



**Cost Recovery for Environmental Assessments by Review Panels
under the *Canadian Environmental Assessment Act, 2012***

Reference Guide for Project Proponents

August 2016

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DOCUMENT INFORMATION

DISCLAIMER

The *Cost Recovery for Environmental Assessments by Review Panels under the Canadian Environmental Assessment Act, 2012: Reference Guide for Project Proponents* is for information purposes only. It is not a substitute for the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) or any of its regulations. In the event of any inconsistency between this guide and CEAA 2012 or its regulations, CEAA 2012 or its regulations would prevail. For the most up-to-date versions of CEAA 2012 and regulations, please consult the [Department of Justice website](#).

UPDATES

This document may be reviewed and updated periodically. To ensure that you have the most up-to-date version, please consult the [Policy and Guidance page](#) of the Canadian Environmental Assessment Agency's website.

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1.0 INTRODUCTION

This reference guide describes the Canadian Environmental Assessment Agency's (the Agency) administrative policy and approach for the recovery from proponents of costs incurred when environmental assessments (EAs) are conducted by a review panel under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012).

The purpose of this guide is to provide proponents of designated projects that are subject to an EA conducted by a review panel with a description of the services and amounts subject to cost recovery and the Agency's approach for the implementation of cost recovery in relation to EAs by review panel.

This reference guide describes the:

- legislative, regulatory and policy basis for cost recovery;
- Agency's administrative policy for cost recovery; and
- roles of the Agency and a review panel during an EA by panel review.

2.0 BASIS FOR COST RECOVERY

2.1 LEGISLATIVE AND REGULATORY BASIS FOR COST RECOVERY

CEAA 2012 provides the Agency with the authority to recover from the proponent of a designated project certain costs incurred during the course of an EA. The authority, as set out in sections 59 to 61 of CEAA 2012, allows for three types of costs to be recovered:

- costs that the review panel and the Agency incur for prescribed services provided by a third party;
- prescribed amounts associated with the carrying out of the Agency's responsibilities; and
- prescribed amounts associated with the carrying out of the responsibilities of the members of a review panel.

The services and amounts eligible to be recovered are prescribed in the [Cost Recovery Regulations](#), which apply only when an EA of a designated project is referred to a review panel.

The *Cost Recovery Regulations* specify that the cost recovery scheme established in CEAA 2012 does not apply to a proponent who is:

- a federal authority;
- the Commissioner in Council of the Northwest Territories, the Legislature of the Yukon, an agency or body of those governments;
- the council of a band, as defined in subsection 2(1) of the *Indian Act*; or
- a provincial government, except in the case of a provincial Crown corporation.

2.2 APPLICABLE FEDERAL INSTRUMENTS

The management of the Agency's cost recovery regime is governed by a range of federal laws and policies, including the following:

- [*Cost Recovery Regulations*](#) which sets out the services and amounts for which the Agency can recover costs from the proponent of a project that undergoes an assessment by review panel.
- [*User Fees Act*](#) which provides the legal framework within which departments are required to manage user fees, including the establishment and reporting of standards;
- Treasury Board of Canada Secretariat [*Policy on Service Standards for External Fees*](#) which sets the requirements for service standards and monitoring of fee-related activities through audit and evaluation;
- Treasury Board of Canada Secretariat [*Guideline on Service Standards*](#) which provides general guidance on the use of service standards across the Government of Canada;
- [*Financial Administration Act*](#) which provides for the financial administration of the Government of Canada, the establishment and maintenance of the accounts of Canada and the control of Crown corporations;
- Treasury Board of Canada Secretariat [*Directive on Travel, Hospitality Conference and Event Expenditures*](#);
- [*National Joint Council Travel Directive*](#); and
- [*Employee remuneration*](#) and [*benefits*](#) which are established by Treasury Board of Canada.

3.0 ADMINISTRATIVE POLICY

3.1 SERVICE PLEDGE AND PRINCIPLES

The Agency is committed to providing timely, transparent and professional service in support of EAs referred by the Minister of Environment and Climate Change (the Minister) to review panels. This includes coordinating and managing the recovery of costs of review panels; ensuring that appropriate accounting, tracking, and reporting mechanisms are in place; and providing information and direction to proponents.

