

MEMORANDUM OF UNDERSTANDING
BETWEEN
EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA
AND
NATIONAL ENERGY BOARD
RESPECTING THE APPLICATION AND ENFORCEMENT
OF THE CANADA LABOUR CODE, PART II.

Labour Program
Employment and Social Development Canada

National Energy Board

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1. PURPOSE

- 1.1 The purpose of this memorandum of understanding (MOU) is to establish a joint administrative arrangement between Employment and Social Development Canada – Labour Program and, the National Energy Board (NEB) for the application and enforcement of Part II of the *Canada Labour Code* (Code), in the Federal Oil and Gas Industry.

2. DEFINITIONS

For the purpose of this MOU:

“Appeals Officer” means a person who is designated as an appeals officer under section 145.1 of the Code;

“Assurance of Voluntary Compliance” or “AVC” means an employer’s or employee’s written commitment to a Delegated Official that a contravention of the Code, which does not constitute a danger, will be corrected within a specified period of time;

“Compliance Policy” means a written policy designed to guide compliance activities and ensure a consistent and uniform application and enforcement of the Code to federal employers and employees (“OPD 700-2 Compliance Policy, *Canada Labour Code*, Part II”, as amended);

“Code” means the *Canada Labour Code*, as amended;

“COHSR” means the *Canada Occupational Health and Safety Regulations*;

“Direction” means a verbal or written order by a Delegated Official made pursuant to section 145 of the Code;

“Delegated Official” means a person that has been delegated certain authorities by the Minister of Labour to perform activities related to the administration and enforcement of the Code;

“DESDA” means *Department of Employment and Social Development Act*, as amended;

“ESDC—Labour Program” means Employment and Social Development Canada – Labour Program;

“Extended Jurisdiction” means, in this MOU, authorization for the National Energy Board (NEB), employees of which are Delegated Officials and carry out the administration and enforcement of the Code on behalf of the Minister of Labour on the following basis:

- For the purpose of this MOU, the National Energy Board is an Extended Jurisdiction for employees in the Federal Oil and Gas Industry excluding those at head and regional offices;

“Federal Oil and Gas Industry” means those works, undertakings or businesses related to the federal Pipeline Industry regulated by the NEB under the *National Energy Board Act*, as well as the Frontier Oil and Gas Industry;

“Frontier Oil and Gas Industry” means works or activities on or in connection with the exploration or drilling for the production, conservation, processing or transportation of oil or gas in frontier lands, regulated by the NEB primarily under the *Canada Oil and Gas Operations Act (COGOA)* or the *Canada Petroleum Resources Act (CPRA)*, and subject to the *Oil and Gas Occupational Safety and Health Regulations*;

“Hazardous Occurrence” means an accident, occupational disease or other occurrence arising in the course of, or in connection with, the employee’s work that has caused, or is likely to cause, injury to the health and safety of an employee or any other person;

“ICOHS” means the Interdepartmental Committee on Occupational Health and Safety;

“Interpretations, Policies and Guidelines” or “IPGs” means documents designed to provide guidance and clarification to Delegated Officials and stakeholders on specific issues related to the application and enforcement of the Code;

“Minister of Labour” means the Minister of Labour appointed under the *Department of Employment and Social Development Act*, or, pursuant to that legislation, the Minister of Employment and Social Development, where no Minister of Labour is appointed. Under the *Employment and Social Development Act*, where no Minister of Labour is appointed, all references to the Minister of Labour in federal legislation or in orders, regulations or other instruments made under federal legislation are to be read as a reference to the Minister of Employment and Social Development;

“OHS” means occupational health and safety;

“OGOSHR” means the *Oil and Gas Occupational Safety and Health Regulations*;

“Operations Program Directives” or “OPDs” means written directives that provide Delegated Officials with operational and administrative policies, procedures and guidelines on the application and enforcement of the Code;

“Pipeline Industry” includes works or activities on or in connection with the transportation of oil or gas through a pipeline, as defined in the *National Energy Board Act* and is subject to the COHSR;

“Program Advisor” means a person employed with the ESDC–Labour Program who provides advice and guidance to Delegated Officials employed by the NEB on technical and policy issues;

“Regulations” mean the *Canada Occupational Health and Safety Regulations* and the *Oil and Gas Occupational Safety and Health Regulations*;

“RICOHS” means the Regional Interdepartmental Committee on Occupations Health and Safety; and

“Sub-ICOHS” means the sub-group of the ICOHS referred to in section 8.2 of this MOU.

