consider when in the role of an RA for projects which are subject to a screening under CEAA. It does not extensively consider DOE's responsibilities as an RA for projects on the Comprehensive Study List nor those which are referred to mediation or panel reviews. The Agency's interdepartmental guidance should be used for those cases where DOE is involved as an RA in these types of projects.

The first two steps of the list are exceptions to the normal screening process. They are included here in an effort to ensure that such cases are dealt with consistently across the Department.

i. Document Excluded Projects

DOE should be consistent in documenting those projects it has excluded from an environmental assessment whether they are listed on the Exclusion List Regulation or because of a national emergency, in the interest of preventing damage to property or the environment or in the interest of public health or safety (s.7(1)(b)&(c)).

It is recommended that DOE use the form entitled *Projects Excluded for Assessment under CEAA*, included at the back of this section, to consistently document such exclusions.

DOE should be particularly thorough with respect to documenting exclusions based on a funding trigger *'in relation to a project where the essential details of the project are not specified before or at the time the power is exercised or the duty or function is performed'*. (s.7(2))

A clear paper trail for projects excluded from an EA under the Act, accessible by the public under the *Access to Information Act* (excluded projects will not be registered on the Public Registry), will go a long way toward lending credibility to the exclusion provisions of CEEA.

ii. Consider Option to Terminate the Assessment at any Time

DOE should be aware of the fact that *'where at any time a Responsible Authority decides not to exercise any power or perform any duty or function referred to in s. 5 in relation to a project that has not been referred to a mediator or a review panel, it may terminate the environmental assessment of the project'*. (s.26)

This section may prove appropriate in those cases where DOE determines that, part way through an EA, it no longer wishes to be associated with the project. The basis for such a decision could vary from concern over the nature of the environmental effects of the project to budget freezes within the Department itself.

1. Identify all Responsible Authorities

In keeping with its leadership role with respect to CEEA, DOE should ensure that all of the RAs involved in a project are identified.

This would involve identifying all RA's for all undertakings in the lifecycle of the same physical work. For example, for a physical work such as a mine, such undertakings could include the mine's construction, operation, modification, decommissioning and abandonment, consistent with the 'one project/one assessment' concept. The one project/one assessment concept is the subject of a proposed regulation which is to be in place soon after the proclamation of the Act. This regulation is designed to minimize the effect on stakeholders of more than one EA for the same physical work.

Provincial offices of the Canadian Environmental Assessment Agency which have been established under harmonization agreements with the provinces will be of assistance in this task where a joint federal/provincial assessment is to be performed. Refer to Appendix K for locations of and contacts in these offices.

NOTE:

When first informed of a project for which it may be an RA, DOE should always refer to the Federal Environmental Assessment Index (FEAI) of the Public Registry to check whether, by chance, the project has already been registered. (DOE's Public Registry contacts in each region, who have access to the Internet, will be able to do this verification).

If it is found that the project has already been registered, DOE should inform the lead RA (as indicated on the FEAI) of DOE's pending involvement in the same project.

Refer also to Appendix L for a list of contacts in each federal government department. This list of contacts may also be of assistance in the task of identifying all RAs for a project.

Once the list of RA's has been established, DOE, in consultation with the Agency, should facilitate getting the group together to determine the lead RA for the project.

2. Determine, together with other RAs, the lead RA

Choosing the lead RA is a decision which must be made in consultation with all of the other RAs for the project. According to CEEA, when agreement can't be reached with respect to designation of the lead RA, the Agency may advise the group with respect to how the powers, duties and functions required of the group can be allocated.

NOTE:

Readers should be aware that when in the role of an RA, regardless of whether it is given the lead role, DOE remains responsible for making a decision with respect to the EA of the project for which it is a Responsible Authority. Delegation of such decisions is not possible.

DOE can use the following list of considerations, (provided by the Agency for use as a guide only), in order to negotiate in a consistent manner with other RAs with respect to which RA should assume the lead:

- a department which is the proponent for the project would logically be the lead RA
- a department with a funding trigger would take the lead over a department with a regulatory (ie. Law List) trigger
- the department having a land trigger would lead over a department which has a regulatory trigger
- when there is both a land trigger and a funding trigger, establishment of the market value of the land may help determine which of the two RAs has more 'invested' in the project, and so, which should be given the lead

3. When in the role of the lead RA, create/maintain a project record on the Federal Environmental Assessment Index (FEAI)

The Public Registry process is one element of CEAA which goes well beyond that which was required under the EARPGO. When DOE is the lead RA for a project, it will be responsible for maintaining a record of the project on the FEAI component of the Public Registry from the initiation of the EA until the completion of any follow-up program.

Refer to Section 9.0 of this document for details on DOE's responsibilities with respect to the Public Registry.

4. Refer to existing inter-jurisdictional agreements

The negotiation of federal-provincial/territorial EA Harmonization Agreements is an ongoing priority for the federal government in its effort to promote effective and consistent environmental assessment processes in Canada and to avoid uncertainty and duplication in those processes.

The Canadian Council of Ministers of the Environment, the principal forum for Canadian intergovernmental cooperation on environmental matters, released the *Draft Framework for Environmental Harmonization* in November 1992. This framework consists of a number of fundamental principals and provides the basis for the negotiation of bilateral agreements.

When DOE becomes aware of a project where it is likely to have a s.5 trigger and which also involves a jurisdiction (province/territory) with which the federal government has signed a EA harmonization agreement, DOE should immediately contact the Government of Canada designated regional office in that jurisdiction (see Appendix K) or, through the appropriate regional environmental assessment contact (see Appendix J) the Agency's Headquarters Office. The Agency will act as the point of contact with the province or territory at all stages of a cooperative environmental assessment, except in the case of a joint review panel.

Where an EA harmonization agreement exists, a co-operative EA must be performed according to the agreement. DOE must be aware that, notwithstanding the agreement, it retains it's CEAA related responsibilities.

5. Determine scope of the project

As an RA for a project subject to a screening, and according to s.15(1), DOE must determine *'the scope of the project in relation to which an environmental assessment is to be conducted'*. In other words, as part of its responsibilities, DOE will have to decide **which physical works are to be included as elements of the project** for which it is an RA. It is important that DOE base the scoping of projects for which it is an RA on defensible analyses which are consistently exercised across the Department.

NOTE:

Project scoping has been elaborated on by the Regulatory Advisory Committee (RAC) in discussions of the 'one project/one assessment' concept. A regulation based on this concept, designed to minimize the effect on stakeholders of more than one EA in relation to the same physical work, is expected to be in place following CEAA's proclamation. This step of DOE's RA Checklist will be modified when the details of the proposed regulation are finalized.

Though CEAA does not clearly specify which physical works should be included within the scope of a project, s.15(3) does specify that *'where a project is in relation to a physical work, an environmental assessment shall be conducted in respect of every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work that is proposed by the proponent or that is, in the opinion of*

(s.15(3)(a)) *the responsible authority... likely to be carried out in relation to that physical work.*

Clearly, it is not always feasible to include the details of all undertakings in relation to a project (such as the full details of what the future decommissioning of a mine might entail) within the same EA. The point, rather, is that the Act requires that to the greatest extent possible the EA must include all undertakings in relation to the proposed project and all undertakings likely to be carried out in relation to the project where the project is in relation to a physical work.

NOTE:

The Inclusion List specifies which undertakings related to a physical activity can be included in the scope of the project and, as such, limits the undertakings which can be included in the EA of such projects. (e.g. Inclusion List, Part VI, Waste Management, No. 41: The operation or testing of a mobile PCB destruction system...)

The following example may help illustrate this aspect of project scoping. The responsibilities of other departments will be ignored in this example, for the sake of simplicity.

NOTE:

Imagine that a proposal is put forward for a set of locks along a navigable, international waterway. The proposal includes details of the construction, operation and future planned modification of the locks. Since the proposal involves an international waterway, DOE would be responsible for issuing an *International Rivers Improvement Act* (IRIA) permit. This permitting involvement (a s.5(d) trigger) would make DOE an RA for the project.

Since, according to s.15(3) all undertakings in relation to a physical work must be included in the environmental assessment, DOE, as an RA, would be required to combine the construction, operation and planned modifications of the locks under one project assessment. Any future changes to the locks would also be subject to an EA when details of those changes are available.

Project scoping also allows DOE, when it is an RA, to combine two or more distinct physical works under one EA using the 'principal project/accessory' test. This test has been recommended by the Regulatory Advisory Committee as a means of fostering consistency in project scoping. It is based on the premise that 'accessory' works can be combined under the same project EA as the 'principal' work. In order to base its project scoping decisions on this principal project/accessory test, DOE must first make a judgement on the relationship of the physical works for which it has involvement as an RA.

The following example uses this approach:

NOTE:

An example often used to illustrate a case where two distinct physical works can be considered as one project using the principal project/accessory test is a proposal for the construction of a pulp mill and a dam which is to provide power exclusively to the mill. In this example, (modified slightly so that DOE is involved as an RA), the mill itself does not trigger CEAA. However, due to the fact that the project involves an international river, an IRIA permit is required. Since this permitting exercise is a Law List trigger, the proposed dam construction requires an environmental assessment under the Act.

The dam is the accessory to the mill, since, in this example, the mill is clearly the principal work. Since it is the accessory work which triggers the Act, the scope of the project must be restricted to the dam.

If this example were to be turned upside down so that the principal work (the mill) triggered the Act rather than the accessory work (the dam), then the dam could be included along with the mill as one project subject to assessment under CEAA.

Finally, if both the dam and the mill were to trigger the Act, both could be assessed as one project under the same EA. CEAA s.15(2) provides guidance for such a case, since it states *For the purposes of conducting an environmental assessment in respect of two or more projects, (a) the responsible authority... may determine that the projects are so closely related that they can be considered to form a single project.*

When confronted with this issue and to ensure that, over time, this concept is executed in a consistent manner across all of the Department, readers should obtain advice from HQ Legal Services by contacting their regional environmental assessment contact (see list of contact names in Appendix J).

Details on scope of project which are provided in the Agency's '*The RA's Guide to the Canadian Environmental Assessment Act*', also outline three principals (interdependence, linkage and proximity) which may be of assistance in determining whether or not multiple distinct physical works can be united in one project EA. Readers should refer to this interdepartmental document for further details on this topic.

6. Determine scope of the assessment

Scope of assessment determination is an area with which the federal government has been given more guidance than that which is available for scope of project determination.

The scope of assessment includes determining which environmental effects should be addressed, the scope of the environmental effects to be assessed and the effects to be considered in making decisions regarding the project.

NOTE:

DOE should be aware that some aspects of assessment scoping, such as the limits to the consideration of areas outside of the mandate of the federal government, remain under review by the Department of Justice.

Crucial to the proper determination of the scope of an assessment is the definition of environmental effect (s.2(1)). For this reason, it is provided once again in full:

NOTE:

'environmental effect' means, in respect of a project,

- (a) any change that the project may cause in the environment, including any effect of any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and*
 - (b) any change to the project that may be caused by the environment, whether any such change occurs within or outside Canada.*
-

Also important to determining the scope of assessment is the list of factors which CEAA specifies (in s.16) should be considered in a screening of a project. A summary of these factors is provided here.

Every screening or comprehensive study of a project must include a consideration of:

- the environmental effects of the project, including those of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
- the significance of the above effects;
- comments from the public;
- measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project; and
- any other matter relevant to the screening or comprehensive study such as the need for the project and alternatives to the project, that the RA or, except in the case of a screening, the Minister, after consulting with the RA, may require to be considered.

In addition to the factors set out above, every comprehensive study of a project shall include a consideration of the following factors:

- the purpose of the project;
- alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;
- the need for, and the requirements of, any follow-up program in respect of the project; and
- the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the present and those of the future.

A number of points should be emphasized with respect to the factors included in s.16.

- Firstly, DOE should note that s.16(e) allows for discretion on the part of the RA in terms of which additional factors should be considered within the scope of the assessment. This gives DOE the flexibility, for example, to consider factors comparable to those required of a Comprehensive Study in the EA of a project not listed on the Comprehensive Study List. This flexibility may prove useful to DOE in its role in being exemplary in meeting the requirements of the Act in cases where DOE deems that a proposal, which is not on the Comprehensive Study List, merits a more extensive assessment.
- Secondly, the assessment of cumulative effects must also be considered as part of the scoping of the assessment. This is an area new to the requirements of a federal EA and an area in which the federal government will gain expertise only with experience.

NOTE:

DOE should note that in order to be considered within the EA of a project, cumulative effects must be both associated with an effect from the project and be likely to occur. Readers should refer also to the Agency's interdepartmental guidance document entitled '*Addressing Cumulative Environmental Effects*'.

- **Finally, DOE is now developing a Departmental document on 'Guidelines on Incorporating Socio-economic Considerations into the Environmental Assessment Process'. When completed, this document will be included in the Appendix. The Agency is also preparing reference documents (*Assessing the Effects on Health, and Determining Environmental Effects on Physical and Cultural Heritage*) which would be of assistance in scoping of assessments.**

NOTE:

In summary, the Act requires the RA to consider the following in its environmental assessment:

- **all of the factors set out in s.16 (summarized above in step 6);**
- **all of the effects which fall within the Act's definition of 'environmental effect';**
- **any factors which are relevant to the environmental assessment that other federal laws or regulations require or permit the RA to consider, including the factors that the law creating the RA's decision-making authority states must or may be considered.**

Aside from that which is provided in the Act itself, guidance in the area of determining the scope of an EA can be drawn from court decisions (e.g. the Oldman Dam decision) made under the EARPGO. This case law will remain useful for CEAA.

For example, we know that when DOE is an RA:

- **for which it is the proponent (s.5(1)(a)),**
- **for which it has a financial trigger (s.5(1)(b)), or**
- **for which it may provide an interest in land for the purposes of the project (s. 5(1)(c)),**

then DOE may assess all the environmental effects of the project whether or not they fall within federal jurisdiction. In these cases, DOE may attach any condition or require any mitigation measure it considers appropriate in

the circumstances regardless of whether they fall within federal jurisdiction.

If, however, DOE is an RA:

- for which it has a regulatory duty (s.5(1)(d)),
(e.g. issuing of an *International River Improvement Regulations* licence)

the environmental assessment may still include all environmental effects of the project whether or not they fall within federal jurisdiction, however, the conditions or mitigation measures it attaches to the approval are limited to those factors specifically set out in CEAA and to areas within federal jurisdiction.

The Agency's guidance document entitled *The Responsible Authority's Guide to the Canadian Environmental Assessment Act*, provides a number of case studies which help to illustrate how an RA should determine the scope of the environmental assessment of a project.

7. Identify/pursue all information needed to make a decision

Where DOE is an RA, the project manager must determine whether to pursue additional studies or information in order to make an informed decision with respect to a project. An informed decision is one which takes into consideration:

- the concerns of the public consulted early in the process;
- the areas of concern of other specialist or expert FAs consulted early in the process;
- anticipated adverse environmental effects of the project;
- the size of the project; and
- the novelty of the approach (e.g. new technology or design) used in the project.

Though we have learned from case law under the EARPGO (Point Aconi) that a court of law will be reluctant to review the merits of decisions made by a Minister who has exercised his discretion appropriately, the courts will consider whether the factors that the Minister took into account in exercising his discretion were "relevant". In this respect, DOE must ensure that all steps taken in order to reach an informed decision with respect to a project are well documented.

8. Contact expert Federal Authorities

Unlike under the EARPGO, the onus is on the RA to request specialist or expert information or knowledge with respect to a project from Federal Authorities (FAs) or expert federal departments such as Agriculture Canada, Health Canada, Heritage Canada, Indian Affairs and Northern Development, NRCan-Forestry or Fisheries and Oceans.

Where DOE is an RA, expert FAs should be routinely contacted as early as possible in the process in order to gain insight into those concerns which fall outside of DOE's mandate and to ensure that such concerns are properly investigated and addressed during the EA of the project.

