

Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)

WHEREAS Canada and Alberta respect each other's constitutional responsibilities, including a shared responsibility for the environment; and

WHEREAS Canada and Alberta recognize that environmental assessment is an important environmental management tool contributing to the goal of sustainable development; and

WHEREAS both governments have environmental assessment responsibilities operating within a framework of legislation and government policy and want to meet those responsibilities in a cooperative way; and

WHEREAS Canada and Alberta are both signatories to the Canada-wide Accord on Environmental Harmonization (Canadian Council of Ministers of the Environment, 1998) and its Sub-agreement on Environmental Assessment; and

WHEREAS section 5.9.0 of the Sub-agreement commits the parties to negotiate bilateral agreements to implement the Sub-agreement; and

WHEREAS Canada and Alberta are committed to undertake cooperative environmental assessments under this bilateral Agreement when an environmental assessment is required under the Canadian Environmental Assessment Act and an environmental impact assessment report is required under Alberta's Environmental Protection and Enhancement Act; and

WHEREAS Canada and Alberta have agreed to the following objectives for this Agreement:

To ensure that the environmental effects of proposed projects are carefully considered before decisions are taken by governments.

To achieve greater efficiency and the most effective use of public and private resources, where assessment processes involving both parties are required by law, through a single environmental assessment and review process for each proposed project.

To establish accountability and predictability by delineating the roles and responsibilities of the federal and provincial governments.

THEREFORE, Canada and Alberta agree to the following provisions:

1.0 DEFINITIONS

In this Agreement:

"Aboriginal persons"
means the Indian, Inuit or Métis peoples of Canada.

"Agency"
means the Canadian Environmental Assessment Agency established by the Canadian Environmental Assessment Act.

"Alberta Board"
means the Alberta Energy and Utilities Board or the Natural Resources Conservation Board.

"Cooperative environmental assessment"
means a single environmental assessment under the terms of the Sub-agreement in which both Parties cooperate through the process of the Lead Party to meet the legal requirements of both the Canadian Environmental Assessment Act and Alberta's Environmental Protection and Enhancement Act.

"Decision-making authority"

means any federal or provincial department, agency or board with a legislated responsibility to make a decision with respect to a proposed activity or project.

"Designated office"

means either the Alberta Office or the Agency Office as identified in sections 4.1 and 4.2 of this Agreement.

"Environmental assessment"

means an assessment of the environmental effects of a project conducted under the Canadian Environmental Assessment Act, or Part 2, Division 1 of Alberta's Environmental Protection and Enhancement Act.

"Environmental assessment report"

means the environmental impact assessment report prepared by the proponent in a cooperative environment assessment.

"Environmental assessment responsibility"

means a decision or action which must be preceded, under either the laws of Canada or Alberta, by an environmental assessment.

"Federal environmental assessment coordinator"

means the federal environmental assessment coordinator referenced in sections 12.1 to 12.5 of the Canadian Environmental Assessment Act.

"Federally-regulated body"

means any person or body that is required to ensure an environmental assessment is conducted in accordance with regulations under the Canadian Environmental Assessment Act.

"Joint panel"

means a panel established jointly under the laws of Alberta and Canada to undertake the critical evaluation and determination of effects in a cooperative environmental assessment. The joint panel may undertake at the same time other evaluations of the project which are within its legal authority.

"Parties"

means Canada and Alberta.

"Lead Party"

means the Party as determined under sections 5.6.0 to 5.6.4 of the Sub-agreement and section 5.0 of this Agreement.

"Other Party"

means the Party other than the Lead Party, having a legal requirement to conduct an environmental assessment of a project.

"Project"

means a project as defined in section 2(1) of the Canadian Environmental Assessment Act or an activity as defined in section 1(a) of Alberta's Environmental Protection and Enhancement Act for which the preparation of an environmental impact assessment report has been required under Part 2, Division 1 of that Act.

"Responsible authority" and "federal authority"

have the same meaning as in section 2(1) of the Canadian Environmental Assessment Act.

"Sub-agreement"

means the Sub-agreement on Environmental Assessment to the Canada-wide Accord on Environmental Harmonization signed by the Canadian Council of Ministers of the Environment in 1998.

2.0 PRE-NOTIFICATION CONTACTS

2.1 The Parties will consult with each other and work with prospective proponents as early as possible in a project planning exercise to:

determine preliminary information requirements needed to identify the Parties' environmental assessment responsibilities; and

advise prospective proponents of potential regulatory requirements.

2.2 The Parties, through their designated offices, will inform each other of project proposals potentially subject to a cooperative environmental assessment and ensure timely access to information about the proposed project. Both Parties will protect this information until the prospective proponent publicly discloses the project or files an application, in accordance with access to information and privacy legislation.

2.3 The Parties will advise prospective proponents of projects about the potential for a cooperative environmental assessment at the earliest opportunity.

2.4 When providing information to prospective proponents, each Party will encourage the prospective proponent to contact the other Party's designated office for information about its information requirements.

3.0 NOTIFICATION AND DETERMINATION OF PARTIES PARTICIPATING IN AN ENVIRONMENTAL ASSESSMENT

3.1 The Parties will exchange information and take actions that lead to early decisions about whether they require an environmental assessment.

3.2 Once a proponent has filed provincial public disclosure documents or a federal project description document for a project potentially subject to a cooperative environmental assessment, the Parties will:

notify each other;

share these documents as soon as possible; and

commence the cooperative environmental assessment.

3.3 Following notification of a proposed project, the Parties will confirm as soon as practicable whether an environmental assessment responsibility exists for the proposed project. Where a Party is unable to confirm whether it has an environmental assessment responsibility for a proposed project, that Party will:

participate in the cooperative environmental 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; and

identify and inform the other Party as early as possible of the nature of its potential environmental assessment responsibilities and the additional information required.

