

Canada - Saskatchewan Agreement on Environmental Assessment Cooperation (2005)

PREAMBLE

WHEREAS Canada and Saskatchewan respect each other's constitutional responsibilities as they relate to the environment;

WHEREAS Canada and Saskatchewan have each established processes for environmental assessment which operate in a framework of legislation and government policies;

WHEREAS Canada and Saskatchewan believe that the powers and duties established by the Canadian Environmental Assessment Act and Saskatchewan's The Environmental Assessment Act can be exercised in a coordinated and cooperative manner;

WHEREAS Canada and Saskatchewan believe that the objectives of each government's environmental assessment process are consistent in principle and intent;

WHEREAS Canada and Saskatchewan 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 Saskatchewan agreed, through clause 5.9.0 of the Sub-agreement, to negotiate a bilateral agreement to implement the Sub-agreement;

WHEREAS Canada and Saskatchewan are committed to the principles and objectives of cooperation embodied in the Accord and the Sub-agreement; and

WHEREAS Canada and Saskatchewan have agreed that, when an environmental assessment of a project is required by Canada pursuant to the Canadian Environmental Assessment Act and an environmental impact assessment is required by Saskatchewan pursuant to The Environmental Assessment 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 Saskatchewan agree to implement the Sub-agreement through the following provisions.

DEFINITIONS

In this Agreement:

"The Agency"

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

"Cooperative environmental assessment"

means the environmental assessment of a project where Canada and Saskatchewan 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 Saskatchewan office or the Agency office as identified in clauses 6 and 7 of this Agreement.

"Environmental assessment"

means an assessment of the environmental effects of a project conducted in accordance with the Canadian Environmental Assessment Act, or in accordance with Saskatchewan's The Environmental Assessment Act.

"Environmental assessment report"

means for Saskatchewan, a statement as defined in section 2 of Saskatchewan's The Environmental Assessment Act and, for Canada, the environmental impact assessment report prepared by the proponent in a cooperative environmental assessment.

"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 Saskatchewan, a ministerial decision pursuant to Saskatchewan's The Environmental Assessment 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.

"Interest"

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

"Joint review panel"

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

"Lead Party"

means the Party as determined under clause 5.6.0 of the Sub-agreement and clause 19 of this Agreement.

"Party"

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

"Project"

means a project as defined in section 2(1) of the Canadian Environmental Assessment Act or a project that has received a project proposal number from Saskatchewan's office in accordance with Saskatchewan's environmental assessment review process or a project that is a development as defined in section 2 of Saskatchewan's The Environmental Assessment Act.

"Terms of reference"

means for Saskatchewan, project specific guidelines and, for Canada, a document produced by the federal responsible authority(ies) outlining the process and information requirements which would satisfy the legislated requirements for an environment assessment.

"Responsible authority" and "federal authority"

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

INTERPRETATION

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

2. This Agreement:

is intended to create an administrative framework within which the Parties can cooperatively exercise their respective powers and duties established by the Canadian Environmental Assessment Act, Saskatchewan's The Environmental Assessment Act and the regulations made pursuant to those Acts but, it is not intended to be legally binding on the Parties;

is intended to be a public document that is to be read with, and interpreted in a manner consistent with the Canadian Environmental Assessment Act, Saskatchewan's The Environmental Assessment Act and the

regulations made pursuant to those Acts and all other federal and provincial legal requirements, including but not limited to legislative requirements; and

does not create any new legal powers or duties nor does it alter in any way the powers and duties established by the Canadian Environmental Assessment Act, Saskatchewan's The Environmental Assessment Act and the regulations made pursuant to those Acts.

3. 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.

OBJECTIVES

4. The objectives of this Agreement are:

to foster cooperation between Canada and Saskatchewan concerning the environmental assessment of projects;

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 describe the roles and responsibilities for the Parties in implementing this Agreement.

DESIGNATED OFFICE

5. (1) 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 projects under environmental assessment review;

providing information about their respective environmental assessment processes, policies and procedures to the participants in a cooperative environmental assessment;

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;

reviewing, at least annually, the implementation of this Agreement and the effectiveness of the cooperative environmental assessments undertaken;

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.

(2) The designated offices 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.

(3) 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.

6. Saskatchewan's designated office will be the Saskatchewan Environment, Environmental Assessment Branch office in Regina (Saskatchewan's office).

7. Canada's designated office will be the Agency office in Winnipeg (Canada's office).

8. Each Party agrees to notify the other Party if the location of its designated office changes.

PRELIMINARY CONSULTATIONS

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

10. (1) Where a Party learns of a potential project that might be subject to a cooperative environmental assessment if it were to proceed, that Party will provide information about that project to the other Party's designated office.

