

CANADA-ONTARIO AGREEMENT ON ENVIRONMENTAL ASSESSMENT COOPERATION

PREAMBLE

WHEREAS Canada and Ontario respect each other's constitutional responsibilities;

WHEREAS certain projects in Ontario require an environmental assessment by Canada pursuant to the *Canadian Environmental Assessment Act* and by Ontario pursuant to the Ontario *Environmental Assessment Act*;

WHEREAS the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act* allow for inter-jurisdictional cooperation and coordination in environmental assessment;

WHEREAS Canada and Ontario have subscribed to those principles of cooperation embodied in the *Sub-agreement on environmental assessment* (Sub-agreement) established under the *Canada-wide Accord on Environmental Harmonization* (Accord);

WHEREAS Canada and Ontario agree that a cooperative environmental assessment will be conducted for each project covered by this agreement according to the requirements of their respective authorizing statutes and regulations while avoiding unnecessary duplication, delays and uncertainty that could arise from separate environmental assessments; and

THEREFORE Canada and Ontario agree to implement the provisions in the Sub-agreement through this Agreement on environmental assessment cooperation.

DEFINITIONS

In this Agreement:

“Class environmental assessment document” means a class environmental assessment document prepared under section 14 of the Ontario *Environmental Assessment Act*.

“Class screening report” means a class screening report as declared under section 19 of the *Canadian Environmental Assessment Act*.

“Cooperative environmental assessment” means the environmental assessment of a proposed project where Canada and Ontario have an environmental assessment responsibility, and they cooperate to meet the legal environmental assessment requirements of both Parties through a single environmental assessment process.

“Environmental assessment document” means:

- (a) for Canada, the documentation provided by the proponent in response to the scope of the project, the factors to be considered under section 16 of the *Canadian Environmental Assessment Act*, and the scope of those factors; and
- (b) for Ontario, the document that is submitted by a proponent seeking approval for an undertaking to the Ontario Minister of the Environment for review under the Ontario *Environmental Assessment Act*. The environmental assessment document is the result of the proponent’s entire planning process, including pre-submission consultation.

“Environmental assessment” means the assessment of the environmental effects of a proposed project conducted in accordance with the *Canadian Environmental Assessment Act* or in accordance with the Ontario *Environmental Assessment Act* and their regulations.

“Environmental assessment responsibility” means:

- (a) for Canada, a power, duty or function that is exercised by any person or body under the *Canadian Environmental Assessment Act* that requires a screening, comprehensive study, mediation or review panel under the *Canadian Environmental Assessment Act*; and
- (b) for Ontario, a ministerial decision pursuant to the Ontario *Environmental Assessment Act* that is approved by the Ontario Cabinet.

“Interest” means the environmental management responsibilities of a Party, the exercise of which does not require an environmental assessment responsibility by that Party.

“Joint panel/tribunal” means a public hearing body established by Canada pursuant to the *Canadian Environmental Assessment Act*, and by Ontario under the Ontario *Environmental Assessment Act* and the *Consolidated Hearings Act*, the members of which are appointed by Canada and Ontario.

“Lead Party” means the Party as determined under clause 9 of this Agreement.

“Party” means either Canada or Ontario.

“Project” means a project as defined in subsections 2(1) and 2(3) of the *Canadian Environmental Assessment Act* or an undertaking as defined in subsection 1(1) of the Ontario *Environmental Assessment Act*.

“Responsible authority” has the same meaning as set out in section 2(1) of the *Canadian Environmental Assessment Act*.

“Terms of reference” means:

- (a) for Canada, the scope of the project, the factors to be considered and the scope of the factors as determined under sections 15 and 16 of the *Canadian Environmental Assessment Act* by a responsible authority in the case of a screening or a comprehensive study and by the Minister of the Environment (and in appropriate circumstances by a review panel) in the case of a panel review; and
- (b) for Ontario, the formal document submitted for the Minister's approval early in the environmental assessment process which sets out the workplan to be followed during the production of the environmental assessment document. Once approved, the terms of reference form the framework for the preparation and review of the environmental assessment document. Under subsection 6.1(1) of the Ontario *Environmental Assessment Act*, the environmental assessment must be prepared in accordance with the approved terms of reference.

