

Policy Directive:
Environmental Assessment Procedures

Division: Environmental
Assessment

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Prepared by:

*Michael D. Rigby, Paul Rideout,
N. Williams*

Subject:

Environmental Assessment Procedures

Objective:

To provide a consistent set of procedures to be followed by the Registration Coordinator, Environmental Assessment Committee Chairperson, Registration Reviewers, and environmental assessment committees for purposes of carrying out duties associated with the provisions of The Environmental Assessment Act, 1980

Background:

The environmental assessment process of the Government of Newfoundland and Labrador was initially implemented as a policy in the 1970's. The Environmental Assessment Act, 1980 and Environmental Assessment Regulations, 1984, more clearly defined details associated with the process.

Legislation:

The Environmental Assessment Act, 1980
The Environmental Assessment Regulations, 1984

Policy:

To ensure consistency in the administrative details of the environmental assessment process, the attached Environmental Procedures Manual, Guidelines for Environmental Assessment Committees and Early Cooperative Consultation Procedure documents shall constitute the procedures to be followed for these respective activities.

ENVIRONMENTAL ASSESSMENT PROCEDURES MANUAL
Environmental Assessment DivisionDepartment of EnvironmentGovernment of
Newfoundland and Labrador
April 1986

Background:

The Environmental Assessment Act (E.A. Act) for Newfoundland and Labrador became law in November of 1980. It requires that many projects that may have some significant impact upon the environment must be registered with the Department of Environment for examination and may not proceed until discharged under the Act.

Those activities which are affected by the E.A. Act are described as undertakings and are defined as, "any enterprise, activity, project, structure, work, policy, proposal, plan or program that may in the opinion of the Minister (of Environment), have a significant environmental impact."

Those who propose to carry out these undertakings whether they be corporations, groups or individuals are described as proponents.

The list of undertakings which must be registered can be found in Schedule 1 of the Environmental Assessment Regulations 1984. Some undertakings, such as those initiated before the regulations came into effect in 1985, are exempted from the application of the E.A. Act.

The Process

Ideally, application of the E.A. Act results in a step-by-step approach by both proponent and government. Following is a brief outline of the steps that are taken when a "typical" undertaking becomes subject to the E.A. Act.

1. Pre-Registration

The Environmental Assessment Division may become aware of a project requiring registration (e.g., by referral from another department, through the news, etc.). Once it is determined that such a project is an undertaking as defined in Schedule 1 of the E.A. Regulations a request for registration (Form 1(a)) is prepared and sent along with a copy of the publication Environmental Assessment: A Guide to the Process.

The Minister also has the authority to define as an undertaking a development not included in Schedule 1 of the Regulations. Generally the Minister would initiate such a definition in response to a request made from another department, agency, public interest group, etc. The E.A. Division may be asked to comment on such a request.

2. Registration

Proponents are required to register any undertaking with the Minister of Environment. The form for filing the registration can be found in Schedule 3 of the E.A. regulations, 1984 (copies are made available as Form 2(a)). The original, including necessary maps and drawings plus 40 copies must be submitted. Basically this registration form identifies the proponent and describes in detail the proposed undertaking.

3. Examination

Once the Minister of Environment had received a registration it is passed on to the Environmental Assessment Division. Here it is passed to the Program Coordinator (Registration Coordinator) who co-ordinates the intergovernmental examination of the proposal. The First step is to determine whether the submission is complete and can therefore be accepted as a registration. Within 10 days of its receipt the Minister must publically announce that the registration has been filed and must make it available for public examination. The Public is invited to submit written comments within 30 days of the Minister's announcement. Publication is accomplished through a press release - The Environmental Assessment Bulletin - which is prepared by the Program Coordinator for the Minister every week.

The scientist to whom the registration has been assigned gives it a file number and prepares a checklist of events that outline the various steps of the assessment procedure.

A Registration Acknowledgement Form (E.A. Form #2b) is sent to the proponent's principle contact person.

