

Canada-Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act

This agreement between

THE GOVERNMENT OF CANADA as represented by the Minister of Fisheries and Oceans and the Minister of Environment (herein referred to as "Canada")

OF THE FIRST PART

AND

THE GOVERNMENT OF ALBERTA as represented by the Minister of Environmental Protection (herein referred to as "Alberta")

OF THE SECOND PART

WHEREAS, both Canada and Alberta recognize that sustainable development and social well-being depend upon the preservation of a high standard of environmental quality;

AND WHEREAS, the Canadian Council of Ministers of the Environment have endorsed the Statement of Interjurisdictional Cooperation on Environmental Matters to provide an overall framework for effective intergovernmental cooperations on environmental matters;

AND WHEREAS, the Canadian Council of Ministers of the Environment have endorsed the National Commitment to Pollution Prevention as a key component of environmental protection and sustainable development;

AND WHEREAS, both Canada and Alberta are committed to minimizing duplication and overlap, and maximizing cooperation and coordination for environmental matters;

AND WHEREAS, Section 5 of the Department of Fisheries and Oceans Act enables the federal Minister of Fisheries and Oceans, with the approval of the Governor in Council, to enter into agreements with a provincial government respecting the carrying out of programs for which the Minister of Fisheries and Oceans is responsible;

AND WHEREAS, Section 7 of the Department of Environment Act enables the federal Minister of Environment, with the approval of the Governor in Council, to enter into agreements with a provincial government respecting the carrying out of programs for which the Minister of Environment is responsible;

AND WHEREAS, Section 20 of the Environmental Protection and Enhancement Act (EPEA) enables the Minister of Environmental Protection to enter into agreements with the Government of Canada relating to any matter pertaining to the environment;

AND WHEREAS, the Governor in Council, by Order in Council P.C. 1994-879, dated May 26, 1994, has authorized the federal Minister of Fisheries and Oceans and the federal Minister of the Environment to enter into this Agreement with Alberta;

NOW THEREFORE, Canada and Alberta agree as follows:

1.0 DEFINITIONS FOR THIS AGREEMENT AND THE ANNEXES HERETO:

"Access to Information Act" means the Access to Information Act R.S. 1985 c. A-1 as amended;

"Agreement" means the Canada - Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act;

"annual report" means the state of the environment report prepared annually pursuant to section 15 of EPEA;

"approval" means an "approval" as defined in section 1(f) of EPEA;

"authorization" means an authorization issued under the Pulp and Paper Effluent Regulations (PPER);

"Authorization Officer" means the official named in Column II of Schedule V of the PPER;

"CEPA" means the Canadian Environmental Protection Act; R.S. 1985 c.16 (4th supp.) as amended;

"deleterious substance" means "deleterious substance" as defined in subsection 34(1) of the Fisheries Act;

"deposit" means "deposit" as defined in subsection 34(1) of the Fisheries Act;

"DFO" means the Federal Department of Fisheries and Oceans;

"EC" means the Federal Department of the Environment (Environment Canada);

"EPEA" means the Environmental Protection and Enhancement Act, S.A. 1992 c. E-13.3;

"EP" means the provincial Department of Environmental Protection;

"federal lands" means "federal lands" as defined in section 52 of the CEPA;

"federal works and undertakings" means "federal works and undertakings" as defined in section 52 of the CEPA;

"Fisheries Act" means the Fisheries Act R.S. 1985, c.F-14, as amended;

"fish habitat" means "fish habitat" as defined in subsection 34(1) of the Fisheries Act;

"inspector" means an "inspector" as defined under clause l(gg) of EPEA and subsection 38(1) of the Fisheries Act;

"investigator" means an "investigator" as defined under clause l(hh) of EPEA;

"PERT" means the Alberta Environmental Protection Pollution Emergency Response Team;

"Privacy Act" means the Privacy Act; R.S. 1985 c. P-21 as amended;

"PPER" means the Pulp and Paper Effluent Regulations made pursuant to the Fisheries Act, SOR/92-269 as amended;

"release(s)" means a release that is required to be reported under section 99 of EPEA and under section 3 of the Release Reporting Regulation AR 117/93 as amended by AR 247/93 and deposits of deleterious substances which are required to be reported pursuant to subsection 38(4) of the Fisheries Act and the PPER;

"Technical Advisory Panel" means the panel established pursuant to Annex 1 to EPS 1/RM/18 describing aquatic environmental effects monitoring requirements at pulp and paper mills and off- site treatment facilities regulated under the PPER;

"water frequented by fish" means "water frequented by fish" as defined in subsection 34(1) of the Fisheries Act.

