

## **Environmental Law Centre**

### **Comments on Proposed revisions to the Canada-Alberta Agreement for Environmental Assessment Cooperation**

The Environmental Law Centre is a charitable organization that has operated in Alberta since 1982. The Centre provides services in legal education and assistance, research and law reform to achieve its objective of making the law work to protect the environment. Accordingly, we have prepared comments on the proposed revisions to the *Canada-Alberta Agreement for Environmental Assessment Cooperation* (the "Agreement"). We participated in the discussion/information workshop held in Edmonton on September 10, 2004.

#### **General comments**

There are many positive changes in the proposed revisions. In particular, we fully support the expansion of public participation opportunities under the Agreement. However, only items we have found to be problematic are identified in these comments.

#### **Determination of the need for a public hearing**

Concerning section 7.1(a):

This requirement (that the Agency Office promptly notify Alberta of the type of environmental assessment that will apply) fetters the discretion of the Minister under section 28 of CEAA. This discretionary power allows the Minister to refer an assessment to a review panel where there may be significant adverse effects or where public concerns warrant a referral. This power may be exercised at any time.

The section 28 power is essential, particularly with respect to screenings, as it allows the Minister to respond to ongoing public concerns. While it is in the parties' mutual interest to know as soon as possible whether a public hearing is required under CEAA, it is inappropriate and unnecessary for the Minister's discretion to be fettered in this way. Section 28 already requires that the Minister consult with the Province before exercising his discretion. The Agreement should provide that notification is subject to the Minister's discretionary power under CEAA section 28.

## **Aboriginal considerations**

As the Environmental Law Centre has no special expertise in aboriginal legal issues, our comments on this section are general in nature.

An amendment to the preamble of the Agreement should be made confirming the obligations of the federal and Alberta governments to respect and uphold aboriginal and treaty rights, and the importance of aboriginal participation in the environmental assessment process.

Concerning section 13.1, the Agreement itself is incapable of affecting the nature and scope of aboriginal and treaty rights. Furthermore, section 13.1 does not create any rights or entitlements not already clearly provided for in the rest of the Agreement. The proposed wording should be deleted.

The role of affected aboriginal groups should not be limited to the public involvement provisions of section 10. The public consultation requirements should reflect the unique interests of aboriginal peoples in the environment and environmental assessment. It is therefore important that special provision for notification and involvement of aboriginal groups be made in the Agreement.

We urge Alberta Environment and the Canadian Environmental Assessment Agency to carry out separate, comprehensive consultations with Aboriginal groups concerning the Agreement.

On behalf of the Environmental Law Centre, thank you for considering our comments. Should you have any questions regarding them, or would like further assistance or input from our office, please do not hesitate to contact me at (780) 424-5099, extension 310.

September 30, 2004

James Mallet  
Staff Counsel  
Environmental Law Centre