

CANADA-MANITOBA AGREEMENT ON ENVIRONMENTAL ASSESSMENT COOPERATION

PREAMBLE

WHEREAS Canada and Manitoba are both signatories to A Canada-Wide Accord on Environmental Harmonization (the Accord) and its Sub-agreement on Environmental Assessment (the Sub-agreement);

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

WHEREAS Canada and Manitoba believe that their established processes for environmental assessment, which operate in a framework of legislation and government policies, can be exercised in a cooperative and coordinated manner; and

WHEREAS Canada and Manitoba have agreed that, when an environmental assessment for a project is required by Canada pursuant to the Canadian Environmental Assessment Act and an environmental assessment of a similar or overlapping development is required by Manitoba pursuant to The Environment Act, a cooperative environmental assessment will be undertaken to generate the type and quality of information and conclusions on environmental effects required by all Parties making decisions on the basis of the cooperative environmental assessment;

THEREFORE, Canada and Manitoba agree to implement the Sub-agreement through the following provisions.

DEFINITIONS

In this Agreement:

“Agency”

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

“Cooperative environmental assessment”

means the environmental assessment of a project proposal in respect of which Canada and Manitoba have an environmental assessment responsibility and they cooperate through the Lead Party's assessment process to meet the legal environmental assessment requirements of both Parties through a single environmental assessment.

“Designated office”

means either the Manitoba office or Canada's office, as identified in clauses 8 and 9 of this Agreement.

“Environmental assessment”

means an assessment of the environmental effects of a project conducted by Canada in accordance with the Canadian Environmental Assessment Act, or of a development by Manitoba in accordance with The Environment Act.

“Environmental assessment responsibility”

means for Canada, the powers, duties or functions, the exercise of which requires an environmental assessment in accordance with the Canadian Environmental Assessment Act, and, for Manitoba, a director or ministerial licensing decision pursuant to The Environment Act.

“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.

“Interest”

means the environmental management responsibilities of a Party related to a project proposal, the exercise of which does not require a legislated environmental assessment.

“Joint review panel”

means a panel established by Manitoba under The Environment Act, and by Canada pursuant to the Canadian Environmental Assessment Act, the members of which are appointed by Canada and Manitoba.

“Lead Party”

means the Party as determined under clause 5.6.0 of the Sub-agreement and clauses 32, 33 and 34 of this Agreement.

“Party”

means either the Government of Manitoba (Manitoba) or the Government of Canada (Canada).

“Project”

means a project as defined in section 2(1) of the Canadian Environmental Assessment Act or a Class 1, 2, or 3 development listed in Manitoba Regulation (MR) 164/88 under The Environment Act.

“Project Administration Team”

means a team made up of representatives with an environmental assessment responsibility with respect to a project proposal, from Manitoba, from each of the federal responsible authorities for the environmental assessment and from the Agency.

“Responsible authority” and “federal authority”

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

OBJECTIVES OF THE AGREEMENT

Canada and Manitoba agree to the following objectives for this Agreement:

to foster cooperation between Canada and Manitoba concerning the environmental assessment of project proposals;

to achieve greater efficiency and the most effective use of public and private resources, where environmental assessment processes involving both Parties are required by law; and

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

INTERPRETATION

This Agreement is entered into under the spirit and intent of the Sub-agreement and the Accord.

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

This Agreement recognizes the right of either Party to carry out its legal responsibilities and obligations, and creates no legal obligations on the Parties.

Neither Canada nor Manitoba give up any jurisdiction, right, power, privilege, prerogative or immunity by virtue of this Agreement.

SCOPE OF APPLICATION

For Canada, this Agreement applies to any person or body that is required to ensure that an environmental assessment is conducted under the Canadian Environmental Assessment Act and its regulations, including a federally regulated body as defined in section 1 of this Agreement.

DESIGNATED OFFICES

Each Party will designate an office to be responsible for:

coordinating, as needed, administrative matters pertaining to this Agreement and any potential cooperative environmental assessment;

facilitating consultation and cooperation between the Parties in relation to project proposals under environmental assessment review;

providing information about their respective environmental assessment processes, policies, and procedures;

coordinating and facilitating federal-provincial contact and communication on general environmental assessment matters with potential proponents, other government departments and agencies, the public and First Nations communities;

developing joint operational guidelines, as needed, for matters pertaining to this Agreement; and

keeping a directory of the names of those who have been assigned, by each Party, to assist in the administration or review of a cooperative environmental assessment and making this information available on request.

Manitoba’s designated office will be the Manitoba Conservation, Environmental Assessment & Licensing Branch (Manitoba’s office).