In supporting review panels, the Agency is committed to administering cost recovery in a manner that is efficient, transparent, and consistent. The following principles guide the Agency's actions:

- Costs recovered by the Agency are reasonable and predictable, and the Agency and review panels will conduct their activities in an efficient manner. Tools such as an initial billing instrument and monthly invoices ensure timely provision of estimates and expenditures to the proponent.
- The provision of services is transparent and measurable, and aligned with the timelines established in CEAA 2012 for the conduct of EAs by review panels (Appendix 1 provides details regarding the timelines for an EA by review panel).
- The management system for cost recovery is transparent and ensures accountability. It includes rigorous tracking of expenditures, third party auditing of costs, and periodic evaluation of the implementation of the administrative policy for the recovery of costs associated with an EA by review panel.

3.2 APPLICATION OF COST RECOVERY

CEAA 2012 provides for the recovery of costs in relation to all EAs of designated projects where the Agency is the responsible authority (i.e. EAs by the Agency and EAs by a review panel). However, the *Cost Recovery Regulations*, which prescribe the services and amounts eligible to be recovered, apply only to the EA of a designated project that has been referred to a review panel. As a result, the Agency does not recover costs associated with EAs conducted by the Agency.

Under CEAA 2012, the Agency has the authority to recover eligible costs incurred from the time the Notice of Commencement of an EA is posted to the [Canadian Environmental Assessment Registry](#) (the Registry) to the time that an EA Decision Statement is issued to the proponent. However, in keeping with the intent of the *Cost Recovery Regulations*, the Agency only recovers costs from the date that the Notice of Referral of an EA to a review panel is posted on the Registry.

The recovery of costs associated with an EA by review panel, including associated Indigenous consultation, includes all eligible costs associated with the following phases of an EA by review panel:

- **Pre-Panel Appointment phase:** Eligible costs associated with activities from the date that the Notice of Referral of an EA to a review panel is posted on the Registry until the establishment of the review panel.
- **Panel phase:** Eligible costs associated with activities from the time of the establishment of the review panel until the submission of the report of the review panel.
- **Post-Panel phase:** Eligible costs associated with activities from the submission of the report of the review panel until the issuance of the EA Decision Statement.

A process diagram providing an overview of the phases of an EA by review panel, including associated Indigenous consultation, is provided in Appendix 2. The roles and responsibilities of Agency staff involved in an EA by review panel during these phases, and which of those roles are cost recoverable, are described in Appendix 3.

Any funds allocated by the Agency to support participation of participants in an EA by review panel are not cost recoverable.

When the Minister refers the EA of a designated project to a review panel, the Minister can enter into an agreement with another jurisdiction and a joint review panel¹ can be established. Some provincial governments have bilateral agreements in place with the federal government that may provide details for sharing the costs between the two governments associated with the conduct of an EA by a joint review panel. The *Canada-Alberta Agreement for Environmental Assessment Cooperation* (2005) is one example. Where no agreement between the federal and provincial government is in place, cost sharing is addressed on a case-by-case basis.

The Minister must terminate the EA by review panel of a designated project if the review panel fails to meet its timelines; and may terminate an EA by review panel when the Minister is of the opinion that the review panel will not be able to submit its report on time. If the Minister exercises this authority, the Agency will be required to complete the EA and prepare a report in accordance with the Minister's directives. The costs incurred by the Agency to complete the EA and prepare the report will be recovered from the proponent.

3.3 SERVICES AND AMOUNTS

The *Cost Recovery Regulations* prescribe the services and amounts for which the Agency can recover costs from the proponent of a designated project undergoing an EA by review panel. These include:

¹ **Joint review panel:** A review panel established jointly between the Minister of Environment and Climate Change and another jurisdiction that has powers, duties or functions in relation to the assessment of the environmental effects of the project.

- costs incurred for services provided by a third party;
- amounts related to the exercise of the Agency’s responsibilities; and
- amounts related to the exercise of the responsibilities of the review panel members.

