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# **Audit of Public Participation and Consultation Activities**

**The Audit and Evaluation Branch**

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**Canada** 

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## List of Acronyms

CAE	Chief Audit Executive
CEPA	<i>Canadian Environmental Protection Act</i>
CRM	Client Relationship Management database
DM	Deputy Minister
EAAC	External Audit Advisory Committee
EC	Environment Canada
ISRD	Intergovernmental and Stakeholder Relations Directorate
PAA	Program Alignment Architecture
TB	Treasury Board
TBS	Treasury Board Secretariat

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## Executive Summary

Government of Canada policy requires departments to consult with Canadians and consider their interests and concerns when establishing priorities, developing policies and regulations, and planning and implementing programs and services.<sup>1</sup>

Beyond the need to comply with Government of Canada policy, Environment Canada (EC) has specific legal responsibilities to notify, consult and otherwise engage Canadians as outlined in specific Acts (such as the *Canadian Environmental Protection Act, 1999* [CEPA 1999] and *Species at Risk Act* [SARA]). In addition, EC is obligated to consult with Aboriginal governments and communities when contemplated Crown conduct may have an impact on asserted or established Aboriginal or Treaty rights, or where contractual obligation exists. For example, land claims and self-government agreements typically specify requirements and processes to consult on specific matters.

The purpose of this audit was to assess the adequacy and effectiveness of the public consultation process. The audit scope included consultation activities that respond to EC statutory, legal duty to consult, and good governance requirements. The audit examined consultations with Aboriginal peoples, environmental non-governmental organizations, business and industry, and civil society groups. The audit covered the period between April 1, 2012 and March 31, 2013. Audit fieldwork was completed in August 2013.

### Main Findings and Recommendations

Overall, the governance, risk management and management practices and processes supporting public consultations at EC are adequate and effective, although some areas require improvement to support Department-wide planning and reporting and an effective transition toward the use of more online consultation tools. The audit team observed examples of properly designed and effectively applied controls, which led to the following positive findings:

- Public consultations are aligned with EC strategic priorities and communicated across the relevant organizational levels.
- The *Environment Canada Policy on Public Participation and Aboriginal Consultations* and EC's *Handbook on Public Consultations* outline roles and responsibilities, and provide guidance on policy requirements.
- Program officials interviewed were experienced and knowledgeable on the public consultation process.
- Cross-departmental and governmental collaboration occurs through committees and working groups.
- A basic information technology (IT) infrastructure is in place (e.g., SharePoint, stakeholder databases, Consultation Calendar), but currently is not mandatory.
- Consultation activities are aligned with the principles-based approach set out in the aforementioned EC consultation policy and handbook.

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<sup>1</sup> TBS, *Communications Policy of the Government of Canada, Policy Statement*, August 2006.

## **Summary of Recommendations**

As summarized below, opportunities were identified where management practices and processes could be enhanced:

The Assistant Deputy Minister, Strategic Policy Branch should:

1. Establish and communicate the basic requirements to ensure branch heads document consultation activities, demonstrate due diligence, and retain key documents such as evaluations of the consultation process and results, risk considerations, and lessons learned.
2. Determine the necessary information needed to support planning and reporting of consultation activities, and develop a long-term approach to capture Department-wide data.
3. Ensure a formal change management and communications strategy is included in the e-Consultation initiative in order to support implementation.

# 1. INTRODUCTION

## 1.1 Background

Government of Canada policy requires consultation with and consideration of Canadians' interests and concerns when establishing priorities, developing policies and regulations, and planning and implementing programs and services.<sup>2</sup> In addition, Environment Canada (EC) is obligated to consult with Aboriginal governments and communities when contemplated Crown conduct may have an impact on asserted or established Aboriginal or Treaty rights or where contractual obligation exists. For example, land claims and self-government agreements typically specify requirements and processes to consult on specific matters.