INTERPRETATION

1. (1) This Agreement:

- (a) creates an administrative framework within which the Parties can cooperatively exercise their respective powers and duties established by the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*;
- (b) is a public document that is to be read and interpreted in a manner consistent with the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*, and all other federal and provincial legal requirements, including, but not limited, to legislative requirements; and
- (c) does not create any new legal powers or duties nor does it alter the powers and duties established by the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act* and is not legally binding on the Parties.

(2) This Agreement recognizes the right of either Party to carry out its legal obligations and confirms the commitment of the Parties to work together in conducting cooperative environmental assessments.

(3) Neither Canada nor Ontario gives up any jurisdiction, right, power, privilege, prerogative or immunity by virtue of this Agreement or any subsidiary agreements resulting therefrom.

SCOPE

2. For Canada, this Agreement applies to any person or body that is required to ensure an environmental assessment is conducted under the *Canadian Environmental Assessment Act* and for Ontario this Agreement applies to any person or body having authority under the Ontario *Environmental Assessment Act*.

OBJECTIVES

3. The objectives of this Agreement are to:
- (a) achieve greater efficiency and the most effective use of public and private resources where environmental assessment processes involving both Parties are or may be required by law;
 - (b) foster cooperation between the Parties concerning the environmental assessment of proposed projects; and
 - (c) describe the roles and responsibilities for the Parties in implementing a cooperative environmental assessment.

COORDINATION OF RESPONSIBILITIES OF DESIGNATED OFFICES

Designated Offices

4. (1) Each Party will maintain an office that will serve as the main source of general information on that Party's environmental assessment process, procedures and policies.
- (2) Canada's designated office will be the Canadian Environmental Assessment Agency's office (Agency office) located in Toronto.
- (3) Ontario's designated office will be the Environmental Assessment and Approvals Branch of the Ministry of the Environment located in Toronto (Ontario office).
- (4) Each Party's designated office will be responsible for:
- (a) coordinating, as needed, administrative matters pertaining to this Agreement and any potential cooperative environmental assessment;
 - (b) facilitating consultation and cooperation between the Parties in relation to projects proceeding under a cooperative environmental assessment, where appropriate;
 - (c) providing information about their respective environmental assessment processes, policies and procedures;

- (d) coordinating and facilitating federal and provincial contact and communication on environmental assessment matters with potential proponents, other government departments, ministries, agencies, Aboriginal communities, and the public;
- (e) reviewing periodically the implementation of this Agreement and the effectiveness of the cooperative environmental assessments undertaken;
- (f) developing operational procedures, as needed, for matters pertaining to this Agreement; and
- (g) keeping a directory of the names of those who have been assigned by each Party to assist in the administration or review of each cooperative environmental assessment and making this information available to each other on request.

(5) The designated offices will meet as required to monitor the efficiency and effectiveness of the Agreement and to review comments from the public on the operation of the Agreement that may be received.

COOPERATIVE ENVIRONMENTAL ASSESSMENT COORDINATION RESPONSIBILITIES

(Clauses 5 through 23 of this Agreement do not apply to the development or review of federal class screening reports or provincial class environmental assessment documents, or Ontario Regulation 116/01 (Electricity Projects); nor do they apply to projects being assessed under these instruments. See clauses 24 and 25 for coordination procedures of class environmental assessments.)

5. (1) Normally, for projects subject to a cooperative environmental assessment, the following will apply:

- (a) the Agency office will act as the federal environmental assessment coordinator, as described under the *Canadian Environmental Assessment Act*, throughout all stages of the cooperative environmental assessment unless confirmed otherwise by the Agency office to the Ontario office; and
- (b) the Ontario office will coordinate the input and involvement of provincial ministries and agencies from the early stages of pre-notification through all stages of the cooperative environmental assessment.

