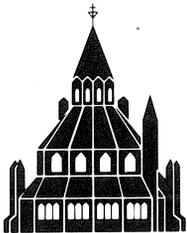


**ENVIRONMENTAL IMPACT ASSESSMENT
IN CANADA: PROPOSALS FOR CHANGE**

James R. Robertson

LAW AND GOVERNMENT DIVISION

October 1989



Library of
Parliament
Bibliothèque
du Parlement

**Research
Branch**

The Research Branch of the Library of Parliament works exclusively for Parliament, conducting research and providing information for Committees and Members of the Senate and the House of Commons. This service is extended without partisan bias in such forms as Reports, Background Papers and Issue Reviews. Research Officers in the Branch are also available for personal consultation in their respective fields of expertise.

CE DOCUMENT EST AUSSI
PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	1
THE EXISTING PROCESS	4
IMPROVING THE PROCESS	6
CONCLUSIONS	14
SELECTED REFERENCES	15
APPENDICES	



CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

ENVIRONMENTAL IMPACT ASSESSMENT IN CANADA: PROPOSALS FOR CHANGE

INTRODUCTION

In April 1989, the Trial Division of the Federal Court of Canada ruled that the Rafferty Alameda Dam Project on the Souris River in Saskatchewan could not proceed because the federal Environmental Assessment and Review Process Guidelines Order had not been complied with. The Federal Court of Appeal subsequently upheld this decision, with the result that the project was halted while an environmental impact assessment was carried out; on 31 August 1989, the Minister of the Environment permitted the project to resume under a stricter licence.

Since the Rafferty Alameda decision, many groups have argued that environmental impact assessments should be required by the federal government for a variety of projects and proposals. Moreover, the government has announced that it intends to introduce environmental assessment legislation in the near future.

This paper will outline the provisions of the existing federal environmental impact assessment procedure and various recommendations and proposals that have been made for improving it.

BACKGROUND

Environmental impact assessment (EIA) is a relatively new concept. Its emergence as a major concern is a reflection of the growing awareness of the importance of environmental issues, as well as the increasing size and complexity of modern projects. For many years, economic and engineering studies have accompanied any major new proposal; now, environmental review is also becoming part of the process.

Environmental impact assessment really began with the enactment of the National Environmental Policy Act (NEPA) in the United States in 1969. NEPA is a federal law, although many U.S. states have adopted similar laws applying to state actions. The American experience has also prompted many other jurisdictions, including Canada, to implement similar legislation.

In Canada, Ontario enacted the Environmental Assessment Act in 1975; most provinces now have some form of environmental impact assessment requirement either in legislation or regulations.⁽¹⁾ At the federal level, EIA has existed since the 1970s, although it has evolved and been revised over the years. The federal Environmental Assessment and Review Process (EARP) was developed in response to a December 1973 Cabinet decision to provide for evaluation of environmentally significant undertakings subject to federal control. The main outlines of the process were approved by Cabinet in April 1974. Minor revisions were made by Cabinet directive in 1977.

In its initial form, EARP was entirely administrative. A 1979 amendment to the Government Organization Act gave EARP a statutory basis for the first time by authorizing the Minister of the Environment to establish and operate an environmental assessment process; since 1979, the federal Minister of the Environment's duties have included the following responsibility:

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...⁽²⁾

(1) For a summary of provincial schemes, see Environmental Assessment in Canada: 1988 Summary of Current Practice, published under the auspices of the Canadian Council of Resource and Environment Ministers, William J. Couch, ed., Federal Environmental Assessment Office Review Office.

(2) Department of the Environment Act, R.S.C. 1985, c. E-10, section 5(a)(ii).

In 1983, following 10 years of experience with EARP, the federal Cabinet ordered a formal evaluation of the program.⁽³⁾ This resulted in proclamation of an Order in Council on 22 June 1984 under the Government Organization Act.⁽⁴⁾ This Order in Council replaces the previous Cabinet directives that established the program. Concern with the ad hoc nature of EARP and a lack of public confidence in it led to the move to a more formal basis for the program. Although earlier there had been arguments in favour of keeping the "new and untried" process flexible, by 1984 other considerations had become more important.

A complaint about EARP in its early days was that it was merely a policy or administrative matter, and had no firm statutory basis. While this has now been remedied, its status is still somewhat unusual and uncertain. In the recent Federal Court case involving the Rafferty Alameda Project, the Court decided that the EARP Guidelines Order did constitute an "enactment" or "regulation" as defined in section 2 of the federal Interpretation Act.⁽⁵⁾

Nevertheless, there may still be strong reasons for enacting specific legislation governing environmental impact assessment at the federal level. The present situation, where the EARP Guidelines Order is an Order in Council under general organizational legislation, is far from satisfactory: EARP can be changed at will by the Cabinet, there are no safeguards or opportunities for real public scrutiny, and its legal status

(3) "Improvements to the Federal Environmental Assessment and Review Process," 12 April 1984.

(4) Environmental Assessment and Review Process Guidelines Order, SOR/84-467, P.C. 1984-2132. A copy of the Guidelines Order is annexed as Appendix A. See also guide to the EARP published by the Federal Environmental Assessment Review Office.

(5) Canadian Wildlife Federation Inc., Gordon Geske and Joseph Dolecki v. Minister of the Environment and Saskatchewan Water Corporation, Federal Court of Canada, Trial Division, Court No. T-80-89, 10 April 1989, unreported, p. 11.

and application remain less clear than if they were embodied in a statute passed by Parliament. At the same time, there are some advantages to the existing system, including the fact that it allows flexibility, which can be important in such a dynamic and rapidly changing area.

THE EXISTING PROCESS

EARP has been described as a planning process, rather than a regulatory one; this reflects the belief that environmental assessments should be undertaken as early as possible in the decision-making process, and before irrevocable decisions have been made. The purpose is to "ensure that the environmental implications of all proposals ... are fully considered and where the implications are significant, [to] refer the proposal to the Minister [of the Environment] for public review...."

The EARP Guidelines Order applies to all departments, boards and agencies of the federal government, as well as to certain federal Crown corporations. The organization with the authority to make a decision about a proposal is referred to as the "initiating department" or initiator, while the "proponent" is the government department or the private sector organization that intends to undertake the proposal. A single entity may play both roles.

The EARP Guidelines Order is applicable to any proposal

- (a) that is to be undertaken by an initiating department;
- (b) that may have an environmental effect on an area of federal responsibility;
- (c) for which the Government of Canada has a financial commitment; or
- (d) that is located on lands, including the offshore, that are administered by the Government of Canada.

EARP can be applied in cooperation with other environmental regulation so as to avoid duplication of public reviews. Departments are

also expected to ensure that Canadian activities do not cause adverse effects in other countries.

The process is based on the principle of self-assessment. This means that all initiating departments must develop their own internal screening procedures to assess the potential environmental impact of all proposals for which they have decision-making authority. Initial assessment tries to determine the environmental effects of a proposal and their significance and also examines public concerns. It is hoped that this stage of the process will identify appropriate mitigation measures that can be incorporated into the design of the project. This leads to the decision whether to go ahead with the proposal, to abandon it or to refer it for public review. There must be public access to information about the proposal as well as an opportunity for response to this information before the proposal is implemented. Concerns have also been expressed about lack of public access to information gathered or held by the government in connection with environmental impact assessments. One of the basic rationales for EIA is informational; subject to legitimate concerns for confidentiality, environmental information needs to be generally available.

Where a proposal's adverse environmental effects are deemed substantial, the minister of the initiating department refers the matter to the Minister of the Environment for a public review.⁽⁶⁾ This is conducted by an Environmental Assessment Panel, an independent body appointed by the Minister of the Environment for each proposal. Each panel has a specific mandate, which may include such matters as the general socio-economic effects, assessment of technology, and the need for the proposal. This mandate is specified in the terms of reference issued to the panel by the Minister of the Environment after consultation with the minister of the initiating department. Each panel establishes its own operating procedures; such flexibility is necessary since proposals differ widely. Normally a panel holds preliminary public meetings to determine the scope and importance of issues, and then gives the proponent guidelines for preparing

(6) See Appendix B for a diagram outlining the basic Environmental Assessment and Review Procedure. Appendix C contains a Glossary of terms commonly used in discussing environmental assessment.

an Environmental Impact Statement, which forms the basis for the main public hearings and review.