The Audit of Public Participation and Consultation Activities was included in the 2012-2013 Risk-Based Audit and Evaluation Plan approved by the Deputy Minister (DM) in September 2012.

Public participation is the umbrella term used to describe a spectrum of activities and processes the Department can employ to engage those interested in, and affected by, Government actions and decisions. The public, in this context, is broadly defined to include: all Canadian citizens; provincial, territorial, municipal and Aboriginal governments; Aboriginal peoples; civil society organizations; business and industry; other federal government departments; and other stakeholders who are interested in and affected by a particular issue.

Federal departments are responsible for identifying those interested in and affected by an issue, and for providing them with open, meaningful and reasonable opportunities for public participation at all stages of policy, program and regulatory development and delivery. This includes informing and engaging Canadians on the nature and implications of the public policy issue at hand based on available evidence, science or knowledge.<sup>3</sup>

Departments are required to clearly set out the process and timelines for public participation, so that those potentially affected by Government decisions are aware of the process and can provide input. As well, departments are expected to provide timely feedback to Canadians on the outcome of a process and on the priorities considered in the decisions that were made.<sup>4</sup>

Furthermore, federal departments have a legal duty to consult Aboriginal groups with respect to potential adverse impacts arising from Crown activities on established or potential Aboriginal rights protected under section 35 of the *Constitution Act, 1982*. The duty to consult stems from the Government's unique legal requirement to maintain the honour of the Crown in its dealings with Aboriginal peoples.<sup>5</sup> In 2011, the Government of Canada issued the *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*. The guide provides direction to federal departments on assessing common law requirements, including effectively carrying out meaningful consultations.

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<sup>2</sup> Treasury Board Secretariat (TBS), *Communications Policy of the Government of Canada, Policy Statement*, August 2006.

<sup>3</sup> TBS, *Communications Policy of the Government of Canada, Policy Statement*, August 2006.

<sup>4</sup> Government of Canada, *Cabinet Directive on Regulatory Management*, April 2012.

<sup>5</sup> Government of Canada, *Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, 2011.

Public participation in the Government decision-making process is also a key element of good governance. Effective public participation allows the federal government to benefit from the experience and expertise of society at large, leading to: more informed decisions; better design of policies, programs and regulations; and greater legitimacy in the decision-making process. Of equal importance listening to and addressing the concerns of those interested in and affected by an issue can help to manage conflict, resulting in fewer costs and delays in implementing policies and initiatives.<sup>6</sup>

## 1.2 *Public Consultations at Environment Canada*

Public consultation is an important aspect of EC's work. The Department cannot carry out its mandate to protect the environment and promote sustainable development in isolation.

Although the responsibility for public consultations is shared by programs involved in policy, program and regulatory development and delivery, the Intergovernmental and Stakeholder Relations Directorate (ISRD), reporting to the Strategic Policy Branch, serves as an advisory group.

In 2010, the Department released its *Policy on Public Participation and Aboriginal Consultation* and the *Handbook on Public Participation*. The policy seeks to foster and support a culture of public participation in the decision-making process. It establishes guidelines in key areas of public participation, and outlines the criteria to consider when planning and implementing public participation processes. The policy also reflects EC's commitment to involve Canadians in decision-making processes in a consistent, reasonable and meaningful way, and encourages the Department to plan accordingly in order to have the appropriate mechanisms and resources in place to respect this commitment. The handbook provides guidelines to EC staff involved in planning or implementing public participation activities for policy, program or regulatory development and delivery.

As part of its policies, EC established the following public participation principles in order to support timely and effective decision-making<sup>7</sup>:

- **Transparency** – The Department should inform participants of the purpose and objectives of the process, what is expected of them, what they can expect of the Department, and how it will use and consider their input;
- **Respect** – Public participation should be based on mutual respect for the time, legitimacy and views of all participants. Effective public participation will not always lead to agreement, but it will lead to better informed and more confident decision-making;
- **Inclusiveness and Accessibility** – The Department should involve as broad a range of groups or individuals who may be affected by, interested in, or able to make a meaningful contribution to the decision as is appropriate;
- **Coordination** – The planning and implementation of public participation processes should be coordinated with other departments, agencies and sections of Environment Canada to avoid duplication and to collaborate on overlapping issues; and;

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<sup>6</sup> EC, *Environment Canada Policy on Public Participation and Aboriginal Consultation*, 2010.