(2) For projects or parts of projects referred to a joint panel/tribunal, the following will apply:

- (a) the joint panel/tribunal secretariat will become the point of contact for Canada and Ontario once a project has been referred by both Ministers of the Environment to the joint panel/tribunal for hearing; and
- (b) the Agency office will resume its role as point of contact for Canada and the Ontario office will resume its role as point of contact for Ontario, following the submission of the joint panel/tribunal report and recommendations/decisions to the Ministers of the Environment.

PRE-NOTIFICATION AND EARLY COORDINATION

6. (1) The Parties will advise each other as early as possible, through their designated offices, of projects potentially subject to both the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*.

(2) The designated offices will provide timely disclosure and access to relevant information about the proposed projects.

(3) The Parties will consult and work with each other and proponents, as early as possible, to ensure that the information needed to identify the Parties' environmental assessment responsibilities is included in any project description under the *Canadian Environmental Assessment Act* or an application under the Ontario *Environmental Assessment Act*. Guidance will be provided to the proponent in a consolidated fashion where appropriate.

(4) The designated offices will advise proponents at the earliest opportunity when they are aware of the potential for a cooperative environmental assessment of a proposed project.

NOTIFICATION AND DETERMINATION OF ENVIRONMENTAL ASSESSMENT RESPONSIBILITIES

7. (1) Following submission of a project description, the designated offices, will confirm, in writing, to each other as soon as practicable so that each Party's legislated timelines can be met, when an environmental assessment responsibility or an interest exists in relation to the proposed project.

(2) If either Party believes that it may have an environmental assessment responsibility but the project proposal or description documentation is insufficient to make such a final determination, that Party will:

- (a) document its responsibilities that may require an environmental assessment and request the proponent to provide the additional information required; and

(b) provide the documentation referred to in (a) above to the other Party including the proponent's response to the other Party.

(3) Where one Party has an environmental assessment responsibility and the other Party believes that it may have an environmental assessment responsibility but has not yet made such a determination, the Party that has yet to make a determination will participate in the environmental assessment until it has made a determination. Such participation will be mindful of the need to make a timely determination of environmental assessment responsibilities. The information required to make a determination may be obtained as provided for in clause 7(2).

COOPERATIVE ENVIRONMENTAL ASSESSMENTS

8. (1) Where each Party has determined that it has an environmental assessment responsibility for a proposed project, a cooperative environmental assessment will be undertaken.

(2) The cooperative environmental assessment will be administered by a Lead Party in a manner that enables both Parties to meet their legal requirements and ensures that the cooperative environmental assessment:

(a) generates the type and quality of information required to satisfy both the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*; and

(b) provides findings on the environmental effects of the proposed project required for decision making by the respective Parties.

(3) A Party's participation in a cooperative environmental assessment will be consistent with and mindful of legislated timelines.

DETERMINING LEAD PARTY

9. (1) The Lead Party for the purposes of administering the cooperative environmental assessment will, in accordance with section 5.6.0 of the Sub-agreement to the Accord, generally be determined as follows:

(a) Canada will be the Lead Party for proposed projects on federal lands where federal approval(s) apply.

(b) Ontario will be the Lead Party for proposed projects on lands within its provincial boundary not covered under clause (a) above where *Environmental Assessment Act* approval(s) may apply.

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

(2) If a Party believes that it would be in the best interest of a cooperative environmental assessment to vary the Lead Party under clause 9(1)(a) or 9(1)(b) above, that Party will notify the other Party's designated office within 25 working days of receiving an adequate project description and provide a rationale for the variance. While the issue of varying the Lead Party is being discussed, the Party assuming the lead based on clauses 9(1)(a) and 9(1)(b) of this Agreement will continue to act as the Lead Party for the purposes of the cooperative environmental assessment.