Copies of the registration along with an Opinion Request form (E.A. form #2c) are sent to members of the intergovernmental screening committee. These people, representing both provincial and federal jurisdictions, have 30 days in which to study the registration and decide, according to their departmental mandate, whether or not the proposed undertaking requires formal environmental assessment. The Environmental Screening Criteria Guidelines (Form 3a) have been prepared for use by these reviewers to guide them in this task. (For convenience, the public and government response deadlines can be synchronised by adopting whatever date is later). A department failing to respond by the deadline is recorded as having no concerns. To ensure that responses reflect departmental positions, the signature of the reviewer's Deputy Minister (or equivalent designated head) is required to confirm the opinion expressed. This form also requires each Deputy Minister to nominate a person to an assessment committee if that department's response requests an EPR or EIS.

4. Minister's Decision

The Program coordinator summarizes the replies that have been received on the Opinion Request Form and from the public. If necessary he or she may seek clarification of opinions from individual reviewers. Form 2(d) is used to keep a record of government reviewers' opinions and is kept on file in the E.A. Division. If technical or public reviewers recommend that an Environmental Preview Report or an Environmental Impact Statement is required, a memo to this effect is prepared for the Minister. This memo, detailing the reasons for such a recommendation, is forwarded through the Director of Environmental Assessment, the Assistant Deputy Minister, and the Deputy Minister, and

accompanies the Minister's decision letter as described below.

Based on input from the public and the results of the intergovernmental screening of the proposed undertaking, the Minister must make a decision within 45 days of receipt of the registration, as to whether or not the proposed undertaking is to be subject to further application of the E.A. Act.

The Minister can make one of three decisions:

First, undertaking may proceed as proposed subject to any other acts or regulations at any level of government. In this case the undertaking has been discharged under the E.A. Act. A letter indicating this follows the format of Form 2(g) and may advise the proponent if various permits/approvals/licences which will be required and which were identified in the screening referral.

Second, the Minister may require that an Environmental Preview Report (EPR) be prepared by the proponent. This document provides the Minister and his/her advisors with additional detailed information concerning possible environmental effects of the proposed undertaking based on readily available information. In effect the Minister has requested more information before he makes a decision concerning the proposal. Details concerning an EPR may be found in Section 10 of the Act and Section 7 of the Regulations. In practice, an EPR is only recommended to the Minister if one is confident that the information in the document is readily available or if minimal field work is required, and there is little possibility that there will be a subsequent need to require that an E.I.S. be called for. If there is a reason to believe that enough information cannot be generated in the E.P.R. to enable a decision to be made which will resolve the identified conflict, than an E.I.S. should be recommended.

Third, the Minister may decide that an Environmental Impact Statement (E.I.S.) is required. This would be a complete description of the undertaking stating the need for the undertaking, the existing environment relating to the undertaking and the predicted impacts of the undertaking on the environment and proposals for mitigation and monitoring.

Within 10 days of having advised the proponent, the Minister announces his decision publicly. This is accomplished through the environmental assessment bulletin.

In addition, the Program Coordinator is responsible for preparing the Screening Decision Advisement Form (Form 2(f)) for distribution to the designated provincial and federal government reviewers.

Where an E.P.R. or an E.I.S. is required an environmental assessment committee is appointed by the Minister from nominations received in the Opinion Request Form. The role of the committee is to advise the Minister on scientific and technical matters pertaining to the preparation and presentation of the

document produced. The E.A. Committee is chaired by one of the Environmental Biologists. The committee also meets as required with the proponent or his representative to provide advice to facilitate the preparation of a satisfactory E.I.S. A more detailed summary of duties for committee members is summarized in the document: Guidelines for Environmental Assessment Committees.

5. Proponents Action

Subject to the Minister's decision (as outlined above) the proponent has three possible courses of action.

First, where the proposed undertaking has been discharged under the E.A. Act, the proponent may seek approval from appropriate regulatory bodies or agencies in order to proceed with his work. For example, Crown land may have to be procured, activities affecting water bodies may have to be approved by the Department of Environment and the Department of Fisheries and Oceans, waste management might have to be approved by the Departments of Environment and Health, etc. Once a proposed undertaking has been discharged, the proponent has three years in which to begin work. After that time, if work has not begun, the undertaking must again be registered.