3.3.1 Third party services

The following categories of costs associated with third party services obtained by a review panel or by the Agency are subject to cost recovery:

- Travel:
 - (a) regular travel services
 - (b) chartered services
- Publication and printing (including professional desktop publishing, editing and English/French or French/English translation)
- Distribution services:
 - (a) regular mail
 - (b) courier
- Telecommunications (including telephone and line installation, Internet, long-distance, teleconference and video conference services)
- Advertising and news wire services
- Public meeting, panel hearing and panel meeting facilities and equipment, including:
 - (a) hospitality
 - (b) simultaneous interpretation
 - (c) audio systems
 - (d) transcription services
 - (e) computer equipment

3.3.2 Amounts related to the exercise of the Agency’s responsibilities

Salary and travel expenses related to the exercise of the Agency’s responsibilities during the conduct of the EA by review panel, including Crown consultation with Indigenous groups to fulfill “duty to consult” requirements of section 35 of the *Constitution Act*, are subject to cost recovery. The amounts that can be cost recovered include:

- Direct and attributable federal government employees’ salaries and employee benefit plans (EBP), including overhead and overtime charges. Salary per diem rates are based on a productivity rate of 220 days/year and an EBP of 20% of total chargeable salaries using:

- (a) for employees represented by bargaining units, the rates of pay as established in collective agreements between Treasury Board and the bargaining units (the highest increment will be used for all classifications); or
 - (b) for excluded or unrepresented employees, the rates of pay established by Treasury Board under section 11.1 of the *Financial Administration Act* (the highest increment will be used for all classifications).
- Direct and attributable federal government employees' travel expenses. Rates are provided within the Treasury Board's *Directive on Travel, Hospitality Conference and Event Expenditures*.

3.3.3 Amounts related to the exercise of the responsibilities of members of a review panel
Remuneration costs and travel expenses related to the exercise of the responsibilities of members of a review panel are subject to cost recovery. The amounts that can be cost recovered include:

- Remuneration of review panel members:
 - (a) panel chairperson \$650 per day
 - (b) panel member \$500 per day
- Direct and attributable review panel members' travel expenses. Rates are provided within the Treasury Board *Directive on Travel, Hospitality Conference and Event Expenditures*

3.4 FINANCIAL INFORMATION

3.4.1 Billing Instrument

As soon as possible after the decision by the Minister to refer the EA of a designated project to a review panel, the Agency will provide the proponent with a billing instrument, which contains an initial budget estimate of the costs associated with the EA by review panel.

The initial estimate will be broken down into the three categories of recoverable costs, as set out in section 3.3 above and the *Cost Recovery Regulations*. The Agency may reallocate costs between these categories as the review process proceeds. The amounts outlined in the billing instrument reflect the estimated costs prior to any applicable taxes. The initial budget estimate should not be considered to be the maximum expenses and is subject to revision, as it is not always possible to accurately predict all costs or services at the beginning of an EA, and unforeseen factors may change the initial estimates.

The proponent is required to pay the actual costs eligible for recovery under the *Cost Recovery Regulations* even if these costs exceed those in the billing instrument, including any required taxes.

The Agency will inform the proponent if an update to the billing instrument is necessary due to an increase or decrease in expected costs.

3.4.2 Invoicing

An invoice will be prepared and issued to the proponent on a monthly basis. Each invoice will specify the amount of applicable taxes. The Agency will pay recoverable costs up front, and subsequently invoice the proponent for these costs.

Once all bills related to the EA conducted by the review panel have been paid by the Agency, the Agency will prepare and issue a final invoice to the proponent.

Should the proponent decide not to proceed with the project and hence terminate the requirement for an EA by review panel, the Agency will consolidate all accrued costs up to the date of termination and prepare and issue a final invoice to the proponent.

Proponents are encouraged to raise any issues or concerns with the initial billing instrument, monthly invoices or the final invoice with the Agency. A dispute resolution mechanism is available to proponents if differences remain unresolved and is described in section 3.4.5.

3.4.3 Payment Due and Debt

All invoices issued by the Agency to the proponent are payable within 30 calendar days after the day on which demand for payment is issued. Payments not received within 30 days will be considered overdue and treated as a debt owing to Her Majesty (as per section 61 of CEEA 2012). Interest will be charged on overdue amounts. These amounts are subject to recourse in a court of law.