Early involvement of Expert FAs will provide these other departments the opportunity to determine if they would likely be involved in a s.5 trigger for the project at some point in the future. If so, the department could become involved immediately as an RA for the project, even if they have not yet received a formal triggering application (ie. a formal request for an Ocean Dumping permit which may be required in the future).

DOE can also pursue information from sources other than expert FAs, (e.g. provinces, universities) as appropriate to help reach a well-informed decision on the future of a project.

9. Assess appropriateness of public involvement

Public participation in the EA of projects as well as access by the public to the information on which those assessments are based are fundamental principals of CEAA. This is evident by their mention in both the Preamble and the Purposes sections of the Act.

NOTE:

Under the current set of CEEA regulations, the RA must provide the public with an opportunity to comment on environmental assessments carried out through comprehensive studies or public reviews.

However, provision of an opportunity for the public to comment on environmental assessments carried out through screenings is optional. In summary, s.18(3) indicates that in cases where the RA is of the opinion that public participation in the screening of a project is appropriate in the circumstances, or where required by regulation, the public should be notified of, and given an opportunity to examine, the screening report before the RA makes a decision on the future of the project.

DOE, in setting an example to other departments and agencies for proper compliance with the Act, must be exemplary in its efforts to involve the public in assessments of projects for which it is an RA. As such, DOE should consider the following when assessing the appropriateness of public involvement:

- public involvement should be considered as early as possible in the assessment process
- the appropriateness and degree of public involvement will vary with the profile of the project- high profile projects, such as the following, should be given special consideration:
 - those taking place in a populated or environmentally sensitive area (e.g. proposed developments within a National Wildlife Area), or
 - those for which public concerns have been raised in the past (e.g. nuclear waste, PCBs), or
 - those likely to have transboundary implications (recall Windy Craggy Mine- a mine proposed for a location in British Columbia which would have had environmental effects across an international border)
- the Act's definition of environmental effect, which includes *'any change that the project may cause in the environment, including any effect of any such change on health and socio-economic conditions, on physical*

and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons' clearly indicates that many potential environmental effects can have social implications; environmental effects of this type can be best determined by involving the public

- in keeping with the Act's definition of environmental effects, DOE should be particularly aware of unique concerns of cultures of peoples (such as aboriginal peoples) may be affected by the project in question
- according to a report of an interdepartmental working group to the Committee of Deputy Ministers on Justice and Legal Affairs entitled *Fiduciary Relationship of the Crown with Aboriginal Peoples*, the lead RA will be the lead for any associated aboriginal fiduciary issues
- DOE should always consider seeking input, as appropriate, from all relevant stakeholders, including other levels of government, other jurisdictions (provinces), academia and Environmental Non-Governmental Organizations.
- when in doubt, DOE should involve the public in the environmental assessment of the project for which it is a Responsible Authority
- refer to Section 7.0 of this Handbook for departmental guidance on public participation; refer also to the *Praxis Manual* (see details of this reference in Appendix) for further guidance on *Public Involvement - Planning and Implementing Public Involvement Programs*.

10. Assess public concern

NOTE:

DOE should be aware of the importance of public concern with respect to a project. Any public concerns not sufficiently addressed during the screening or comprehensive study phase could warrant referral of the project for further review by mediation or review panel.

DOE project managers must always weigh public concern with respect to the proposed project. Assessment of public concern should consider:

- the level of concern voiced by those most likely to be directly affected by the project
- the number and frequency of public petitions
- the number of official organizations voicing concern
- the existence of information, based on sound science and fact, substantiating the voices of concern
- the type and number of letters of concern (Ministerial Correspondence) received by the Minister; as a general rule, more weight should be given to the number of individualized letters of concern versus form letters addressed to the Minister
- the amount of media coverage the issue receives (e.g. front page reporting, editorials)
- whether, how often and in what way the issue is raised in the House of Commons

NOTE:

DOE should always anticipate, as early as possible, projects with which it has some involvement (either as an RA or an expert FA) which will likely be referred to panel or mediation in order to ensure that senior management is made aware of potentially sensitive projects in a timely manner, either via DOE's Early Warning System or with a briefing note.

11. Prepare screening report

CEAA specifies (much more clearly than does the EARPGO) the factors to be considered in every project screening. Readers should refer to s.16 of the Act (included in the Appendix), for the list of factors which must be considered in every screening performed under CEAA. Refer to a summary of s.16 included in step 6, above.

DOE should use a standard Departmental CEAA Screening Form, a sample of which is provided at the end of this section, to consistently log all project screening decisions. A modification of this form may be designed to reflect concerns more appropriate to each region. An electronic copy of all screening decisions will also be logged by the lead RA on the Federal

Environmental Assessment Index of the Public Registry system.

12. Determine need to refer project to panel review/mediation

DOE may, according to s.25 of the Act, request that the Minister refer the project to a mediator or a review panel where public concerns warrant the request or where, taking into account mitigation measures, the project may cause significant adverse environmental effects.

In this respect, DOE will have the same responsibility as an RA from any other department or agency. As such, the Agency's interdepartmental reference document entitled '*Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects*' should be used for reference purposes.

If DOE considers that public concern about the proposal for which it is an RA is such that reference to a mediator or review panel is warranted, a recommendation must be forwarded to the Minister. (s.20(1)(c)(iii) or 23(b)(iii)). The request, which must include all relevant information for the Minister's consideration, should formally be communicated in a letter from the Deputy Minister to the Minister. The Minister should always have been apprised of the possibility of such a request earlier, through briefing notes or DOE's Early Warning process.

DOE's Ministerial referrals should be co-ordinated through the EACC Regional contacts and the Environmental Assessment Branch in Ottawa. The steps involved in such referrals are provided in Section 10.0 - DOE's Communications Approval Process.

13. Notify senior management of pending major decisions

DOE should ensure that senior management is made aware of projects which will be referred to review panels or to mediation and of upcoming decisions which may be perceived negatively by the public, other jurisdictions, industry, or other government departments. Urgent information can be passed to the Deputy Minister by means of DOE's Early Warning process, otherwise, a briefing note is recommended.

14. Make/Document screening decision

DOE should ensure that the decision made following the EA is well documented. At a minimum, the screening form provided at the end of this

section, or a variation of this form which is more appropriate to your region, should be used to summarize the decision. This form should clearly indicate the location of those documents used to make the screening decision (such as documents which summarize public involvement/concern, socio-economic effects, cumulative effects).

The Act gives clear direction with respect to the possible decisions an RA can make based on the screening report and concerns of the public. It is important the Department follow the exact wording provided by the Act in their screening decisions. This point was made in Justice Muldoon's decision on Rafferty No. 2.

NOTE:

The decisions which are possible following consideration of the screening report and public comments are found in s.20 of the Act. These decisions are summarized here for DOE's purposes.

Taking into account the implementation of any mitigation measures that DOE as an RA considers appropriate, DOE may decide that:

- a) the project is not likely to cause significant adverse environmental effects (s.20(1)(a)), therefore DOE will support the project
- b) the project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances (s.20(1)(b)), therefore DOE will not support the project
- c) or where,
 - it is uncertain whether the project is likely to cause significant adverse environmental effects (s.20(1)(c)(i));
 - the project is likely to cause significant adverse environmental effect (s.20(1)(c)(ii)), however decision 'b' (above), does not apply;
 - public concerns warrant a reference to a mediator or a review panel (s.20(1)(c)(iii));

DOE will refer the project to the Minister for subsequent referral to a mediator or a review panel for further review.

DOE should refer to the Agency's guidance document entitled *Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects* for interdepartmental guidance on making such a judgement.

15. Determine need for follow-up program

A follow-up program is one that is used to evaluate the effectiveness of mitigative measures and the accuracy of impact predictions, after the completion of an environmental assessment..

The consideration of the need for and requirements of a follow-up program is a requirement of only those projects subject to a comprehensive study, mediation or review panel. Though, as an RA, DOE is not required to consider the need for and requirements of a follow-up program during the screening of a project, it may decide to pursue these considerations upon deciding that such a program would be valuable in the circumstances. As part of this consideration, DOE should solicit input from expert or specialist FA's regarding the need for and requirements of such a program.

NOTE:

DOE should note that s.16(1)(e) gives the RA the freedom to consider any matter outside those factors specifically mentioned in s.16 that are relevant to the screening and that it deems are necessary to be considered. This open-ended paragraph or 'basket clause' would allow DOE to consider the need for and requirements of a follow-up program during the screening of a project, even though such a consideration is not required under the Act.

An awareness of this possibility may be useful, in future, where DOE is the RA for the screening of a project for which it anticipates that a follow-up program would be beneficial.

If, however, following the screening of a project, DOE as an RA decides to proceed with providing support to the project based on a 20(1)(a) decision:

'...where, taking into account the implementation of any mitigation measures that the responsible authority considers appropriate, the project is not likely to cause significant adverse environmental effects...'

or, in the case where the Minister refers the comprehensive study report back to DOE (as an RA) for action, since, taking into account implementation of mitigation measures:

- the project is not likely to cause significant adverse environmental effects;
or,
- the project is likely to cause significant adverse environmental effects which can be justified,

DOE must then design and arrange for the implementation of any follow-up program that it considers appropriate. This requirement is set out in s.38(1). If DOE, as an RA, decides that a follow-up program is appropriate, it must ensure, according to s.38(2)(d)&(e), that the public is made aware of the follow-up program and its results.

In general, DOE should place importance on developing a follow-up program in cases where a new approach is to be used (e.g. the proposed approach to mediation makes use of new methods or technology, a routine project is proposed for a new environmental setting).

16. Inform public of screening decision

Once it has made a screening decision, DOE as an RA must ensure that the public has access to the decision. This requirement is set out in s.38(2) of the Act.

Details of this requirement are provided in the highlighted note on the next page.

NOTE:

If DOE as an RA decides that it will support the project following the environmental assessment, it must inform the public. This s.38(2) obligation, which cannot be completely met by the current design of the Public Registry system, requires that the RA notify the public of:

- its course of action in relation to the project;
- any mitigation measures to be implemented;
- the extent to which recommendations in the mediation or panel review report have been adopted as well the reasons any of the recommendations were not adopted;
- any follow-up program designed for the project; and
- the results of any follow-up program.

(DOE's Guidance on Public Participation and Notification, found in Section 7.0 of this Handbook, will be of assistance in meeting this public notification requirement).

If, however, DOE as an RA decides at any time that it will not support the project, it must simply ensure that this decision is noted on the Federal Environmental Assessment Index of the Public Registry.

(Details on the Public Registry system, and its implications for DOE in particular, are found in Section 9.0 of this Handbook).

17. Ensure implementation of mitigation measures

Where DOE comes to the decision that a project is not likely to cause significant adverse environmental effects where appropriate mitigation measures are implemented, it is obliged (with the qualifications found in s.20(2)) to ensure that those mitigation measures are implemented by the proponent of the project.

18. Implement follow-up program, where required (refer to step 15)

As an RA, DOE:

- must ensure that a follow-up program, where deemed appropriate, is implemented and as such, has the authority to require the proponent to carry out the follow-up program;
- is responsible for ensuring that management systems are in place to take action on follow-up results.

Expert FA's will be expected to provide information on the need for and requirements for follow-up programs in areas for which they have responsibility and to fill knowledge gaps where such gaps exist (e.g. environmental quality indicators, socio-economic and human health indicators, criteria to judge the effectiveness of mitigation measures in protecting a valued ecosystem component, minimizing socio-economic and human health effects).

The DOE and FEARO May 1994 draft document entitled *Environmental Effects Monitoring in Environmental Assessment* is intended for use in EA, whenever a follow-up program is required. The final document, which will incorporate regional comments, will be included in the Appendix upon its completion.

19. Determine if this screening is an appropriate candidate for a class screening

CEAA allows the RA to officially declare a screening report for use as a model for the screening of projects within the same class (e.g. routine ocean disposal, shoreline stabilization, dredging) as the project on which the class screening was originally based. The class screening provisions outlined in s.19 of CEAA were the subject of review within the Department.

In summary, this review proposed that DOE assess classes of projects for their potential as candidates for the development of class screening reports for declaration by the Agency on a pilot basis. DOE will then base its future use of class screening reports on the results of this pilot.

This approach would allow DOE to gain experience and evaluate the benefits of the class assessment provisions of CEAA before making a long-term commitment to the process. It is an approach which also provides the Department with an opportunity to show its support for CEAA.

If the formal declaration process proves to be unduly onerous and without significant benefits, the Department would be free to back away from the s.19 provisions of CEEA.

In order to evaluate it's effectiveness in terms of cost savings/efficiency, as well as in terms of measured improvement in consistency and quality of screenings, the pilot class screening report should be reviewed after a specified period of time. A three year time period has been proposed.

6.5 DOE's Screening Checklist

- i. Document Excluded Projects
(see Section 6.7 - DOE's Standard Form for CEEA Exclusions)**
 - ii. Consider option to terminate the assessment at any time**
-
- 1. Identify all Responsible Authorities**
 - 2. Determine, together with other RAs, the lead RA**
 - 3. When in the role of the lead RA, create a project record on the
Federal Environmental Assessment Index of the Public Registry**
 - 4. Refer to existing inter-jurisdictional agreements**
 - 5. Determine scope of the project**
 - 6. Determine scope of the assessment**
 - 7. Identify/pursue all information needed to make a decision**
 - 8. Contact expert Federal Authorities**
 - 9. Assess appropriateness of public involvement**
 - 10. Assess public concern**

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- 11. Prepare screening report
- 12. Determine need to refer project to panel review/mediation
- 13. Notify senior management of pending major decisions
- 14. Make/document screening decision
(see Section 6.6 - DOE's CEAA Screening Summary Form)
- 15. Determine need for follow-up program
- 16. Inform public of screening decision
- 17. Ensure implementation of mitigation measures
- 18. Implement follow-up program, where required
- 19. Determine if this screening is an appropriate candidate for a class screening

6.6 DOE'S CEEA Screening Summary Form

PROJECT IDENTIFICATION

Title: _____

Description: _____

Geographic Location: _____

Responsible Manager: _____ Branch: _____ Location: _____
Phone: _____ FAX: _____

Public Registry RA Reference No.: _____ FEAI No.: _____

SUPPORTING DOCUMENTS

Location of Documents: _____

Document Contact Name: _____ Phone: _____ FAX: _____

RESPONSIBLE AUTHORITY IDENTIFICATION

Lead RA: _____

Contact Name: _____ Phone: _____ FAX: _____

Other RA: _____ Other Jurisdiction: _____

Contact Name: _____ Contact Name: _____

Phone: _____ FAX: _____ Phone: _____ FAX: _____

Other RA: _____ Other Jurisdiction: _____

Contact Name: _____ Contact Name: _____

Phone: _____ FAX: _____ Phone: _____ FAX: _____

ASSESSMENT DETAILS

Assessment Type: (check one)

Screening _____

Comprehensive _____

Class Screening _____

Other _____

Environmental Effects: (check as appropriate)

Health _____

Biophysical _____

Cumulative _____

Socio-economic _____

Federal/Provincial Harmonization Agreement in Place? _____

(location of associated documents must be noted in Supporting Documents section of this form)

SPECIALIST INFORMATION (e.g. from a Department, Agency, Province, University)

Authority: _____ Area of Concern: _____

Authority: _____ Area of Concern: _____

Authority: _____ Area of Concern: _____

(location of associated documents must be noted in Supporting Documents section of this form)

PUBLIC INVOLVEMENT

Public Involved? (Y/N) _____

Public Concerned? (Y/N) _____

Details: _____

Details: _____

(location of associated documents must be noted in Supporting Documents section of this form)

DECISION

Proposal Cancelled (Reason: _____)

DOE's EA Terminated (Reason: _____)

Project not likely to cause significant adverse environmental effects (s.20(1)(a))

Project likely to cause adverse environmental effects than cannot be justified (s.20(1)(b))

Project referred to Minister for mediator or review panel referral (s.20(1)(c)) because:

(i) it is uncertain whether the project is likely to cause significant adverse environmental effects

(ii) project is likely to cause significant adverse environmental effects

(iii) public concerns warrant referral

The environmental assessment for the above project complies with the requirements set out in the Canadian Environmental Assessment Act.