3. AUTHORITIES AND ACCOUNTABILITIES

- 3.1 The Minister of Labour, has sole responsibility to Parliament for the application of the Code.
- 3.2 The Minister of Natural Resources, or such other Minister as is designated by the Governor in Council as the Minister for the purposes of the *National Energy Board Act*, has sole responsibility to Parliament for the *National Energy Board Act*.
- 3.3 The Minister of Natural Resources and the Minister of Indian Affairs and Northern Development Canada have responsibility to Parliament for the following:
 - (a) the *Canada Oil and Gas Operations Act*, and
 - (b) the *Canada Petroleum Resources Act*.
- 3.3.1 In respect of Regulations made pursuant to the Code for employees working in the Federal Oil and Gas Industry, the NEB and ESDC-Labour Program have duties which are specifically divided as follows:

Responsibilities in relation to COHSR

- (a) ESDC-Labour Program will consult with the NEB about amendments being considered to the COHSR.
- (b) ESDC-Labour Program and the NEB (if consulted by ESDC-Labour Program under (a)) are responsible for making recommendations in respect of proposed amendments to the COHSR.

- (c) ESDC-Labour Program will consult the NEB of any amendments to the COHSR immediately upon their publication in the Canada Gazette, Part II.

Responsibilities in relation to OGOSHR

- (d) If amendments to the COHSR have been made under (c), the NEB shall inform the ESDC-Labour Program of any provisions in the COHSR amendments that, in the NEB's view, should be included in OGOSHR and why.
- (e) ESDC-Labour Program carries the primary responsibility of seeking feedback from stakeholders regarding proposed amendments to the OGOSHR. The NEB will provide assistance to the extent possible, including sharing responsibilities for the coordination of activities, and development of correspondence to stakeholders.
- (f) ESDC-Labour Program and the NEB shall endeavor to set and meet reasonable deadlines, collaborate in all aspects of preparation and publication of the amendments to the OGOSHR.

- 3.4 ESDC-Labour Program is responsible for the application and enforcement of the Code and the investigation of Hazardous Occurrences at the head offices and regional offices of the Federal Oil and Gas Industry. The NEB, acting on behalf of the Minister of Labour, is responsible for the application and enforcement of the Code and for the investigation of Hazardous Occurrences in respect of the Federal Oil and Gas Industry, excluding head and regional offices, subject to the *Canadian Transportation Accident Investigation and Safety Board Act*.
- 3.5 ESDC-Labour Program and the NEB are responsible for ensuring that the Code is applied and enforced in accordance with the IPGs and OPDs issued by ESDC – Labour Program, developed in consultation with the NEB.
- 3.6 The NEB may issue policy documents on the application and enforcement of the Code in the Federal Oil and Gas Industry only after it has ensured, through consultation with ESDC-Labour Program, that the documents are consistent with the overall federal program and policies on OHS.

- 3.7 ESDC-Labour Program and the NEB acknowledge that it is an offence under section 42 of the *Department of Employment and Social Development Act (DESDA)* for anyone, including Delegated Officials employed with the NEB, to knowingly use or make available information otherwise than in accordance with the Code or the DESDA. ESDC-Labour Program and the NEB further acknowledge that an individual who is guilty of an offence under section 42 of DESDA is liable on summary conviction to a fine of up to \$10,000 or to imprisonment for up to six months, or both, and a body or a person (other than an individual) who is guilty of an offense under section 42 of DESDA is liable on summary conviction to a fine of up to \$100,000.

4. PRINCIPLES AND COMMITMENTS

- 4.1 ESDC-Labour Program and the NEB will work together so that the purpose of Part II of the Code, “to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment”, is achieved.
- 4.2 This MOU is an administrative arrangement aimed at ensuring an effective and efficient OHS program delivery in the Federal Oil and Gas Industry.
- 4.3 ESDC-Labour Program and the NEB are committed to providing timely notification and appropriate consultation whenever the activities and responsibilities of one organization directly affect the activities and responsibilities of the other.
- 4.4 ESDC-Labour Program and the NEB shall cooperate and communicate openly in the application and enforcement of the Code in the Federal Oil and Gas Industry.

