



Memorandum of Understanding

between the

Oil and Gas Commission

and

Environmental Assessment Office

Regarding

Reviewable Projects

Date:	October 17, 2013
Version:	Final

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**ENVIRONMENTAL ASSESSMENT OFFICE AND THE OIL AND GAS
COMMISSION AGREE AS FOLLOWS:**

Part I – Definitions and Interpretation

1. In this Memorandum of Understanding:

“Commission” means Oil and Gas Commission continued under section 2 of the *Oil and Gas Activities Act*;

“concurrent permitting” means the process as defined in the Concurrent Approval Regulation under the *Environmental Assessment Act*. The Regulation includes criteria and timelines for reviewing information for permit applications during the environmental assessment;

“EAA” means the *Environmental Assessment Act*, SBC 2002, c. 43, as amended from time to time;

“environmental assessment” means the assessment of potential significant adverse effects as defined in the EAA;

“environmental assessment certificate” means an environmental assessment certificate under the EAA;

“EAO” means Environmental Assessment Office of the Ministry of Environment;

“MOU” means memorandum of understanding;

“OGAA” means the *Oil and Gas Activities Act*, SBC 2008, c. 36, as amended from time to time;

“Party or Parties” means either the Commission or EAO or both, depending on the context in which it appears;

“Permitting Processes” refers to the Commission’s process as defined by OGAA or other legislation administered by the Commission;

“project” means a project that:

- (a) is a project requiring review under the EAA, and
- (b) requires a permit, authorization or approval from the Commission under OGAA or other legislation administered by the Commission; and

“synchronous permitting” means a flexible approach which provides proponents the opportunity to have both environmental assessment and permitting processes proceed in

tandem with the intent of creating timeline efficiencies in permitting processes if an environmental assessment certificate is issued. Synchronous permitting is similar to concurrent permitting without legislated decisions or timelines.

2. Words and expressions used in reference to personal information but not defined in this MOU, unless the context otherwise requires, have the same meanings as in the *Freedom of Information and Protection of Privacy Act*.
3. This MOU does not determine or affect the extent or exercise of legal authority by either party, nor is it intended to limit interactions or engagement with other relevant agencies as part of the normal administration of their mandates.

Part II – Purposes of the Memorandum of Understanding

4. The purpose of this MOU is to identify opportunities to facilitate collaboration between the Parties to maximize the overall effectiveness and efficiency in fulfilling their respective regulatory mandates on projects. Specifically, this MOU assists the Commission and EAO to:

Environmental Assessment and Permitting:

- (a) prevent unnecessary duplication between environmental assessment and permitting processes;
- (b) inform proponents and provide them with the opportunity to achieve synchronous permitting or concurrent permitting processes to reduce overall regulatory process timelines;
- (c) streamline and coordinate consultation with aboriginal groups to the mutual benefit of aboriginal groups, EAO and the Commission; and
- (d) develop highly effective, legally enforceable environmental assessment certificate conditions;

Compliance and Enforcement:

- (a) establish effective and efficient project monitoring, compliance and enforcement processes.

- (b) communicate, coordinate and cooperate through all stages of compliance planning, operations and reporting, both at the program level and for individual projects;
- (c) demonstrate respect for the Parties' mandates, roles and responsibilities while examining options to provide an innovative compliance and enforcement service; and
- (d) ensure flexibility while leveraging strengths of each organization to ensure effective use of resources.

Part III - Notification and Information Exchange

5. The Parties will notify each other in a timely manner of proposed projects that may be subject to regulation by both Parties.
6. The Parties will, to the extent possible, share information and data that may be required by the Parties in carrying out their respective regulatory responsibilities in relation to a project.
7. The Commission will make staff experts available to the EAO as necessary to assist the EAO with technical or regulatory matters related to project impact assessment, and post-certificate matters (if an environmental assessment certificate is issued).
8. EAO will provide the Commission an opportunity to review and provide comment on an environmental assessment work plan (a "Work Plan") relating to a project prior to finalization of the Work Plan.
9. EAO will provide an opportunity for the Commission to review and comment on any proposed amendments to environmental assessment certificates for projects.
10. If a Party receives a request under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 ("FOIPPA") for information related to a project, the Party will, before the release of the information package, notify the other Party that a request has been received and may, to the extent permitted by FOIPPA, provide the other Party with details of the scope of the information request.