3.4.4 Audit

The Agency will keep records open to audit and inspection by an independent auditor that is deemed acceptable to the Agency and the proponent. Such records will include all invoices, receipts, vouchers, time sheets and documents used by the Agency, in full or in part, to calculate the recoverable costs of conducting the EA.

Should the Agency or the proponent exercise its option to audit, that party will be responsible for the cost of the audit.

Where an audit reveals discrepancies regarding the amount charged by the Agency, those discrepancies will be promptly rectified. An adjustment invoice or reimbursement cheque will be issued to the proponent by the Agency should discrepancies be revealed as a result of an audit.

Audits will be conducted in accordance with a schedule agreed upon by the Agency and the proponent.

3.4.5 Dispute Resolution Mechanism

A dispute resolution mechanism is available to resolve disputes related to the billing instrument and any subsequent updates or the amounts invoiced to the proponent in the final invoice, pursuant to CEAA 2012 and the *Cost Recovery Regulations*.

As a first step, the proponent should seek to resolve disputes through discussions with the Panel Manager for the EA. Should the dispute remain unresolved after such discussions, the proponent may initiate the process of appeal detailed below.

The appeal must be based on existing information. Where new substantive information arises, the original decision should be revisited by all parties prior to proceeding with the appeal.

A proponent may appeal a decision with respect to:

- the billing instrument;
- amendments to a billing instrument resulting in a change in the estimate of the total amount to be recovered; and
- the final invoice submitted to the proponent by the Agency.

First Level of Appeal—Director, Review Panels Division

The proponent is required to submit a letter of intent to appeal to the Director, Review Panels, within 15 calendar days of when the billing instrument and any subsequent updates, or the final invoice was received.

Within 15 calendar days of the date of the letter of intent to appeal, or a time frame that the Director and proponent agree upon, the proponent must file a detailed statement indicating the specific reason for the appeal, the basis for the appeal and providing substantiating information.

The Director will inform the proponent of the outcome of the appeal. A written response will be provided within 30 calendar days from the receipt of the substantiating information.

Second Level of Appeal—Vice President, Operations Sector

Within 15 calendar days of the date of the Director's decision made at the first level of appeal, the proponent must advise the Vice President, Operations, in writing of his or her intent to appeal and identify the name and title of one person who is nominated to be on an appeal committee.

Within 15 days of the receipt of the proponent's intent to appeal to the second level, the Vice President will submit to the proponent, the names and titles of two people nominated as members of an appeal committee.

An appeal committee will be formed with membership as follows:

- One member nominated by the Vice President;
- One member nominated by the proponent; and
- One member agreed upon by both the Vice President and the proponent who will chair the appeal committee.

The recommendation made by the appeal committee will be based on the information submitted in the original notification and reviewed at the first level of appeal. The appeal committee may receive oral presentations as considered to be necessary by a committee member. The proponent will be given an opportunity to make an oral presentation.

The recommendation made to the Vice President will be made on the basis of at least two of the three committee members concurring on the recommendation.

The Vice President will consider the recommendation of the appeal committee and inform the proponent of his or her decision within 30 calendar days of the receipt of the appeal committee's recommendation.

The Vice President's decision is final.

4.0 PRIMARY AGENCY CONTACTS

For more information pertaining to project-specific costs or procedures, proponents are encouraged to contact the Panel Manager assigned to their proposed designated project.

For more information on the Agency's cost recovery policies or procedures, please contact:

Canadian Environmental Assessment Agency
22nd Floor, Place Bell
160 Elgin Street
Ottawa ON K1A 0H3
Tel.: 613-957-0700
Toll free number: 1-866-582-1884
info@ceaa-acee.gc.ca

APPENDIX 1: TIMELINES

When referring a designated project to an EA by review panel, the Minister will set project-specific timelines for the following phases of the EA:

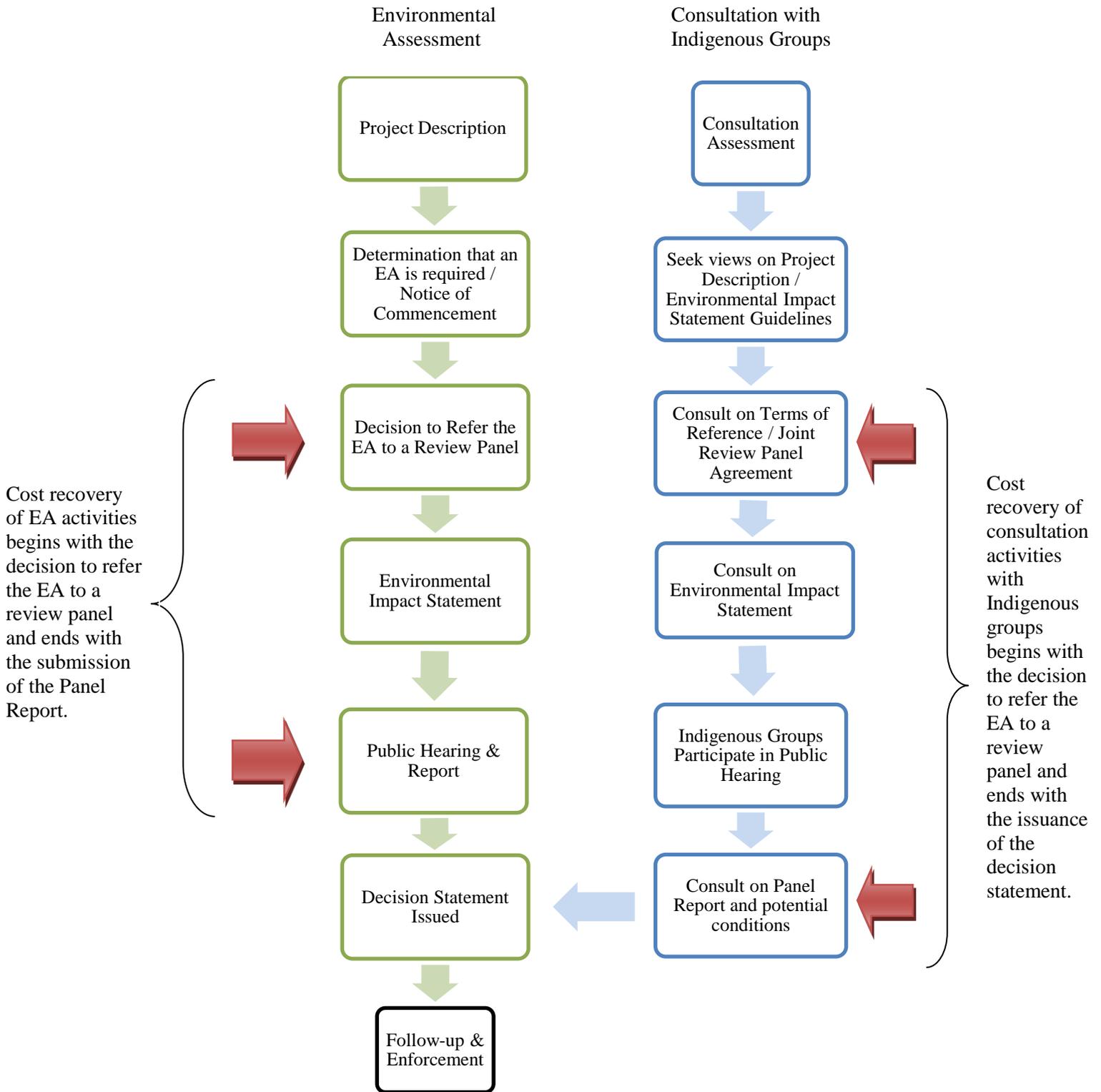
- Pre-Panel Appointment Phase: The timeline for the establishment of the review panel from the date of the referral of the project to an EA by review panel.
- Panel Phase: The timeline for the submission of the review panel report to the Minister from the date of the establishment of the review panel.
- Post-Panel Phase: The timeline for the issuance of the Minister's EA decision statement from the date of the submission of the review panel report.