Generally, the panel recommends whether the project should proceed, and, if so, under what terms and conditions, though some panels may be limited to an "environmental design review," whereby they may only recommend terms and conditions for the project. The panel's final report, which is always made public, is advisory only. The ministers make the final decisions as to what extent panel recommendations should be adopted before the project can proceed.

The Federal Environmental Assessment Review Office (FEARO) administers the EARP. The Office is independent of Environment Canada and its executive director reports directly to the Minister. FEARO provides initiating departments with guidelines for screening proposals and general assistance to develop and implement departmental procedures.

IMPROVING THE PROCESS

Over recent years, the Department of the Environment has conducted extensive consultations on ways in which to improve the Environmental Assessment and Review Process. Discussion papers, studies, and consultations on this subject have been ongoing for some time now.⁽⁷⁾ Increased experience with environmental assessment procedures within Canada and elsewhere has led to numerous further recommendations. The following is a brief summary of some of these.

It has been suggested, for instance, that the "environment" that is reviewed in an EARP should be expanded to include social, economic

(7) See, for example, Reforming Federal Environmental Assessment: A Discussion Paper, 1987; Initial Environmental Assessment at Environment Canada: A Discussion Paper with Recommendations, May 1987; "Summary of Public Consultations on Reforming the Federal Environmental Assessment and Review Process," February 1988; "Reforming Federal Environmental Assessment: Alternatives for Consideration," March 1988.

and cultural conditions. There is some provision under the existing EARP for consideration of such aspects, but critics argue that it should be more explicit. The term "environment" was not defined when EARP was initially created, but it was generally understood to be restricted to the biophysical environment. Consideration of social and other factors could result in a different type of review, and in traditional environmental issues being overshadowed. A summary of public opinion prepared by the Department of the Environment concluded:

...[P]articipants over its fourteen years [of the EARP] have shown that their prime concerns are the social and economic implications that arise from change to the biophysical environment as well as other socio-economic impacts. This view was reflected during the consultations. It was argued that "environment" should have a broad definition similar to that found in the environmental assessment Acts of Ontario, Saskatchewan and Newfoundland - i.e. should include such "social, economic and cultural conditions that influence man," as well as human health and man-made objects. Native groups said that special matters pertaining to aboriginal rights should also be addressed in environmental assessments.(8)

The proposals covered by EARP could be broadened to include not only a new project, but also any alteration or extension to an existing project, activity or structure. It has also been recommended that EARP address the issue of the cumulative effects of several undertakings.

The EARP Guidelines Order has broad implications; it currently provides that the Guidelines apply to any proposal "that may have an environmental effect on an area of federal jurisdiction" (section 6(b)). In the Rafferty Alameda Project case, the Federal Court concluded: "The Project will ... have an environmental impact on a number of areas of federal authority, namely international relations, the Boundary Waters

(8) Environment Canada, "Summary of Public Consultations on Reforming the Federal Environmental Assessment and Review Process," February 1988, p. 5.

Treaty (transboundary water flows), migratory birds (by virtue of the Migratory Birds Convention), interprovincial affairs and fisheries."(9)

Many environmentalists appear to recommend casting the net of EARP as widely as possible so as to capture all undertakings that have any federal aspect or element; exemptions for projects with a very minor federal component, or where provisions exist to avoid duplications of assessment could then be granted. Another approach would be to define very clearly those projects or environmental issues that are of concern; this would have the advantage of providing more certainty and it would also avoid diluting EARP by too frequent invocation.

It will continue to be important that EARP apply to those undertakings or activities for which the federal government has a decision-making responsibility, for example in issuing a licence or permit or granting permission. This was at the heart of the case involving the Rafferty Alameda Project. Again, an undertaking might require federal approval, yet not affect any matter of federal jurisdiction; in this case, a wider provision would be essential in order for federal legislation to be applicable.

It has been suggested that EARP should apply to provincial governments and their Crown corporations and to municipal governments, where matters of federal jurisdiction are being affected. It is interesting to note that the federal position in the Rafferty Alameda Project case was that the project was a provincial undertaking, subject only to provincial regulations and guidelines; this argument was rejected by the court. There might also be cases where a project does not directly involve the federal government, but where two or more provinces are involved; here the federal government could perhaps perform a useful mediation or supervisory role.(10)

(9) See footnote (5), p. 12.

(10) Some people argue that federal environmental authority could be exercised over matters that would otherwise be within exclusive provincial jurisdiction because potential environmental impacts can be characterized as matters of national concern, and, hence, a matter coming under the "peace, order and good government" clause of the Constitution Act. The Supreme Court of Canada decision in R. v. Crown Zellerbach Canada Ltd., [1988] 1 S.C.R. 401, 84 N.R. 1, provides some basis for this argument.

Under the present self-assessing system, the proponent of an undertaking is required to provide the EIA. While self-assessment probably remains the most viable approach for EARP, it does mean that environmental assessments of certain undertakings or projects may not be done, either inadvertently or by design. More important, it means that the scope and issues of the initial impact assessment are determined by the proponent. Some critics would like to see self-assessment replaced by varying degrees of more rigorous central supervision. One proposal is that all environmental impact assessments should be submitted to the Minister of the Environment or at least that copies should be sent to the Minister; under EARP, many projects are never referred to the Minister.

It has also been suggested that any review of a proposal should look at the need for the project and the alternatives to it. It would perhaps be preferable that the need for and alternatives to the project should have been assessed by the proponent before the review stage. One of the important benefits of the environmental assessment process is to ensure that governments, decision-makers, and other interested parties have adequate information about the environmental effects of a proposed undertaking. In this regard, need and alternatives are important components.

As noted earlier, environmental impact assessments should take into account the cumulative effects; that is, the effects of a project under review together with the effects of any similar projects. At present, there is considerable dissatisfaction in this regard, both with EARP and other environmental assessment regimes. While one project may not have a significant impact on the environment, a series of such projects, perhaps concentrated in one geographic area or affecting similar ecological components, may have.

Many projects have both federal and provincial components, and environmental impact assessments may be required at both levels. A review may be even further complicated if it involves two or more provinces as well as the federal government. There should be provision for avoiding such duplication and unnecessary expenditure of time and money. The EARP Guidelines Order currently provides:

5.(1) Where a proposal is subject to environmental regulation, independently of the Process, duplication in terms of public reviews is to be avoided.

(2) For the purpose of avoiding the duplication referred to in subsection (1), the initiating department shall use a public review under the Process as a planning tool at the earliest stages of development of the proposal rather than as a regulatory mechanism and make the results of the public review available for use in any regulatory deliberations respecting the proposal.

There are no clear-cut solutions to the problems of overlapping jurisdiction in this field. In some cases, joint federal-provincial hearing boards could be appointed; in others, one level of government could devolve its process to the other, on certain conditions. Any solution must avoid federal intervention in provincial areas of jurisdiction and recognize that different governments may have different interests, priorities or standards, which may not always be reconcilable.

There is also the potential for duplication or misunderstanding between a revised and perhaps broadened federal environmental impact assessment procedure, and the procedures of other regulatory bodies. Again, there is a wide diversity of approaches and regimes. The National Energy Board (NEB), for example, has authority to assess a project's environmental impacts, while most other federal regulatory bodies do not; some provincial regulatory bodies have such authority, but not all.

Cooperation would limit duplication, simplify the approval process, and set the rules so that time and resources would not be wasted in determining responsibility. There are, however, many views on how best to achieve these ends. Provision might be made for "cross-appointments" - for example, the appointment of an external expert to an NEB panel when important environmental issues were involved. The Province of Ontario has made legislative provision for a consolidated hearing procedure that includes several tribunals; a similar procedure could be considered for the federal government. Some commentators suggest a two-stage review: the

first by an environmental assessment panel and the second by another regulatory agency.(11)

Continuing to have hearings conducted by an independent board or tribunal, as at present, would avoid allegations of bias or conflicts of interest. The members could be appointed by the Minister, as at present, or the full Cabinet. The board could be permanent, with a group of three members that heard all cases (as, for instance, is the case with the Pest Management Advisory Board), or could choose members to hear a specific case from a permanent roster of individuals (as in the case of the Canadian Human Rights Tribunal Panel or the procedure under the Binational Panel Dispute Settlement provisions of the Canada-U.S. Free Trade Agreement). It is also possible that board members could be appointed on a case-by-case basis, thus ensuring that people with suitable expertise were selected. This is essentially the procedure under the EARP Guidelines Order; panels are usually chaired by the Executive Chairman of FEARO or a delegated representative.

