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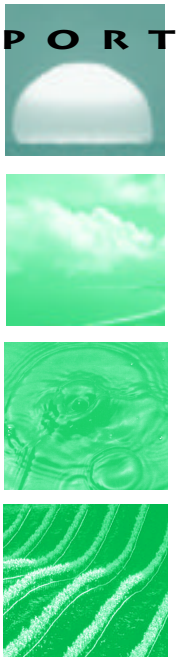

A Federally Coordinated Review of Federal Environmental Regulations Affecting Mining in Canada

JULY

1998

PREPARED BY

Natural Resources Canada
in collaboration with:

Canadian Environmental Assessment Agency

Environment Canada

Finance Canada

Fisheries and Oceans Canada

Indian and Northern Affairs Canada

Industry Canada

Treasury Board

Government of Canada Gouvernement du Canada

Canada

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Introduction

At the July 1997 Mines Ministers' Conference (MMC), mines ministers charged the Intergovernmental Working Group on the Mineral Industry (IGWG) with preparing a government/industry report that reviews federal-provincial-territorial regulations affecting mining and proposing appropriate recommendations for their consideration at the 1998 MMC.

An IGWG/Industry Task Force, comprised of representatives from federal and provincial departments and the mining industry, was formed to coordinate the review process. According to the cooperative approach prepared by the Task Force, each jurisdiction designs, implements, and reports on its own review process. Results of these individual reports will be synthesized in an overview report for consideration by mines ministers at their July 1998 MMC.

This report, entitled *Report on a Federally Coordinated Review of Federal Environmental Regulations Affecting Mining in Canada***, is the federal component of the federal-provincial-territorial review. By reporting on regulatory reform and identifying opportunities for improving the efficiency and effectiveness of the regulatory and decision-making process, it also meets a commitment made in** *The Federal Government's Response to the Final Report of the Standing Committee on Natural Resources: Streamlining Environmental Regulation for Mining* **to prepare a comprehensive progress report on the status of regulatory reform for mining.**

2. The Federal Review Process

The federal approach to the review was developed by Natural Resources Canada (NRCan) in consultation with Environment Canada, the Canadian Environmental Assessment Agency (the Agency), the Department of Indian Affairs and Northern Development, the Department of Fisheries and Oceans (DFO), Industry Canada, Finance Canada, the Treasury Board, and the Privy Council Office.

The objective of the federal review is to identify opportunities to work cooperatively towards improving the efficiency and effectiveness of the federal regulatory and related decision-making processes. Its goals are to enhance regulatory process certainty and transparency, reduce duplication, maximize the efficiency and appropriateness of timing of the administration and decision-making processes, ensure consistency of application, and maintain or improve environmental protection. It is guided by the vision, objectives and principles of the Whitehorse Mining Initiative (WMI), the *Minerals and Metals Policy of the Government of Canada***, and other relevant government policies and commitments.**

The core components of the federal review are the federal environmental regulations affecting mining (e.g., matters related to the *Canadian Environmental Assessment Act***, the** *Fisheries Act***, the** *Navigable Waters Protection Act***, the Metal Mining Liquid Effluent Regulations (MMLERs), and related decision-making processes).**

Other federal regulatory frameworks were considered within the appropriate provincial and territorial reviews. Regulations that fall under this category include the *Atomic Energy Control Act* **under the Atomic Energy Control Board, which regulates uranium mines in Saskatchewan, and the regulation of activities related to mining north of 60° N.**

The federal review is based on the results of a Canada-wide consultation process that took place on the internet from January 19 to February 20, 1998. This virtual workshop outlined the federal review process and documented case histories of mining projects that were submitted to the federal environmental assessment and permitting processes. Participants, through access to the web site or by facsimile, provided information and comments on the regulatory and decision-making processes relevant to the case histories. This broad consultation process involved some 130 participants from all interested stakeholder groups across Canada, including remote areas of the country.

After closure of the virtual workshop, a multi-stakeholder group convened to prepare a draft report on the federal review. Representatives from federal and provincial government agencies, environmental organizations, Aboriginal groups and industry participated in the retreat that took place at a facility in Cantley, Quebec, from February 24 to 27, 1998. Participants in the retreat discussed the results of the virtual workshop and prepared, based on their personal experience and knowledge, a draft report on comments and observations related to the four federal acts and regulations covered by the federal review. The text of this report follows, verbatim, as requested by the Cantley Retreat participants who indicated their wish that this draft

report serve as the basis for discussion at the multi-stakeholder National Workshop on Environmental Regulations Affecting the Mining Sector that was held in Toronto in early April 1998.

This report also includes a progress report on the reform of federal environmental regulations affecting the mining sector, which has been prepared by NRCan in cooperation with appropriate regulatory departments.

3. Report from the Cantley Retreat

This section reproduces, verbatim, a report that was prepared to document the outcome of a multi-stakeholder retreat that was held in Cantley, Quebec, from February 24 to 27, 1998. The report is based on participants' experience and knowledge and does not represent the official position of their respective organizations, nor should it be considered an expression of official views of the Government of Canada.

The intent of the Cantley Retreat participants was, when preparing their report, to provide information and elicit discussion. At their request, the Cantley Retreat Report served as the basis for discussion at the multi-stakeholder National Workshop on Environmental Regulations Affecting the Mining Sector that was held in Toronto on April 8 and 9, 1998.

CANTLEY RETREATPARTICIPANTS

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Paula Caldwell, Environment Canada
Jim Clarke, Canadian Environmental Assessment Agency
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3.1 COMMENTS OR OBSERVATIONS RELATED TO THE *CANADIAN ENVIRONMENTAL ASSESSMENT ACT* (CEAA)

Predictability of Process

Interpretations of *Fisheries Act* triggers can introduce uncertainty to the initial scope of the environmental assessment (EA). *Fisheries Act* authorizations and permits result in the EA being triggered too late in the project review process to allow for coordinated planning.

Option:
- **Make the *Fisheries Act* a more predictable trigger through changes to the policy, the procedures or the legislation.**

In the absence of other triggers, community concerns may be sufficient to warrant a CEAA review.

Option:
- **Consider using the discretionary mechanism within the CEAA (Section 28) to trigger a panel review where there is a sufficient public concern.**

There is uncertainty about the potential scope of an EA and, in particular, concern about unclear requirements for cumulative effects assessment.