Second, the proponent may have to prepare an E.P.R. Once the E.P.R. is submitted, the Minister has 10 days to publicly announce its receipt and 40 days to advise the proponent of his decision to either discharge him from further requirements under the E.A. Act or to request that an E.I.S. be prepared. Within 10 days of advising the proponent the Minister must publically announce his decision. An E.P.R. is prepared using guidelines rather than formal terms of reference.

Thirdly, the proponent may be required to prepare an E.I.S.. In this case the proponent is required to provide the Minister with Terms of Reference (T.O.R.) a document that will outline how the E.I.S. is to be prepared, its scope and the approach that the proponent will take in order to fulfill the requirements of the E.A. Act. It will be able to consider this third step a series of events.

Pre-Consultation Meeting: The chairperson arranges a pre-submission consultation with the proponent and/or his consultants and the members of the Assessment Committee in order that all parties can become familiar with the details of the undertaking and its assessment. The main purpose of this consultation is to streamline the environmental assessment process. In practice it is accomplished by bringing together regulators and the proponent for dialogue in a non-adversarial atmosphere where the proponent and the assessment committee can work together to clarify and summarize the issues of concern. The overall objective is to provide the proponent and the committee with an opportunity to agree in principle upon the contents of a focused terms of reference which will address issues related to valued ecosystem components.

Chapter 12 of Beanlands and Duinker (An Ecological Framework for Environmental Impact Assessment in Canada) should be used as reference material concerning valued ecosystem components. (See the document: Early Cooperative Consultation Procedure).

Terms of Reference: Following the preconsultation meeting, the proponent submits 25 copies of a draft T.O.R.. Within 10 days of its receipt the Minister must announce publicly that a draft T.O.R. has been submitted. The public and the E.A. Committee then have 30 days in which to examine the draft T.O.R. and to make their opinions on its acceptability known to the Minister. Within 45 days of receiving the draft T.O.R. the Minister must advise the proponent of his/her decision on the acceptability of the T.O.R. NOTE: The Minister's decision makes use of the advice received from both the public and the assessment committee. It is possible that the assessment committee need not meet with the proponent to discuss details if the T.O.R. was not found to be acceptable. Usually, though, the chairperson can handle these details.

An acceptable T.O.R. will indicate that the E.I.S. will include; a description of the proposed undertaking, the reason for the undertaking; other methods of carrying out this undertaking; alternatives to the undertaking; a description of the present environment (valued ecosystem component) to be affected; a description of the future environment should the undertaking not proceed; the impacts that may be caused to the environment; actions to alter or remedy the impacts on the environment (rehabilitation); an evaluation of the advantages and disadvantages to the environment of the undertaking; measures to minimize all significant harmful impacts (mitigation); a proposal to monitor harmful impacts during construction and operation; proposals for a program of public information; and may include an Environmental Protection Plan.

The T.O.R. should also indicate a commitment to describe impacts which may occur despite the controls and remedies proposed. It must outline the design of any component structure (e.g., water resources inventory, historic resources research) to be used in the preparation of the E.I.S. and include a commitment to concerns voiced by the public during the preparation of the E.I.S.. When Component studies are used, these act as technical documents which are then summarised in the E.I.S. in a manner that enables the public to understand the information generated.

After he has notified the proponent of the acceptability of the T.O.R., the Minister has 10 days in which to make his decision known publicly.

Component Studies: If component studies are necessary, separate T.O.R. may be prepared and submitted to the minister for similar review. This may be done concurrently or consecutively.

Once the T.O.R. has been accepted, the proponent may begin preparation of the E.I.S. and any associated component studies. (Part of the preparation will be a public information program for the area to be affected by the proposed undertaking.) Concerns identified at public information sessions must be noted and addressed in the E.I.S..