3.4 If, at any time during the cooperative environmental assessment process, a Party confirms that it does not have an environmental assessment responsibility in relation to the project, it will immediately inform the other Party of this determination.

4.0 DESIGNATED OFFICES

4.1 Alberta's designated office is the Environmental Management Branch, Northern Region of the Alberta Department of Environment (Alberta Office) or any other person or body designated by the Deputy Minister of the Alberta Department of Environment.

4.2 Canada's designated office is the regional office of the Canadian Environmental Assessment Agency (Agency Office) located in Edmonton.

4.3 The designated offices of both Parties will provide information on their environmental assessment processes, applicable laws, policies, agreements and responsibilities. Each office will also create and maintain a directory for each cooperative environmental assessment with the names and contact points for participants of the Party who have been assigned to assist in the administration or review of a cooperative environmental assessment. This information will be made available to the other Party, the proponent and members of the public.

4.4 The designated offices of the Parties will jointly implement and administer this Agreement. They will meet as required to monitor the efficiency and effectiveness of the Agreement and to review comments from the public on the operation of the Agreement that may be received by the Parties. The designated offices will at all times endeavour to agree on the interpretation and application of this Agreement and will make efforts, through cooperation and consultation, to resolve disputes.

5.0 DETERMINATION OF LEAD PARTY

5.1 In a cooperative environmental assessment, the Lead Party responsible for the administration of a cooperative environmental assessment will be determined by sections 5.6.0, 5.6.1 and 5.6.2 of the Sub-agreement unless varied by mutual agreement under section 5.6.4. Sections 5.6.0, 5.6.1, 5.6.2, 5.6.4 and 2.2.0 in the Sub-agreement are as follows:

"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 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:

scale, scope and nature of the environmental assessment;
capacity to take on the environmental assessment including resources;
physical proximity of government's infrastructure;
effectiveness and efficiency;
scientific and technical expertise;
ability to address client or local needs;
interprovincial, interterritorial or international considerations; and
existing regulatory regime.

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."

5.2 For the purposes of this Agreement, the Parties agree to interpret "existing regulatory regime" in section 5.6.4 of the Sub-agreement to include the legal requirements of quasi-judicial tribunals.

5.3 The Party assuming the lead on the basis of sections 5.6.1 and 5.6.2 of the Sub-agreement will notify the Other Party, the proponent and the public that it is the Lead Party at the time that the proponent provides a public disclosure document or a federal project description document that meets federal and provincial guidance.

5.4 If either Party believes that it would be in the best interest of a cooperative environmental assessment to vary the lead under section 5.6.4 of the

Sub-agreement, the Party will notify the other Party within twenty-five (25) working days of receiving a project disclosure and provide a rationale for the variance. While the issue of varying the lead is being discussed, the Party assuming the lead based on sections 5.6.1 and 5.6.2 of the Sub-agreement will continue to act as the Lead Party for the purposes of the cooperative environmental assessment. If the Parties agree to vary the lead, the proponent and the public will be notified as soon as possible.

5.5 If a project is located on both federal land and other land within the province, and if section 2.2.0 in the Sub-agreement does not apply, and if both governments require assessments by law, the Lead Party will be determined by mutual agreement.

6.0 COOPERATIVE ENVIRONMENTAL ASSESSMENT

General Provisions

6.1 Where both Parties determine they have an environmental assessment responsibility, or where one Party has an environmental assessment responsibility and the other Party believes it may have an environmental assessment responsibility but has not yet made a determination, a cooperative environmental assessment will be undertaken.

6.2 The Lead Party will administer its process used for the cooperative environmental assessment to enable both Parties to meet their legal environmental assessment requirements. The Other Party will adapt its procedures and practices, to the extent its legal requirements allow, to follow the process of the Lead Party. To accommodate the legal requirements of both Canada and Alberta, the definitions of "environment" and "environmental effect" adopted for the assessment will incorporate the legal requirements of both Parties.

6.3 Federal responsible authorities will be available in Alberta as required to conduct their business related to Alberta projects and to facilitate efficient consultation with proponents and the public.

Senior One Window Contacts

6.4 Each Party involved in the cooperative environmental assessment will identify a senior one window contact for each major phase of the cooperative environmental assessment and will communicate this information to the other Party, the proponent and the public promptly.

For Canada, unless notice to the contrary is provided in accordance

with section 6.6, the Agency Office will assume the powers, duties and functions of the federal environmental assessment coordinator and subject to section 7.5, will appoint a senior one window contact for the cooperative environmental assessment.

6.5 Each Party's senior one window contact will be responsible for:

facilitating communication and cooperation with the other Party, the proponent and the public on matters related to the cooperative environmental assessment of a project;
ensuring the coordination of that Party's participation in the assessment and that its participation is consistent with the terms of the Sub-agreement, the Canada-Alberta Agreement on Environmental Assessment Cooperation and its Appendices;
ensuring the assessment is consistent with that Party's legislated requirements;
ensuring that any public notification and/or consultation at appropriate stages of the assessment is in accordance with the legislative requirements of that Party;
ensuring that Party meets the timelines as established under section 6.9; and
working with the other senior one window contact to resolve process and content issues that may arise during the assessment.

6.6 The designated offices will inform each other of any changes in the senior one window contacts as soon as possible after they occur during the cooperative environmental assessment.

Joint Advisory Review Team

6.7 To make best use of resources available for the cooperative environmental assessment, the Lead Party will establish and chair a joint advisory review team for each project. The joint advisory review team will be composed of experts with relevant skills from the Parties with an environmental assessment responsibility for the project. Other experts, as required, may participate on a joint advisory review team. Detailed provisions for the establishment and conduct of joint advisory review teams are specified in Appendix 1.