Options:
- **Incorporate results from scoping-related court decisions into guidelines for Responsible Authorities (RAs) and participants.**
- **Apply new CEAA Practitioners' Guide on cumulative effects assessment.**

Where land claims are in process or have been settled without completion of regulatory regimes, all participants in EA processes face greater uncertainty and complications.

Options:
- **Promote early communication between proponent and Aboriginal people.**
- **Consider the use of Memoranda of Understanding (MOU)/Accords to ensure meaningful participation and improved certainty of process.**
- **As appropriate, implement clear nation-to-nation or company-to-community interim measures (Wahnapitae Agreement in Sudbury).**

There is a lack of clarity around the different responsibilities and requirements under EA and the subsequent permitting phase.

Options:
- **Obtain input from stakeholders in preparing Terms of References (TOR) and clearly define and communicate the requirements under TOR for the EA and permitting processes.**
- **Ensure agencies, stakeholders and others involved in the permitting phase are linked to EA processes in order to provide for continuity and coordination of implementation of EA conditions of approval.**
- **Establish the appropriate level of technical detail required for EAs that will foster effective evaluation, planning and assessment prior to proceeding to the permitting phase.**

Uncertain or unduly extended timelines can create unnecessary delays and increased costs. Arbitrarily short timelines, on the other hand, can compromise the

thoroughness of the process. The differences in the complexity of technical, social and environmental issues among different projects require varying commitments of time and resources. Due to fiscal constraints, the necessary resources are not always available for government to respond efficiently and effectively.

Options:

- **Establish an approach to timelines that adequately reflects the complexity of the project and concerns.**
- **All participants in the EA process should outline time requirements as early as possible in the process.**
- **Assign adequate resources for government to respond effectively to the EA requirements within the timelines identified.**
- **Explore and initiate alternate approaches for funding where insufficient resources exist to complete assessments in a timely manner (e.g., financial bonding, tax incentives, future revenue claw-backs).**

Process Coordination and Integration

Mining is, for the most part, a provincially regulated activity, but federal statutes are often invoked. A lack of coordination between jurisdictions can create situations where either gaps or overlaps can occur, resulting in costs to the proponent, participants and the environment.

Options:

- **Coordinate the tasks and requirements associated with the federal and provincial/territorial approval processes.**
- **Within an integrated process, the responsible agency should be determined on the basis of authority, resources and expertise.**

A *Canada-Wide Accord on Environmental Harmonization* **has been signed but not implemented.**

Options:

- **Encourage performance-oriented bilateral agreements in a timely fashion where capacity and resources exist to meet regulatory objectives.**
- **Clear criteria for effectiveness and efficiency to implement bilateral agreements should be established to ensure appropriate checks and balances.**
- **Information should be made available to assist new regulatory bodies established under claims legislation to realize the benefits of adopting an integrated approach to EAs.**

Meaningful Participation

Aboriginal people are more than stakeholders. They have a usufructuary right to lands and therefore must have an ongoing role in decision-making concerning land-use issues, etc.

Options:

- **In the absence of a land claim agreement, measures such as an MOU/Accord can ensure meaningful participation (e.g., Voisey's Bay) and greater certainty of process.**
- **Round Table approaches can be useful in addressing the concerns of Aboriginal and other groups regarding regulatory issues in mining (e.g., Cree-Canada Round Table).**

Insufficient time, resources and information flow, combined with inadequate involvement in the early stages of an EA, are barriers to fair and effective participation.

Options:
- **An adequate information flow and opportunities to participate should be available throughout the entire EA process.**
- **Improved awareness and access to intervenor funding should be provided sufficiently in advance of the intervention deadlines.**
- **Priority should be given to those most directly affected by, and/or closest to, the project.**
- **Consideration should be given to the educational, technological and cultural differences among participants.**
- **Enviroment Canada and the Agency, together with the Canadian Council of Ministers of the Environment (CCME), are in the process of developing an annex to the** *Canada-Wide Accord on Environmental Harmonization* **that will include engaging in meaningful public participation and involvement with Aboriginal groups.**

Availability of Relevant Information

Existing information relevant to EAs is often dispersed among different companies, agencies and institutions. For a variety of reasons, including incompatibility, confidentiality and cost, valuable data sets may be difficult to access and analyze for EAs.

Options:
- **Relevant information should be placed into metadata directories.**
- **Access to internet-based directories, databases and linkages between information sources should be developed and improved.**
- **Useful historical information and case studies, be it in electronic form (e.g., CEAA CD-Rom) or traditional formats, should be archived and made available.**
- **There should be better distribution of practitioners' guidelines.**

Gaps in baseline environmental, social and economic information, including Traditional Ecological Knowledge (TEK), required for EAs can lead to delays and costs. Inadequate baseline information can create problems in both EA and monitoring.

Options:
- **Clarify responsibilities for the collection and maintenance of information.**
- **Coordinate government-maintained databases.**
- **Encourage consistency of information collection, storage and access standards.**

Legal recognition has been given to oral testimony (traditional knowledge) as being valid in the decision-making process. In the Delgamuukw court decision, oral traditional knowledge was given equal weight to scientific knowledge.

Options:
- **Establish guidelines on how to use TEK.**
- **Provide resources for departments to contract Aboriginal communities to describe and outline how TEK can be used in EAs.**
- **Dialogue with communities about the impacts and benefits associated with a mine.**

Concerns have been raised regarding the technical rigour in EA. Without sufficient quantity and quality of technical information, the effectiveness of both risk assessment and mitigation measures will be compromised.

Options:

- **Establish and communicate clear standards for technical analysis (e.g., B.C. Acid Mining Drainage Guidelines).**
- **Establish quality-control mechanisms for technical information used in EA decision-making.**
- **When dealing with issues of scientific uncertainty, the precautionary principle as defined in the** *Whitehorse Mining Initiative (WMI) Leadership Council Accord* **should be applied.**

Cost of Decision-Making

Decision-makers should create mechanisms that enable all stakeholders to participate fully, efficiently, effectively and equitably in land-use decision-making processes. Industry is concerned about the "open cheque book" approach to cost recovery.