2.0 PURPOSE

2.1 The purpose of this Agreement is to establish the terms and conditions for the cooperative administration of subsection 36(3) and the related provisions of the Fisheries Act, the regulations under the Fisheries Act designated in the annexes, and the EPEA.

3.0 OBJECTIVE

3.1 The objective of this Agreement is to streamline and coordinate the regulatory activities of Canada and Alberta in relation to the protection of fisheries and to reduce duplication of regulatory requirements for the regulated sector.

4.0 PRINCIPLES OF COOPERATION

4.1 The principles of this Agreement are:

COMMITMENT TO ACTION	the Parties to this Agreement recognize that they are committed to act on environmental matters within their respective areas of jurisdiction while respecting the jurisdiction of other governments.
COLLABORATION	to maximize efficiency and effectiveness, the Parties are committed to recognizing each other's strengths and capabilities and to cooperate in the harmonization of environmental legislation, regulations, policies, programs and projects.
CONSULTATION	where one Party's legislation, regulations, policies, programs and projects affect the other Party's jurisdiction, the Parties undertake to provide one another with timely notification and appropriate consultation.
TRANSBOUNDARY ENVIRONMENTAL EFFECTS	recognizing the transboundary nature of the environment, the Parties undertake to cooperate in the management of environmental issues that traverse jurisdictional boundaries within Canada.
SERVICE TO STAKEHOLDERS	the Parties undertake to provide improved service to all stakeholders by minimizing duplication and overlap of operational activities and providing single window delivery to the fullest extent possible.
INFORMATION SHARING	each Party agrees to share information with the other Party relating to the administration of their respective legislation subject to each Party's legislated requirements and to protect confidential business and personal information.
EMERGENCY RESPONSE	the Parties undertake to continue to cooperate in ensuring an immediate and coordinated response to environmental emergencies.
COST SHARING	<p>each Party will bear its own costs in relation to this Agreement. Each Party's financial obligation under this Agreement is subject to sufficient funds being appropriated and allocated to the respective Party for the purposes of this Agreement. Where one Party carries out work, by prior agreement between the Parties, that is identified as solely of interest to the other Party, the Party not carrying out the work will reimburse the Party carrying out the work for its incremental costs in carrying out that work.</p> <p>Environment Canada's financial obligation under this Agreement is subject to the approval of the Treasury Board, Government of Canada and to sufficient funds being appropriated and allocated.</p>

5.0 ACTIVITIES

5.1 The Parties agree to establish detailed collaborative arrangements for a variety of activities related to the administration of their respective legislation. Such collaborative arrangements shall be detailed separately as annexes which form part of this Agreement.

5.2 Without limiting this Agreement, the following activities shall be considered as appropriate subjects for detailed collaborative arrangements:

MONITORING	the Parties may agree to develop complementary and cooperative monitoring programs with provisions for information sharing. Such programs can be used to evaluate and detect trends in environmental quality and to determine the effectiveness of pollution control programs.
RESEARCH	the Parties may agree to develop complementary and cooperative research programs with provisions for information sharing.
PUBLICATIONS	the Parties may agree to cooperate in the publication of reports arising from their respective activities in the administration of EPEA and the Fisheries Act.
CONFERENCES	the Parties may agree to cooperate in the organization and sponsorship of conferences, meetings and symposia dealing with fisheries, environmental quality and toxic substance issues of both national and regional interest.
INFORMATION SHARING	the Parties may agree to procedures for sharing information related to the administration of their respective legislation. The Parties may also agree to share confidential business and personal information to the extent permitted by their respective legislation and on the understanding that the legislated confidentiality requirements of each Party will be fully respected.
RELEASES	the Parties may agree to immediately inform each other of releases that are required to be reported pursuant to their respective legislation and releases that violate the requirements of their respective legislation. The Parties may also agree to coordinate their response to such releases.
INSPECTION	the Parties may agree to coordinate their inspection activities in order to make better use of limited resources and to reduce the administrative burden for those subject to both federal and provincial requirements.
INVESTIGATION AND ENFORCEMENT	the Parties may agree to cooperate in the investigation of offences and in taking enforcement actions in response to violations of their respective legislation. Such cooperation may involve, but is not limited to the sharing of technical and compliance data and the

attendance in court of inspectors, analysts and expert witnesses.

