

Canada-Quebec Agreement on Environmental Assessment Cooperation

WHEREAS Canada and Quebec recognize that environmental assessment, which includes public participation, is an important environmental management and planning tool for promoting sustainable development objectives;

WHEREAS both governments have, respectively, environmental assessment responsibilities and wish to assume these responsibilities in a cooperative manner;

WHEREAS Canada and Quebec favour conducting cooperative environmental assessments, within the framework of this bilateral agreement, when an environmental assessment is required pursuant to the Canadian Environmental Assessment Act and pursuant to the Quebec Environment Quality Act;

WHEREAS Canada and Quebec favour a coordinated approach to the environmental assessments of projects in order to reduce overall delays, which could result from an uncoordinated application of their respective environmental assessment procedures, and this without compromising environmental protection;

THEREFORE the Parties agree to the following provisions:

DEFINITIONS

In this Agreement:

"Cooperative environmental assessment"

means the environmental assessment of a project to be undertaken entirely in Quebec where Canada and Quebec have an environmental assessment responsibility and cooperate according to a coordinated process.

"Environmental assessment"

means an assessment of the environmental effects of a project conducted in accordance with the Canadian Environmental Assessment Act or Division IV.1, Chapter I, of the Quebec Environment Quality Act.

"Environmental assessment responsibilities"

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 Quebec, the exercise of the powers and duties vested in the Minister of the Environment under Division IV.1 of the Quebec Environment Quality Act.

"Environmental impact statement"

means the assessment report on a project's environmental impacts prepared by a proponent to meet the requirements of the Canadian Environmental Assessment Act and of Division IV.1 of the Quebec Environment Quality Act and of the Quebec Regulation respecting environmental impact assessment and review.

"Guidelines"

means, for Canada, guidelines on the scope of the project, the factors as well as the scope of these factors to be considered in the context of an environmental assessment pursuant to sections 15 and 16 of the Canadian Environmental Assessment Act and, for Quebec, the directive of the Minister of the Environment on the nature, scope and extent of the environmental impact statement that the project proponent must prepare pursuant to section 31.2 of the Quebec Environment Quality Act.

"Parties"

means Canada and Quebec.

"Project"

means, for Canada, a project as defined in subsection 2(1) of the Canadian Environmental Assessment Act and, for Quebec, a project subject to the environmental impact assessment and review process as defined under Division IV.1 of the Quebec Environment Quality Act.

"Proponent"

has, for Canada, the meaning defined in section 2(1) of the Canadian Environmental Assessment Act and, for Quebec, includes the initiator of a project as defined in section 31.2 of the Quebec Environment Quality Act.

"Responsible authority"

means any person or body required, pursuant to the Canadian Environmental Assessment Act or its regulations, to ensure that an environmental assessment of a project is conducted.

INTERPRETATION

1. (1) Neither Canada nor Quebec give up, by virtue of this Agreement, any rights, competencies, powers, privileges, prerogatives or immunities.

(2) This Agreement:

constitutes an administrative framework within which the Parties collaborate to exercise their respective powers and duties with respect to environmental assessment as set out in the Canadian Environmental Assessment Act and in Division IV.1 of the Quebec Environment Quality Act;

must be interpreted in accordance with the Canadian Environmental Assessment Act and the Quebec Environment Quality Act, as well as other legal requirements, including, but not limited to, legislative requirements;

does not establish new powers or duties nor does it alter the powers and duties established by the Canadian Environmental Assessment Act and the Quebec Environment Quality Act, and is not legally binding on the Parties;

does not affect in any way the independence and autonomy of any commission of the Bureau d'audiences publiques sur l'environnement or joint review panel which may participate in the conduct of a cooperative environmental assessment.

SCOPE

2. This Agreement applies to any person or body responsible in Quebec for the application of the Canadian Environmental Assessment Act or of Division IV.1 of the Quebec Environment Quality Act, and the regulations made thereunder.

OBJECTIVES

3. The objectives of this Agreement are to:

foster cooperation and coordination between the Parties concerning the environmental assessment of projects while meeting the requirements of the Canadian Environmental Assessment Act and of the Quebec Environment Quality Act;

describe the roles and responsibilities of the Parties in implementing cooperative environmental assessments, thereby achieving more efficient use of public and private resources.