6.8 The joint advisory review team, through the senior one window contacts, will keep all the decision-making authorities informed at each stage of the cooperative environmental assessment on matters provided for by section 6.9 to 6.17. This will include provision of advice on:

a schedule for the completion of the cooperative environmental assessment, in recognition of legislated requirements, including all required notifications and opportunities for public consultation;
the terms of reference for the environmental assessment report including the scope of the project to be assessed and the scope of the environmental assessment (including the factors to be considered and the scope of the factors);
the analysis of information; and
whether the information in the environmental assessment report meets the requirements contained in the terms of reference for the environmental assessment report.

Schedule and Work plan for the Cooperative Environmental Assessment

6.9 Pursuant to section 5.5.0 of the Sub-agreement, the senior one window contacts, working through the joint advisory review team, will establish timelines and a schedule for the cooperative environmental assessment in consultation with the proponent.

6.10 The Parties agree to undertake their responsibilities for the cooperative environmental assessment within the established timelines and schedule. Key milestones, including all milestones affecting public participation in the assessment, will be made available publicly in a timely manner.

6.11 Where a schedule must be altered, the Party requesting the change will consult with the other Party and the proponent. Where an amended schedule would affect the opportunity for public involvement, the public will be advised of the revised schedule and provided with an explanation of the changes.

Terms of Reference for the Environmental Assessment Report

6.12 The Lead Party will issue terms of reference to the project proponent for the preparation of the environmental assessment report for the cooperative environmental assessment. The terms of reference will be developed with the participation of both Parties to meet their respective requirements. The Lead Party will ensure that the environmental information needs of the Other Party are met by the terms of reference for the environmental assessment report.

6.13 Following the issuance of the terms of reference, the Other Party will confirm within fifteen (15) working days that the terms of reference meet its requirements. If, at any time, either Party identifies the need for additional information to meet its legal requirements, that Party will provide the proponent with a list of the additional information that is required together with an explanation.

Analysis of Environmental Assessment Information

6.14 Each Party agrees to review the information generated by the cooperative environmental assessment to ensure it meets the requirements of the terms of reference for the environmental assessment report and that Party's respective environmental assessment requirements.

6.15 If deficiencies in the information provided are identified, the Lead Party will inform the proponent of these deficiencies and seek the required information. To the extent possible, the Lead Party will issue a consolidated list of deficiencies, or clearly identify whether additional information is sought to meet the specific needs of each Party.

6.16 When the requirements for information have been met in accordance with the terms of reference for the environmental assessment report and any identified deficiencies (including additional environmental assessment information requested by either Party pursuant to section 6.13), the

Lead Party will forward the environmental assessment report to the decision-making authorities for assessment in accordance with their legal requirements.

6.17 Upon submission of the environmental assessment report by the proponent, each Party's decision-making authorities will initiate their own internal analysis of that information to understand the significance

of the environmental effects. This analysis, internal to each Party, will occur concurrently with, but be kept separate from the review of the environmental assessment report to ensure that the requirements of the terms of reference have been met.

Evaluation and Determination of Environmental Effects

6.18 Each Party in a cooperative environmental assessment will make a determination of the environmental effects, including their significance, taking into account public concerns.

6.19 Community knowledge and Aboriginal traditional knowledge may be considered in conducting an environmental assessment.

6.20 The decision-making authorities having an environmental assessment responsibility will use the relevant information generated by the cooperative environmental assessment for the purposes of their decision making. When a Responsible Authority undertakes a comprehensive study report, the environmental assessment report, meeting the requirements of the terms of reference and any identified deficiencies, and including all relevant information requested under section 6.13, will be adopted as the environmental information component of the comprehensive study report.

6.21 Each Party in a cooperative environmental assessment will ensure that its legal requirements are fulfilled.

7.0 DETERMINATION OF THE NEED FOR A PUBLIC HEARING

7.1 For projects subject to a cooperative environmental assessment, the following will apply:

each Party will provide notification to the other Party and will consider the procedural requirements of the other Party when making a recommendation for a panel review or mediation; and
Canada will promptly notify Alberta of the type of environmental assessment required under the Canadian Environmental Assessment Act and will provide details of the procedural requirements that will apply to the proposed project. This notification will include a subsequent notification should the type of environmental assessment required change pursuant to sections 20, 21.1, 25, or 28 of Canadian Environmental Assessment Act.

7.2 To the extent possible, the Parties will coordinate the timing of their determinations of the need for a public hearing. Each Party will determine its need for a public hearing in as timely a way as possible and will communicate this need to the other Party.

7.3 If Canada determines that a review panel is required and Alberta, as the Lead Party, has not yet made a determination about the need for a public hearing, the federal and responsible authorities will continue to participate in Alberta's environmental assessment process until Alberta has made its determination.

Joint Panel

7.4 If both Parties determine that a public hearing is required, a joint panel will be appointed to conduct a joint panel review.

7.5 A panel Secretariat will be appointed to fulfill the functions identified in section 6.1 of Appendix 2 for both Parties and will be the senior one window contact for the purposes of the joint panel review.

7.6 The Parties acknowledge that the federal Minister of the Environment must fix or approve the terms of reference for a joint panel review as required by section 41(c) of the Canadian Environmental Assessment Act. The Parties acknowledge that any confirmation made by federal authorities with respect to the terms of reference for the environmental assessment report under section 6.13 shall not fetter the discretion of the federal Minister of the Environment in fixing or approving the terms of reference for the joint panel review.

