

**AGREEMENT  
To Establish a Joint Review Panel  
for the Pierre River Mine Project**

**Between  
The Minister of the Environment, Canada**

**- and -**

**The Energy Resources Conservation Board, Alberta**

**PREAMBLE**

**WHEREAS** the Energy Resources Conservation Board (the ERCB) has statutory responsibilities pursuant to the *Energy Resources Conservation Act*; and

**WHEREAS** the Minister of the Environment, Canada (the Federal Minister of the Environment) has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act*; and

**WHEREAS** the Pierre River Mine Project (the project) requires a public hearing and approvals from the ERCB pursuant to the *Energy Resources Conservation Act*, and the *Oil Sands Conservation Act*, and is subject to an assessment under the *Canadian Environmental Assessment Act*; and

**WHEREAS** the Canadian Environmental Assessment Agency (the Agency) has requested, in accordance with section 25 of the *Canadian Environmental Assessment Act*, that the Federal Minister of the Environment refer the project to a review panel; and

**WHEREAS** the Federal Minister of the Environment has referred the project to a review panel in accordance with section 29 of the *Canadian Environmental Assessment Act*; and

**WHEREAS** the Government of the Province of Alberta and the Government of Canada established a framework for conducting joint review panels through the *Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)* signed on May 17, 2005; and

**WHEREAS** the ERCB and the Federal Minister of the Environment have determined that a joint review of the project will ensure that the project is evaluated according to the spirit and requirements of their respective authorities while avoiding unnecessary duplication, delays and confusion that could arise from individual reviews by each government or the ERCB; and

**WHEREAS** the ERCB and the Federal Minister of the Environment have determined that a joint review of the project should be conducted in a manner consistent with the provisions of Appendix 2 of the *Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)*; and

**WHEREAS** the Federal Minister of the Environment has determined that pursuant to subsection 40(2) of the *Canadian Environmental Assessment Act* a joint review panel should be established to consider the project; and

**WHEREAS** the ERCB has determined that pursuant to section 22 of the *Energy Resources Conservation Act* a joint review panel cooperative proceeding should be established and that the project should be considered in a cooperative proceeding by the ERCB and the Agency; and

**WHEREAS** the Federal Minister of the Environment and the ERCB previously established a joint review panel for the Jackpine Mine Expansion Project, as evidenced by their written agreement dated September 13, 2011 and its amendment; and

**WHEREAS** the Federal Minister of the Environment and the ERCB have determined that, given commonalities between the two projects and the single, integrated Environmental Impact Statement that has been prepared for the two projects, the joint panel process for this project may proceed with increased efficiency from coordinating its review process with the joint panel review process for the Jackpine Mine Expansion Project.

**THEREFORE**, the ERCB and the Federal Minister of the Environment hereby establish a joint review panel for the project in accordance with the provisions of this Agreement and the Terms of Reference attached as an Appendix to this Agreement.

## **1. Definitions**

For the purpose of this Agreement and of the Appendix attached to it,

"**Agency**" means the Canadian Environmental Assessment Agency established by the *Canadian Environmental Assessment Act*.

"**environment**" means the components of the Earth, and includes

- a. land, water and air, including all layers of the atmosphere;
- b. all organic and inorganic matter and living organisms; and
- c. the interacting natural systems that include components referred to in a. and b.

"**environmental effect**" means, in respect of the project,

- a. any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residence of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,
- b. any effect of any change referred to in paragraph a. on
  - i. health and socio-economic conditions
  - ii. physical and cultural heritage
  - iii. the current use of lands and resources for traditional purposes by Aboriginal persons, or
  - iv. any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or
- c. any change to the project that may be caused by the environment

whether any such change or effect occurs within or outside Canada.