(2) The notified Party will identify in a timely manner the information that will likely be needed by that Party to identify its environmental assessment responsibilities and the extent to which that Party may wish to participate in further consultations with the potential proponent.

11. (1) The Parties will consult and work with each other and potential 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.

(2) Each Party will include the other Party's information requests in the guidance that it provides to potential proponents regarding any subsequent submission.

12. 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 Saskatchewan, Canada will notify Saskatchewan early in the process of developing the report and will provide Saskatchewan with an opportunity to participate in the process.

NOTIFICATION AND DETERMINATION OF PARTIES PARTICIPATING IN AN ENVIRONMENTAL ASSESSMENT

Sharing Information

13. (1) The Parties will provide notification about projects that are potentially subject to their respective environmental assessment processes in a manner that ensures timely disclosure and access to relevant information about the projects.

(2) When Saskatchewan's office receives a project proposal or becomes aware that a project is a development, as defined in Saskatchewan's The Environmental Assessment Act, it will provide any relevant information about the project to Canada's office at the earliest possible opportunity.

(3) For projects in Saskatchewan subject to the Canadian Environmental Assessment Act, the federal responsible authority will inform Canada's office regarding the project and ensure that any project description documentation is provided to Saskatchewan's office at the earliest possible opportunity where one of the following apply:

the project is likely to have potentially adverse environmental effects which may include the types of impacts defined in section 2(d) of Saskatchewan's The Environmental Assessment Act;

the screening for the project is likely to consider factors under section 16(2) of the Canadian Environmental Assessment Act; or

the project will be subject to a comprehensive study under section 21 of the Canadian Environmental Assessment Act.

(4) The Parties may specify certain types of projects, or categories of projects described above, for which notification may not be required.

Determining Environmental Assessment Responsibilities

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

15. The Parties will notify each other as early as possible, upon determining whether they may have an environmental assessment responsibility in relation to a project.

16. If either Party believes it may require an environmental assessment by law, but lacks sufficient information in the project proposal or description documentation to make a final determination, that Party will:

document its responsibilities that may require an environmental assessment and the additional information required; and

submit this documentation to the other Party, who will ensure, to the extent permitted by the relevant legislation, that the information needed to make a determination is generated.

COOPERATIVE ENVIRONMENTAL ASSESSMENTS

17. (1) Where each Party has determined that it has an environmental assessment responsibility for a project, the Parties agree that a cooperative environmental assessment will be undertaken.

(2) The cooperative environmental assessment will be administered, in a manner that enables both Parties to meet their legal requirements, by a Lead Party who will ensure that 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 required for decision making by the respective Parties.

18. Where one Party has an environmental assessment responsibility and the other Party has not yet made a determination but believes that it may also have an environmental assessment responsibility the Party that has yet to make a determination will participate in the environmental assessment in accordance with clause 16 of this Agreement until it has made a determination.

Determining Lead Party

19. (1) The Lead Party for the purposes of the cooperative environmental assessment will generally be determined as follows:

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

Saskatchewan will be the Lead Party for projects on lands within its provincial boundary, not covered under clause 19(1)(a) of this Agreement where provincial approvals apply; and

If a project is located on lands under both federal and provincial jurisdiction, the Lead Party will be determined by mutual agreement of the Parties.

(2) 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 19(1) of this Agreement, that Party may notify the other Party and include with the notice a proposal for varying the lead.

(3) In the notice referred to in clause 19(2) 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.

(4) The lead will be varied only as agreed to by the Parties.

Single Contacts

20. (1) Each Party will identify a single contact able to carry out the responsibilities listed in clause 21 of this Agreement, for the cooperative environmental assessment or phases of the assessment, and will communicate this promptly to the other Party.

(2) Saskatchewan's contact will be the project manager to whom the project is assigned.

(3) Canada's contact will be the federal environmental assessment coordinator, as provided for in sections 12.1 and 12.4 of the Canadian Environment Assessment Act. For cooperative environmental assessments, unless notice to the contrary is provided to Saskatchewan, the Agency's office will assume the powers, duties and functions of the federal environmental assessment coordinator.

21. Each Party's contact will:

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

contact relevant departments and agencies in their respective governments to confirm the lead, as determined by clause 19(1) of this Agreement, or give notice that the Parties have agreed to vary the lead in accordance with clause 19(4) of this Agreement;

work with the other contact to resolve process and content issues that may arise during the cooperative environmental assessment;

coordinate the Party's consultation with the other Party, the proponent, and the public on matters pertaining to the cooperative environmental assessment; and

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

Project Administration Team

22. (1) For each cooperative environmental assessment, there will be a Project Administration Team made up of one representative from Saskatchewan and each of the federal responsible authorities for the environmental assessment, as well as one representative from the Agency.