7.7 Where there is a joint panel review, each of the provincial and federal authorities may make a submission to the joint panel describing its environmental responsibilities together with its views, analysis and conclusions about the environmental effects of the project and measures proposed to mitigate those effects.

7.8 Detailed provisions for the establishment and conduct of joint panel reviews are specified in Appendix 2.

Where Only One Party Holds a Public Hearing

7.9 Where both Parties have made a determination on the need for a public hearing and only one Party has determined that a public hearing is required, where possible, the other Party will complete any remaining analysis or mediation and provide its conclusions and recommendations to the panel or Alberta Board presiding over the public hearing prior to the date for the public hearing.

8.0 COORDINATION OF DECISIONS

8.1 The Parties agree to coordinate, to the extent possible, the timing of decisions. Each Party will notify the other of its respective decisions concerning the environmental assessment of a proposed project and provide an opportunity to coordinate the announcement of such decisions.

8.2 Where a cooperative environmental assessment results in an approval of a project subject to related federal and Alberta conditions, the Parties agree to coordinate, where possible, their respective responsibilities for monitoring and follow-up arising from the assessment. The Parties may also coordinate other monitoring and follow-up programs and activities as appropriate.

9.0 PUBLIC REGISTRY

9.1 For projects subject to a cooperative environmental assessment, the Parties agree to cooperate in meeting their respective public registry requirements. Both Parties will maintain public registries in accordance with the requirements of their respective legislation.

9.2 The public, proponent and the other Party will be provided access to the registries maintained by the Parties in accordance with their legislated requirements.

9.3 The Parties will continue to evaluate opportunities to provide the public with more convenient access to information about cooperative environmental assessments, including linking the websites of the Parties.

10.0 PUBLIC INVOLVEMENT

10.1 The Parties involved in a cooperative environmental assessment will facilitate public participation, where consistent with their policies and legislation, which may include providing access to information, technical expertise, and participation at public meetings.

10.2 Provision for public participation in cooperative environmental assessments shall include where applicable, but not be limited to:

- public notice that a cooperative environmental assessment will be conducted;
- public disclosure and an opportunity to comment on a proposed terms of reference for the environmental assessment report;
- an opportunity to participate in public consultations required by the terms of reference, as part of the preparation of an environmental assessment report;
- public notification that the final terms of reference for the environmental assessment report has been issued;
- an opportunity to be consulted in the comprehensive study process in accordance with section 21 of the Canadian Environmental Assessment Act;
- an opportunity to participate in the comprehensive study in accordance with section 21.2 of the Canadian Environmental Assessment Act;
- an opportunity to comment on the comprehensive study report in accordance with section 22 of the Canadian Environmental Assessment Act;
- public notification of the availability of the environmental assessment report;
- an opportunity for members of the public to comment on the environmental assessment report provided by the proponent;
- public notification of the opportunity to comment on the need for a public hearing;
- public notification of the Parties intention to appoint a joint panel in accordance with section 58(3) of the Canadian Environmental Assessment Act; and
- if a public hearing is held, an opportunity for members of the public to participate in the hearing.

10.3 Consistent with the Sub-agreement, each Party will provide participant funding based on its law or policy.

10.4 Notices of filing of environmental assessment documents, placed by the proponent or Lead Party in the cooperative environmental assessment process, will indicate the involvement of both Parties. If the Other Party later withdraws from the cooperative environmental assessment because it has determined it has no environmental assessment responsibility, that Party shall notify the proponent and the public of the change using equivalent notification procedures. The Parties agree that when a joint panel review is undertaken, public notices placed by either Party will identify the involvement of both Parties in the hearing.

11.0 TRANSBOUNDARY CONSIDERATIONS

During a Cooperative Environmental Assessment

11.1 The Parties agree that the environmental effects of a project must be assessed regardless of the location of jurisdictional boundaries.

11.2 Where a project in Alberta, which is the subject of a cooperative environmental assessment, has the potential to cause significant adverse environmental effects on another province or territory in Canada, the Lead Party shall ensure that the potentially affected province or territory is notified and provided opportunity for involvement through the cooperative environmental assessment. The opportunity for consultation will include opportunity to participate in a consultation program for the preparation of the environmental assessment report, to provide written comments at the appropriate stage of the environmental assessment and to appear at a public hearing if one is convened.

Transboundary Petition or Request under the Canadian Environmental Assessment Act

11.3 Where Canada becomes aware of potential transboundary environmental effects relating to a project within the meaning of sections 46, 47 or 48 of the Canadian Environmental Assessment Act, whether the project is situated in Alberta or in another jurisdiction with potential transboundary effects in Alberta:

the Agency Office will promptly notify the Alberta Office of the transboundary concerns;

upon notification, as referred to in subsection (a), the Parties agree to exchange information relating to the project, the potential transboundary environmental effects, and any assessment of the environmental effects of the project; and

for projects in Alberta, Canada will consider any available information on environmental effects generated by the review of an application under Alberta legislation or an assessment of the environmental effects of the project conducted under Alberta's Environmental Protection and Enhancement Act before taking final action under sections 46, 47 or 48 of the Canadian Environmental Assessment Act.

International

11.4 Where Canada has obligations pursuant to an international agreement concerning the environmental assessment of certain projects subject to a cooperative environmental assessment, Canada will notify and consult with Alberta to ensure the cooperative environmental assessment respects the international commitments.

11.5 Canada will notify and offer to consult with Alberta before entering into new international agreements affecting Alberta's responsibilities or obligations under this Agreement.

12.0 CLASS SCREENINGS

12.1 Where Canada intends to declare a model or replacement class screening report pursuant to the Canadian Environmental Assessment Act that may have a bearing on the environmental assessment of future projects in Alberta, Canada will notify Alberta early in the process of developing the report, and will provide Alberta with an opportunity to participate in the process, including an opportunity for Alberta to provide input on the report before it is finalized.