(3) The Party requesting a variance shall provide its rationale for suggesting a variance based on an evaluation of the following criteria:

- (a) scale, scope and nature of the environmental assessment;
- (b) capacity to administer the assessment including available resources;
- (c) physical proximity of government's infrastructure;
- (d) effectiveness and efficiency;
- (e) access to scientific and technical expertise;
- (f) ability to address proponent or local needs;
- (g) inter-provincial, inter-territorial or international considerations; or
- (h) existing regulatory regime including the legal requirements of quasi-judicial tribunals.

(4) If the Parties agree to vary the Lead Party, the proponent will be notified by the new Lead Party, through its designated office, as soon as possible.

SINGLE CONTACTS

10. (1) For each cooperative environmental assessment, the Parties, through their designated offices, will identify a single contact and provide the name and contact information promptly to the other Party in writing.

(2) Canada's contact will be the assigned Agency officer who acts as the federal environmental assessment coordinator unless confirmed otherwise by the Agency office to the Ontario office.

- (3) Ontario's contact will be the project officer to whom the project is assigned.
- (4) Each Party's contact will:
- (a) coordinate its Party's participation in the cooperative environmental assessment;
 - (b) confirm the environmental assessment responsibility(ies) or the interest that applies to the proposed project;
 - (c) contact relevant departments, ministries and agencies in their respective governments to confirm the Lead Party as determined by clause 9;
 - (d) work with the other Party's contact to resolve process and content issues that may arise during the cooperative environmental assessment;
 - (e) coordinate the Party's consultation with the other Party and the proponent on matters pertaining to the cooperative environmental assessment; and
 - (f) work to ensure that the timelines established for the cooperative environmental assessment are met.

JOINT ASSESSMENT COMMITTEE

11. (1) For each cooperative environmental assessment other than a joint panel/tribunal, there will be a Joint Assessment Committee made up of one representative from the Agency and one from each of the federal responsible authorities for the environmental assessment, and a representative from the Ontario office and any additional representative(s) the Ontario office considers appropriate.

- (2) The Joint Assessment Committee members are responsible for:
- (a) establishing a mutually agreeable workplan for completion of each stage of assessment consistent with legislated timelines;
 - (b) identifying the information requirements needed by the Parties to satisfy their legal environmental assessment requirements through the review of the terms of reference; determining the completeness and adequacy of the environmental assessment information and report;
 - (c) analyzing and reporting on the findings of the environmental assessment document;
 - (d) coordinating, to the extent possible, the timing of environmental assessment decisions and the announcement of such decisions; and

(e) other related functions as determined by the Joint Assessment Committee.

(3) Members of the Joint Assessment Committee may seek input from federal expert authorities, provincial ministries and other advisors as required to meet their responsibilities. These experts and advisors may be invited to participate on the Joint Assessment Committee.

ESTABLISHMENT OF A WORKPLAN FOR THE ASSESSMENT

12. (1) Where a cooperative environmental assessment is undertaken, the Joint Assessment Committee will establish a project-specific workplan for the completion of each stage of the assessment consistent with legislated timelines.

(2) The Lead Party, through its designated office, will communicate the workplan to the project proponent.

(3) The Parties will fulfill their cooperative environmental assessment responsibilities within the workplan that they have agreed upon provided that the necessary information is in their possession. A workplan may be updated and amended throughout the cooperative environmental assessment with the mutual agreement of both Parties.

PUBLIC PARTICIPATION

13. (1) The Parties agree to cooperate in meeting their respective public consultation requirements under the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*. Public records, containing a complete set of materials, will be maintained by both Parties in accordance with the requirements of their respective legislation.

(2) To facilitate public participation, the Parties will ensure that the public is able to:

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

(b) participate in the environmental assessment of the project, to the extent provided for by the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*, and any regulations or policies made pursuant to those Acts or any operational procedures developed under this Agreement.