Submission of the E.I.S.: The Minister may require that up to 50 copies of the completed E.I.S. be forwarded to him/her. Within 10 days of submission the Minister must announce publicly its receipt. The public now has 45 days to comment on the E.I.S. and advise the Minister on its acceptability based on whether or not it meets the requirements outlined in the approved T.O.R. Before advising the Minister the E.A. committee may need to meet with the proponent to discuss any changes which may be required and which could be readily made. If the Minister decides that the E.I.S. is not acceptable he/he may require the proponent to do further work, to amend the statement or to submit an addendum to the statement at a later date. Once an E.I.S. has been found to be acceptable, the Minister must prepare a report for cabinet within 25 days recommending whether the undertaking be permitted to proceed. This submission is drafted by the scientist handling the assessment and summarizes the findings of the E.I.S., discusses impacts that have been identified and recommends whether the proposed undertaking should proceed. Subject to the Minister accepting these recommendations, the final decisions on whether and how the undertaking proceeds are the responsibility of the Cabinet.

6. Public Hearings

On rare occasions, in the event of strong public interest or concern, the Minister of Environment may ask that Cabinet appoint an E.A. board to hold public hearings related to the proposed undertaking. The board is made up of 2 to 5 persons not employed by the government. The Minister of Environment has 15 days after acceptance of an E.I.S. in which to recommend public hearings. The E.A. board is appointed within 30 days of the Minister of Environment's recommendation and within 10 days of its appointment announces the appointment of the board publicly.

Public hearings have to be held in the area to be affected 60 to 90 days after the board is appointed. The proponent has 30 days to respond to concerns arising from these hearings and the board has 45 days after the hearings to make a report to the Minister of Environment. The Minister then has 30 days to make the board's report public and 25 days to make a recommendation to Cabinet on the acceptability of the undertaking.

7. Discharge

If an E.A. Board has not been appointed, the Minister must, within 45 days of his/her acceptance of an E.I.S., discharge the proponent from any further

requirements under the E.A. Act. If an E.A. board is appointed, the minister must, within 30 days of his/her receipt of the report of the Board, discharge the proponent from any further requirements under the E.A. Act.

EARLY CO-OPERATIVE CONSULTATION PROCEDURE

Pre-Submission Consultation in the Environmental Assessment Process
Environmental Assessment Division Department of Environment Government of
Newfoundland and Labrador

November 1983 Updated August 1986

PRE-SUBMISSION CONSULTATION

INTRODUCTION

The purpose of pre-submission is to address as many of the concerns that normally arise during formal environmental assessment at an early stage with a view to eliminating or minimizing such concerns prior to the submission of the Terms of Reference or the Environmental Impact Statement. This process is designed to ensure that the proponent seeks the opinion, advice and expertise of reviewing agencies and incorporates such reference into the development of Terms of Reference and the E.I.S. By engaging in this process at the earliest point in the planning phase of resource developments, many conflicts should be resolved and remaining conflicts will provide a focus for resolution in the formal review process.

The ultimate objective of this procedure is to streamline the environmental assessment process. Other benefits which may occur include the expediting of the permit approval process, the development of meaningful dialogue between developers and regulators, and the reduction of the less-than-desirable history of adversarial conflict experiences in this and other jurisdictions.

ESSENTIAL ELEMENTS FOR CONSULTATION

Experience acquired in the administration of the Environmental Assessment process in Newfoundland and Labrador, as well as in other provinces and the federal government strongly suggests that several key elements are crucial to the consultation process if the assessment of resource developments is to be improved.

- Consultation must commence at the conceptual stage of planning.
- Proponents are responsible for initiating consultation prior to entering the formal review phase
- All government reviewers should be involved at the outset of consultation
- Reviewers are responsible for advising proponents on all matters under the agency's mandate that pertain to the proposed undertaking, and that such advice reflect the overall viewpoint of the agency.
- Scoping and setting of boundaries should deal with important issues rather than

with all concerns which may possibly arise.

- Assessment personnel should facilitate the dialogue between proponent and reviewers and should give every assistance in providing the proponent with an understanding of the requirements of the process.
- Concerns amenable to conflict resolution should be resolved and the remaining issues should be clearly defined for resolution in the formal review phase.
- Public information programs should reflect a willingness by the proponent to respond to public concerns in a meaningful fashion.
- All parties in the Environmental Assessment process should remain open and receptive to new ideas and concepts, should maintain a flexible attitude toward resolving conflict, and should model those behaviours which will result in the responsible participation and successful realization of proactive planning.