**"federal authority"** refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

**"report"** means the document produced by the Joint Review Panel, which contains decisions pursuant to the *Energy Resources Conservation Act* or the *Oil Sands Conservation Act*, and the Joint Review Panel's rationale, conclusions and recommendations relating to the environmental assessment of the project, including any mitigation measures and follow-up program pursuant to the *Canadian Environmental Assessment Act*.

**"follow-up program"** means a program for

- a. verifying the accuracy of the environmental assessment of the project, and
- b. determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project.

**"Joint Review Panel"** refers to the Joint Review Panel established by the ERCB and the Federal Minister of the Environment through this Agreement.

**"mitigation"** means, in respect of the project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means.

**"parties"** means the signatories to this Agreement.

**"proponent"** has the meaning provided in section 2 of the *Canadian Environmental Assessment Act*

**"public registry"** means a repository to facilitate public access to the records relating to the environmental assessment of the project in accordance with section 55 of the *Canadian Environmental Assessment Act*.

**"responsible authority"** refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

## **2. Establishment of the Joint Review Panel**

- 2.1 A process is hereby established to create a Joint Review Panel, pursuant to section 22 of the *Energy Resources Conservation Act* with the authorization of the Lieutenant Governor in Council of Alberta, and sections 40, 41 and 42 of the *Canadian Environmental Assessment Act*, for the purposes of the joint review of the project.
- 2.2 The ERCB and the Agency will make arrangements to coordinate the announcements of a joint review of the project by both Alberta and Canada.

### **3. Constitution of the Joint Review Panel**

- 3.1 The Joint Review Panel will consist of three members. Two members, including the Joint Review Panel Chair, will be appointed by the Chair of the ERCB with the approval of the Federal Minister of the Environment. The third Joint Review Panel member will be appointed by the Federal Minister of the Environment in accordance with article 3.2 of this Agreement.
- 3.2 The Federal Minister of the Environment will select the third Joint Review Panel member and recommend the selected candidate as an individual who may serve as a potential acting member of the ERCB. If acceptable to the Lieutenant Governor in Council of Alberta and the Chairman of the ERCB, the Lieutenant Governor in Council of Alberta will nominate this candidate to serve as an acting member of the ERCB and the Chairman of the ERCB will appoint this candidate as a member of the Joint Review Panel. The selected candidate will also be appointed by the Federal Minister of the Environment as a member of the Joint Review Panel.
- 3.3 The Joint Review Panel members shall be unbiased and free from any conflict of interest relative to the project and are to have knowledge or experience relevant to the anticipated environmental effects of the project.

### **4. Conduct of Assessment by the Joint Review Panel and Coordinated Review Process**

- 4.1 The Joint Review Panel shall conduct its review in a manner that discharges the responsibilities of the ERCB under the *Energy Resources Conservation Act*.
- 4.2 The Joint Review Panel shall conduct its review in a manner that discharges the requirements set out in the *Canadian Environmental Assessment Act* and in the Terms of Reference attached as an Appendix to this Agreement and that were fixed and approved by the Federal Minister of the Environment and the ERCB.
- 4.3 The Joint Review Panel shall have all the powers and duties of a panel described in section 35 of the *Canadian Environmental Assessment Act* and of a division of the ERCB described in section 8 of the *Energy Resources Conservation Act*.
- 4.4 The Joint Review Panel hearing shall be public and the review will provide opportunities for timely and meaningful participation by the public, including Aboriginal persons and groups. Hearing participants will not be required to satisfy the test under subsection 26(2) of the *Energy Resources Conservation Act*. The Joint Review Panel shall conduct its hearing in accordance with the ERCB's *Rules of Practice*. The Joint Review Panel will, however, attempt to make the review process as accessible as reasonably possible for individuals or groups who are not represented by legal counsel or who may lack experience with the quasi-judicial nature of the hearing process.
- 4.5 A majority of the Joint Review Panel members constitutes a quorum for the purposes of the environmental assessment to be conducted by the Joint Review Panel. When a hearing, public meeting, or other activity is conducted by the Joint Review Panel and a member of the Joint Review Panel for any reason does not attend on any day or part of a day, the other members who are sitting at the hearing, public meeting or other activity may continue as fully and effectively as though the absent member was present.