Responsible Manager: _____

Signature: _____ Date: _____

6.7 DOE'S Standard Form for CEAA Exclusions

PROJECTS EXCLUDED FROM ASSESSMENT	
Project Title:	_____
Project Description:	_____ _____ _____
Location of Supporting Documentation:	_____ _____
DOE Manager:	Phone: _____
	Fax: _____
REASON FOR EXCLUSION	
<input type="checkbox"/>	Project is described in an exclusion list (s.7(1)(a))
<input type="checkbox"/>	Project is to be carried out in response to a national emergency for which special temporary measures are being taken under the Emergencies Act; (s.7(1)(b))
<input type="checkbox"/>	Project is to be carried out in response to an emergency and carrying out the project forthwith is in the interest of preventing damage to property or the environment or is in the interest of public health or safety (s.7(1)(c))
<input type="checkbox"/>	Project involves a funding trigger in relation to a project where the essential details of the project are not specified before or at the time the power is exercised or the duty or function is performed. (s.7(2))
AUTHORITY	
The Department of Environment's exclusion of the above-noted proposal from an environmental assessment is in compliance with the Canadian Environmental Assessment Act.	
Project Manager Signature: _____	Date: _____

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SECTION 7.0 - TABLE OF CONTENTS

7.0 DOE GUIDANCE ON PUBLIC PARTICIPATION	7-1
7.1 Introduction	7-1
7.2 Statutory Requirements	7-2
7.2.1 DOE Interpretation	7-2
7.3 Involving the Public	7-3
7.3.1 Screening	7-3
7.3.2 Comprehensive Study	7-9
7.4 Examples of Public Participation Programs	7-10



7.0 DOE GUIDANCE ON PUBLIC PARTICIPATION

7.1 Introduction

The preamble to the *Canadian Environmental Assessment Act* highlights the commitment of the Government of Canada to "*facilitate public participation in the environmental assessment of projects to be carried out by or with the approval of the Government of Canada and providing access to the information on which those assessments are based*".

Though public participation in the environmental assessment process is thus a fundamental objective of the Act, CEAA allows some discretion in terms of how this is to be achieved.

This section focusses on the screening and comprehensive study phases of the environmental assessment process under CEAA. Since public review and mediation are, by their nature, public participation processes, they will not be dealt with here. Given that the vast majority of environmental assessments of projects where DOE is a Responsible Authority are dealt with at the screening phase (as opposed to panel review or mediation), it is important that DOE have a consistent approach to involving the public on these projects.

NOTE:

"DOE will facilitate opportunity for public participation in environmental assessment with respect to its project decisions and provide access to the information on which those assessments are based."

(Policy Directive on the Implementation of CEAA by Environment Canada)

This section sets out what is required in terms of public participation under CEAA as well as DOE's interpretation of "minimum requirements". More importantly, it provides suggestions as to how to meet these requirements.

DOE will continue to learn from its efforts in the area of public participation

through follow-up to completed assessments and through evaluation of the effectiveness of the public participation programs used. The Environmental Assessment Coordinating Committee (EACC) will be used to share experiences and convey lessons learned about DOE's public participation strategies, plans and responses. National consistency is important to the Department.

7.2 Statutory Requirements

NOTE:

s.4 *The purposes of this Act are...*

(d) *to ensure that there be an opportunity for public participation in the environmental assessment process,*

s.18(3) *Where the responsible authority is of the opinion that public participation in the screening of a project is appropriate in the circumstances, or where required by regulation, the responsible authority shall give the public notice and an opportunity to examine and comment on the screening report and on any record that has been filed in the public registry established in respect of the project pursuant to section 55 before taking a course of action pursuant to section 20.*

s.22(1) *After receiving a comprehensive study report in respect of a project, the Agency shall, in any manner it considers appropriate to facilitate public access to the report, publish a notice setting out the following information...*

7.2.1 DOE Interpretation

Public participation is discretionary in a screening; however, DOE will be consistent as to the defensible exercise of this discretion. From a practical perspective, and consistent with the purpose of the Act and the Agency's guidelines, public participation is an essential component at the early stages of a comprehensive study although, strictly speaking, the legal requirement under s.22 and s.23 of the Act is imposed at the end of the process once the

comprehensive study report is completed.

Where DOE is a Responsible Authority through a regulatory provision from the Law List, and public consultation or participation is required by the regulation, this consultation may be used to satisfy all or part of CEEA's public participation objectives.

As a minimum, the Public Registry can be one vehicle to notify the public. By examining project information in the Registry, the public could see whether it is interested in a project and learn how to participate in the process. When the public has been involved from the front end of an assessment, DOE is not absolved of the responsibility to notify the public of the completion of the screening report.

7.3 Involving the Public

7.3.1 Screening

A stepwise approach to determining whether public participation is appropriate is recommended. This approach is summarized as follows:

Is public participation appropriate?

Step 1 → Apply discretion criteria

Step 2 → Identify target public

Step 3 → Develop participation strategy and plan

Step 4 → Implement public participation program

- feedback/public response
- modification/adaptation

Step 5 → Response and Analysis

Step 1: Appropriateness of Public Participation - Exercising your Discretion

The issue of public participation should be considered as early as possible in the screening process. Consider the overall scale of the project and its likely scale of environmental effects. The public's concerns, and thus desire for participation can frequently be predicted based on the nature or magnitude of the project and its likely environmental implications.

In exercising this discretion, the responsible manager should consider whether:

- the project is taking place in, or proximal to, a densely populated or environmentally sensitive area;
- the project has generated, or is likely to generate media interest or Parliamentary questions;
- the project is of a type for which public concerns have been raised in the past (e.g. PCB destruction);
- the project is one which could be characterized as a "major" project either in geographic, monetary or environmental scale or is likely to have transboundary implications but is not on the Comprehensive Study List;
- consistent with the fiduciary responsibilities of the Department as a Responsible Authority, the project is likely to have direct or indirect environmental effects on natives or lands in which they have interest, including any effect of any change in the environment on current use of lands and resources for traditional purposes;
- the assessment could benefit from local or public knowledge regarding specific environmental effects or mitigation; and
- in the judgement of the accountable manager, the assessment would benefit from public participation for any other reason.

Public participation is discretionary for routine, minor, or environmentally benign projects. Keep in mind that circumstances and public interest can change and DOE managers must be prepared to respond accordingly.

Where there is more than one Responsible Authority, they must jointly

decide the lead responsibilities, including the necessity of and manner in which to carry out a public participation program.

NOTE:

DOE should briefly document why the decision was taken not to involve the public and it must be based on relevant considerations.

Step 2: Identify Target Public

For clarity, "public" includes a variety of individuals and entities. This document does not consider public to include federal authorities or other jurisdictions within the meaning of ss.12(5) of the Act. For the purpose of this document, "public" includes any citizen or group of citizens, including aboriginals, non-governmental environmental organizations, community representatives, industry groups and local collectives (e.g. fishermen's unions).

Construct a list of potentially affected and/or interested groups or members of the "public". Use or add to these suggestions defined in project-specific terms. Prioritize these groups or members based on their interests. Special consideration should be given to the following:

- any person or group who can reasonably be expected to have a direct interest or stake in the project, or whose livelihood is based on lands or natural resources likely to be affected by the project;
- any public to which the Department, when in the role of Responsible Authority, may have fiduciary responsibilities;
- any environmental group which has expressed interest relative to the project (it may also be valuable to inform the ENGO network to see if there is any interest); and
- any member of the public who has made representation of concern or interest respecting the project.

Step 3: Develop a Public Participation Program

Principles

- The program must be developed and implemented at the earliest

possible stage.

- The proposed timelines must integrate the opportunity for public comment on the screening report with regulatory or other scheduling parameters (note that flexibility is crucial as Responsible Authorities must also assess the nature of public concern respecting its course of action under s.20).
- The methods of notification and consultation are tailored to project-specific circumstances and no one "recipe" will work in all cases.
- Consistent with principles of sound business planning, DOE could put the onus on the proponent to undertake, and thus absorb, the program's costs in terms of human and financial resources, to the extent practicable. Concerns surrounding this approach include:
 - the Responsible Authority remains accountable for CEAA decisions, and
 - the potential for the perception of bias.

DOE should be seen to be doing what makes sense, both fiscally and environmentally, in the circumstances.

A public participation program consists of a **strategy**, which can be brief, to set the overall direction and objectives, and a **plan of action** on how, and by whom (including timelines), it could be implemented. Different tools and techniques, described in other references, can assist the manager in involving and informing the public and scoping the issues of public interest. See examples at the end of this section for greater clarity.

Strategy

The strategy should scope out DOE's interests with respect to the potential environmental effects of the project and link them with DOE's intent regarding public participation (e.g. seek consensus, seek information, inform on issues). Given the proposed general thrust of the strategy, the magnitude of effort required must be considered (i.e. the magnitude of the potential problems should match the magnitude of the proposed public involvement).

Stated objectives should be clear and attainable within the project context. Pros and cons of different approaches can be integrated as appropriate. The Plan should identify the Departmental and other

government department (OGD) contributors to the team efforts for the assessment. Proponent-lead initiatives should be identified and DOE's role and intent clearly stated.

Plan

A specific plan of action can be recommended which would set out:

- the methods to be employed (including compliance with notification requirements under ss.18(3) for screenings), and;
- their anticipated timeframe for completion.

Methods

The likely effectiveness of public consultation tools should be taken into account. Where efforts are likely to require substantial investment of time and resources, or where potentially problematic issues are anticipated, the approval of the appropriate RDG or ADM should be sought.

Timeframe

Estimate the time required for the screening or comprehensive study. Timeframe estimates must include the "*opportunity to examine and comment on the screening report*". Such opportunity must be long enough to be meaningful.

DOE must be sensitive to its fiduciary responsibilities regarding aboriginals in the context of environmental assessment. Notwithstanding the above, DOE should have a section in the strategy and plan devoted solely to this matter. It should contain discussion of:

- the merits of native involvement based on the issues at hand; and
- the proposed manner of native participation in the environmental assessment.

Consultation with First Nations should respect the nature of the consultative approach adopted through any existing agreement or administrative arrangement.

Design of Public Liaison Tools

The content of any public liaison tool (e.g. newspaper ad, letter) should

be concise and clearly state the intent of the contact (e.g. seek public input, advise of the opportunity for comment on the screening report, make public aware of the environmental assessment of a project).

Where direct mailings or other public correspondence methods are planned, DOE should provide sufficient detail to allow for meaningful input or informed expression of interest (i.e. a brief description of the proposed project, along with possible environmental consequences as appropriate).

The nature of DOE's role as a Responsible Authority, consistent with the requirements of CEAA, should be described using plain language. The responsible manager should be clearly identified in any correspondence.

DOE should not take a position with respect to a project which is currently being assessed so as not to appear to prejudge the assessment outcome.

Step 4: Implement a Public Participation Program

Implementation of a public participation program involves carrying out the action plan described above. It also means getting down to the hands-on level to deal with some of the issues in a public context. Implementation of the program will likely be flexible. At any stage of the progress of public participation with respect to a screening, the plan of action and its composite timeframes could be modified based on feedback on public interests.

Where a public participation program is warranted, the opportunity for comment should be factored into the process leading up to the completion of the report.

Feedback/Public Response

This refers to feedback from the public to the responsible manager or Department based on their interests or concerns about the project being assessed. The feedback could take the form of complaints, expression of interest in a project or project issues, expression of appreciation of DOE's efforts, or recommendations as to other means of clarifying issues or seeking public participation. For example, a public meeting may result in feedback that strongly encourages a follow-up session because more issues have come to light or current ones have not been adequately addressed.

Modification/Adaptation

The responsible manager and the environmental assessment team must interpret any feedback in light of its responsibilities for the assessment and from the project-specific context. The nature of the public response may necessitate a change to the overall strategy. It may be important to revisit or re-scope the issues of concern to the public when the response deviates from expectations.

Step 5: Response and Analysis

Response refers to how DOE answers the comments or concerns generated through the public participation program. Response can be twofold:

- DOE's response to issues through follow-up actions and subsequent informing of target groups; and
- internal DOE response through modification to the assessment, briefing of senior management, legal appraisal of issues.

In terms of public response in the former case, there are no hard and fast rules other than to be prepared to modify the plan of action when the situation warrants (e.g. add new members of the public, formulate additional mailouts). DOE should be seen to be adaptable, open and approachable.

In the latter scenario, normal operational channels will be used when senior management needs to be informed. When the screening is a result of regulatory responsibilities, the information from the public or public groups can be integrated into the regulatory approval process.

Internal response also addresses such matters as analyzing the nature of public concern under s.20 (to determine whether public concerns warrant a reference to a mediator or review panel) which will not be dealt with in this document.

7.3.2 Comprehensive Study

Public participation is not explicitly stated as a CEAA requirement during the environmental assessment and preparation of the comprehensive study report. The Act requires only that the Agency publish a notice inviting comments on the comprehensive study after receiving a comprehensive study report (ss.22(1)).

However, implicitly and from a practical perspective, it is strongly recommended that DOE involve the public from the earliest possible point in the Study. Part of the premise with respect to comprehensive study project designations was that the nature of projects to which the comprehensive study process applies are those for which the public generally has concerns.

The Minister of the Environment must subsequently make a process decision as to the course of action respecting a comprehensive study project (s.23). DOE must fulfil its responsibilities while at the same time keeping in mind the dual nature of the responsibilities of the Minister under CEEA. Therefore, DOE would want to ensure that it was well positioned as a Responsible Authority for a comprehensive study (i.e. having fulfilled its public participation obligations in a defensible manner) to facilitate the responsibilities of the Minister under s.22 and s.23.

When DOE is a Responsible Authority for a project on the Comprehensive Study List, it should therefore undertake a public participation program as part of the report development. Managers and practitioners are advised to follow Step 2 through Step 5 which are outlined above in section 7.3. Particular attention should be paid to ensuring that sufficient time is available for public input tailored to the extent of the proposed public participation program.

7.4 Examples of Public Participation Programs

A. Screening

Example 1: The screening of a proposed industrial expansion (assume DOE is a Responsible Authority in this example)

The strategy could be to seek broad involvement of the public to canvass issues and inform interest groups. The objectives could include:

- satisfying fiduciary responsibilities by directly involving a downstream native band;
- seeking historical information on water quality;
- building consensus on environmental issues between various stakeholders.

The plan could include setting out the preferred approach such as the involvement of the broad public through selective use of public meeting fora at which major concerns can be recognized and/or addressed.

A letter to the downstream native band could invite their participation through issue identification, knowledge generation and input to mitigation of environmental matters of concern to their band and their use of land and natural resources for traditional purposes. Specific mailouts could be targeted to certain known publics (e.g. local ENGOs) or stakeholders (local commercial fishing cooperative, industrial plant workers collective). Other forms of direct and proactive consultation are possible. Local newspaper ads could provide a timely means for "setting the stage" for the above approaches.

The proponent could be tasked with elements related to the organization of a public meeting on the issues and interests of the public. The proponent could be given the responsibility to mail out information to interested members of the public which may already have been provided to the Department.

Example 2: The screening of a project which involves the killing of selected migratory birds for scientific purposes

The environmental effects of the project are likely minor. The strategy could be to inform the public passively through the Public Registry. There are, however, certain unknowns regarding current status of endangered birds (e.g. peregrine falcon) at the specified location. The objective of a public consultation program could be to:

- passively inform the broad population; and
- seek further information on recent sightings of peregrine falcons.

The plan could be to

- satisfy the requirements of the Public Registry, and
- send a letter to the local field naturalists club to the attention of bird watchers to invite them to bring forward any information not otherwise available to CWS. The workload may be shared so that the proponent manage the former and CWS address the latter.