REPORTING

the Parties agree to share such information as will enable each to meet its statutory reporting obligations to the Legislature or Parliament, as the case may be.

ADMINISTRATION OF REGULATIONS

the Parties may agree to specific arrangements and roles in the administration of regulations made pursuant to the Fisheries Act and regulations made pursuant to EPEA.

6.0 MANAGEMENT COMMITTEE

6.1 A Management Committee shall be established to direct the implementation of this Agreement. The membership of the Committee shall include an equal number of federal and provincial officials appointed respectively by the Parties. The Management Committee shall be co-chaired by one federal and one provincial member.

6.2 The membership of the Management Committee shall be prescribed in annex 1.

6.3 The responsibilities of the Management Committee shall include:

1. implementing this Agreement;
2. establishing terms of reference to guide its activities;
3. developing collaborative arrangements for activities such as those listed in section 5.2 and detailing those arrangements in annexes to this Agreement;
4. establishing a mechanism whereby disagreements between the Parties can be addressed in accordance with the legislative obligations of each Party;
5. making cost sharing arrangements for the implementation of this Agreement in accordance with the Principles of this Agreement;
6. establishing a cooperative approach to public communications and media inquiries arising from the activities undertaken pursuant to this Agreement;
7. evaluating the administration of this Agreement on a regular basis and preparing recommendations for its revision and amendment as appropriate;
8. reviewing and preparing a report on the administration of this Agreement on an annual basis to satisfy the statutory reporting requirements of the Parties.

6.4 Decisions of the Management Committee shall be taken on the basis of unanimous consent amongst the Committee members.

7.0 TERM OF THE AGREEMENT

7.1 This Agreement, including annexes 1, 2, 3, 4, and 5, shall enter into force on the 1st day of September, 1994 and shall remain in force until terminated by one or both Parties.

8.0 AMENDMENT OF THE AGREEMENT

8.1 This Agreement or any annexes may be amended from time to time subject to the approval of the Governor in Council.

9.0 TERMINATION OF THE AGREEMENT

9.1 This Agreement and Annexes may be terminated by either Party giving to the other Party at least six (6) months written notice of its intention to terminate the Agreement.

IN WITNESS WHEREOF, this Agreement has been executed on the day of , 1994 on behalf of Canada by the Minister of Fisheries and Oceans and the Minister of the Environment and on behalf of Alberta by the Minister of Environmental Protection.

IN THE PRESENCE OF:

GOVERNMENT OF ALBERTA

Witness Minister of Environmental Protection

Approved pursuant to the Alberta
Department of Federal and
Intergovernmental Affairs Act

Witness Minister of Federal and
Intergovernmental Affairs

GOVERNMENT OF CANADA

Witness Minister of Fisheries and Oceans

Witness Minister of the Environment and
Deputy Prime Minister

Annex 1 Management Committee

1.0 Purpose and Responsibilities:

1.1 The Management Committee is responsible for ensuring this Agreement is implemented and for the development of collaborative arrangements for the various activities identified in this Agreement.

1.2 Collaborative arrangements developed by the Management Committee will be recommended to the Federal and Provincial Ministers for inclusion as annexes to this Agreement.

1.3 The Management Committee may establish joint federal- provincial working groups for purposes of developing collaborative draft arrangements.

1.4 The Management Committee may discuss and develop proposals, for consideration by the Ministers of EP, EC and DFO, for cost sharing in respect of any of the annexes in accordance with the Principles of this Agreement.

2.0 Resolution of Disagreements

2.1 Any disagreements between the Parties pursuant to the administration and implementation of this Agreement should be resolved as soon as practicable.

2.2 Disagreements may be resolved through oral or written communication between the co-chairpersons or at a regular or specially called meeting of the Management Committee.