Another question is who should have "standing" to appear at public hearings to offer evidence, to examine and cross examine witnesses, and to be represented by an agent or counsel. The wish is to invite the widest possible participation yet to avoid frivolous or vexatious matters or participants and unnecessary duplication. Criteria for standing could be clearly set out in the legislation, for instance on the basis of financial interest in a project, geographic proximity to it, etc. At the same time, it might be desirable to leave some discretion to individual boards to fashion rules appropriate to the relevant issues; indeed, because of the wide diversity of environmental issues and projects, fixed procedures would probably be impossible.

(11) There may also be cases where a formal hearing is not the most appropriate forum; consideration could be given to the concept of mediation. This is seen to have advantages in certain circumstances in lieu of the more expensive, and time-consuming, panel review. It would probably be most effective when there are only a small number of interested parties who could be clearly identified, and number of issues were few, and all parties consent to mediation. If the mediation was not successful, panel review could remain an option.

There is support for the concept of intervenor funding to ensure fairness, better-informed participants, and a more thorough discussion of the issues, although there are also strong arguments against such funding. Many of the interested parties are voluntary or non-profit - often community or environmental groups - or individual citizens who lack the resources and often the expertise to evaluate environmental impact assessments and to mount their case. The money could be provided by the government, or by the proponent as a cost of the process. Other funds might be provided through a special levy or tax. Some believe that funding should be administered by an independent agency, according to predetermined criteria; others suggest the money could be disbursed by the federal government directly, by the proponent of an undertaking (although this would raise concerns), or at the direction of the reviewing board. As there are usually far more people seeking funds than there are funds available, some system of priority would need to be established to give preference to groups that would be directly affected by the proposal. There are also questions as to what expenses or activities should be funded: travel, lawyers' and consultants' fees, research, etc. "Seed funding" might allow groups to get started, and to fund hearing expenses, if warranted.

Tying funding to the contribution made to the process would probably encourage only those intervenors who had something to add, and would discourage unnecessary interventions. The Canadian Radio-television and Telecommunications Commission (CRTC) in telecommunications matters, and Ontario's Consolidated Hearing Board, for example, are able to award costs to intervenors who have contributed responsibly to a better understanding of the issues.

Some or all of the criteria or matters to be considered by the panel could be specified, as is done in some provincial legislation. The panel decision could be binding, could, as under the EARP Guidelines, be advisory, or could be in the form of recommendations to the Minister of the Environment, the proponent, or whatever individual or group (such as the Cabinet) makes the final decision.

Consideration could be given to setting a time limit by which the panel must render a decision. While the number and complexity of

issues will differ from case to case, a deadline would ensure that matters did not drag on, especially important for undertakings proposed by the private sector. There could also be time limits for decisions at the different levels.

The introduction of various appeal rights (to the courts, the Minister, Cabinet, and so forth) has been suggested. The existing EARP has no rights of judicial appeal; a panel decision can be totally ignored, and there is no remedy. While the provision of a full right of appeal has certain merits, appeal rights could be limited to questions of law, or mixed fact and law. At the same time, rights of appeal would allow the process to go on indefinitely, at considerable cost in terms of time, energy and money. Judicial appeals could be very useful in appropriate cases, but, unless there were controls, might also be used for extraneous reasons, or frivolously.

It has been suggested that the Minister be allowed to exempt undertakings or proponents from the application of the Act if he considered this to be "in the public interest." The vagueness of this term could allow the intent of the EARP to be circumvented and frustrated. Ontario's Environmental Assessment Act allows the Minister, with the approval of the Lieutenant Governor in Council, to exempt an undertaking or project if he is of the opinion:

that the exemption is in the public interest, having regard to the purpose of this Act and weighing the same against the injury, damage or interference that might be caused to any person or property by the application of this Act to any undertaking.

The number of exemptions and the significance of some of them have prompted critics to dub this legislation the "Environmental Exemption Act." Exemptions were given to foreclose action against government departments, and to legitimize projects which had been improperly commenced. In July 1983, following criticism from environmental groups and others, the Ontario government established an Environmental Assessment Advisory Committee, to review exemption and designation requests. It is, however, merely an

advisory committee; it can give an opinion only at the request of the Minister.

The Ontario experience has led to the following suggestions. First, there should be clear procedures and criteria for exempting an undertaking or proponent. Second, decisions should be made either by an independent entity, or on the advice of an independent advisory committee, so as to avoid politicizing the process. Third, the decisions should not be made by the Minister of the Environment alone; if the decision-making power is to remain at the political level, decisions should be made by the Cabinet, or, at the very least, by the Minister with the approval of the Cabinet.

Both ongoing monitoring of an undertaking's environmental impacts and post-project surveillance would help to ensure compliance with any set terms, conditions or modifications, verify the accuracy of environmental predictions, and permit observation of effects that had not been anticipated, at present a major weakness of most environmental impact assessment programs. EIA is an exercise in risk management; it is based on the likelihood of certain consequences of certain activities. As external factors change, this likelihood can be affected.

The provisions of the EARP ought to be innovative and creative, encourage compliance with the legislation, and permit enforcement if necessary.

CONCLUSIONS

Canada's National Task Force on Environment and Economy in 1987⁽¹²⁾ and the Science Council of Canada in 1988⁽¹³⁾ reiterated that

(12) National Task Force on Environment and Economy (Canada), Report, submitted to the Canadian Council of Resource and Environment Ministers, 24 September 1987.

(13) Science Council of Canada, Environmental Peacekeepers: Science, Technology and Sustainable Development in Canada, Ottawa, 1988.

environmental considerations must be integrated with traditional financial, technical and political considerations in any development decisions.

Experience with environmental impact assessment indicates some of the strengths and weaknesses of the existing process. It is expected that the federal EARP will be revised in the near future, and that EIA assessment will be embodied in legislation. Whether the process will be subjected to major changes or merely to fine-tuning, it is clear that it will continue to play a significant role that will, if anything, increase in importance in the coming years.

SELECTED REFERENCES

Canada, National Task Force on Environment and Economy. Report. Submitted to the Canadian Council of Resource and Environment Ministers. 24 September 1987.

Canadian Council of Resource and Environment Ministers. Environmental Assessment in Canada: Summary of Current Practice. Published annually.

Canadian Environmental Assessment Research Council. Evaluating Environmental Impact Assessment: An Action Prospectus. 1988.

Cotton, Roger and D. Paul Emond. "Environmental Impact Assessment." Environmental Rights in Canada. Edited by John Swaigen. Butterworths, Toronto, 1981.

Environment Canada. Initial Environmental Assessment at Environment Canada: A Discussion Paper with Recommendations. May 1987.

Environment Canada. Reforming Federal Environmental Assessment: A Discussion Paper. 1987.

Environment Canada. "Summary of Public Consultations on Reforming the Federal Environmental Assessment and Review Process." February 1988.

Federal Environmental Assessment Review Office. The Federal Environmental Assessment and Review Process. 1987.

Federal Environmental Assessment Review Office. "Reforming Federal Environmental Assessment: Alternatives for Consideration." 1988.

Fenge, Terry and L. Graham Smith. "Reforming the Federal Environmental Assessment and Review Process." Canadian Public Policy, XII:4:596-605.

Fulton, William. "The Environmental Push and Pull." California Lawyer. March 1985, p. 50-54.

Gibson, Robert and Grace Patterson. Environmental Assessment in Canada. 1984.

Hazell, Stephen. "An Environmental Auditor." Policy Options. April 1988, p. 8-10.