B. Comprehensive Study

Example: The comprehensive study of a proposed dam on an International River

The strategy could involve informing interested groups and seeking further information from local inhabitants or governments concerning wildlife dispersal in the intended reservoir area, water quality information and flood records, local

effects of upstream hydroelectric installations, use of natural resources for traditional purposes by aboriginal persons, etc. In this scenario, as for most major projects, the proponent would be expected to supply a reasonable amount of information in the context of its proposal. Information required for the comprehensive study must also satisfy the regulatory requirements of the *International River Improvements Regulation* license.

The plan could be to:

- satisfy the requirements of the Public Registry; and
- send letters to appropriate public contacts and/or post a notice at the town hall informing of the assessment.

Any potentially affected native band or settlement should be contacted accordingly. After this initial phase, it is likely that a public meeting will be warranted whereby the proponent could respond to any questions and DOE, along with other Responsible Authorities, could explain its role in the context of the environmental assessment and the *International Rivers Improvement Act*. Preparations for the public meeting could include a local newspaper ad on the particulars of the meeting.

8.0 DOE'S PARTICIPATION AS AN EXPERT AT REVIEW PANELS AND MEDIATIONS

Under s. 35(1) of CEAA, unlike under EARP, a Review Panel has the power to summon any person to appear as a witness before it and to require the witness to give evidence and produce documents or other things deemed necessary for the Panel's assessment of the project under consideration. As it is DOE's intention to be exemplary in its environmental stewardship, a subpoena of DOE experts would not be necessary. Review Panels and Mediations can be quite informal, as was the case for most Public Reviews which took place under EARP.

DOE staff may be involved in CEAA Review Panels or Mediations in various capacities. These are:

- as a responsible authority and/or proponent, and
- as an 'expert' federal authority.

Prior to appearing before a Panel or Mediation in either of these capacities, the Departmental representatives will:

- ensure that both the Deputy Minister's office and HQ EAB have been informed of the timing and possible implications of the upcoming appearance before the Panel/Mediation

As representatives from an expert federal department appearing before a Review Panel/Mediation, the Departmental representatives will:

- ensure that its relationship with the Panel is free of potential conflicts of interest; in other words, DOE staff memberships on management boards, or outside committees that may be affected by a review must be disclosed to the panel at the outset;
- provide details on the Department's review of the screening or comprehensive study report;
- participate in public hearings as required by the Panel;
- answer questions as clearly and concisely as possible;

- answer technical questions limited to their field of expertise by providing factual information and scientifically supportable interpretations of that information;
- answer questions with respect to the mandate of the Department, but not attempt to answer policy or Departmental position questions;
- not make conclusions with respect to significance on the overall project in areas outside of DOE's mandate; and,
- refrain from gratuitous speculation about significance;

As designated presenters of the Departmental position called in front of the Review Panel, the Departmental representatives will:

- be prepared to answer any questions they are qualified to answer that are directly related to the Departmental position;
- offer to provide or arrange for written answers on behalf of the Department, for those questions that cannot be answered immediately,
- NOT offer personal opinions.

Regardless of the capacity in which a Departmental representative has been called before a Panel, the following suggestions may help to make the experience less intimidating:

- contact the Panel Manager to obtain more precise and written confirmation of the day and time you will be called; plan to arrive at the Panel location early;
- prepare thoroughly for your session by anticipating potential questions rather than attempting to memorize a rehearsed submission;
- consult with the Department of Justice; Legal Services is available to coach witnesses on what to expect at a hearing and to offer tips on answering questions, or to offer counsel with respect to any sensitive or complex issues that may arise from the evidence that officials are asked to give; have a lawyer accompany you if you expect legal challenges;
- take a deep, calming breath and pause for a moment before you begin; answer questions at a moderate, measured pace; speak more loudly than usual since the microphone in front of you is connected to a tape recorder, and does not necessarily amplify;

- if you don't understand a question, ask that it be re-phrased; if you don't understand why a question has been asked, answer it anyway; don't answer a question with a question; and only answer one question at a time;
- consider each response carefully, be aware that many Panel participants may not be familiar with your area of expertise; your answers should be able to be understood by a layperson;
- be honest, scientific and impartial in your responses;
- present opinions with confidence and be succinct.

Overall, a well received presentation is one which is delivered with simplicity and common-sense. Listen carefully, be cool, and stay within your area of expertise.



SECTION 9.0 - TABLE OF CONTENTS

9.0 THE PUBLIC REGISTRY - A DOE PERSPECTIVE	9-1
9.1 Introduction	9-1
9.2 An Overview of the Public Registry	9-1
9.3 Public Registry Components	9-3
9.3.1 The Federal Environmental Assessment Index	9-3
9.3.2 The Record Listing	9-4
9.3.3 The Records	9-5
9.4 DOE's Public Registry	9-5
9.4.1 Who will enter the data onto the Federal Environmental Assessment Index?	9-6
9.4.2 How often will records on DOE's Filing System be sent to the central Federal Environmental Assessment Index?	9-7
9.4.3 How will DOE determine which records belong on the Public Registry?	9-7
9.4.4 Who in DOE will be required to do the record clearing?	9-7
9.4.5 How should DOE's records be filed once they have been cleared?	9-8
9.4.6 What if multiple RAs file a record on the FEAI for the same project?	9-8
9.4.7 Will the public have access to the Federal Environmental Assessment Index?	9-9
9.4.8 Who will the public contact to get more information about a project undergoing an environmental assessment?	9-9

9.4.9	When should DOE be prepared to field Public Registry inquiries?	9-9
9.4.10	Public Registry Inquiry Form	9-11
9.4.11	What types of questions can DOE expect from the public? .	9-12
9.4.12	How much time does DOE have to respond to public requests for records?	9-12
9.4.13	Can DOE also expect 'walk-in' public inquiries?	9-12
9.4.14	Can DOE cost recover for responding to public requests for copies of records?	9-13
9.4.15	Can DOE be reimbursed for the funds that it cost recovers?	9-14
9.4.16	When do records requested by the public have to be translated?	9-14

9.0 THE PUBLIC REGISTRY - A DOE PERSPECTIVE

9.1 Introduction

The requirement to establish and maintain a Public Registry is an aspect of CEAA which will have a significant impact on DOE simply because it is a requirement which did not exist under the Environmental Assessment and Review Process (EARP) Guidelines Order.

The purpose of this section is to focus on the implications of the Public Registry on DOE as well as to present a Departmental approach to meeting its requirements. An overview of the Public Registry is first presented in order to provide readers with the background needed to consider its implications.

NOTE:

Readers should also refer to related documents drafted by the Agency for the interdepartmental audience, including *The Responsible Authority's Filing System of the Federal Environmental Assessment Index- A User's Manual* and *A Reference Guide for the Canadian Environmental Assessment Act- The Public Registry*, which is included as an appendix to *The Responsible Authority's Guide to the Canadian Environmental Assessment Act*.

9.2 An Overview of the Public Registry

One of the cornerstones of CEAA is its commitment to providing the public with a fair and transparent environmental assessment process. The preamble to the Act, which sets the foundation for the entire process, emphasizes the Government of Canada's commitment to providing the public with the opportunity to participate in the environmental assessment process as well as to have access to the information on which those environmental assessments are based. The Public Registry system goes a long way toward meeting this commitment.

Section 55 of the CEAA specifically addresses the Public Registry requirements. It indicates that the Registry must be maintained in respect of every project for which an EA is conducted regardless of whether the project undergoes a screening, comprehensive study, panel review or mediation. It is also specific with respect to where the responsibilities rest.

NOTE:

According to s.55, the Public Registry must be maintained by:

- a) *the Responsible Authority (RA), from the commencement of the environmental assessment of the project until the follow-up program, if there is one, has been completed;*
 - b) *the Agency, when the project is referred to a mediator or a review panel, from the appointment of the mediator or the members of the panel until the report of the mediator or review panel is submitted to the Minister of the Environment.*
-

The Agency, being responsible for administering and ensuring consistency of the process, has established an electronic Public Registry system within which all RA's will function and which facilitates meeting the requirements of the Public Registry under the Act.

NOTE:

DOE should be aware that, based on the Agency's design of the electronic Federal Environmental Assessment Index (FEAI), only the lead Responsible Authority is responsible for filing the environmental assessment on the FEAI for a particular project. In such cases, other Responsible Authorities for the project must ensure that the 'lead' receives all the information necessary to perform this function on behalf of the group.

Therefore, when DOE is a Responsible Authority for a project, but not the 'lead' Responsible Authority, or when it finds itself in the role of an expert Federal Authority for a project, DOE will not be required to file a record of the environmental assessment on the FEAI.

9.3 Public Registry Components

The Public Registry consists of three components:

- **the Federal Environmental Assessment Index,**
- **the record listing, and**
- **the records which are produced, collected or submitted with respect to the environmental assessment process.**

A detailed description of each of these components is provided on the following pages.

9.3.1 The Federal Environmental Assessment Index

The **Federal Environmental Assessment Index** or **FEAI** is a national, electronic database of the key information from all of the environmental assessments conducted under CEAA. The FEAI receives this key information (e.g. project title, type of assessment, type of physical work or activity, start date of project assessment, geographic location) from federal departments and agencies across all of Canada. It also captures the names and addresses of individuals assigned to be 'contacts' for each project in order to provide a window for public access to the records produced, collected or submitted during the related environmental assessment.

The FEAI receives updates of this key information on a monthly basis. Once these updates are received, the public portion of the FEAI is updated as well.

The public portion or 'view' of the information stored on the FEAI provides the general public with access to information on all federal environmental assessments performed under the CEAA. The public have access to this information initially in a number of ways:

- through the ENGO electronic Bulletin Board (known as the 'WEB');
- at libraries; 350 public/government libraries across the country will receive regular electronic and/or paper updates of the records on the Registry (refer to Appendix P for list of libraries involved);
- at Agency offices (HQ, provincial and specific Public Review offices).

9.3.2 The Record Listing

The **record listing** portion of the Public Registry is an itemized list of the publicly available records produced, collected or submitted with respect to the environmental assessment of a project.

The Act obliges each RA to maintain such a record listing for those assessments for which it is responsible. Each RA should ensure that such record listings are provided to the 'contact' for the environmental assessment (as noted on the FEAI) so that the listing is readily available to members of the public who request such information.

When in the position of an RA for a project, DOE's responsibilities will include:

- determining which records, or portions there-of, must be placed in the Public Registry based on *Access to Information* guidelines;
- ensuring that the record listing is kept up-to-date for each project, based on the determination noted in the above point; and
- ensuring that the record listing is available to the public, either in paper or electronic format upon request.

NOTE:

DOE should be aware that during the first phase of the Public Registry, the 'public view' of the FEAI will not include the **record listing** for each project since the monthly update of the FEAI does not transfer this information. This feature is planned for the second phase of the Public Registry.

For this reason, it is important that DOE ensure that a paper or electronic copy of the **record listing** for each of its environmental assessments be prepared and available for the public, upon request.

9.3.3 The Records

The **record** portion of the Public Registry system includes all records produced, collected, or submitted with respect to the environmental assessment of a project.

NOTE:

DOE should be aware of how broadly the Act defines what constitutes a record. According to CEAA, a record is:

'any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof.'

When in the role of lead RA for a project, DOE will serve as the window through which the public can gain access to the records associated with the environmental assessment of the project in question. In this role, DOE will also:

- ensure that each record produced by or for DOE has been subject to the record clearing process based on the *Access to Information Act* (this requirement is covered later in this section);
- determine the fee for providing copies of records to the public, based on *DOE's Cost Recovery Guidelines* (refer to copy in Appendix O);
- respond to public requests related to the environmental assessment in a timely manner; and
- determine the need to translate records based on the *Official Languages Act* (this requirement is covered later in this section).

9.4 DOE's Public Registry

Under the CEAA, DOE will have two roles to play- that of a Responsible Authority (RA) and that of an 'Expert' Federal Authority (FA).

As under the Guidelines Order, DOE will more often find itself in the role of an Expert FA- a role in which the Department will have no Public Registry responsibilities. Maintenance on the FEAI of the records of scientific information or data that DOE provides as an Expert FA toward an environmental assessment will become the responsibility of the lead RA for the project. In other words, public access to these records will be provided by the lead RA for the life of the project.

NOTE:

DOE, in its role as an Expert Federal Authority for a project undergoing assessment will have no obligations or responsibilities with respect to the record kept on the FEAI for that project.

Based on the Agency's design of the electronic FEAI, only the lead RA for a project is responsible for filing the EA with the FEAI. The lead RA will also be responsible for the related record clearing requirements of the Registry.

In order that DOE be prepared for the role of lead RA for a project, a number of issues must be considered. These issues are presented below as a series of questions and answers.

9.4.1 *Who will enter the data onto the Federal Environmental Assessment Index?*

For projects for which DOE is the only or the 'lead' RA, data entry will be performed by the designated Public Registry contact in the region where the environmental assessment takes place. Data entry will be done by accessing DOE's FEAI Filing System and following procedures for data entry and transmission as set out in the Agency's guidance material.

Regions which anticipate they will rarely be in the role of the lead RA for a project may choose to have just one point of data entry for the entire region. This scenario would require that paper copies of the information required of the FEAI be sent to the chosen data entry site for entry onto the FEAI.

Regions which expect a higher volume of activity may choose to have data entry sites across a number of district or program areas (e.g. Contaminated Sites Program, Environmental Partners Fund Program) in order to distribute the workload.

9.4.2 *How often will records on DOE's Filing System be sent to the central Federal Environmental Assessment Index?*

The FEAI receives updates of the information entered onto the various RA Filing Systems on a monthly basis. Therefore, any new environmental assessments entered onto DOE's Filing System or any change in the status of environmental assessments entered within the last month will be noted on the central FEAI only after the next monthly update.

DOE should be aware that projects must be maintained on DOE's Filing System and updated onto the FEAI on a monthly basis until the completion of any follow-up program associated with the project.

The Agency, which is responsible for the central FEAI, will ensure the updated environmental assessment information is made available to the public.

9.4.3 How will DOE determine which records belong on the Public Registry?

Section 55(3) of CEAA clearly sets out which records belong on the Public Registry. It states '*a public registry shall contain all records produced, collected or submitted with respect to the environmental assessment of the project*'. The Act qualifies this requirement by indicating the need to first determine whether a record can be made publicly available, based primarily on the *Access to Information Act*. Further to this, the Agency recommends that departments and agencies address key privacy and access considerations before a record is produced to eliminate the need to follow the record clearing procedures later.

In order to prepare the Department for the document clearing aspect of the Public Registry, EAB provided each Region with record clearing training and related documentation on the *Access to Information & Privacy Acts*. Readers should refer to this guidance as well as to pages 169-178 of the Agency's *Public Registry Reference Guide* for more information on this aspect of the Public Registry.

9.4.4 Who in DOE will be required to do the record clearing?

Due to the importance of the procedure, it is recommended that the manager of the project under assessment (since this individual will be most familiar with the file) be responsible for the record clearing.

NOTE:

HQ Legal Services is available for assistance related to record clearing questions. Questions should be forwarded to HQ Legal Services through your appropriate regional environmental assessment contact. Refer to Appendix J for the name of the contact in your region.

9.4.5 *How should DOE's records be filed once they have been cleared?*

It is important that records that have been cleared be so indicated and kept separate from the working versions of the records. The cleared records should also be easily accessible in order to respond to phone or 'walk-in' requests by the public to view the records.

Since each record on the public version of the FEAI will be identified with a unique FEAI# (generated by the FEAI), the Project Title and the RA Reference#, one or all of these references may be used by the public when making an inquiry. For this reason, DOE should consider filing records which have been cleared with an indication of the RA Reference# and Project Title. (The FEAI# will not be received by DOE's Filing System until after each successful monthly update- this time delay would make the FEAI# less useful to DOE). The practice of using these identifiers will facilitate quick response to public inquiries.

NOTE:

To prepare for enquiries from the public, each region of DOE should consider the possibility of setting aside a 'record viewing' room to allow the public to look over records noted in the Public Registry before making a request for a personal copy.