<sup>7</sup> EC, *Environment Canada Policy on Public Participation and Aboriginal Consultation*, 2010.



- **Environmental Sustainability** – In keeping with the Government of Canada's efforts to adopt environmentally responsible measures in its operations, Environment Canada should consider all environmental aspects in the planning and implementation of both small and large activities.

In addition to these principles, EC also applies the following principles when consulting Aboriginal peoples in a manner to support timely and effective decision-making:

- **Meaningfulness and Good Faith** – In keeping with the Supreme Court of Canada's direction on Aboriginal consultation and with the other principles set out in this policy, Environment Canada should undertake genuine efforts to ensure consultation with Aboriginal peoples addresses all legitimate concerns, as is appropriate to the Department's mandate and authority.
- **Reconciliation** – Environment Canada's approach to Aboriginal consultation should promote the reconciliation of Aboriginal and non-Aboriginal claims, interests and ambitions, recognizing that today's events are part of a long-lasting and ongoing relationship between Aboriginal peoples and the Crown.
- **Reasonableness** – Environment Canada should make all reasonable efforts to respect Aboriginal and treaty rights while balancing the interests of all Canadians in protecting our shared environment.

In 2012-2013, 136 consultations took place, with an approximate budget of \$800K, 50% of those consultations were for statutory requirements, 35% were for good governance, and 3% were for the legal duty to consult. The group that participated the most in these consultations was the industry sector.

### **1.3 Objectives and Scope**

The objective of the audit was to assess the adequacy and effectiveness of the public consultation process. More specifically, the audit looked at whether

- governance processes provide overall direction with regards to objectives, approaches, roles and responsibilities, and oversight for public consultation processes,
- management processes are in place to identify and mitigate key risks related to public consultations, and
- management practices and processes are in place to ensure effective and efficient public consultations and compliance with policy, regulatory and legislative requirements.

For the purposes of this audit, consultation activities were defined as public participation that involves obtaining feedback on analysis, alternatives and/or decisions. As such, the consultations that were examined included: informing participants, listening to and acknowledging concerns and aspirations, and providing feedback on how input was used. The audit did not focus on activities that sought to inform the public by providing information to help people understand issues, alternatives or opportunities. Similarly, the audit did not include collaborative initiatives where EC primarily provides support or participates with other jurisdictions and groups to develop local or regional management plans

The scope of the audit included consultation activities that respond to EC statutory, legal duty to consult, and good governance requirements, including consultations with Aboriginal peoples, environmental non-governmental organizations, business and industry, and civil society groups. The scope also included a review of a sample of eight files selected from the Consultation Calendar maintained by ISRD. It did not assess the completeness of the consultation activities included in the Calendar.

The audit covered the period between April 1, 2012 and March 31, 2013.

## **1.4 *Audit Methodology***

The planning phase for this audit took place from January 2013 to April 2013. A risk assessment was performed to confirm the audit objective and areas that warranted further examination in the conduct phase of the audit. Based on the identified risks, the audit criteria were developed by focusing on the requirements of the related Treasury Board (TB) policies, directives and guidelines. Appendix A of this audit report lists the audit criteria.

The conduct phase for this audit took place at EC headquarters from June 2013 to August 2013. A review was conducted of EC departmental documents, a sample of branch or initiative documentation, and sample files, as were interviews with individuals from several EC branches/directorates.

### **Statement of Conformance**

This audit conforms with the Internal Auditing Standards for the Government of Canada as supported by the results of the quality assurance and improvement program.

