



Evaluation of Environment Canada's Aboriginal Consultations on Wastewater

Management Response and Final Report

February 25, 2009

Evaluation and Final Report
prepared by Auguste Solutions & Associates Inc.

Management Response
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Environment Canada

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SECTION 1.0 MANAGEMENT RESPONSE TO THE EVALUATION OF ENVIRONMENT CANADA'S ABORIGINAL CONSULTATIONS ON WASTEWATER

This document consists of two parts. The first part is Environment Canada's management response to the recommendations from the *Evaluation of Environment Canada's Aboriginal Consultations on Wastewater, Final Report, July 2008* (Final Evaluation Report). The second part is the consultant's Final Evaluation Report, presented in its entirety and unedited. The management response has been drafted this way to preserve the independent nature of the evaluation.

Report clearance steps:

Project initiated	November 8, 2007
Report completed by the consultant	May 9, 2008
Report accepted by the Department	July 29, 2008
Report and management response approved by Departmental Evaluation Committee	February 25, 2009

1.1 EXECUTIVE SUMMARY

Environment Canada is developing federal regulations applicable to the wastewater sector. In that regard, the Department worked with the Canadian Council of Ministers of the Environment (CCME) to complete the Canada-wide Strategy for the Management of Municipal Wastewater Effluent (CCME Strategy). The core elements of the CCME Strategy that relate to federal jurisdiction will form the basis of the regulations.

Under the Government of Canada *Cabinet Directive on Streamlining Regulation*, 2007, departments and agencies are responsible for conducting consultations at all stages of a regulatory development process. To this end, Environment Canada developed a three-phased consultation process for the wastewater regulations. Phase 1 of the consultation focused on the development process for the CCME Strategy and on early versions of the Strategy. Phase 2 of the consultation focused on Environment Canada's *Proposed Regulatory Framework for Wastewater, Consultation Document*, October 2007 and the September 2007 draft CCME Strategy. Phase 3 of the consultation will focus on the draft legal text of the federal wastewater regulations after they are published in the *Canada Gazette*, Part 1, targeted for late 2009.

Phase 2 of the consultation consisted of a series of consultation sessions held across the country in all provinces and territories.¹ The consultation sessions targeted three "streams" of interested parties: Aboriginal peoples and their organizations; municipalities and organizations; and federal departments and agencies. Environment Canada focused much attention on the consultation with Aboriginal peoples and their organizations. As part of this process, an

1 In the case of Aboriginal peoples and organizations, a session was not held in Nova Scotia since the Mi'kmaq–Nova Scotia–Canada consultation process was initiated but could not be completed.

independent Aboriginal firm was contracted to conduct a formal evaluation of the Aboriginal consultation sessions.²

The evaluation contractor was not required to evaluate either the scientific content of the proposed regulations or the consultation with municipalities and organizations and with federal departments and agencies. The evaluator was also not required to provide legal advice, to review Supreme Court of Canada decisions or to search for interpretation of Supreme Court of Canada decisions.

The evaluation found that the majority of Aboriginal participants agreed that the overall objective of the proposed regulations for the management of wastewater effluents is important, and that action must be undertaken. It also found that the consultation was implemented as per the approved plan and was consistent with the *Guidelines for Effective Regulatory Consultations*, Treasury Board of Canada Secretariat, 2007.³

The majority of Aboriginal participants did, however, state that they did not consider the process to be one of consultation with Canada's Aboriginal peoples; rather, they considered it to be more of a dialogue or discussion. Some of Canada's Aboriginal peoples were also concerned that the use of the term consultation within the context of the Environment Canada wastewater process could set a precedent in defining consultation that might have a serious negative impact on future consultations and negotiations on other matters.

The evaluation culminated in three conclusions with five associated recommendations. First, the evaluation concluded that Environment Canada and Aboriginal participants employed different definitions of consultation and that this had an impact on the consultation process and its evaluation. Second, the evaluation concluded that Environment Canada succeeded in delivering and sharing information according to its approved plan. Adjustments were recommended for future processes. Third, the evaluation concluded that Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations* contains evaluation requirements not addressed by the evaluation, which was launched before these guidelines were finalized.

The evaluation's five recommendations focused on the following:

- clarifying the term consultations, specifically in the *Guidelines for Effective Regulatory Consultation*, Treasury Board of Canada Secretariat, 2007
- engaging Aboriginal organizations to identify a mutually agreeable process for the next steps on wastewater consultations
- establishing a team aware of Aboriginal priorities and developing protocols
- using an “advisor” and undertaking process adjustments for future dialogue
- conducting an evaluation of the remainder of the wastewater consultation process

The following subsection outlines Environment Canada's management response to each of the five recommendations. It includes a description of the actions that will be undertaken, gives the name of the Environment Canada branch and directorate responsible, and provides a timeline for dealing with the response to each recommendation. The management response is followed by the consultant's final report on the evaluation.

² Evaluation of Environment Canada's Aboriginal Consultations on Wastewater, Final Report, July 2008, prepared by Auguste Solutions & Associates Inc.

³ Associated with the Cabinet Directive on Streamlining Regulation, Canada, 2007

1.2 INTRODUCTION AND CONTEXT

According to the Government of Canada *Cabinet Directive on Streamlining Regulation*, 2007, Environment Canada is responsible for conducting consultations on its wastewater regulations currently being developed under the *Fisheries Act*, R.S.C., 1985, c. F-14. During phase 2 of a three-phased consultation process, Environment Canada held consultation sessions with Aboriginal peoples and their organizations from May 2007 to January 2008. In a separate process, the two other streams of interested parties—federal departments and agencies, and municipalities and organizations—were also consulted. Aboriginal firms were contracted to help with organizing, facilitating and report writing for the sessions with Aboriginal participants, and the Assembly of First Nations and the Inuit Tapiriit Kanatami were contracted to develop impact analysis papers and distribute them to their members to aid in understanding the issues associated with wastewater management and the proposed regulations. An Aboriginal firm was contracted to conduct an independent evaluation of phase 2 of the Aboriginal consultation process.

The final report for the independent evaluation, prepared by the contractor Auguste Solutions & Associates Inc., states that the objectives of the evaluation were as follows:

- to examine the effectiveness and appropriateness of Environment Canada's Aboriginal consultations concerning the proposed wastewater regulatory framework (consultations with non-Aboriginal municipalities are not included within the scope of this evaluation)
- to provide recommendations to Environment Canada for improving future consultations with Aboriginal stakeholders.

As described in the evaluation, Environment Canada invited representatives from Aboriginal communities and organizations (approximately 1000 invitation letters were mailed) across Canada. Between 180 and 200 different Aboriginal communities participated, representing 25-30% of all First Nation communities and 4% of Inuit communities across Canada. The majority (75%) of Aboriginal participants stated that they were better informed about the proposed regulations after the Environment Canada-led sessions and the majority of Aboriginal participants believe that Environment Canada is aware of and understands the issues Aboriginal participants presented at the sessions. A large majority of participants (88%) agreed or strongly agreed that Environment Canada listened and responded to their questions and concerns.

Key findings of the evaluation indicate that Environment Canada consistently followed Government of Canada policies for consulting the public while making regulations. The findings did, however, indicate that Environment Canada and the majority of Aboriginal participants did not share the same definition of consultation. Aboriginal participants stated that they considered the sessions to be technical workshops rather than consultations and they raised concern that this initiative could establish precedents that could affect future consultation processes and negotiations between Canada and Aboriginal peoples if they agreed that this was consultation.

The evaluation culminated in three conclusions with associated recommendations. The conclusions as found on pages 48–49 of the consultant's final evaluation report are presented verbatim below:

Conclusion #1: The primary and most pressing question, which is repeated several times during the conduct of this evaluation, is the need to define what a “consultation” is. Environment Canada did meet its obligation to consult based upon the Federal Government's definition of consultation. The Aboriginal participants to the consultations,

including their representative organizations, the Assembly of First Nations and Inuit Tapiriit Kanatami, disagree with Environment Canada and state that Environment Canada's process of dialogue with them was not consultations. This has resulted in a situation that must be addressed.

Central to the disagreement is the word consultations. Canada's Aboriginal Peoples employ the term consultations in a very different manner than does the Federal Government. If Environment Canada had employed a term such as *public dialogue* rather than insisting on using the term *consultations*, many if not most of the problems would not have occurred.

Conclusion #2: Environment Canada and the Aboriginal participants were successful in terms of delivering and sharing information and knowledge. The knowledge, content and delivery of information during the sessions did positively meet many of the expectations of the Aboriginal participants, and the Session and National Reports accurately captured the essential messages. The need for action in wastewater effluent management is not contested and those opinions have been validated by 40% of the national target audience. However, some future improvements can be considered for the "next round of discussions."

Conclusion #3: Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations*, which was issued after Environment Canada undertook this evaluation, contains evaluation requirements not addressed by this evaluation.

Environment Canada accepts the independent evaluation and agrees to the following actions as the Government's appropriate management response to the recommendations.

1.3 RECOMMENDATIONS AND MANAGEMENT RESPONSE

The text outlined in the following boxes is extracted verbatim from the consultant's final evaluation report. Each box is followed by the Department's management response and actions for that particular recommendation.

Recommendation #1a (Section 5.2 of the Final Evaluation Report)

Before continuing its consultations with Canada's Aboriginal Peoples, Environment Canada needs to request that Treasury Board modify its 2007 *Guidelines for Effective Regulatory Consultations* by replacing the term *consultations* with a term that is mutually acceptable to the federal government and Canada's Aboriginal Peoples.

Management Response

The Treasury Board of Canada Secretariat has developed a series of *Guidelines for Effective Regulatory Consultations*. These Treasury Board guidelines were developed to meet the needs of a broad number of federal departments undertaking an array of consultations on regulation development which may be based on any one of a number of different pieces of legislation. The Treasury Board guidelines state that "the extent to which stakeholders are involved in a consultation process varies considerably, from simply providing them with information to engaging them in a true partnership with shared decision making. Regulatory consultations tend to fall somewhere in the middle of this continuum, since the final decision regarding regulation rests with a specific individual (i.e. the Minister) or body (i.e. the Governor in Council). These Guidelines focus primarily on the consultation process, which entails a two-way exchange in

which stakeholders are given an opportunity to provide input and affect the outcome of a regulatory proposal.”⁴

The Department recognizes that consulting interested and affected parties is an important component of regulatory development. Each consultation process may require different interpretations of who to consult, and how and when to consult them. The Department is satisfied with the use of the term consultation in this particular situation regarding its wastewater consultations.

The Department agrees to inform Treasury Board of the findings of the evaluation. The Department does not agree with the recommendation to request that Treasury Board replace the term consultation in the 2007 *Guidelines for Effective Regulatory Consultations*, as these guidelines are intended to be applied to a broad spectrum of consultation activities.

For the next phase of the wastewater consultation process, the Department will clearly communicate the purpose of the consultation, method and level of engagement, and the participants' ability to influence the decision or action being taken.

Action: Environment Canada will send a joint Assistant Deputy Minister transmittal letter to the Treasury Board of Canada Secretariat Executive Secretary, Regulatory Affairs to provide information about the findings of this evaluation for reference and future consideration.

Functional responsibility: ADM – Strategic Policy Branch, and ADM – Environmental Stewardship Branch.

Contact person: Director General – Intergovernmental and Stakeholder Relations, or Director General – Public and Resources Sectors.

Timeline: Spring 2009.

Recommendation #1b (Section 5.2 of the Final Evaluation Report)

Follow the Assembly of First Nations' suggestion that Environment Canada sit down with Canada's Aboriginal Peoples, before continuing with its consultations plan, and identify a mutually agreeable process to engage in consultations (dialogue) on the development of regulations for wastewater effluent management on Aboriginal lands.

Management Response

Environment Canada agrees to dialogue with national Aboriginal organizations to explore the possibility of defining a mutually agreeable process for future consultations with Aboriginal people on wastewater regulations, while respecting Treasury Board 2007 *Guidelines for Effective Regulatory Consultations* and other departmental guidance and guidelines. However, there may be differences in what the Government of Canada, including the Department, and national Aboriginal organizations consider to be appropriate consultations with Aboriginal people, which may impact the ability to reach a consensus.

Action: Environment Canada's Wastewater staff will contact national and regional Aboriginal organizations to discuss possible options for the next phase of the consultation as wastewater regulations are developed and implemented.

⁴ *Guidelines for Effective Regulatory Consultations*, Treasury Board of Canada Secretariat, 2007, p. 2

Functional responsibility: ADM – Environmental Stewardship Branch.

Contact person: Director General – Public and Resources Sectors.

Timeline: Before the publication of draft regulations in the *Canada Gazette*, Part I.

Recommendation #1c (Section 5.2 of the Final Evaluation Report)

To support Recommendation #1b, Environment Canada needs to establish a team that includes members who are aware of Aboriginal priorities and issues as well as being culturally sensitive. This team should meet with the Assembly of First Nations and the Inuit Tapiriit Kanatami to establish protocols for continued dialogue between Environment Canada and Canada's Aboriginal Peoples.

Management Response

The Department agrees that it is appropriate to have a culturally sensitive team that is aware of Aboriginal priorities and issues and that can advise departmental staff. Environment Canada does have such a team in place that acts as the departmental centre of expertise on Aboriginal consultations and public participation and coordinates the departmental network of practitioners on consultation. The Department supports continued dialogue with Canada's Aboriginal peoples and agrees to develop protocols on a case-by-case basis, where appropriate.

Action: The departmental team will continue to provide advice to program staff in planning consultation processes to develop a good working relationship with Aboriginal peoples.

Functional responsibility: ADM – Strategic Policy Branch.

Contact person: Director General – Intergovernmental and Stakeholder Relations.

Timeline: Ongoing on a case-by-case basis.

Recommendation #2a (Section 5.2 of the Final Evaluation Report)

For future "consultation" processes, Environment Canada should incorporate the use of an "Advisor" to enhance and improve the dialogue process. As well, EC should undertake process adjustments for future dialogue with Canada's Aboriginal Peoples: two day versus one day workshop; incorporate break-out sessions; consider using fewer locations for dialogue; all of which may increase interest and participation as well as improving the cost-effectiveness equation.

Management Response

The Department interprets the use of an advisor in this recommendation to mean an "external advisor." The Department agrees to use an external advisor as determined to be appropriate on a case-by-case basis. In the case of the wastewater consultations, Aboriginal external advisors were hired under contract to provide advice on the consultation sessions, materials and participants and to facilitate and report on the sessions to help maximize the effectiveness and reach of the consultations.

The Department agrees that process adjustments for future dialogue with Canada's Aboriginal people may be required depending on the circumstances of each consultation. The use of longer workshops and fewer locations for engaging Aboriginal people would need to be

evaluated on a case-by-case basis to ensure that this is reasonable and practical for both parties and that the Crown is being fiscally responsible.

Action: The use of an external advisor and process adjustments will be considered on a case-by-case basis to ensure that the most effective process is undertaken. In order to facilitate process adjustments for future consultations, lessons learned from the consultations on wastewater and their evaluation will be shared with the network of departmental practitioners involved in Aboriginal consultation.

Functional responsibility: ADM – Strategic Policy Branch, and ADM – Environmental Stewardship Branch.

Contact person: Director General – Intergovernmental and Stakeholder Relations Directorate, and Director General – Public and Resources Sectors.

Timeline: Spring 2009 and ongoing.

Recommendation #3 (Section 5.2 of the Final Evaluation Report)

Environment Canada should undertake the evaluation of the remainder of its planned wastewater dialogue with Canada's Aboriginal Peoples to meet the requirements of Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations*.

Management Response

The Department agrees to undertake an evaluation of the remaining part of its consultations on wastewater in accordance with the 2007 *Cabinet Directive on Streamlining Regulation* and Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations*.