International Association for Impact Assessment. Impact Assessment Bulletin.

Science Council of Canada. Environmental Peacekeepers: Science, Technology and Sustainable Development in Canada. Ottawa, 1988.

APPENDIX A

**Environmental Assessment and Review Process Guidelines Order,
SOR/84-467, P.C. 1984-2132**

Registration
SOR/84-467 22 June, 1984

GOVERNMENT ORGANIZATION ACT, 1979

**Environmental Assessment and Review Process
Guidelines Order**

P.C. 1984-2132 21 June, 1984

Her Excellency the Governor General in Council, on the recommendation of the Minister of the Environment, pursuant to subsection 6(2) of the Government Organization Act, 1979*, is pleased hereby to approve the annexed Guidelines respecting the implementation of the federal policy on environmental assessment and review, made by the Minister of the Environment on June 11, 1984.

**GUIDELINES RESPECTING THE IMPLEMENTATION
OF THE FEDERAL POLICY ON ENVIRONMENTAL
ASSESSMENT AND REVIEW**

Short Title

1. These Guidelines may be cited as the *Environmental Assessment and Review Process Guidelines Order*.

Interpretation

2. In these Guidelines,
- “Environmental Impact Statement” means a documented assessment of the environmental consequences of any proposal expected to have significant environmental consequences that is prepared or procured by the proponent in accordance with guidelines established by a Panel; (*énoncé des incidences environnementales*)
- “department” means, subject to sections 7 and 8,
- (a) any department, board or agency of the Government of Canada, and
- (b) any corporation listed in Schedule D to the *Financial Administration Act* and any regulatory body; (*ministère*)
- “initiating department” means any department that is, on behalf of the Government of Canada, the decision making authority for a proposal; (*ministère responsable*)
- “Minister” means the Minister of the Environment; (*Ministre*)
- “Office” means the Federal Environmental Assessment Review Office that is responsible directly to the Minister for the administration of the Process; (*Bureau*)

* S.C. 1978-79, c. 13, s. 14

Enregistrement
DORS/84-467 22 juin 1984

LOI DE 1979 SUR L'ORGANISATION DU GOUVERNEMENT

**Décret sur les lignes directrices visant le processus
d'évaluation et d'examen en matière
d'environnement**

C.P 1984-2132 21 juin 1984

Sur avis conforme du ministre de l'Environnement et en vertu du paragraphe 6(2) de la Loi de 1979 sur l'organisation du gouvernement*, il plaît à Son Excellence le Gouverneur général en conseil d'approuver, conformément à l'annexe ci-après, le Décret sur les lignes directrices visant la mise en œuvre du processus fédéral d'évaluation et d'examen en matière d'environnement pris par le ministre de l'Environnement le 11 juin 1984.

**DÉCRET SUR LES LIGNES DIRECTRICES VISANT LA
MISE EN ŒUVRE DU PROCESSUS FÉDÉRAL
D'ÉVALUATION ET D'EXAMEN EN MATIÈRE
D'ENVIRONNEMENT**

Titre abrégé

1. *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement.*

Définitions

2. Les définitions qui suivent s'appliquent aux présentes lignes directrices.
- «Bureau» Le Bureau fédéral d'examen des évaluations environnementales chargé d'administrer le processus et relevant directement du Ministre. (*Office*)
- «commission» Commission d'évaluation environnementale chargée, en vertu de l'article 21, de réaliser l'examen public d'une proposition. (*Panel*)
- «énoncé des incidences environnementales» Évaluation détaillée des répercussions environnementales de toute proposition dont les effets prévus sur l'environnement sont importants, qui est effectuée ou fournie par le promoteur en conformité avec les directives établies par une commission. (*Environmental Impact Statement*)
- «ministère» S'entend:
- a) de tout ministère, commission ou organisme fédéraux, ou
- b) dans les cas indiqués, l'une des corporations de la Couronne nommées à l'annexe D de la *Loi sur l'administration financière* ou tout organisme de réglementation. (*department*)

* S.C. 1978-79, c. 13, art. 14

“Panel” means an Environmental Assessment Panel that conducts the public review of a proposal pursuant to section 21; (*commission*)

“Process” means the Environmental Assessment and Review Process administered by the Office; (*processus*)

“proponent” means the organization or the initiating department intending to undertake a proposal; (*promoteur*)

“proposal” includes any initiative, undertaking or activity for which the Government of Canada has a decision making responsibility. (*proposition*)

«ministère responsable» Ministère qui, au nom du gouvernement du Canada, exerce le pouvoir de décision à l'égard d'une proposition. (*initiating department*)

«Ministre» Le ministre de l'Environnement. (*Minister*)

«processus» Le processus d'évaluation et d'examen en matière d'environnement, administré par le Bureau. (*Process*)

«promoteur» L'organisme ou le ministère responsable qui se propose de réaliser une proposition. (*proponent*)

«proposition» S'entend en outre de toute entreprise ou activité à l'égard de laquelle le gouvernement du Canada participe à la prise de décisions. (*proposal*)

Scope

3. The Process shall be a self assessment process under which the initiating department shall, as early in the planning process as possible and before irrevocable decisions are taken, ensure that the environmental implications of all proposals for which it is the decision making authority are fully considered and where the implications are significant, refer the proposal to the Minister for public review by a Panel.

4. (1) An initiating department shall include in its consideration of a proposal pursuant to section 3

(a) the potential environmental effects of the proposal and the social effects directly related to those environmental effects, including any effects that are external to Canadian territory; and

(b) the concerns of the public regarding the proposal and its potential environmental effects.

(2) Subject to the approval of the Minister and the Minister of the initiating department, consideration of a proposal may include such matters as the general socio-economic effects of the proposal and the technology assessment of and need for the proposal.

5. (1) Where a proposal is subject to environmental regulation, independently of the Process, duplication in terms of public reviews is to be avoided.

(2) For the purpose of avoiding the duplication referred to in subsection (1), the initiating department shall use a public review under the Process as a planning tool at the earliest stages of development of the proposal rather than as a regulatory mechanism and make the results of the public review available for use in any regulatory deliberations respecting the proposal.

Application

6. These Guidelines shall apply to any proposal

(a) that is to be undertaken directly by an initiating department;

(b) that may have an environmental effect on an area of federal responsibility;

Portée

3. Le processus est une méthode d'auto-évaluation selon laquelle le ministère responsable examine, le plus tôt possible au cours de l'étape de planification et avant de prendre des décisions irrévocables, les répercussions environnementales de toutes les propositions à l'égard desquelles il exerce le pouvoir de décision.

4.(1) Lors de l'examen d'une proposition selon l'article 3, le ministère responsable étudie:

a) les effets possibles de la proposition sur l'environnement ainsi que les répercussions sociales directement liées à ces effets, tant à l'intérieur qu'à l'extérieur du territoire canadien; et

b) les préoccupations du public qui concernent la proposition et ses effets possibles sur l'environnement.

(2) Sous réserve de l'approbation du Ministre et du ministre chargé du ministère responsable, il doit être tenu compte lors de l'étude d'une proposition de questions telles que les effets socio-économiques de la proposition, l'évaluation de la technologie relative à la proposition et le caractère nécessaire de la proposition.

5.(1) Si, indépendamment du processus, le ministère responsable soumet une proposition à un règlement sur l'environnement, il doit veiller à ce que les examens publics ne fassent pas double emploi.

(2) Pour éviter la situation de double emploi visée au paragraphe (1), le ministère responsable doit se servir du processus d'examen public comme instrument de travail au cours des premières étapes du développement d'une proposition plutôt que comme mécanisme réglementaire, et rendre les résultats de l'examen public disponibles aux fins des délibérations de nature réglementaire portant sur la proposition.

Champ d'application

6. Les présentes lignes directrices s'appliquent aux propositions

a) devant être réalisées directement par un ministère responsable;

b) pouvant avoir des répercussions environnementales sur une question de compétence fédérale;

(c) for which the Government of Canada makes a financial commitment; or

(d) that is located on lands, including the offshore, that are administered by the Government of Canada.