5. RELATIVE ROLES AND RESPONSIBILITIES

- 5.1 Every request for assistance from an employer or an employee of the Federal Oil and Gas Industry will receive prompt response from ESDC-Labour or the NEB.
- 5.1.1 The NEB is responsible to ensure that Delegated Officials employed with the NEB are available and ready to respond at all hours (“24/7”), upon notification of an event.

5.1.2 An event referred to in section 5.1.1. includes fatalities, serious injuries, refusals to work and any other matters where the employer must contact the NEB as soon as possible, but not later than 24 hours.

5.2 The following process will be used for determining responsibility when receiving a request for assistance, notification of a refusal to work, or any matter requiring investigation, from the Federal Oil and Gas Industry:

- (a) Upon receiving a request for assistance, ESDC-Labour Program or the NEB will promptly determine responsibility, consulting with each other as necessary.
- (b) Once ESDC-Labour Program and/or the NEB have determined which department or agency is responsible, the appropriate department or agency will act on the request.
- (c) If ESDC-Labour Program or the NEB receives the request but subsequently determines that the other department or agency has responsibility, the request will be referred as appropriate.
- (d) If there is disagreement regarding which department or agency is responsible for the request for assistance, the disagreement will be discussed with the NEB Labour Program Manager, and the ESDC-Labour Program Advisor.
- (e) If no resolution can be reached under paragraph 5.2(d), section 10 – Dispute Resolution of this MOU will be followed.

5.3 Those persons delegated by the Minister of Labour, exercise the powers, duties and functions that are provided for in the Code, and the Regulations, including but not limited to:

- (a) providing information to employers and employees in the Federal Oil and Gas Industry concerning the prevention of health and safety hazards, and compliance with the Code;
- (b) routinely visiting work places subject to the Code to monitor compliance with the Code;
- (c) investigating refusals to work, as provided for by section 129 of the Code;

- (d) investigating fatalities, Hazardous Occurrences and complaints in respect of the Federal Oil and Gas Industry, in accordance with the OPDs and IPGs;
- (e) consulting with an ESDC-Labour Program Advisor in all cases of serious accidents once all the facts have been gathered and initial analysis is complete;
- (f) investigating complaints related to health and safety and Hazardous Occurrences in respect of the Federal Oil and Gas Industry in accordance with the OPDs and IPGs, and in the course of the investigation, and where required:
 - i. obtaining an AVC from an employer or employee where there has been a contravention of the Code or Regulations that does not constitute a danger to an employee; and
 - ii. issuing Directions to employers and employees where required.
- (g) preparing a prosecution proposal for non-compliance with the Code or Regulations as described in the OPDs, working with prosecutors from the Public Prosecution Service of Canada (PPSC), appearing in court and giving evidence when required:
 - i. the cost of prosecutions relating to non-compliance with the Code and the Regulations in respect of the Federal Oil and Gas Industry, other than head and regional offices, will be covered by the NEB.

- 5.4 An ESDC-Labour Program – Program Advisor will be responsible for reviewing all Directions issued by NEB Delegated Officials prior to the issuance of the Direction, with a target response time of 24 hours.
- 5.5 Any decision made by a Delegated Official may be subject to appeal before an Appeals Officer pursuant to section 146 of the Code.