Canada’s designated office will be the Agency’s Prairie Region office in Winnipeg (Canada’s office).

The designated offices will jointly implement and administer this Agreement. They will consult as required to monitor the efficiency and effectiveness of the Agreement.

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, in accordance with clauses 68-72 of this Agreement.

Preliminary Consultations

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

Where a Party learns of a prospective project proposal that might be subject to a cooperative environmental assessment if it were to proceed, that Party will provide information on the project proposal to the other Party's designated office.

The designated office receiving information provided as per clause 13 of this Agreement will identify, in a timely manner, the information that will likely be needed by that Party to determine its environmental assessment responsibilities and the extent to which that Party may wish to participate in further consultations with the proponent.

Parties will consult and work with each other and proponents as early as possible to ensure that the preliminary information, needed to identify the Parties' environmental assessment responsibilities, is included in any subsequent submission.

Each designated office will include the other Party's information needs in the advice that it provides to proponents regarding any subsequent submission.

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 future projects in Manitoba, Canada will notify Manitoba early in the process of developing the report and will provide Manitoba with an opportunity to participate in the process.

NOTIFICATION AND DETERMINATION OF PARTIES PARTICIPATING IN AN ENVIRONMENTAL ASSESSMENT

Sharing Information

The Parties, through their designated offices, will provide notification about project proposals that are potentially subject to their respective environmental assessment processes in a manner that ensures timely disclosure and access to relevant information about the proposals.

When Manitoba's office receives a proposal pursuant to The Environment Act, it will provide a copy of the proposal to Canada's office at the earliest possible opportunity.

For project proposals in Manitoba subject to the Canadian Environmental Assessment Act that fit the description of a development, or part thereof, as set out in MR 164/88, Classes of Development Regulation under The Environment Act, the federal responsible authority will inform Canada's office and that office will ensure that any project description documentation is provided to Manitoba's office at the earliest possible opportunity.

The Parties, through their designated offices, may specify certain types of project proposals, or categories of project proposals described above, for which notification may or may not be required.

Determining Environmental Assessment Responsibilities

The Parties agree to determine, as soon as is practicable and within the time frames set out in legislation, regulations, or policy, whether they have an environmental assessment responsibility in relation to the project proposal.

Giving Notice about Participation in the Assessment

The Parties, through their designated offices, will notify each other of their respective determinations as soon as possible after determining whether they have, or are likely to have, an environmental assessment responsibility with respect to a project proposal.

If either Party believes that it may have an environmental assessment responsibility, but lacks sufficient information in the project proposal or description documentation to make a final determination, that Party, through its designated office, will:

document the additional information required;

submit this documentation to the Party providing the notification as per clause 18 of this Agreement to ensure that the information needed in order to make a determination is generated;

participate in the environmental assessment in accordance with clauses 24(a) and (b) of this Agreement until it has made a determination; and

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 proposal, it will immediately, through its designated office, inform the other Party of this determination.

COOPERATIVE ENVIRONMENTAL ASSESSMENT

Following a determination that both Parties have an environmental assessment responsibility with respect to a project proposal, a cooperative environmental assessment will be undertaken.

The cooperative environmental assessment will be administered by the Lead Party, as determined in section 32 of this agreement, in a manner that enables both Parties to meet their legal requirements.

The Project Administration Team, as described in clause 35 of this Agreement, will ensure the cooperative environmental assessment:

generates the type and quality of information required to meet the legal environmental assessment requirements of each Party; and

provides findings on the environmental effects of the project proposal required for decision making by the respective Parties.

The Parties will at all times endeavour to agree on the interpretation and application of the Agreement and will make every effort, through implementation planning, cooperation and consultation to resolve disputes.

On an individual cooperative environmental assessment basis, this function will be the role of the Project Administration Team.

Where, despite the best efforts of the Project Administration Team, a Party is convinced that one or more of their legal information or process requirements is not being met, that Party, through its designated office, will:

document the requirement in relation to the legal responsibilities, provide the documentation to the other Party and declare its intention to collect this information independently;

while in the process of independently collecting the information in accordance with clause 29(a) of this Agreement, continue to participate in the cooperative environmental assessment to its conclusion; and

make every available effort to ensure that the additional information is collected and available prior to the conclusion of the cooperative environmental assessment for integration into the cooperative environmental assessment decision making; otherwise, the Party that collected the information will use it solely for its decision making.

Single Contacts

Each Party will identify a single contact, capable of fulfilling the responsibilities set out in clauses 31 and 37 of this Agreement, for the cooperative environmental assessment or phases of the assessment and will, through their designated offices, communicate this promptly to the other Party.