(3) Project-specific workplans are to reflect any public participation requirements to the extent provided for by the *Canadian Environmental Assessment Act* and the *Ontario Environmental Assessment Act*, and any regulations or policies made pursuant to those Acts or any operational procedures developed under this Agreement.

FINALIZATION OF THE TERMS OF REFERENCE

14. (1) The Joint Assessment Committee will work together to consolidate the information requirements of both Parties at the terms of reference stage to guide the proponent in preparing an environmental assessment document for the cooperative environmental assessment.

(2) For the purposes of developing the terms of reference, the definitions of "environment" and "environmental effects" in the *Canadian Environmental Assessment Act*, and "environment" in the Ontario *Environmental Assessment Act* will be adopted to incorporate the legal requirements of both Parties.

(3) The Joint Assessment Committee with their advisors, as referred to in clause 11, will review the terms of reference document submitted by the proponent to determine its completeness and adequacy.

(4) If deficiencies in the information provided are identified, or additional information is needed, the Lead Party's designated office will inform the proponent of these deficiencies or the additional information required. The Lead Party's designated office will issue to the proponent a consolidated list of deficiencies and/or additional information sought by each Party to meet each Party's specific requirements.

(5) The Parties will confirm to each other and the proponent when the terms of reference document meets their respective requirements. The Lead Party's designated office will notify the proponent when the terms of reference is approved.

(6) The Parties will provide guidance to the proponent, upon request, during the preparation of the environmental assessment document to ensure the document meets their legislative and policy requirements.

DETERMINATION OF COMPLETENESS OF THE ENVIRONMENTAL ASSESSMENT DOCUMENT

15. (1) The Joint Assessment Committee and its advisors will review the environmental assessment document submitted by the proponent to determine the completeness and adequacy of the information.

(2) If deficiencies in the information provided are identified, or additional information is needed, a consolidated deficiency document will be prepared by the Joint Assessment Committee. The Lead Party's designated office will issue the agreed upon deficiency document to the proponent.

(3) The designated offices will confirm, in writing, to each other and the proponent when their Party's requirements for information, including those requirements outlined in the deficiency document referred to in clause 15(2), have been met in accordance with the terms of reference.

(4) Where a Party determines that the information it requires to fulfill its legal obligations will not be provided by the cooperative environmental assessment, that Party, while continuing to participate in the cooperative environmental assessment, will document its information needs in relation to its legal responsibilities, provide this to the Lead Party's designated office, and identify its intention to request information from the proponent so that implications for the workplan determined in clause 12(1) can be considered.

(5) If the Party conducting additional steps or seeking additional information completes its task prior to the conclusion of the cooperative environmental assessment, the additional information will be integrated into the cooperative environmental assessment in accordance with the workplan for the cooperative environmental assessment. Otherwise, the additional information will be used solely for the decision making required of the Party that conducted the additional steps or sought the additional information.

COORDINATION OF DECISIONS AND ANNOUNCEMENTS

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

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

(3) Upon completion of a cooperative environmental assessment, each Party will notify the other of project decisions, the proposed timing of public announcements concerning these decisions, and provide an opportunity to coordinate the announcement of such decisions.

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

(5) The designated offices of both Parties will provide assistance in achieving coordination.

MITIGATION AND FOLLOW-UP

17. Where a cooperative environmental assessment leads to the approval of a proposed project by Ontario and where Canada exercises a power, or performs a function, or a duty in relation to the proposed project, subject to identified mitigation measures, monitoring and follow-up requirements or any other terms and conditions, the Parties will communicate and may coordinate their respective requirements if any, where it is possible and mutually advantageous to do so. A project-specific agreement may be developed between the Parties to confirm the cooperative arrangements in this regard.

JOINT PANEL/TRIBUNAL

18. (1) Where either Party intends to refer an environmental assessment matter to a review panel under the *Canadian Environmental Assessment Act* or the Environmental Review Tribunal for a hearing under the Ontario *Environmental Assessment Act*, and if applicable the *Consolidated Hearings Act*, the Party's designated office will provide immediate notice to the other Party's designated office and consult on the possibility of establishing a joint panel/tribunal for the project.