In our professional judgement, sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The conclusions were based on a comparison of the situations as they existed at the end of the fieldwork in August 2013 against the audit criteria.

## **2. FINDINGS AND RECOMMENDATIONS**

This section presents detailed findings from the Audit of Public Participation and Consultation Activities. The findings are based on evidence and analysis gathered during all phases of the audit.

### **2.1 *Strategic Direction and Priorities***

Public consultations are aligned with EC strategic priorities, and are communicated across the relevant organizational levels.

The audit found that senior management are advised of planned public consultation for key initiatives (e.g., World Class Regulator, Forward Regulatory Plan). Priorities for collaborations and consultations are identified at the Program Alignment Architecture (PAA) level in the Departmental Report on Plans and Priorities. Upcoming consultations and related documents (where relevant) are posted online for regulatory and legislative initiatives in the EC Forward Regulatory Plan 2012-2014, the CEPA Environmental Registry, or the Species at Risk Public Registry. The audit also found that current and past EC consultations are posted on the Consulting with Canadians portal. Additionally, senior and program managers who were interviewed indicated that strategic priorities for EC public consultations are well communicated and understood within the pertinent organizational levels and branches.

### **2.2 *Departmental Policies and Guidelines***

The Department has established policies and guidelines that outline principles and practices for public consultation across EC. The audit noted that the Department has developed and implemented a *Policy on Public Participation and Aboriginal Consultation* and a *Handbook on Public Participation*. As part of the audit, the EC policy was compared with similar policy documents developed by four federal organizations, and was found to be a leading practice. The audit also noted that both documents were aligned with Government of Canada policies and guidelines for public consultations.

The EC policy and handbook were developed in collaboration with branches that held significant experience in conducting consultations, and were communicated through various means (such as training sessions and information sessions).

Although managers who were interviewed indicated they had referenced relevant guidance documents during consultations, the extent to which they did so varied based on individual experience.

## **2.3 Consultation Practices and Documentation**

Public consultation activities are not documented in a consistent manner.

EC consultation procedures should be supported with relevant documentation from programs to demonstrate adherence to core principles outlined in the policy and handbook for public consultations.

To assess the reasonableness of practices used by consultation managers in the planning, implementation, reporting and evaluation of public consultation activities, the audit team examined a sample of consultation file documentation, and interviewed departmental officials.

The audit found that the extent to which formal consultation processes are documented varies depending on the complexity or type of public consultations. Where consultations are more sensitive or complex, some managers tend to adopt more formal or structured approaches. Although a majority of the sample files reviewed were found to include appropriate supporting documentation, some exceptions were noted:

- The audit found inconsistencies in the retention of approved documents such as consultation plans, funding/hospitality requests, etc. The copies found on file were not always the original signed versions.
- Although the *Handbook on Public Participation* provides guidance on risk considerations, the audit found limited evidence of actual risk analyses being documented (including identification of mitigating activities to address the risks).
- Limited audit evidence was found of processes being in place to assess the effectiveness of the design and delivery of consultation activities, or to collect and share lessons learned about public consultation activities.

Retention of documentation by programs may be necessary to demonstrate due diligence at a later date. In addition, feedback from participants should be used to identify opportunities in order to increase the effectiveness or efficiency of public consultation processes.

### **Recommendation #1**

The Assistant Deputy Minister, Strategic Policy Branch, should establish and communicate the basic requirements to ensure branch heads document consultation activities, demonstrate due diligence, and retain key documents such as evaluations of the consultation process and results, risk considerations, and lessons learned.

### **Management Response**

The Assistant Deputy Minister, Strategic Policy Branch, agrees that consultation activities should be documented in a consistent manner and that these documents should be retained to demonstrate due diligence. The Assistant Deputy Minister will ensure that best practices are established and communicated. EC also recognizes that documentation is especially important for Aboriginal consultations. Although the audit

recommendations did not address the specifics of Aboriginal consultations, the Assistant Deputy Minister will ensure that the requirements for Aboriginal consultations are also clearly defined and communicated.

