

SUB-AGREEMENT ON ENVIRONMENTAL ASSESSMENT

PREAMBLE

Environmental assessment provides a means to integrate environmental factors into project planning and decision-making. It involves the preparation of an environmental assessment report by a proponent and the review and critical evaluation of that report and other input. It is a public process to provide information about the environmental effects of a proposed project to assist decision-making by proponents and by governments. The parties to this Sub-agreement (“the Parties”) are seeking to provide the public, proponents, and governments with greater consistency, predictability, and timely and efficient use of resources where two or more Parties are required by law to assess the same proposed project. This Sub-agreement on Environmental Assessment (“Sub-agreement”) operates within a framework of legislation and government policies to contribute to the vision of the highest level of environmental quality in Canada, and to a future based on the principles of sustainable development.

1. OBJECTIVES

- 1.1.0 Consistent with the *Canada-Wide Accord on Environmental Harmonization*, and to address the issues of co-operation, uncertainty and duplication with respect to the environmental assessment of proposed projects, the objectives of this Sub-Agreement are:
 - 1.1.1 To ensure that the environmental effects of proposed projects are carefully considered before decisions are taken by governments.
 - 1.1.2 To achieve greater efficiency and the most effective use of public and private resources, where assessment processes involving more than one jurisdiction are required by law, through a single environmental assessment and review process for each proposed project.
 - 1.1.3 To establish accountability and predictability by delineating the roles and responsibilities of the federal, provincial and territorial governments.

2. SCOPE

- 2.1.0 This Sub-Agreement applies when more than one Party must make a decision or issue an approval which must by law be preceded by an environmental assessment.

- 2.2.0 This Sub-agreement does not apply in areas where an environmental assessment process exists pursuant to a land claim or self-government agreement. The Parties will share the principles of this Sub-agreement with Aboriginal people when negotiating environmental assessment regimes pursuant to land claim and self-government agreements.

3. PRINCIPLES

- 3.1.0 In addition to reflecting the principles identified in the Canada-wide Accord on Environmental Harmonization, this Sub-Agreement is based on the following:

- 3.1.1 **Effectiveness:** A harmonized approach to environmental assessment will provide the information needed for sound project planning and decision-making by proponents and governments that contribute to environmental protection and sustainable development.
- 3.1.2 **Transparency and Public Accountability:** The integrity and credibility of a sound environmental assessment process will be built on a foundation of openness, transparency, accountability, and, effective participation of interested parties and the general public.
- 3.1.3 **Efficiency and Certainty:** Environmental assessment will be conducted in a timely way that protects the environment, promotes certainty of process, and makes the best use of public and private resources.

4. CONTENT OF THE ENVIRONMENTAL ASSESSMENT

Assessment Information Elements

- 4.1.0 An environmental assessment report shall be prepared by the proponent in accordance with Terms of Reference issued by the lead Party for an assessment. In developing the Terms of Reference, the Parties involved in an assessment shall consider for inclusion, but not be limited to, the following information elements :
1. Description of the proposed project;
 2. Description of the purpose of the proposed project;
 3. Summary of applicable laws, regulations, policies, management plans, approvals, national and international environmental agreements;
 4. Description of the existing environment, related to the proposed project and the significance of potential environmental effects of the proposed project;
 5. Identification and evaluation of the direct, indirect, cumulative and transboundary environmental effects of the proposed project, including risk of accidents and malfunctions;
 6. Identification and evaluation of alternative means of carrying out the proposed project;

7. Public sector project - identification and evaluation of alternatives to the proposed project including not proceeding with the proposed project;
8. Description of public consultations, the results of those consultations, and the effect of that public input on project planning and on the assessment report;
9. Other information identified by processes used to solicit concerns from governments or the public about the environmental effects of the proposed project;
10. Identification and evaluation of measures for mitigation and monitoring of impacts, and those impacts which cannot be mitigated.
11. Capacity of renewable resources that are likely to be affected by the proposed project to meet the needs of the present and those of the future.