- 4.6 If at any time prior to issuing its report the Joint Review Panel is of the opinion that the review of the project may proceed with increased efficiency by being coordinated with the review process for the Jackpine Mine Expansion Project, the Joint Review Panel may coordinate its review process with the Jackpine Mine Expansion Project review process.
- 4.7 The Joint Review Panel may, at any time, consider the progress of the Jackpine Mine Expansion project review process when making decisions about the conduct of the Pierre River Mine review process, and may decide to coordinate the review process as provided in Article 4.6.
- 4.8 If the Joint Review Panel decides to coordinate the review process for the project with the review process for the Jackpine Mine Expansion project, the Joint Review Panel shall ensure that the coordination of the review processes is done in a manner consistent with this Agreement, and in a manner that ensures that the review process for the project is procedurally fair.

## **5. Secretariat**

- 5.1 Administrative, technical, and procedural support requested by the Joint Review Panel shall be provided by a Secretariat, which shall be the joint responsibility of the ERCB and the Agency.
- 5.2 The Secretariat will report to the Joint Review Panel and will be structured so as to allow the Joint Review Panel to conduct its review in an efficient and cost-effective manner.
- 5.3 The ERCB will provide its offices for the conduct of the activities of the Joint Review Panel and the Secretariat.

## **6. Aboriginal Rights and Interests**

- 6.1 The Joint Review Panel may receive information from Aboriginal groups related to the nature and scope of asserted or established Aboriginal and treaty rights in the area of the project, as well as information on the potential adverse environmental effects that the project may have on asserted or established Aboriginal and treaty rights. The Joint Review Panel may also receive information provided in this regard by other participants, federal authorities or government, and provincial departments or government.
- 6.2 The Joint Review Panel shall reference in its report:
  - a. the information provided by participants regarding the manner in which the project may adversely affect asserted or established Aboriginal and treaty rights; and
  - b. the information provided by participants regarding the strength of claim in respect of Aboriginal and treaty rights asserted by a participant, including information about the location, extent, bases and exercise of those asserted Aboriginal and treaty rights in the area of the project.

For the purposes of its report, the Joint Review Panel shall document claims of Aboriginal and treaty rights as presented by participants and consider the effects of the project on the Aboriginal and treaty rights so presented. The Joint Review Panel may use this information to make recommendations that relate to the manner in which

the project may adversely affect the Aboriginal and treaty rights asserted by participants.

- 6.3** Notwithstanding articles 6.1 and 6.2, the Joint Review Panel is not required by this agreement to make any determinations as to:
- a. the validity of Aboriginal or treaty rights asserted by a participant or the strength of such claims;
  - b. the scope of the Crown's duty to consult an Aboriginal group; or
  - c. whether the Crown has met its respective duties to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 6.4** Nothing in this article 6 limits the application of Part 2 of the *Administrative Procedures and Jurisdiction Act* to the ERCB, and the Joint Review Panel (in its capacity as a division of the ERCB) remains at all times subject to the requirements of, and entitled to exercise the powers under Part 2 of the *Administrative Procedures and Jurisdiction Act*, including but not limited to section 13 thereof.