COORDINATION OF THE AGREEMENT

4. (1) Each Party will designate a representative to be responsible for:

jointly implementing and administrating this Agreement, including developing joint operational procedures, as needed;

facilitating consultation and cooperation between the Parties in relation to general environmental assessment matters and in relation to projects subject to a cooperative environmental assessment;

coordinating and facilitating relations and communications on general environmental assessment matters with government departments and agencies, potential proponents, the general public, and where appropriate, Aboriginal communities;

reviewing, at least once a year, the implementation of this Agreement and evaluate the effectiveness of the process for the cooperative environmental assessments undertaken.

(2) The designated representatives will consult each other concerning the interpretation and application of this Agreement and cooperate to resolve disputes. They will consult one another as necessary to review the observations and comments of departments, proponents and the public concerning the application of the Agreement.

(3) Quebec's representative will be the Directeur des évaluations environnementales du ministère de l'Environnement located in Québec, Quebec (hereinafter called "Quebec's representative"). Canada's representative will be the director of the office of the Canadian Environmental Assessment Agency located in Québec, Quebec (hereinafter called "Canada's representative"). Each Party will inform the other Party of any change in its designated representative.

PRELIMINARY CONSULTATIONS

Proponents

5. (1) The Parties will consult each other and will collaborate with proponents as early as possible to ensure that the information needed to determine their environmental assessment responsibilities is included in any project description provided pursuant to the Canadian Environmental Assessment Act or a project notice made pursuant to the Quebec Environment Quality Act.

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

Exchange of Information

6. (1) The Parties will notify each other in a timely manner about projects that are potentially subject to a cooperative environmental assessment and will provide each other mutual access to the relevant information on the projects, taking into account their respective legislative requirements.

(2) When the Quebec Minister of the Environment receives a project notice pursuant to section 31.2 of the Quebec Environment Quality Act and this project is likely to be subject to the Canadian Environmental Assessment Act, Quebec's representative will provide the project description and any other related documentation to Canada's representative as soon as possible.

(3) When Canada determines that an environmental assessment of a project pursuant to the Canadian Environmental Assessment Act is required and that this project is likely to be subject to the Quebec Environment Quality Act, Canada's representative will provide the project description and any other related documentation to Quebec's representative as soon as possible.

(4) The notified Party will identify, in a timely manner, the information required to determine its environmental assessment responsibilities, and the extent to which it may wish to participate in consultations with the proponent.

(5) The Parties may jointly specify in writing the types of projects for which information sharing is not necessary.

DETERMINATION OF ENVIRONMENTAL ASSESSMENT RESPONSIBILITIES

7. (1) The Parties agree to determine, as soon as practicable and within any time frames set out in legislation, regulation or operational policy statements, whether they have an environmental assessment responsibility in relation to a project and to notify each other as early as possible.

(2) If either Party believes that it may have an environmental assessment responsibility, but deems the information provided in the project description or project notice insufficient to make a final decision, it will request additional information from the proponent and provide a copy of the information request and the proponent's response to the other Party.

(3) In the event that one Party has an environmental assessment responsibility and the other Party believes that it may have an environmental assessment responsibility, but has not yet made a decision, the Parties will cooperate until a decision has been made in this regard.

COOPERATIVE ENVIRONMENTAL ASSESSMENTS

8. (1) Where both Parties establish that they have an environmental assessment responsibility for a project, they agree to undertake a cooperative environmental assessment.

(2) The cooperative environmental assessment of a project will be administered in a manner that allows both Parties to meet the requirements of their respective legislation.

Coordinators

9. (1) For any project that is subject to a cooperative environmental assessment, each Party will appoint a coordinator capable of fulfilling the responsibilities set out in clause (4) below and will communicate this promptly to the other Party.

(2) Quebec's coordinator will be Quebec's representative or any other designated person by the latter.

(3) Canada's coordinator will be Canada's representative, or any other person designated by the latter, who will act as the federal environmental assessment coordinator, unless confirmed otherwise by Canada's representative to Quebec's representative.

(4) Each coordinator will:

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

communicate with the relevant departments and agencies in their respective government to confirm the co-chair or chair of the cooperative environmental assessment committee;

work with the other coordinator to resolve any disputes that may arise during the cooperative environmental assessment;

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

ensure that the Party it represents meets the schedule established pursuant to clause 10(2)(a) for the cooperative environmental assessment.

Cooperative environmental assessment committee

10. (1) A cooperative environmental assessment committee will manage each cooperative environmental assessment and will ensure that, in the context of the environmental assessment, the relevant and necessary information to meet the requirements of the Canadian Environmental Assessment Act and of the Quebec Environment Quality Act is obtained and taken into account. The committee will be composed of the Parties' coordinators and of any other persons designated by the

Parties' representatives. The cooperative environmental assessment committee is co-chaired by Quebec and Canada's coordinators unless agreed otherwise by the Parties.