The degree to which elements are emphasized or the detail required in an assessment will vary among classes of projects and for individual assessments.

- 4.1.1 Where two or more Parties participating in an assessment have differing definitions of “environment” or “environmental effects”, a definition will be adopted that incorporates the legal requirements of each Party involved in the assessment.

Assessment Stages

- 4.2.0 An assessment shall include provisions for public participation, and contain the following assessment stages:
 - 4.2.1 Determination of Parties participating in an assessment, and a schedule or timelines for the assessment.
 - 4.2.2 Finalization of the Terms of Reference for the environmental assessment report.
 - 4.2.3 Determination of completeness of environmental assessment information provided by the proponent.
 - 4.2.4 Determination of the need for an independent public hearing, and the composition of the hearing body.
 - 4.2.5 Critical evaluation and determination of environmental effects of the proposed project and finalization of recommendations to project decision-makers.
- 4.3.0 The Parties involved in an assessment will facilitate public participation where consistent with their policies and legislation, which may include access to information, technical expertise, and participation at public meetings. Participant funding will also be made available by any Party which requires participant funding by law or policy.
 - 4.3.1 The provisions for public participation in environmental assessments under 4.2.0 shall include the following notifications and opportunities:

- a) timely public disclosure of the project proposal and, where provided for in legislation or agreed to by the Parties involved in an assessment, an opportunity for members of the public to comment on a proposed Terms of Reference for the assessment;
- b) an opportunity for members of the public to participate in public consultations required by a Terms of Reference, as part of the preparation of an environmental assessment report;
- c) public notification of the availability of the environmental assessment report and an opportunity for members of the public to comment on the completeness of environmental information;
- d) where discretion is available to the Parties involved in an assessment under their laws on the need for a public hearing, the public will be notified and given the opportunity to comment on the need for a public hearing; and
- e) if a public hearing is held, an opportunity for members of the public to participate in the hearing.

4.4.0 The Parties agree that the ordering of the stages outlined in 4.2.0 can be altered, provided no regulatory approvals are issued prior to the assessment being completed.

5. IMPLEMENTATION

5.1.0 There will be one assessment for a proposed project, which will meet the information requirements of all Parties making decisions on the basis of the assessment.

5.2.0 In the implementation of this sub-agreement, the Parties will establish a specific time period in which a potential Party to an assessment for a proposed project will determine if an assessment is required, and clarify its environmental responsibilities for the proposed project.

5.3.0 During the time period determined in negotiations under 5.2.0, a Party will participate in the assessment as if it had an environmental assessment responsibility for the proposed project, until and unless it determines it does not have an environmental assessment responsibility.

5.4.0 There will be a lead Party responsible for the administration of the assessment process for each proposed project; each Party involved in the assessment will identify a one-window contact for that assessment.

- 5.5.0 The lead Party for an assessment will establish a schedule of timelines for the assessment with the other involved Party(ies) and the proponent. Where a schedule must be altered, the lead Party will consult with the other involved Party(ies) and the proponent. Where an amended schedule would affect the opportunity for public involvement, the public would be advised of the revised schedule, along with an explanation for the changes.
- 5.6.0 The lead Party for the purposes of the application of the assessment process will generally be determined as follows:
- 5.6.1 The federal government will be the lead Party for proposed projects on federal lands where federal approval(s) apply to a proposed project, subject to the limitation in 2.2.0.
- 5.6.2 The provincial government will be the lead Party for proposed projects on lands within its provincial boundary not covered under 5.6.1 where provincial approval(s) apply to a proposed project, subject to the limitation in 2.2.0.
- 5.6.3 The territorial government will be the lead Party for Commissioner's lands where territorial approvals apply to a proposed project, subject to the limitation in 2.2.0.
- 5.6.4 For the purposes of this Sub-agreement, the arrangements in section 5.6.1, 5.6.2 and 5.6.3 may be varied based on a "best-situated" assessment as per the following criteria and as agreed to by governments through development of specific implementation agreements:
- (i) scale, scope and nature of the environmental assessment;
 - (ii) capacity to take on the lead including resources;
 - (iii) physical proximity of government's infrastructure;
 - (iv) effectiveness and efficiency;
 - (v) scientific and technical expertise;
 - (vi) ability to address client or local needs;
 - (vii) interprovincial, interterritorial or international considerations; and
 - (viii) existing regulatory regime.
- 5.7.0 Implementation of this Sub-agreement is based on a co-operative approach to environmental assessment. The approach is designed to provide an assessment that meets the decision-making needs of the Parties involved in an assessment. Within this framework, the assessment process of the lead Party will be used. The lead Party, with the participation of the other Party(ies), will ensure its process:
- (i) generates the type and quality of information required to meet the legal environmental assessment requirements of each Party; and
 - (ii) provides conclusions on the environmental effects of the proposed project required for decision-making by the Parties involved in an assessment.