## **7. Record of Joint Review and Report**

- 7.1** A public registry will be maintained by the Secretariat during the course of the joint review in a manner that provides for convenient public access, and for the purposes of compliance with sections 55 to 55.5 of the *Canadian Environmental Assessment Act*.
- 7.2** Subject to subsections 35(3), (4), and (4.1) and section 55.5 of the *Canadian Environmental Assessment Act*, the public registry will include all submissions, correspondence, hearing transcripts, exhibits and other information received by the Joint Review Panel and all public information produced by the Joint Review Panel relating to the review of the project.
- 7.3** On completion of the assessment of the project, the Joint Review Panel shall prepare a report. The report shall include an executive summary in both official languages. The report will set out the rationale, conclusions and recommendations of the Joint Review Panel relating to the environmental assessment of the project, including any mitigation measures and follow-up program, and a summary of comments received from the public, including Aboriginal persons and groups. The report will be conveyed to the Government of Alberta and the Federal Minister of the Environment within 90 days of the close of the record if the public hearing is not coordinated with the Jackpine Mine Expansion Project's public hearing, or within 120 days of the close of the record if the public hearing is coordinated with the Jackpine Mine Expansion Project's public hearing. Simultaneously, the report will be published and made available to the public by the Joint Review Panel.
- 7.4** After the report is submitted, the responsibility for the maintenance of the public registry will be transferred to the responsible authority. The ERCB will continue to maintain records of the proceedings and the report in accordance with its normal practices and procedures.
- 7.5** The Agency will be responsible for the translation of key documents prepared by the Joint Review Panel, including public notifications and releases and the report,

into both of the official languages of Canada. The Agency will use all reasonable efforts to expedite the translation of the report.

## **8. Other Government Departments**

- 8.1** The Joint Review Panel may request federal authorities and provincial authorities having specialized information or knowledge with respect to the project to make that information or knowledge available to the Joint Review Panel in an acceptable manner.
- 8.2** Nothing in this Agreement will restrict the participation by way of submission to the Joint Review Panel by other federal or provincial government departments or bodies, subject to article 8.1, above, subsection 12(3) of the *Canadian Environmental Assessment Act* and the ERCB Rules of Practice.

## **9. Participant Funding**

- 9.1** Decisions regarding participant funding by the Agency under the federal Participant Funding Program, and decisions on local intervenor funding by the ERCB as provided for in the *Energy Resources Conservation Act*, ERCB Rules of Practice and the ERCB's Directive 31: Guidelines for Energy Proceeding Cost Claims will, to the extent practicable, take into account decisions of the other party.

## **10. Cost Sharing**

- 10.1** The ERCB, as lead party, will develop a budget estimate of expenses agreeable to both parties prior to initiation of the Joint Review Panel activities.
- 10.2** The costs of the joint review will be apportioned between the ERCB and the Agency in the manner set out in articles 10.3, 10.4 and 10.5.
- 10.3** The ERCB will be solely responsible for the following costs:
- salaries and benefits of the Joint Review Panel Chairman and the member of the Joint Review Panel not appointed in accordance with article 3.2; and
  - salaries and benefits of ERCB staff involved in the joint review.
- 10.4** The Agency will be solely responsible for the following costs:
- per diems of the Joint Review Panel member appointed in accordance with article 3.2;
  - salaries and benefits of Agency staff involved in the joint review;
  - all costs associated with the Agency's legal counsel for the proceeding;
  - all costs associated with the federal Participant Funding Program;
  - translation of records and documents into the official languages of Canada other than translation required as outlined in article 10.5 of this Agreement; and
  - costs associated with the public registry established pursuant to section 55.1 of the *Canadian Environmental Assessment Act*.

- 10.5** The ERCB and the Agency agree to share equally all those costs listed below, incurred as part of the joint review from the signing of this Agreement to the date the report is issued by the Joint Review Panel. The shareable costs are as follows:
- travel-related expenses associated with the review incurred by Joint Review Panel members and Joint Review Panel Secretariat staff;
  - per diems and associated expenses of independent/non-government expert consultants, analysts and communications specialists retained by the Secretariat;
  - language translation and interpretation services and facilities related to the evidence of applicants, participants and local interveners as required by the Joint Review Panel, but not including translation service referred to in article 7.5 of this Agreement;
  - printing of any reports and documents distributed by the Joint Review Panel necessary for the Joint Review Panel's work;
  - the publication of notices and releases;
  - photocopying, including the reproduction of documents contained in the public registry, and postage related to the joint review;
  - court reporting and transcripts as required by the Joint Review Panel;
  - rental of hearing, public meeting and public information office facilities and equipment;
  - audio and audio-visual services at the hearing and public meetings; and
  - miscellaneous expenditures up to a maximum of five percent (5%) of the total budget for the joint review.
- 10.6** The Agency may only be responsible for contributing to shareable costs within the allowable limits of Treasury Board Secretariat directives.
- 10.7** Shareable costs of the joint review as detailed in article 10.5 will be incurred at the sole discretion of the Joint Review Panel with due regard to economy and efficiency.
- 10.8** All expenses not listed above will need prior approval of both parties if they are to be equally shared.