13.0 ABORIGINAL CONSIDERATIONS

13.1 Nothing in this Agreement affects or alters constitutionally-protected Aboriginal rights or Treaty rights. Where a project has the potential to have environmental effects that could affect Indian Reserve lands or the current use of lands and resources for traditional purposes by Aboriginal persons, the Parties will ensure that

potentially affected Aboriginal groups are notified in writing about opportunities for involvement that may exist in accordance with section 10 of this Agreement.

13.2 This Agreement does not apply to environmental assessment processes existing pursuant to a land claim agreement or self-government agreement.

13.3 This Agreement may be revised should changes be required to reflect land claim agreements or Aboriginal self-government agreements that are entrenched in legislation.

13.4 The Parties will share the principles of this Agreement with Aboriginal people when negotiating environmental assessment regimes pursuant to land claim agreements or self-government agreements.

14.0 ISSUE MANAGEMENT BETWEEN THE PARTIES

14.1 The designated offices will work with each other to resolve process and content issues that may arise during the cooperative environmental assessment and will make efforts, through cooperation and consultation, to resolve disputes.

14.2 The Parties will make every reasonable effort to agree on the interpretation and application of this Agreement, including but not limited to:

the scope of projects;
the factors and scope of factors to be assessed;
the adequacy of information;
matters relating to process; or
any other matter related to a cooperative environmental assessment

14.3 Should differences in views arise between the Parties on any of the matters referred to in section 14.2, the Parties will, to the extent possible, seek to resolve their differences at a working level.

14.4 All reasonable efforts will be made to resolve differences at a working level. As may be described in appendices developed by the Parties in accordance with section 16.4 of this Agreement, these efforts will include the use of all appropriate means, where both Parties agree. Where these efforts are unsuccessful, and where both parties agree, the designated offices will convene a meeting of the Parties, at a senior level, within ten (10) working days of the issue being brought to the attention of the two offices to seek a resolution of the issue or to agree on a process for resolving the issue.

14.5 If the issue has not been resolved after the timeframe agreed to by the senior officials at the onset of the issue management process, the matter may be referred to the President of the Canadian Environmental Assessment Agency and the Deputy Minister of the Alberta Department of Environment, where they both agree, to facilitate resolution of the issues by the Parties.

14.6 The Parties recognize that this issue management process does not fetter the authority of a responsible authority or a federally-regulated body under the Canadian Environmental Assessment Act or the authority of any official under Alberta's Environmental Protection and Enhancement Act.

15.0 MONITORING AND ASSESSING THE EFFECTIVENESS OF THIS AGREEMENT

15.1 The Parties will review the implementation of the Agreement and the effectiveness of the cooperative environmental assessment process annually and will prepare a report to the President of the Canadian Environmental Agency and the Deputy Minister of the Alberta Department of Environment within ninety (90) days of the end of each calendar year.

15.2 The Parties will work together with a view to develop common understandings or approaches to environmental assessment issues of mutual interest with the aim of providing more certainty to proponents and other participants involved in a cooperative environmental assessment. Where appropriate, operational procedures will be developed to facilitate the implementation of this Agreement.

15.3 The Parties agree to undertake a comprehensive evaluation of this Agreement every five years. This evaluation will include opportunities for input from stakeholders and the public.

16.0 APPENDICES

16.1 Appendix 1 (Joint Advisory Review Team Guide) and Appendix 2 (Joint Panel Reviews) provide more detailed provisions on these two key aspects of cooperative environmental assessments. Appendix 3 commits the Parties to explore opportunities to achieve the objectives of environmental harmonization and provides a framework for additional cooperation, related to the situation when only one Party has an environmental assessment responsibility.

16.2 The Parties may amend Appendix 1 and 3 by agreement between the President of the Canadian Environmental Assessment Agency and the Deputy Minister of the Alberta Department of Environment.

16.3 The Parties may amend Appendix 2 by agreement between the President of the Canadian Environmental Assessment Agency, the Deputy Minister of the Alberta Department of Environment and the Chairs of the Alberta Boards.

16.4 The Parties may develop or amend future appendices by agreement between the President of the Canadian Environmental Assessment Agency and the Deputy Minister of the Alberta Department of Environment.

17.0 INTERPRETATION

17.1 Neither Canada nor Alberta gives up any jurisdiction, right, power, privilege, prerogative or immunity by virtue of this Agreement.

17.2 This Agreement must be interpreted in a manner consistent with federal and provincial legal requirements, including but not limited to legislative requirements.

17.3 For Canada, this Agreement applies to any person or body that is required to ensure an environmental assessment is conducted under the Canadian Environmental Assessment Act and its regulations, including a federally-regulated body as defined in section 1.0 of this Agreement.

18.0 DURATION OF AGREEMENT

18.1 This Agreement will be in force from the date of its execution. It may be revised, within the spirit of this Agreement, at any time by mutual consent. Substantive revisions to this Agreement or its appendices will undergo public review.

18.2 Either Party can terminate this Agreement after forty-five (45) days written notice to the other Party. In the event of termination, the Parties will provide transitional arrangements for projects already involved in a cooperative environmental assessment process.

19.0 SIGNATURES

In witness thereof, the Honourable Stéphane Dion has hereunto set his hand and seal on behalf of Canada, and the Honourable Guy Boutilier has hereunto set his hand and seal on behalf of Alberta, to this Agreement this _____ day of _____, 2005.

(Original text signed on May 17, 2005.)