CEAA 2012 requires that the decision statement be issued no later than 24 months after the day on which the EA of the designated project was referred to a review panel.

The Minister may extend the timelines of an EA by review panel by a maximum of three months to enable cooperation with another jurisdiction or because of circumstances specific to the proposed project. The Governor in Council may, on the recommendation of the Minister, grant further extensions.

Note: The period that is taken by the proponent to respond to a request by the Agency, the review panel or the Minister (to conduct studies, prepare the environmental impact statement, collect further information, etc.), is not counted in the project-specific timeline established for the EA.

APPENDIX 2: GENERAL PROCESS FOR AN EA BY A REVIEW PANEL AND ASSOCIATED CONSULTATION WITH INDIGENOUS GROUPS



Appendix 2 provides a process diagram depicting two vertical flows of activities related to an EA by a review panel, with arrows indicating the parts of the process that are subject to cost recovery. The left side of the diagram shows key EA activities and the right side shows key activities related to consultation with Indigenous groups.

The diagram indicates the Agency does not recover costs during initial EA activities (i.e. Project Description, Determination that an EA is required and Notice of Commencement) or during initial consultation with Indigenous groups (i.e. consultation assessment, seeking views on Project Description and Environmental Impact Statement Guidelines).

Red arrows show cost recovery of EA activities begins with the decision to refer the EA to a review panel, includes the review of the Environmental Impact Statement and ends with the submission of the panel report. Similarly, red arrows indicate cost recovery of consultation activities with Indigenous groups begins with the decision to refer the EA to a review panel, includes: consulting on Terms of Reference/ Joint Review Panel Agreement, consulting on Environmental Impact Statement, a public hearing with participation of Indigenous groups and consulting on the panel report and potential conditions; and ends with the issuance of the Decision Statement.

The diagram illustrates the Agency does not recover costs during final EA activities (i.e. issuance of Decision Statement or follow-up and enforcement).

APPENDIX 3: AGENCY STAFF ROLES AND RESPONSIBILITIES IN EAs BY REVIEW PANEL

Agency staff perform a number of different functions with respect to EAs by review panel depending on the phase of the process. The following describes the types of tasks carried out, organized by phase of the EA by review panel process and whether or not the activities will be cost-recovered.

1. Pre-Panel Appointment Phase

Cost Recoverable Activities

Following the referral of the designated project to an EA by review panel and prior to the appointment of a review panel, Agency staff are involved in: developing documents associated with the EA by review panel, including Terms of Reference for the review panel and, where required, a Joint Review Panel Agreement; determining whether there is enough information in a proponent's Environmental Impact Statement to allow the review panel to conduct its technical review; and other tasks. Agency staff also undertake various tasks associated with coordinating the federal review team and consulting with potentially affected Indigenous groups (see section 4 below).

Some staff involved in the Pre-Panel Appointment phase of the EA may become members of the panel secretariat upon appointment of the review panel.

Activities that are not Cost-Recovered

The costs associated with any work conducted by Agency staff prior to the referral of a designated project to an EA by review panel are not recovered.

2. Panel Review Phase

Cost Recoverable Activities

Upon appointment of the review panel by the Minister, a secretariat, composed of Agency staff (and in the case of a joint review panel, staff from the partnering jurisdiction), is created which functionally reports to the review panel members. In accordance with the principles of administrative law, upon appointment of a review panel, the review panel secretariat operates within the deliberative privilege of the review panel. This means that the members of the secretariat do not discuss issues associated with the EA by the review panel with Agency staff, or any other individuals who are not part of the secretariat.

Members of the review panel secretariat perform a number of functions and duties to support the review panel.

Panel Manager manages the secretariat and is responsible for the delivery and coordination of the general duties of the secretariat; provides the review panel with procedural, technical, analytical and administrative support throughout the EA; acts as the review panel's liaison with the proponent, government departments, Indigenous groups and other participants in regard to providing procedural information with respect to the review process; assists the

review panel in preparing and distributing correspondence, procedures, reports and other documents; and manages the review panel's budget and expenditures. The Panel Manager works collaboratively with the partner jurisdiction, where applicable, to ensure the delivery and coordination of an efficient joint process.