Options:

- **Proponent should only pay for project-specific information, and not for information required for regional land-use decision-making or general baseline data collection.**
- **Costs to participate should be outlined at the outset.**
- **Intervenors should prepare proposals documenting their cost to participate.**
- **The Agency should conduct a systematic program to look at the EA cost and benefits for a variety of case studies (above program will go into the five-year review).**
- **Efforts should be made to anticipate regional information requirements and to address this need in advance of project assessments wherever possible.**
- **In cases where the proponent collects information considered to be a public good, consideration should be given to some form of recognition or remuneration.**

Accountability

Following EA approval, there is often insufficient monitoring, evaluation or compliance with established EA conditions. Without adequate follow-up systems, valuable feedback will not be available to evaluate the success of the EA process and associated mitigation measures to improve future project assessments.

Options:

- **Establish mechanisms for follow-up, monitoring and research to evaluate the effectiveness of prescribed protection, mitigation and/or compensation measures.**
- **Refine future EAs based on systematic feedback from monitoring and evaluation.**
- **Protect EA process integrity through improved enforcement of conditions associated with project approval.**
- **Take advantage of partnership opportunities associated with project development to test the effectiveness of avoidance and mitigation measures.**

Aboriginal communities are often not reported to on the status of the environment and are not involved in monitoring and enforcing compliance.

Option:

- **Aboriginal communities should be reported to by the Government throughout the process, from exploration to mine closure (e.g., Environmental Quality Committees in Northern Saskatchewan).**

In some cases, as a result of insufficient resources for monitoring and enforcement, environmental protection measures established through the EA process are not being realized. These situations contribute to increased liability and erosion of public confidence.

Options:

- **Ensure that regulatory bodies develop or have access to the appropriate resources and appropriate expertise. This should include knowledge of local Aboriginal customs and traditions.**
- **Establish and maintain monitoring and enforcement capability (e.g., technological support and training).**

3.2 COMMENTS OR OBSERVATIONS RELATED TO THE *FISHERIES ACT* (SUB-SECTION 35(2)) AND THE *NAVIGABLE WATERS PROTECTION ACT* (NWPA)

Predictability of Process

There is a lack of consistent standards and criteria (i.e., technical guidelines).

Options:

- **Develop national standards/guidelines to provide consistency of approach for activities related to the *Fisheries Act* and the NWPA (e.g., stream crossings, roads, pipelines, etc.).**
- **These standards/guidelines should cover all stages of mineral development, including exploration (e.g., standards for drilling on ice).**
- **They should take into account regional settings or specific species.**
- **Standards should also be provided for the types of information that are needed to meet the requirement of the guidelines (what a company might need to meet the requirements (impact on fish habitat, etc.)). Such an approach would provide the proponent with more certain means of planning and conducting its operation without causing harmful alteration to fish habitat and navigable water.**
- **Relevant guidelines, developed in consultation with other industries (for example, for the construction of pipelines and forestry roads), relevant agencies, organizations and stakeholders should be made available as reference material (it could, for example, be cross-linked with regional baseline information databases).**

There is uncertainty with respect to triggering the CEAA.

Options:

- **Certainty must be provided to the proponent when harmful alteration is likely to occur, and an authorization should be required to avoid the problem associated with triggering the CEAA late in the project review process.**
- **It is desirable at an early stage for proponents to know if their proposal will trigger the CEAA so that they can plan for a process that integrates the work required for an authorization and an EA.**

- **The NWPA, or its related regulations, does not include a clear definition of "navigability." This leaves room for interpretation and inconsistency in its implementation. The Government should amend these statutes to define the term "navigability" in order to increase regulatory certainty.**

There is inconsistent application of DFO's *Policy for the Management of Fish Habitat* (including the No Net Loss Guidelines (Kemess South, BHP, etc.).

Options:
- **DFO should provide guidelines to ensure that its policy on mitigation and compensation under the *Fisheries Act* is applied in a consistent, predictable and transparent manner nation wide.**
- **There should also be certainty of requirements and process associated with the review and approval of Habitat Compensation Agreements, including the type of compensation that would be acceptable.**
- **Issues surrounding the concept and definition of "critical habitat" need to be clarified. DFO is reviewing its *Habitat Conservation and Protection Guidelines* (e.g., to focus on the identification and protection of critical species and their critical habitat as opposed to the current focus of protecting all species and their habitat).**

Process Coordination and Integration

Roles and responsibilities should be clearly defined.

Options:
- **Responsibilities should be clearly defined and rest with the "best situated" jurisdiction which, in part, means that it must have the capacity to fulfil these responsibilities. Roles and responsibilities may vary from jurisdiction to jurisdiction and be assumed by a province, a territory, the federal government, or another governing body.**
- **Service delivery standards, including timelines for responding to requests, should be provided (for administrative processes and provision of professional advice).**
- **The amount of time needed to make a decision should reflect the complexity of the problem being considered (for example, decisions required on a minor matter should be made expediently, or the proponent should be given a reason why the decision has been inordinately delayed).**
- **The responsibility for undertaking (or managing) the various roles may differ (e.g., databases or habitat management). Even though there might be many agencies involved, their efforts should be coordinated.**

Availability of Relevant Information

There is a need for regional baseline information.

Options:
- **In order to improve the effectiveness and efficiency of EAs, all interested parties should have access to relevant environmental and other information. Currently, information may be collected and held by a variety of government agencies and others. There is a need to determine what information exists and how it can be accessed. In order to have access to information from various sources, it is necessary to compile and maintain an inventory of existing information and databases.**
- **Information should be spatially referenced (designed for GIS application). It may be provided by industry and/or governments and/or non-governmental**

organizations, and should be adequate in order to make the necessary decisions. It should be scientifically based and include traditional knowledge where appropriate. One valuable source of information should be the feedback from ongoing monitoring activities.

- **The appropriate regulatory agencies will be responsible for defining the information requirements (for example, the Valued Ecosystems Components (VECs)) for the databases.**
- **In order to encourage the early compilation of comprehensive data, it is recommended that information derived from environmental baseline studies be accepted as part of the required assessment work obligations (i.e., submitted for credit) under the appropriate legislation in the provinces and territories.**

Accountability

There is a lack of accountability.