9.4.6 *What if multiple RAs file a record on the FEAI for the same project?*

In rare cases, early in the life of a proposed project, multiple RAs may be involved in the same project without being aware of one another's involvement. This scenario could result in more than one RA entering information on the FEAI for the project.

Should DOE suspect this is a possibility, a search must be done of the FEAI (which holds records entered by all departments and agencies) through the Internet. DOE is one of the departments which now has access to the Internet.

If such a scenario is confirmed, a lead RA must be chosen and the multiple records on the FEAI must be merged. The Agency's design of the FEAI allows for such a 'fix'. Refer to page 7.3 of the Agency's *'User Manual on the Responsible Authority's Filing System of the Federal Environmental Assessment Index'* for the steps required to consolidate EAs or to change the lead RA for a project.

9.4.7 Will the public have access to the Federal Environmental Assessment Index?

The public will have access to a public version of the FEAI which will be available from a number of different venues including public libraries (refer to Appendix P), the Agency's offices and Panel Review offices across Canada. The Agency will be responsible for providing the public with this information, based on monthly updates from RA Filing Systems.

9.4.8 Who will the public contact to get more information about a project undergoing an environmental assessment?

Since the Agency is responsible for maintaining records on the Registry of projects referred to a mediator or review panel, the public will contact the Agency for information on those projects until the time that the report of the panel or mediator is returned to the Minister and the RA. Once the lead RA receives the panel or mediation report, the public will once again contact the lead RA to receive information related to the project.

For all other projects, the public will forward their questions directly to the individuals listed on the FEAI as 'contacts' for a particular project.

Where DOE is the lead RA, it will provide two contacts for each project record on the FEAI: a record contact (such as the file clerk) and a project contact (such as the project manager). It is suggested that the titles and not the names of these contacts be provided to allow for changes in personnel over time.

9.4.9 When should DOE be prepared to field Public Registry inquiries?

DOE should be prepared to field such inquiries one month after the FEAI is established since this is the earliest that the public will have had access to the FEAI.

DOE must ensure that the public is given access to the records requested in a manner which is consistent across the entire Department. Accordingly, each Region should facilitate public access to the records associated with a particular project assessment between the hours of 9:00 to 4:00, weekdays, local time.

Should either contact person (the record contact or the project contact) be unavailable during these hours, a fall-back position must be in place. This could be as simple as ensuring that the person (e.g. receptionist, secretary) receiving the re-routed call is knowledgeable enough about the FEAI to record the information required to satisfy the request.

NOTE:

Public enquiries should be handled in a consistent manner across the department. Therefore, it is suggested that the following information always be officially logged:

- *date and time of the enquiry as well as the date and time that any follow-up as a result of the enquiry is satisfied;*
- *name, address, phone number of the person making the request;*
- *project title, location and RA Reference # of the project;*
- *whether or not the Record Listing for the project is needed; and*
- *the title and author of any record which is requested in order to facilitate retrieving the record.*

In addition, the person making the enquiry should always be informed of DOE's Cost Recovery Policy in relation to the Public Registry.

The form provided on the following page may be helpful in logging public inquiries related to documents on DOE's Public Registry.

9.4.10 PUBLIC REGISTRY INQUIRY FORM

Date: _____ Page ___ of ___

IDENTIFICATION OF INQUIRER:

Name/Title:

Address:

Phone:

FAX:

PROJECT IDENTIFICATION:

Title:

Location:

RA Reference No:

FEAI No:

DETAILS OF REQUEST:

Record Listing Requested? (Y/N)

Record(s) Requested? (Y/N)

Format Requested: Diskette? (Y/N)

Paper? (Y/N) Other:

Title:

Title:

Author:

Author:

Publication Date:

Publication Date:

Title:

Title:

Author:

Author:

Publication Date:

Publication Date:

Date Inquiry Satisfied Completely::

9.4.11 *What types of questions can DOE expect from the public?*

Public inquiries will be most common for large projects which have a high public profile. Where DOE is lead RA for this type of project, a large volume of public inquiries related to the adverse environmental effects of the project should be expected both before the Minister refers the project to a mediator or review panel (if appropriate) and after the report of the mediator or review panel is submitted back to the Minister and DOE.

More often, DOE should expect requests for the **record listing** for those less controversial projects for which they are the lead RA since the first phase of the Public Registry will not include the transfer of the record listing to the FEAI during the monthly update. Therefore, at least initially, the public view will lack the record listing for each project.

Accordingly, DOE must maintain a paper or electronic copy of the current record listing for each project for which it is an RA, in order to respond to requests for copies as efficiently as possible.

After this preliminary request for the project's record listing, DOE can expect a request to be made for copies of one or all of the records on the record listing. As often as possible, it is recommended that DOE supply the records in electronic format.

9.4.12 *How much time does DOE have to respond to public requests for records?*

Since records must be cleared using ATIP procedures **before**, not after, a public request for the record is made, DOE should attempt to respond to public requests for records faster than if the request was made through ATIP. The turn-around time for ATIP inquiries is 30 days.

DOE should be aware that some flexibility exists for this turn-around time in cases where a request is received for a large number of records and where the public is agreeable to the delay. Guidelines on the time for responding to requests is available from the Agency's *'Reference Guide on the Public Registry'*.

9.4.13 *Can DOE also expect 'walk-in' public inquiries?*

DOE should fully expect to have members of the public visit the offices of the project contacts in order to review the record listing or the records associated with a particular project. In order to accommodate this possibility and depending on the frequency of inquiries, DOE should consider establishing a

'viewing room' (e.g. an empty office, a small meeting room) in each site where records are located so that members of the public can review records of interest.

9.4.14 *Can DOE cost recover for responding to public requests for copies of records?*

Yes. Using its general power to contract, DOE can cost recover for such Public Registry related activity. A cost-recovery policy in relation to Public Registry requests will help to discourage requests which are not well scoped (ie. "give me a copy of ALL the records you have for projects in that general area").

DOE should be aware that cost recovery can be used for reimbursement of the direct costs of reproducing records in hard copy or electronic form. Costs can not be recovered, however, for indirect costs associated with providing access to records nor can they be recovered for providing the public with access to the records for viewing purposes only.

According to the Agency's *Reference Guide on the Public Registry*, there should be no minimum or maximum charges for reproducing records. Charges will automatically be waived when the costs do not exceed \$25. A determination of the fees to be charged should be provided to a person making a request, and a cheque (cash should not be accepted) made out to the *Receiver General for Canada* should be received prior to the request being met.

For cost savings, the reproduction of records in electronic form will be encouraged.

NOTE:

DOE's Cost Recovery Guidelines, based on the ATIP guidelines, are included in Appendix O. Readers should note that though the ATIP guidelines do not set a fee for information provided in diskette format, the Agency's guidance refers to a fee of \$10.00 for information provided on 5.25" or 3.5" diskettes.

Refer also to the Agency's guidance on cost recovery, set out in detail on pages 178-183 of *The Reference Guide for the Canadian Environmental Assessment Act - The Public Registry*.

9.4.15 *Can DOE be reimbursed for the funds that it cost recovers?*

Yes. Though typically, recovered costs are forwarded to the Receiver General of Canada, arrangements can be made in advance with the Department of Finance to have the funds which are recovered returned to the responsibility centre where the costs were incurred. This arrangement must be done at the start of each fiscal year based on an estimate of the amount of money to be cost recovered during the year.

Such an arrangement would best be negotiated after the Public Registry has been up and running for a period of time in order to provide the experience needed to best estimate whether the volume of public inquiries would merit such an arrangement.

9.4.16 *When do records requested by the public have to be translated?*

There is a legal requirement to translate records related to environmental assessments if the records:

- were prepared for the purpose of communicating with the public;
- originated with an RA; and
- have a primary contact (as listed on the FEAI) located in an area designated as officially bilingual (refer to Appendix Q).

DOE should be aware of this focus on the location and origin of the records, rather on the origin of the request for the records. It should also be clear that **all three of the above conditions must be met before a record is required to be translated into the other official language.** For example, records that are prepared by the RA for internal use to assist in making a decision (but not for the purpose of communicating with the public) do not have to be translated even if they are stored in officially bilingual areas.

The need for translating records into languages other than the two official languages (such as aboriginal languages - North of 60°) must be determined on a case by case basis. Questions with respect to such cases should be forwarded to HQ Legal Services through your environmental assessment regional contact.

NOTE:

DOE should be aware that a record noted on the Public Registry which:

- was prepared for the purpose of communicating with the public;
- originated with an RA; and
- has a primary contact (as listed on the FEAI) who is in a area designated as being officially bilingual.

must be translated into the other official language only if and when a request is made for that record!

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Section 10.0 - Table of Contents

10.0	COMMUNICATIONS AND APPROVAL PROCESS	10-1
10.1	Briefing Notes	10-2
10.2	Questions and Answers (QA's)	10-3
10.3	Ministerial Correspondence	10-4



10.0 EA INFORMATION COMMUNICATION AND APPROVALS PROCESSES

The following sections are provided to assist in the implementation of the departmental EA management framework, and to ensure that national consistency is maintained regarding the processes used throughout Environment Canada in the development and approval of environmental assessment briefing notes, ministerial correspondence, and "Q's & A's (questions and answers).

In the development of briefing notes, the Departmental Briefing Unit's manual (October, 1994) will also be adhered to as appropriate. In all cases where notes are developed, the guidelines pertaining to "regional lead" and "NPD-EAB lead" will be respected.

The development of environmental assessment related correspondence will adhere to the established departmental EA management framework and, the Departmental Correspondence Unit's (December, 1994) Executive Correspondence Manual.

"Questions and answers" (Q&A's) requests are usually associated with a short turn around time. Often the Parliamentary Relations Office will liaize directly with the responsibility center either at headquarters or the regional office. The information will be shared between HQ and the region to facilitate program communications and national consistency.

10.1 Briefing notes

- Environmental Assessment (EA) briefing notes can originate from the Departmental Briefing Unit (DBU), the EPS/ECS Briefing Secretariat, or other sources within the Department. EA briefing notes may also be unsolicited.
- Regardless of origin, all EA briefing materials shall be coordinated through the EPS/ECS Briefing Secretariat.
- Upon receipt of a request for an EA briefing note, the EPS/ECS Briefing Secretariat shall assign the "lead" to the appropriate region, or to the National Programs Directorate/Environmental Assessment Branch (NPD-EAB), using criteria that are consistent with the EA Management Framework.
- Requests for briefing notes that focus mainly on issues associated with regional delivery of Departmental EA positions, corporate approaches and procedures; regional CEAA Departmental compliance; and other regional responsibilities as outlined in the EA Management Framework, shall be led by the region.
- Requests for briefing notes that focus mainly on matters of overall Departmental EA policy development; legal issues; questions of national EA consistency, including joint DOE/Agency issues; and other HQ responsibilities outlined under the EA Management Framework, shall be led by NPD-EAB.
- Requests for briefing materials that touch solely on the mandate of the Agency shall be forwarded directly to the Agency by DBU.
- Upon receipt of a request to prepare an EA briefing note, the DOE official shall confirm that the request was routed through the ECS/EPS Briefing Secretariat and that the nature of the request is consistent with their responsibilities as outlined under the EA Management Framework. If there is any doubt, the ECS/EPS Briefing Secretariat in Ottawa is to be contacted immediately.
- Once a week, the EPS/ECS Briefing Secretariat shall provide NPD-EAB with a list of requests for EA briefing notes received and outstanding.
- All draft briefing note materials shall be consistent with the current Departmental briefing note format.

- Unsolicited briefing notes shall follow the same general procedures as solicited notes.

Regional Lead

- In cases where a regional lead is established, NP-EAB shall be consulted in a timely manner, preferably before a draft response is prepared. The draft response shall be approved by the region at the appropriate level and forwarded to the Regional Briefing Unit for transfer to the ECS/EPS Briefing Secretariat.
- The ECS/EPS Briefing Secretariat shall ensure that all notes generated by the region are signed-off for national consistency by the ADM-EPS.

NPD-EAB Lead

- In cases where an HQ lead is established, NP-EAB shall consult with the appropriate region(s) in advance.
- The EPS/ECS Briefing Secretariat shall forward a copy of approved notes to the appropriate region(s) in a timely manner.
- Joint DOE/Agency briefing notes shall be developed in a manner that is consistent with the October 1, 1993 memo from then Assistant Deputy Minister of DOE's Conservation and Protection Service (copy attached), including separate sections entitled "Agency Position" and "Departmental Position", where necessary.

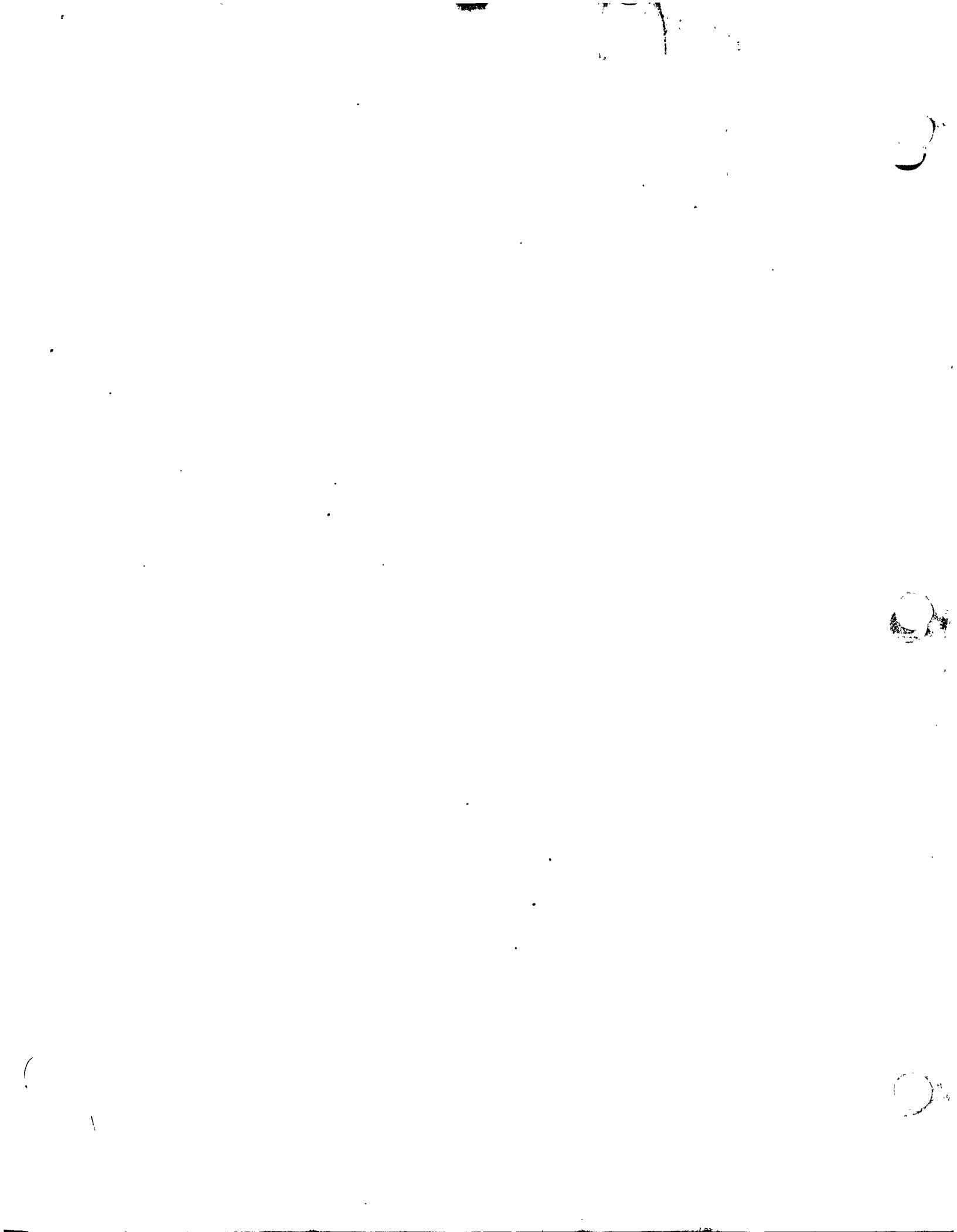
10.2 Question and Answer Approval Process

- Requests for Q&A's usually originate from the DOE Parliamentary Relations Office (PRO) but can be prepared in an unsolicited fashion.
- Due to the usual need for a quick turn-around time associated with a request for a Q&A card, it is at the discretion of PRO to forward the request directly to the Region or to NP-EAB for reply in order to ensure that the deadline is met.
- Time permitting, the officer assigned to develop the Q & A card will provide their counterpart with a draft copy of the material for review and input. At a minimum, the officer developing the card will provide their counterpart with a final copy at the time that it is forwarded to PRO.