Action: Evaluation of future consultation processes with all stakeholders and interested parties, including any that occur on wastewater, will be considered in the context of the Department's annual risk-based audit and evaluation planning and will be completed in consultation with the Department's Audit and Evaluation Branch. The specific requirements for formal evaluation of regulatory consultations will be clarified with the Treasury Board of Canada Secretariat to ensure that the Department is carrying out its evaluations appropriately. There are various means of undertaking such an evaluation: the responsible program could fund and organize the evaluation, with the Evaluation Branch acting as its scientific authority (as was done for this consultation evaluation); or the evaluation could be undertaken and/or funded by the budget of the Audit and Evaluation Branch in its annual plan. Other options may also be considered in light of the clarification received from the Treasury Board of Canada Secretariat.

Functional responsibility: Director General – Audit and Evaluation, and ADM – Environmental Stewardship Branch.

Contact person: Director – Evaluation, and Director General – Public and Resources Sectors Directorate.

Timeline: The evaluation of the next phase of the wastewater consultations will be carried out within the first departmental evaluation cycle following the end of the consultation period after publication of the draft regulation in the *Canada Gazette*, Part I.

**SECTION 2.0 *EVALUATION OF ENVIRONMENT CANADA'S ABORIGINAL
CONSULTATIONS ON WASTEWATER, FINAL REPORT, JULY 2008***

Evaluation of Environment Canada's Aboriginal Consultations on Wastewater

FINAL Report Friday 29 Jul 2008

*Evaluation of Environment Canada's Consultations
With Aboriginal Peoples on the CCME Canada-wide Strategy
for the Management of Municipal Wastewater Effluent, and
Environment Canada's Proposed Regulatory
Framework for Wastewater*

Prepared for Environment Canada's
Evaluation Division, Audit and Evaluation Branch
and
Wastewater Section, Aboriginal and Public Sectors Division
Environmental Stewardship Branch
by
Auguste Solutions & Associates Inc.

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Acknowledgments

The evaluators would first like to thank the hundreds of First Nations and Inuit Elders, elected officials, consultation participants and interviewees, as well as their host organizations, all of whom contributed significantly to this project by providing insights, information and comments crucial to this evaluation. We also thank them for allowing us onto their territories and lands so that we could participate in the consultation sessions.

The evaluators would also like to thank the government officials from all levels of government who organized and made the presentations at the twenty-one consultation sessions that were held across all of Canada, and in particular the Environment Canada officials who organized the sessions attended by the evaluators. We also thank them for explaining their interpretation of the consultation processes they have undertaken for the control of wastewater effluent discharge into open waters.

The evaluators thank the representatives from the Assembly of First Nations (AFN) and the Inuit Tapiriit Kanatami (ITK) who gave of their time to explain their expectations and understanding of what they believe constitutes adequate and appropriate consultations.

The evaluators would also like to thank the members of the evaluation steering committee who shared their knowledge, experience and wisdom in guiding the evaluators.

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Auguste Solutions & Associates Inc.'s team of evaluators included Jim Coflin and Pierre Barrieau, and its team leader Auguste Barrieau.

Report Clearance Steps¹

Report completed by the consultant	9 May 2008
Report accepted by department	29 Jul 200X
Report sent for management response	Month 200X
Management response received	Month 200X
Report completed	Month 200X
Report approved by DEC	Month 200X

Acronyms Used in this Report

AFN	Assembly of First Nations
AGA	Annual General Assembly
AGM	Annual General Meeting
CCME	Canadian Council of Ministers of the Environment
CEPA 1999	Canadian Environmental Protection Act, 1999
DEC	Departmental Evaluation Committee
DIAND	Department of Indian Affairs and Northern Development
EC	Environment Canada
EQ	Evaluation question
FNIHB	First Nations Inuit and Health Branch
ITK	Inuit Tapiriit Kanatami
MNC	Métis National Council
RMAF	Results-based Management Accountability Framework
TBD	To be determined

¹ After completion and approval of this evaluation report by Environment Canada's Evaluation Steering Committee, an internal departmental process will be initiated to obtain formal departmental approval of the evaluation.

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EXECUTIVE SUMMARY

Environment Canada decided to undertake two series of consultations on their proposed Regulatory Framework for Wastewater; one series with Canada's Aboriginal Peoples and the other series with all other Canadian stakeholders. This evaluation addresses the consultations undertaken with Canada's Aboriginal Peoples.

Government of Canada policy requires that the Canadian public be consulted on all proposed legislation and regulations. The Supreme Court of Canada decided in November 2004 that Governments in Canada must consult with Canada's Aboriginal Peoples when those Governments plan to undertake actions that may impact upon the constitutional or treaty rights of Canada's Aboriginal Peoples. Canada's Aboriginal Peoples are defined in the constitution to include First Nations, Inuit and Métis Peoples.

Environment Canada invited Aboriginal organizations and communities to 21 consultation sessions held in all provinces and territories across Canada, except Nova Scotia. First Nations in Nova Scotia were unable to participate because the tripartite process they employ had not sufficiently progressed to start their consultations before the deadline for the consultation sessions and the January 2008 deadline for comments to the CCME Development Committee.²

The purpose of the consultations was to seek input/comments on:

- The Canadian Council of the Ministers of the Environment (CCME) *Canada-wide Strategy for the Management of Municipal Wastewater Effluent*, September 2007; and
- Environment Canada's *Proposed Regulatory Framework for Wastewater*, October 2007.

Environment Canada undertook to conduct a formal evaluation of the consultation processes it employed to consult with *Canada's Aboriginal Peoples*. The objectives of the evaluation were:

- To examine the effectiveness and appropriateness of Environment Canada's Aboriginal consultations concerning the proposed wastewater regulatory framework (consultations with non-Aboriginal municipalities are not included within the scope of this evaluation); and
- To provide recommendations to Environment Canada for improving future consultations with Aboriginal stakeholders.

² Environment Canada has stated that it is still hopeful that the tripartite process can be completed and comments are still being accepted and will be considered prior to the publication of a draft *Fisheries Act* regulation in the *Canada Gazette*.

The evaluation did not evaluate the 'scientific content' of the proposed regulations.

The primary methodologies employed to conduct the evaluation included:

- Document review of relevant policies and literature
- Observing five of the consultation sessions conducted by Environment Canada;
- Ensuring that a participant exit-survey was conducted at all of the consultation sessions;
- Conducting two series of telephone interviews; one after the distribution of the draft individual Session Reports; and one after the distribution of the draft National Report;
- Conducting discussions with national Aboriginal organizations; and
- Discussing the drafts of this evaluation report with national and regional Environment Canada staff and national Aboriginal organizations before the preparation of the final version of this report.

Early during the evaluation process a major challenge was encountered. Canada's Aboriginal Peoples differentiate between: (i) the Government's view of public consultations as a process that encourages dialogue and the exchange of information; and (ii) their Aboriginal view of consultation between the Government and Canada's Aboriginal Peoples as being a formal and often binding process akin to negotiations. For this reason the Assembly of First Nations, Inuit Tapiriit Kanatami and most of the Aboriginal participants at the EC led consultation sessions would not accept Environment Canada's position that the wastewater consultation sessions constituted *consultations with Canada's Aboriginal peoples*.

Conclusions and Recommendations

Conclusion #1: The primary and most pressing question, which is repeated several times during the conduct of this evaluation, is the need to define what a "consultation" is. Environment Canada did meet its obligation to consult based upon the Federal Government's definition of consultation. The Aboriginal participants to the consultations, including their representative organizations, the Assembly of First Nations and Inuit Tapiriit Kanatami, disagree with Environment Canada and state that Environment Canada's process of dialogue with them was not consultations. This has resulted in a situation that must be addressed.

Central to the disagreement is the word consultations. Canada's Aboriginal Peoples employ the term consultations in a very different manner than does the Federal Government. If Environment Canada had employed a term such as *public dialogue* rather than insisting on using the term *consultations*, many if not most of the problems would not have occurred.

Recommendation #1a: Before continuing its consultations with Canada's Aboriginal Peoples, Environment Canada needs to request that Treasury Board modify its 2007 *Guidelines for Effective Regulatory Consultations* by replacing the term *consultations* with a term that is mutually acceptable to the federal government and Canada's Aboriginal Peoples.

Recommendation #1b: Follow the Assembly of First Nations' suggestion that Environment Canada sit down with Canada's Aboriginal Peoples, before continuing with its consultations plan, and identify a mutually agreeable process to engage in consultations (dialogue) on the development of regulations for wastewater effluent management on Aboriginal lands.

Recommendation #1c: To support Recommendation #1b, Environment Canada needs to establish a team that includes members who are aware of Aboriginal priorities and issues as well as being culturally sensitive. This team should meet with the Assembly of First Nations and the Inuit Tapiriit Kanatami to establish protocols for continued dialogue between Environment Canada and Canada's Aboriginal Peoples.

Conclusion #2: Environment Canada and the Aboriginal participants were successful in terms of delivering and sharing information and knowledge. The knowledge, content and delivery of information during the sessions did positively meet many of the expectations of the Aboriginal participants, and the Session and National Reports accurately captured the essential messages. The need for action in wastewater effluent management is not contested and those opinions have been validated by 40% of the national target audience. However, some future improvements can be considered for the "next round of discussions".

Recommendation #2a: For future "consultation" processes, Environment Canada should incorporate the use of an "Advisor" to enhance and improve the dialogue process. As well, EC should undertake process adjustments for future dialogue with Canada's Aboriginal Peoples: two day versus one day workshop; incorporate break-out sessions; consider using fewer locations for dialogue; all of which may increase interest and participation as well as improving the cost-effectiveness equation.

Conclusion #3: Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations*, which was issued after Environment Canada undertook this evaluation, contains evaluation requirements not addressed by this evaluation.

Recommendation #3: Environment Canada should undertake the evaluation of the remainder of its planned wastewater dialogue with Canada's Aboriginal Peoples to meet the requirements of Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations*.

Observation: Environment Canada may want to examine the evaluation requirements specified within Treasury Board's 2007 *Guidelines for Effective*

Regulatory Consultations on all of the public consultations it is conducting, and not only those with Canada's Aboriginal Peoples.

Section 1. BACKGROUND AND CONTEXT

The background information and context presented within this section of the evaluation was drawn mostly from the document review and interviews with key informants and participants of Environment Canada's consultation process. Some information also came from the exit survey questionnaire used at the end of each of the 21 consultation sessions led by Environment Canada (EC).

1.1 TERMINOLOGY EMPLOYED IN THIS REPORT

This evaluation report employs terminology where the meaning of the terms may mean different things to different people. This sub-section explains some of the terms that are central to interpreting and understanding this report and its conclusions and recommendations. Appendix 3 to this report contains additional explanations of some evaluation terminology.

1.1.1 ENVIRONMENT CANADA LED CONSULTATIONS

The question of *what constitutes consultations* quickly became the central issue of this evaluation. EC's interpretation of what constitutes consultations is very different from the interpretation and understanding held by the Aboriginal participants and organizations that attended the EC led consultation sessions.

This evaluation report uses variations of the phrase *EC led consultation sessions* because that is the terminology that was employed in the documentation and communications prepared and distributed by EC to the Aboriginal participants and organizations; and in the terms of reference and scope of work prepared for the conduct of this evaluation.

The use of the phrase *EC led consultations* within this report is not to be interpreted as either agreement or disagreement that consultation sessions were or were not held with Canada's Aboriginal Peoples. Discussions on whether consultations were or were not held are presented in the observations and conclusions sections within this report.

1.1.2 CANADA'S ABORIGINAL PEOPLES

Canada's Aboriginal Peoples is the term used by the Supreme Court of Canada when it collectively refers to First Nations, Inuit and Métis individuals and communities residing in Canada.

This evaluation report uses *Canada's Aboriginal Peoples* when it refers collectively to First Nations, Inuit and Métis individuals and communities, as did the Supreme Court of

Canada (SCC). Aboriginal organizations that represent Canada's Aboriginal Peoples are not included within the term Canada's Aboriginal peoples. Aboriginal organizations are identified separately from Canada's Aboriginal Peoples when reference is made to those organizations.

1.2 CCME STRATEGY AND WASTEWATER REGULATIONS

The Canadian Council of Ministers of the Environment (CCME) is comprised of the environment ministers from the federal, provincial and territorial governments. The CCME seeks to achieve positive environmental results; focusing on issues that are national in scope and that require the collective attention of governments. In November 2003, the CCME identified municipal wastewater as a priority and established a Development Committee to oversee the preparation of a CCME Canada-wide Strategy for the Management of Municipal Wastewater Effluent.

Wastewater is a mixture of liquid and semi-liquid wastes from two sources:

- Sanitary sewage generated in homes and public places; and
- Businesses, institutions and industries that discharge their wastewater into municipal wastewater systems.

The Canada-wide Strategy for the Management of Municipal Wastewater Effluent provides federal, provincial and territorial governments with common objectives for the management of wastewater effluents and a description of their respective roles and responsibilities. The Canada-wide Strategy is to be implemented by all jurisdictions. Environment Canada will implement the Strategy by developing federal regulations under the *Fisheries Act* that will apply to wastewater effluents across the country, including those discharged into systems located on Aboriginal and federal land, and additional instruments under the *Canadian Environmental Protection Act, 1999* (CEPA 1999) as necessary.

These proposed federal regulations will establish limits for substances that can be found in wastewater effluents. All jurisdictions have the option of applying stricter regulations and controls within their boundaries, realizing that the federal regulations are the minimum standard that must be met.

1.3 ENVIRONMENT CANADA'S CONSULTATION PROCESS

EC's plan is to regulate wastewater effluents released to surface water from municipal and other wastewater systems, including those in First Nations, Inuit and Métis communities, and on other federal lands such as those owned by Parks Canada, National Defence, Fisheries and Oceans, Public Works Government Services Canada, and others. The proposed regulations are to be developed under the authority of the *Fisheries Act* and, possibly, the *Canadian Environmental Protection Act, 1999*.

EC's Wastewater Section, in conjunction with EC's regional offices, led the delivery of the Aboriginal consultations. The implementation of the consultations employed a three-phased approach:³

- *Phase 1: Information sessions on the development of options for a CCME Canada-wide Strategy for the management of wastewater (Nov 2003-April 2007);*
- *Phase 2: Consultations on the draft CCME Canada-wide Strategy for the Management of Municipal Wastewater Effluent and EC's Proposed Regulatory Framework for Wastewater (May 2007-December 2008); and*
- *Phase 3: Consultations on draft wastewater effluent regulations post publication in Canada Gazette, Part I (a minimum of a 60 day formal comment period, additional effort TBD) (Jan 2009-Dec 2009).*

EC, as one member of the CCME Development Committee, began its pre-consultation process with non-Aboriginal municipalities in November 2004. Consultations with Canada's Aboriginal Peoples began with: (i) the Assembly of First Nations (AFN) in April 2005; (ii) Inuit Tapiriit Kanatami (ITK) in May 2005; and (iii) the Métis National Council (MNC) in January 2006. About forty EC consultation-related events have since been held with Canada's Aboriginal Peoples since April 2005.

EC's objectives for the Aboriginal consultations, with respect to wastewater, were to:⁴

- *explain the technical aspects of the CCME draft Canada-wide Strategy and Environment Canada's proposed Regulatory Framework for Wastewater and their application to Aboriginal communities;*
- *collect and consider Aboriginal Peoples' views and comments, and provide those comments to the Development Committee as it finalizes the CCME Strategy;*
- *consider Aboriginal People's views and comments in developing EC's position on the CCME Canada-wide Strategy and in the development of EC's draft regulations;*
- *document any information/issues raised of a non-technical nature to bring back to EC, and INAC if applicable, to be addressed through appropriate channels; and*

³ Plan For Consulting Aboriginal Peoples on CCME draft Canada-wide Strategy for the Management of Municipal Wastewater Effluents and Environment Canada's Regulatory Proposal for Wastewater, Internal Draft, Environment Canada, October 1, 2007

⁴ Plan For Consulting Aboriginal Peoples on the CCME draft Canada-wide Strategy for the Management of Municipal Wastewater Effluent and Environment Canada's Regulatory Proposal for Wastewater, 3 Phase Approach, Internal Draft, October 1, 2007.