- 5.8.0 The Parties agree that for projects requiring a public hearing under this sub-agreement, there will be only one public hearing process.
- 5.9.0 The Parties agree to negotiate bilateral agreements to implement this Sub-agreement. Bilateral agreements will be shared with the other Parties and applicable provisions in these agreements will be available for inclusion in bilateral agreements with the other Parties.
- 5.10.0 The Parties involved in an assessment agree to base their decisions and approvals on the overall environmental acceptability of the proposed project on the information generated by the assessment. Each Party retains the ability to make decisions respecting the proposed project and to issue or refuse permits, licenses, funding, or other authorizations with regard to a proposed project for matters within its legislative authority.
- 5.11.0 The Parties agree that measures will be developed to ensure the timely fulfillment of assessment and review responsibilities for a proposed project under this Sub-agreement. Measures may include:
- (a) legislated timelines;
 - (b) bilateral agreements for co-operation;
 - (c) incorporation of time-lines in terms of reference;
 - (d) voluntary agreement between the Parties and the proponent.
- 5.12.0 The Parties agree to seek to amend their legislation and/or assessment processes as necessary to comply with their obligations under the terms of this Sub-agreement.

6. ACCOUNTABILITY, MANAGEMENT, AND ADMINISTRATION

- 6.1.0 The Parties involved in an assessment shall make public in a timely fashion all information related to the assessment, subject to any existing confidentiality requirements.
- 6.2.0 The Parties shall make public in a timely fashion the Sub-agreement, any amendments to it, or any bilateral or multi-lateral agreements resulting from the Sub-agreement.
- 6.3.0 Ministers, through CCME, will review progress, address issues and effectively administer the requirements of this Sub-agreement.
- 6.4.0 The Parties agree to the need and the importance of reviewing their environmental assessment practices and results to ensure that the practices are efficient and the results are effective, and that Canadians in all parts of Canada are assured of high quality environmental assessment. Accordingly:

- 6.4.1 This Sub-agreement may be amended from time to time with the consent of the governments.
- 6.4.2 The Council of Ministers will review this Sub-agreement in consultation with the public within two (2) years after the date of its coming into force, and thereafter as required.
- 6.5.0 This Sub-agreement shall enter into force on the date of execution indicated herein.

Sub-agreement on Environmental Assessment

Signed by:

British Columbia	Honourable Cathy McGregor
Alberta	Honourable Ty Lund
Saskatchewan	Stuart Kramer for Honourable Lorne Scott
Manitoba	Honourable Jim McCrae
Ontario	Honourable Norm Sterling
Environment Canada	Honourable Christine Stewart
New Brunswick	Honourable Joan Kingston
Nova Scotia	Honourable Wayne Adams
Prince Edward Island	Honourable Kevin J. MacAdam
Newfoundland and Labrador	Honourable Oliver Langdon Brian Tobin
Yukon	Honourable Eric Fairclough
Northwest Territories	Honourable Stephen Kakfwi
Nunavut	Honourable Peter Kilabuk

Note: Québec has not endorsed the Canada-wide Accord on Environmental Harmonization or the Canada-wide Environmental Standards Sub-agreement.