## **11. Invoicing**

- 11.1** The ERCB will be responsible for advancing funds for the payment of the shareable costs and will invoice the Agency for the amounts owed under this Agreement, except for travel-related expenses of the Agency's staff which will be advanced by the Agency. In the event that the Agency is required to advance shareable funds directly, it will advance funds for payment and will invoice the ERCB as determined under this Agreement.
- 11.2** The invoicing will be done either at the end of each month or quarterly at the discretion of the ERCB. The invoice will cover all shareable costs paid by the ERCB.
- 11.3** Each invoice will be accompanied by a summary description of the shareable costs actually incurred and paid for the period covered by the invoice, in a form

satisfactory to both parties and will be approved by an official acceptable to both parties. Detailed information about incurred costs will be retained and made available to either Party upon request.

- 11.4 Subject to compliance with the above requirements, the Agency will pay to the ERCB the amount stated as being owed to it in the invoice within sixty (60) days of having received such invoice.
- 11.5 With respect to invoices covering the last period of any fiscal year (ending March 31), and the last invoice to be produced for the Joint Review Panel, each Party may review and deduct from the invoice, any incurred shareable costs that have not been previously recovered, so as to determine a net transfer of shared costs from one party to another. The payment will be made within thirty (30) days of having received such invoice. An accounting of the shared expenses incurred by the Agency will be sent with the year-end and final payments, or earlier as may be requested by the ERCB.

## **12. Audit**

- 12.1 Subject to this Agreement, both parties will keep open to audit and inspection by the Agency or the ERCB, or their duly authorized representative, all invoices, receipts, vouchers and documents of any nature or kind whatsoever that have been relied on by either of the two parties to calculate the shared cost of conducting the public review.
- 12.2 The Party exercising its option to audit will be responsible for the cost of the audit.
- 12.3 Where an audit conducted by either Party in connection with this Agreement reveals discrepancies regarding the amount billed to the Agency, and where prompt resolution between the parties is unattainable, an independent auditor acceptable to both parties will resolve the issue.

## **13. Amending this Agreement**

- 13.1 The terms and provisions of this Agreement may be amended by written memorandum executed by both the Federal Minister of the Environment and the Chairman of the ERCB. Subject to section 27 of the *Canadian Environmental Assessment Act*, upon completion of the joint review, this Agreement may be terminated at any time by an exchange of letters signed by both parties.

## 14. Signatures

WHEREAS the parties hereto have put their signatures

<original signed by>

The Honourable Peter Kent  
Minister of the Environment

Date

**MAR 21 2012**

<original signed by>

Dan McFadyen, P.Eng:  
Chairman  
Energy Resources Conservation Board

Date

*May 30, 2012*

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## **Appendix Terms of Reference**

### **Part I - Scope of Project**

The Pierre River Mine Project proposed by Shell Canada Limited includes the construction, operation, and reclamation of an oil sands surface mine and bitumen extraction facilities in the Fort McMurray area. The proposed mining project is to be located approximately 90 kilometres north of Fort McMurray on Oil Sands Leases on the west side of the Athabasca River. The proposed development includes an open pit, truck and shovel mine, ore handling facility, bitumen extraction facilities, tailings processing facilities, support infrastructure, water and tailings management plans, and an integrated reclamation plan, as well as the construction of a bridge across the Athabasca River. The Pierre River Mine Project is designed to produce a total of 31,800 cubic metres per day (200,000 barrels per day) of bitumen. The project components which are part of the scope of this assessment include:

- Open pit, truck and shovel mine;
- Ore preparation and handling facility;
- Bitumen extraction facilities;
- Bitumen froth treatment plant;
- Bitumen products storage facilities;
- Tailings management and processing facilities;
- Fish habitat compensation and any required infrastructures;
- Co-generation facility;
- All related works and activities including all temporary facilities required for the construction and operation of the above-mentioned facilities, namely
  - permanent and temporary access roads (new or modified);
  - construction or modification of any airstrip;
  - permanent and temporary work camps;
  - all temporary or permanent electrical power supply lines;
  - drinking water supply for camps;
  - water supply for the project, including water storage facilities
  - all temporary or permanent power supply for camps and worksites;
  - temporary control structures and diversion works;
  - treatment of wastewaters and waste management as well as the infrastructure required for this management;
  - any bridges and watercourse crossings (new or modified);
  - construction worksites and storage areas;
  - management of excavation material;

- handling and storage of petroleum products and hazardous materials

## **Part II - Scope of the Environmental Assessment**

1. The Joint Review Panel shall conduct an assessment of the environmental effects of the project based on the Scope of Project (Part I).
2. The assessment shall include a consideration of the factors listed in paragraphs 16(1)(a) to (d) and subsection 16(2) of the *Canadian Environmental Assessment Act*, namely:
  - a. the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
  - b. the significance of the effects referred to in paragraph a.;
  - c. comments from the public, including Aboriginal persons and groups, that are received during the joint review;
  - d. measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project;
  - e. the purpose of the project;
  - f. alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;
  - g. the need for, and the requirements of, any follow-up program in respect of the project; and
  - h. the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the present and those of the future.
3. The assessment by the Joint Review Panel shall also include a consideration of the additional following matters:
  - a. the need for the project;
  - b. alternatives to the project received during the joint review;
  - c. effects of the project on asserted or established Aboriginal and treaty rights, to the extent the Joint Review Panel receives such information as provided in article 6 of the Agreement; and
  - d. community knowledge and aboriginal traditional knowledge (such as traditional use studies) received during the joint review.

### **Part III – Scope of the factors**

The scope of the factors include those specified in the “Final Terms of Reference” for the preparation of the Environmental Impact Assessment Report for the Shell Canada Limited Jackpine Mine Expansion & Pierre River Mine issued by Alberta Environment on November 28, 2007. The document is available on the public registry (document # 5).

In addition, the Joint Review Panel in considering the factors outlined in Part II shall have regard for the following:

#### **Aboriginal Rights and Interests**

The Joint Review Panel shall consider:

- Evidence concerning any potential project effects to asserted or established Aboriginal and treaty rights presented by participants, such as:
  - Any potential effects on uses of lands and resources by Aboriginal groups for traditional purposes;
  - Any effects (including the effects related to increased access and fragmentation of habitat) on hunting, fishing, trapping, cultural and other traditional uses of the land (*e.g.* collection of medicinal plants, use of sacred sites), as well as related effects on lifestyle, culture, health and quality of life of Aboriginal persons;
  - Any effects of alterations to access into areas used by Aboriginal persons for traditional uses;
  - Any adverse effects of the project on the ability of future generations to pursue traditional activities or lifestyle;
  - Any effects of the project on heritage and archaeological resources in the project area that are of importance or concern to Aboriginal groups;
- The methods and measures proposed to manage, mitigate and compensate to an acceptable level, any identified effects on asserted or established Aboriginal rights and interests.

