

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN
THE NATIONAL ENERGY BOARD (NEB)**

AND

ENVIRONMENT AND CLIMATE CHANGE CANADA (ECCC)

(HEREINAFTER REFERRED TO COLLECTIVELY AS THE “PARTICIPANTS”)

WHEREAS, pursuant to **the *National Energy Board Act***, the ***Canada Oil and Gas Operations Act***, and **the *Northwest Territories Oil and Gas Operations Act***, the NEB regulates aspects of the energy industry in Canada including the construction and operation of interprovincial and international pipelines; pipeline traffic, tolls and tariffs; the construction and operation of international and designated interprovincial power lines; the export and import of natural gas; the export of oil and electricity; and the exploration and drilling for, and the production, conservation, processing and transportation of petroleum in the non-Accord frontier¹ offshore areas and, the onshore Northwest Territories portion of the Inuvialuit Settlement Region²;

WHEREAS the ***Department of the Environment Act*** sets out the powers, duties and functions of the Minister of the Environment with respect to the preservation and enhancement of the quality of the natural environment, providing meteorological services, and coordinating policies and programs to achieve environmental objectives. ECCC discharges this mandate and the Minister’s mandate under all relevant Acts on behalf of the Minister of the Environment;

WHEREAS the Government of Canada has, when administering the ***Canadian Environmental Protection Act, 1999*** the duty to:

- i.** take or require that reasonable remedial measures are taken to protect the environment, as warranted,
- ii.** establish nationally consistent levels of environmental quality,
- iii.** enforce CEPA (1999) and its regulations in a fair, predictable and consistent manner.

WHEREAS the Minister of the Environment has an important role in the administration and enforcement of subsections 36(3) to (6) of the ***Fisheries Act*** (FA), which prohibit the deposit of

¹ The NEB has regulatory responsibilities for oil and gas exploration and activities in frontier lands that belong to Her Majesty in right of Canada, or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources and not otherwise regulated under joint federal/provincial accords.

² Under the Northwest Territories Devolution Agreement date 1 April 2014, the NEB will regulate oil and gas activities in the Northwest Territories (onshore) portion of the Inuvialuit Settlement Region pursuant to the NWT Oil and Gas Operations Act (OGOA).

any deleterious substance into water frequented by fish, and subsections 38(5)-(7), which mandate reporting and remedial measures in response to such an unauthorized deposit;

WHEREAS the Minister of the Environment is responsible for the administration and enforcement of the *Migratory Birds Convention Act, 1994* (MBCA), which implements the Migratory Birds Convention by protecting and conserving migratory birds – as populations and individual birds – and their nests. The Act also prohibits the deposit of substances that are harmful in areas or waters frequented by migratory birds;

AND WHEREAS the Participants came together to develop a MOU to coordinate and promote cooperation in areas of mutual interest and benefit, and, through the sharing of information, to support the Participants in promoting safety and environmental protection in their respective areas of regulatory jurisdiction.

FOR THE PURPOSES OF THIS MOU, THE PARTICIPANTS CONCUR AS FOLLOWS:

1. Purpose

The purpose of this MOU is to enhance cooperation and coordination of activities between the Participants related to safety and the environment, including activities respecting environmental emergencies regulatory matters, the sharing of resources, and emergency management.

2. Areas of Cooperation and Coordination of Activities

2.1. *Regulatory Matters*

- 2.1.1. The Participants will cooperate through ongoing information exchanges on their respective environmental emergencies regulatory requirements, guidelines, best practices, development, oversight and processes, and will seek joint initiatives where beneficial.
- 2.1.2. Activities to be coordinated under this MOU may also include any other activity that is of mutual benefit and interest to the Participants, including participation in regulatory forums and committees.

2.2. *Resource Sharing and Cost Recovery*

- 2.2.1 Cooperation under this agreement may include the sharing of both technical and staff resources and information, where capacity exists.
- 2.2.2 Cooperation may also include requests by a Participant for resources from the other Participant, to carry out specific activities on a cost-recovery basis.

- 2.2.3 Where a Participant requests the services of technical staff from the other Participant for support on a specific activity that is not within the scope of general cooperation and activities contemplated in this subsection, the Participants may jointly develop means for the reimbursement of costs incurred for such services, including a schedule of related fees for such services.
- 2.2.4 Where a Participant requests services from the other Participant that are subject to reimbursement, the Participants will jointly develop an agreement setting out the terms and conditions of the services to be provided including service standards, calculation of payments, invoice procedures, indemnity provisions, and settlement of disagreements processes.

2.3. *Environmental Emergency Management*

- 2.3.1 The Participants will cooperate in areas related to environmental emergencies, including incidents associated with NEB-regulated facilities, in accordance with Annex A to this MOU.