(2) If the Parties agree that a joint panel/tribunal can be established in a manner that satisfies the requirements of both the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act* or the *Consolidated Hearings Act*, they will enter into a project-specific agreement respecting the establishment of a joint panel/tribunal, its membership, and the manner in which the cooperative environmental assessment is to be conducted including the scope of the assessment.

(3) The joint panel/tribunal shall have the powers and duties of a panel provided for in the *Canadian Environmental Assessment Act* and of the Environmental Review Tribunal under the Ontario *Environmental Assessment Act* or the *Consolidated Hearings Act*.

(4) The agreement referred to in 18(2) is to contain the provisions necessary to satisfy the requirements of the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act or the Consolidated Hearings Act*, and may contain additional provisions respecting the operation of the joint panel/tribunal, the establishment of a panel secretariat to provide administrative and procedural support to the joint panel/tribunal, cost sharing, assistance provided to participants in the hearing process in accordance with the Parties' legislation and policies, the expected time frame for completion of the work by the joint panel/tribunal and any other matter that the Parties agree is necessary for the proper conduct of the work by the joint panel/tribunal.

(5) All documents produced by the joint panel/tribunal including its final report, will take account of and reflect the views of each member of the joint panel/tribunal.

(6) The joint panel/tribunal's final report shall be put forth as recommendations to Canada and as decisions to Ontario subject to Ministerial review. Prior to making a

decision on the proposed project, the Parties shall discuss the joint panel/tribunal findings and seek to issue their decisions within a time frame agreed to by the Parties.

ACCOMMODATING INTERESTS

19. (1) Where one Party has an environmental assessment responsibility respecting a proposed project and the other Party has an interest, the Party with the environmental assessment responsibility will invite early in the environmental assessment the Party with an interest to review the environmental assessment information and provide comments related to its mandated responsibilities.

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

MEDIATION UNDER THE ONTARIO *ENVIRONMENTAL ASSESSMENT ACT*

20. (1) To help resolve disputes that may arise during the course of an environmental assessment in Ontario, the Ontario Minister of the Environment may under subsections 6(5), 8(1), and 16(6) of the Ontario *Environmental Assessment Act* refer a matter to mediation.

(2) Where a project is subject to a cooperative environmental assessment and Ontario is considering the referral of the project to mediation as described in clause 20(1), the Ontario office will notify the Agency office to determine whether Canada wishes to participate in the mediation.

MEDIATION UNDER THE *CANADIAN ENVIRONMENTAL ASSESSMENT ACT*

21. Where Canada is considering the referral of a project to a mediator pursuant to subsection 29(1) of the *Canadian Environmental Assessment Act*, the Agency office will notify the Ontario office to determine whether Ontario wishes to participate in the mediation.

TRANSBOUNDARY CONSIDERATIONS

22. (1) Where a proposed project in Ontario is subject to a cooperative environmental assessment, and has the potential to cause adverse environmental effects in another province or territory in Canada, the Lead Party's designated office will advise the proponent to inform the potentially affected province or territory and consult the

potentially affected province or territory during the conduct of the cooperative environmental assessment.

(2) The Parties may invite any potentially affected province/territory to input into the cooperative environmental assessment.

(3) For a project outside Ontario subject to the *Canadian Environmental Assessment Act* and which has the potential to cause adverse environmental effects in Ontario, Ontario will be invited by Canada to input into the assessment of that project.

(4) The requirement in clause 22(3) does not apply where Ontario has been notified by another province or territory pursuant to an agreement and has been given an opportunity to participate.

(5) Where Canada has obligations pursuant to an international agreement with respect to the environmental assessment of certain proposed projects that are subject to a cooperative environmental assessment, Canada will notify and discuss its obligations with Ontario to ensure compliance of the cooperative environmental assessment with the international commitments.