## **Cumulative Effects Assessment**

The cumulative effects assessment should take into consideration the approach described in the Agency's *Cumulative Effects Assessment Practitioners Guide* (1999) and in the Agency's Operation Policy Statement entitled "Addressing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act*" updated in November 2007.

The Joint Review Panel should focus its consideration of cumulative effects on key valued components. Without limiting itself thereto, the following components should be considered:

- water quality and quantity, including any potential effects on navigable waters or navigation;
- air quality and greenhouse gas emissions;
- asserted or established Aboriginal and treaty rights and interests;
- wildlife and wildlife habitat for valued species including: federally and provincially listed species at risk, and migratory birds; and
- valued vegetation communities and wetlands.

The cumulative effects assessment should provide a justification and description of the temporal boundaries and include, but not be limited to, the following:

- a pre-industrial case to allow the Joint Review Panel to take into account the effects that may have already been experienced prior to the project; and
- future foreseeable projects or activities as of the issuance of the Joint Review Panel's Terms of Reference.

## **Accidents & Malfunctions**

In considering the environmental effects of malfunctions or accidents that may occur in connection with the project, the Joint Review Panel should include potential malfunctions or accidents associated with the following components:

- tailings management;
- waste management and disposal;
- use, handling or spills of chemicals and hazardous materials on-site;
- the increase in road traffic, and the risk of road accidents; and
- any other project components or systems that have the potential, through accident or malfunction, to adversely affect the natural environment.

The Joint Review Panel should consider the likelihood of occurrence of a malfunction or an accident and the sensitive elements of the environment (*e.g.* communities, homes, natural sites of interest, areas of major use) that may be affected in the event of any such malfunction or accident.

Plans, measures and systems to reduce the potential occurrence of a malfunction or accident should be considered in the assessment and should indicate how they will

reduce the effects or consequences of any such malfunction or accident.

### **Effects of Changes to the Environment**

Consistent with the definition of “environmental effects” in the *Canadian Environmental Assessment Act*, the Joint Review Panel shall consider the effects of any changes to the environment caused by the project on the following factors:

- Health and Socio-Economic Conditions, including effects on navigation
- Physical and Cultural Heritage
- Current use of lands and resources for traditional purposes by Aboriginal persons
- Any structure, site or thing that is of historical, archaeological or architectural significance

### **Change to the Project Caused by the Environment**

Consistent with the definition of “environmental effects” in the *Canadian Environmental Assessment Act*, the Joint Review Panel will also consider any change to the project that may be caused by the environment.

Environmental changes and hazards that may occur and may affect the project shall be described. The Joint Review Panel should also take into account the potential influence of climate change scenarios presented by the proponent and interveners on climate parameters (e.g. precipitation, temperature), and physical environmental processes. The influence that these environmental changes and hazards may have on the project should be predicted and described. The environmental assessment should describe how these changes and hazards are accounted for in the project design.

### **Capacity of Renewable Resources**

Renewable resources are resources such as fish, wildlife, trees, water quality and quantity and airshed which are replaced or replenished, on an ongoing basis, either naturally or by human actions.

The Joint Review Panel shall consider the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the present and those of the future. The following points should be addressed:

- a description of the renewable resources that may be affected by the project;
- a brief description of the project’s environmental effects on the renewable resource;
- an indication as to the way in which the capacity of this resource was measured or evaluated;
- an indication of the temporal and geographic boundaries used to assess the capacity of the affected resource;
- a description of any other appropriate mitigation measures;
- a determination of the significance of the residual effects on the renewable resource and its capacity to meet the needs of current and future generations;

- an identification of the risks and uncertainties that remain and the description of the next steps, if any, that will be required to address this effect.

#### **Part IV – Review Process**

The Joint Review Panel may coordinate its review process with the review process for the Jackpine Mine Expansion Project, as provided in Articles 4.6, 4.7 and 4.8 of this Agreement.