CONCLUSIONS

The successful conduct of consultation in the early stages of resource development planning will assist the developer in meeting the requirements of Section 13 of the E.A. Act and Sections 6(5) and 6(6) of the Environmental Assessment Regulations concerning the proposed undertaking relative to its alternatives and the effect it may have on the environment.

Pre-submission consultation should assist government in facilitating the wise management of the natural resources of the province while protecting the environment and the quality of life of the people of the province.

Quite simply, this process should result in the preparation, review and approval of an acceptable Environmental Impact Statement.

GUIDELINES for ENVIRONMENTAL ASSESSMENT COMMITTEES MARCH 1994

INTRODUCTION

The Environmental Assessment Division of the Department of Environment and Lands is charged with coordinating the implementation of the environmental assessment act. There is no provision in the Act for the Minister of Environment and Lands to appoint Environmental Assessment Committees composed of one representative from each departmental agency of government having an interest in a particular undertaking. The role of the Committee is to develop project guidelines, to provide scientific, technical, and professional advice to the Minister regarding the adequacy of documents (terms of reference, component studies, E.R.Ps, E.I.S.s) and whether proposed projects should proceed or not based on their environmental acceptability

The following guidelines should assist members while serving on E.A. Committees.

CHAIRPERSON'S RESPONSIBILITIES

1. The Minister of Environment and Lands shall appoint a Chairperson who shall be responsible for the coordination of the work of the E.A. Committee.
2. Within the context of the legislative and policy mandate of the Environmental Assessment Process, the Chairperson shall maintain an active, unbiased and facilitative role in the deliberations of the E.A. Committee
3. The Chairperson arranges meetings with the E.A. Committee as appropriate. Typically meetings are scheduled for the following events:
 - i) Initial familiarization meeting where role and conduct of the Committee shall be clearly explained, where individual environmental issues are identified and discussed by members, where a determination is made as to whether the necessary technical skills are possessed by the E.A. Committee members or accessible to the Committee. A recommendation may be forwarded to the Minister to employ an expert reviewer(s) if one or more relevant technical skills are not represented by the committee.
 - ii) A Scoping meeting of the E.A. Committee and the proponent will present a description of the undertaking and the rationale/need for the undertaking, where the acquirements of the E.A. Act are clearly communicated to the proponent, and where the issues identified by the E.A. Committee are discussed with the proponent.
 - iii) Following the receipt of and/or the review of the Terms of Reference, Component Studies, EPR's & EIS's if required to address issues and resolve conflicts.
 - iv) At any time during an environmental assessment to address outstanding issues as required.

The proponent is invited to attend meetings as appropriate; the E.A. Committee may meet privately for internal discussions.

4. The Chairperson maintains an unbiased and facilitative role at these meetings
5. The Chairperson serves the members of the Committee in any way feasible, promotes a fair and balanced consideration of issues raised by members. The Chairperson shall not override the formal scientific and technical positions put forward by members, unless such positions are considered as; a) falling outside the purview of the environmental assessment process altogether; b) beyond the scope of the particular environmental assessment at hand; or c) outside the jurisdiction of the particular department.

6. The Chairperson works to ensure the issues discussed during meetings are relevant to the E.A. process
7. The Chairperson works to achieve consensus and resolve conflicts among the E.A. Committee members and/or the proponent
8. The Chairperson works to ensure open discussion while avoiding the establishment of inflexible positions.
9. The Chairperson prepares draft reports based on a synthesis of E.A. Committee and public comments that present recommended courses of action to the Minister; the draft reports are circulated to the members for their review and verification. The Chairperson seeks committee consensus before submitting the final report to the Minister. The final report is presented to the Minister with recommendations and clearly dissenting opinions. If a consensus cannot be reached, the Chairperson evaluates different positions and makes a recommendation regarding the course of action for the Minister.
10. The Chairperson, or more senior departmental official shall make public comments concerning the work of the E.A. Committee as appropriate.