Manitoba's contact will be the Director, Environmental Assessment and Licensing Branch; and

Canada's contact will be the federal environmental assessment coordinator, as provided for in sections 12.1 and 12.5 of the Canadian Environmental Assessment Act. For cooperative assessments, unless notice to the contrary is provided to Manitoba, Canada's office will assume the powers, duties, and functions of the federal environmental assessment coordinator.

Each Party's contact will:

coordinate that Party's participation in the cooperative environmental assessment;

work with the Project Administration Team to resolve process and content issues that may arise during the cooperative environmental assessment;

facilitate communication and cooperation with the other Party, with the proponent and the public, when appropriate, on matters related to the cooperative environmental assessment of a project;

endeavour to ensure that Party meets the timelines established for the cooperative environmental assessment.

Determining Lead Party

For the purposes of the cooperative environmental assessment, the Lead Party will generally be determined as follows:

Canada will be the Lead Party for project proposals on federal lands where federal approvals apply;

Manitoba will be the Lead Party for project proposals on lands within its provincial boundary, not covered under clause 32(a) of this Agreement where provincial approvals apply; and

if a project proposal will be located on lands under federal and provincial jurisdiction, the Lead Party will be determined by mutual agreement of the Parties taking into account the criteria in clause 34 of this Agreement.

If a Party believes that it would be in the best interest of a cooperative environmental assessment to vary the lead from the arrangements in clause 32(a) and (b) of this Agreement, that Party, through its designated office, may notify the other Party. A decision to vary the lead will be agreed to by both Parties.

In the notice referred to in clause 33 of this Agreement, the Party will provide its rationale for suggesting a variance based on an evaluation of any of the following criteria:

scale, scope, and nature of the environmental assessment;
capacity to administer the assessment including available resources;
physical proximity of the government's infrastructure;
effectiveness and efficiency;
access to scientific and technical expertise;
ability to address client or local needs;
interprovincial, inter-territorial, or international considerations; or
existing regulatory regime, including the legal requirements of quasi judicial tribunals.

Project Administration Team

The Lead Party's contact will establish and be the Chairperson of a Project Administration Team.

As required, the Project Administration Team will consult with a technical advisory committee made up of advisors from the respective administrations to provide advice to the Project Administration Team in order to meet its responsibilities.

The Project Administration Team will be responsible for managing the cooperative environmental assessment including:

- coordinating public participation in the cooperative environmental assessment as per clause 38 of this Agreement;
- coordinating consultation between the Parties, the proponent and the public on matters pertaining to the cooperative environmental assessment;
- establishing a mutually agreeable schedule for the cooperative environmental assessment as per clauses 38 and 40 of this Agreement;
- setting the information requirements for assessing the environmental effects of the project proposal as per clauses 42, 43, and 44 of this Agreement;
- ensuring that the information pertaining to the environmental effects of the project proposal is analyzed, as per clause 45 of this Agreement;
- assessing the completeness of the environmental assessment information and discussing the findings of the cooperative environmental assessment report and any proposed recommendations to decision makers;
- coordinating, to the extent possible, the timing of environmental assessment decisions and the announcement of such decisions, as per clause 53, 54, and 55 of this Agreement; and
- coordinating all contact relating to the cooperative environmental assessment, through the Chairperson, with the proponent unless otherwise agreed to by the Parties.

Public Participation

In a manner consistent with the legislated or prescribed responsibilities of each Party, the cooperative environmental assessment will provide for the following notifications and opportunities for public participation that will include but not be limited to:

- access to information and public registries pursuant to legislated requirements;
- public notice that a cooperative environmental assessment is to be conducted;
- an opportunity for members of the public to review the information requirements for the cooperative environmental assessment and provide comments to the Parties through the Chairperson of the Project Administration Team;
- ensure the public availability of the environmental assessment information and technical review comments on that information;
- an opportunity for members of the public to review and comment on the environmental assessment information and technical review; and
- public notification of amendments to the schedule for undertaking the cooperative environmental assessment, if the amendments would affect the opportunity for public involvement.

Cooperative Environmental Assessment Schedule

Once the Project Administration Team has established an agreed upon schedule, the Chairperson will notify the proponent of the schedule for the cooperative environmental assessment.

Where the schedule must be altered, the Chairperson will consult and reach agreement on the required change(s) with the Project Administration Team and discuss, on behalf of the Project Administration Team, the change(s) with the proponent.