- 5.6 The ESDC-Labour Program and the NEB acknowledge that under section 144 of the Code, no Delegated Official, and no person who has accompanied or assisted that Delegated Official, may be required to give testimony in a civil or administrative proceedings with regard to information obtained in the Delegated Official's exercise of powers or performance of the duties or functions delegated by the Minister of Labour, except with the written permission of the Minister of Labour.
- 5.7 A Delegated Official employed by the NEB shall advise their direct supervisor and the Chief Operating Officer of the NEB of each circumstance in which an action taken by that official pursuant to the Code or the Regulations is made the subject of an appeal under section 146 of the Code or any other legal proceeding.
- 5.8 ESDC-Labour Program and the NEB will co-operate in the development and implementation of OHS promotional activities aimed at employers and employees in the Federal Oil and Gas Industry. ESDC-Labour Program will produce OHS educational and information material and provide any other applicable assistance, as required.
- 5.9 The NEB shall take the lead role in providing assistance to workplace health and safety committees for companies in the Federal Oil and Gas Industry other than head or regional offices, but with assistance from ESDC-Labour Program when necessary.
- 5.10 When processing an Access to Information and Privacy (ATIP) request, the department or agency that is in control of the documents will process the request.
- 5.10.1 The NEB will consult with ESDC-Labour Program on ATIP requests where documents pertain to the ESDC-Labour Program.
- 5.10.2 ESDC-Labour Program will consult with the NEB on ATIP requests where documents pertain to the NEB.
- 5.11 The NEB shall investigate official OHS complaints received from ESDC-Labour Program employees of Regional Operations and Compliance Directorate (ROC) as per procedures set out in Annex 1.

6. DELEGATED OFFICIAL TRAINING

- 6.1 Persons who meet the standard of knowledge and skills required to carry out the duties and responsibilities of Delegated Officials may be recommended by the NEB to the Minister of Labour for delegation of powers, duties and functions for the administration and enforcement of the Code.
- 6.2 ESDC-Labour Program and the NEB will ensure that Delegated Officials receive the training necessary to meet the knowledge requirements set out in the ESDC-Labour Program's "Certification and Recertification Program for Delegated Officials" in order to carry out their powers, duties and functions effectively. ESDC-Labour Program and the NEB may ensure that Delegated Officials have received the necessary training outlined in the National Training Program OPD 104-1.
- 6.3 ESDC-Labour Program and the NEB will work together and support each other's training sessions by providing access to ESDC-Labour Program mandatory training required for Delegated Officials, technical expertise, shared training plans and course calendars, and make training sessions available to each other's employees (as space and resources permit). Additionally, Operational Program Directives (OPDs) and Occupational Health and Safety Tribunal Canada appeal summaries (OHSTC) are available through GCconnex. ESDC-Labour Program is responsible for 100% of the costs for the training and travel expenses for ESDC employees attending NEB training and the NEB is responsible for 100% of the costs for the training and travel expenses for NEB employees attending Labour Program training.

7. SUPPORT SERVICES

- 7.1 ESDC-Labour Program maintains a number of in-house, central and regional OHS support services to assist in the application and enforcement of the Code, including:
- (a) contracted industrial hygiene, engineering and laboratory services; and
 - (b) in-house industrial safety engineering expertise.

- 7.2 NEB Delegated Officials will have access to the above services through the ESDC-Labour Program National Headquarters and the applicable regional offices. Arrangements for these services are to be made on a case-by-case basis by contacting:
- (a) the ESDC-Labour Program Regional OHS Manager when assistance from the region is required; or
 - (b) the Manager, OHS Compliance and Operations, when assistance from ESDC-Labour Program National Headquarters is required.

Access to the service referred to in 7.1(a) is at the NEB's expense.

- 7.3 ESDC-Labour Program will provide NEB with timely service and opinions regarding the application and enforcement of the Code.

8. INTERDEPARTMENTAL CO-ORDINATION AND GOVERNANCE

- 8.1 An Interdepartmental Committee on Occupational Health and Safety (ICOHS) has been established to oversee the coordinated, effective and consistent application and enforcement of the Code in federal workplaces. The ICOHS will consist of the ESDC-Labour Program – Workplace Directorate and Regional Operations and Compliance Directorate, and will include Senior Management from each extended jurisdiction which employs Delegated Officials that carry out administration of the Code as set out in this MOU. The ICOHS will meet annually and when required.
- 8.2 A sub-group of the ICOHS (Sub-ICOHS) will be established to provide an opportunity to discuss working-level issues related to the coordinated, effective, and consistent application and enforcement of the Code by NEB Delegated Officials. Sub-ICOHS will meet annually or when required, be chaired by the ESDC-Labour Program Workplace Directorate and Regional Operations and Compliance Directorate, and will consist of persons employed at the NEB who are involved in the management of the administration of the Code.