MEMBERS' RESPONSIBILITIES

1. The Minister of Environment and Lands shall appoint as Members to an Environmental Assessment Committee those individuals nominated by the deputy minister (or an equivalent position) of the departmental agencies expressing an interest in a particular undertaking. Each Member will represent a unique mandate that is relevant to the undertaking being addressed.
2. The role of each Member is to assist in the development of guidelines, to provide scientific, technical, and professional advice within the context of their agencies mandate regarding the adequacy of assessment documents and, to recommend whether the undertaking being assessed should proceed or not based on its environmental acceptability.
3. The Members shall conduct themselves according to the highest standards of their profession and in keeping with the Oath of Allegiance and the Oath of Secrecy signed upon entering the public service.
4. The Members shall respect the committee's main communication channel through the Chairperson to the Minister regarding their deliberations in Committee and subsequent communication with their respective executive officers and advisors
5. While the primary role of the Member is to provide advice within the context of their agency's mandate, the Member should also make every effort to attend to their role as problem-solvers within Committee tasks. Rather than maintaining an

inflexible position, members should strive to remain open-minded about seeking novel solutions to real problems and to considering proposals brought forward by the proponent.

6. The Member shall not override the formal scientific and technical positions put forward by other members, unless such positions are considered as; a) falling outside the preview of the environmental assessment process altogether; b) beyond the scope of the particular environmental assessment at hand; or c) outside the jurisdiction of the particular department.

REVIEW PROCEDURES

1. The meetings of the Committees shall be private and proceedings shall be confidential. The Committee may wish to consult with the proponent, technical experts, or other individuals, which invitation will be issued by the Chairperson.

2. Internal correspondence pertaining to the work of the Committee shall be confidential and shall be shown only to senior officers and advisors of the members respective departments or agencies

3. External correspondences regarding environmental assessment and pertaining to the Committee shall be addressed to the Minister.

4. Members will assist in the development of guidelines for EPR's and EPS's. The time frames will be developed after the provisions are finalized in the regulations.

5. Members shall review draft terms of reference for environmental impact statements and shall, within 30 days of the date of issue, present to the Chairperson written comments including an opinion whether they are satisfactory.

6. Members shall review draft and final component studies and shall, within 30 days of issue, present written comments to the Chairperson on the scientific and technical accuracy and adherence to the terms of reference of such studies.

7. Members shall review the Environmental Impact Statement with regard to the terms of reference and shall, within 45 days of issue, present written comments to the Chairperson on such evaluation and a written opinion whether the statement is satisfactory. In cases where a Member is of the opinion that a statement is unsatisfactory, the Member shall provide written recommendations to the Chairperson concerning the measures which must be taken by the proponent to render the statement satisfactory.

8. Members shall review the Environmental Preview Report with regard to the terms of reference and shall, within 30 days of issue, present written comments to the Chairperson on such evaluation and a written opinion whether the EPR is

satisfactory. In cases where a Member is of the opinion that an EPR is unsatisfactory, the Member shall provide written recommendations to the Chairperson concerning the measures which must be taken by the proponent to render it satisfactory.

9. The Chairperson shall prepare a draft report of the Committee based on a synthesis of the comments emanating from the review and shall incorporate all points of view therein. This draft will be circulated among the Members for their final input and verification. A meeting may be called to achieve this objective.

10. The final report of the Committee shall be delivered to the Minister by the Chairperson and copies shall be forwarded simultaneously to the Members.

11. The Chairperson shall prepare a list of recommendations resulting from the Committee's review and shall seek consensus on such recommendations before submitting them to the Minister. Dissenting opinions shall be clearly identified within.

12. Members are cautioned that the report of the committee and the recommendations are not available for public distribution. The Freedom of Information Act expressly forbids the public disclosure of advice to ministers.

NON COMPLIANCE

1. Any member who fails to abide by these policies and procedures shall be dismissed from the Committee. The Minister shall then ask the respective department to nominate a new member to the Committee.

WAIVER OF REQUIREMENTS

1. The Chairperson, with the consent of the Minister, may waive any or all of the preceding requirements in order to expedite the functioning of the Committee. \

March 1994