- *provide feedback to participants on "what was heard" at the consultation sessions and at a future date (probably coincident with publication of draft regulations in the Canada Gazette, Part 1) feedback on "how input was considered" will be made available.*

EC's planned consultation process for Phase II (the focus of this evaluation) called for:⁵

- *Contracting national Aboriginal organizations to prepare impact analysis documents and national position papers that will be distributed to Aboriginal communities and the participants of the consultation sessions.*
- *Conducting pre-consultation workshops and discussions with selected Aboriginal organizations to develop impact analysis papers and other relevant documents to assist in the consultation process (fall of 2007).*
- *Sending consultation documents and invitations to all Chiefs and Councils, AFN, ITK, MNC and other Aboriginal technical and political organizations that the CCME Strategy was underway and consultation sessions would be starting in the fall 2007.*
- *Awarding contracts to Aboriginal organizations to: (i) assist Environment Canada to reach out to Aboriginal communities and encourage participation at the consultation sessions, (ii) help coordinate and organize the logistics for each of the sessions; (iii) facilitate the consultation sessions and encouraged dialogue in identifying and clarifying wastewater issues faced by Aboriginal communities and organizations; (iv) produce reports for each session, ensuring all concerns and issues are identified; and (v) assist with the administration of the participants' travel expense claims.*
- *Participating in workshops, training sessions and public speaking opportunities prior to consultation sessions to ensure that communities have received the information that Environment Canada is planning to consult them and make them aware of how they can express their views or their interest in attending a consultation session; (e.g. the Assembly of First Nations' National Water Policy Forum, Feb 2007, in Toronto).*
- *In May 2007, Environment Canada sent to all Chiefs and Council, a letter notifying them of the upcoming consultation sessions in the fall 2007. A second letter was sent by EC's regional staff in October 2007 to an updated list of people (based on feedback received from the first mailing) inviting the Chiefs and Aboriginal organizations to send representatives to attend a specific consultation session in their area beginning November 2007 until January 2008.*

5

Plan For Consulting Aboriginal Peoples on the CCME draft Canada-wide Strategy for the Management of Municipal Wastewater Effluent and Environment Canada's Regulatory Proposal for Wastewater, 3 Phase Approach, Internal Draft, October 1, 2007. This is an "evergreen" document that was originally prepared in 2006 and which EC states was updated throughout the process as needed.

- *Communicating with Aboriginal communities and organizations about the purpose and intent of the planned consultation sessions, including: (i) posting information on internet sites; (ii) faxes and letters; and (iii) telephone calls and e-mails.*⁶
- *Inviting and holding approximately 20 regional consultation sessions⁷ with Aboriginal Peoples to discuss wastewater management issues and provide an opportunity for them express their views on the Proposed Regulatory Framework for Wastewater and its connections to the CCME Strategy. The objective of the consultation sessions was to discuss issues with Aboriginal representatives and to provide them with an opportunity to express their views and opinions.*
- *Providing session participants with the opportunity to make written submissions and comments on the CCME Strategy by January 31, 2008.*
- *Producing a summary of the discussions at each consultation sessions.*
- *Preparing and distributing of a "What We [EC] Heard" National Report to all session participants and the CCME Development Committee.*

EC invited Aboriginal organizations and communities to 21 consultation sessions that were held in all provinces and territories. Only First Nations in Nova Scotia were unable to participate. It is uncertain if First Nations in Nova Scotia will be able meet with EC prior to the completion of the wastewater regulations because of the current tripartite process being developed in Nova Scotia.⁸

The purpose of EC led consultations is to present and obtain comments on:

- The Canadian Council of the Ministers of the Environment (CCME) *Canada-wide Strategy for the Management of Municipal Wastewater Effluent*, and
- Environment Canada's *Proposed Regulatory Framework for Wastewater*.

The EC's wastewater consultations presented: (i) the overall context under which the wastewater effluent regulations were being prepared; (ii) the broad technical

⁶ ITK stated that their 67 communities were not contacted or offered financial support to attend. A local Inuit community representative attended in the EC led sessions in Kuujuaq, Iqaluit and Goose Bay.

⁷ The initial plan was that twenty consultation sessions would be held. In the end, twenty-one consultations were held; of which twenty were conducted in a workshop format, and the Kuujuaq session was held by videoconference.

⁸ The Nova Scotia Mi'kmaq through their Assembly of Nova Scotia Mi'kmaq Chiefs (ANSMC) have undertaken a tripartite Framework Agreement with the Governments of Canada and Nova Scotia. This is a complex process that includes consultative and negotiation processes. For a variety of reasons, some of which were related to the development of the tripartite process, the Mi'kmaq of Nova Scotia were not ready to participate in the EC led consultative process.

requirements that are being considered for inclusion within the proposed regulations; and
(iii) the schedule being considered for the implementation of the proposed regulations.

At most of the 21 consultation sessions, representatives from the Department of Indian Affairs and Northern Development (DIAND) discussed their department's potential role in funding the resource and infrastructure costs that would result from the implementation of the regulations. Most of these sessions were attended by provincial or territorial representatives. The two workshop sessions and the videoconference session held north of the 60th parallel were also attended by local government representatives; some of whom made presentations, some of whom responded to questions, and some of whom were observers and did not participate in the discussions.

1.4 GOVERNMENT'S OBLIGATION TO CONSULT

The evaluators were not permitted to interpret or explain the SCC Haida decision as Environment Canada viewed this to be a 'legal interpretation' and therefore outside of the scope of the evaluation.

Environment Canada also required that the evaluators not state what the SCC Haida decision was with respect to what does or does not constitute consultations or how consultations are or are not to be conducted.

1.5 GOVERNMENT OF CANADA'S PERSPECTIVE ON CONSULTATIONS

Since the 2004 SCC decisions on consultations, only one federal government document has been issued by the federal government; Treasury Board's 2007 document *Guidelines for Effective Regulatory Consultations*.⁹ ¹⁰ The evaluators were informed that a draft (not issued) document that specifically addresses consultations with Aboriginal Peoples has been developed by Justice Canada. It was stated by EC that the draft Justice Canada document was not yet ready for circulation outside of the federal government and therefore not provided to the evaluators.

The *Guidelines for Effective Regulatory Consultations* state that for all consultations on regulatory matters that:

- *Government departments and agencies must therefore make systematic efforts to ensure that interested and affected parties have the opportunity to take part in open, meaningful, and balanced consultations at all stages*

⁹ [Guidelines for Effective Regulatory Consultations](#), President of the Treasury Board, 2007, page 1,

¹⁰ The Government distributed draft documents on consultations prior to the Guidelines for Effective Regulatory Consultations, but these are not considered to have been issued as policies or directives.

*of the regulatory process, that is, development, implementation, evaluation, and review.*¹¹

- *These Guidelines focus primarily on the consultation process, which entails a two-way exchange in which stakeholders are given an opportunity to provide input and affect the outcome of a regulatory proposal. A good consultation process assists in developing quality regulations and mitigates implementation risks.*¹²
- *There is no one-size-fits-all approach to regulatory consultations. The size and scope of the consultative process depend on the proposed regulations and the number of people or groups affected by them.*¹³

The *Guidelines for Effective Regulatory Consultations* specifically addresses Canada's Aboriginal Peoples twice:

- *Consulting with Aboriginal groups involves special considerations. A fiduciary relationship arising out of their historic relationship exists between the Government of Canada and Aboriginal peoples. Departments and agencies are to work with First Nations, Inuit, and Métis communities and peoples; national, regional, and local Aboriginal organizations; and Aboriginal governments and ensure that they meet all obligations that may exist in relation to rights protected by section 35 of the Constitution Act, 1982.*¹⁴
- *The process for selecting an appropriate consultation tool may require special effort to develop approaches that effectively engage persons who are visually or hearing impaired or members of ethno-cultural or Aboriginal communities.*¹⁵

The *Guidelines for Effective Regulatory Consultations* do not address or attempt to interpret the Supreme Court of Canada 2004 decisions on consultations, nor do they specify what may or may not constitute appropriate consultations with Canada's Aboriginal Peoples.

Three documents, all produced before the 2004 Supreme Court of Canada's decision *Haida Nation versus British Columbia and Weyerhaeuser*, provide guidance to federal government officials on the process of conducting public consultations:

¹¹ [Guidelines for Effective Regulatory Consultations](#), President of the Treasury Board, 2007, page 1

¹² [Guidelines for Effective Regulatory Consultations](#), President of the Treasury Board, 2007, page 2.

¹³ [Guidelines for Effective Regulatory Consultations](#), President of the Treasury Board, 2007, page 2.

¹⁴ [Guidelines for Effective Regulatory Consultations](#), President of the Treasury Board, 2007, page 3.

¹⁵ [Guidelines for Effective Regulatory Consultations](#), President of the Treasury Board, 2007, page 12.

- *Guide to Making Federal Acts and Regulations* which was jointly published by the Privy Council of Canada and the Department of Justice in 2001 and issued in 2003;
- *Government of Canada Policy on Consulting and Engaging Canadians, Draft for Discussion* issued by Treasury Board Secretariat, September 24, 2001; and
- *Health Canada Policy Toolkit for Public Involvement in Decision Making*, Health Policy and Communications Branch, 2000.¹⁶

None of these three documents, nor any of the others reviewed for this evaluation (except for the 2004 Supreme Court of Canada decisions), specifically addressed the Aboriginal consultation process.

1.6 ABORIGINAL PERSPECTIVE ON CONSULTATIONS

Canada's Aboriginal Peoples differentiate between: (i) the Government's general view of public consultations as a process that encourages dialogue and the exchange of information; and (ii) their view of the consultation between the Government and Canada's Aboriginal Peoples which is a formal often binding process akin to negotiations. For this reason both Aboriginal organizations (AFN and ITK) and the majority of the participants to the EC led consultation sessions could not accept Environment Canada's position that the wastewater consultation sessions constituted consultations with Canada's Aboriginal peoples.

The non-acceptance of EC's position on consultations is explained in sub-section 4.1.6, EQ 6: Is There a Shared Understanding of Consultations?

The Assembly of First Nations states that consultations must *include*:

- *Attaining consent of First Nations;*
- *Conducting joint development of any proposed legislation or policy;*
- *Establishing independent monitoring and decision-making bodies to address the current imbalance in power; and,*
- *Appropriate intergovernmental mechanisms including appropriate consultation policies, financing and dispute resolution mechanisms.*

During discussions with officials from the Assembly of First Nations, they noted that their political leaders must take a political decision to participate in a consultative process

¹⁶ Health Canada's toolkit refers to public involvement and not consultations.

before it can be stated that consultations have occurred; *with anything less being discussions and not consultations.*

The Assembly of First Nations also stated that Governments (federal, provincial and/or territorial) cannot unilaterally impose their policies or directives upon Canada's Aboriginal Peoples. The Assembly of First Nations also stated that since the definition of consultations has not been decided by the Courts, and since there is no mutually agreed to binding definition of what constitutes consultations between the Government of Canada and Canada's Aboriginal Peoples, the Government cannot unilaterally impose their definition of consultations.

The Inuit Tapiriit Kanatami and the Assembly of First Nations stated that EC's consultation sessions on wastewater do not constitute consultations with Canada's Aboriginal Peoples.

1.7 ABORIGINAL JURISDICTIONS AND AUTHORITY TO MAKE DECISIONS

There are between 514 and 533 First Nations (the number varies according to the source and their treaty status) and 67 Inuit communities and hamlets, for a total of between 581 and 600 communities, depending on which definition of First Nations is used. These communities fall under a variety of legal structures varying from treaty lands to private lands, each with its special distinctions and independent legal basis.

The Inuit have community and regional structures, and are represented by Inuit Tapiriit Kanatami (ITK). First Nations also have tribal and regional organizations, and are represented by the Assembly of First Nations (AFN). Both ITK and AFN draw their authority from the governments of the communities they represent.

It is practice for ITK and AFN to represent and discuss a wide range of issues and areas, which can include but is not limited to: Aboriginal and treaty rights; economic development; education; languages and literacy; health and wellness; housing; social development; justice; land claims; the environment; and a whole range of issues that are of common concern and which arise from time to time.

It is important to note that while the Inuit Tapiriit Kanatami and the Assembly of First Nations do represent their constituencies, they must seek the mandate from their constituencies to formally represent them on important matters such as regulations and negotiations. For example, it is usually the First Nation and not the AFN that negotiates or initiates legal action on a community specific topic such as a land claim. The specific First Nation leads the process.

ITK and AFN are federally funded organizations that were established to provide a voice that represents their Inuit and First Nation constituencies. ITK and AFN are the voices of 95% or more of their respective constituencies. Some Inuit and First Nation communities state that the ITK and AFN do not represent them, but this percentage varies depending on the topics and issues being addressed, and the leadership within those First Nations and Inuit communities.

Section 2. OBJECTIVES, ISSUES AND QUESTIONS

This section identifies the objectives of the evaluation as well as the evaluation issues and evaluation questions that are addressed by the evaluation.

2.1 EVALUATION OBJECTIVES AND STATEMENT OF WORK

This evaluation is conducted in part, to respond to the *Guidelines for Effective Regulatory Consultations* that state that:¹⁷

Evaluations should be conducted both as the consultations are taking place, so that changes can be made if necessary, and at the end of the consultations, to assess the results. The consultation plan should detail how these evaluations will be conducted.

The objectives of this evaluation are:

To examine the effectiveness and appropriateness of EC's Aboriginal consultations concerning the proposed wastewater regulatory framework; and

To provide recommendations to Environment Canada for improving future consultations with Aboriginal stakeholders.

The Statement of Work for this evaluation states:

- *Assist in validating and finalizing the logic model framework;*
- *Assist in planning the evaluation of EC's consultation process with Aboriginal Peoples;*
- *Identify the data that would need to be gathered;*
- *Develop supporting tools to gather the data;*
- *Gather and analyse primary and secondary data (note: collection of evaluation form) will be handled at each session by session facilitators);*
- *Using the data gathered, in addition to EC's planning documents, provide an analysis of the consultation process against the logic model and provide lessons learned for future consultations with Aboriginal peoples;*
- *Produce draft and final reports and a PowerPoint presentation.*

¹⁷

Guidelines for Effective Regulatory Consultations, President of the Treasury Board, 2007, page 1

During the preparation of the evaluation workplan, it was noted that the information needed to adequately address cost-effectiveness would not be available to the evaluators before the evaluation was scheduled to be completed. A contract amendment was signed to expand the evaluation to better address cost-effectiveness. The scope was increased to include the following:

- *update the logic model and evaluation plan;*
- *adjust the evaluation issues as appropriate;*
- *adjust the current evaluation questions as appropriate, and*
- *prepare additional evaluation questions and analysis.*

2.2 AGAINST WHAT CRITERIA WILL CONSULTATIONS BE MEASURED?

The lack of a clear commonly shared definition of what constitutes consultations between the Federal Government and Canada's Aboriginal Peoples, legal or otherwise, raises the question: What criteria will be used to determine if EC consulted with Canada's Aboriginal Peoples?

In February 2008, EC provided the evaluators with a copy of Treasury Board's November 2007 *Guidelines for Effective Regulatory Consultations*. A review of this document provided a framework that could be used to determine if EC met the government's requirement to consult with Canada's Aboriginal Peoples. Using the 2007 *Guidelines for Effective Regulatory Consultations* to evaluate the consultation process could potentially seem to be unfair to EC because they did not have access to the 2007 Guidelines during the planning and implementation of the consultations.