2.3 Failure to resolve an issue at this level will result in the issue being forwarded to the Regional Director General, Central and Arctic Region, for the Department of Fisheries and Oceans, the Regional Director General, Prairie and Northern Region, for the Department of the Environment, and one or more of the Assistant Deputy Ministers of the Department of Environment Protection.

2.4 Where a consensus cannot be reached, each Party shall be free to take whatever action it considers necessary and appropriate under its own legislation, after providing reasonable notice to the other Party of the nature and timing of such action.

3.0 Public Communications

3.1 Where possible, public communications and media inquiries, arising from the activities undertaken pursuant to this Agreement, will be coordinated by the co-chairpersons.

3.2 Special arrangements for public communications or media inquiries may be developed for specific annexes.

3.3 Where one co-chairperson responds to public communications and media inquiries without prior consultation with the other Party, that co-chairperson will inform the other co-chairperson and other committee members, as soon as possible.

4.0 Meetings

4.1 The Management Committee will meet a minimum of once (1 time) per year to evaluate the administration and implementation of this Agreement and the annexes and if necessary provide recommendations for its revision and updating as appropriate.

4.2 The annual meeting will be held in April of each year or as mutually agreed to by the co-chairpersons and will include the review of the administration of this Agreement and the preparation of a report to satisfy the statutory reporting requirements set out in the respective federal and provincial legislation.

5.0 Membership

5.1 The Committee shall be comprised of three (3) federal and three (3) provincial members as follows:

Federal
Manager, Alberta Office,
Environmental Protection Directorate,
Prairie and Northern Region, Environment Canada -
Co-chairperson

Director, Habitat Management
Central and Arctic Region
Fisheries and Oceans Canada

Chief, Ecosystem Quality Branch
Environmental Conservation
Prairie and Northern Region
Environment Canada

and;

Provincial
Director, Standards and Approvals
Alberta Environmental Protection - Co-chairperson

Director, Pollution Control Division
Alberta Environmental Protection

Director, Fisheries Management Division
Alberta Environmental Protection

5.2 Management Committee members may designate alternates to attend Management Committee meetings in their respective places when unable to personally attend.

5.3 The Management Committee may invite individuals to meetings as observers or for the purpose of making presentations.

Annex 2 Releases

1.0 Purpose

The purpose of this annex is to clarify roles and responsibilities of the Parties in sharing information respecting releases and in responding to releases in identified areas of shared jurisdiction.

2.0 Objectives

2.1 The Parties share the objective of encouraging and monitoring the reporting of releases by widely publicizing the single toll-free telephone number to be used to satisfy the reporting requirements under EPEA and the Fisheries Act.

2.2 The Parties share the objective of minimizing the number of releases in Alberta through preventative means such as contingency planning and pollution prevention and control regulation.

2.3 The Parties share the objective of mitigating the adverse effects of releases through fast and effective response.

2.4 The Parties share the objective of informing the public in a timely and thorough manner concerning releases.

3.0 Reporting

3.1 PERT will maintain and operate a 24 hour, seven (7) day a week environmental spill response toll-free telephone number, to receive reports of all releases in Alberta.

3.2 EP will advise EC immediately upon receipt of a report of the following types of release:

1. a release involving a deposit of a deleterious substance into water frequented by fish or a release which is likely to result in harmful alteration, disruption or destruction of fish habitat;
2. a release on federal lands, works or undertakings; or
3. a release involving or which may affect lands or waters outside of the territorial boundaries of Alberta.

3.3 EC will advise EP immediately of any release in Alberta that is reported directly to EC.

4.0 Response

4.1 For the purpose of this annex the lead response agency will be the agency with the primary responsibility for responding to releases and may include, but not be limited to

1. accident investigation;
2. providing clean - up advice;
3. ensuring remedial action;
4. co-ordinating remedial response by multiple agencies;
5. providing information for the purpose of public notification; and
6. following up on remedial activities.

4.2 For the purpose of this annex the support agency will be the agency that provides technical advice, monitoring equipment and coordination with other agencies as requested by the lead response agency.

4.3 EP will be the lead response agency for releases in Alberta with the exception of releases under paragraph 3.2 (b).

4.4 EP will be the lead response agency for releases under paragraph 3.2(a) and (c) unless agreed otherwise by the Parties on a case by case basis.