(2) Each Party will select its own representative(s) to the Project Administration Team.

(3) The Lead Party will call together and chair the Project Administration Team.

(4) The Project Administration Team will be responsible for managing the cooperative environmental assessment, including:

establishing a mutually agreeable schedule for the cooperative environmental assessment as per clause 23 of this Agreement;

developing mutually agreeable terms of reference for assessing the environmental effects of the project, as per clause 25 of this Agreement;

assessing the completeness of the environmental assessment information as described in clauses 26 and 27 of this Agreement;

ensuring that information pertaining to the environmental effects of the project is analyzed;

discussing the findings of the environmental assessment report; and

coordinating, to the extent possible, the timing of environmental assessment decisions and the announcement of such decisions, as per clauses 35 and 36 of this Agreement.

(5) Members of the Project Administration Team may seek input from advisors as required to meet their responsibilities.

Establishing the Schedule and Public Participation

23. (1) The Project Administration Team will establish an expected schedule for the completion of each stage of the cooperative environmental assessment.

(2) The schedule for a cooperative environmental assessment will provide for the following notifications and opportunities for public participation:

access to information and public registries pursuant to legislated requirements;

public notice that a cooperative environmental assessment is about to be conducted;

an opportunity for members of the public to review draft terms of reference for the cooperative environmental assessment and provide comments to the Parties on these terms of reference;

public notification of the availability of the environmental assessment report and technical review comments on the report; and

an opportunity for members of the public to review the environmental assessment report and technical review comments and to provide comments to the Parties on the completeness of the environmental assessment report and environmental information in accordance with legislated timelines.

(3) The Lead Party will communicate the anticipated schedule to the project proponent.

(4) Where a change to the schedule is proposed, the Lead Party will consult and reach agreement about the change(s) with the Project Administration Team and discuss the change(s) with the proponent.

(5) Where an amended schedule would affect the opportunity for public involvement, the public will be advised of the revisions to the schedule, along with an explanation for the changes.

24. Where a Party determines at any time during the cooperative environmental assessment that one or more of their legislated process requirements will not be met by the Lead Party's environmental assessment process, it will document the requirement and identify its intention to carry out the required process activity to the Lead Party so that implications for the schedule can be considered.

Setting Terms of Reference for the Preparation of the Environmental Assessment Report

25. (1) The Project Administration Team will work together to consolidate the information requirements of both Parties into the terms of reference. The terms of reference are intended to guide the proponent in preparing an environmental assessment report for the cooperative environmental assessment.

(2) For the purposes of developing consolidated terms of reference that will incorporate the legal requirements of both Parties, the definitions of "environment" and "development" in Saskatchewan's The Environmental Assessment Act and "environment" and "environmental effects" in the Canadian Environmental Assessment Act will be adopted.

(3) Once the terms of reference have been agreed to by the Project Administration Team, the Lead Party will issue them to the project proponent.

Determining Completeness of an Environmental Assessment Report

26. (1) The Parties, through the Project Administration Team, will review the environmental assessment report submitted by the proponent to determine the completeness of the information.

(2) The Parties will each identify whether additional information is needed to meet their respective decision-making needs.

(3) If information deficiencies, which would prevent the cooperative environmental assessment from proceeding, are identified by the Parties, the Lead Party will consolidate the deficiencies into one document.

(4) The Lead Party will issue the agreed upon, consolidated, deficiency document to the proponent.

27. Where a Party determines that the information it requires to fulfil its legal obligations will not be provided by the cooperative environmental assessment, that Party will document its information need in relation to its legal responsibilities, provide this to the Lead Party, and identify its intention to collect this information independently so that implications for the schedule determined in clause 23 of this Agreement can be considered.

28. The Parties will confirm when their respective requirements for information have been met in accordance with the terms of reference, any identified deficiencies and any additional information outlined in clause 27 of this Agreement.

Joint Review Panels

29. (1) For a cooperative environmental assessment, when the Minister for Saskatchewan has decided to appoint persons to conduct an inquiry or inquiries pursuant to section 14 of Saskatchewan's The Environmental Assessment Act with respect to the project, or when Canada has determined that the project should be referred to a review panel to conduct an environmental assessment of the project pursuant to the Canadian Environmental Assessment Act, the Parties 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.

(2) If the Parties agree that a joint review panel can be established in a manner that satisfies the requirements of sections 40 and 41 of the Canadian Environmental Assessment Act and section 14 of Saskatchewan's The Environmental Assessment Act, and allows for the lawful exercise of discretionary powers given to the federal and provincial ministers pursuant to those Acts, they will enter into a project specific agreement respecting the establishment of a joint review panel.