Original text signed by _____
Signed on behalf of Canada
by the Honourable Stéphane Dion,
Minister of the Environment

Original text signed by _____
Signed on behalf of Alberta
by the Honourable Guy Boutilier,

Minister of Environment

Original text signed by _____
and, pursuant to the
Government Organization Act,
the Honourable Ed Stelmach,
Minister of International and Intergovernmental Relations

Original text signed by _____
Witness

Appendix 1 – Joint Advisory Review Team Guide

1.0 TEAM STRUCTURE

1.1 Each Party will identify available personnel for the joint advisory review team. The Lead Party will establish the joint advisory review team with the Other Party as soon as feasible after it has been determined that there will be a cooperative environmental assessment.

1.2 Joint advisory review team members will focus their participation on their areas of expertise and the areas of primary environmental management responsibility of their agency or department.

2.0 TERMS OF REFERENCE FOR THE ENVIRONMENTAL ASSESSMENT REPORT

2.1 The joint advisory review team will recommend terms of reference that are designed to meet the environmental assessment requirements of each of the Parties and that consider any input received through public involvement provided for pursuant to section 10.2(b) of this Agreement.

2.2 Essential characteristics of appropriate information requirements in the environmental assessment terms of reference are:

the information is required to understand the proposed project and its environmental effects in accordance with section 6.2 of this Agreement;

the information will assist in project decision making; and

the information can reasonably be expected to be provided.

Generally, information requests should focus on information needs and provide flexibility in methods for obtaining the information.

2.3 Scope of Project:

the scope of the project for the purposes of the environmental assessment report will be developed by the joint advisory review team to meet both Parties' requirements and will consider input from the public and proponent.

2.4 Scope of Assessment:

the scope of the assessment will be developed by the joint advisory review team to meet both Parties' requirements and will consider input from the public and proponent;

generally, the spatial boundary should extend to the limit where an effect can reasonably be expected;

generally, the temporal boundary should extend to the past to the extent required to understand the environmental effects of the project; and

generally, the temporal boundary should be extended to the future to a point where the effects of the project are expected to be mitigated or to the limit of significant residual effects.

3.0 REVIEW OF ENVIRONMENTAL ASSESSMENT REPORT

3.1 The Parties will review the environmental assessment report to determine if it meets the information requirements specified in the terms of reference for the environmental assessment report and identify any further information required.

3.2 The review conducted by the joint advisory review team will not include an assessment of the significance of the environmental effects and it will not determine the merits of the proposed project.

4.0 TRAINING

4.1 The Parties shall undertake from time to time to provide information and training to federal authorities, provincial departments and staff of the Alberta Boards on the purposes and processes established by this Agreement and on each other's environmental assessment legal requirements and responsibilities. The Parties agree to develop information that identifies the roles and responsibilities of the federal and provincial departments, agencies and/or boards that may participate in the cooperative environmental assessment process.

4.2 Prior to the commencement of the review of a cooperative environmental assessment report, the Lead Party shall ensure that the joint advisory review team understands the principles and objectives of the Lead Party's review process and the joint advisory review team's role in regulatory processes.

Appendix 2 – Joint Panel Reviews

WHEREAS Canada and Alberta have established a framework for conducting joint panel reviews as part of the Canada-Alberta Agreement on Environmental Assessment Cooperation; and

WHEREAS the Canadian Environmental Assessment Act, the Energy Resources Conservation Act, and the Natural Resources Conservation Board Act allow for inter-jurisdictional cooperation and coordination in the review of projects; and

WHEREAS the Natural Resources Conservation Board, the Alberta Energy and Utilities Board and the Government of Canada have determined that a joint panel review will ensure that projects are evaluated according to the spirit and requirements of their respective authorities while avoiding unnecessary duplication, delays and confusion that could arise from individual reviews; and

WHEREAS Canada and Alberta have determined a process to establish the Lead Party in each joint panel review;

THEREFORE, the Parties to this Agreement will establish joint panels in accordance with the following provisions:

1.0 DEFINITIONS

For the purpose of this Appendix:

"Agency"

means the Canadian Environmental Assessment Agency established by the Canadian Environmental Assessment Act.

"Alberta Board"

means the Alberta Energy and Utilities Board or the Natural Resources Conservation Board.

"EIA report"

means an environmental impact assessment report prepared in accordance with the terms of reference issued for the project by a designated director under Alberta's Environmental Protection and Enhancement Act.

"Final report"

means the document produced by the joint review panel, which contains decisions pursuant to the applicable Alberta legislation and the joint review panel's conclusions and recommendations pursuant to the Canadian Environmental Assessment Act with respect to the environmental assessment of the project.

"Joint panel"

means the joint review panel established by the appropriate Alberta Board and the federal Minister of the Environment through this Agreement.

"Parties"

means the federal Minister of the Environment and the Chair of the appropriate Alberta Board.

"Project files"

means the files established and maintained pursuant to section 55.4 of the Canadian Environmental Assessment Act.

2.0 ESTABLISHMENT OF THE JOINT PANEL

2.1 Joint panels shall be created pursuant to appropriate Alberta legislation with the authorization of the Lieutenant Governor in Council of Alberta, and sections 40, 41 and 42 of the Canadian Environmental Assessment Act, for the purposes of the review of projects.

2.2 For each project subject to a joint panel review, a project-specific agreement will be established. The project-specific agreement will be signed and amended by the federal Minister of the Environment and the chair of the appropriate Alberta Board.

2.3 The appropriate Alberta Board and the Agency will make arrangements to coordinate the announcements of joint panel reviews of projects.

3.0 CONSTITUTION OF THE JOINT PANEL

3.1 A joint panel will normally consist of three (3) members.

3.2 Two (2) members, including the panel chair, will be selected directly by the Lead Party and approved by the Other Party.