## **2.4 Consultation Information**

Information on key stakeholder and participant groups to enable reporting, monitoring and decision making is not available.

Information is important in supporting effective and efficient public consultations. It supports management in the planning and reporting of consultations, and allows management to better understand the nature and scope of consultation activities, assess potential capacity needs, and identify areas that can potentially be transitioned to more flexible and cost-effective approaches (such as online consultations).

The audit found that the Consultation Calendar, maintained by ISRD, is the only tool that captures Department-wide information on public consultation activities and includes information such as the rationale or trigger for the consultations, their purpose, planned activities, stakeholder groups, and planned/actual expenditures. Management indicated that they intend to increase the request for input into the Calendar from the current annual update to a tri-annual model, in order to provide more complete and current information. The audit noted, however, that it is not mandatory for consultation managers to input information into the Consultation Calendar, and there is no clear understanding among management and staff regarding what information is required. The audit noted instances of incomplete information for stakeholders and consultation activities posted in the Calendar.

Although ISRD has recently begun implementing and promoting (in collaboration with the Chief Information Officer) a centralized client relationship management (CRM) database to support consultation activities, many EC directorates and/or divisions maintain their own databases of stakeholders and partners. A centralized database or source of information on key stakeholder and participant groups that is maintained and accessible would help to support cross-departmental collaborative opportunities and ensure complete and accurate information is available for reporting, monitoring or decision-making purposes.

### **Recommendation #2:**

The Assistant Deputy Minister, Strategic Policy Branch, should determine the necessary information needed to support planning and reporting of consultation activities and develop a long-term approach to capture Department-wide data.

### **Management Response**

The Assistant Deputy Minister, Strategic Policy Branch, agrees with this recommendation. Steps have already been taken to improve EC's ability to capture key information related to the planning and reporting of consultation activities. An expanded Consultations Calendar was approved in October 2013, in which consultation managers were asked to provide additional information about ongoing or upcoming consultations,

such as the consultation's trigger, intended methods, the number of participants from various stakeholder categories, and the consultation's budget. In addition, in order to ensure that the information included in the calendar remains accurate, requests for updates will be sent by the Assistant Deputy Minister three times per year (instead of annually).

The Assistant Deputy Minister will also build on existing efforts to better capture Department-wide data. The Strategic Policy Branch will promote a greater use by the Department of the CRM database (a consultation tracking and management tool), and work to create an external-facing public registry that will allow stakeholders to identify themselves and their areas of interest. Together, these two tools will feed into a centralized database of stakeholder information that will be accessible to all consultation managers.

## **2.5 Implementation of e-Consultation**

Although the Department is moving ahead with implementing e-Consultations (i.e., via electronic means), there is no evidence of a change management or communications strategy developed.

The Department has made it a priority to leverage online technologies where appropriate in order to meet growing stakeholder and partner expectations for online engagement, in a cost-effective and efficient manner. The Department's priority to transition to e-Consultations has received senior management support, but is still in the first phases of implementation.

The e-Consultation initiative now underway is critical to position the Department going forward. Making use of web-based tools to complement traditional approaches to consultations will help EC increase its reach and efficiency in considering the views of Canadians in the Department's policies, programs and initiatives. It will also help the Department align with a broader federal direction outlined in initiatives such as the Open Government Action Plan.

At the time of this audit, the Department was implementing a number of initiatives to support e-Consultations:

- e-Consultation pilots (i.e., one e-Consultation pilot underway, with two more pilots planned for 2013-14)
- Reviewing the usage of social media to support consultations (e.g., a review of EC Social Media Policy; development of a process for using social media tools)
- Further development of the IT infrastructure, including a stakeholder registry (i.e., an online registry where stakeholders can self-register and/or update contact information)

The Department is moving ahead with incorporating telecommunication, online and web-based tools into public consultations, primarily through an increased use of teleconferences, video conferences, webinars, online collaboration and e-surveys.