Options:

- **There is a need to enhance the accountability of regulatory agencies and companies by providing a feedback mechanism to take into account the results of past decisions when making future decisions.**
- **Mitigation measures identified in** *Fisheries Act* **authorizations should be monitored and evaluated to determine whether or not these measures are achieving their objectives.**
- **There should be an appropriate appeal mechanism when** *Fisheries Act* **authorizations are refused or granted. By providing such a mechanism that could allow for a review, the accountability of officials, proponents and ministers would be enhanced.**

3.3 COMMENTS OR OBSERVATIONS RELATED TO THE METAL MINING LIQUID EFFLUENT REGULATIONS (MMLERs)

A basis for a cooperative national environmental protection framework regarding mine effluents has been developed but has not been fully implemented.

Options:

- **Encourage the Government to implement the Assessment of the Aquatic Effects of Mining in Canada (AQUAMIN) recommendations in a timely manner, having regard to the results of the Aquatic Effects Technology Evaluation (AETE) program, the** *Canada-Wide Accord on Environmental Harmonization***, and relevant sub-agreements.**
- **Responsibilities for delivery should be clearly defined and assigned to the agency "best situated" to discharge them through an administrative, equivalency or other agreement.**

3.4 OTHER ISSUES RAISED BY PARTICIPANTS

The retreat focused on federal regulatory frameworks with national applications. Other federal regulatory frameworks are important elements of the overall framework and were considered within the appropriate provincial and territorial review. The Atomic Energy Control Board regulates uranium mines under the *Atomic Energy Control Act* **and has a major role in Saskatchewan, while the Department of Indian Affairs and Northern Development regulates activities related to mining north of 60° N under the authority of several statutes and has the lead on negotiation of**

Aboriginal land claims and maintenance of existing treaties. Those federal frameworks were considered in examining the interaction between federal, provincial/territorial and other requirements in the review for Saskatchewan, the Yukon and the Northwest Territories.

Although these other federal frameworks were not considered by the retreat, participants underscored their importance and identified a need to incorporate relevant findings or conclusions from provincial and territorial reviews into the report of the overall federal review.

4. Progress Report on the Reform of Federal Environmental Regulations Affecting Mining in Canada

This progress report has been prepared by NRCan, in collaboration with appropriate regulatory departments, to document progress made by the federal government towards regulatory efficiency and effectiveness.

Early in the last mandate, *Creating Opportunity* **committed the federal government to work with the provinces and territories to provide a favourable investment climate for jobs and economic growth while protecting the environment. This commitment was reiterated in** *Securing Our Future Together***, in which the federal government stated its intention to build on the progress achieved and the solid foundations put in place over the last four years to strengthen the economy. Regulatory reform is part of this foundation as the federal government is committed to ongoing efforts to improve the efficiency of the regulatory process while maintaining or improving its effectiveness in meeting environmental protection objectives.**

The federal government works in partnership with provincial and territorial governments, industry, Aboriginal people, the environmental community and others to improve regulatory efficiency. *The Minerals and Metals Policy of the Government of Canada: Partnerships for Sustainable Development* **was revised to describe, within areas of federal jurisdiction, the Government's role, objectives and strategies for the sustainable development of Canada's mineral and metal resources. It also gives more consideration to the social and environmental impacts of proposed mines, rather than focussing solely on their economic impacts.**

The Government's efforts towards regulatory efficiency were guided by the work of the Standing Committee on Natural Resources that, in its interim and final reports on streamlining environmental regulation for mining, provided a number of recommendations to improve the federal environmental regulatory regime affecting this industry. In response, the federal government identified some 50 initiatives (Appendix 1) designed to respond to these recommendations.

Of the 50 commitments identified in the Government's responses to the recommendations of the Standing Committee, 31 (62%) have been implemented, and progress has been made on another 16 (32%), for a total of 94%. Action on the remaining 3 commitments has either been delayed or postponed. A year after the signing of the Government's response to the final report of the Standing Committee, 47 (94%) of the Government's commitments have been, or are in the process of being, implemented.

Progress made in relation to the federal acts and regulations covered by the federal-provincial-territorial review, i.e., the *Canadian Environmental Assessment Act***, the** *Fisheries Act***, the** *Navigable Waters Protection Act* **and the Metal Mining Liquid Effluent Regulations, are described here in more detail for the purpose of reporting on the federal component of the federal-provincial-territorial review.**

4.1 THE *CANADIAN ENVIRONMENTAL ASSESSMENT ACT* (CEAA)

In the area of environmental assessment, both levels of government have developed regulations to meet their respective regulatory responsibilities. Provinces have developed their own legislation where environmental assessment is the responsibility of the provincial ministry of the environment and is subject to strict timelines. The federal government has established the *Environmental Assessment and Review Process Guidelines Order* **(EARPGO) to assess the environmental impacts of projects for which it has a decision-making responsibility. EARPGO was replaced, in January 1995, by the CEAA.**

The number of federal departments that will eventually be involved in an environmental assessment (EA) depends on the scope and nature of the project. While for a simple project assessed at the screening level there is usually only one federal department involved, for projects triggering the CEAA at the comprehensive study or panel review level more than one federal department could be involved. The responsibility to lead the EA process may rest with any federal regulatory department. In addition, under EARPGO, and initially under the CEAA, federal departments were not subject to any timelines for the EA process.

Provincial and federal EAs were conducted in an independent manner. In addition, proponents of mining projects would sometimes apply for relevant federal permitting or authorization late in the development process. As a result, mining projects could be submitted to two different and out-of-phase EAs, with the federal one usually lagging behind the provincial one.

There was a need to improve the EA process and to coordinate activities between governments. The CEAA was proclaimed in January 1995 to eliminate the uncertainty associated with EARPGO. It addresses some of the problems associated with duplication of regulatory activities by allowing for the harmonization of EA processes where a provincial process already exists. In addition, the federal government is developing regulations, procedures and guidelines to complement the CEAA and to ensure a more efficient and predictable EA process.

One of these enhancements is the Federal Coordination Regulation (FCR), promulgated in April 1997, to ensure that EAs are efficiently coordinated when two or more federal authorities are involved. It introduces timelines to the federal EA process, thus providing private sector proponents with certainty on the timing of federal determinations. The FCR also facilitates the harmonization of the federal and provincial EA processes.