Panel Analyst supports the Panel Manager in carrying out the above responsibilities.

Registry Coordinator ensures the timely posting of records to the Agency's Registry.

Administrative Support Officer assists with administrative and logistical arrangements, including travel and accommodation arrangements for panel meetings and the public hearing and contracting for third-party services.

Legal Counsel provides legal advice to the review panel throughout the EA of a designated project. The Agency administers the retainer agreement on behalf of the review panel. This lawyer is not an employee of Justice Canada. The recovery of costs associated with the legal counsel to the review panel will be negotiated with proponents on a project-specific basis.

Communications Advisor provides communications advice and services to the review panel, including managing media relations, responding to media enquiries on behalf of the review panel, coordinating public announcements, preparing communications products as required, and providing assistance during the public hearing and public information sessions as needed.

Finance Officer assists the Panel Manager in developing a budget for the review panel, prepares invoices for recoverable expenses and provides financial and administrative services to the review panel.

Agency staff, who are not part of the secretariat, undertake various tasks associated with coordinating the federal review team and consulting with potentially affected Indigenous groups (see section 4 below). These operate outside the deliberative privilege of the review panel.

3. Post-Panel Phase

Once a panel report has been submitted to the Minister, Agency staff will be involved in the development of the Minister's EA Decision Statement.

Cost Recoverable Activities

Costs associated with the Agency's role as Crown Consultation Coordinator during the post-panel phase will be recovered (see section 4 below).

Activities that are not Cost-Recovered

The costs associated with the involvement of Agency staff in the development of the EA Decision Statement following the submission of the Panel's report are not recovered.

4. All Phases of the Review Process

Following the referral of a designated project to an EA by review panel, the following roles and responsibilities will be exercised by the Agency throughout the review panel process, both before a review panel has been appointed (the Pre-Panel Appointment phase) and after the appointment of the review panel (the Panel phase and Post-Panel phase). These Agency staff operate outside the deliberative privilege of the review panel, and explicitly support the Agency and the Minister in fulfilling their responsibilities in the review panel process.

Cost Recoverable Activities

Crown Consultation Coordinator develops and implements a Crown consultation plan and where applicable, coordinates Crown consultation activities with those of another jurisdiction. The Crown Consultation Coordinator represents the Crown during consultation activities, compiles the Crown consultation record, coordinates the evaluation of the scope, nature and sufficiency of the Crown's consultation efforts, coordinates the response to Indigenous groups on how concerns were addressed during the EA review panel process, and documents activities relevant to the review panel EA process. This may involve analyzing submissions prepared by Indigenous groups and participating in the process to identify issues of concern that the Crown may need to consider within their panel submissions and in the subsequent development of conditions within the EA Decision Statement.

Crown Consultation Analyst supports the Crown Consultation Coordinator in carrying out the above responsibilities.

Agency Federal Participation Coordinator facilitates the participation of federal departments in the review panel process. Functions can include coordinating communication and discussion among federal participants, any joint jurisdiction, the proponent and Indigenous groups (in consultation with the Crown Consultation Coordinator) to facilitate an understanding of the various perspectives related to the project. The main tasks occur in the Pre-Panel Appointment phase during the conformity review of the Environmental Impact Statement to identify any gaps, deficiencies or overlaps in the federal information.

Panel Issues Coordinator assigned to support the Major Projects Management Office (MPMO), assists in the identification of consistent federal approaches to issues arising in the review panel process and providing advice in substantive discussions among federal departments. Any such staff will take day-to-day direction from the MPMO.

Agency Management Team may participate in federal review team meetings and Indigenous consultations sessions. The travel costs associated with delivery of any non-managerial functions by members of the management team in the review panel process are recoverable.

Activities that are not Cost Recovered

Agency Management Team supports the Agency and the Minister in fulfilling his or her responsibilities under CEAA 2012 in the review panel process. The salary costs for the time spent by the Agency management team on designated projects subject to an EA by review panel are not recovered.

Participant Funding Program Staff manage the Participant Funding Program. The salary costs for these staff are not recovered. Any funds allocated by the Agency to support participation of participants in an EA by review panel are also not recovered.