3. General

- 3.1. The Participants will endeavor to maintain regular communication by phone or email, and to meet at least once annually, for the purposes of identifying potential future opportunities for information sharing, cooperation and coordination as well as training and exercise opportunities.
- 3.2. The Participants intend to encourage staff within their respective organization to informally exchange information, as appropriate, within their specific areas of responsibility, on an ongoing basis.
- 3.3. The Participants intend to jointly determine, in writing, activities to be carried out under this MOU before their realization, and to jointly review and coordinate these activities. The Participants will set out, as appropriate in the circumstances, the specific parameters applicable to any such activity.

4. Disclosure and Use of Information

- 4.1. The Participants will collect, use, retain, publish and disclose the information exchanged between themselves under this MOU in accordance with all applicable laws and standards.
- 4.2. The Participants will not disclose to a third-party any information exchanged in confidence between them without the express written authorization of the originating Participant or as otherwise required by law.

5. Disclaimers

- 5.1. This MOU is not legally binding and does not impose, nor is it intended to impose, any legal commitments on, or give rise to any legal rights not otherwise held by, the Participants.
- 5.2. Each Participant is to pay for its own costs related to the activities under this MOU, subject to the availability of its staff and financial resources and any request for services made under subsection 2.2.

6. Termination

- 6.1. This MOU may be terminated by either Participant at any time by providing at least sixty (60) days' written notice to the other Participant.
- 6.2. This MOU terminates five years from the date it takes effect.

7. Amendment and Monitoring

- 7.1. The Participants may jointly modify this MOU at any time with the written approval of the Participants. Any amendment to the MOU becomes effective upon the date of the last Participant's signature, unless otherwise indicated.
- 7.2. The amendment of any appendix made under this MOU will be determined in writing in that appendix. This includes the addition of supporting appendixes which may set out general or specific cooperative and information sharing activities
- 7.3. Each Participant will notify the other participant of any change to its enabling legislation, related regulations or policies that may impact this MOU as soon as practicable after having discovered the change.

8. Effective Date and Signature

- 8.1. This MOU will commence and take effect upon the date of the last Participant's signature. The effective date of any appendix to this MOU takes effect at the date specified in that appendix.
- 8.2. This MOU may be signed in one or more counterparts, each of which is deemed an original, and all of which together constitute the same arrangement.

9. Settlement of Disagreements

The Participants will make all reasonable attempts to resolve any dispute arising from or regarding the interpretation or administration of this MOU through consultation among the Participants' designates identified in section 4.

10. Languages

This arrangement is written in English and in French, each text being equally valid.

FOR THE NEB

FOR ECCC

Signed original

Signed original

**Executive Vice President
Regulatory**

**Associate Assistant Deputy
Minister, Environmental Protection
Branch**

Date: 10 April 2018

Date: 29 April 2018

ANNEX “A”

ENVIRONMENTAL EMERGENCY MANAGEMENT

This annex is governed by the understanding as described in the MOU between ECCC and the NEB.

1.0 Purpose

As per paragraph 2.3.1 Emergency Management, the purpose of this annex is to provide additional information related to how the Participants will share information and cooperate in areas related to environmental emergencies, including incidents associated with NEB-regulated facilities. This includes the Participants’ roles within the incident management system and exchanges of information and collaboration on scientific needs arising as the result of emergency situations that have, or potentially will, impact the environment and/or human health.

2.0 Definitions

Lead Federal Regulatory Agency (Lead Agency)

The federal agency, with primary jurisdiction, that oversees the response and recovery efforts by the responsible party.

The NEB is identified as lead agency for pollution incidents originating from NEB-regulated facilities and activities including:

- Interprovincial and international pipelines; and
- Exploration and drilling for, the production, conservation, processing and transportation of petroleum in the non-Accord frontier offshore areas and, the onshore Northwest Territories portion of the Inuvialuit Settlement Region.

ECCC is identified as lead agency when ECCC has authority and where:

- The spill has been caused by a federal department or agency on their own property, or
- An agency is not capable or willing to act as a lead agency.

National Environmental Emergencies Centre (NEEC)

The NEEC is ECCC’s 24/7 focal point for the provision of scientific and technical advice during an emergency to inform actions that reduce the consequences of environmental emergencies and monitor that the measures required under the law are being taken to protect the environment. In the event of a spill where the Canada-US Joint Inland Pollution Contingency Plan is activated, NEEC coordinates with the U.S Environmental Protection Agency the binational concept of operations.

Environmental Emergencies Science Table (Science Table)

The Science Table is a NEEC-chaired group of relevant experts in the field of environmental protection that may be activated during an environmental emergency response. Science Table participants identify environmental protection priorities, potentially impacted federal, provincial and territorial legislation and mandates and inform actions that reduce the consequences of environmental emergencies. The Science Table is activated when required by NEEC, or when requested by the Lead Agency, in order to ensure potentially impacted members with legislation and/or mandate are fully briefed on the incident and assistance is needed to ensure all potential environmental resources at risk and legislation are identified.