7. Where the decision making authority for a proposal is a corporation listed in Schedule D to the *Financial Administration Act*, the Process shall apply to that proposal only if

(a) it is the corporate policy of that corporation to apply the Process; and

(b) the application of the Process to that proposal is within the legislative authority of that corporation.

8. Where a board or an agency of the Government of Canada or a regulatory body has a regulatory function in respect of a proposal, these Guidelines shall apply to that board, agency or body only if there is no legal impediment to or duplication resulting from the application of these Guidelines.

9. (1) Where, in respect of a proposal, there are two or more initiating departments, the initiating departments shall determine which of the responsibilities, duties and functions of an initiating department under these Guidelines shall apply to each of them.

(2) Where the initiating departments cannot under subsection (1) agree to a determination, the Office shall act as an arbitrator in the making of the determination.

INITIAL ASSESSMENT

Initiating Department

10.(1) Every initiating department shall ensure that each proposal for which it is the decision making authority shall be subject to an environmental screening or initial assessment to determine whether, and the extent to which, there may be any potentially adverse environmental effects from the proposal.

(2) Any decisions to be made as a result of the environmental screening or initial assessment referred to in subsection (1) shall be made by the initiating department and not delegated to any other body.

11. For the purposes of the environmental screening and initial assessment referred to in subsection 10(1), the initiating department shall develop, in cooperation with the Office,

(a) a list identifying the types of proposals that would not produce any adverse environmental effects and that would, as a result, be automatically excluded from the Process; and

(b) a list identifying the types of proposals that would produce significant adverse environmental effects and that would be automatically referred to the Minister for public review by a Panel.

12. Every initiating department shall screen or assess each proposal for which it is the decision making authority to determine if

(a) the proposal is of a type identified by the list described under paragraph 11(a), in which case the proposal may automatically proceed;

c) pour lesquelles le gouvernement du Canada s'engage financièrement; ou

d) devant être réalisées sur des terres administrées par le gouvernement du Canada, y compris la haute mer.

7. Lorsqu'une corporation nommée à l'annexe D de la *Loi sur l'administration financière* exerce le pouvoir de décision relativement à une proposition, le processus ne s'applique à la proposition que si la corporation:

a) a comme politique générale d'appliquer le processus; et

b) est habilitée à appliquer le processus à cette proposition.

8. Lorsqu'une commission ou un organisme fédéral ou un organisme de réglementation exerce un pouvoir de réglementation à l'égard d'une proposition, les présentes lignes directrices ne s'appliquent à la commission ou à l'organisme que si aucun obstacle juridique ne l'empêche ou s'il n'en découle pas de chevauchement des responsabilités.

9. (1) Lorsqu'il y a plus d'un ministère responsable à l'égard d'une proposition, ceux-ci décident entre eux de la répartition des fonctions et des responsabilités que les présentes lignes directrices attribuent à un ministère responsable.

(2) Lorsque les ministères responsables visés au paragraphe (1) ne peuvent en arriver à une décision unanime, le Bureau agit à titre d'arbitre dans la prise de la décision.

ÉVALUATION INITIALE

Le ministère responsable

10. (1) Le ministère responsable s'assure que chaque proposition à l'égard de laquelle il exerce le pouvoir de décision est soumise à un examen préalable ou à une évaluation initiale, afin de déterminer la nature et l'étendue des effets néfastes qu'elle peut avoir sur l'environnement.

(2) Les décisions qui font suite à l'examen préalable ou à l'évaluation initiale visés au paragraphe (1) sont prises par le ministère responsable et ne peuvent être déléguées à nul autre organisme.

11. Aux fins de l'examen préalable et de l'évaluation initiale visés au paragraphe 10(1), le ministère responsable dresse, en collaboration avec le Bureau, les listes suivantes:

a) une liste des divers types de propositions qui n'auraient aucun effet néfaste sur l'environnement et qui, par conséquent, seraient automatiquement exclus du processus; et

b) une liste des divers types de propositions qui auraient des effets néfastes importants sur l'environnement et qui seraient automatiquement soumises au Ministre pour qu'un examen public soit mené par une commission.

12. Le ministère responsable examine ou évalue chaque proposition à l'égard de laquelle il exerce le pouvoir de décision, afin de déterminer:

a) si la proposition est d'un type compris dans la liste visée à l'alinéa 11a), auquel cas elle est réalisée telle que prévue;

(b) the proposal is of a type identified by the list described under paragraph 11(b), in which case the proposal shall be referred to the Minister for public review by a Panel;

(c) the potentially adverse environmental effects that may be caused by the proposal are insignificant or mitigable with known technology, in which case the proposal may proceed or proceed with the mitigation, as the case may be;

(d) the potentially adverse environmental effects that may be caused by the proposal are unknown, in which case the proposal shall either require further study and subsequent rescreening or reassessment or be referred to the Minister for public review by a Panel;

(e) the potentially adverse environmental effects that may be caused by the proposal are significant, as determined in accordance with criteria developed by the Office in cooperation with the initiating department, in which case the proposal shall be referred to the Minister for public review by a Panel; or

(f) the potentially adverse environmental effects that may be caused by the proposal are unacceptable, in which case the proposal shall either be modified and subsequently rescreened or reassessed or be abandoned.

13. Notwithstanding the determination concerning a proposal made pursuant to section 12, if public concern about the proposal is such that a public review is desirable, the initiating department shall refer the proposal to the Minister for public review by a Panel.

14. Where, in any case, the initiating department determines that mitigation or compensation measures could prevent any of the potentially adverse environmental effects of a proposal from becoming significant, the initiating department shall ensure that such measures are implemented.

15. The initiating department shall ensure

(a) after a determination concerning a proposal has been made pursuant to section 12 or a referral concerning the proposal has been made pursuant to section 13, and

(b) before any mitigation or compensation measures are implemented pursuant to section 14,

that the public have access to the information on and the opportunity to respond to the proposal in accordance with the spirit and principles of the *Access to Information Act*.

16. The initiating department, in consultation with the Office, shall establish written procedures to be followed in order to make a determination under section 12 and shall provide the Office on a regular basis, with information, on its implementation of the Process with respect to the proposals for which it is the decision making authority.

17. The initiating department shall

(a) ensure that federal-provincial, territorial and international agreements reflect the principles of the Process with respect to proposals for which it is the decision making authority; and

b) la proposition est d'un type compris dans la liste visée à l'alinéa 11b), auquel cas elle est soumise au Ministre pour qu'un examen public soit mené par une commission;

c) si les effets néfastes que la proposition peut avoir sur l'environnement sont minimales ou peuvent être atténués par l'application de mesures techniques connues, auquel cas la proposition est réalisée telle que prévue ou à l'aide de ces mesures, selon le cas;

d) si les effets néfastes que la proposition peut avoir sur l'environnement sont inconnus, auquel cas la proposition est soumise à d'autres études suivies d'un autre examen ou évaluation initiale, ou est soumise au Ministre pour qu'un examen public soit mené par une commission;

e) si, selon les critères établis par le Bureau, de concert avec le ministère responsable, les effets néfastes que la proposition peut avoir sur l'environnement sont importants, auquel cas la proposition est soumise au Ministre pour qu'un examen public soit mené par une commission; ou

f) si les effets néfastes que la proposition peut avoir sur l'environnement sont inacceptables, auquel cas la proposition est soit annulée, soit modifiée et soumise à un nouvel examen ou évaluation initiale.

13. Nonobstant la détermination des effets d'une proposition, faite conformément à l'article 12, le ministère responsable soumet la proposition au Ministre en vue de la tenue d'un examen public par une commission, chaque fois que les préoccupations du public au sujet de la proposition rendent un tel examen souhaitable.

14. Le ministère responsable voit à la mise en application de mesures d'atténuation et d'indemnisation, s'il est d'avis que celles-ci peuvent empêcher que les effets néfastes d'une proposition sur l'environnement prennent de l'ampleur.

15. Le ministère responsable doit s'assurer

a) après qu'une détermination sur les effets d'une proposition a été faite conformément à l'article 12 ou après qu'une proposition a été soumise au Ministre conformément à l'article 13, et

b) avant la mise en application de mesures d'atténuation et d'indemnisation conformément à l'article 14,

que le public a accès à l'information concernant cette proposition conformément à la *Loi sur l'accès à l'information*.