In addition, in order to ensure that regulatory authorities and project proponents have access to relevant information on the federal regulatory requirements, the Canadian Environmental Assessment Agency (the Agency), in collaboration with Environment Canada and NRCan, is preparing a suite of guides to help proponents with the federal EA process for mining projects. A first guide, entitled *Guide to Information Requirements for Federal Environmental Assessment of Mining Projects in Canada,* **has been released as a test version. Guides to the environmental assessment of coal mine projects and gold and base-metal mine projects are being developed. The Agency also released, for public consultation,** *A Cumulative Effects Assessment Practitioners Guide,* **which is designed to clarify the requirements of the CEAA with respect to cumulative impact assessments.**

Another enhancement to the CEAA is the development of *Procedures for an Assessment by a Review Panel***, which were tabled on November 25, 1997. The procedures improve**

the efficiency of the federal panel review process by establishing mandatory timelines, the most important of which is the 396-day period for the review of a project from referral to the submission of the final report. The total duration of the process could extend to the maximum of 441 days should the panel require additional information from the proponent on which to base public hearings.

With respect to federal-provincial harmonization, a significant enhancement is the recently signed CCME *Canada-Wide Accord on Environmental Harmonization*. **The environment ministers of Canada, nine provinces, and the territories signed this agreement and three sub-agreements (on environmental assessment, inspection activities and standards) on January 29, 1998. Prior to the signing of the multilateral agreement and sub-agreements, bilateral agreements on environmental assessment had been concluded with Alberta (1993), Manitoba (1994) and British Columbia (1997). In addition, where bilateral agreements to cooperate on environmental assessment do not yet exist, the federal government is committed to developing project-specific agreements so that there will be a single coordinated and comprehensive environmental review of a proposed development project.**

Multilateral and project-specific agreements ensure an efficient coordination between relevant government agencies. To further improve process efficiency, the Standing Committee on Natural Resources recommended in 1995 that, for large-scale mining projects, NRCan be designated as the agency responsible for anticipating EAs and coordinating the participation of all federal authorities in the process in a timely and efficient manner. NRCan has assumed this responsibility for major mining projects south of 60° N, such as the proposed Voisey's Bay project in Newfoundland-Labrador and the Cheviot coal project in Alberta. The Department of Indian Affairs and Northern Development has this responsibility for mining projects north of 60° N.

In addition, NRCan, in collaboration with responsible federal agencies, is monitoring all significant mineral development projects that are going through the federal regulatory system. This monitoring activity will be used to evaluate the impacts of regulatory reform on development projects, identify regulatory problems, and develop and implement action plans to rapidly address these problems as they are identified. This information will also be used as background information for the planned five-year review of the CEAA.

4.2 ADMINISTRATION OF THE *FISHERIES ACT*

Authorizations issued under sub-section 35(2) of the *Fisheries Act* **can trigger a federal EA process under the CEAA. These authorizations are issued by DFO in situations where harmful alteration of fish habitat cannot be avoided through project relocation, redesign or mitigation. In cases where harm to fish habitat cannot be avoided, compensation for this damage is normally provided, possibly by creating new habitat elsewhere, in order to satisfy the no net loss principle of DFO's** *Policy for the Management of Fish Habitat.*

Sections 35 and 36 of the *Fisheries Act* **are intended to provide for the protection of fishes and their habitat. Section 35(1) provides a prohibition against any "work or undertaking" that could result in the harmful alteration, disruption or destruction of fish habitat, defined to include all parts of the environment "on which fish depend, directly or indirectly, in order to carry out their life processes." Sub-section 35(2) provides for an exemption to this prohibition, according to conditions agreed to by the Minister. Section 36 makes it an offence to deposit any "deleterious substance of any type in water frequented by fish" or anywhere else if that substance may find its way**

into such water, except according to regulations under the *Fisheries Act* or other federal regulations. Because of its broad scope, the fact that Section 35 of the *Fisheries Act* is, since January 19, 1995, a trigger under the CEAA has led to EAs for a large number of projects.

The Standing Committee identified areas for improving the administration and application of the *Fisheries Act*. The federal government, in its responses to the Committee's recommendations, identified the following initiatives to address its concerns:

- **Reviewing DFO's policies on habitat compensation to ensure consistent application of the "no net loss" principle;**
- **Working with the mining industry and other stakeholders to ensure a better understanding of how the *Policy for the Management of Fish Habitat* applies to mineral development projects, as well as developing new mechanisms for improving the efficiency and certainty of the process (e.g., service standards, guidelines for codes of best practice); and**
- **In consultation with stakeholders, developing proposals to formalize and clarify fish habitat management arrangements with inland provinces.**

DFO is reviewing its *Policy for the Management of Fish Habitat* as an integral component of its Sustainable Development Strategy, which is being developed in response to the recent amendments to the *Auditor General Act*. DFO has consulted with stakeholders to identify issues that should be addressed in its Sustainable Development Strategy, and is including a review of the Policy as part of its consultations.

DFO held a workshop to consult on habitat delegation with stakeholders, including the mining industry, in November 1996. *Science Services Standards* was released in 1997. DFO is also reviewing its *Habitat Conservation and Protection Guidelines* and is preparing a *Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption and Destruction of Fish Habitat*.

Amendments to the *Fisheries Act* (Bill C-62), tabled on October 3, 1996, would have provided the authority to delegate fish habitat management responsibilities to inland provinces. Bill C-62 died on the Order Paper in May 1997.

4.3 ADMINISTRATION OF THE *NAVIGABLE WATERS PROTECTION ACT* (NWPA)

Another statute that triggers the CEAA is the NWPA, which requires federal government approval prior to the construction of any type of work in, under, over or through a navigable body of salt or fresh water.

The NWPA, or its related regulations, do not include a clear definition of "navigability," thus leaving room for interpretation and regional inconsistency in its implementation. The Government is amending the NWPA to define the term "navigability" in order to increase regulatory certainty and reduce delays for mining projects.

The modernization of the NWPA focuses on three main aspects: defining the geographic scope of the Act and providing a clearer definition of "navigability"; reviewing the applicability of the Act and harmonizing it with other federal legislation; and developing a cost-recovery mechanism for services provided by NWPA officers.