The problem was discussed with the Evaluation Steering Committee. From the various discussions that ensued, an agreement evolved that since one of the overall departmental objectives was that this report might serve to guide future EC consultations with Canada's Aboriginal Peoples, that the most recent document (the 2007 Guidelines) would be used rather than previously issued documents that were inadequate for the task. Implicit in this decision was the understanding that the evaluators would ensure that the context of the evaluation criteria not being available to the EC consultation team prior to their planning and implementing the evaluation process would be clearly stated within the evaluation report.

Decision: The 2007 Guidelines for Effective Regulatory Consultations will be the criteria against which the EC led consultations will be evaluated.

2.3 DID THE EVALUATION MEET TB'S 2007 GUIDELINES?

During a review of a draft of this evaluation report, the Evaluation Steering Committee requested that the evaluators review the 2007 Guidelines to determine if the scope of this

evaluation meets the requirements specified within the 2007 Guidelines. The Evaluation Steering Committee also noted that the manner in which EC conducts future consultations with Canada's Aboriginal Peoples may be affected by this evaluation, and that the response to this question (Does the evaluation meet TB's 2007 Guidelines?) should be clearly addressed.

It was agreed that the response to this new question was important and should be addressed within this evaluation. The evaluators examined different options for the inclusion of this requirement and it was determined that it would be necessary to add a new evaluation issue and evaluation questions so that the questions could be addressed within the scope of this evaluation.

Decision: A fifth evaluation issue, *Other Issues*, was added to the original list of four evaluation issues, as were four new evaluation questions EQ 19, EQ 20, EQ 21 and EQ 22.

The new evaluation issue and evaluation questions are:

Issue 5: Other Issues: Does the evaluation meet TB's 2007 Guidelines?

- EQ 19: Was the evaluation conducted as the consultations were taking place and at the end to assess the results?
- EQ 20: Did the evaluation address: (i) whether the process is working (has worked), and (ii) what results are being (have been) achieved?
- EQ 21: Did the evaluation address: (i) how well the consultation plan was implemented, (ii) did the evaluation measure success, and (iii) did the evaluation determine whether adjustments should be made to advance the consultation objectives?
- EQ 22: Did the end-of-process evaluation allow officials to document lessons learned?

It is important to restate that EC's Evaluation Steering Committee was not aware of the evaluation requirements specified within the 2007 Guidelines at the time that the terms of reference and scope of work were produced for this evaluation.

2.4 EVALUATION ISSUES AND EVALUATION QUESTIONS

A Results-based Management Accountability Framework (RMAF) was not prepared for the EC led consultations as RMAFs are usually prepared for large programs funded by the Federal Government. A draft logic framework prepared by EC for this evaluation was

the source for the initial version of the four evaluation issues and fifteen evaluation questions that were used for the conduct of this evaluation.

Three weeks into the evaluation, it became evident that Canada's Aboriginal peoples differentiated between: (i) the Federal Government's view of public consultations as a process that encourages dialogue and the exchange of information; and (ii) their Aboriginal view of consultations that is a formal binding process akin to negotiations. The question of *what does and does not constitute consultations* continued to take greater significance and was having a major impact upon the evaluation.

An evaluation process issue was that the draft logic model also seemed to assume that Canada's Aboriginal Peoples shared EC's belief that wastewater regulations are required. Without addressing whether this belief was accurate or not, it might not be possible for the evaluators to respond and adequately distinguish between: (i) whether there is a shared need for regulations; and (ii) whether there is a shared belief that consultations were delivered by EC.

It quickly became evident that the evaluation would have to address these challenges. The Evaluation Steering Committee and the evaluators met on three occasions to discuss, amongst other things, how to address these challenges and questions.

Decision: It was agreed to add evaluation questions EQ 1, EQ 3 and EQ 7 to allow for the challenges to be better addressed.

2.4.1 FINAL LIST OF EVALUATION ISSUES AND EVALUATION QUESTIONS

Issue 1: Implementation: Was the consultation process delivered as planned?

- EQ 1: Is there a shared acknowledgement that regulations are required to control the discharge of effluent into surface waters?
- EQ 2: What constitutes consultation with respect to the Supreme Court of Canada decisions?
- EQ 3: What constitutes consultations with respect to Government of Canada policies and direction?
- EQ 4: Did EC, the partners, and the Aboriginal participants share a common understanding of what constitutes appropriate consultations?
- EQ 5: Was the consultation plan developed and approved by EC management?
- EQ 6: Was the consultation plan successfully implemented as designed?
- EQ 7: Was there agreement among partners and stakeholders to implement the planned consultations with Aboriginal communities and organizations?

Issue 2: Results: Did the consultations achieve their intended results?

- EQ 8: Did the consultations successfully inform the Aboriginal participants about the proposed CCME strategy and the proposed regulations?
- EQ 9: Were the consultations conducted in a manner consistent with the Supreme Court of Canada decisions?
- EQ 10: Did the consultations include all of the Aboriginal Peoples that should have participated in the consultations?
- EQ 11: Does Environment Canada understand Aboriginal concerns and expectations with respect to the proposed wastewater regulatory framework
- EQ 12: Do Aboriginal stakeholders understand the purpose and impact of the proposed wastewater regulatory framework?
- EQ 13: Was the wastewater consultation process acceptable to Aboriginal stakeholders?
- EQ 14: Did the consultations produce unintended results?

Issue 3: Cost Effectiveness: Were the consultations with Aboriginal partners and stakeholders cost effective?

- EQ 15: Were the consultations cost-effective in presenting the CCME strategy and the proposed regulations to Canada's Aboriginal Peoples?
- EQ 16: Were the consultations cost-effective in obtaining Aboriginal support for the CCME strategy and the proposed regulations?

Issue 4: Relevance: Was the consultation conducted in a manner consistent with federal priorities and needs?

- EQ 17: Was the consultation process consistent with the federal government's policy for making regulations?
- EQ 18: Did stakeholders identify approaches to consultations with Aboriginal communities and organizations that would be more appropriate?

Issue 5: Other Issues: Does the evaluation meet TB's 2007 Guidelines?

- EQ 19: Was the evaluation conducted as the consultations were taking place and at the end to assess the results?
- EQ 20: Did the evaluation address: (i) whether the process is working (has worked), and (ii) what results are being (have been) achieved?
- EQ 21: Did the evaluation address: (i) how well the consultation plan was implemented, (ii) did the evaluation measure success, and (iii) did

the evaluation determine whether adjustments should be made to advance the consultation objectives?

EQ 22: Did the end-of-process evaluation allow officials to document lessons learned?

Section 3. METHODOLOGIES AND OBSERVATIONS

The methodologies to be used in this evaluation were specified within the request for proposals for this evaluation. The evaluators met with EC's Evaluation Steering Committee to obtain a better understanding of EC's evaluation objectives and requirements. A detailed evaluation plan was prepared and accepted by the Evaluation Steering Committee.

The methodologies agreed to with the Evaluation Steering Committee, and employed in the evaluation included:

- Conducting a summary literature and document review;
- Conducting key informant interviews;
- Observing five of the consultation sessions conducted by Environment Canada;
- Conducting a participant exit-survey at all of the consultation sessions;
- Conducting post Session Report telephone interviews;
- Conducting post national Report telephone interviews; and
- Discussing the draft of this evaluation report with representatives of Environment Canada and national Aboriginal organizations (AFN and ITK) before the preparation of the final version of this report.

3.1 SUMMARY LITERATURE AND DOCUMENT REVIEW

EC provided an initial set of documents for review by the evaluators. After reviewing those documents a search was conducted for:

- Supreme Court of Canada decisions that addressed consultations with Canada's Aboriginal Peoples;
- Articles that addressed the Supreme Court of Canada decisions;
- Government policies, directives and guidelines on consulting with Canada's Aboriginal Peoples;
- Articles that addressed how governments consult with Canada's Aboriginal Peoples; and
- Articles on consultation practices in general.

During meetings with Aboriginal organizations, copies of documents were obtained on their policies and practices relative to consultations with the Government of Canada.

The evaluators were informed that Justice Canada had produced a draft document that addresses the processes to be employed by the Government of Canada when consulting with Canada's Aboriginal Peoples. The document (which was not yet ready for distribution during the course of this evaluation) was classified for use only by government officials and was therefore not available for review by the evaluators.

The literature and document review failed to identify either: (i) an independently published legal interpretation of what the SCC stated constituted consultations; nor (ii) a mutually acceptable definition of what the federal government and Canada's Aboriginal Peoples believes constitutes consultations. Also, no literature or methodology by which to specifically evaluate an Aboriginal consultation was found.

The lack of a definition for consultations created a significant methodological challenge to the evaluation.

3.2 KEY INFORMANT INTERVIEWS AND DISCUSSIONS

Key informant interviews ¹⁸ were conducted with EC national staff (4 individuals) as well as some with Aboriginal representatives from the Assembly of First Nations and Inuit Tapiriit Kanatami; with some of these individuals being interviewed more than once. These interviews were sometimes conducted one-on-one and sometimes in group sessions.

Group discussions and one-on-one discussions and 'chats' were held with EC regional staff, both in Ottawa and during the four site visits conducted by the evaluators. These discussions were unstructured and were used to get a better understanding of the dynamics and processes being employed.

The purpose of the key informant interviews and the less formal discussions was two-fold:

- To gather background and contextual information on the consultative process employed by EC; and
- To obtain feedback on the drafts of this evaluation report.

¹⁸ The term *key informant interviews*, for this evaluation, is to be interpreted in the wider sense to also include meetings where evaluation objectives and requirements were addressed as well as gathering background information on the subject matter to be evaluated. Formal interview guides were not employed as the contract for the evaluation was signed days before the first consultation session was to be observed by the evaluators.

3.3 EXIT SURVEY QUESTIONNAIRES

At the end of each of the 20 in-person EC led consultation sessions an exit survey questionnaire was provided to the participants. Completion of the exit survey questionnaire was done on a voluntary basis.

The exit survey questionnaires were designed to obtain participant feedback on the quality and usefulness of the information that was presented, as well as feedback on the processes employed during the sessions including the quality of the facilitation services that were provided. The results of the exit survey excluding the respondents' personal comments and observations and all the sequentially numbered data tables are presented within Appendix 4.

Table 1 presents the distribution by region of the participants who completed the exit survey questionnaire. With two of the regions having fewer than 10 respondents, it was decided that the results of the survey could not be reported on a regional basis. All of the results presented within this report are therefore presented on a national basis.

Interviewee's Region	Participant Response	
	Frequency	Percentage
Alberta	6	4%
Atlantic	22	15%
British-Columbia	19	13%
Manitoba	28	20%
North (includes NWT, Yukon and Nunavut)	20	14%
Ontario	17	12%
Quebec	17	12%
Saskatchewan	7	5%
Did not respond	6	4%
Total	142	100%

Note: The table numbers in the main body of this report are those that are used in Appendices 4 and 5. The tables in the main body of this report are not numbered sequentially.

Table 3 identifies the primary roles and responsibilities that the Aboriginal participants associated themselves with at the consultation sessions. EC was successful in obtaining a good cross-section of participants.

Primary Responsibility	Participant Response	
	Frequency	Percentage
An elected official making regulations or bylaws	15	11%
An employee making regulations or bylaws	10	7%
Providing technical and operational advice to wastewater system managers	35	25%
Managing/operating a wastewater system	35	25%
Other	41	29%
Did not respond	6	4%
Total	142	100%

3.4 OBSERVING FIVE CONSULTATIONS

The evaluators attended five of the 21 consultation sessions conducted by EC. Four sessions were attended in person (Yellowknife, Comox, Fort William First Nation and Montreal) with the fifth session (Kuujjuaq) attended by videoconference.

The evaluators selected the sessions that they would attend, with EC requesting that one session be attended where the discussions would primarily be in French, and that each session be in a different region.

Four of the five sessions observed by the evaluators were conducted in a workshop format, with government officials presenting information and the participants being provided with the opportunity to ask questions. EC staff employed the workshop process at 20 of the 21 sessions. The only session where the workshop process was not employed was in Kuujjuaq where the videoconference was held.

During discussions held with participants at the four sessions where the evaluators attended as observers, and in subsequent discussions with AFN and ITK participants, there was a general comfort with the workshop format. It was noted that the workshops missed two important elements:

- There were no break-out sessions where participants could discuss in smaller groups; and
- The workshop should have been held over two days so that the evening of the first day could have been used to discuss larger community concerns about the impacts that the regulations would have.

3.5 TELEPHONE SURVEYS

The Post Session Report telephone survey was designed to gather Aboriginal participants' feedback on the Session Reports for the session they attended. The questions focussed on whether the session Reports, one for each of the 21 sessions that were held: (i) adequately summarized the results of the sessions; and (ii) participant confidence that Environment Canada has a good understanding of the concerns, interests and priorities of Aboriginal communities about the proposed wastewater regulations.

The Post Draft National Report telephone survey was designed to gather Aboriginal participants' feedback on the National Report and to see if their opinions had changed since they had reviewed their Session Reports.

The questions focussed on whether the draft National Report: (i) adequately summarized the results of the sessions, but at a national level; and (ii) participant confidence that Environment Canada has a good understanding of the concerns, interests and priorities of Aboriginal communities about the proposed wastewater regulations.

The national distribution of the Aboriginal participants that participated in the two telephone surveys is presented in Table 21.

Table 21 Interviewee's Region	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
Atlantic	4	11%	4	13%
Quebec	5	14%	4	13%
Ontario	5	14%	3	10%
Manitoba	5	14%	4	13%
Saskatchewan	5	14%	3	10%
Alberta	5	14%	3	10%
British Columbia	5	14%	6	20%
North	3	8%	3	10%
Total	37	100%	30	100%

The results of the telephone surveys, excluding the respondents' personal comments and observations, are presented within Appendix 5.

Section 4. FINDINGS AND OBSERVATIONS

The findings and observations are presented under the four main issue areas of this evaluation which are Implementation (design/delivery); Results (success), Cost Effectiveness, and Relevance; plus a fifth called Other Issues.

4.1 ISSUE #1: IMPLEMENTATION

The first issue addressed by the evaluation is:

Was the consultation process delivered as planned?

The evaluation questions addressed under this evaluation issue are:

- EQ 1: *Is there a shared acknowledgement that regulations are required to control the discharge of effluent into surface waters?*
- EQ 2: *What constitutes consultation with respect to the Supreme Court of Canada decisions?*
- EQ 3: *What constitutes consultations with respect to Government of Canada policies and direction?*
- EQ 4: *Did EC, the partners, and the Aboriginal stakeholders share a common understanding of what constitutes appropriate consultations?*
- EQ 5: *Was the consultation plan developed and approved by EC management?*
- EQ 6: *Was the consultation plan successfully implemented as designed?*
- EQ 7: *Was there agreement among partners and stakeholders to implement the planned consultations with Aboriginal communities and organizations?*

4.1.1 EQ 1: NEED FOR WASTEWATER EFFLUENT REGULATIONS?

Is there a shared acknowledgement that regulations are required to control the discharge of effluent into surface waters?

Analysis Supporting Findings: Evaluation question EQ 1 was added after the exit survey and telephone surveys were completed thus making it too late to ask whether the

Aboriginal participants understood the need for regulations or another mechanism to control the discharge of effluent into surface waters.

Using an alternative approach, the evaluators looked at: (i) the comments and suggestions included with the three surveys; (ii) the Aboriginal participants' comments that were heard during the sessions observed by the evaluators; (iii) the session Reports that were produced for the 21 sessions; (iv) the key informant interviews with representatives from the Assembly of First Nations and Inuit Tapiriit Kanatami; and (v) the discussions and 'chats' held with the Aboriginal participants. It was generally found that:

- For the majority of the Aboriginal participants:
 - There is strong agreement that action must be undertaken to improve the quality of water in First Nations and Inuit communities; and
 - There is a general agreement that regulations are needed so that: (i) there is a shared understanding of what are the maximum acceptable discharge levels for effluents; (ii) acceptable methods of controlling effluents are known; and (iii) clean drinking water is available to the community.
- For about a quarter of the Aboriginal participants there is an agreement that water quality issues must be addressed but that Aboriginal communities should be reporting to national and regional Aboriginal organizations rather than EC.