16. Le ministère responsable, de concert avec le Bureau, établit par écrit les procédures à suivre pour la détermination des effets d'une proposition selon l'article 12 et fournit régulièrement au Bureau des renseignements concernant l'application du processus aux propositions à l'égard desquelles il exerce le pouvoir de décision.

17. Le ministère responsable:

a) s'assure que les ententes des services fédéraux avec les provinces, les territoires et d'autres pays sont en accord avec les principes du processus, en ce qui concerne les propositions à l'égard desquelles il exerce le pouvoir de décision; et

(b) include in its program forecasts and annual estimates of the resources necessary to carry out the Process with respect to proposals.

Federal Environmental Assessment Review Office

18. It is the responsibility of the Office to

- (a) provide initiating departments with procedural guidelines for the screening of proposals and to provide general assistance for the development and installation of implementation procedures;
- (b) assist the initiating department in the provision of information on and the solicitation of public response to proposals early enough in the planning stage that irrevocable decisions will not be taken before public opinion is heard;
- (c) publish in summary form the public information provided to the Office by an initiating department on proposals for which it is the decision making authority and for which a determination under section 12 has been made; and
- (d) inform the Minister on a periodic basis, in a report to be made public, on the implementation of the Process by initiating departments.

Other Departments

19. It is the role of every department that has specialist knowledge or responsibilities relevant to a proposal to

- (a) provide to the initiating department any available data, information or advice that the initiating department may request concerning
 - (i) any regulatory requirements related to the project, and
 - (ii) the environmental effects and the directly related social impact of those effects; and
- (b) as appropriate, advocate the protection of the interests for which it is responsible.

Public Review

20. Where a determination concerning a proposal is made pursuant to paragraph 12(b), (d) or (e) or section 13, the initiating department shall refer the proposal to the Minister for public review.

21. The public review of a proposal under section 20 shall be conducted by an Environmental Assessment Panel, the members of which shall be appointed by the Minister.

22. The members of a Panel shall

- (a) be unbiased and free of any potential conflict of interest relative to the proposal under review;
- (b) be free of any political influence; and
- (c) have special knowledge and experience relevant to the anticipated technical, environmental and social effects of the proposal under review.

b) inscrit dans ses prévisions de programmes et ses budgets annuels les ressources nécessaires à l'application du processus à ces propositions.

Bureau fédéral d'examen des évaluations environnementales

18. Il incombe au Bureau

- a) d'émettre à l'intention des ministères responsables, des lignes directrices pour l'évaluation initiale des propositions et pour aider ces ministères à instaurer des procédures d'application du processus;
- b) d'aider les ministères responsables dans la prestation de renseignements et l'obtention de la réaction du public aux propositions, assez tôt au cours de l'étape de planification pour s'assurer que des décisions irrévocables ne sont pas prises avant que l'opinion du public soit entendue;
- c) de publier, sous forme de résumé, l'information publique qui lui a été fournie par les ministères responsables au sujet des propositions à l'égard desquelles ces derniers exercent le pouvoir de décision et dont les effets sur l'environnement ont été déterminés conformément à l'article 12; et
- d) d'informer le Ministre au moyen d'un rapport périodique à rendre public, au sujet de la mise en application du processus par les ministères responsables.

Autres ministères

19. Il incombe à tout ministère à vocation spécialisée ou ayant des responsabilités à une proposition donnée:

- a) de fournir au ministère responsable, sur demande, des données, des renseignements ou des avis concernant:
 - (i) les exigences réglementaires afférentes à la proposition, et
 - (ii) les effets de la proposition sur l'environnement ainsi que les répercussions sociales qui y sont directement liées; et
- b) au besoin, de proposer des mesures de protection pour les ressources renouvelables dont il a la responsabilité.

Examens publics

20. Lorsque les effets d'une proposition ont été déterminés conformément aux alinéas 12b), d) ou e) ou à l'article 13, le ministère responsable soumet la proposition au Ministre pour examen public.

21. L'examen public visé à l'article 20 est réalisé par une commission d'évaluation environnementale dont les membres sont nommés par le Ministre.

22. Les membres d'une commission doivent:

- a) faire preuve d'objectivité et ne pas être dans une situation où il y a un risque de conflit d'intérêts quant à la proposition à l'étude;
- b) être à l'abri de l'ingérence politique; et
- c) posséder des connaissances particulières et une expérience se rapportant aux effets prévus de la proposition sur les plans technique, environnemental et social.

23. (1) The Executive Chairman of the Office or his delegate shall be the Chairman of a Panel unless, in the opinion of the Minister, the circumstances of a particular review deem it inappropriate.

(2) The Executive Chairman of the Office shall appoint the Executive Secretary of the Panel.

24. The Office shall provide a Panel with

- (a) any support staff that it may require; and
- (b) any logistical and administrative services that it may require for its public review and for its public information program conducted pursuant to subsection 28(1).

25. (1) The public review of a proposal shall include

- (a) an examination of the environmental effects of the proposal; and
- (b) an examination of the directly related social impact of those effects.

(2) The examinations under paragraphs (1)(a) and (b) shall be conducted by the same Panel.

(3) Subject to the approval of the Minister and the Minister of the initiating department, the scope of the public review of a proposal may include such matters as the general socio-economic effects of the proposal and the technology assessment of and need for the proposal.

26. (1) The Minister, after consultation with the Minister responsible for the initiating department, shall issue the terms of reference outlining the scope of the public review to be undertaken by a Panel.

(2) The Office, in consultation with the initiating department, shall draft the terms of reference referred to in subsection (1).

(3) The terms of reference for a Panel shall be made available to the public.

27. (1) All hearings of a Panel shall be public hearings conducted in a non-judicial and informal but structured manner.

(2) A Panel shall establish, in accordance with procedural guidelines issued by the Office, its own detailed operating procedures.

(3) Witnesses before a Panel may be questioned but may not be sworn or subpoenaed.

(4) A Panel may question the relevancy and content of any information submitted to it.

28. (1) Every Panel shall conduct a public information program to advise the public of its review and to ensure that the public has access to all relevant information that any member of the public may request.

(2) The public information program referred to in subsection (1) shall be in addition to any other public information program that may be conducted by a department or a proponent that is specifically relevant to the activities of that department or proponent.

23. (1) Le président de chaque commission est le président exécutif du Bureau ou son délégué, à moins que le Ministre ne le juge pas indiqué en raison des circonstances d'un examen particulier.

(2) Le président exécutif du Bureau nomme le secrétaire exécutif de la commission.

24. Le Bureau fournit à la commission:

- a) le personnel de soutien nécessaire; et
- b) les services de soutien administratif et matériel dont elle a besoin pour mener son examen public et la campagne d'information visée au paragraphe 28(1).

25. (1) L'examen public d'une proposition comprend:

- a) une étude des effets de la proposition sur l'environnement; et
- b) une étude des répercussions sociales directement liées à ces effets.

(2) Les études visées aux alinéas (1)a) et b) sont menées par la même commission.

(3) Sous réserve de l'approbation du Ministre et du ministre chargé du ministère responsable, l'examen public d'une proposition peut porter sur des questions telles que les effets socio-économiques de la proposition, l'évaluation de la technologie et le caractère nécessaire de la proposition.

26. (1) Le Ministre, après consultation avec le ministre chargé du ministère responsable, établit le mandat de chaque commission en précisant la portée de l'examen public qu'elle effectuera.

(2) Le Bureau rédige le mandat visé au paragraphe (1) en consultation avec le ministère responsable.

(3) Le mandat de chaque commission est rendu public.

27. (1) Les audiences d'une commission sont des audiences publiques qui sont menées de manière informelle suivant des règles déterminées mais non judiciaires.

(2) Chaque commission établit une marche à suivre détaillée, conformément aux procédures générales établies par le Bureau.

(3) Les participants aux audiences publiques d'une commission peuvent être interrogés mais non assermentés ni assignés à comparaître.

(4) Une commission peut remettre en question la pertinence et le contenu des renseignements qui lui sont présentés.