4.4 METAL MINING LIQUID EFFLUENT REGULATIONS (MMLERs)

Federal, provincial and territorial governments have developed regulations and mechanisms for monitoring and reporting on the state of the environment. This has led to some duplication of regulatory activities between these two levels of government. The federal MMLERs, under the *Fisheries Act,* **were promulgated in 1977 and control the quality of liquid effluents being discharged into waters frequented by fish. The MMLERs are regarded as national baseline standards that apply across Canada as minimum requirements. The provinces and territories may now have their own regulations that may be more stringent and comprehensive than the MMLERs for the management of water. Environment Canada periodically reports on the rate of compliance of mining effluents with the MMLERs.**

There may be enforcement and reporting requirements from the two levels of government, and industries may be subjected to inspections by inspectors under the authority and legislation of federal and provincial agencies. In some situations, this may impose a burden on the industry. There are opportunities to harmonize environmental inspection, monitoring and reporting activities.

The federal government is committed to modernizing the MMLERs. In preparation for this revision, Environment Canada launched the multi-stakeholder AQUAMIN program to evaluate the effectiveness of the current regulations, to assess the impacts of mining on aquatic ecosystems in Canada, and to recommend amendments to the MMLERs.

Federal, provincial and territorial governments, The Mining Association of Canada, Aboriginal organizations and environmental non-governmental organizations participated in the AQUAMIN program. Their report, *The Assessment of the Aquatic Effects of Mining in Canada,* **was released in October 1996. It includes consensus recommendations for the modernization of the MMLERs to ensure a consistent level of effluent quality at Canadian mines; the inclusion of gold mines that use cyanide, and base-metal mines older than 1977; the development of an Environmental Effects Monitoring (EEM) program; and effluent toxicity testing requirements.**

The Government is committed to updating and applying the MMLERs within the context of the *Canada-Wide Accord on Environmental Harmonization* **and related sub-agreements. The sub-agreement on Canada-wide standards offers the prospect of a consistent level of environmental protection across Canada, and the sub-agreement on environmental inspections provides an umbrella framework for a single-window approach to environmental inspections. Environmental management may be rationalized through these two sub-agreements, ensuring common environmental protection objectives while streamlining monitoring and reporting activities.**

The process that will lead to revised MMLERs has begun and will be completed by mid-1999. A multi-stakeholder advisory group and expert working groups will provide strategic advice to ensure that the amended MMLERs and EEM program reflect the AQUAMIN recommendations, respect stakeholders' consensus, and are consistent with the spirit of the Canada-Wide Accord.

5. Conclusion

The federal-provincial-territorial review is an unprecedented opportunity to document concerns associated with the interaction of federal and provincial environmental regulations, and to consider solutions that take advantage, in a cooperative and innovative way, of the complementarity of both levels of government.

The review has the potential, through renewed partnerships, to improve regulatory efficiency while protecting the environment as both levels of government are determined to continue to provide an attractive investment climate for Canada's natural resource industries. This common objective is particularly important for mining and environmental protection and conservation, which are areas where the two senior levels of government have interrelated regulatory responsibilities.

The review also offers the opportunity to contribute to the efforts of the Canadian Council of Ministers of the Environment to develop and implement consistent environmental measures in all jurisdictions.

Appendix 1

Status Report on the Commitments Identified in the Government's Responses to the Recommendations of the Standing Committee on Natural Resources

D(F): Delivered (finite commitment) P: In progress
D(O): Delivered (ongoing commitment) De: Delayed

Regulatory Reform Commitment	Initiative	Status
GENERAL PRINCIPLES AND APPROACHES		
1. Strengthen partnership with provinces on environmental management.	The *Canada-Wide Accord on Environmental Harmonization* (the Canada-Wide Accord) was signed by the Canadian Council of Ministers of the Environment (CCME) on January 29, 1998.	D(F)
2. Improve the administration of environmental regulatory regimes.	Sub-agreements on environmental assessment, national standards and environmental inspections were signed on January 29, 1998.	D(F)
3. Identify and focus regulatory reform efforts on real regulatory problems and ensure that requirements are clear, predictable and efficient.	*The Minerals and Metals Policy of the Government of Canada: Partnerships for Sustainable Development,* published in November 1996, defines the Government's role, policy and strategy for regulatory efficiency for the mining sector.	D(O)
REGULATORY PROCESS COORDINATION, MANAGEMENT AND MONITORING		
4. Prepare a comprehensive progress report on the reform of environmental regulations affecting mining.	The present progress report has been prepared in collaboration with appropriate federal regulatory departments. Further progress reports on regulatory reform for mining will be prepared as warranted.	D(F)
5. Ensure that departmental responsibilities pursuant to the Government's Regulatory Process Management Standards are met by December 31, 1997.	The Treasury Board Secretariat published a Guide to the Standards in November 1996. Regulatory authorities are establishing the necessary systems.	P
6. Develop a schedule to review and report on compliance with the Management Standards.	Environment Canada (EC) and DFO will conduct an internal review and provide a copy of the report to the President of the Treasury Board by the end of 1999. A status report was prepared in March 1998.	P
7. NRCan will assume the role of project facilitator for major mining projects south of 60° N.	NRCan officials have assumed this role with the Voisey's Bay project in Newfoundland-Labrador and the Cheviot coal project in Alberta.	D(O)