The main steps of the joint review by the Joint Review Panel will be as follows:

##### **Review of the documentation**

1. Within 15 days following its appointment, the Joint Review Panel will initiate a public comment period on whether the information available on the public registry is sufficient to allow a review that complies with the Joint Review Panel's Terms of Reference and to proceed to the public hearing phase of the process. The public will be provided with a minimum of 60 days to provide comments.
2. Comments received during the comment period will be immediately made available to the public through the public registry.
3. After the public comment period has closed, the Joint Review Panel will decide if it has adequate information to proceed to hearing. In so doing, the Joint Review Panel will consider its own review of the information, and any written comments from the public, including Aboriginal persons and groups, government departments, other governments or technical experts, and any written exchanges between interested parties.
4. Should the Joint Review Panel identify information deficiencies after reviewing the available information and considering any comments received, the Joint Review Panel shall require additional information from the proponent. Any requirement for additional information will be issued by the Joint Review Panel as soon as is reasonably practicable following the close of the public comment period.
5. If the Joint Review Panel concludes that it has adequate information to proceed to hearing, it will announce the hearing as soon as is reasonably practicable following the close of the public comment period, providing for a minimum of 60 days notice prior to the commencement of the hearing.
6. Notwithstanding paragraph 4 above, if the Joint Review Panel is of the view that it requires additional information from the proponent but the information deficiency is minor in nature, and the Joint Review Panel receives a commitment from the proponent to provide the outstanding information, the Joint Review Panel will announce the hearing, providing for a minimum of 60 days notice prior to the commencement of the hearing.

##### **Determination of Adequacy of Additional Information Requested by the Joint Review Panel**

7. Upon receipt of additional information provided by the proponent pursuant to a

requirement under paragraph 4 above, the Joint Review Panel will ensure that the information is made available to the public for review and comment for a period of at least 30 days.

8. If, after reviewing the additional information and any written comments from the public, the Joint Review Panel concludes that it has adequate information to proceed to hearing, it will announce the hearing, providing for a minimum of 60 days notice prior to the commencement of the hearing.
9. If, after reviewing the additional information and any written comments from the public, the Joint Review Panel is still of the view that it does not have adequate information to proceed to hearing, it shall inform the proponent of the outstanding information requirements and indicate that the hearing will not be scheduled until that information has been provided by the proponent. Any additional information thereafter provided by the proponent will be subject to public comment in the manner described in paragraph 7 above.
10. Notwithstanding paragraph 9 above, if after reviewing the additional information and any written comments from the public the Joint Review Panel is of the view that the lack of information is minor in nature and the Joint Review Panel receives a commitment from the proponent to provide the outstanding information prior to the hearing, the Joint Review Panel will announce the hearing, providing for a minimum of 60 days notice prior to the commencement of the hearing.
11. If at any time during the review process the Joint Review Panel requests additional information from the proponent, the Joint Review Panel may specify the date by which the proponent must provide the information.

#### **Public Hearings and Coordinated Review Process**

12. The Joint Review Panel may coordinate its public hearing with the Jackpine Mine Expansion Project public hearing as provided in Article 4 of this Agreement. If the Panel considers coordinating the two public hearings, it must consult the public on the proposed public hearing process and timing.
13. The Joint Review Panel shall hold the hearing in a location or locations selected by the Joint Review Panel, and will endeavour to hold at least a portion of the hearing in, or as near to as is practicable, one or more communities that:
  - the Joint Review Panel believes may be affected by the project; or
  - are nearest to the location where the project is proposed to be carried out.

#### **Joint Review Panel Report**

14. The Joint Review Panel will deliver its report to the Federal Minister of the Environment within 90 days following the close of the record if the public hearing is not coordinated with the Jackpine Mine Expansion Project's public hearing, or will deliver two separate reports, one for each of the two Projects, within 120 days following the close of the record if the public hearing is coordinated with the Jackpine Mine Expansion Project's public hearing. The report will take into

account and reflect the views of all Joint Review Panel members.