The audit noted that the 2013-14 e-Consultation Work Plan includes key elements, such as a proposed approach for e-Consultations that includes, roles and responsibilities, milestones, and timelines. However, formalized change management plan and communications strategy were not included. Without a formal change management approach or a communications strategy to support the e-Consultation initiative, there is a potential risk that the Department will not garner buy-in from employees involved in the process.

In addition, results from interviews indicated that it can sometimes be difficult to retain interest among online consultation participants when a change management approach is not adopted.

**Recommendation #3:**

The Assistant Deputy Minister, Strategic Policy Branch, should ensure that a formal change management and communications strategy is included in the e-Consultation initiative, in order to support implementation.

**Management Response**

The Assistant Deputy Minister, Strategic Policy Branch, agrees with the need for a clear approach to manage the Department's move towards a greater use of e-Consultations. The Assistant Deputy Minister also agrees with the need to improve communications with consultation managers regarding the Department's decision to use more e-Consultation tools and the expectations that this places upon them. While senior management reviewed and approved a proposed approach for e-Consultations that includes roles and responsibilities, milestones, and timelines, there is uneven understanding among consultation managers about the expectations placed upon them by the Department's plan. Consultation managers also have uneven levels of the knowledge and experience required to lead e-Consultations, and further guidance is required around the processes required to acquire and use online tools.

The Assistant Deputy Minister, Strategic Policy Branch, will strengthen EC's centralized consultations and e-Consultations-enabling function in order to provide greater guidance and support to consultation managers. The Consultation and Stakeholder Affairs' 2013-14 workplan includes key elements of a change management strategy; these will be strengthened in 2014-15. This work will form the basis of clear communication across the Department.

### **3. CONCLUSION**

Overall, the governance, risk management and management practices and processes supporting public consultations at EC are adequate and effective. Opportunities to enhance management practices and processes include: clarification on documentation requirements; an approach for capturing Department-wide information on stakeholders and consultation activities; and the e-Consultation change management and communication strategy.

## Annex 1 - Audit Criteria

**Audit Objective: Assess the adequacy and effectiveness of the public consultation process.**

Audit Criteria	Audit Sub-Criteria	Met / Not Met
<p>1. Governance processes that establish and monitor the way that consultations are undertaken within Environment Canada, provide overall direction with regards to objectives, approaches, roles and responsibilities and oversight for public consultation processes.</p>	<p>1.1 Authority, responsibility and accountability for public consultation processes are clear, well communicated and documented.</p>	<p>Met</p>
	<p>1.2 Strategic direction and priorities are established for public consultation processes and are communicated, along with legislative requirements to consult, across the respective organizational levels.</p>	<p>Met</p>
	<p>1.3 Departmental policies and guidelines have been developed and implemented, and are aligned with Government of Canada policies and guidelines for public consultations.</p>	<p>Met</p>
	<p>1.4 Management monitors public consultation processes to identify possible efficiencies and monitor compliance with policy, regulatory and legislative requirements.</p>	<p>Met with minor issues.</p>
<p>2. Management processes are in place to identify and mitigate key risks related to public consultations.</p>	<p>2.1 Management has implemented an approach with respect to risk management of public consultations.</p>	<p>Met with minor issues.</p>
<p>3. Management practices and processes are adequate to ensure effective and efficient public consultations that comply with policy, regulatory and</p>	<p>3.1 Appropriate systems, tools, expertise and procedures are in place to ensure the effective and consistent application of established principles and practices for public consultation processes across the</p>	<p>Met</p>



legislative requirements.	department.	
	3.2 The department leverages, where appropriate, collaborative opportunities to enhance public consultations.	Met with minor issues.
	3.3 A formal process is in place to support the analysis, planning, communicating, implementing, reporting and evaluation of public consultations within a particular decision-making process.	Met with minor issues.
	3.4 The Department leverages information technologies to enhance public consultations.	Met with minor issues.