Where an amended schedule would affect the opportunity for public involvement, the public will be advised by the Chairperson, on behalf of the Project Administration Team, of the revisions to the schedule, along with an explanation for the changes.

Setting the Environmental Assessment Information Requirements

For the purposes of developing the environmental assessment information requirements, the definitions of “environment” and “environmental effects” will be adopted from both The Environment Act and the Canadian Environmental Assessment Act to ensure the requirements of both Parties are met.

Where further environmental assessment information is needed, the Project Administration Team will consolidate the information requirements of both Parties into a single request for information, intended to guide the proponent in preparing the environmental assessment information for the cooperative environmental assessment.

Once the request for environmental assessment information has been agreed to by the Project Administration Team, the Chairperson of the Project Administration Team will issue the request to the project proponent. The Parties, through the Project Administration Team, will review the environmental assessment information submitted by the proponent to determine its completeness and adequacy. In this regard:

the Parties will each identify whether additional information is needed to meet their respective decision-making needs;

if additional information is required by the Parties that would prevent the cooperative environmental assessment from proceeding, the Lead Party will, on behalf of the Project Administration Team, consolidate the additional information requirements into one document; and

the Chairperson, on behalf of the Project Administration Team, will issue the agreed upon additional information requirements document to the proponent.

Joint Review Panels

For a cooperative environmental assessment, when the Minister for Manitoba has determined that a public hearing pursuant to The Environment Act with respect to the development will be necessary, and/or when Canada has determined that the project should be referred to a review panel pursuant to the Canadian Environmental Assessment Act, the Party(ies), through their contact(s), shall provide immediate notice of that decision to the other Party and consult on the possible establishment of a joint review panel for the project proposal.

As early as possible in the cooperative environmental assessment of a project proposal for which a joint review panel will be established, the Parties will enter into an agreement specific to the project proposal to establish the joint review panel and set the terms of reference for its operation including:

membership of the panel, including the chairperson;

cost sharing arrangements;

provisions for cost recovery;

assistance provided to participants in the hearing process; and

any other matter as directed by the requirements of federal and provincial legislations and this Agreement.

Where a joint review panel secretariat is established, the panel secretariat will be Canada’s and Manitoba’s single contact for the panel.

All documents produced by a joint review panel, including its final report, will take account of and reflect the views of all the members of the panel.

The joint review panel's final report shall be conveyed to the Parties as recommendations only.

In considering the recommendations of a joint review panel, Canada agrees not to exercise any power, duty, or function in respect of the project and Manitoba agrees not to issue an approval under The Environment Act, prior to the Parties discussing the panel’s findings and recommendations.

Decisions on the federal Participant Funding Program and participant assistance by Manitoba will, to the extent practicable, take into account the decision of the other Party.

Recommendations to Decision Makers and Coordination of Decisions

Each Party having an environmental assessment responsibility will use the information generated by the cooperative environmental assessment for the purposes of their respective decision making, provided that each Party is of the opinion that the information generated in the process meets the requirements of its environmental assessment legislation.

Upon completion of a cooperative environmental assessment, each Party will, through its contact, notify the other of project proposal decisions and provide an opportunity to coordinate the announcement of such decisions.

To the extent possible, neither Party will communicate its decision directly to the proponent or the public without prior notification of the other Party.

Follow-up

Where a cooperative environmental assessment results in the approval of a project proposal subject to federal and Manitoba conditions, and where the Parties agree that it would be mutually advantageous to do so, the Parties agree to communicate and to coordinate the follow-up responsibilities of Canada and Manitoba.

ABORIGINAL CONSIDERATIONS

The Parties recognize the constitutional protection given to existing Aboriginal and Treaty rights by section 35 of the Constitution Act, 1982.

Where a project proposal subject to a cooperative environmental assessment has the potential to cause adverse environmental effects, the Parties will ensure that any potentially affected Aboriginal peoples are notified, so they may participate in the cooperative environmental assessment, as provided for by the respective Acts, the regulations made pursuant to those Acts or in accordance with clause 38 of this Agreement.

This Agreement does not apply to environmental assessment processes existing pursuant to an established land claim or Aboriginal self-government agreement.

This Agreement may be revised should changes be required to reflect comprehensive land claim agreements or Aboriginal self-government agreements that are given effect by legislation.

The Parties agree to share the principles of the Accord, the Sub-agreement, and the provisions of this Agreement with Aboriginal peoples when negotiating environmental assessment regimes pursuant to land claim or self government agreements in Manitoba.