Findings: The majority of the Aboriginal participants agree that the overall objective of the proposed regulations (in a form yet to be agreed to) for the management wastewater effluents is important and action (in a manner yet to be agreed to) must be undertaken.

Observation: The shared awareness and desire to address wastewater effluents and clean water issues provides a mutually agreed objective around which future discussions could be held.

4.1.2 EQ 2: WHAT WERE THE SUPREME COURT DECISIONS ON CONSULTATIONS?

What constitutes consultation with respect to the Supreme Court of Canada decisions?

Analysis Supporting Findings: The SCC and government policy were reviewed and no definitions or complete explanations were found (evaluators did not conduct legal interpretation of the SCC decisions).

Findings: The evaluators did not find either: (i) an independently published legal interpretation of what the SCC stated constituted consultations; nor (ii) a mutually acceptable definition of what the federal government and Canada's Aboriginal Peoples believes constitutes consultations.

Observation: The lack of an established and mutually agreed to definition of what constitutes consultations is and will likely be a continuing impediment to the eventual implementation of a process that is acceptable to both EC and Canada's Aboriginal Peoples.

4.1.3 EQ 3: WHAT ARE GOVERNMENT POLICIES ON CONSULTATIONS

What constitutes consultations with respect to Government of Canada policies and direction?

Analysis Supporting Findings: The *Guidelines for Effective Regulatory Consultations* state that consultations are necessary when preparing regulations, and the guidelines present descriptions of what is to be done when planning and organizing consultations.

The guidelines state that consultations with *Aboriginal groups involve special considerations. A fiduciary relationship arising out of their historic relationship exists between the Government of Canada and Aboriginal peoples. Departments and agencies are to work with First Nations, Inuit, and Métis communities and peoples; national, regional, and local Aboriginal organizations; and Aboriginal governments and ensure that they meet all obligations that may exist in relation to rights protected by section 35 of the Constitution Act, 1982.*¹⁹

The *Guidelines for Effective Regulatory Consultations* do not specify the special considerations consultations that are to be undertaken with Aboriginal groups.

Findings: The *Guidelines for Effective Regulatory Consultations* issued by Treasury Board in 2007 are the current authority on consultations. It does not define specifically or generally what constitutes consultations with Canada's Aboriginal Peoples.

There are no formally approved Government of Canada policies that specify what constitutes consultations between the Government and Canada's Aboriginal Peoples.

Observation: EC is bound by Federal Government policy that states that they must conduct consultations on all proposed regulations.

4.1.4 EQ 4: WAS CONSULTATION PLAN APPROVED BY EC MANAGEMENT?

Was the consultation plan developed and approved by EC management?

Analysis Supporting Findings:

¹⁹ *Guidelines for Effective Regulatory Consultations*, President of the Treasury Board, 2007, page 3.

An early draft Consultation Plan was approved in June 2006 by the Strategic Integration (SI) Board for fall 2006 implementation. However, for reasons internal to Environment Canada, the Consultation Plan was not implemented.²⁰

An updated Consultation Plan was prepared: *Plan for Consulting Aboriginal Peoples on CCME Draft Canada-wide Strategy for the Management of Municipal Wastewater Effluents and Environment Canada's Regulatory Proposal for Wastewater, Internal Draft, Environment Canada, October 1, 2007* for implementation in the fall 2007 to spring 2008. As per the Consultation Plan, the consultation sessions from November 2007 to January 2008 were only 1 part of the consultation process. The cost estimate to conduct the consultation sessions across Canada had been developed to cover high participation since the level of interest was unknown at the early planning stage.

Findings: A draft consultation plan dated 1 October 2007 plan was developed and approved by EC.

Observation: A consultation plan was submitted to and approved by EC management.

4.1.5 EQ 5: WAS THE CONSULTATION PLAN IMPLEMENTED AS DESIGNED?

Was the consultation plan successfully implemented as designed?

Analysis Supporting Findings: The evaluators reviewed EC's consultation plan, attended four of the sessions, participated in a videoconference session, read session and other reports, and interviewed Aboriginal participants and EC staff who had attended the other 16 sessions.

EC succeeded in holding a total of 21 sessions in all regions of Canada except for Nova Scotia. EC presented the information and documentation that had been identified within their consultation plan.²¹

EC succeeded in inviting Aboriginal representatives from across Canada with between 180 and 200 different Aboriginal communities participating, with between 25% to 30% of all First Nations communities and 4% of all Inuit communities.

Findings: The consultation plan was implemented as planned, and the immediate outcomes specified in the draft logic model were generally met.

²⁰ Plan For Consulting Aboriginal Peoples on CCME draft Canada-wide Strategy for the Management of Municipal Wastewater Effluents and Environment Canada's Regulatory Proposal for Wastewater, Internal Draft, Environment Canada, page 7, October 1, 2007. This document is an evergreen document originally prepared in 2006 and was updated from time to time as the consultation process proceeded.

²¹ First Nations in Nova Scotia were unable to participate because the tripartite process they employ had not sufficiently progressed to start their consultations before the deadline for the consultation sessions and the January 2008 deadline for comments to the CCME Development Committee. Environment Canada is still hopeful that the tripartite process can be completed and comments are still being accepted and will be considered prior to the publication of a draft *Fisheries Act* regulation in the *Canada Gazette*.

Observation: EC succeeded in obtaining representation from between 25 to 30% of all First Nations communities and 4% of Inuit at its planned consultation sessions. The lack of a prescribed attendance target (number of participating communities) prevents determining whether EC was successful or not.

4.1.6 EQ 6: IS THERE A SHARED UNDERSTANDING OF CONSULTATIONS?

Did EC, the partners, and the Aboriginal stakeholders share a common understanding of what constitutes appropriate consultations?

Analysis Supporting Findings: The first telephone survey asked the Aboriginal participants who attended an EC led consultation: *Do you have suggestions about ways that Environment Canada could approach consultations with Aboriginal communities and organizations that would be more appropriate or successful for both parties?* Table 32 presents a summary of the comments and suggestions that were received in response to the question.

Table 32 Suggestions (submitted)	SESSION Report Response	
	Frequency	Percentage
Process is not considered a consultation	13	68%
Information needs to be shared earlier	3	16%
Aboriginals need to be involved earlier	2	11%
Aboriginals should be treated within the same framework as other Canadians	1	5%
Total	19	100%

Canada's Aboriginal Peoples differentiate between: (i) the Government's view of public consultations as a process that encourages dialogue and the exchange of information; and (ii) their Aboriginal view of consultation is a formal and often binding process akin to but not negotiations. For this and probably other reasons the Aboriginal participants could not accept Environment Canada's position that the wastewater consultation sessions constituted *consultations with Canada's Aboriginal peoples*.

The Assembly of First Nations states that consultations must *include*: ²²

²² Successful First Nation Policy Development: Delivering Sustainability, Accountability and Innovation, Assembly of First Nations, March 2006, page 13

- *Attaining consent of First Nations;*
- *Conducting joint development of any proposed legislation or policy;*
- *Establishing independent monitoring and decision-making bodies to address the current imbalance in power; and,*
- *Appropriate intergovernmental mechanisms including appropriate consultation policies, financing and dispute resolution mechanisms.*

During discussions with officials from the Assembly of First Nations, they noted that their political leaders must take a political decision to participate in a consultative process before it can be stated that consultations have occurred; *with anything less being discussions and not consultations.*

Some of Canada's Aboriginal Peoples are also concerned that the use of the term consultations within the context of EC wastewater may be used as a precedent in defining consultations, and that the precedent might have a serious negative impact on future consultations and negotiations on other matters.

Findings: Environment Canada and the Aboriginal organizations and participants at the EC led sessions do not share a common understanding of what constitutes consultations.

- EC states that their consultations were consultations as understood by the Federal Government and that terms such as *public dialogue* did not adequately describe their consultation sessions.
- The Aboriginal organizations and participants stated that the EC led sessions were not consultations . . . the terms *an exchange of information* and *public dialogue* better describe EC's sessions.

Observation: A mutually agreed upon definition for consultations or the use of a term other than consultations would most likely be required to resolve the current impasse before the process can continue forward in a significant manner.

Observation: First Nations are concerned about how EC's consultations could be used as a precedent by the Federal Government during future treaty and land claim negotiations as well as court cases.

4.1.7 EQ 7: WAS THERE AGREEMENT TO IMPLEMENT CONSULTATIONS?

Was there agreement among partners and stakeholders [during the planning phase] to implement the planned consultations with Aboriginal communities and organizations?

Analysis Supporting Findings: AFN and ITK agreed to prepare *technical submissions* with respect to the proposed regulations, but both organizations stated prior to and during

the Environment Canada led sessions that the sessions did not constitute what they believe should be *consultations with Canada's Aboriginal Peoples*.

Furthermore, during interviews and discussions with AFN and ITK representatives they stated that they agreed to attend the EC led consultation sessions but that they were attending technical discussions and not consultations.

Findings: During the planning phase, Aboriginal communities and organizations agreed to attend the Environment Canada's sessions but they did not accept that the sessions were consultations, rather seeing them as technical sessions or workshops that addressed wastewater regulations.

Observation: Aboriginal organizations and community representatives attended the EC led consultations but refused to accept that the EC led sessions constituted consultations.

4.1.8 SUMMARY OF OBSERVATIONS, ISSUE #1

Issue #1: *Was the consultation process delivered as planned?*

The key observations for this issue are:

- The shared awareness and desire to address wastewater effluents and clean water issues provides a mutually agreed objective around which future discussions could be held.
- The lack of an established definition on consultations is and will likely be a continuing impediment to the eventual implementation of a process that is acceptable to both EC and Canada's Aboriginal Peoples.
- EC is bound by Federal Government policy that states that they must conduct consultations on all proposed regulations.
- A consultation plan was submitted to and approved by EC management
- EC succeeded in delivering its planned consultations to between 25% and 30% of all First Nations communities and 4% of all Inuit communities.
- A mutually agreed upon definition for consultations or the use of a term other consultations would most likely be required to resolve the current impasse before the process can continue forward in a significant manner.
- First Nations are concerned about how EC's consultations could be used as a precedent by the Federal Government during future treaty and land claim negotiations as well as court cases.

- Aboriginal organizations and community representatives attended the EC led consultations but refused to accept that the EC led sessions constituted consultations.

4.2 ISSUE #2: RESULTS

The second issue addressed by the evaluation is:

Did the consultations achieve their intended results?

The evaluation questions addressed under this evaluation issue are:

- EQ 8: *Did the consultations successfully inform the Aboriginal participants about the proposed CCME strategy and the proposed regulations?*
- EQ 9: *Were the consultations conducted in a manner consistent with the Supreme Court of Canada decisions?*
- EQ 10: *Did the consultations include all of the Aboriginal Peoples that should have participated in the consultations?*
- EQ 11: *Does Environment Canada understand Aboriginal concerns and expectations with respect to the proposed wastewater regulatory framework?*
- EQ 12: *Do Aboriginal stakeholders understand the purpose and impact of the proposed wastewater regulatory framework?*
- EQ 13: *Was the wastewater consultation process acceptable to Aboriginal stakeholders?*
- EQ 14: *Did the consultations produce unintended results?*

4.2.1 EQ 8: INFORMED ABOUT STRATEGY AND PROPOSED REGULATIONS?

Did the consultations successfully inform the Aboriginal participants about the proposed CCME strategy and the proposed regulations?

Analysis Supporting Findings: The exit survey questionnaire sought to determine if the participants believed that they were more knowledgeable about the purpose and potential impact of the Regulatory Framework for Wastewater as a result of the sessions. Two questions were asked: (i) Before today's consultation session I believe that I was knowledgeable about the purpose and potential impact of the regulatory Framework for Wastewater; and (ii) After today's consultation session I believe that I was knowledgeable about the purpose and potential impact of the Regulatory Framework for Wastewater.

Tables 5 and 6 (combined below) demonstrate that the combined percentages of participants who strongly agree and agree moved from 52% before the sessions to 92% after the sessions.

Tables 5 and 6 Combined Aboriginal Participants, Knowledge Increase	BEFORE Session		AFTER Session	
	Frequency	Percentage	Frequency	Percentage
Strongly agree	7	5%	29	20%
Agree	67	47%	102	72%
Disagree	46	32%	4	3%
Strongly disagree	18	13%	5	4%
No response / Other	4	3%	2	2%
Total	142	100%	142	100%

Findings: The Aboriginal participants stated that they were better informed about the proposed regulations after the EC led sessions.

Observation: The workshops resulted in a significant increase in knowledge.

4.2.2 EQ 9: WERE CONSULTATIONS CONSISTENT WITH SUPREME COURT DECISIONS?

Were the consultations conducted in a manner consistent with the Supreme Court of Canada decisions?

Environment Canada stated part way through the evaluation that the evaluators were not to undertake a review of the SCC decisions as that would be a legal interpretation of the SCC decisions and outside the scope of the evaluation.

Observation: The question of whether the EC led consultations were consistent with SCC decisions could not be answered within the scope of the evaluation.

4.2.3 EQ 10: DID CONSULTATIONS INCLUDE ALL ABORIGINAL PEOPLES?

Did the consultations include all of the Aboriginal Peoples that should have participated in the consultations?

Analysis Supporting Findings: The review of available documentation indicates that EC attempted to contact all First Nations and that the First Nations were offered funding to cover their travel and accommodation costs.

Inuit communities were not invited to attend the EC led consultations. EC instead invited the operators of the wastewater systems servicing Inuit communities. Three of the EC sessions were held in communities in or very close to an Inuit community. In those three instances one Inuit community was represented at each of the three sessions. There are

about 67 Inuit communities across Canada, with the number of communities depending upon the definition used to identify what constitutes an Inuit community.

The Métis Settlements of Alberta were consulted in a joint Environment Canada/Province of Alberta consultation session held in Edmonton. The scope of this evaluation did not include these consultations that EC conducted with Métis organizations and communities.

Findings: It is estimated that between 25% and 30% of the total number of the First Nations and 4% of the Inuit communities in Canada participated in the Environment Canada led sessions.

Observation: EC did not establish a performance measurement strategy or success targets for Aboriginal participation levels and thus it can not be determined whether EC was successful or not.

4.2.4 EQ 11: DOES ENVIRONMENT CANADA UNDERSTAND ABORIGINAL CONCERNS?

Does Environment Canada understand Aboriginal concerns and expectations with respect to the proposed wastewater regulatory framework?

Analysis Supporting Findings: To determine if EC was aware and had recorded the issues identified by the participants, two questions were asked: (i) *Did the Session Report capture the issues discussed at the session you attended?; and (ii) Did the National Report capture the issues discussed at the session you attended?*

Table 24 demonstrates that a large majority (92%) of the Aboriginal respondents to the post Session Report telephone survey stated that the Session Reports addressed all or missed just a few of the issues they identified about the proposed regulations. Similarly a large majority (87%) of the Aboriginal respondents to the post National Report telephone survey stated that the National Report addressed all or missed just a few of the issues they identified about the proposed regulations.

Report Covering Issues	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
The report covered all of the issues	24	65%	12	40%
The report missed a few of the issues	10	27%	14	47%
The report missed many of the issues	3	8%	4	13%

The report missed most of the issues	0	0%	0	0%
Total	37	100%	30	100%

To determine if the Aboriginal participants believed that EC had a good understanding of the concerns, interests and priorities, two questions were asked: (i) *Looking back over the wastewater consultation process to date, including reading the Session Report for your session, how confident are you that Environment Canada has a good understanding of the concerns, interests and priorities of Aboriginal communities about the proposed wastewater regulations?* and (ii) *Looking back over the wastewater consultation process to date, including reading the National Report for your session, how confident are you that Environment Canada has a good understanding of the concerns, interests and priorities of Aboriginal communities about the proposed wastewater regulations?*

Table 28 demonstrates that most respondents (71%) to the Session Report telephone survey stated that they were confident or somewhat confident that EC understands their concerns, while a slightly higher percentage (77%) were confident or somewhat confident that EC understands their concerns after they had read the draft National Report.

