

INSPECTIONS AND ENFORCEMENT SUB- AGREEMENT

This Sub-Agreement covers inspection and enforcement activities undertaken to verify and ensure compliance with environmental protection laws. This agreement includes the provisions of the *Canada-wide Environmental Inspections Sub-agreement* which it now replaces.

1. OBJECTIVES

- 1.1 Consistent with the *Canada-wide Accord on Environmental Harmonization* and Annexes, and to enhance environmental protection, the objectives of this Sub-Agreement are:
- 1.1.1 To achieve a consistent, high level of compliance with environmental protection laws across Canada, and
- 1.1.2 To serve as an enabling framework for future bilateral and multilateral implementation agreements that:
- i. deliver a range of inspection and enforcement activities across Canada that are fair, consistent and predictable;
 - ii. provide a cooperative work sharing approach for inspection and enforcement activities related to environmental protection laws, where appropriate;
 - iii. identify a process to set priorities for inspection and enforcement programs; and
 - iv. provide an efficient and cost effective approach to inspection and enforcement activities in Canada.

2. SCOPE

- 2.1 This Sub-Agreement applies to inspection and enforcement activities undertaken for the purpose of achieving compliance with environmental protection laws.
- 2.1.1 “environmental protection laws ” in this Sub-Agreement mean any act, statute or regulation, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health in the context of environmental quality.

- 2.1.2 “inspection activities” in this Sub-Agreement means any actions taken by governments, such as site visits, examining substances, processes, products or wastes, taking samples for analysis, examining records or other information, responding to complaints, and review of self-reported information, to verify that the operations and activities of the regulated community (regulatee) are in conformity with the law.
- 2.1.3 “enforcement activities” in this Sub-Agreement means any actions taken by governments to gather evidence associated with potential violations, to undertake preparatory work for court actions and all sanctions and follow-up associated with responses to violations of the law.
- 2.2 The focus of this Sub-Agreement is on areas where federal, provincial and territorial governments have the environmental protection laws and the ability to take action in similar situations. Based on assessment of which government is best-situated, implementation agreements may encompass inspection and enforcement activities related to environmental provisions in any other legislation administered by signatory Ministers as agreed to by the respective governments.

3. PRINCIPLES

- 3.1 In addition to principles identified in the *Canada-wide Accord on Environmental Harmonization* and Annexes, implementation agreements under this Sub-Agreement will reflect the following:
- 3.1.1 **Legal Applicability:** Governments acknowledge that all federal, provincial and territorial environmental legislation continues to apply regardless of which jurisdiction carries out the inspection and enforcement activities.
- 3.1.2 **Transparency:** Inspection and enforcement information will be exchanged between and among governments. Reports on inspections, and enforcement responses will be publicly available following the principles enumerated in Section 6.4 below.
- 3.1.3 **Risk Based Approach:** Governments will set priorities for inspection and enforcement activities in consideration of environmental and health risks, compliance levels and other factors relating to enhancing environmental protection.

4. APPROACH

- 4.1 Implementation agreements will provide flexibility in determining the respective roles and responsibilities of governments.

- 4.1.1 In the context of this Sub-Agreement, the inspection and enforcement functions of the federal government include international borders and obligations, transboundary domestic issues, federal lands and facilities, products/substances in Canada-wide trade and commerce, and other matters specific to the federal government.
- 4.1.2 In the context of this Sub-Agreement, the inspection and enforcement functions of provincial and territorial governments include industrial and municipal facilities and discharges, application of laws on provincial and territorial land, waste disposal and destruction, and other matters specific to provincial and territorial governments.
- 4.1.3 For the purpose of this Sub-Agreement, the activities set out in 4.1.1 and 4.1.2 may be varied based on a best-situated assessment as per criteria outlined in 4.1.4 and as agreed to by governments through development of specific implementation agreements.
- 4.1.4 In assessing which government is best situated, governments agree to give consideration to applicable criteria such as:
- i. scale, scope and nature of the environmental issue;
 - ii. equipment, infrastructure and laboratory capacity to support activities;
 - iii. physical proximity;
 - iv. efficiency and effectiveness;
 - v. human and financial resources to deliver obligations;
 - vi. scientific, technical and analytical expertise;
 - vii. ability to address local needs;
 - viii. interprovincial, inter-territorial/international considerations and obligations;
 - ix. government already performing inspection and enforcement activities; and
 - x. existing agreements
- 4.2 Notwithstanding each government's jurisdiction and the best situated to act concept, governments agree to provide mutual support utilizing the strengths and capabilities of each jurisdiction throughout implementation of this Sub-Agreement.
- 4.3 Irrespective of agreements to divide the delivery of such activities between or among the governments, each government will maintain an inspection and enforcement capacity.

5. ACCOUNTABILITY

- 5.1 Governments entering into implementation agreements under this Sub-Agreement remain ultimately accountable and legally responsible for the enforcement of their own environmental protection laws.
- 5.2 In undertaking a role under an implementation agreement of this Sub-Agreement, a government agrees to assume obligations for the discharge of that role which include:
- i. the delivery of agreed to results and measurable outputs;
 - ii. the commitment to report publicly, on results achieved, to demonstrate that its obligations have been met; and
 - iii. the provision to the other government of relevant data and information required to fulfill applicable provincial/territorial and federal statutory and non-statutory requirements.
- 5.3 In instances where a government is unable to fulfill its obligations under an implementation agreement, governments agree that each of the respective governments will enforce their own environmental protection laws for the continued protection of the environment until such time as the other government is able to resume its obligations and/or the implementation agreement is amended to address the change in circumstances.