(6) Where Canada becomes aware of potential transboundary concerns relating to a project within the meaning of sections 46, 47 or 48 of the *Canadian Environmental Assessment Act*, whether the project is situated in Ontario or in another jurisdiction with potential transboundary effects in Ontario:

- (a) the Agency office will promptly notify the Ontario office of the potential transboundary concerns;
- (b) upon notification, as referred to in clause 22(6)(a), the Parties agree to exchange information relating to the project, the transboundary concerns, and any assessment of the environmental effects of the project; and
- (c) for projects in Ontario, Canada will consider any available information generated by an assessment of the environmental effects of the project conducted under the Ontario *Environmental Assessment Act* required by Ontario before taking final action under sections 46, 47 or 48 of the *Canadian Environmental Assessment Act*.

CONSIDERATION OF ABORIGINAL INTERESTS

23. (1) Where a project subject to a cooperative environmental assessment has the potential to have environmental effects on an Aboriginal community, the Parties will ensure that the potentially affected Aboriginal community is notified so that it may participate in the cooperative environmental assessment. Notification and participation of a potentially affected Aboriginal community will be conducted in accordance with any

requirements that may be set out in the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*, and any regulations or policies made pursuant to those Acts or any operational procedures developed under this Agreement.

(2) This Agreement does not apply to environmental assessment processes pursuant to a land claim or Aboriginal self-government agreement.

(3) This Agreement may be revised to reflect land claim agreements or Aboriginal self-government agreements that are given effect by legislation.

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

(5) Nothing in this Agreement affects or alters constitutionally-protected Aboriginal rights or Treaty rights.

CLASS ENVIRONMENTAL ASSESSMENT, CLASS SCREENINGS AND ELECTRICITY PROJECTS

Development or Review of a Federal Class Screening Report, a Provincial Class Environmental Assessment Document or Ontario Regulation 116/01

24.(1) For the development or review of a federal class screening report or a provincial class environmental assessment document or Ontario Regulation 116/01, the following will apply:

- (a) the Parties will notify and invite each other through their designated office as early as possible to participate;
- (b) the Agency office will coordinate the input and involvement of federal departments and agencies in the development or review of provincial class environmental assessment documents and Ontario Regulation 116/01;
- (c) the Ontario office will coordinate the input and involvement of provincial ministries and agencies into the development or review of federal class screening reports;
- (d) the extent of this participation will be determined as early as possible on a case-by-case basis; and
- (e) where Parties agree to participate, they will do so in a manner consistent with legislated timelines.

(2) At the time of development or review, the Parties agree to include provisions in federal class screening reports, provincial class environmental assessment documents, and Ontario Regulation 116/01, to facilitate cooperation for project environmental assessments prepared under these instruments.

Coordination Framework for Projects Subject to Provincial Class Environmental Assessments or Ontario Regulation 116/01 (Environmental Screening Process)

25. (1) For a proponent(s) seeking to concurrently satisfy the requirements of a provincial class environmental assessment document, or Ontario Regulation 116/01 (Environmental Screening Process), and the requirements under the *Canadian Environmental Assessment Act* for a project, the following coordination procedures apply:

- (a) the proponent(s) is to notify and consult the Agency's office early in the planning process when the details of the project are known, and provide a project description in a timely manner;
- (b) where it is determined based on the project description that an environmental assessment responsibility of the project is required, or is likely to be required, under the *Canadian Environmental Assessment Act*, the Agency office or the federal authority will convene a discussion with the proponent(s) and potential or actual responsible authorities to discuss the coordinated process, including its workplan;
- (c) the Agency office or a federal authority will notify the proponent(s) of federal requirements and the commencement of the federal assessment; and
- (d) the proponent(s) and the Agency office or the federal authority will work together to address federal concerns and information requirements.

(2) The proponent(s) of the project will follow the class environmental assessment process or Ontario Regulation 116/01 approved under the Ontario *Environmental Assessment Act*, and incorporate additional information necessary to satisfy the requirements of the *Canadian Environmental Assessment Act*.