Table 28 Confidence that EC Understands	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
Doubtful	3	8%	2	7%
Somewhat doubtful	8	22%	5	17%
Somewhat confident	15	41%	15	50%
Confident	11	30%	8	27%
Total	37	100%	30	100%

Findings: The majority of the Aboriginal participants believe that Environment Canada is aware of and understands the issues Aboriginals presented at the sessions.

Observation: EC is aware of and understands the Aboriginal issues associated with the wastewater regulatory framework.

4.2.5 EQ 12: UNDERSTAND WASTEWATER REGULATORY FRAMEWORK?

Do Aboriginal stakeholders understand the purpose and impact of the proposed wastewater regulatory framework?

Analysis Supporting Findings: One dimension to measure the degree of understanding is whether the level of understanding is sufficient to share information and understanding with others.

When asked in the exit survey questionnaire to respond to the statement; *As a result of being here today, I will be able to explain Environment Canada's proposed wastewater regulatory framework to others*, the majority of the Aboriginal participants, 75% stated that they strongly agree or agree that after the session that they would be able to explain the proposed regulatory framework to others. This is shown in Table 17.

Current Understanding	Participant Response	
	Frequency	Percentage
Strongly Agree	9	7%
Agree	96	68%
Disagree	28	20%
Strongly Disagree	4	3%
Did not respond	5	3%
Total	142	100%

Findings: The majority of the Aboriginal participants (75%) reported that after the sessions that they had a better understanding of the proposed regulations, an increase of 39.5% over their pre-session levels of knowledge.

Observation: The workshop process is a good format for sharing information with Aboriginal participants.

4.2.6 EQ 13: WAS PROCESS ACCEPTABLE TO ABORIGINAL PARTICIPANTS?

Was the wastewater consultation process [workshops] acceptable to Aboriginal stakeholders?

Analysis Supporting Findings: Officials at the Department of Indian Affairs and Northern Development (DIAND) and the First Nations and Inuit Health Branch (FNIHB) confirmed that a 'large percentage' of their group meetings used to discuss matters of regional and/or national interest are conducted in a workshop format. The Aboriginal participants to the consultation sessions were generally comfortable with the workshop format, with one recurring suggestion being that the workshops should have been two days long so that the complexity of the proposed regulations could have been better addressed and allowed for more discussion.

Two-day workshops also have the advantage of allowing 'off-record' discussions during the first evening, thus allowing for the possible resolution of challenges and issues that cannot be addressed during a one-day workshop.

Table 18 presents the results of the exit survey question that asked the Aboriginal participants to rate the following statement: *I think that the Environment Canada officials at today's session really listened to what people said about the proposed wastewater regulations and other issues.*

Table 18 Environment Canada Listened	Participant Response	
	Frequency	Percentage
Strongly Agree	21	15%
Agree	103	73%
Disagree	7	5%
Strongly Disagree	4	3%
Did not respond	7	5%
Total	142	100%

A large majority (88%) agreed or strongly agreed that EC listened and responded to their questions and concerns.

Table 16 presents the results of the exit survey question that asked the Aboriginal participants to rate the following statement: *The answers to our questions provided the information that we sought.*

Table 16 Quality of Answers	Participant Response	
	Frequency	Percentage
Strongly Agree	7	5%
Agree	89	63%
Disagree	32	23%
Strongly Disagree	6	4%
Did not respond	8	6%
Total	142	100%

A majority (68%) agreed or strongly agreed that EC provided the responses they sought to their questions.

Findings: The workshop format for the EC led sessions worked well

Observations: The workshop process was acceptable to the Aboriginal stakeholders.

4.2.7 EQ 14: DID THE CONSULTATIONS PRODUCE UNINTENDED RESULTS?

Did the consultations produce unintended results?

Analysis Supporting Findings: As discussed in EQ 6, the first telephone survey asked the Aboriginal participants who attended an EC led consultation: *Do you have suggestions about ways that Environment Canada could approach consultations with Aboriginal communities and organizations that would be more appropriate or successful for both parties?*

Table 32 Suggestions (submitted)	SESSION Report Response	
	Frequency	Percentage
Process is not considered a consultation	13	68%
Information needs to be shared earlier	3	16%
Aboriginals need to be involved earlier	2	11%
Aboriginals should be treated within the same framework as other Canadians	1	5%
Total	19	100%

The four EC led consultation sessions attended by the evaluators confirmed the findings presented in Table 32. For example: (i) Aboriginal participants stood up and stated that they were not there to attend formal consultations; (ii) Aboriginal participants stated that they wanted the record of the session to show that they were attending as observers and not participants at a consultations; and (iii) other Aboriginal participants said that they were there to gather information and not participate in consultations.

Findings: The primary unintended impact is that the Aboriginal participants did not accept that the EC led sessions were consultations.

Observations: EC's plan includes more consultations with Canada's Aboriginal Peoples to address the specifics of the wastewater regulations including how the regulations are to be implemented, managed and monitored/reported. The current disagreement on interpretation of what is a consultation between EC and the Aboriginal participants may significantly delay or block EC's plans.

4.2.8 SUMMARY OF OBSERVATIONS, ISSUE #2

The second issue addressed by the evaluation is:

Issue #2: Did the consultations achieve their intended results?

The observations for this issue are:

- The question of whether the EC led consultations were consistent with SCC decisions could not be answered within the scope of the evaluation.
- EC did not establish a performance measurement strategy or success targets for Aboriginal participation levels and thus it can not be determined whether EC was successful or not.
- EC is aware of and understands the Aboriginal issues associated with the wastewater regulatory framework.
- The workshop process is a good format for sharing information with Aboriginal participants.
- The workshop process was acceptable to the Aboriginal stakeholders.
- EC's plan includes more consultations with Canada's Aboriginal Peoples to address the specifics of the wastewater regulations including how the regulations are to be implemented, managed and monitored/reported. The current disagreement on interpretation of what is a consultation between EC and the Aboriginal participants may significantly delay or block EC's plans.

4.3 ISSUE #3: COST-EFFECTIVENESS

The third issue addressed by the evaluation is:

Were the consultations with Aboriginal partners and stakeholders cost effective?

The evaluation questions addressed under this evaluation issue are:

EQ 15: *Were the consultations cost-effective in presenting the CCME strategy and the proposed regulations to Canada's Aboriginal Peoples?*

EQ 16: *Were the consultations cost-effective in obtaining Aboriginal support for the CCME strategy and the proposed regulations?*

4.3.1 EQ 15: COST-EFFECTIVE IN PRESENTING STRATEGY AND REGULATIONS?

Were the consultations cost-effective in presenting the CCME strategy and the proposed regulations to Canada's Aboriginal Peoples?

Analysis Supporting Findings: Cost-effectiveness at its simplest level is the return on an organization's investment in a program, calculated as the dollar value of the benefits delivered divided by the amount spent to obtain the benefits.

To determine cost-effectiveness the cost of conducting the EC led consultations was compared to two somewhat similar events in which the evaluators participated. The comparison events are: (i) a series of FNIHB Aboriginal health-related roundtables held at seven locations across Canada; and (ii) a series of national Aboriginal pre-school education workshops held at eleven locations across Canada.

The two FNIHB examples were two-day workshops while the EC sessions were one-day workshops. In order to provide a valid balanced comparison, other cost elements of the FNIHB events that were adjusted includes:

- Removing second day accommodation and meals allowances from the FNIHB events;
- Removing simultaneous translation services in both Aboriginal languages and French from the FNIHB events;
- Removing Elder's services and Elder support services from the FNIHB events; and
- Adding 11% and 13% to FNIHB airline travel costs to reflect the significant increases due to fuel costs.

- The cost of the EC contracts with AFN and ITK to prepare an Impact Analysis and Position Paper was removed for this comparison because there were no comparable contracts issued in the FNIHB events.

The adjusted per-participant cost for the FNIHB events were \$1,580 and \$1,495.

The cost breakdown for EC's consultations follows:

•	Travel Expenses in \$000s	
○	Pre-consultation Travel	\$11.7
○	NCR Travel	\$24.7
○	Regional Travel	\$55.9
○	Participant Travel	\$116.4
	Sub-Total travel	\$208.7
•	Session Expenses in \$000s	
○	Atlantic (6 sessions)	\$27.0
○	Quebec (1 session)	\$45.5
○	Ontario (2 sessions)	\$43.1
○	Prairie and Northern (6 sessions*)	\$72.0
○	Pacific and Yukon (5 sessions)	\$71.7
	Sub-Total Session Expenses	\$259.3
	TOTAL Expenses in \$000s	\$468.0
	Total Aboriginal Participants	250 (estimated)
	<u>Cost per Participant</u>	<u>\$1,872</u> (not in \$000s)

EC's higher cost per participant, based solely on the evaluator's experience, is probably due in large part to the cost of facilitating and administrating twice the number of sessions, when compared to the number of events held by FNIHB.

Findings: The EC consultations were generally cost-effective when compared to the practices employed FNIHB.

Observations: While the consultations were cost effective, savings may have been incurred if fewer sessions were held with larger groups, resulting mostly from reduced facilitation, planning and site costs.

4.3.2 EQ 16: COST-EFFECTIVE IN OBTAINING ABORIGINAL SUPPORT?

Were the consultations cost-effective in obtaining Aboriginal support for the CCME strategy and the proposed regulations?

Analysis Supporting Findings: The analysis presented for EQ #11 (*Does Environment Canada understand Aboriginal concerns and expectations with respect to the proposed wastewater regulatory framework?*) in sub-section 6.1.4 of this report supports the findings presented above.

Findings: Cost-effectiveness in obtaining Aboriginal support, expressed as a return on EC's investment could not be determined primarily because Aboriginal support cannot be quantitatively measured before the next round of discussions is held with Canada's Aboriginal Peoples.

The Aboriginal participants acknowledge that EC did hear what they said and that the Regional and National Reports did include their concerns and issues.

Observation: Cost effectiveness in obtaining Aboriginal support, expressed as a return on EC's investment, may only be calculable after the completion of the next phase of the EC led consultations.

4.3.3 SUMMARY OF OBSERVATIONS, ISSUE #3

Issue #3: *Were the consultations with Aboriginal partners and stakeholders cost effective?*

Observations:

- While the consultations were cost effective, savings may have been incurred if few sessions were held with larger groups.
- Cost effectiveness in obtaining Aboriginal support, expressed as a return on EC's investment, may only be calculable after the completion of the next phase of the EC led consultations.

4.4 ISSUE #4: RELEVANCE

The fourth issue addressed by the evaluation is:

Was the consultation conducted in a manner consistent with federal priorities and needs?

The evaluation questions addressed under this evaluation issue are:

EQ 17: *Was the consultation process consistent with the federal government's policy for making regulations?*

EQ 18: *Did stakeholders identify approaches to consultations with Aboriginal communities and organizations that would be more appropriate?*

4.4.1 EQ 17: CONSULTATIONS CONSISTENT WITH FEDERAL POLICY?

Was the consultation process consistent with the federal government's policy for making regulations?

Analysis Supporting Findings: Federal Government regulatory activity is governed by the *Cabinet Directive on Streamlining Regulation*²³ and the *Guidelines for Effective Regulatory Consultations*,²⁴ which require that EC conduct the consultations.

The EC led consultations did follow the spirit and intent of the *Cabinet Directive on Streamlining Regulation* and the *Guidelines for Effective Regulatory Consultations*.

Findings: Though TB's 2007 Guidelines were not available to EC during the planning and implementation of their consultation sessions, EC's consultation sessions were consistent with the Government's policies for consulting the public when making regulations.

Observation: The distinction must be maintained that while EC did meet TB's 2007 Guidelines, they did not meet the Aboriginal organizations and participants' expectations with respect to consultations, and therefore did not attain their overall objective of obtaining Aboriginal agreement and participation.

²³ The process for developing and approving regulations is subject to the Cabinet Directive on Streamlining Regulations www.regulation.gc.ca

²⁴ *Guidelines for Effective Regulatory Consultations*, President of the Treasury Board, 2007, page 1,

4.4.2 EQ 18: OTHER APPROACHES TO ABORIGINAL CONSULTATIONS?

Did stakeholders identify approaches to consultations with Aboriginal communities and organizations that would be more appropriate?

Analysis Supporting Findings: The Assembly of First Nations states that consultations must *include*:

- *Obtaining the consent of First Nations;*
- *Conducting joint development of any proposed legislation or policy;*
- *Establishing independent monitoring and decision-making bodies to address the current imbalance in power; and,*
- *Appropriate intergovernmental mechanisms including appropriate consultation policies, financing and dispute resolution mechanisms.* ²⁵

During discussions with officials from the Assembly of First Nations, they noted that their political leaders must take a political decision to participate in a consultative process before it can be stated that consultations have occurred; *with anything less being discussions and not consultations.*

Findings: The Assembly of First Nations identified the elements of what they believe constitutes appropriate consultations with Canada's Aboriginal Peoples.

Observations: Aboriginal organizations and participants did not agree that EC held consultations and may not agree to participate in near future consultations if EC continues to call the sessions consultations.

4.4.3 SUMMARY OF OBSERVATIONS, ISSUE #4

Issue #4: *Was the consultation conducted in a manner consistent with federal priorities and needs?*

Observations :

- The distinction must be maintained that while EC did meet TB's 2007 Guidelines, they did not meet the Aboriginal organizations and participants' expectations with respect to consultations, and therefore did not attain their overall objective of obtaining Aboriginal agreement and participation.

25 Successful First Nation Policy Development: Delivering Sustainability, Accountability and Innovation, Assembly of First Nations, March 2006, page 12

- Aboriginal organizations and participants did not agree that EC held consultations and may not agree to participate in near future consultations if EC continues to call the sessions consultations.

4.5 OTHER ISSUES

4.5.1 WAS EVALUATION CONDUCTED DURING AND AT END OF CONSULTATIONS?

The 2007 Guidelines require that:

Evaluations should be conducted both as the consultations are taking place, so that changes can be made if necessary, and at the end of the consultations, to assess the results. The consultation plan should detail how these evaluations will be conducted.

Response: The terms of reference for this evaluation is specific to one portion of the overall consultative process planned by EC. The evaluation does not cover the consultations to be conducted after 31 January 2008 nor the final results to be achieved by the consultation process.

4.5.2 WERE BOTH FACTORS CONSIDERED?

The 2007 Guidelines require that:²⁶

Two factors should be considered when conducting both ongoing and final evaluations: (i) whether the process is working (has worked), and (ii) what results are being (have been) achieved. Both consultation officials and stakeholders should participate in the evaluation process.

Response: The evaluation has examined the processes and results achieved to 31 January 2008 while the consultative process will continue through past December 2009, or longer.

4.5.3 WERE EFFECTIVENESS AND SUCCESS MEASURED?

The guidelines require that:²⁷

Ongoing evaluation throughout the process enables officials to determine how well the consultation plan is being implemented (i.e. whether the process is effective), measure success (i.e. whether the information gathered is valid and

²⁶ [Guidelines for Effective Regulatory Consultations](#), President of the Treasury Board, 2007, page 16

²⁷ [Guidelines for Effective Regulatory Consultations](#), President of the Treasury Board, 2007, page 16

reliable), and determine whether adjustments should be made to advance the consultation objectives.

Response: The evaluation examined the implementation of the first portion of the consultations. Successes were not measured because the intermediate results have yet to be achieved. Information was gathered that enabled the identification of adjustments that should be made to the EC led consultations.

4.5.4 DID END-OF-PROCESS EVALUATION RECORD LESSONS LEARNED?

The guidelines require that:²⁸

The end-of-process evaluation will also allow officials to document lessons learned so that these can be shared within the institution and with other departments and agencies. This helps to ensure that current and future processes are informed by past experience through roundtable seminars, case studies, and articles in newsletters, among other means.