6. IMPLEMENTATION

- 6.1 Governments agree to identify inspection and enforcement activities that would benefit from harmonization and specify the applicable environmental protection laws in the implementation agreements.
- 6.1.1 Governments may develop implementation agreements to cover any or all inspection and enforcement activities.
- 6.2 Governments agree to establish timely and effective procedures for information exchange between jurisdictions and public reporting mechanisms on inspections and enforcement activities, and a process consistent with 5.2, as part of the accountability framework.
- 6.3 Governments recognize that implementation agreements under this Sub-Agreement do not alter the authority and discretion of the Attorney General of Canada to prosecute violations of federal legislation or the authority and discretion of the Attorneys General of provinces/territories to prosecute violations of provincial/territorial legislation.

- 6.4 The gathering and exchanging of information under Sections 3.1.2 and 5.2[iii] will respect all relevant access to information and privacy laws and requirements for public disclosure or confidentiality within environmental protection laws. Consultation between or among governments will be undertaken as appropriate.
- 6.5 Under this Sub-Agreement, governments agree to pursue discussions between federal, provincial and territorial officials, and to meet on a regular basis to discuss matters of common interest such as areas of shared responsibility, national consistency including the setting of priorities, information management systems, and responses to changing circumstances.
- 6.6 Governments agree that implementation agreements under this Sub-Agreement will contain provisions for:
- i. joint reviews, on the effectiveness of the implementation agreement and on any changes that may result, that will be conducted after the first two years of the agreement and thereafter at intervals to be specified in the implementation agreement;
 - ii. operational procedures to ensure that where enforcement and compliance policies differ, the policy pertaining to the legislation being enforced will apply and that where the legislation of both governments is being enforced, the most stringent policy will apply;
 - iii. defining procedures to ensure that inspection activities and investigations activities are linked in non-compliance situations;
 - iv. resolving any concerns or disagreements between governments;
 - v. establishment of a bilateral mechanism to oversee the respective implementation agreements;
- 6.7 Governments agree that implementation agreements under this Sub-Agreement will address the following additional implementation aspects to the extent applicable:
- i. coordination of training so that any government assuming new roles and responsibilities satisfies existing requirements and standards;
 - ii. development of compatible methods, data, procedures and practices;
 - iii. resource implications of the obligations that a jurisdiction might have to assume through the implementation of this Sub-Agreement;
 - iv. designation of officials under legislation; and
 - v. any other matter necessary to implement the Sub-Agreement as agreed by governments.
- 6.8 Implementation agreements under this Sub-Agreement will be subject to a public consultation process prior to being finalized.

7. MANAGEMENT AND ADMINISTRATION

- 7.1 Ministers, through CCME, will review progress, address issues and effectively administer the requirements of this Sub-Agreement.
- 7.2 This Sub-Agreement may be amended from time to time with the consent of the signatories.
- 7.3 This Sub-Agreement shall enter into force on the date of execution indicated herein. A government may withdraw from this Sub-Agreement six months after giving notice, subject to any other applicable statutory requirements.
- 7.4 The Council of Ministers, in consultation with the public, will review this Sub-Agreement five years after the date of its coming into force to evaluate its effectiveness and determine its future.

8. OTHER

- 8.1 Notwithstanding existing environmental protection functions and responsibilities, governments agree that the harmonization of applicable inspection and enforcement functions in Yukon, Northwest Territories and Nunavut are to be implemented as further resource management and related environmental protection responsibilities are devolved to the territorial governments or through intergovernmental agreements, which include appropriate roles for resource management institutions established pursuant to aboriginal claims agreements.

9. REVOCATION OF THE CANADA-WIDE ENVIRONMENTAL INSPECTIONS SUB-AGREEMENT

- 9.1 The signatories hereby revoke the CCME Canada-wide Environmental Inspections Sub-agreement and agree that it is superseded by this Canada-wide Environmental Inspections and Enforcement Sub-agreement.

Inspections and Enforcement Sub-Agreement

Signed by:

British Columbia	Honourable Ian Waddell
Saskatchewan	Honourable Buckley Belanger
Manitoba	Honourable Oscar Lathlin
Ontario	Honourable Elizabeth Witmer
Environment Canada	Honourable David Anderson
New Brunswick	Honourable Kim Jardine
Nova Scotia	Honourable David Morse
Prince Edward Island	Honourable Chester Gillan
Newfoundland and Labrador	Honourable Ralph Wiseman Honourable Tom Lush
Yukon	Honourable Dale Eftoda
Northwest Territories	Honourable Joseph Handley
Nunavut	Honourable Alayuk Akesuk

Note: Québec has not endorsed the Canada-wide Accord on Environmental Harmonization or the Canada-wide Environmental Standards Sub-agreement.