(3) The proponent(s) will present its findings on the predicted environmental effects of the project in a single body of documentation.

(4) All Parties' participation will be consistent with and mindful of timelines set out in the class environmental assessment document or Ontario Regulation 116/01 and legislation.

ISSUES MANAGEMENT BETWEEN THE PARTIES

26. (1) The Parties will make every reasonable effort to agree on the interpretation and application of this Agreement, including but not limited to, the scope of the project and the scope of the assessment, the completeness and adequacy of the information submitted by the proponent, the significance of environmental effects, process related questions, or any issue that is related to a cooperative environmental assessment.

(2) Should a dispute on any of these issues arise, the Parties will, to the extent possible, seek to resolve the dispute at the operational level.

(3) Where all reasonable efforts to resolve a dispute at the operational level have been exhausted and where either Party believes a dispute requires resolution at a more senior level, the Party seeking to resolve the dispute will notify in writing the other Party through its designated office and provide a justification for raising the dispute at a more senior level.

(4) Where both designated offices agree to the consideration of the dispute at a more senior level, the following procedures will apply:

(a) The designated offices, in consultation, will convene a meeting of the Parties at a senior operational level within ten working days of the dispute being brought to the attention of the two offices to seek a resolution of the dispute or to agree on a process for resolving the dispute.

(b) The Agency office will facilitate the participation in the process of relevant senior regional officials, including the office of the senior regional officer of the department or agency or the representative of that office. The Ontario office will facilitate the participation of relevant senior provincial officials.

(c) If after a period of time agreed to by the senior officials at the onset of the dispute resolution procedures outlined in clause 26(4)(a), the dispute has not been resolved, and where the designated offices agree, the matter will be referred to the President of the Canadian Environmental Assessment Agency and the Deputy Minister for the Ontario Ministry of the Environment, to facilitate resolution of the issues by the Parties, including federal responsible authorities and specialist federal authorities, within a specified time frame.

(5) The Parties recognize that this dispute resolution process does not fetter the authority of a federal responsible authority under the *Canadian Environmental Assessment Act* or the authority of the Minister of the Environment under the Ontario *Environmental Assessment Act*.

OPERATIONAL PROCEDURES

27. The Parties, through their designated offices, agree to develop and maintain operational procedures that will facilitate the implementation of this Agreement. The operational procedures will be developed within one year of the execution of this Agreement and will be reviewed by the Parties on mutual consent to determine whether revisions are necessary.

REVISION AND DURATION OF AGREEMENT

28. This Agreement comes into force upon its execution by both Parties.

29. (1) This Agreement may be revised at any time by mutual consent by the Parties.

(2) This Agreement shall be reviewed by the Parties through their designated offices three years following its coming into force. Through this review, the Parties will determine the timing of the next review of the Agreement.

30. (1) Where the environmental assessment of a project has been completed by a Party prior to the coming into force of this Agreement and upon coming into force of this Agreement the other Party has yet to complete its environmental assessment for the same project, the other Party will take into consideration the information generated by the completed environmental assessment.

(2) If an environmental assessment was initiated by one or both Parties prior to the coming into force of this Agreement and it is still under way upon the coming into force of this Agreement, the Parties may agree to apply this Agreement, or any portion thereof, to the environmental assessment.

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

SIGNATURES

In witness thereof the Honourable Stéphane Dion has hereunto set his hand and seal on behalf of Canada, and the Honourable Leona Dombrowsky has hereunto set her hand and seal on behalf of Ontario, to this Agreement, this _____ day of _____, 2004. (Original signed on November 1st, 2004)

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

Original signed by:

The Honourable Stéphane Dion
Minister of the Environment

Signed on behalf of Ontario by
the Honourable Leona Dombrowsky,
Minister of the Environment.

Original signed by:

The Honourable Leona Dombrowsky
Minister of the Environment