3.3 One (1) member will be selected by the Other Party and approved by the Lead Party.

3.4 The joint panel members shall be unbiased and free from any conflict of interest relative to the project and are to have knowledge or experience relevant to the anticipated environmental effects of the project.

4.0 OPERATIONS OF THE JOINT PANEL

4.1 The joint panel process shall be conducted in accordance with the Lead Party's established practice. The Parties acknowledge that it may be necessary to vary the Lead Party's practice to meet the Other Party's review requirements.

5.0 CONDUCT OF ASSESSMENT BY THE JOINT PANEL

5.1 The joint panel shall conduct all public hearings and/or meetings in a manner that discharges the responsibilities of the appropriate Alberta Board, and in a manner that discharges its responsibilities under Canadian Environmental Assessment Act.

5.2 The joint panel shall consider, but not be limited to, all the factors set out in sections 16(1), (2) and (3) of Canadian Environmental Assessment Act, and shall conduct its review in a manner which discharges the requirements set out in the terms of reference for the joint panel which will be fixed or approved by the federal Minister of the Environment.

5.3 All joint panels shall hold public hearings and provide opportunities for public participation.

5.4 The joint panel shall have all the powers and duties of a panel prescribed in the Canadian Environmental Assessment Act and in the appropriate Alberta Board legislation.

6.0 SECRETARIAT

6.1 Administrative, technical, and procedural support requested by the joint panel shall be provided by a Secretariat, which shall be the joint responsibility of the appropriate Alberta Board and the Agency.

6.2 The Secretariat will report to the joint panel and will be structured so as to allow the joint panel to conduct its review in an efficient and cost-effective manner.

6.3 The Lead Party will provide offices for the conduct of the activities of the joint panel and the Secretariat.

6.4 The Secretariat will publish notices related to the joint panel proceeding, and will identify the participation of both Parties.

7.0 OTHER GOVERNMENT DEPARTMENTS

7.1 At the request of the joint panel, federal and provincial authorities having specialist information or knowledge with respect to the project shall make available that information or knowledge in a manner acceptable to the joint panel.

7.2 Nothing in this Agreement will restrict the participation by way of submission to the joint panel by federal or provincial government departments.

8.0 RECORD OF JOINT REVIEW AND FINAL REPORT

8.1 Subject to sections 55.1, 35(4), and 35(4.1) of the Canadian Environmental Assessment Act, the Registry will include all submissions, correspondence, hearing transcripts, exhibits and other information received by the joint panel and all public information produced by the joint panel relating to the review of the project.

8.2 The responsible authority under the Canadian Environmental Assessment Act, will make necessary arrangements with the Agency, for the maintenance of the internet site component of the federal Registry, when the joint panel is announced. The internet site component of the Registry will be maintained by the Agency during the course of the joint panel review in a manner that provides for convenient public access, and for the purposes of compliance with section 55 to 55.5 of Canadian Environmental Assessment Act. Under section 6.1 of the Appendix, the Agency's

co-responsibility for the Secretariat will include the Agency's obligation to maintain the internet site.

8.3 The location of project files component of the Registry during the course of the review will be determined on a project-specific basis.

8.4 On completion of the joint panel review, the joint panel will prepare a final report to be conveyed to Canada, Alberta and the public. The final report will reflect the views of all of the members of the joint panel.

8.5 Once the final report is released, the project files component of the Registry and the responsibility for its maintenance will be transferred to the federal responsible authority. The responsible authority will maintain the Registry in a manner that will provide public access to this material by the Agency, other government departments, and the public.

8.6 The Agency will be responsible for the translation of key documents prepared by the joint panel, including public notifications and releases and the final joint panel report, into both of the official languages of Canada.

9.0 PARTICIPANT FUNDING

9.1 Federal Participant Funding Program decisions by the Agency and decisions on local intervenor or intervenor funding by the Alberta Board pursuant to the appropriate Board legislation, will, to the extent practicable, take into account the decisions of the other Party.

10.0 COST SHARING

10.1 Prior to the initiation of the joint panel, the Lead Party will develop a budget estimate of expenses agreeable to both Parties.

10.2 Costs shall be apportioned as follows:

The Lead Party will be solely responsible for the following costs:

salaries and benefits or per diems of the joint panel chair and the member of the joint panel appointed in accordance in accordance with section 3.2 of this Appendix; and salaries, benefits of the Lead Party's staff on the Secretariat.

The Other Party will be solely responsible for the following costs:

salary and benefits or per diems of the Panel member appointed in accordance with section 3.3 of this Appendix; and

salaries, benefits of the Other Party's staff on the Secretariat.

The Agency will be solely responsible for the following costs:

all costs associated with the federal Participant Funding Program;

translation of documents to the French language; and

creation and maintenance of the Canadian Environmental Assessment Act project file component of the Registry.

Each Party will be responsible for its own internal fixed costs.

10.3 The Alberta Board and the Agency agree to share equally all those costs listed below, incurred between the date of the joint panel project-specific agreement and the date the final report is issued by the joint panel, provided these costs are in direct support of the joint panel review:

travel-related expenses associated with the review incurred by joint panel members and Panel Secretariat staff;

per diems and associated expenses of independent/non-government expert consultants, analysts and communications specialists retained by the Secretariat;

language translation and interpretation services and facilities related to the evidence of applicants, participants and local interveners as required by the joint panel, but not including translation service referred to in Section 10.2(c);

printing of any reports and documents distributed by the joint panel necessary for the Panel's work;

the publication of notices and releases;

photocopying, including the reproduction of documents contained in the Registry, and postage related to the review;

court reporting and transcripts as required by the joint panel;

rental of hearing, public meeting and public information office facilities and equipment;

audio and audio-visual services at the hearing and public meetings; and

miscellaneous expenditures up to a maximum of five percent (5%) of the total budget for the review.