28. (1) Chaque commission mène une campagne d'information pour tenir le public au courant de l'examen entrepris et s'assurer qu'il a accès à l'information pertinente qu'il peut demander.

(2) La campagne d'information visée au paragraphe (1) s'ajoute aux programmes d'information publique des ministères ou des promoteurs qui se rapportent directement à leurs activités.

29. (1) All information that is submitted to a Panel shall become public information.

(2) A Panel shall allow the public access to and sufficient time to examine and comment on the information submitted to it prior to a public hearing.

30. (1) Guidelines for the preparation of an Environmental Impact Statement may be issued by a Panel to the proponent in a public review.

(2) For the purpose of developing the guidelines referred to in subsection (1), a Panel may consult the public and any department.

31. (1) At the end of its review, a Panel shall

- (a) prepare a report containing its conclusions and recommendations for decisions by the appropriate Ministers; and
- (b) transmit the report referred to in paragraph (a) to the Minister and the Minister responsible for the initiating department.

(2) The Minister and the Minister responsible for the initiating department shall make the report available to the public.

32. Any of the requirements or procedures set out in sections 21 to 31 may be varied by the Office in the case of any federal-provincial review or any review that involves special circumstances.

Initiating Department

33. (1) It is the responsibility of the initiating department in a public review to

- (a) ensure that the responsibilities of the proponent in the review are fulfilled;
- (b) ensure that its senior officials and staff make presentations and respond to any questions for which it has responsibility;
- (c) subject to subsection (2), decide, in cooperation with any other department, agency or board of the Government of Canada to whom the recommendations of a Panel are directed, the extent to which the recommendations should become a requirement of the Government of Canada prior to authorizing the commencement of a proposal;
- (d) subject to subsection (2), ensure, in cooperation with other bodies concerned with the proposal, that any decisions made by the appropriate Ministers as a result of the conclusions and recommendations reached by a Panel from the public review of a proposal are incorporated into the design, construction and operation of that proposal and that suitable implementation, inspection and environmental monitoring programs are established; and
- (e) subject to subsection (2), determine in what manner the decisions made under paragraph (c) and those referred to in paragraph (d) are to be made public.

29. (1) Tous les renseignements présentés à une commission sont rendus publics.

(2) La commission doit accorder au public suffisamment de temps pour lui permettre de prendre connaissance des renseignements qu'elle a reçus au sujet d'une proposition et de donner ses commentaires à ce propos.

30. (1) La commission établit à l'intention du promoteur des directives pour l'élaboration d'un énoncé des incidences environnementales.

(2) La commission peut consulter le public et les ministères pour l'élaboration des directives visées au paragraphe (1).

31. (1) Une fois l'examen terminé, la commission:

- a) rédige un rapport contenant ses conclusions et les recommandations qu'elle adresse aux ministres responsables; et
- b) fait parvenir le rapport visé à l'alinéa a) au Ministre et au ministre chargé du ministère responsable.

(2) Le Ministre et le ministre chargé du ministère responsable rendent public le rapport visé à l'alinéa (1)a).

32. Le Bureau peut modifier les exigences ou procédures énoncées aux articles 21 à 31, dans les cas d'examen conjoints fédéraux-provinciaux ou lorsque des circonstances spéciales l'exigent.

Le ministère responsable

33. (1) Lors d'un examen public, il incombe au ministère responsable:

- a) de s'assurer que le promoteur s'acquitte de ses responsabilités;
- b) de prendre les mesures nécessaires pour que ces hauts fonctionnaires et son personnel fassent des présentations et répondent aux questions sur les sujets relevant de sa compétence;
- c) sous réserve du paragraphe (2), de décider, en collaboration avec d'autres ministères, commissions ou organismes fédéraux visés par les recommandations de la commission, de la mesure dans laquelle ces recommandations devraient devenir des exigences fédérales avant d'autoriser la mise en œuvre d'une proposition;
- d) sous réserve du paragraphe (2), s'assurer, en collaboration avec d'autres organismes responsables, que les décisions prises par les ministres responsables à la lumière des conclusions et des recommandations qu'a formulées une commission à la suite de l'examen public d'une proposition, sont prises en considération dans la conception, la réalisation et l'exploitation de cette proposition et que des programmes appropriés de mise en œuvre, d'inspection et de surveillance environnementale sont établis; et
- e) sous réserve du paragraphe (2), de déterminer de quelle façon seront rendues publiques les décisions prises en vertu de l'alinéa c) et celles visées à l'alinéa d).

(2) Where the initiating department has a regulatory function in respect of the proposal under review, the responsibilities set out in paragraphs (1)(c), (d) and (e) shall be amended to account for and not to interfere with the decision making responsibilities of that initiating department.

Proponent

34. It is the responsibility of the proponent in a public review to

- (a) prepare, in accordance with any guidelines established by the Panel pursuant to subsection 30(1), the Environmental Impact Statement and supporting documents;
- (b) submit to a Panel, in such languages as are determined appropriate by the Panel, sufficient copies of the Statement and documents referred to in paragraph (a) as are required for the purposes of the public review;
- (c) implement a public information program to explain the proposal under review and its potential environmental effects;
- (d) in the event that the Panel identifies deficiencies in the Statement referred to in paragraph (a), provide sufficient copies as are required for the purposes of the public review, such additional information as may be requested by the Panel;
- (e) ensure that senior officials and expert staff are present at public hearings of the Panel and that they make the appropriate presentations and respond to any questions put to them; and
- (f) ensure that appropriate post-assessment monitoring, surveillance and reporting, as required by the initiating department, are carried out.

The Federal Environment Assessment Review Office

35. It is the responsibility of the Office in a public review

- (a) to draft for consideration by the Minister, in consultation with the initiating department, the terms of reference referred to in subsection 26(1);
- (b) to identify persons as potential members of a Panel and to make contractual arrangements for their services;
- (c) where appropriate, to negotiate provincial or territorial participation in a public review, federal participation in a provincial review, or any other participation in any other cooperative mechanisms; and
- (d) provide written procedures, and any other advice and assistance on procedural and policy matters, to ensure that there is procedural and policy consistency between the various public reviews by Panels.

Other Departments

36. In a public review, it is the role of every department that has specialist knowledge or responsibilities relevant to a proposal to

(2) Lorsque le ministère responsable a un rôle de réglementation à l'égard de la proposition à l'étude, les responsabilités énoncées aux alinéas (1)c), d) et e) sont modifiées de façon à tenir compte des décisions de ce ministère et à ne pas y nuire.

Le promoteur

34. Lors d'un examen public, il incombe au promoteur:

- a) d'élaborer l'énoncé des incidences environnementales et de présenter les documents à l'appui, conformément aux directives établies par la commission selon le paragraphe 30(1);
- b) de présenter un nombre suffisant d'exemplaires de l'énoncé des incidences environnementales et des documents visés à l'alinéa a), pour l'examen public, dans les langues indiquées déterminées par la commission;
- c) de mettre en œuvre un programme d'information publique visant à expliquer la proposition à l'étude et ses effets possibles sur l'environnement;
- d) dans les cas où la commission décèle des lacunes dans l'énoncé des incidences environnementales visé à l'alinéa a), fournir un nombre suffisant d'exemplaires de l'information supplémentaire, pour l'examen public;
- e) s'assurer que les hauts fonctionnaires et le personnel spécialisé assistent aux audiences publiques de la commission et qu'ils fassent les présentations appropriées et répondent aux questions qui leur sont posées; et
- f) de veiller à ce qu'après l'évaluation, un contrôle et une surveillance indiqués soient assurés et que les rapports voulus soient présentés, comme que le demande le ministère responsable.

Le Bureau fédéral d'examen des évaluations environnementales

35. Lors d'un examen public, il incombe au Bureau:

- a) de rédiger, en consultation avec le ministère responsable, le mandat visé au paragraphe 26(1) pour qu'il soit soumis au Ministre pour étude;
- b) de trouver les membres éventuels d'une commission et de prendre des mesures contractuelles pour retenir leurs services;
- c) au besoin, de négocier la participation provinciale ou territoriale à l'examen public, la participation fédérale à un examen provincial ou toute autre participation à des mécanismes coopératifs; et
- d) de fournir un ensemble de procédures écrites ainsi que des conseils et de l'aide au sujet des questions de procédure et de politique, afin d'assurer l'uniformité sur le plan des procédures et de la politique entre les examens publics des diverses commissions.