(3) An agreement entered into pursuant to clause 29(2) of this Agreement is to contain the provisions necessary to satisfy the requirements of sections 40 and 41 of the Canadian Environmental Assessment Act and may contain additional provisions respecting:

the operation of the joint review panel;

the establishment of a panel secretariat to provide administrative and procedural support to the joint review panel;

the sharing of costs associated with the joint review panel;

any assistance to be provided to participants in the hearing process in accordance with each of the Parties' legislation and policies;

the expected time frame for completion of the work of the joint review panel; and

any other matter that the Parties agree is necessary for the proper conduct of the work of the joint review panel.

30. Where a panel secretariat is established, the panel secretariat will be Canada's and Saskatchewan's single contact for the panel.

31. 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.

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

33. The Parties will discuss the joint review panel findings and recommendations prior to Canada exercising any power, duty, or function in respect of the project and Saskatchewan issuing a ministerial decision under Saskatchewan's The Environmental Assessment Act.

Recommendations to Decision Makers and Coordination of Decisions

34. Each Party having an environmental assessment responsibility will use the information generated by the cooperative environmental assessment for the purposes of its 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.

35. (1) The Parties agree to coordinate the timing of decisions, to the extent possible, throughout the conduct of the cooperative environmental assessment.

(2) Upon completion of a cooperative environmental assessment, each Party will notify the other of project decisions and provide an opportunity to coordinate the announcement of such decisions.

36. 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

37. Where a cooperative environmental assessment results in the approval of a project subject to federal and Saskatchewan conditions and where the Parties agree that it would be mutually advantageous to do so, the Parties agree to communicate and coordinate the follow-up responsibilities of the Minister under Saskatchewan's The Environmental Assessment Act and the follow-up responsibilities of the responsible authority(ies) under the Canadian Environmental Assessment Act.

ACCOMMODATING INTEREST

38. (1) Where a Party identifies its interest in a project to the Party that has an environmental assessment responsibility for the project, the Party with the responsibility will provide opportunities for the Party with an interest to review the environmental assessment information and provide input, as appropriate, on the project.

(2) Nothing in this Agreement is intended to limit the opportunities of either Party to access information or provide input about a project afforded by the participatory nature of the processes administered under both the Canadian Environmental Assessment Act and Saskatchewan's The Environmental Assessment Act.

39. Where one Party has an environmental assessment responsibility for a project, 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 review the environmental assessment information and provide input, as appropriate, on the project. The Parties agree to coordinate the requests through their respective designated offices.

RELATIONSHIP OF THIS AGREEMENT TO ABORIGINAL AGREEMENTS

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

41. Where a project subject to cooperative environmental assessment has the potential to cause adverse environmental effects, the Parties will ensure that any potentially affected Aboriginal groups 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 23(2) of this Agreement.

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

43. 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.

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

ACCOMMODATING TRANSBOUNDARY CONCERNS

45. 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 discuss its obligations with Saskatchewan to ensure compliance of the cooperative environmental assessment with the international commitments.

46. Where a project in Saskatchewan, which is subject to a cooperative environmental assessment, has the potential to cause significant adverse environmental effects on another province or territory in Canada, the Lead Party will ensure that the potentially affected province or territory is informed and consulted with during the conduct of the cooperative environmental assessment.

47. 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 the project is situated in Saskatchewan or in another jurisdiction with potential transboundary effects in Saskatchewan:

the Canada office will promptly notify the Saskatchewan office of the potential transboundary effects;

upon notification, as referred in clause 47(a) of this agreement, the Parties agree to exchange information relating to the project, the transboundary concerns, and any assessment of the environmental effects of the project; and

for projects in Saskatchewan, Canada will consider any available information, generated as a result of Saskatchewan's environmental assessment program, which relates to the project and its environmental effects before taking a final action under sections 46, 47 and 48 of the Canadian Environmental Assessment Act.

REVISION AND DURATION OF AGREEMENT

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

49. This Agreement will be in force from the date of its execution.

50. The Parties agree to evaluate the Agreement and their performance in relation to it every seven years. The evaluation may include opportunities for public consultation if required.

51. 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 Stéphane Dion 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 David Forbes has hereunto set his hand and seal on behalf of Saskatchewan, to this Agreement this _____ day of _____, 2005.

Signed on behalf of Canada
by the Honourable Stéphane Dion,
Minister of the Environment

The Honourable Stéphane Dion

Signed on behalf of Saskatchewan
by the Honourable David Forbes,
Minister of the Department of Environment

The Honourable David Forbes

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