4.5 EC will act as a support agency for releases under paragraph 3.2 (a) and (c) and as requested for specific releases.

4.6 EC will be the lead response agency for releases under paragraph 3.2 (b).

4.7 EP will act as a support agency for releases under paragraph 3.2 (b).

4.8 Both Parties will consult with and advise one another regarding actions taken in dealing with specific releases of joint interest, and will document actions taken and present the other Party with evidence gathered as necessary to support possible legal or other action.

4.9 EP and EC will provide reports of releases as requested by the other Party.

4.10 At the request of either Party, a joint review of release response procedures, either for specific releases or for releases in general, will be held.

4.11 The lead response agency will be responsible for coordinating news media relations in the event of a release, without limiting the other Party from acting within its jurisdictional mandate.

4.12 Where feasible, the Parties will mutually share and provide mutual access to training programs, expert advice, research and development information, and specialized analytical laboratory services.

5.0 Disagreements

Any disagreements between the Parties may be referred to the Management Committee at any time by either Party for resolution.

Annex 3 Inspection, Investigation and Enforcement

1.0 Purpose

The purpose of this annex is to coordinate inspection activities of the Parties in order to make better use of resources and to coordinate investigation and enforcement roles and responsibilities in response to alleged contraventions of the provincial or federal legislation.

2.0 Inspections

2.1 The Parties are responsible for inspections under their respective legislation.

2.2 The Parties will meet annually to co-ordinate inspection strategies for the regulated sectors of common interest.

2.3 At the annual meeting the Parties will consider the following areas:

1. development of an inspection plan to co-ordinate the inspections conducted by EP and EC;
2. timely sharing of information obtained during inspections by one Party with the other Party;
3. development of a single point of contact for the purpose of compliance reporting by the regulated sector; and
4. conducting joint inspections where necessary.

2.4 The Parties agree to share information acquired through the conduct of inspections respecting possible contraventions of provincial or federal legislation.

2.5 The Minister of DFO may, with the consent of the Minister of EP, designate employees of EP who in the opinion of the Minister of DFO are qualified to be so designated, as Fisheries Act inspectors with the power to conduct inspections with respect to the Fisheries Act regulatory requirements and the power to take or direct remedial action pursuant to Section 38 of the Fisheries Act.

3.0 Investigation and Enforcement

3.1 EC and EP will conduct investigations into alleged contraventions of their respective legislation.

3.2 The parties will conduct a joint investigation for alleged contraventions of both federal and provincial legislation.

3.2.1 EP shall be the lead party in joint investigations unless otherwise agreed upon by the parties.

3.2.2 The Parties will confer upon undertaking an investigation and agree on the roles of the lead party and the support party in the investigation.

3.2.3 The Parties agree to exchange all relevant information obtained during an investigation.

3.2.4 The Parties will discuss the appropriate enforcement response at the conclusion of the investigation.

3.2.5 Each party will attempt to coordinate enforcement responses but each party reserves the right to proceed unilaterally with its own enforcement action.

3.2.6 Each party has the right to set and follow its own enforcement policy.

3.2.7 The Parties agree to share evidence, staff, expertise, witnesses and analysts for the purpose of preparing for and conducting trials.

3.2.8 The parties recognize that both federal and provincial Attorneys General retain their discretion to prosecute violations of their respective legislation.

4.0 Training of Inspectors and Investigators

4.1 Training may be provided to inspectors or investigators of Alberta and Canada for the implementation of the Agreement and this annex.

4.2 EC will provide EP staff with access to the requisite training courses for Fisheries Act inspector designation.

5.0 Meetings

The Parties agree to meet once per month or as mutually agreed upon to provide updates on ongoing investigations of mutual interest and to review decisions respecting joint investigations.

6.0 Disagreements

Any disagreements between the Parties may be referred to the Management Committee at any time by either Party for resolution.

Annex 4

Information Sharing

1.0 Purpose

The purpose of this annex is to facilitate the full and open sharing of information between the Parties for the purpose of the administration of this Agreement.

2.0 Types of Information

Information that may be shared between the Parties pursuant to this Annex will include, but not be limited to, information in the possession of the Parties relating to:

1. fish and fish habitat;
2. environmental effects of deleterious substances and in particular their effect on fish;
3. human health effects of deleterious substances;
4. industrial processes;
5. pollution prevention and abatement technology;
6. compliance monitoring;
7. investigation and enforcement activity; and,
8. economic impacts of regulatory controls and technologies.