10.3 Correspondence Approval Process

- Upon receipt of a request from the Departmental Correspondence Unit (DCU) or elsewhere within the Department to develop a response to ministerial or other correspondence, the Ministerial Correspondence Unit (MCU) shall transfer the request:
 - directly to the appropriate Region for reply;
 - to the National Programs Directorate/Environmental Assessment Branch (NP-EAB) in cases where the subject is being coordinated out of HQ for reasons of national consistency;
 - to either of the above, and to the Canadian Environmental Assessment Agency, for joint action.
- The receiver of a request to prepare a reply to correspondence shall confirm that the request was routed through MCU and that the nature of the request is consistent with DOE's responsibilities as outlined under the EA Management Framework. If there is any doubt, MCU in Ottawa shall be contacted immediately.
- MCU shall ensure that standard reply's are used where warranted, updated every three months, and forwarded to the region and NP-EAB once modified. It is the responsibility of both the region and NPD-EAB to inform MCU in a timely manner of any development associated with a project that would affect the accuracy of a standard reply.
- Draft replies that are consistent with an approved standard can be forwarded directly to MCU without NPD-EAB/Regional consultation.
- Where a standard reply is inappropriate, the receiver of a request shall consult relevant officials at both the regional and HQ levels.
- MCU may edit and verify the content of any draft reply before forwarding it to DCU. MCU shall forward a copy of the edited version back to the originator.
- When input is needed from more than one program area within EPS/ECS, MCU shall coordinate the reply and prepare the final draft. A copy shall be sent to the program areas for their files.
- In cases of DOE/Agency or joint Service involvement, DCU shall coordinate the reply.

- Unsolicited correspondence shall follow the same general procedures as solicited correspondence.



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**DOE'S CEEA HANDBOOK:
APPENDIX ON ASSESSING CUMULATIVE ENVIRONMENTAL
EFFECTS AND SOCIO-ECONOMIC EFFECTS**

FINAL DRAFT

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TABLE OF CONTENTS

KEY QUESTIONS	3
1. INTRODUCTION	4
2. DEFINITIONS AND PRINCIPLES	4
3. SCOPING	6
4. ASSESSMENT	21
5. FOLLOW-UP PROGRAMS AND DOCUMENTATION	29

KEY QUESTIONS

This appendix to DOE's CEEA Handbook provides guidance on assessing cumulative environmental effects and socio-economic effects, as required in the *Canadian Environmental Assessment Act*. It is written as a series of questions and commentaries that can be used at any level of environmental assessment (i.e., screening, comprehensive study, mediation and panel review). The most important questions are listed below and should be considered at all levels of assessment. The numbers refer to the question numbers in the main text of the appendix.

1. What is Environment Canada's role in the EA?
2. What is the project?
3. What should be the scope of the cumulative environmental effects and socio-economic effects to be considered?
5. What information and knowledge on the project's cumulative and socio-economic effects is available within Environment Canada?
6. What other sources of information and knowledge are there? Who else should be involved?
7. Is the available information and knowledge sufficient to assess the project's cumulative and socio-economic effects?
8. What basic approaches can be used to assess a project's cumulative and socio-economic effects?
11. What are the project's cumulative environmental effects?
12. What are the project's socio-economic effects?
13. What mitigation measures are appropriate for the project's cumulative and socio-economic effects and which ones are likely to be the most effective?
14. Is the project likely to cause any significant adverse cumulative or socio-economic effects, taking account of the implementation of mitigation measures?
17. Have all the relevant documents on cumulative and socio-economic effects been added to the Public Registry?

1. INTRODUCTION

The *Canadian Environmental Assessment Act* requires 'responsible authorities' (RAs) to consider the cumulative environmental effects and the socio-economic effects of projects in all federal environmental assessments (EAs). Specifically, the *Act* requires 'responsible authorities' to take account of:

"any cumulative environmental effects that are likely to result from the project in combination with other projects and activities that have been or will be carried out" (subsection 16(1)(a)).

Since most, if not all, EAs already take account of the baseline conditions in the project's receiving environment and these conditions will include the cumulative effects of past and present projects and activities, the only new feature of the *Act's* requirement to assess cumulative environmental effects is the obligation to consider how the environmental effects of the project will combine with the effects of "*projects and activities that... will be carried out.*" are called 'imminent projects and activities in this appendix.

The *Act* also contains a requirement to assess socio-economic effects because it states that RAs must consider the project's environmental effects and an "*environmental effect*" is defined as including:

"any change that the project may cause in the environment, including any effect of any such change on ... socio-economic conditions ..." (subsection 2(1)).

This appendix provides guidance on assessing cumulative environmental effects and socio-economic effects as required in the *Act*. It deals with situations when the Department is a 'responsible authority' (RA) and when it is an expert 'federal authority' (FA) and supplements information in the 'Responsible Authority's Guide to the *Canadian Environmental Assessment Act*' and its accompanying Reference Guides¹.

This appendix is written as a series of questions and commentaries. Questions marked with an asterisk (*) are relevant to all levels of environmental assessment, including screening, and are listed on page 3 as 'Key Questions to Consider'. The questions without an asterisk are more relevant to comprehensive study, mediation and panel review.

2. DEFINITIONS AND PRINCIPLES

- **Cumulative Environmental Effects:** The *Act* does not contain a definition of cumulative environmental effects, however, they can be defined as the environmental effects resulting from the effects of a project when combined with those of past, present and imminent projects and activities, occurring over a certain period of time and distance. This is consistent with the requirements of the *Act* and the definition in the Reference Guide on cumulative environmental effects. This definition focuses on how the project's effects will combine with the effects of other projects and activities.

¹ The Responsible Authority's Guide and the Reference Guides are available from the Canadian Environmental Assessment Agency.

However, whenever possible, the cumulative effect of the project itself should be considered. In other words, the **interactions** of the project's environmental effects with themselves should be assessed.

- **Socio-economic Effects:** According to the *Act*, only socio-economic effects caused by a change in the biophysical environment caused by the project must be considered. Socio-economic effects that are not the result of a change in the biophysical environment do not have to be considered in federal EAs. For example, factors such as the effects of the project on taxation revenues do not have to be considered unless they are related to a change in the environment. Although the *Act* does not contain a precise definition of socio-economic effects, they can be defined as effects on the ways that groups of people live, work, play, relate to one another, organise to meet their needs and generally cope as members of society².

Section 16(1)(e)

Section 16(1)(e) of the *Act* allows the RA, in the case of a screening or a comprehensive study, or the Minister, in the case of a review panel or a mediation to include other relevant matters in the EA. For cumulative effects, this could include how the project's effects will combine with the effects of future projects and activities that are not imminent. For socio-economic effects, this could include effects that are not caused by a change in the biophysical environment. When the Department is an FA, it can provide advice on the need to use section (16(1)(e) to broaden the scope of an EA, so long as this does not fetter the RA's determination of the scope of the EA.

- **Minister's Responsibilities:** Under the *Department of Environment Act* the Minister is responsible for the preservation and enhancement of the quality of the natural environment. The Minister and the Government of Canada have related responsibilities under other legislation, policies, guidelines and international agreements. The consideration of cumulative environmental effects and socio-economic effects as an RA or an FA should be cognisant of these responsibilities³.
- **Level of Effort:** The level of effort required to consider a project's cumulative and socio-economic effects should match the scale of the project's likely effects. Assessing the cumulative and socio-economic effects of a routine project, such as a permit application, may require very little work, however, examining the effects of a mega-project may require extensive analysis.

² Based on the definition in the Inter-organizational Committee. 1995. Guidelines and Principles for Social Impact Assessment. Environmental Impact Assessment Review 15:11-43.

³ These responsibilities are outlined in the 'Summary of Environment Canada's Environmental Responsibilities Relevant to Environmental Assessments Conducted Under the *Canadian Environmental Assessment Act*' which contains a brief description of key environmental legislation, regulations, policies, guidelines, objectives and international agreements.

- **Information and Knowledge:** All information and knowledge used to assess a project's effects should be based on the best quality scientific data available and be consistent with any relevant environmental guidelines, such as the Canadian Water Quality Guidelines. The use of documented community or personal knowledge can also be helpful.

3. SCOPING

**Question 1: What is Environment Canada's role in the EA?*

Commentary 1: Approximately 75% of Environment Canada's EA workload is as an FA. Furthermore, Environment Canada is one of the most important FAs, particularly for the assessment of cumulative environmental effects. As an FA, the Department is responsible for providing information and knowledge on cumulative environmental effects and socio-economic effects in its possession to an RA, on request, but it is not responsible for actually assessing a project's effects. Environment Canada should, however, play a pro-active role whenever possible by informing RAs of the relevant information or knowledge in the Department's possession without waiting for a formal request. It should be noted that the Department is not obliged to conduct research or collect new information on cumulative or socio-economic effects when acting as an FA.

When acting as an RA, any other RAs for the project should be identified. Where there is more than one RA for a project, they should collectively determine how the EA should be managed⁴. Furthermore, as an RA, Environment Canada should determine whether or not there will be a provincial EA for the project, and if so, whether or not there will be a cooperative or joint EA conducted. If there is to be a cooperative or joint EA, then its terms of reference should be scoped very carefully so that all federal EA requirements are met. This is particularly important for the assessment of cumulative environmental effects because most provincial EA legislation does not include requirements for the assessment of cumulative environmental effects⁵.

RAs are also responsible for the Public Registry records of an EA (see section 5).

**Question 2: What is the project?*

Commentary 2: In order to consider a project's cumulative or socio-economic effects, there should be a complete description of all aspects of the project that will be included in the EA. Section 15 of the *Act* requires the RA to determine the scope of the project, except in the case of a review panel or mediation when the Minister of the Environment must determine the scope of the project, after consulting with the RA.

⁴ For guidance on managing an EA with more than one RA see 'Process Advice for the Participation of Federal Authorities in an Environmental Assessment' by the Canadian Environmental Assessment Agency.

⁵ At present, only BC's and Alberta's provincial EA legislation includes requirements to assess cumulative environmental effects.

Project Descriptions

Project description should include the different stages in the project's life cycle, such as construction, operation and decommissioning, as well as different project activities, such as the transportation of materials to the site, work at the site and waste management practices. They should also describe the location, scale and timing of different project stages and activities including the types and amounts of materials and the numbers and types of people involved.

When the Department is an FA and the project description provided by the RA is incomplete or insufficient, further details should be requested.

***Question 3:** *What should be the scope of the cumulative environmental effects and socio-economic effects to be considered?*

Commentary 3: The scope of the cumulative and socio-economic effects to be considered by Environment Canada should be determined by the requirements of section 16 of the *Act*, the *Act's* definitions of "environment" and "environmental effects", the Minister's responsibilities⁶ and the definitions and principles in section 2. As noted on p. 5, the scope of the effects to be considered can be broadened using section 16(1)(e) of the *Act*.

Definition of "Environmental Effect"

The *Act's* definition of "environmental effect" includes three types of effects:

- any change that the project may cause in the biophysical environment;
- any effect that a change in the biophysical environment caused by the project may have on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archeological, paleontological or architectural significance; and
- any change that the environment may cause to the project.

Cumulative Environmental Effects

A project's cumulative environmental effects could relate to any aspect of the "environment" or to any type of "environmental effect" (as defined in the *Act*), including effects on:

⁶ These responsibilities are outlined in the 'Summary of Environment Canada's Environmental Responsibilities Relevant to Environmental Assessments Conducted Under the *Canadian Environmental Assessment Act*' which contains a brief description of key environmental legislation, regulations, policies, guidelines, objectives and international agreements.

- water quality or quantity and air quality and climate;
- natural resources, such as fisheries, forestry and land;
- the health of fish, wildlife or plants or their habitats;
- human health and socio-economic conditions;
- physical and cultural heritage;
- aboriginal people and their traditional way of life; and
- effects on the project caused by the biophysical environment.

It is important to note that there may be cumulative effects on socio-economic conditions.

The wording of the *Act's* requirements means that assessments of cumulative effects could be more complex in regions that are already developed or where there is rapid development.

Socio-economic Effects

It is important to note that the *Act's* requirement for the assessment of socio-economic effects are limited to socio-economic effects caused by a change in the biophysical environment, attributable to the project. Thus, federal EAs are not required to assess all of a project's socio-economic effects, but only those related to a change in the biophysical environment.

A project's socio-economic effects could relate to:

- **Effects on natural resources:** These include effects on the use, enjoyment and valuation of natural resources, effects on marketable and non-marketable species, environmental productivity (e.g., agricultural, forestry or fisheries productivity), soil, water or air quality and the recreational importance of parks, forests, beaches, etc.;
- **Social and demographic effects:** These include changes in the size or composition of communities (e.g., in-migration of workers), changes in the rates of crime, violence, prostitution, etc., effects on the labor market and changes in the quality of life;
- **Cultural effects:** These include effects on values, beliefs, spiritual or religious practices, the arts, historical or archeological sites and peoples' sense of cultural identity. They also include effects on traditional ways of life, such as the use of land by Aboriginal people for traditional purposes;
- **Economic effects:** These include economic efficiency effects and distributional effects. Economic effects frequently used in EAs include effects on property values, taxation and revenues, income levels and local businesses and suppliers (especially local businesses dependent on the environment, such as tourism and outfitting); and
- **Effects on community infrastructure and services:** These include effects on transportation, utilities, housing and community and social services, including health and education.

There is some overlap between socio-economic effects and other types of effects included within the Act's definition of "environmental effect". For example, the definition of "environmental effect" includes effects on "physical and cultural heritage", but these types of effects can also be seen as socio-economic effects. Similarly, effects on natural resources may be the same thing as the Act's requirement to consider "the capacity of renewable resources... to meet the needs of the present and those of the future" in comprehensive studies, mediations and review panels (subsection 16(2)(d)).

Example: Identifying Socio-economic Effects

For a project that involves effects on waterfowl habitat, key issues to consider in scoping could include:

- How will the project affect the habitat, in terms of the amount of habitat and its quality?
- How will the project affect local land use?
- Will the affected habitat attract more or less waterfowl and will this affect local hunting?
- How will changes in the waterfowl population affect tourism and recreational activities in the area?
- If waterfowl population numbers change, will local farmers lose more or less grain to the birds? How will this affect them?

Question 4: *What should be the geographic boundaries for the cumulative and socio-economic effects?*

Commentary 4: The geographic boundaries of the assessment should be reasonable and be based on an understanding of the likely extent of the project's environmental effects. The effects of other projects and activities can be used as a secondary criterion for setting the boundaries for cumulative environmental effects, but the principal criterion should always be the expected extent of the project's effects.

Additional criteria that should be considered when setting geographic boundaries include:

- Ecological features and patterns, such as topography, vegetation, land use, wildlife habitats, migratory corridors or flyways, etc.;
- Aquatic boundaries, including watersheds, sub-watersheds and drainage basins; and
- Jurisdictional or administrative boundaries, such as municipal, county, township or regional boundaries.

Setting Geographic Boundaries

Different geographic boundaries should be set for different types of cumulative and socio-economic effects. For example, for wildlife effects appropriate boundaries could include known habitat(s) or migratory corridors or flyways. Appropriate boundaries for effects on water quality or quantity could include subwatersheds. The best boundaries for many socio-economic effects on local residents may often be community boundaries, such as municipal or township boundaries.