8.2.1 The specific responsibilities of Sub-ICOHS will include, but not be limited to, participating or assisting in:

- (a) considering operational issues as they relate to the Code and proposing solutions to resolve actual and potential Code-related OHS problems;
- (b) providing ICOHS members with well-informed briefings of actual or potential Code related OHS problems;
- (c) supporting ICOHS in:
 - i. strategic planning, including the use of performance measures and reporting systems, which could potentially be used to aid the application and enforcement of the Code and Regulations;
 - ii. the development, review and revision of directives and policies (e.g. OPDs, IPGs, Compliance Policy);
 - iii. the review, development and recommendation of changes to the Code and the Regulations; and
 - iv. the establishment of priorities in areas of mutual concern relating to the Code and Regulations.
- (d) examining and proposing solutions to OHS policy and examining and proposing solutions to other OHS issues as they may relate to the administration of this MOU;
- (e) proposing agenda items for ICOHS meetings; and,
- (f) preparing background material in support of proposals in order to ensure that ICOHS members have all the necessary information required for policy or other decisions.

8.2.2 The administrative duties for Sub-ICOHS will be provided by the ESDC-Labour Program Workplace Directorate which is responsible for program development within ESDC-Labour Program.

8.3 A Regional ICOHS has been established for each ESDC-Labour Program region (RICOHS) to consult, coordinate and discuss matters of mutual concern with the extended jurisdictions relating to the administration and enforcement of the Code and to the administration of this MOU.

8.3.1 The ESDC-Labour Program office in each region will chair the RICOHS meetings and will be responsible for providing administrative support to RICOHS. The RICOHS membership will include ESDC-Labour Program – Program Advisors and Managers responsible for the delivery of the federal OHS program in each region and their peer representatives from the NEB who are also responsible for the delivery of the federal OHS program in the extended jurisdictions.

8.3.2 ESDC-Labour Program is responsible to ensure that RICOHS meets at least once annually.

9. PERFORMANCE MEASUREMENT AND REPORTING

9.1 NEB will provide ESDC-Labour Program with quarterly OHS activity reports to assist with monitoring the performance of the federal OHS program within the Federal Oil and Gas Industry on the following activities:

- (a) Hazardous Occurrences;
- (b) complaints;
- (c) refusals to work;
- (d) AVCs received from the Federal Oil and Gas Industry;
- (e) Directions issued;
- (f) inspections;
- (g) investigations; and
- (h) prosecutions.

9.2 The NEB must include the following information for each activity named above in the quarterly reports:

- (a) Compliance Verification Activity number (CVA) or investigation number (reference number);
- (b) CVA type (e.g. audit, inspection, investigation, etc);
- (c) date of activity;
- (d) employer legal & common name;
- (e) address, province;
- (f) fatality;
- (g) disabling injuries; and
- (h) Refusal to Work (RTW) number of employees.

- 9.3 ESDC-Labour Program and the NEB recognize that under section 144, the Minister of Labour may disclose information obtained during the course of an activity pursuant to section 141 if the Minister is satisfied that the public disclosure is in the interest of occupational health and safety or in the public interest.
- 9.4 In order to monitor the application and enforcement of the Code in the Federal Oil and Gas Industry, upon request by the NEB and agreement of ESDC-Labour Program, the National Head Quarters of ESDC-Labour Program will provide to the NEB a copy of its finalized annual report (generated from the Employers Annual Hazardous Occurrence Incident Reports) in relation to employers in the Federal Oil and Gas Industry. These reports will provide employer related information regarding:
- (a) the calculated Disabling Injury Incident Rate (DIIR) as a performance indicator; and
 - (b) Hazardous Occurrences, injuries, illnesses or fatalities.
- 9.5 The Minister of Labour is responsible for reporting to Parliament on the performance of ESDC-Labour Program and the NEB as it relates to the application and enforcement of the Code.
- 9.6 ESDC-Labour Program, with the advice of the ICOHS, will define and collect performance measures to quantify the effectiveness of the application and enforcement of the Code.
- 9.7 In evaluating the application and enforcement of the Code, ESDC-Labour Program, with the input of ICOHS, will take into account the following factors:
- (a) provision for measurable objectives, performance standards and a common performance-measurement process as required by Treasury Board;
 - (b) agreement on specified periods during which evaluations will be undertaken;
 - (c) analysis of resource utilization by the NEB related to arrangements contained in this MOU; and
 - (d) NEB will integrate Code activities into its Quality Management System (QMS) in relation to the administration and enforcement of the Code.