Response: The scope of the evaluation did not include identifying lessons learned; but it did provide information that can be used to guide future evaluations.

²⁸

Guidelines for Effective Regulatory Consultations, President of the Treasury Board, 2007, page 17

Section 5. CONCLUSIONS AND RECOMMENDATIONS

This section of the report presents the compendium of observations that could be drawn from the findings. These are then developed into a set of conclusions which in turn lead to a set of recommendations.

5.1 OBSERVATIONS

5.1.1 ISSUE #1 [IMPLEMENTATION]

Was the consultation process delivered as planned?

The observations for this issue (repeated from the previous section) are:

- The shared awareness and desire to address wastewater effluents and clean water issues provides a mutually agreed objective around which future discussions could be held.
- The lack of an established definition on consultations is and will likely be a continuing impediment to the eventual implementation of a process that is acceptable to both EC and Canada's Aboriginal Peoples.
- EC is bound by Federal Government policy that states that they must conduct consultations on all proposed regulations.
- A consultation plan was submitted to and approved by EC management
- EC succeeded in delivering its planned consultations to between 25% and 30% of First Nations communities and 4% of Inuit communities.
- A mutually agreed upon definition for consultations or the use of a term other than consultations would most likely be required to resolve the current impasse before the process can continue forward in a significant manner.
- First Nations are concerned about how EC's consultations could be used as a precedent by the Federal Government during future treaty and land claim negotiations as well as court cases.
- Aboriginal organizations and community representatives attended the EC led consultations but refused to accept that the EC led sessions constituted consultations.

It is demonstrated that:

- **DELIVERY**: The EC led consultations on the proposed wastewater regulations were delivered as planned. EC was successful in undertaking discussions and receiving feedback from between 25% to 30% of the First Nations and 5% of Inuit communities in Canada. EC received a wide range of technical and socio-economic feedback that will be useful in the preparation of wastewater regulations.
- **CONTENT**: The consultations demonstrated that the majority of the Aboriginal participants supported the overall objective that wastewater regulations (in a form yet to be agreed to) for the management of wastewater effluents is important and action (in a manner yet to be agreed to) must be undertaken to protect the environment and improve the quality of drinking water.
- **DEFINING "CONSULTATION"**: Canada's Aboriginal Peoples and EC do not share a common understanding of what constitutes consultations.
- **IMPEDIMENT TO FUTURE CONSULTATIONS**: EC and Canada's Aboriginal Peoples will have to resolve their current impasse on what would be the appropriate consultations and/or dialogue process that would allow them to advance the proposed wastewater regulatory process.

5.1.2 ISSUE #2 [RESULTS]

Did the consultations achieve their intended results?

The observations for this issue are:

- The workshops resulted in a significant increase in knowledge.
- EC did not establish a performance measurement strategy or success targets for Aboriginal participation levels.
- The workshop process is a good format for sharing information with Aboriginal participants.

It is demonstrated that:

- **KNOWLEDGE**: The Aboriginal participants have an increased awareness and knowledge and appreciation of the proposed wastewater regulations;

- **AWARENESS:** EC has an increased awareness and knowledge of Aboriginal concerns and expectations;
- **PROCESS:** The workshop process worked well but should have been two days long to allow for more discussion of the proposed regulations; and
- **DEFINING "CONSULTATIONS":** The Aboriginal organizations and participants do not agree that the EC led sessions were consultations.

5.1.3 ISSUE #3 [COST EFFECTIVENESS]

Were the consultations with Aboriginal partners and stakeholders cost effective?

The observations for this issue are:

- While the consultations were cost effective, savings may have been incurred if fewer sessions were held with larger groups.
- Cost effectiveness in obtaining Aboriginal support, expressed as a return on EC's investment, may be calculable after the completion of the next phase of the EC led consultations.

It is demonstrated that:

- **COST EFFECTIVENESS:** EC was cost effective in delivering the consultations. Some additional saving may be possible by having fewer sessions and inviting larger audiences/participants.

5.1.4 ISSUE #4 [RELEVANCE]

Was the consultation conducted in a manner consistent with federal priorities and needs?

The observations for this issue are:

- The distinction must be maintained that while EC did meet TB's 2007 Guidelines, they did not meet the Aboriginal organizations and participants' expectations with respect to consultations, and therefore did not attain their overall objective of obtaining Aboriginal agreement and participation.
- Aboriginal organizations and participants did not agree that EC held consultations and may not agree to participate in near future consultations if EC continues to call the sessions consultations.

It is demonstrated that:

- For Environment Canada, the consultations met federal priorities and needs; and
- The consultations *did not* meet the needs of the Aboriginal community being contacted.

5.1.5 ISSUE #5: [OTHER ISSUES]

The observation for this issue is that EC should undertake the steps required to ensure the evaluation of the entire consultative process.

It is demonstrated that Environment Canada has not met all of the evaluation requirements specified in the 2007 TB Guidelines.

5.2 CONCLUSIONS AND RECOMMENDATIONS

Conclusion #1: The primary and most pressing question, which is repeated several times during the conduct of this evaluation, is the need to define what a "consultation" is. Environment Canada did meet its obligation to consult based upon the Federal Government's definition of consultation. The Aboriginal participants to the consultations, including their representative organizations, the Assembly of First Nations and Inuit Tapiriit Kanatami, disagree with Environment Canada and state that Environment Canada's process of dialogue with them was not consultations. This has resulted in a situation that must be addressed.

Central to the disagreement is the word consultations. Canada's Aboriginal Peoples employ the term consultations in a very different manner than does the Federal Government. If Environment Canada had employed a term such as *public dialogue* rather than insisting on using the term *consultations*, many if not most of the problems would not have occurred.

Recommendation #1a: Before continuing its consultations with Canada's Aboriginal Peoples, Environment Canada needs to request that Treasury Board modify its 2007 *Guidelines for Effective Regulatory Consultations* by replacing the term *consultations* with a term that is mutually acceptable to the federal government and Canada's Aboriginal Peoples.

Recommendation #1b: Follow the Assembly of First Nations' suggestion that Environment Canada sit down with Canada's Aboriginal Peoples, before continuing with its consultations plan, and identify a mutually agreeable process to engage in consultations (dialogue) on the development of regulations for wastewater effluent management on Aboriginal lands.

Recommendation #1c: To support Recommendation #1b, Environment Canada needs to establish a team that includes members who are aware of Aboriginal priorities and issues as well as being culturally sensitive. This team should meet with the Assembly of First Nations and the Inuit Tapiriit Kanatami to establish protocols for continued dialogue between Environment Canada and Canada's Aboriginal Peoples.

Conclusion #2: Environment Canada and the Aboriginal participants were successful in terms of delivering and sharing information and knowledge. The knowledge, content and delivery of information during the sessions did positively meet many of the expectations of the Aboriginal participants, and the Session and National Reports accurately captured the essential messages. The need for action in wastewater effluent management is not contested and those opinions have been validated by 40% of the national target audience. However, some future improvements can be considered for the "next round of discussions".

Recommendation #2a: For future "consultation" processes, Environment Canada should incorporate the use of an "Advisor" to enhance and improve the dialogue process. As well, EC should undertake process adjustments for future dialogue with Canada's Aboriginal Peoples: two day versus one day workshop; incorporate break-out sessions; consider using fewer locations for dialogue; all of which may increase interest and participation as well as improving the cost-effectiveness equation.

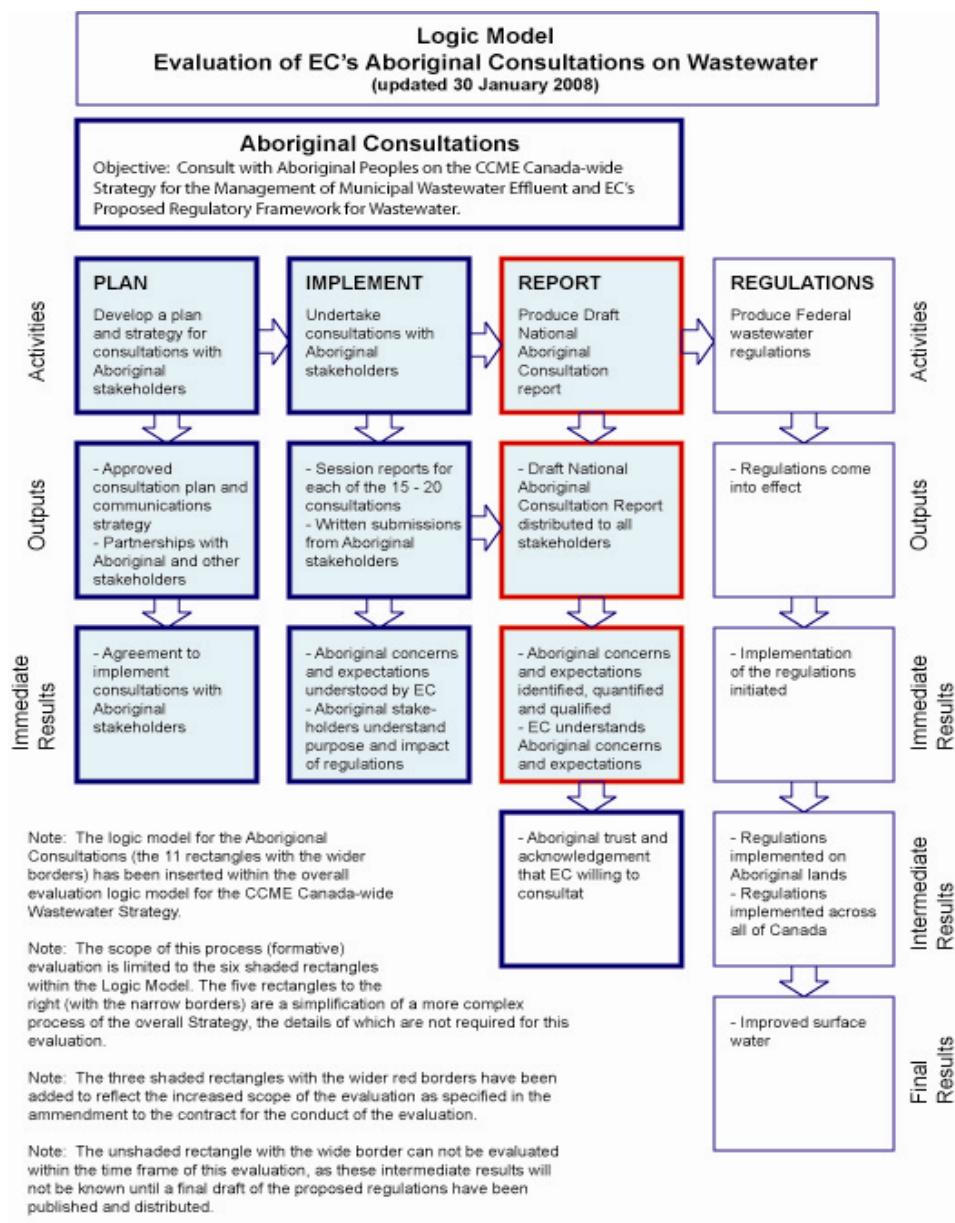
Conclusion #3: Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations*, which was issued after Environment Canada undertook this evaluation, contains evaluation requirements not addressed by this evaluation.

Recommendation #3: Environment Canada should undertake the evaluation of the remainder of its planned wastewater dialogue with Canada's Aboriginal Peoples to meet the requirements of Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations*.

Observation: Environment Canada may want to examine the evaluation requirements specified within Treasury Board's 2007 *Guidelines for Effective Regulatory Consultations* on all of the public consultations it is conducting, and not only those with Canada's Aboriginal Peoples.

Section 6. APPENDICES

Appendix 1. LOGIC MODEL



Appendix 2. KEY REFERENCE DOCUMENTS

The key reference documents used in the conduct of this evaluation included:

- A Review of Public Participation and Consultation Methods, vcn.bc.ca/citizens-handbook/compareparticipation.pdf
- Assessing the Impacts of Public Participation: Concepts, Evidence and Policy Implications, Abelson, J. and Gauvin, F-P. Public Involvement Network, March 2006, <http://www.cprn.org/doc.cfm?doc=1403&l=en>
- Canada-wide Strategy for the Management of Municipal Wastewater Effluent, Canadian Council for Ministers of the Environment, Sept 2007
- Clarifying the Role and Responsibilities for Aboriginal Consultation and Accommodation Within DND/CF, LCdr Ken Osborne DND/CFLA LAS, <http://www.cba.org/CBA/newsletters/pdf/MIL-Aboriginal.pdf>
- The Crown's Constitutional Duty to Consult and Accommodate Aboriginal and Treaty Rights, Research Paper for the National Centre for First Nations Governance February, Prepared by Maria Morellato of Blake, Cassels & Graydon LLP, 2008
- Does Consensus Work? A Pragmatic Approach to Public Participation in the Regulatory Process, Cary Coglianese with David Lazer. Law & Society Review 691-730 (2003), <http://ksghome.harvard.edu/~CCoglianese/Pragmatism&Consensus.pdf>
- Evaluation of the Environment Council's National Waste Dialogue. Warburton D. The Environment Council © 2004, Error! Hyperlink reference not valid.
- Guidelines for Effective Regulatory Consultations, President of the Treasury Board, 2007
- Guide to Making Federal Acts and Regulations, jointly published the Privy Council of Canada and the Department of Justice, copywritten in 2001 and issued in 2003. http://www.pco-bcp.gc.ca/docs/information/Publications/_legislation/lmg_e.pdf
- Guidelines for Consultations and Partnerships Involving Stakeholders in CCME, <http://www.ccme.ca/about/consultation.html>
- Guidelines for Planning & Managing National Consultations, Version 2 – Working Draft, April 2003, Error! Hyperlink reference not valid.
- Government of Canada Policy on Consulting and Engaging Canadians, Draft for Discussion. Treasury Board Secretariat, September 24, 2001
- Haida Nation v BC (Minister of Forests) and Weyerhaeuser, 2004 SCC 73 Source: EAGLE (Environmental-Aboriginal Guardianship through Law and Education) <http://www.eaglelaw.org>

- Health Canada Policy Toolkit for Public Involvement in Decision Making, Health Policy and Communications Branch, 2000, http://www.hc-sc.gc.ca/ahc-asc/pubs/public-consult/2000decision/index_e.html
- Making a difference: A guide to evaluating public participation in central government. Diane Warburton, Commissioned by the Department of Constitutional Affairs by DCA/Involve (2007), <http://sharedpractice.org.uk/Publications/publications.html>
- Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act, http://www.ceaa-acee.gc.ca/013/006/ministerial_guideline_e.htm
- Plan For Consulting Aboriginal Peoples on CCME draft Canada-wide Strategy for the Management of Municipal Wastewater Effluents and Environment Canada's Regulatory Proposal for Wastewater, Internal Draft, Environment Canada, October 1, 2007
- Successful First Nation Policy Development: Delivering Sustainability, Accountability and Innovation, Assembly of First Nations, March 2006
- Supreme Court of Canada decision *Haida Nation versus British Columbia and Weyerhaeuser*, issued on 18 November 2004, 3 S.C.R. 511, 2004, SCC 73
- Supreme Court of Canada decision *Taku River Tlingit First Nation v. British Columbia* issued on 18 Nov 2004, 3 S.C.R. 550, 2004 SCC 74
- The Haida Nation and Taku River Tlingit Decisions: Clarifying Roles and responsibilities for Aboriginal Consultation and Accommodation, Olynyk, John M, February 21, 2005, April 2005 issue of The Negotiator, the magazine of the Canadian Association of the Petroleum, <http://www.cba.org/CBA/newsletters/pdf/MIL-Aboriginal.pdf>
- The True Costs of Public Participation - A Framework,
http://sharedpractice.org.uk/Downloads/TC_Framework.pdf
- Was it worth it? Evaluating public & stakeholder consultation, Rhion Jones & Elizabeth Gammell The Consultation Institute 2004,
<http://www.consultationinstitute.org/research/briefingpapers.asp>

Appendix 3. EVALUATION TERMINOLOGY

The Treasury Board of Canada produces national-level evaluation policies and guidelines that employ terminology that has specific meanings within the process of conducting and reporting on the evaluation of government programs, initiatives and regulatory processes. Government departments and agencies respond to Treasury Board's requirements by producing evaluation directives and operational policies specific to their organizations' evaluation and program requirements. One result of this process is there are a few differences in the interpretation and use of evaluation terminology.