8. Table, by April 1997, *The Federal Government's Response to the Final Report of the Standing Committee on Natural Resources: Streamlining Environmental Regulation for Mining.*	The Minister of NRCan tabled the Government's response to the Committee's Final Report on March 7, 1997.	D(F)
9. Establish a grandfathering provision to allow projects to continue to be assessed under an environmental regulatory regime (where regulatory changes would have a significant impact on the investment that has been made by the proponent).	Projects submitted for environmental assessment under EARPGO remained under this regime after the coming into force of the CEAA in January 1995.	D(O)
10. The Government will monitor its performance related to issuing federal permits and will make recommendations for improvement in the event that approvals take more than six months.	NRCan, in cooperation with relevant regulatory departments, is monitoring mining projects going through the federal preproduction and permitting process.	D(O)
11. The Government is committed to pursuing partnerships with the provinces, territories and others in addressing issues within its jurisdiction.	The federal government is working with its provincial and territorial partners, through the CCME, to harmonize environmental management regimes. Mines ministers launched, in 1997, a federal-provincial-territorial review of environmental regulations affecting the mining industry. The CCME and responsible ministers will be involved in the process.	D(O)
12. NRCan will regularly report, in consultation with appropriate regulatory departments, on progress on regulatory reform for mining. The reports will evaluate the impact of regulatory reform and identify any additional reforms that may be needed.	NRCan coordinated the preparation of *Regulatory Reform and the Canadian Minerals and Metals Industry*, a federal, provincial and territorial cooperative report that was tabled at the July 1997 MMC. NRCan coordinated the preparation of the *Report on a Federally Coordinated Review of Federal Environmental Regulations Affecting Mining in Canada*. NRCan is preparing a report on the multi-stakeholder National Workshop on Environmental Regulations Affecting the Mining Sector held in Toronto April 8 and 9, 1998, in collaboration with workshop participants. NRCan is coordinating the preparation of the Overview Report for presentation at the July 1998 MMC.	D(O)
LAND-USE DECISION-MAKING		
13. Federal regulatory agencies and the mining industry will establish mechanisms for discussing pressing regulatory concerns and achieving efficient and effective solutions related to land use.	Formal mechanisms have been established, including: - *Endangered Species Conservation Task Force;* - *Northwest Territories (N.W.T.) Protected Areas Strategy; and* - *Wildlife Conservation in Resource Development Initiative.*	D(O)

ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS		
14. Federal regulatory agencies and the mining industry will establish mechanisms for discussing pressing regulatory concerns and arriving at efficient and effective solutions related to environmental assessment.	Federal agencies and The Mining Association of Canada (MAC) are members of the multi-stakeholder Regulatory Advisory Committee (RAC) that advises on regulatory initiatives.	D(O)
15. Promulgate the Federal Coordination Regulation by the end of 1996.	The Federal Coordination Regulation came into effect on April 8, 1997. A Guide for the Regulation was completed in July 1997.	D(F)
16. Introduce procedures, in guidelines or regulation, for improving the panel review process.	Ministerial Guidelines for Panel Review Procedures were tabled on November 25, 1997.	D(F)
17. Develop procedures for comprehensive studies.	*A Guide to the Preparation of a Comprehensive Study for Proponents and Responsible Authorities* was released in December 1997.	D(F)
18. Strive to ensure that Responsible Authorities are informed of any decision by the Minister of the Environment within 60 days of submission of comprehensive study reports to the Agency.	Three comprehensive studies have been completed in the mining sector (Musselwhite, Huckleberry and Kemess South). The 60-day standard was met for these three undertakings.	D(O)
19. Develop generic guidelines for preparing comprehensive study reports and environmental impact statements for the mining sector.	A test version of *Guide to Information Requirements for Federal Environmental Assessment of Mining Projects in Canada* was released on February 16, 1998.	D(F)
20. Cooperate with The Mining Association of Canada to develop a better understanding of the application and the requirements of cumulative effects assessment (CEA) for mineral development projects.	NRCan, in cooperation with EC, the Agency and industry, will test the applicability of the *Cumulative Effects Assessment Practitioners Guide* to mineral development projects and identify policy issues that might be affecting cumulative effects assessment.	D(O)
21. Develop a Manual on Best Methods Practice and a Manual for Decision-Makers for cumulative environmental assessment.	A *Cumulative Effects Assessment Practitioners Guide* was released for public consultation.	D(F)
22. Collect and make available case studies that illustrate the practice of cumulative effects assessment.	Information for ongoing and recent assessments is being collected.	D(O)
23. The Government will accelerate its efforts to negotiate bilateral agreements on environmental assessment with all provinces.	Bilateral agreements were signed with Alberta in 1993 and with Manitoba in 1995. The *Canada-British Columbia Agreement for Environmental Assessment Cooperation* was signed on April 21, 1997. Negotiations with other provinces will be actively pursued.	P

24. Where bilateral agreements do not exist, the federal government will work with the provinces to develop project-specific agreements to avoid any duplication in environmental assessment.	Federal and provincial governments signed project-specific agreements for the Cheviot coal project (Alberta) and for the Voisey Bay's project (Newfoundland and Labrador).	D(O)
25. The ministers of the Environment and Industry will release, in the summer of 1996, a report on the results of the Joint Monitoring Program (JMP) for the first year of implement-ation of the *Canadian Environmental Assessment Act* (CEAA).	The report outlining the results of the JMP was completed and released on December 1997.	D(F)
26. The Government will continue to monitor the application of the CEAA, giving particular attention to the comprehensive study and panel review processes.	The Agency and Industry Canada are developing an Ongoing Monitoring Process (OMP) as follow-up to the Joint Monitoring Program (JMP).	P
27. Information on mining projects collected by NRCan will be made available to the Agency and Industry Canada for use in their monitoring program.	NRCan has developed MINTRACK (the Mineral Development Project Tracking System) to store basic information for all mine proposals that are subject to federal environmental regulations. MINTRACK was made generally available.	D(O)
FISHERIES AUTHORIZATIONS AND APPROVALS		
28. Federal regulatory agencies and the mining industry agree to establish formal mechanisms for discussing pressing regulatory concerns and achieving efficient and effective solutions related to fish habitat.	The Deputy Minister of DFO has met with the President of The Mining Association of Canada to discuss the mining industry's concerns regarding the administration of the habitat protection provisions of the *Fisheries Act*.	P
29. Work with the mining industry to develop information requirements and consultative procedures to enhance the review process where it deals with fish habitat issues.	DFO held a workshop to consult on habitat delegation with stakeholders, including the mining industry, in November 1996.	P
30. DFO will include a review of the *Policy for the Management of Fish Habitat* as part of its consultations on its Sustainable Development Strategy.	DFO released a discussion paper entitled *Towards a Sustainable Development Strategy for the Department of Fisheries and Oceans* for public comment in September 1997. The discussion paper includes a request for comments on the *Policy for the Management of Fish Habitat*	D(F)
31. It is intended that the Fish Habitat Policy recognize and take into account other legitimate users of water resources whose interests may conflict with those of habitat managers.		