(2) The cooperative environmental assessment committee is responsible for the following:

establishing a schedule for each stage of the assessment and ensure that it is adhered to;

developing guidelines for assessing the project's environmental effects;

reviewing the compliance of the environmental impact statement with the requirements of the guidelines;

analysing the environmental acceptability of the project;

coordinating, to the extent possible, the timing of decisions related to the administration of the cooperative environmental assessment;

performing any other related function.

(3) When establishing or modifying a schedule for the cooperative environmental assessment, the cooperative environmental assessment committee will consult the project proponent.

Public Participation

11. To facilitate public participation in the cooperative environmental assessments, the public will:

have access to information concerning the environmental assessment of a project pursuant to applicable legislative provisions;

be informed of the conduct of a cooperative environmental assessment and the schedule for this assessment, including changes to the schedule;

have the opportunity to participate in any other way in the environmental assessment of the project, as provided for by the Canadian Environmental Assessment Act and the Quebec Environment Quality Act.

Guidelines

12. The cooperative environmental assessment committee will incorporate the information needs of both Parties in consolidated guidelines for the cooperative environmental assessment. The consolidated guidelines incorporate:

the directive delivered by the Quebec Minister of the Environment pursuant to article 31.2 of the Quebec Environment Quality Act; and

any necessary additional information in order to satisfy the requirements of the Canadian Environmental Assessment Act.

Compliance of the Environmental Impact Statement

13. (1) The co-chair or chair of the cooperative environmental assessment committee, after receiving the proponent's environmental impact statement, will make the statement available to the cooperative environmental assessment committee and the departments concerned.

(2) The cooperative environmental assessment committee will review the environmental impact statement and, where applicable, comments received, in order to determine its compliance with the requirements of the guidelines and whether to request additional information.

(3) Where a Party determines that the information it requires to fulfill its legal obligations is not provided in the environmental impact statement, it will identify, while continuing to participate in the cooperative environmental assessment, the missing information it needs to fulfill its legal obligations, so inform the co-chair or chair of the cooperative environmental assessment committee and subsequently obtain the missing information independently, taking into account the schedule established in clause 10(2)(a).

JOINT REVIEW PANEL

14. (1) If, in the context of a cooperative environmental assessment, the Quebec Minister of the Environment decides, pursuant to the Quebec Environment Quality Act, to direct the Bureau d'audiences publiques sur l'environnement to conduct a public hearing on the project or if Canada decides to submit the project to a review panel which will conduct an environmental assessment pursuant to the Canadian Environmental Assessment Act, the concerned Party will provide immediate notice of its decision to the other Party and will consult on the possible establishment of a joint review panel.

(2) If the Parties agree that a joint review panel can be established in a manner that satisfies the requirements of the Canadian Environmental Assessment Act and the Quebec Environment Quality Act, they will proceed to establish a joint review panel in accordance with the provisions set out in Annex 1 of this Agreement. A joint review panel thus established fulfils its mandate simultaneously with that of the Commission du Bureau d'audiences publiques sur l'environnement responsible for holding a public hearing on the project.

COORDINATION OF DECISIONS AND ANNOUNCEMENTS

15. (1) Upon completion of the cooperative environmental assessment, the Parties, if they deem the information collected during the assessment adequate to meet their respective requirements under the Canadian Environmental Assessment Act and the Quebec Environment Quality Act, will make their decisions under the said legislation, taking this information into account.

(2) To the extent possible, the Parties will coordinate the timing of decisions taken, during the cooperative environmental assessment, as well as any announcements pertaining to these.

(3) Upon completion of a cooperative environmental assessment, the Parties will inform each other of their decisions concerning the project and provide an opportunity to coordinate the announcement of such decisions. To the extent possible, neither Party will communicate its decisions directly to the proponent or the public without prior notification of the other Party.

MITIGATION AND FOLLOW-UP

16. The Parties will inform each other of the mitigation measures, monitoring and follow-up requirements and any other measures whose implementation is considered to be necessary and may, where it is possible and mutually advantageous to do so, coordinate the implementation of their respective requirements in this regard.

SHARING OF EXPERTISE

17. The parties may agree to share expertise on issues concerning the environmental assessment of a project by either Party.