10. DISPUTE RESOLUTION

10.1 Disputes between ESDC-Labour Program and the NEB relating specifically to this MOU will be resolved by the following groups in the order given:

- (a) Director General – Workplace Directorate, ESDC-Labour Program and the Vice President, Operations, NEB;
- (b) ICOHS; and
- (c) the Assistant Deputy Minister, Compliance, Operations and Program Development, ESDC-Labour Program, in consultation with the Chief Operating Officer of the NEB.

10.2 Where no resolution of a dispute is achieved, the Deputy Minister of ESDC-Labour Program will be responsible for rendering a final decision:

11. AMENDMENTS AND TERMINATION

11.1 Amendments to this agreement will be initiated in writing by either the Assistant Deputy Minister, Compliance, Operations and Program Development, ESDC-Labour Program, or the Chief Operating Officer, NEB and signed by both parties.

11.2 This MOU will remain in force until 180 days after the date that either ESDC-Labour Program or the NEB gives written notice of its intention to terminate the MOU.

12. ENTIRE AGREEMENT

12.1 This MOU, and any amendments thereto constitutes the entire agreement between ESDC-Labour and the NEB and supersedes all previous negotiations, communications and other agreements relating to the subject matter unless these are incorporated by reference in this MOU.

12.2 This MOU is available to the public.

13. SIGNATORIES

13.1 This MOU sets out the intentions of ESDC-Labour Program and the NEB but does not create a contractual or legal relationship between them.

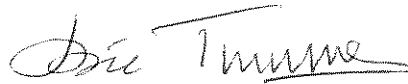
13.2 This MOU comes into effect once signed by both parties.

Original signed on APR 6 /16

Original signed on 6 avril 2016



Gary Robertson
Assistant Deputy Minister
Compliance, Operations and Program
Development – Labour Program
Employment and Social Development
Canada



Josée Touchette
Chief Operating Officer
National Energy Board

Annex 1

Procedures for Investigating Official OHS Complaints Received From Regional Operations and Compliance Directorate (ROC)*

This policy memorandum establishes procedures to be followed when an occupational health and safety (OHS) complaint from an employee of Regional Operations and Compliance is referred to the Minister of Labour for investigation under subsection 127.1(8) of Part II of the Canada Labour Code.

This policy for handling internal OHS complaints will ensure the completion of fair and unbiased investigations and prevent any real or perceived conflicts of interest with both the investigation process and final outcomes.

Notification Procedures

When a Labour Program employee's OHS complaint remains unresolved and is referred to the Minister of Labour for investigation, the Manager or Regional Director shall without delay send the complaint registration form and all supporting documentation to the Manager of Workplace Directorate's OHS Compliance and Operations Unit. The case will then be transferred to and investigated by a Delegated Official employed by the National Energy Board.

Complaint Investigation Process

The assigned investigator shall follow all procedural requirements as stipulated within OPD 700-9 entitled "Complaints Handling, Canada Labour Code Part II," as well as all other applicable OPDs and IPGs.

Labour Program officials under investigation shall fully cooperate with the assigned investigator and not hinder the investigation in any manner, as required by Sections 142, 143, and 143.1 of the Code.

Investigator Guidance

When necessary, the assigned investigator shall consult with their own organization's OHS technical advisors/resources. In the event that additional technical guidance is required, a request for assistance can be sent to the Labour Program's Workplace Directorate via normal channels. Workplace Directorate Program Advisors will then provide the requested technical assistance, but they will not be made privy to the details of the case including the individuals involved, in order to protect the integrity of the investigation.

Employer Assistance

If the Labour Program officials under investigation require guidance or assistance, they are to consult directly with the Health, Safety and Disability Management Division of ESDC.

*A modified version of this process will be applied for complaints alleging non-compliance against the DG of Workplace Directorate and any member of the OHS division of Workplace Directorate.