National Energy Board Emergency Operations Centre (NEB EOC)

The NEB facility located in Calgary is responsible for supporting the field incident management team and assessing actions at a strategic level during an incident. The EOC provides situation reports to the Government of Canada's Emergency Operations Centre in Ottawa.

Environment and Climate Change Canada National Environmental Emergency Operations Centre (ECCC NEEOC)

The ECCC's-NEEC office located in Montreal, QC is responsible for the provision of scientific and technical advice during an emergency, supporting staff that are or will be deployed to the incident, and meeting the departmental strategic needs.

Incident Command System (ICS)

ICS is a standardized on-site management system used during an emergency designed to enable effective, efficient incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure. The system brings together the functions of the federal and provincial governments, local authorities and governments, and the responsible party.

Scientific Support Coordinator (SSC)

The SSC is ECCC's principal advisor to monitor that the incident response required under the law is being provided and to coordinate delivery of ECCC's products and services. The Scientific Support Coordinator provides intelligence, scientific and technical advice to the NEB Incident Command at Command Staff level.

3.0 General Areas of Cooperation Related to Emergency Management

- 3.1 The Participants will coordinate activities by participating in and sharing information on emergency management planning, exercises and response, joint training initiatives, staff exchanges, and meetings.

3.2 The Participants concur that in an emergency response situation, they may call upon one another to provide support in the form of staff and technical resources. The Participants will use their best efforts to provide the requested resources.

4.0 Specific Areas of Cooperation during an Emergency

4.1 Scientific and Technical Support

The NEB may request scientific and technical support from the NEEC in areas within ECCC's mandate, such as:

- Recommended actions to reduce the consequences on the environment and human life or health;
- Advise on mitigation and cleanup measures;
- The physical and chemical properties of various substances which may be toxic and/or harmful to the environment and their fate and effects;
- Physical, chemical and toxicological laboratory analysis of samples;
- Assistance with the design of sampling plans and methods to be used to monitor an ongoing incident as well as to assess the overall impact of an incident on the environment;
- Potential effects to environmental components of the receiving environment;
- Identification of resources at risk through stakeholder engagement and/or provision of environmental sensitivity mapping products;
- Advice on the protection of sensitive ecosystems and wildlife (e.g., migratory birds);
- The provision of weather forecasts and warnings; atmospheric and hydrologic trajectory and dispersion modeling; and other hydro-meteorological related services (e.g., ice and iceberg of satellite tracking of pollution in the marine environment
- Expertise regarding Shoreline Cleanup Assessment Techniques (SCAT), clean up methods, endpoints;
- The use of countermeasures (e.g., spill treating agents) and the net environmental benefit associated with their use; and
- Regulatory requirements regarding ECCC's legislation, which may be impacted by an environmental emergency.

ECCC may request scientific and technical support from the NEB in the following areas within the NEB's mandate:

- Emergency response activities related to oil and gas facilities;
- Characteristics and information on petroleum products transported, including support in obtaining product samples, when required;
- Design and engineering of oil and gas facilities; and
- Regulatory requirements related to NEB-regulated facilities.

4.2 Incident Management System

The Participants will integrate within the lead agency's incident management system in an emergency response situation. The NEB and most of its regulated companies use the ICS.

In the event that the NEB is the lead agency for response purposes and it requests participation by NEEC, ECCC staff will integrate into the ICS as follows:

- The SSC, the primary position filled by ECCC, will report directly to the NEB's on-site incident commander as part of the Command Staff for the incident.
- ECCC could take on other roles within the incident management team as needed based on capacity, (e.g. Technical Specialists and Field Observers); and
- In the event that the NEB's EOC requires technical support from the NEEC, it will provide technical assistance directly to the EOC. This could be accomplished remotely or in-person.

In the event that ECCC is the lead agency for response purposes and it requests participation by NEB Staff, NEB staff will integrate into the ICS as follows:

- Primarily as Technical Specialists, as needed, or in other ICS positions, as needed.

In the event that the ICS is not the incident management system used during an emergency, the Participants will agree amongst themselves as to the roles that each of the participants will play within the incident management system.

5.0 Sharing Pollution Reporting Information

In the event of an emergency, the Participants will share information reported by polluters under relevant pollution reporting legislation.

Under law, all polluters under the *Fisheries Act* or the *Canadian Environmental Protection Act, 1999* must notify authorities when a spill of hazardous substances occurs.

The NEB requires all companies that it regulates to report all pollution incidents to the Online Event Reporting System (OERS) or to the Transportation Safety Board which in turn, notifies the NEB On-Call Responder.

6.0 General

This Appendix will commence and take effect upon the date of the last participant's signature of the MOU.

7.0 Administration of this Annex:

The following are the titles of each designate and their contact information for the purposes of carrying out this Annex:

FOR THE NEB

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FOR ECCC

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