RELATIONSHIP BETWEEN THIS AGREEMENT AND ABORIGINAL PEOPLES

18. (1) Where a project subject to a cooperative environmental assessment has the potential to cause adverse environmental effects on Aboriginal communities, the Parties will notify any potentially affected communities so that they may participate in the cooperative environmental assessment, as provided for by the Canadian Environmental Assessment Act and the Quebec Environment Quality Act, and their respective regulations.

(2) This Agreement does not apply to environmental assessment procedures established pursuant to a final land claim or self-government agreement or to agreements with Aboriginal communities or nations for which an environmental assessment procedure is already provided for.

TRANSBOUNDARY CONSIDERATIONS

19. (1) Where a project subject to a cooperative environmental assessment has the potential to cause significant adverse environmental effects in another province or territory of Canada, the co-chair or chair of the cooperative environmental assessment committee must ensure that the potentially affected province or territory is advised and consulted during the cooperative environmental assessment.

(2) Where a project subject to the Canadian Environmental Assessment Act is proposed in another province or territory of Canada and has the potential to cause significant adverse environmental effects in Quebec, Canada will ensure that Quebec is notified and consulted during the conduct of the environmental assessment. This provision does not apply when Quebec has entered into an agreement with another province or territory under which Quebec will be informed of any project and will have the opportunity to participate in the assessment process before it is completed.

RESOLUTION OF DISPUTES BETWEEN THE PARTIES

20. The parties involved will make every reasonable effort to agree on the interpretation and the application of this Agreement. The parties will endeavor to resolve any dispute related to this Agreement in accordance with the procedure set out in Annex 2.

DURATION OF THE AGREEMENT

21. (1) This Agreement will remain in effect for a period of five years from the date of signing. It may be renewed, with or without amendment, by written consent of the Parties.

(2) Prior to the expiration or renewal of the Agreement, the Parties will evaluate its effectiveness in attaining the objectives. This evaluation may include opportunities for public consultations by either Party, as required.

(3) This Agreement and its Annexes may be amended at any time by written consent of the Parties.

(4) Following consultation between the Parties, this Agreement may be terminated by either Party 45 days after written notice is provided to the other Party.

(5) In cases covered by (1), (3) and (4), the Parties will establish transitional arrangements for projects already subject to a cooperative environmental assessment.

SIGNATURES

In witness thereof, the Parties signed the present Agreement, this _____ day of _____ 2004.
(Original signed on May 19, 2004)

Original signed by:

For the government of Canada

David Anderson
Minister of the Environment

For the government of Quebec

Thomas J. Mulcair
Quebec Minister of the Environment

Benoît Pelletier
Minister for Canadian Intergovernmental Affairs and Native Affairs

Annex 1 - Provisions for Establishing a Joint Review Panel

PURPOSE

This annex describes certain provisions for establishing a joint review panel to conduct cooperative environmental assessments of a project as provided for in clause 14 of the Canada - Quebec Agreement on Environmental Assessment Cooperation.

1. MEMBERSHIP OF JOINT REVIEW PANEL

(1) In general, a joint review panel shall be composed of three members. In this case, these members are named as follows:

The President of the Bureau d'audiences publiques sur l'environnement appoints two members from the Commission of the Bureau d'audiences publiques sur l'environnement mandated to review the project subject to a cooperative environmental assessment as members of the joint review panel, including the president of the said Panel. The Minister of the Environment for Canada approves the appointment of these members as members of the joint review panel, including that of the president of the Panel.

The Minister of the Environment for Canada proposes a third person to the President of the Bureau d'audiences publiques sur l'environnement. The President of the Bureau d'audiences publiques sur l'environnement and the Minister of the Environment for Canada appoint this third person as a member of the joint review panel.

The Quebec Minister of the Environment approves the appointment of the three members of the joint review panel.

(2) The members of the joint review panel shall be unbiased and free from any conflict of interest relative to the project under review; they have relevant knowledge or experience concerning the anticipated environmental effects of the project.

(3) The members of the joint review panel shall respect the spirit of the Code d'éthique et de déontologie des membres du Bureau d'audiences publiques sur l'environnement.

2. MANDATE AND POWERS OF THE JOINT REVIEW PANEL

(1) Mandate - A joint review panel shall conduct a public review of a project in order to meet the requirements of the Canadian Environmental Assessment Act and the Quebec Environment Quality Act.

(2) Powers - A joint review panel shall enjoy the powers and immunities conferred by section 35 of the Canadian Environmental Assessment Act.