32. Provide stakeholders, before the end of 1996, with a draft discussion paper as part of a review of policy issues concerning habitat compensation.	DFO is currently reviewing its *Habitat Conservation and Protection Guidelines* , which will include reference to habitat compensation. Revised guidelines are in preparation. DFO's *Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption and Destruction of Fish Habitat* has been completed.	P
33. DFO will, in early 1997, develop and participate in workshops to promote a better understanding of DFO's policies and programs.		
34. DFO will develop service standards, in consultation with stakeholders, as part of a government-wide program to improve the delivery and efficiency of programs.	*Science Services Standards* was released in 1997.	D(F)
35. Delegation of certain responsibilities for the management of fish habitat to inland provinces.	The Government of Canada tabled amendments to the *Fisheries Act* (Bill C-62) on October 3, 1996. The amendments would have provided the authority to delegate fish habitat management responsibilities to inland provinces. Bill C-62 died on the Order Paper in May 1997.	De
AMENDMENTS TO THE NAVIGABLE WATERS PROTECTION ACT (NWPA)		
36. Amendments to the NWPA.	*A Proposal to Amend the Navigable Waters Protection Act Discussion Paper* is to be released during the summer of 1998.	P
ADMINISTRATION AND REGULATION OF LIQUID EFFLUENTS		
37. EC will announce, before the end of 1996, if any measures to update, strengthen or further harmonize the Metal Mining Liquid Effluent Regulations (MMLERs) are needed.	EC released, during the summer of 1997, an action plan for the revision of the MMLERs.	D(F)
38. The Government will update and apply the MMLERs within the context of the harmonization effort.	According to the implementation plan, the process that will lead to revised MMLERs will be completed by mid-1999.	P
39. The Geological Survey of Canada (NRCan) will accelerate its timetable for the development of its Metals in the Environment (MITE) research program.	Results of the MITE will be provided to the technical and scientific working groups involved in the amendment of the MMLERs.	D(O)
40. The Minister of the Environment will, as a priority, continue discussions on bilateral or multilateral agreements to harmonize the administration of the MMLERs.	The Government is committed to updating the MMLERs within the spirit of the *Canada-Wide Accord on Environmental Harmonization*. Related sub-agreements on standards and inspection will provide a basis for harmonizing the administration of some aspects of the MMLERs.	P

41. Environment ministers are targeting November 1997 as a timeline for setting standards for a first set of priorities, and intend to have related implementation plans developed by May 1998.	Environment ministers have committed to developing Canada-wide standards for six priority substances (particulate matters, ground-level ozone, mercury, benzene, petroleum hydrocarbons, and dioxins and furans). Proposed standards and accompanying implementation plans will be presented to ministers for their approval between fall 1999 and fall 2000.	P
42. In their Harmonization Work Plan, environment ministers have agreed to the development of bilateral implementation agreements on inspections by May 1998.	Environment ministers signed the *Canada-Wide Accord on Environmental Harmonization*, including a sub-agreement on environmental inspections, on January 29, 1998. Officials are discussing additional multilateral aspects of inspections and expect to conduct bilateral negotiations in the near future.	P
TRANSPORTATION OF RECYCLABLE METALS		
43. Work to remove the negative connotation given to recyclable materials associated with the term "waste."	Domestically, the federal government has worked within the CCME to decouple the definition of "recyclable materials" and "wastes" and will be able to implement those changes once the appropriate authority is granted in the new CEPA (*Canadian Environmental Protection Act*) Bill. At the international level, Canada will continue to work within the Organization of Economic Co-operation and Development (OECD) and the Basel Convention to promote the decoupling of the definitions of "recyclable materials" and "wastes."	P
44. Through the CCME, continue to review the definitions of "waste" and "hazard."	The CCME hosted a workshop in December 1996 to explain its proposal to redefine "waste" to exclude recyclable materials.	D(F)
45. Identify recyclable materials that require controls but need not be managed as "waste."	The CCME is considering the appropriateness of exempting materials or classes of materials from chronic Hazard Test (leachate) Requirements. This policy direction, if accepted, would require review, at the federal level, to ensure consistency with Canada's international obligations.	P
46. Remove transboundary restrictions to recyclable metals that do not pose a risk to human health and the environment and whose industrial use is well managed.	In the new CEPA Bill, the Government will be seeking the authority to issue permits that would allow industry to export or import hazardous wastes and recyclable materials, or to move them interprovincially in a manner different than that prescribed in the regulations.	P
47. Continue to work with the provinces and international counterparts to apply to appropriate materials movement and management controls that reflect their risk to human health and the environment.	The federal government will continue to work with its provincial partners within the CCME, and its international partners within the OECD and Basel Convention, to determine the appropriate levels of control necessary for hazardous wastes and hazardous recyclable materials.	D(O)

REGULATORY REGIME ON FEDERAL LANDS		
48. On federal lands north of 60° N, NRCan will support efforts by DIAND to ensure an efficient and effective regulatory regime.	NRCan has supported/is supporting DIAND on: - the draft consultation document on *Mine Reclamation Policy for the Northwest Territories*; - the *Mackenzie Valley Resource Management Act* (Bill C-6 - expected to be signed by October 1998); - amendments to the *Yukon Quartz Mining Act* and to the *Yukon Placer Mining Act;* - draft Mine Development, Production and Reclamation Regulations (MDPRR); - the *Nunavut Water Act*, which died on the Order Paper in May 1997 and will have to be reintroduced; - establishment of the Nunavut Planning Commission in early July 1997; - amendments to the Canada Mining Regulations that were proclaimed on February 18, 1997; and - Northwest Territories Pits and Quarries Regulations and the Mackenzie Valley Pits and Quarries Regulations, which are under development.	D(O)
NON-REGULATORY APPROACHES		
49. Give due consideration to the use of all non-regulatory measures before making any decisions to develop new environmental regulations.	Finding evidence of a problem and identifying and reviewing alternative solutions are the first two steps set out in the Regulatory Process Management Standards. The November 1996 *Minerals and Metals Policy of the Government of Canada* requires that a broad range of non-regulatory approaches be considered as alternatives or complements to regulation prior to making any decisions to develop new regulations.	D(O)
50. Development of standard for environmental assessments at the screening level under the auspices of the Canadian Standards Association (CSA).	A multi-stakeholder committee was formed and held its first meeting in early October 1997.	P