ACCOMMODATING INTEREST

Where one Party has an environmental assessment responsibility respecting a project proposal, and the other has an identified interest in the project proposal, the Party that has an environmental assessment responsibility will provide an opportunity for the Party with an interest to provide input, as appropriate, on the project proposal including the review of the environmental assessment information.

Nothing in this Agreement is intended to limit the opportunities of either Party to access information or provide input to an environmental assessment of a project proposal afforded by the participatory nature of the processes administered under both the Canadian Environmental Assessment Act and The Environment Act.

Where one Party has an environmental assessment responsibility for a project proposal, the other Party agrees, subject to resource limitations, to provide expertise to the Party with the environmental assessment responsibility following receipt of a request, from that Party, to provide input, as appropriate, on the project proposal including the review of the environmental assessment information. The parties agree to coordinate the requests through their respective designated offices.

ACCOMMODATING TRANSBOUNDARY CONCERNS

Where Canada has obligations pursuant to an international agreement concerning the environmental assessment of certain projects subject to a cooperative environmental assessment pursuant to this Agreement, Canada will notify and discuss its obligations, through its designated office, with Manitoba to ensure compliance of the cooperative environmental assessment with the international commitments.

For any project proposal in Manitoba which is subject to a cooperative environmental assessment and that has the potential to cause significant adverse environmental effects in another province or territory in Canada, the potentially affected province or territory shall be notified and invited by the Lead Party's contact to take part in the cooperative environmental assessment of the project proposal.

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

Canada will promptly notify the Manitoba's office of the potential transboundary effects;

upon notification, as referred to in clause 67(a) of this Agreement, the Parties agree to exchange, through their designated offices, information relating to the project, the transboundary concerns, and any assessment of the environmental effects of the project; and,

for projects in Manitoba, Canada will consider any available information generated by an assessment of the environmental effects of the project proposal required by Manitoba before taking final action under sections 46, 47 and 48 of the Canadian Environmental Assessment Act.

DISPUTE RESOLUTION

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 the project, the factors and scope of factors to be assessed, the completeness and adequacy of information, the significance of environmental effects, matters relating to process, or any other matter related to a cooperative environmental assessment.

Should a difference in view between the Parties arises on any of the matters referred to in clause 68 of this Agreement, the Parties will, to the extent possible, seek, through the designated offices, to resolve the difference.

Where all reasonable efforts to resolve a difference have been unsuccessful through the designated offices, including the use of all appropriate means as may be described in operational procedures developed by the Parties, and where both Parties agree, the designated offices will convene a meeting of the Parties at an Assistant-Deputy Minister to Executive Director level to seek a resolution of the issue, or to agree on a process for resolving it. The senior-level meeting will occur within ten working days of the time that Canada's office and Manitoba's office agree that the senior-level meeting is warranted.

If the issue has not been resolved within the timeframe agreed to by the senior officials at the onset of the dispute resolution process, the matter may be referred to the President of the Agency and the Deputy Minister of the Department of Conservation in Manitoba where they both agree to facilitate resolution of the issue by the Parties within a specified timeframe.

The Parties recognize that this dispute resolution process does not fetter the authority of the federal responsible authorities or a federally-regulated authority under the Canadian Environmental Assessment Act, or the authority of any official under the Environmental Act.

REVISION AND DURATION OF AGREEMENT

The Parties agree to undertake, through their designated offices, periodic reviews of the implementation of this Agreement, to confirm its effectiveness in fostering cooperation between the Parties and in meeting the objectives of this Agreement.

This Agreement may be revised at any time by mutual consent.

This Agreement will be in force for a period of five years from the date of its execution at which time it will either be renewed by mutual agreement or terminated.

Prior to the expiration and renewal of the Agreement, the Parties will, through their designated offices, evaluate the Agreement and their performance in relation to it. The evaluation will include opportunities for public consultation as appropriate.

Following consultations between the Parties, this Agreement may be terminated by either Party forty-five days after written notice is provided to the other Party. In the event of termination, the Parties will provide transitional arrangements for projects already involved in a cooperative environmental assessment.

SIGNATURES

In witness thereof the Honourable John Baird has hereunto set his hand and seal under section 58(1)(c) and 58(1)(d) of the Canadian Environmental Assessment Act on behalf of Canada, and the Honourable Stan Struthers has set his hand and seal pursuant to section 16 of the Executive Government Organization Act, on behalf of Manitoba, to this Agreement this _____ day of _____, 2007.

Signed on behalf of Canada
by the Honourable John Baird,
Minister of the Environment.

The Honourable John Baird

Signed on behalf of Manitoba
by the Honourable Stan Struthers,
Minister of Conservation.

The Honourable Stan Struthers

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