Part IV - Aboriginal Interests

11. The Parties may share information (“Consultation Information”) relating to:
- (a) consultation protocols,
 - (b) ethno-historic information,
 - (c) preliminary assessments of strength of claim of aboriginal rights or knowledge of treaty rights,
 - (d) consultation records, and
 - (e) any other information that may assist the Parties to ensure the Crown’s legal obligations to consult and, where required, accommodate aboriginal groups where a project could impact treaty or aboriginal rights (including title), claimed or proven.
12. In sharing Consultation Information, the Parties do not intend to compromise the confidentiality of the Consultation Information, and/or waive solicitor-client privilege over any legal advice or opinions included in the Consultation Information.
13. The Parties agree that any Consultation Information received from the other Party which contains confidential information will not be shared with or referenced to persons outside of EAO or the Commission without expressed permission unless required by the *Freedom of Information and Protection of Privacy Act*.
14. EAO will, where appropriate, provide an opportunity for the Commission to review and provide comment on draft consultation reports relating to projects.
15. The Parties will notify each other of scheduled meetings with aboriginal groups, where such meetings may be relevant to the activities of the other Party.
16. The Parties will, where appropriate, invite each other to attend meetings with aboriginal group representatives.
17. The Parties will, where appropriate, coordinate requests when seeking advice or information with respect to aboriginal groups from other government agencies.
18. Where existing consultations processes are not established, the Parties will make every effort to jointly develop consultation processes that represent the interests and responsibilities of both Parties with the intent, to the extent practicable, of establishing

a single consultation protocol (Consultation Protocol) for each project. The Consultation Protocol may be used by both the Parties to fulfill their respective responsibilities relating to the Crown's legal obligation to consult and, where required, accommodate aboriginal groups.

19. Coordinated Consultation Agreements may be attached to this MOU as Schedules for transparency. The attachment of such Agreement as a Schedule to this MOU does not constitute a material change to the content of this MOU and will not require amendment of the MOU.

Part V – Proponent Meetings and Technical Working Groups

20. The Parties will, where appropriate, invite each other to attend meetings with project proponents.

21. EAO agrees to invite the Commission to be a key member of any technical working group established for projects.

22. Where the Commission has accepted an invitation to be a member of a technical working group, it will make best efforts to participate in all meetings of the group.

23. The Commission will assist technical working groups by identifying issues relating to the Commission's regulation of a project and by providing regulatory and technical knowledge regarding oil and gas activities and related activities.

24. Through the course of an environmental assessment, the Parties will regularly communicate about which issues are most appropriate to be addressed during the environmental assessment for a project or through subsequent authorizations.

25. Through the technical working group, EAO will provide opportunities for the Commission to review and provide comment on the following documents ("Environmental Assessment Documents") relating to a project:

(a) the Application for environmental assessment or application for amendment to the environmental assessment certificate;

(b) the draft assessment report;

(c) the draft environmental assessment certificate, including any conditions to be included in or attached to the draft environmental assessment certificate to ensure they are measurable and enforceable; and

(d) other documentation produced during, and in support of, the environmental assessment process.

26. The Commission will review and may provide comment on any of the environmental assessment documents in accordance with any timelines established by the EAO.

27. The Commission will provide opportunities for EAO to review and provide comment on the following documents ("Commission Documents") relating to a project:

(a) draft determination rationales relating to applications to the Commission for approvals in relation to a project; and

(b) draft approval documents, including any conditions relevant to an environmental assessment certificate to be included in or attached to such approval documents.

28. The Commission may, after consultation with EAO, establish a timeline for EAO to review and provide comments with respect to the Commission Documents.

29. The Parties may, for transparency, attach as a Schedule to this MOU, any agreement which clarifies procedures for any activities referenced in this MOU, such as Terms of References or Project Charters. The attachment of such an agreement as a Schedule, does not constitute a material change to the content of this MOU and will not require amendment of the MOU.

Part VI - Compliance and Enforcement

30. EAO agrees to involve the Commission, and the Commission agrees to participate, in the development of any plan created for the purpose of guiding activities undertaken by EAO, the Commission and/or other provincial regulatory agencies to monitor, assess and enforce compliance with the conditions of an environmental assessment certificate for projects ("Compliance Management Plans").