The scope of each evaluation is guided by the evaluation issues and evaluation questions that were specifically developed for that evaluation. The topics to be addressed by the evaluation issues are identified by Treasury Board policy; with the departments given the ability to adapt the evaluation issues to the program, initiative or regulatory process that is being evaluated. Evaluation questions are a sub-set of the evaluation issues. Evaluation questions are designed to address the department's priorities and information requirements. Evaluation reports must address each of the evaluation issues and evaluation questions.

Within this report, analysis is the process of using data and information collected during the evaluation to produce findings. Findings are fact-based, developed from independently verifiable data and information. To increase the reliability of findings, data and information is often sought from more than one independent source.

Findings are sometimes also referred to as evidence. Evidence-based evaluations are therefore evaluations where the findings are based upon data and information that can be verified by an independent third party. Other than in this paragraph, the authors of this report do not employ the terms evidence and evidence-based evaluations because of the associated legal and judicial connotations.

Observations are fact-based statements that are developed from specific verifiable findings, usually responding to the evaluation issues and evaluation questions. As such observations do not include an element of interpretation by the evaluators. The term observation is not to be interpreted in the clinical sense where trained evaluators and social scientists observe and report upon human behaviour and interaction.

Conclusions, however; are built upon one or more observations. Conclusions do require an element of interpretation by the evaluators. It is possible that the evaluation conclusions may not be agreed to by all readers of this report because different readers may have different interpretations of the observations. This is understandable.

Recommendations are the evaluators' proposed approach to how the conclusions can best be addressed. The recommendations identify the goal to be achieved. It is the department's responsibility to decide upon which of the evaluation's recommendations are to be implemented and the action plan that is required to achieve the desired results.

Appendix 4. SESSION EXIT SURVEY

The exit survey was conducted at 20 of the 21 EC led consultation sessions, with 142 completed questionnaires returned to the evaluators. Personal comments and observations submitted with the completed questionnaires have not been included within this appendix.

Note: The results in the following table have been rounded to the nearest percentage point and the totals may vary plus or minus a percentage point.

1 Interviewee's Region

Interviewee's Region	Participant Response	
	Frequency	Percentage
Alberta	6	4%
Atlantic	22	15%
British-Columbia	19	13%
Manitoba	28	20%
North	20	14%
Ontario	17	12%
Quebec	17	12%
Saskatchewan	7	5%
Did not respond	6	4%
Total	142	100%

2 Please check which of the following types of organizations that you are representing at this consultation.

Type of Organization	Participant Response	
	Frequency	Percentage
First Nation - My Community	85	60%
First Nation - Regional/Tribal	28	20%
First Nation - Provincial/Territorial	5	4%
First Nation - National	2	1%
Inuit - My Community	6	4%
Inuit - Regional/Territorial	4	3%
Inuit - Nunavut/Nunavik/Nunatsiavut	4	3%
Inuit – National	1	1%
Metis - My Community	0	0%
Metis – Regional	0	0%
Metis - Provincial/Territorial	0	0%
Metis – National	0	0%
Other – Aboriginal	7	5%
Total	142	100%

3 Please check one of the following to identify your primary responsibility for wastewater management issues within the organization you represent.

Primary Responsibility	Participant Response	
	Frequency	Percentage
An elected official making regulations or bylaws	15	11%
An employee making regulations or bylaws	10	7%
Providing technical and operational advice to wastewater system managers	35	25%
Managing/operating a wastewater system	35	25%
Other	41	29%
Did not respond	6	4%
Total	142	100%

4 Have you previously participated in organized event(s) or meeting(s) about wastewater management and/or proposed regulations? Please identify those (all) organizations with whom you met.

Table 4 Previous Events	Participant Response	
	Frequency	Percentage
I have not previously participated	91	64%
With Environment Canada	27	19%
With provincial or territorial government officials, including Nunavut, Nunavik and Nunatsiavut	9	6%
With national and/or regional Aboriginal organizations	15	11%
With other organizations	16	11%
Total	---	---

Note: Respondents could answer more than one choice therefore the totals are not provided for this question.

5 Before today's consultation session, I believe that I was knowledgeable about the purpose and potential impact of the proposed Regulatory Framework for Wastewater.

Table 5 Prior Knowledge	Participant Response	
	Frequency	Percentage
Strongly Agree	7	5%
Agree	67	47%
Disagree	46	32%
Strongly Disagree	18	13%
Did not respond	4	3%
Total	142	100%

6 After today's consultation session, I believe that I am more knowledgeable about the purpose and potential impact of the regulatory Framework for Wastewater.

Table 6 Current Knowledge	Participant Response	
	Frequency	Percentage
Strongly Agree	29	20%
Agree	102	72%
Disagree	4	3%
Strongly Disagree	5	4%
Did not answer	2	2%
Total	142	100%

7 I received the consultation materials before the start of this session.

Table 7 Materials	Participant Response	
	Frequency	Percentage
Did not receive	40	28%
1-5 days before	26	18%
5-10 days before	31	22%
More than 10 days	43	30%
Did not respond	2	2%
Total	142	100%

8 I consulted with decision makers within my community/organization about the wastewater consultations before I attended today's session.

Table 8 Consulted with Local Population Prior	Participant Response	
	Frequency	Percentage
Strongly Agree	5	4%
Agree	58	41%
Disagree	58	41%
Strongly Disagree	19	13%
Did not respond	2	2%
Total	142	100%

9 The document entitled 'Proposed Regulatory Framework for Wastewater' dated October 2007 is clear and easy to read and understand.

Table 9 Regulatory Framework Easy Read Understand	Participant Response	
	Frequency	Percentage
Strongly Agree	2	1%
Agree	96	68%
Disagree	25	18%
Strongly Disagree	4	3%
Did not respond	15	11%
Total	142	100%

10 The document entitled 'CCME Canada-wide Strategy dated October 2007' is clear and easy to read and understand.

Table 10 CCME Canada-Wide Strategy, Clear and Easy ..	Participant Response	
	Frequency	Percentage
Strongly Agree	2	1%
Agree	99	70%
Disagree	23	16%
Strongly Disagree	5	4%
Did not respond	13	9%
Total	142	100%

11 The materials given to me prior to the consultation session gave me the information I needed to participate in today's discussions

Table 11 Sufficient Documentation	Participant Response	
	Frequency	Percentage
Strongly Agree	8	6%
Agree	83	59%
Disagree	26	18%
Strongly Disagree	13	9%
Did not respond	12	8%
Total	142	100%

12 The documents provided today during the consultation session were clear and helpful.

Table 12 Document Clarity and Usefulness	Participant Response	
	Frequency	Percentage
Strongly Agree	17	12%
Agree	104	73%
Disagree	12	8%
Strongly Disagree	4	3%
Did not respond	5	3%
Total	142	100%

13 The individuals who organized the registration, travel and other arrangements for this consultation session did a good job.

Table 13 Travel Arrangements	Participant Response	
	Frequency	Percentage
Strongly Agree	27	19%
Agree	94	66%
Disagree	10	7%
Strongly Disagree	4	3%
Did not respond	7	5%
Total	142	100%

14 The people who made presentations today were good communicators and explained things well.

Table 14 Quality of Presentations	Participant Response	
	Frequency	Percentage
Strongly Agree	30	21%
Agree	98	69%
Disagree	8	6%
Strongly Disagree	3	2%
Did not respond	3	2%
Total	142	100%

15 I was able to ask all the questions that I needed to ask, and say what I needed to say.

Table 15 Possibility to Ask Questions	Participant Response	
	Frequency	Percentage
Strongly Agree	28	20%
Agree	91	64%
Disagree	11	8%
Strongly Disagree	5	4%
Did not respond	7	5%
Total	142	100%

16 The answers to our questions provided the information that we sought.

Table 16 Quality of Answers	Participant Response	
	Frequency	Percentage
Strongly Agree	7	5%
Agree	89	63%
Disagree	32	23%
Strongly Disagree	6	4%
Did not respond	8	6%
Total	142	100%

17 As a result of being here today, I will be able to explain Environment Canada's proposed wastewater regulatory framework to others.

Table 17 Current Understanding	Participant Response	
	Frequency	Percentage
Strongly Agree	9	7%
Agree	96	68%
Disagree	28	20%
Strongly Disagree	4	3%
Did not respond	5	3%
Total	142	100%

18 I think that the Environment Canada officials at today's session really listened to what people said about the proposed wastewater regulations and other issues.

Table 18 Environment Canada Listened	Participant Response	
	Frequency	Percentage
Strongly Agree	21	15%
Agree	103	73%
Disagree	7	5%
Strongly Disagree	4	3%
Did not respond	7	5%
Total	142	100%

19 I believe that this consultation process will result in our concerns and priorities being adequately addressed within the regulations that will be developed by Environment Canada.

Table 19 Concerns Adequately Addressed	Participant Response	
	Frequency	Percentage
Strongly Agree	7	5%
Agree	73	51%
Disagree	37	26%
Strongly Disagree	9	6%
Did not respond	16	11%
Total	142	100%

20 Environment Canada's consultations with Aboriginal organizations and communities about wastewater regulations work well and should be used for future consultations.

Table 20 Process Works Well	Participant Response	
	Frequency	Percentage
Strongly Agree	17	12%
Agree	78	55%
Disagree	27	19%
Strongly Disagree	8	6%
Did not respond	12	9%
Total	142	100%

Appendix 5. TELEPHONE SURVEYS

Two telephone surveys were conducted:

- The Post Session Reports survey was conducted after the session reports were circulated to the EC led consultation participants; and
- The Post Draft National Report survey was conducted after the draft of the National Report was circulated to the participants.

To facilitate the review of the responses, those questions which were common to both surveys have been placed within the same table.

Note: The numbering of the questions and tables was continued from the previous survey to facilitate referencing the questions within the report.

21 Interviewee's Region

Interviewee's Region	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
Atlantic	4	11%	4	13%
Quebec	5	14%	4	13%
Ontario	5	14%	3	10%
Manitoba	5	14%	4	13%
Saskatchewan	5	14%	3	10%
Alberta	5	14%	3	10%
British Columbia	5	14%	6	20%
North	3	8%	3	10%
Total	37	100%	30	100%

22 Please identify which of the following types of organizations that you were representing at this consultation.

Table 22 Type of Organization	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
First Nation - My Community	25	69%	18	60%
First Nation - Regional/Tribal	6	16%	4	13%
First Nation - Provincial/Territorial	0	0%	1	3%
First Nation - National	3	8%	2	7%
Métis - My Community	0	0%	0	0%
Métis - Regional/Tribal	0	0%	0	0%
Métis - Provincial/Territorial	0	0%	0	0%
Métis - National	0	0%	0	0%
Inuit - My Community	2	5%	2	7%
Inuit - Regional/Territorial	0	0%	0	0%
Inuit - Nunavut/Nunavik/Nunatsiaut	0	0%	0	0%
Inuit - National	1	3%	1	3%
Non-Aboriginal Government - My Community	0	0%	0	0%
Non-Aboriginal Government - Regional/Tribal	0	0%	0	0%
Non-Aboriginal Government - Provincial/Territorial	0	0%	0	0%
Non-Aboriginal Government - Federal	0	0%	0	0%
Other	0	0%	0	0%
Did Not Respond	0	0%	2	7%
Total	37	100%	30	100%

23 Please check one of the following to identify your primary responsibility for wastewater management issues within the organization you represent.

Table 23 Primary Responsibility	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
An elected official making regulations or bylaws	1	3%	1	3%
An employee making regulations or bylaws	8	22%	6	20%
Providing technical and operational advice to wastewater system managers	11	30%	13	43%
Managing/operating a wastewater system	15	41%	8	27%
Other	2	5%	2	7%
Total	37	100%	30	100%

24 Did the Regional / National report capture the ISSUES discussed at the session you attended?

Table 24 Report Covering Issues	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
The report covered all of the issues	24	65%	12	40%
The report missed a few of the issues	10	27%	14	47%
The report missed many of the issues	3	8%	4	13%
The report missed most of the issues	0	0%	0	0%
Total	37	100%	30	100%

25 Does the Regional / National report address your INDIVIDUAL VIEWS AND BELIEFS as discussed at the session you attended?

Table 25 Report Covering Views and Beliefs	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
The report covered all of the views and beliefs	17	46%	13	43%
The report missed a few of the views and beliefs	14	38%	15	50%
The report missed many of the views and beliefs	6	16%	2	7%
The report missed most of the views and beliefs	0	0%	0	0%
Total	37	100%	30	100%

26 Did your community or organization make a written submission to Environment Canada?

Table 26 Written Submission	SESSION Report Response	
	Frequency	Percentage
Yes	2	5%
No	35	95%
Total	37	100%

27 IF you or your organization made a written submission to Environment Canada, how confident are you that they will consider your submission when they draft the wastewater regulations?

Table 27 Aboriginal Participants, Knowledge Increase	SESSION Report Response	
	Frequency	Percentage
Doubtful	0	0%
Somewhat doubtful	0	0%
Somewhat confident	0	0%
Confident	2	6%
Did not respond	35	94%
Total	37	100%

28 Looking back over the wastewater consultation process to date, including reading the Session Report for your session / National Report, how confident are you that Environment Canada has a good understanding of the concerns, interests and priorities of Aboriginal communities about the proposed wastewater regulations?

Table 28 Confidence	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
Doubtful	3	8%	2	7%
Somewhat doubtful	8	22%	5	17%
Somewhat confident	15	41%	15	50%
Confident	11	30%	8	27%
Total	37	100%	30	100%

29 Based on the consultations to date, including the Session report for your session / National Report, how confident are you that Environment Canada will consider the identified Aboriginal concerns, interests and priorities when they draft the wastewater regulations?

Table 29 Confidence	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
Doubtful	1	3%	1	3%
Somewhat doubtful	5	14%	3	10%
Somewhat confident	17	46%	17	57%
Confident	14	38%	9	30%
Total	37	100%	30	100%

30 Since receiving your Session Report / National Report, has your opinion of the consultation process employed by EC either improved or decreased?

Table 30 Opinion of the Consultation Process	SESSION Report Response		NATIONAL Report Response	
	Frequency	Percentage	Frequency	Percentage
Decreased	0	0%	0	0%
No Change	26	70%	19	63%
Increased	11	30%	11	37%
Total	37	100%	30	100%

31 In your opinion, would the wastewater consultations be a good model for future consultations with Aboriginal communities and organizations?

Table 31 A Good Model?	SESSION Report Response	
	Frequency	Percentage
Yes	14	38%
No	23	62%
Total	37	100%

32 Do you have suggestions about ways that Environment Canada could approach consultations with Aboriginal communities and organizations that would be more appropriate or successful for both parties?

Table 32 Suggestions (submitted)	SESSION Report Response	
	Frequency	Percentage
Process is not considered a consultation	13	68%
Information needs to be shared earlier	3	16%
Aboriginals need to be involved earlier	2	11%
Aboriginals should be treated within the same framework as other Canadians	1	5%
Total	19	100%

Note: Seventeen of the 37 respondents provided comments, and two of those respondents provided two responses, bringing the total number of responses to 19. This was not a multiple-choice question; the respondents were asked to write out suggestions. The responses were analysed and summarized into the four responses provided in Table 32 above.