Autres ministères

36. Lors d'un examen public, il incombe à tout ministère à vocation spécialisée ou ayant des responsabilités liées à une proposition donnée:

- (a) provide to the Panel and any other participants in the public review any available data, information or advice that is requested from them;
- (b) provide experts at public hearings of the Panel to make presentations or to respond to questions; and
- (c) where appropriate, advocate the protection of the interests for which they have responsibility.

- a) de fournir, sur demande, des données, des renseignements et des conseils aux membres de la commission et aux autres participants de l'examen public;
- b) d'assurer la présence de spécialistes lors des audiences publiques de la commission afin que ceux-ci fassent des présentations ou répondent à des questions; et
- c) d'encourager, au besoin, la protection des intérêts dont il est responsable.

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

These Guidelines set out the requirements and procedures of the federal Environmental Assessment and Review Process and the responsibilities of the participants therein.

NOTE EXPLICATIVE

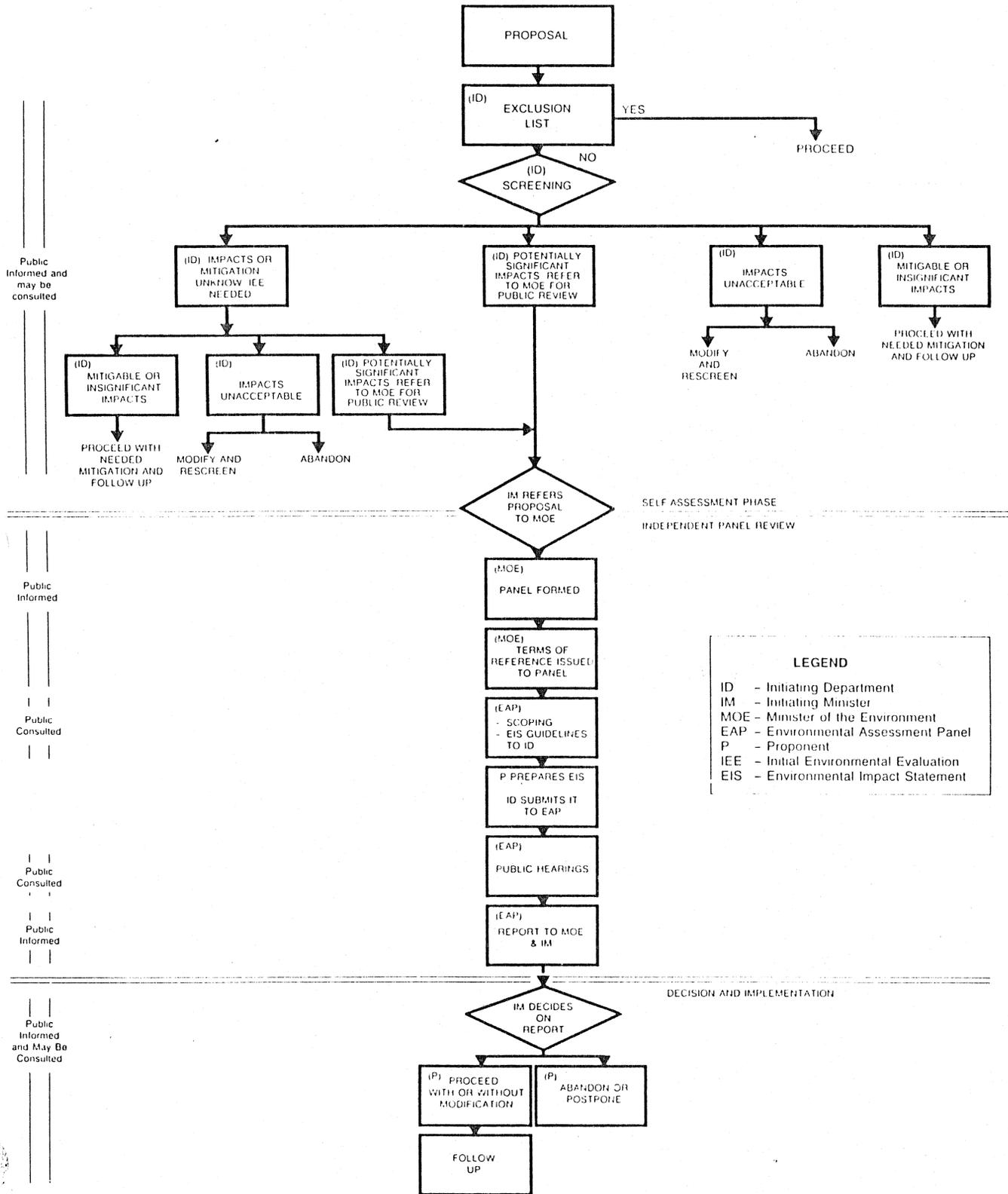
(La présente note ne fait pas partie du règlement et n'est publiée qu'à titre d'information)

Cette série de directives décrivent les exigences et les procédures du Processus fédéral d'évaluation et d'examen environnemental ainsi que les responsabilités de ceux qui y participent.

APPENDIX B

Source: Canadian Council of Resource and Environment Ministers,
Environmental Assessment in Canada: 1988 Summary of Current
Practice, December 1988, p. 12.

FEDERAL ENVIRONMENT ASSESSMENT AND REVIEW PROCESS



LEGEND

- ID - Initiating Department
- IM - Initiating Minister
- MOE - Minister of the Environment
- EAP - Environmental Assessment Panel
- P - Proponent
- IEE - Initial Environmental Evaluation
- EIS - Environmental Impact Statement

APPENDIX C

Source: Federal Environmental Assessment Review Office, The Federal Environmental Assessment and Review Process, 1987, at p. 7.

GLOSSARY

AREA-WIDE REVIEW

Includes a number of proposals for a large area which may be at different stages of planning or based on different levels of scientific knowledge.

ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS (EARP)

The procedure used by federal departments to consider the full environmental implications of all proposals for which they have a decision-making authority.

ENVIRONMENTAL DESIGN REVIEW

Focuses on the appropriate environmental terms or environmental design parameters that should be used to keep adverse impacts at a minimum.

ENVIRONMENTAL IMPACT

The effect of an intervention on a community of plants, animals or humans and on the environment that they inhabit and with which they interact, including effects on human health and well-being.

ENVIRONMENTAL IMPACT ASSESSMENT

An activity to identify, predict and interpret the environmental impact of an action.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

A detailed documented assessment of the potential significant environmental consequences of any proposal that is produced by, or for, a proponent, in accordance with the information requested by an environmental assessment panel for a public review.

CONCEPT OR GENERIC REVIEW

Held very early in planning for a range of proposals dealing with new concepts or technologies.

DEPARTMENT

Under the Guidelines Order this means any department, board or agency of the Government of Canada, any parent corporation listed in Schedule C to the Financial Administration Act, and any regulatory body.

GUIDELINES ORDER

The Environmental Assessment and Review Process Guideline Order (P.C. 1984-2132 SOR/84-467 - June 22, 1984).

INITIAL ASSESSMENT

An examination of a proposal to determine if, and to what extent, there are potentially adverse environmental impacts and if public concern about the proposal is such that a public review is desirable, and if a public review is not needed, to identify appropriate environmental design and mitigation features to be incorporated into the project design.

INITIATOR or INITIATING DEPARTMENT

Any department that on behalf of the Government of Canada has to make a decision about a proposal.

PANEL

A group appointed by the Minister of the Environment to review a proposal that was referred by an initiator for public review.

PARENT CORPORATION

Corporations as listed in Schedule C to the Financial Administration Act.

PROPONENT

The organization intending to undertake a proposal for which the Government of Canada has a decision-making authority.

PROPOSAL

Any initiative, undertaking or activity for which the Government of Canada has a decision-making responsibility, in accordance with the Guidelines Order.

PUBLIC HEARING

An open public forum held by an environmental assessment panel to gather facts and concerns during a public review of a proposal.