10.4 Shareable costs of the joint review as detailed in section 10.3 will be incurred by the joint panel with due regard to economy and efficiency.

10.5 All expenses not listed above will need prior approval of both Parties if they are to be equally shared.

10.6 To facilitate the delivery of payment of per diems of the joint panel member appointed in accordance with section 3.3, the Lead Party may elect to pay the individual in response to appropriate invoices and invoice the Other Party for the reimbursement of such payments.

11.0 INVOICING

11.1 The Lead Party will be responsible for advancing funds for the payment of the shareable costs and will invoice the Other Party for the amounts owed under a project-specific except for travel-related expenses of the Other Party's staff which will be advanced by the Other Party. In the event that the Other Party is required to advance shareable funds directly, it will advance funds for payment and will invoice the Lead Party as determined under this Agreement.

11.2 The invoicing will be done either at the end of each month or quarterly at the discretion of the Lead Party. The invoice will cover all shareable costs paid by the Lead Party.

11.3 Each invoice referred to in a project-specific agreement will be accompanied by a summary description of the shareable costs actually incurred and paid for the period covered by the invoice, in a form satisfactory to both Parties and will be certified by an official acceptable to both Parties. Detailed information about incurred costs will be retained and made available to either Party upon request.

11.4 Subject to compliance of the above requirements of a project-specific agreement the Other Party will pay to the Lead Party the amount stated as being owed to it in the invoice within sixty (60) days of having received such invoice.

11.5 With respect to invoices covering the last period of any fiscal year (ending March 31), and the last invoice to be produced for a joint panel review, each Party may review and deduct from the invoice, any incurred shareable costs that have not been previously recovered, so as to determine a net transfer of shared costs from one Party to another. The payment will be made within thirty (30) days of having received such invoice. An accounting of the shared expenses incurred by the Other Party will be sent with the year-end and final payments, or earlier as may be requested by the Lead Party.

12.0 AUDIT

12.1 Subject to a project-specific agreement both Parties will keep open to audit and inspection by the Agency or the appropriate Alberta Board, or their duly authorized representative, all invoices, receipts, vouchers and documents of any nature or kind whatsoever that have been relied on by either of the two Parties to calculate the shared cost of conducting the public review.

12.2 The Party exercising its option to audit will be responsible for the cost of the audit.

12.3 Where an audit conducted by either Party, in connection with a project-specific agreement, reveals discrepancies regarding the amount billed to the other Party, and where prompt resolution between the Parties is unattainable, an independent auditor acceptable to both Parties will resolve the issue.

Appendix 3 – Other Environmental Cooperation

WHEREAS the Canadian Council of Ministers of the Environment (CCME) Sub-agreement applies only when both Parties require an environmental assessment by law; and

WHEREAS a cooperative environmental assessment established under the Canada-Alberta Agreement on Environmental Assessment Cooperation applies only when both governments require an assessment by law; and

WHEREAS the Canadian Environmental Assessment Act and the Alberta's Environmental Protection and Enhancement Act allow for broader inter-jurisdictional cooperation and coordination; and

WHEREAS Canada and Alberta are committed to developing cooperative working relationships between jurisdictions in the interest of more efficient and effective environmental management; and

WHEREAS Canada and Alberta agree that when only one of them has an environmental assessment responsibility for a project, there may be additional cooperative actions which are in the best interest of the environment, may enhance government decision making, and which are consistent with the spirit and intent of the Sub-agreement and the objectives of the CCME Canada-wide Accord on Environmental Harmonization to:

enhance environmental protection;
promote sustainable development; and

achieve greater effectiveness, efficiency, accountability, predictability, and clarity of environmental management.

THEREFORE, Canada and Alberta agree:

1.0 To explore opportunities to achieve the objectives of environmental harmonization related to the situation when only one of them has an environmental assessment responsibility for a project.

2.0 To make the best use of specialized skills and resources to enhance environmental management and sound decision making when only one Party has an environmental assessment responsibility:

the Party that has no environmental assessment responsibility for the project being assessed by the other may be invited or may request to be invited to participate in the assessment of the project. This participation is subject to the agreement of both Parties;

the nature of the other Party's participation within the assessment process, set out by the Party with the environmental assessment responsibility, may include, but is not necessarily limited to, providing technical expertise and/or participation on the project advisory team assigned to the project;

the Party with an environmental assessment responsibility will consider relevant factors in determining the appropriate participation of the other Party, which may include:

the levels of expertise available,

the needs of the Party with an environmental assessment responsibility for additional expertise,

the other environmental management responsibilities of both Parties, and iv. the scope and complexity of the environmental assessment;

In every case, notwithstanding sub-section 2(a) in this Appendix, the other Party will have the opportunity to participate in a consultation program carried out by the proponent for the preparation of an environmental assessment report, to provide written comments to the decision maker at the appropriate stage of the environmental assessment process and to appear at the public hearing if one is held by the Party with an environmental assessment responsibility;

a Party requesting to be invited or that is invited to participate in an assessment will fully disclose any cost recovery, user fee or other costs that might be charged to the proponent or to the Party with an environmental assessment responsibility due to its participation.

3.0 The federal environmental assessment coordinator within the Agency Office will be the senior one window contact for Canada, and will fulfil the responsibilities identified in section 6.5 of the Agreement for environmental assessments carried out pursuant to Appendix 3. Alberta will identify a senior one window contact for each major phase of environmental assessments carried out pursuant to Appendix 3 and will communicate this information to the Agency office and the proponent promptly.

Last Updated: 2005-07-22