31. The Parties acknowledge that where each Party has the authority to undertake compliance and enforcement actions with respect to a project, the Parties will seek to coordinate such actions.

32. The Parties agree to exchange information related to monitoring, assessing and enforcing compliance matters, including information relating to:
- (a) the development of Compliance Management Plans for projects;
 - (b) monitoring or inspection information relevant to the other Party's regulation of a project;
 - (c) incidents of real or perceived non-compliance with an environmental assessment certificate or a permit, authorization or regulatory requirement administered by the Commission; and
 - (d) any compliance and enforcement actions of a Party, whether contemplated or conducted, that are relevant to the other Party's regulation of a project.
33. The Parties may agree to operational compliance coordination frameworks ("OCCF") to guide the operations of compliance and enforcement activities, including communication and reporting protocols. An OCCF may relate to general compliance and enforcement matters, a particular project, or a particular group or type of projects.
34. In order to promote efficient and safe work environments and to promote the ability of the staff of both Parties to work together collaboratively, opportunities for joint training and other learning opportunities will be encouraged.
35. Where requested by the EAO, the Commission will make every effort to provide available regulatory or technical experts to assist the EAO with its compliance and enforcement activities.

Part VII – Synchronous and Concurrent Permitting

36. EAO will notify the Commission of any applications for concurrent review made pursuant to section 23(1) or (2) of the EAA or orders contemplated pursuant to section 23(3)(a) and will provide the Commission an opportunity to provide comment before any application determination or order is made under those provisions.
37. Where the decision to conduct synchronous permitting or concurrent permitting has been made, it will be reflected in the Work Plan.

38. The Parties will develop guidance documents respecting projects that undergo concurrent permitting or synchronous permitting and will ensure that the guidance contained in such documents is made available to proponents.

Part VIII - Miscellaneous

39. This MOU does not delegate any statutory authority to EAO or to the Commission and does not in any way limit the Parties' responsibilities or exercise of discretion under their respective legislation or under any other enactment(s).

40. This MOU is not legally binding, does not impose legal obligations on either EAO or the Commission, and has no legal effect.

41. The parties will develop guidance and internal processes as necessary to implement their respective roles under this MOU.

42. Where differences arise between EAO and Commission staff regarding interpretation or adherence to the MOU that cannot be resolved by those staff, the matter will be referred to the Associate Deputy Minister responsible for EAO and the Commission's Commissioner for resolution.

Part IX - Term of Agreement

43. The Parties agree to meet on an annual basis to examine the effectiveness of this MOU and may recommend amendments and implement as required.


44. Any amendment of this MOU agreed to by the Parties must be in writing and signed by the Parties.

45. This MOU and any amendments are effective on the latest date they are signed by the Parties and remain in effect until:

(a) a replacement MOU is signed between the Parties; or,

(b) a Party notifies the other in writing that this MOU is no longer in effect.

Part X: Effective Date and Signatures



Paul Jenkins
Commissioner
Oil and Gas Commission

October 17 2013
Date



Doug Caul
Associate Deputy Minister
Environmental Assessment Office

October 17 2013
Date

Appendix I: Principle and Secondary Contacts

Principle Contacts

Director, Major Projects
Resource Development and Geology
Oil and Gas Commission
PO Box 9331, Stn Prov Gov't
Victoria, BC V8W 9N3
Telephone: 250-419-4400
Fax: 250-419-4403

Executive Project Director
Oil and Gas Sector Lead
Environmental Assessment Office
PO Box 9426, Stn Prov Gov't
Victoria, BC V8W 9V1
Telephone: (250) 952-6507
Fax: 250 357-6762

Compliance and Enforcement

Deputy Commissioner, Operations Engineering
100, 10003 - 100th Ave
Fort St John, BC
Telephone: 250-794-5200
Fax: 250-794-5380

Executive Director, Policy & Quality Assurance
Environmental Assessment Office
PO Box 9426, Stn Prov Gov't
Victoria, BC V8W 9V1
Telephone: 250- 387-6748
Fax: 250-356-7440

Appendix II: List of Schedules

n/a

Appendix III: Policy Documents, Manuals, Guidelines and Bulletins

n/a