***Question 5:** *What information and knowledge on the project's cumulative and socio-economic effects is available within Environment Canada?*

Commentary 5: When identifying what information and knowledge is available within Environment Canada and which may be relevant to a project's cumulative or socio-economic effects, the following types and sources of information should be considered:

- Monitoring information on air quality, water quantity or quality, wildlife, soils, etc. in Departmental databases;
- Scientific articles, journals, books and reports in the Department's resource centers;
- Information on Departmental bulletin boards and databases;
- Unpublished papers and reports prepared by staff and consultants; and
- The professional knowledge and experience of staff, including scientists and engineers.

Information and Knowledge

Subsection 12(3) of the *Act* requires federal authorities to make available relevant information or knowledge in their possession. In this context, information can be defined as data, measurements, observations or findings and knowledge can be defined as the interpretation of information to make it useful. Knowledge is based on the experience of those interpreting the information.

To facilitate the assessment of cumulative environmental effects, a key-worded bibliography has been prepared for Environment Canada which includes, reports, papers and publications on the assessment of cumulative environmental effects in Canada and elsewhere. This is available from the Environmental Assessment Branch in headquarters.

It is likely that most of Environment Canada's information and knowledge on socio-economic effects will deal with the use, productivity, enjoyment and valuation of natural resources. Environment Canada's information and knowledge on other types of socio-economic effects are likely to be limited. For this reason it will be important for the

Department to consult with FAs knowledgeable about other types of socio-economic effects when it is an RA. For EAs where the assessment of a project's socio-economic effects is likely to be an especially important part of the EA, Environment Canada could consider retaining consultants with expertise in this area.

***Question 6:** *What other sources of information and knowledge are there? Who else should be involved?*

Commentary 6: When Environment Canada is an RA, sources of information and knowledge outside the Department should be identified as early as possible in the EA. Such sources include:

- Other federal departments and agencies (i.e., FAs);
- Provincial and municipal government departments, especially environmental, planning and resource management departments;
- Private consultants;
- Academic and research institutions; and
- Local residents, businesses and groups.

Table 1 shows the key federal departments and agencies that have information and knowledge on cumulative and socio-economic effects.

When Environment Canada is an RA, formal written requests for information should be made to all relevant FAs. These requests should be as specific as possible and explicitly mention the need for information on cumulative and/or socio-economic effects.

When Environment Canada is acting as an FA, staff should suggest other FAs and organisations that may have information and knowledge about the project's cumulative or socio-economic effects to the RA(s).

TABLE 1: KEY FEDERAL AUTHORITIES FOR INFORMATION ON CUMULATIVE AND SOCIO-ECONOMIC EFFECTS⁷

	DEPARTMENT	TYPES OF EFFECT
CUMULATIVE EFFECTS	Fisheries and Oceans Canada	Fish, fish habitat and marine mammals
	Agriculture Canada	Agriculture, soils, land use, soil erosion
	Natural Resources Canada	Forest resources, energy resources including mining, hydro-electric, nuclear, oil/gas
	Health Canada	Human health
	Indian and Northern Affairs Canada	Cumulative effects in the North
SOCIO-ECONOMIC EFFECTS	Agriculture Canada	Agricultural productivity, effects on agriculture and people dependent on agriculture
	Natural Resources Canada	Socio-economic effects of energy production and use including mining, hydro-electric, nuclear, oil/gas
	Fisheries and Oceans Canada	Effects on fisheries and communities dependent on fisheries
	Indian and Northern Affairs Canada	Effects on Aboriginal people and cultures, the North
	Heritage Canada	Effects on cultural and heritage resources
	Industry, Science and Technology Canada	Effects on Canadian industries, competitiveness, etc.
	Health Canada	Human health

⁷ Based on the draft Reference Guide on involving expert FAs prepared by the Canadian Environmental Assessment Agency.

***Question 7:** *Is the available information and knowledge sufficient to assess the project's cumulative and socio-economic effects?*

Commentary 7: Whether acting as an RA or an FA, Environment Canada staff should decide whether the information and knowledge available is sufficient to permit an assessment of the project's cumulative and socio-economic effects. Such decisions should be based on the quality of the information, any gaps in the information and whether or not there is any conflicting or ambiguous information.

If Environment Canada is an RA, any identified deficiencies in the available information or knowledge should be clearly identified in the EA, and staff should decide if studies or research are needed to provide additional information.

In the FA role, the Department can provide advice on the need for further studies, but it is not responsible for making decisions about whether or not to conduct them. This is a responsibility of the RA in screening and comprehensive studies and it is a responsibility of the Minister of the Environment, in consultation with the RA, in the case of panel reviews and mediations.

If Environment Canada advises an RA that additional studies are warranted, it should provide a clear statement of the need, a description of the studies being recommended and an explanation of how the results should be incorporated or used in the EA. When the Department conducts research or collects new information on behalf of an RA, Departmental policies regarding cost recovery should be applied.

***Question 8:** *What basic approaches can be used to assess a project's cumulative and socio-economic effects?*

Commentary 8: Basic approaches that can be used for assessing a project's cumulative or socio-economic effects include:

- Literature reviews;
- Public consultation;

Public Consultation

Public consultation is required at the comprehensive study and review panel levels of EA. It is not required for screening. However, even at the screening level public consultation can be an important means of assessing a project's cumulative and socio-economic effects. Local residents often have useful information about:

- Other projects and activities in the area;
- Baseline environmental and socio-economic conditions;
- The project's likely cumulative and socio-economic effects; and
- Appropriate mitigation measures.

Therefore, Environment Canada should consider public consultation at all levels of EA.

- Site visits;
- Case studies and the cumulative and socio-economic effects of other similar projects; and
- Professional knowledge and experience.

These approaches can be used in combination with each other as well as in combination with the more formal methods outlined below.

Question 9: *What methods can be used to assess a project's cumulative environmental effects?*

Commentary 9: There is no single standard method for assessing a project's cumulative environmental effects. Indeed, the available methods are still evolving rapidly and much progress has been made in recent years. Methods for the assessment of cumulative environmental effects can be divided into two general categories:

- Methods for use in project-level EAs; and
- Methods for use in land use or resource planning⁸.

Table 2 summarises four types of methods that can be used in project-level EA. The following criteria should be used to select an appropriate method(s) to assess a project's cumulative effects:

- **Matrices:** Use matrices to **identify** a project's cumulative environmental effects when:
 - The project only has a few activities or components;

⁸ For a review of both types of methods see Smit and Spaling. 1995. Methods for Cumulative Effects Assessment. Environmental Impact Assessment Review 15:81-106.

- There is a small number of valued ecosystem components (VECs); and
- There are only a few other projects and activities to consider.

Note: Matrices can be used to assess cumulative environmental effects if they are modified to include weighting or ranking systems.

- **Mapping, biogeographic analysis and landscape ecology:** Use these types of methods to assess cumulative environmental effects when:
 - There are several other projects and activities to consider;
 - Temporal and/or spatial considerations are especially important; and
 - Ecological effects are being assessed.

Mapping, biogeographic analysis and landscape ecology require polygon or spatial data. Biogeographic analysis and landscape ecology also require data on functional attributes or indicators of the project's receiving environment, e.g., water quality, age of trees, etc. and its effects on these attributes.

- **Modelling:** Use modelling methods to establish relationships between the project and its effects and/or to determine the probability of the effects when:
 - Effects on human health are being assessed;
 - Quantitative data on emissions, exposures and/or stresses are available; and
 - There are only a few other projects and activities to consider.

TABLE 2: METHODS FOR ASSESSING A PROJECT'S CUMULATIVE ENVIRONMENTAL EFFECTS

Type of Method	Characteristics	Strengths	Weaknesses	References
Matrices	<p>Rows usually correspond to different project activities and stages. Columns can correspond to different environmental media or to valued ecosystem components. Can be used to identify cumulative effects by overlaying two matrices: one for the project being assessed and one for other projects and activities.</p>	<ul style="list-style-type: none"> • Simple • Can be adapted to different types of projects and VECs • Good at identifying effects • Can be modified to include weighting or ranking systems 	<ul style="list-style-type: none"> • Do not represent spatial or temporal considerations well • Tend to oversimplify interactions • Do not address the magnitude of the effects, unless weighting or ranking systems are included • Can become cumbersome if all activities and environmental features are included • Can be difficult if there are several other projects and activities to consider 	<p>The Natural Resources Canada 'Environmental Assessment Manual' contains matrices for identifying cumulative environmental effects</p>
Mapping (including GIS)	<p>Measures changes in the spatial distribution and extent of VECs, using point or polygon data. GISs may be developed for EAs of mega-projects, but simple map overlays are likely to be the preferred method in routine EAs unless a GIS has already been developed.</p>	<ul style="list-style-type: none"> • Represents spatial considerations well • Can be adapted to include temporal considerations by doing a time series analysis • Can incorporate effects from single or multiple sources 	<ul style="list-style-type: none"> • Does not identify cause-effect relationships well • Requires a lot of spatial data • Can be expensive in terms of time and resources required to generate useful information 	<p>Cocklin, C, Parker, S. and Hay, J. 1992 Journal of Environmental Management 35:51-67</p>
Biogeographic Analysis and Landscape Ecology	<p>Based on the spatial distribution of ecological components and their attributes. Indicators represent the structural aspects of the environment (e.g., % tree cover) and functional attributes (e.g., age/composition of forest)</p>	<ul style="list-style-type: none"> • Represents spatial considerations well • Can be adapted to include temporal considerations by doing a time series analysis • Can incorporate effects from single or multiple sources 	<ul style="list-style-type: none"> • Requires detailed data on ecological components, processes and quality • Does not identify cause-effect relationships well • Determines baseline conditions. Usefulness as a predictive tool is limited. 	<p>Gosselink J. and Lee, L. 1989. Wetlands 2: 93-174 See also: MacViro 1995 Effects Monitoring Program for the Niagara Escarpment Plan Area, prepared for the Ontario Ministry of Environment and Energy</p>

Type of Method	Characteristics	Strengths	Weaknesses	References
Environmental Modelling (various types)	A variety of environmental modelling methods have been developed including mathematical modelling, risk assessment, cause-effect analysis and statistical analysis. Most modelling techniques are quantitative.	<ul style="list-style-type: none"> • Good at relating causes and effects, the magnitude of the effects and probability functions • Can address functional or structural changes • Can represent temporal considerations through time trend modelling 	<ul style="list-style-type: none"> • Does not represent spatial considerations well • Dependent on availability of reliable input data and understanding of environmental behavior • Few models have been validated • Can be expensive in terms of time and resources required to generate useful data 	<p>Hunsaker, C. et al. 1990. Environmental Management 14: 325-332</p> <p>Ziemer, R. et al 1991. Journal of Environmental Quality 20: 36-42</p>

Question 10: *What methods can be used to assess a project's socio-economic effects?*

Commentary 10: There is a variety of methods available for assessing a project's socio-economic effects, and the choice of method(s) will depend on the circumstances of individual EAs. Table 3 summarizes five types of methods that can be used to assess a project's socio-economic effects.

The following criteria should be used to select an appropriate method(s) to assess a project's socio-economic effects:

- **Matrices:** Use matrices to **identify** a project's socio-economic effects when:
 - The project only has a few activities or components; and
 - There is a small number of valued socio-economic characteristics or indicators.

Note: Matrices can be used to assess socio-economic effects if they are modified to include weighting or ranking systems.

- **Surveys and Questionnaires:** Use surveys and questionnaires when baseline information on socio-economic conditions, especially information on demographics and values, is inadequate, or to obtain information on attitudes about the project or its likely effects. Before initiating a survey or questionnaire, Environment Canada should ensure that similar information has not already been collected for another purpose and that sufficient time and resources are available.
- **Group Methods:** Use group methods to assess a project's socio-economic effects when:
 - There are opposing or different views about the project's socio-economic effects in a potential affected community;
 - Meetings can be arranged at a common location; and
 - There is a shortage of information.
- **Modelling and Forecasting:** Use modelling and forecasting methods to assess a project's socio-economic effects when:
 - There are sufficient quantitative input data available, especially economic data; and
 - There are appropriate models available that include environmental factors.
- **Expert Methods:** Use expert methods to assess a project's socio-economic effects when:
 - The socio-economic effects are uncertain or there is a shortage of information;
 - Experts hold different or opposing views about the project's socio-economic effects; and
 - Meetings can be arranged at a common location.

TABLE 1. METHODS FOR ASSESSING A PROJECT'S SOCIAL-ECONOMIC EFFECTS

Type of Method	Characteristics	Strengths	Weaknesses	Reference
<p>Matrices</p>	<p>Rows usually correspond to different project activities and stages. Columns can correspond to valued socio-economic characteristics or indicators, such as effects on natural resources, population changes, economic effects etc.</p>	<ul style="list-style-type: none"> • Simple • Can be adapted to different types of projects and socio-economic characteristics or indicators • Good at identifying effects • Can be modified to include weighting or ranking systems 	<ul style="list-style-type: none"> • Do not represent spatial or temporal considerations well • Tend to oversimplify interactions • Do not address the magnitude of the effects, unless weighting or ranking systems are included • Can become cumbersome if all activities and characteristics are included 	<p>The Inter-organisational Committee (1995) has developed a generic matrix relating project stages with socio-economic variables. See: Environmental Impact Assessment Review 15: 11-43</p>
<p>Surveys and Questionnaires</p>	<p>Usually consists of a series of standardised questions administered in person, by phone or by mail to a selected sample. Results are statistically analysed</p>	<ul style="list-style-type: none"> • Useful for obtaining information on demographics, attitudes and values • Good at determining baseline conditions • Can provide detailed information on particular issues 	<ul style="list-style-type: none"> • Can be expensive in terms of time and resources • Investigators can bias the results • Large randomly selected samples are needed for representative results. • Response rates are important • Control groups may be necessary 	<p>For reviews of methods see the Inter-organisational Committee (1995); Finsterbusch et al. (1983) Social Impact Assessment Methods. Sage Publications, Beverly Hill, CA; and Branch et al. (1984) Guide to Social Assessment: A Framework for Assessing Social Change. Westview Press, Boulder, Co</p>

Type of Method	Characteristics	Strengths	Weaknesses	Reference
Group Methods	Groups of selected people meet to discuss particular questions or issues. Questions are usually more open-ended than survey questions. Focus groups are a frequently used method.	<ul style="list-style-type: none"> Useful for obtaining information on attitudes and values Can be used to determine baseline conditions or to predict effects Can lead to a consensus and balance out opposing views 	<ul style="list-style-type: none"> Can require considerable time commitment from participants May not be representative of the population at large Investigators can easily bias the results 	For reviews of methods see the Inter-organisational Committee (1995); Finsterbusch et al. (1983) Social Impact Assessment Methods.
Modelling and Forecasting	Most models relate changes in social, economic and fiscal conditions to each other or to external factors such as changes in public policy, trade, development projects, etc. Includes cost-benefit and valuation of environmental goods and services.	<ul style="list-style-type: none"> Economic models are very sophisticated and can be used for cost-benefit analysis Good at relating causes and effects, the magnitude of the effects and probability functions Can represent temporal considerations through time trend modelling 	<ul style="list-style-type: none"> Few socio-economic models include environmental factors Does not represent spatial considerations well Dependent on availability of reliable input data and understanding of environmental behavior Few models have been validated Can be expensive in terms of time and resources required to generate useful data 	Sage Publications, Beverly Hill, CA; and Branch et al. (1984) Guide to Social Assessment: A Framework for Assessing Social Change. Westview Press, Boulder, Co
Expert Methods	Relies on the use of experts, either individually or in groups. Examples include the Delphi and nominal group techniques.	<ul style="list-style-type: none"> Can lead to a consensus and balance out opposing views. Can be effective when time or resources are limited Uses professional expertise and knowledge 	<ul style="list-style-type: none"> Does not include affected communities and may not represent local attitudes and values Depends on the experts selected 	

- (b) To assess the project's contribution to cumulative environmental effects, it will be necessary to examine its environmental effects, using the definitions of "*environment*" and "*environmental effect*" in the *Act*. It should be noted that this includes cumulative socio-economic effects and effects on human health.
- (c) Although the identity and nature of past projects and activities may be unknown, assessments of cumulative effects should identify existing projects and activities and the projects and activities that "*will be carried out*". Projects and activities that "*will be carried out*" should be interpreted as follows:
- Projects where:
 - there has been a firm decision to proceed by senior management or a Board of Directors; and
 - all the necessary federal, provincial and/or territorial approvals, including EA approvals, permits, leases and licenses, have been received; and
 - project financing is in place.
 - Activities that:
 - involve or affect natural resources, including water use, hunting, fishing and tourism;
 - are planned, documented or recorded; and
 - are important or can reasonably be expected to occur on a regular or frequent basis in the foreseeable future.