(3) A joint review panel shall produce its report within the same timeframe as the Commission of the Bureau d'audiences publiques sur l'environnement, in accordance with the provisions set out in clause 6 of this Annex.

3. ADMINISTRATIVE AND TECHNICAL SUPPORT

The administrative and technical support required by the joint review panel is provided under an agreement to be reached between the Canadian Environmental Assessment Agency and the Bureau d'audiences publiques sur l'environnement.

4. JOINT REVIEW PANEL FILE

The project assessment file shall be made available to the public as provided for under the Canadian Environmental Assessment Act and the Quebec Environment Quality Act.

5. PUBLIC PARTICIPATION IN THE REVIEW AND REPORT

A joint review panel shall hold hearings to provide an opportunity for public participation.

6. REPORT

(1) Following an inquiry by the Bureau d'audiences publiques sur l'environnement for a project subject to a cooperative environmental assessment, the President of the Bureau d'audiences publiques sur l'environnement shall submit the report to the Quebec Minister of the Environment within the established timeframe.

(2) The joint review panel shall submit its report to the Minister of the Environment for Canada and to the Quebec Minister of the Environment within the same timeframe.

(3) The commission of the Bureau d'audiences publiques sur l'environnement and the joint review panel may produce a joint report. In this case, the Minister of the Environment for Canada and the Quebec Minister of the Environment will make the report public simultaneously.

(4) The Canadian Environmental Assessment Agency is responsible for the translation of public notices and of the final report of the joint review panel as to make them available in French and English. It is agreed that for Quebec, all communications are made in accordance with the Charte de la langue française.

7. COST SHARING

(1) Before the commencement of the joint review panel's work, the Canadian Environmental Assessment Agency and the Bureau d'audiences publiques sur l'environnement will agree on budget provisions, expenditures, and cost sharing procedures.

(2) The joint review costs are incurred by the joint review panel with due regard to economy and efficiency.

(3) The parties agree that the Canadian Environmental Assessment Agency or the Bureau d'audiences publiques sur l'environnement or their duly authorized representatives shall verify and inspect all documentation (invoices, receipts and other pertinent documents) used by either party to calculate the shared costs incurred in managing the public review.

(4) When a verification conducted by either party as part of this Agreement reveals discrepancies in the amount invoiced to the other party, and the parties are not able to resolve the matter quickly, an independent auditor agreed to by both parties may be called on to resolve the dispute.

8. FINANCIAL ASSISTANCE TO PARTICIPANTS

Canada, through the Canadian Environmental Assessment Agency, agrees to administer its participant funding before the joint review panel begins its work.

Annex 2 - Provisions for the Resolution of Disputes between the Parties

1. The Parties will make every reasonable effort to agree on the interpretation and application of this Agreement, notably with respect to the scope of the project and the assessment, the compliance of the impact statement submitted by the proponent with the requirements of the guidelines, the significance of the environmental effects and matters relating to the process.

2. In the event of disagreement on these issues, the Parties will endeavour, to the extent possible, to resolve their disputes at an operational level.
3. When all reasonable means to resolve a dispute will have been exhausted at the operational level and when one Party is of the opinion that the dispute must be resolved at a higher level, that Party advises its designated representative, in writing, pursuant to section 4 of the Agreement, by providing the reasons for which the Party considers it necessary to take the dispute to a higher level. Upon receipt of the notice, the representative immediately informs the other Party's representative of the request to refer the dispute to a higher level.
4. If they are of the opinion that it is appropriate to refer the dispute to a higher level, Canada's and Quebec's representatives agree on a schedule, on an procedure for resolving the dispute including the persons and organizations to be involved.
5. If the dispute has still not been resolved by the end of the agreed schedule pursuant to section 4, Canada's and Quebec's representatives may, if they consider it advisable in order to facilitate a resolution, refer the matter to the President of the Canadian Environmental Assessment Agency and to the Deputy Minister of the ministère de l'Environnement du Québec.
6. The Parties agree that the dispute resolution process will in no way limit the powers and privileges of a responsible authority pursuant to the Canadian Environmental Assessment Act or the authority of the Government of Quebec pursuant to Division IV.1, Chapter I, of the Environment Quality Act.
7. The dispute resolution process does not apply in any way to cost sharing between the Bureau d'audiences publiques sur l'environnement and the Canadian Environmental Assessment Agency provided for under clause 7 of Annex 1 to this Agreement, or to any other dispute arising from the activities of the joint review panel.