3.0 Disclosure of Information

3.1 Each Party will share information received pursuant to this Agreement or the annexes with the other Party in a timely fashion or as provided in the other annexes to this Agreement.

3.2 Each Party is subject to the limitations for public disclosure contained in section 33 of EPEA, the federal Privacy Act and the federal Access to Information Act.

3.3 Information provided by one Party to the other Party, pursuant to this Agreement or any of the annexes, shall not be released to the public if it could reasonably be expected to harm the enforcement of any law of Canada or a province or to the conduct of lawful investigations.

4.0 Manner of Disclosure between the Parties

4.1 EC and EP shall each identify one employee of their respective Departments to act as a contact for requests for information under the Agreement and annexes.

4.2 Within a reasonable time after receipt of a request for information under section 2, the Party receiving the request shall provide the information to the other Party.

5.0 Disagreements

Any disagreements between the Parties may be referred to the Management Committee at any time by either Party for resolution.

Annex 5

Administration of Pulp and Paper-effluent Regulations

1.0 Purpose

The purpose of this annex is to facilitate federal-provincial cooperation in the regulation of pulp and paper mill effluent in order to maximize the effectiveness of regulatory efforts and reduce the administrative burden on the pulp and paper industry.

2.0 Roles and Responsibilities of the Authorization Officer

2.1 The Authorization Officer shall receive all of the information described in Section 4.1 of this Annex, which mill operators are required to submit to an Authorization Officer pursuant to the PPER.

2.2 The Authorization Officer shall conduct the issuance, amendment and withdrawal of any authorizations pursuant to Sections 16, 17, and 18 of the PPER.

2.3 The Authorization Officer shall form the Technical Advisory Panel described in Annex 1 to "Aquatic Environmental Effects Monitoring Requirements" EPS 1/RM/18.

3.0 Reports of Deposits Out of the Normal Course of Events

3.1 Where pulp and paper mill operators are required to report deposits out of the normal course of events pursuant to Section 38 of the Fisheries Act, they may meet this requirement by reporting to PERT.

3.2 Upon receipt of a report pursuant to Section 38 of the Fisheries Act, PERT will immediately notify the Alberta Office Manager, Environmental Protection Branch, Prairie and Northern Region of EC.

3.3 The arrangements outlined in paragraphs 3.1 and 3.2 above, constitute an arrangement for the purposes of paragraph 36(1)(b) of the PPER.

4.0 Information Sharing - Monthly Monitoring Reports; Ownership Information; Emergency Response Plans; Reference Production Rates; Effluent Outfalls

4.1 Where the Authorization Officer is a provincial employee, he/she will provide the Alberta Office Manager, Environmental Protection Branch, Prairie and Northern Region of EC with a copy (in hard copy or electronic format) of the following information submitted by operators pursuant to the PPER:

1. monthly reports on the results of monitoring referred to in paragraphs 7(1)(b) and 7(3)(b) of the PPER;

2. information on the ownership of mills and off-site treatment facilities referred to in paragraphs 7(1)(c) and 7(3)(c) of the PPER;
3. emergency response plans referred to in paragraphs 7(1)(e) and 7(3)(d) of the PPER; and,
4. the notification of reference production rates referred to in subsection 12(3) of the PPER.

4.2 Where the Authorization Officer is a provincial employee, copies of information referred to in section 4.1 of this annex will be provided to the Alberta Office Manager, Environmental Protection Branch, Prairie and Northern Region of EC within ten (10) working days of receipt of the information.

4.3 The Regional Director of Fisheries and Habitat Management in DFO shall provide the Authorization Officer with copies of information respecting effluent outfalls provided to the Minister of DFO pursuant to section 27 of the PPER within ten (10) working days of receipt of the information.

5.0 Environmental Effects Monitoring

5.1 The Authorization Officer will convene a meeting of the Technical Advisory Panel at least once per year to review the implementation of environmental effects monitoring requirements contained in the PPER and in approvals.

5.2 Whenever feasible, the Authorization Officer shall harmonize federal and provincial environmental effects monitoring requirements.

6.0 Disagreements

Any disagreements between the Parties may be referred to the Management Committee at any time by either Party for resolution.