Since the *Act* does not contain a definition of "*activity*", activities can include any relevant activity. In this context, activities are not limited to the "*physical activities*" listed in the *Inclusion List Regulations*.

Identifying Imminent Projects and Activities

Assessments of a project's cumulative environmental effects do not have to consider a project's 'growth inducing ability'. For example, an EA of a road in an undeveloped area does not have to consider how the project may lead to future developments in the area. This is because there is still a relatively high level of uncertainty about the precise nature and timing of the future development. However, EAs can be broadened to include a project's 'growth inducing ability' by using section 16(1)(e) of the *Act*.

As well as identifying imminent projects and activities, EAs should summarise the available information on their potential environmental effects. Sources of information on imminent projects and activities and their potential environmental effects include:

- federal, provincial and municipal government departments, especially land use planners and environmental staff;
- the Public Registry and EA registries or files maintained by provincial departments;
- project owners and operators and local developers; and
- local residents and community groups.

If information on the environmental effects of imminent projects and activities is incomplete, this should be documented in the EA. It is not necessary to collect new information on the potential effects of imminent projects and activities.

(d)

The next step is to assess how the project's environmental effects will combine with the effects of the other projects and activities, in other words, to assess the project's contribution to cumulative environmental effects. The *Act* states that EAs must consider the environmental effects of the project "*in combination with*" the effects of other projects and activities. This should be interpreted as meaning that EAs must consider:

- how the project's environmental effects interact with other environmental effects to cause a new effect;
- effects from two or more projects or activities creating separate loads on some aspect of the environment, which, taken together, cause a magnified impact on this aspect of the environment;
- effects from two or more projects or activities causing effects on different aspects of the environment which in turn relate to one another and cause further environmental effects.

For example, if mining activities are likely to result in the entry of sediments into a stream, affecting a local fish population, the EA should address all stresses that could affect the fish, not just other sources of sediments.

As well, cumulative environmental effects can occur at different levels of biological organisation including the cellular, organ, individual, population, community and ecosystem levels. EAs should focus on effects at higher levels of organisation, while recognising the links between different levels. For example, biochemical changes or metabolic changes in a fish population may be a good indicator of cumulative effects.

Question 12: *What are the project's socio-economic effects?

- (a) *What are the baseline socio-economic conditions in the project's receiving environment?*
- (b) *How will the project affect conditions in the biophysical environment?*
- (c) *How will changes in the biophysical environment affect socio-economic conditions?*
- (d) *Who will be affected by changes in the biophysical environment?*

Commentary 12:

- (a) To assess a project's socio-economic effects, it is first necessary to determine the baseline socio-economic conditions in the project's receiving environment. This can be done using the definition of socio-economic effects in section 2 and by identifying valued characteristics or indicators of socio-economic conditions, such as changes in population size or composition, levels of crime, changes in the local economy and income levels.

If the available information on baseline socio-economic effects is incomplete, it may be appropriate to collect new data using one or more of the methods discussed in section 3. Information on baseline conditions should be sufficient to support the assessment of socio-economic effects, but not so broad that it lacks focus.

- (b) As noted in section 2, only socio-economic effects caused by a change in the biophysical environment must be assessed. Socio-economic effects not caused by a change in the environment do not have to be assessed. Therefore, before the socio-economic effects can be assessed, there must be a thorough understanding of the project's effects on the biophysical environment. This should be based on the definition of "*environment*" in the *Act*.

- (c) The next step is to consider how the changes in the biophysical environment will affect socio-economic conditions. This should be done by 'projecting' the baseline socio-economic conditions into the future without the project and comparing them with future conditions with the project. Many socio-economic conditions are constantly changing (e.g., population levels, resource use, etc.) and will continue to change, irrespective of the project. These changes should be anticipated before the effects of the project can be determined, unless it is reasonable to assume that there will be no change in the indicator or characteristic being assessed. Other points include:

- **Information:** Assessments of socio-economic effects should be based on quantitative information whenever possible, while recognising that the nature of some socio-economic information can preclude quantification.

- **Time Frames:** Some socio-economic effects will occur immediately and others may take longer to develop. Similarly, some effects may be short-term, seasonal or reversible, whereas others may be long-term, irreversible or outlast the project's lifespan. The time frames used to assess socio-economic effects should always reflect the nature of the effects.
- **Community-specific Assessments:** Assessments of a project's socio-economic effects should be community-specific and take account of the circumstances and conditions of individual communities, rather than using a 'cookie cutter' approach. For example, it is common for EAs to conclude that communities will have a higher standard of living because there will be a larger tax base or more jobs. This may be an appropriate conclusion in some cases, but not in all. More money may also mean higher rates of alcoholism, drug abuse and violence in a community. Furthermore, if paid employment on the project takes the place of traditional or subsistence activities, such as hunting and fishing, some communities, especially Aboriginal ones, may experience adverse social and cultural effects, even if they are better off in monetary terms.

(d) An important element of any assessment of socio-economic effects is to consider who will experience any effects and to analyse the 'distributional equity' of the situation. In other words, who will benefit from the project and who will experience any adverse effects? If there is a difference between who will benefit and who will experience the adverse effects, the situation may not be very equitable and appropriate mitigation measures should be considered. This type of situation can occur when profits from a project are exported from an adversely affected community.

Who Will Be Affected

When identifying who will be affected by changes in socio-economic conditions, the following groups should be considered:

- Natural resource users including farmers, hunters, fishers, and their families;
- Local businesses and industries that are dependent on natural resources, e.g., tourism, outfitters and guides;
- People who use the environment for recreational or outdoor activities e.g., hikers, boaters, swimmers, casual walkers or visitors, etc.;
- Aboriginal people and communities;
- People who live or work nearby or in potentially affected communities, and people who have an interest (e.g., own property) in the area; and
- People who could be employed by the project or benefit from it.

***Question 13:** *What mitigation measures are appropriate for the project's cumulative and socio-economic effects and which ones are likely to be the most effective?*

Commentary 13: Under the *Act*, all EAs must include a consideration of the mitigation measures for the project's environmental effects, including measures to mitigate any cumulative or socio-economic effects. Mitigation measures are defined as measures that will eliminate, reduce or control a project's effects and they include replacement, restoration, compensation and restitution.

Cumulative Environmental Effects

Mitigation measures for cumulative environmental effects could include:

- Avoiding wildlife habitats or areas known to contain endangered species;
- Adjusting work schedules to minimize disturbance;
- Structures, such as berms and noise attenuation barriers;
- Pollution control devices, such as scrubbers and electrostatic precipitators; and
- Changes in process technology or waste management practices.

Responsibility for Mitigating Cumulative Environmental Effects

In practice, proponents are often responsible for the implementation of mitigation measures, as part of the EA. In the context of mitigation measures for cumulative effects, proponents should only be responsible for mitigating the project's environmental effects or the project's contribution to cumulative environmental effects. This is because in most circumstances it is unreasonable to expect proponents to mitigate the environmental effects of other projects and activities.

Socio-economic Effects

Mitigation measures for a project's socio-economic effects can focus on the effects on the biophysical environment that are causing the socio-economic effects, or on the socio-economic effects themselves. Mitigation measures for the effects on the biophysical environment should be considered **before** mitigation measures for the socio-economic effects themselves. This is because it is better to prevent the socio-economic effects from occurring than to have to manage them later. If, however, mitigation measures for effects on the biophysical environment are unlikely to prevent the socio-economic effects, measures for mitigating the socio-economic effects could include:

- Providing community facilities, services or infrastructure;
- Providing financial restitution such as income replacement;
- Providing re-training opportunities or alternative sources of employment; and
- Providing replacement or alternative amenities or resources.

Example: Mitigating Socio-economic Effects on Hunters

If a project, such as a development in an area of waterfowl habitat, is likely to cause adverse socio-economic effects on local hunters, because of effects on migratory birds, these effects could be mitigated by minimizing the effects on the birds or by reducing the dependency of the hunters on the birds. It would be better to minimise the effects on the birds.

Mitigation measures for socio-economic effects must be reasonably related to the effects themselves. In other words, the link between the socio-economic effects and the mitigation measures must be logical and rational. For example, simply providing financial compensation to a potentially affected community is unlikely to be a mitigation measure for the purposes of the *Act* unless it is clear how the money will be used to mitigate the project's effects.

As well, mitigation measures for a project's socio-economic effects should be acceptable to the people affected, otherwise they are unlikely to be effective. Determining the acceptability of mitigation measures could involve public consultation.

All mitigation measures considered must be technically and economically feasible and whether it is an FA or an RA, the Department should recommend the most effective ones for implementation.

Under the *Act*, RAs are responsible for ensuring the implementation of mitigation measures (subsections 20(2) and 37(2)), including measures for cumulative and socio-economic effects. Therefore, when the Department is an RA, Environment Canada staff should ensure that any necessary arrangements are made to implement the recommended measures. The federal government can only implement mitigation measures within areas of federal jurisdiction.

***Question 14:** *Is the project likely to cause any significant adverse cumulative or socio-economic effects, taking account of the implementation of mitigation measures?*

Commentary 14: As an RA, Environment Canada must determine whether the project is likely to cause significant adverse environmental effects, taking account of the implementation of mitigation measures. This must include the significance of any adverse cumulative effects and any socio-economic effects caused by a change in the biophysical environment.

As an FA, Environment Canada may provide advice on whether or not the project is likely to cause any significant adverse environmental effects, as long as this does not fetter the RA's determination.

Unsubstantiated and unsupported public concerns and values cannot be part of the determination of significance. Decisions about whether adverse environmental effects are significant must be based on objective reasoning and factual information alone, although this

can include the results of public opinion surveys. Public concerns are taken account of in other ways in the EA process, for example, if there is a determination that a project is likely to cause significant adverse environmental effects, the RA must also decide whether or not such effects can be "*justified in the circumstances*". For further information on the role of public concerns and values in the determination of significance, please see the Reference Guide on deciding whether a project is likely to cause significant adverse environmental effects⁹.

The Reference Guide separates the determination of significance into three related and sequential steps:

- Deciding if the project's environmental effects are **adverse**;
- Deciding if the adverse environmental effects are **significant**; and
- Deciding if the significant adverse environmental effects are **likely**.

It also provides general criteria for making decisions on each of these points. Although this approach is somewhat complex, it does help to 'unpack' the overall determination into its component parts.

Cumulative Environmental Effects

Even though the adverse environmental effects of a project may not be significant, when combined with the effects of other projects and activities, its cumulative effects could be significant. For example, although the effects of a single hydro dam may be minor, its cumulative effects combined with the effects of other dams in the watershed may be significant. Thus, projects in regions where there are other past, present or imminent projects and activities are more likely to have significant cumulative environmental effects than projects in undeveloped areas.

To determine whether or not a project is likely to cause significant adverse cumulative effects or to provide advice on this matter, Environment Canada should consider:

- Information on the environmental effects of other past, present and imminent projects and activities;
- Data on baseline environmental conditions, including details of any natural variations in these conditions, such as seasonal changes in water levels;
- Relevant environmental standards or guidelines such as the Canadian Water Quality Guidelines; and
- Any ecosystem objectives or known ecological thresholds or 'carrying capacities'.

⁹

Available from the Canadian Environmental Assessment Agency.

Socio-economic Effects

Deciding whether or not a project is likely to cause significant adverse effects on socio-economic conditions is probably more challenging than determining the significance of cumulative environmental effects because there are no accepted standards or norms for most socio-economic conditions or indicators.

In the absence of accepted standards or norms for socio-economic conditions, major changes in one or more of the following parameters can be used to decide whether or not a project is likely to cause significant adverse effects on socio-economic conditions:

- Effects on natural resources, including effects on the use, productivity, enjoyment or value of natural resources;
- Social and demographic effects;
- Cultural effects;
- Economic effects; and
- Effects on community infrastructure and services.

5. FOLLOW-UP PROGRAMS AND DOCUMENTATION

Question 15: *Is there a need for a follow-up program for the project's cumulative or socio-economic effects?*

Commentary 15: The *Act* states that the purpose of follow-up programs is to:

- Verify the accuracy of EAs; and/or
- Determine the effectiveness of mitigation measures.

Whether the Department is an RA or an FA, it is recommended that the need for, and requirements of, a follow-up program should be considered in all types of EA (screening, comprehensive study, mediation and panel review). The *Act* requires RAs to consider the need for, and requirements of a follow-up program in comprehensive studies, mediations and panel reviews. When the Department is an FA, it can provide advice on a follow-up program so long as this does not fetter the RAs determination of the need for, or requirements of a program. Follow-up programs usually involve monitoring and reporting on a project's observed environmental effects.

Under the *Act*, RAs are also responsible for arranging for the implementation of follow-up programs (subsection 38(1)). Therefore, when the Department is an RA, Environment Canada staff should ensure that any necessary arrangements are made to implement the recommended program.

Follow-up Programs for Cumulative Environmental Effects

When designing follow-up environmental monitoring programs for cumulative environmental effects, any responsibilities assigned to the proponent should be based on the project's environmental effects or its contribution to cumulative environmental effects. This is because in most circumstances it is unreasonable to expect proponents to monitor the environmental effects of other projects and activities.

Question 16: *Has the assessment of the project's cumulative and socio-economic effects been adequately documented?*

Commentary 16: The assessment of a project's environmental effects, including its cumulative and socio-economic effects, should be adequately documented in the environmental assessment report. The form and length of the documentation of the assessment of cumulative and socio-economic effects will vary, depending on the project's likely effects. However, to comply with the *Act's* requirements, the minimum documentation should include:

Cumulative Environmental Effects

- A description of baseline conditions in the project's receiving environment;
- A list of known present and imminent projects and activities in the area;
- A statement of the cumulative environmental effects of the project in combination with the effects of the past, present and imminent projects and activities;
- A description of mitigation measures for the project's cumulative environmental effects and a rationale for the recommended measures; and
- A determination of whether or not the project is likely to cause significant adverse cumulative environmental effects, taking account of the implementation of mitigation measures.

Socio-economic Effects

- An assessment of the project's effects on the biophysical environment;
- An assessment of any changes in socio-economic conditions caused by the project's effects on the biophysical environment;
- A description of mitigation measures for the project's socio-economic effects and a rationale for the recommended measures; and
- A determination of whether or not the project is likely to cause significant adverse socio-economic effects, taking account of the implementation of mitigation measures.

For projects at the comprehensive study, mediation and review panel levels of EA, the documentation of a project's cumulative and socio-economic effects should include the additional factors to be considered at these levels of EA, such as follow-up plans, alternative means of carrying out the project and the project's effects on renewable resources.

***Question 17:** *Have all the relevant documents on cumulative and socio-economic effects been added to the Public Registry?*

Commentary 17: Section 55(1) of the *Act* requires RAs to establish and maintain a Public Registry of documents relating to each federal EA. The Public Registry consists of three parts:

- The Federal EA Index;
- The document listing; and
- The actual documents.

The document listing for each project should include all documents on cumulative environmental effects and socio-economic effects used in the EA. Furthermore, the document listing for each project and the documents themselves must be accessible to the public on request in electronic or paper format¹⁰.

¹⁰ For further details on the Public Registry, see the Reference Guide on the Public Registry, available from the Canadian Environmental Assessment Agency.