

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**HUMAN RESOURCES DEVELOPMENT CANADA**  
**AND**  
**NATIONAL ENERGY BOARD**  
**RESPECTING THE APPLICATION AND ENFORCEMENT**  
**OF THE CANADA LABOUR CODE, PART II**  
**IN THE**  
**FEDERAL OIL AND GAS SECTOR**

**Labour Branch**  
**Human Resources Development Canada**

**Operations Business Unit**  
**National Energy Board**

1. PURPOSE ..... Page 1 of 10

2. PRINCIPLES AND COMMITMENTS ..... Page 1 of 10

3. DEFINITIONS ..... Page 1 of 10

4. AUTHORITIES AND RESPONSIBILITIES ..... Page 2 of 10

5. INTERVENTIONS ..... Page 3 of 10

6. COMPLIANCE MEASURES ..... Page 4 of 10

7. SAFETY OFFICER TRAINING ..... Page 5 of 10

8. SUPPORT SERVICES ..... Page 5 of 10

9. INTERDEPARTMENTAL CO-ORDINATION ..... Page 6 of 10

10. INFORMATION GATHERING AND EXCHANGE ..... Page 7 of 10

11. EVALUATION ..... Page 8 of 10

12. DISPUTE RESOLUTION ..... Page 9 of 10

13. AMENDMENTS AND TERMINATION ..... Page 9 of 10

14. ENTIRE AGREEMENT ..... Page 9 of 10

## 1. PURPOSE

- 1.1 The purpose of this memorandum of understanding (MOU) is to establish a joint administrative arrangement between Human Resources Development Canada - Labour Branch (HRDC-Labour) and National Energy Board (NEB) for the application and enforcement of the *Canada Labour Code, Part II* (the Code) in the federal oil and gas sector.

## 2. PRINCIPLES AND COMMITMENTS

- 2.1 HRDC-Labour and the NEB will work together to achieve the purpose of the Code which is "to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment".
- 2.2 This MOU is an administrative arrangement aimed at ensuring an effective and efficient occupational safety and health (OSH) program delivery in the federal oil and gas sector, and this MOU is available to the general public.
- 2.3 HRDC-Labour 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.
- 2.4 HRDC-Labour and the NEB shall co-operate and communicate openly in the application and enforcement of the Code in the federal oil and gas sector.

## 3. DEFINITIONS

For the purpose of this MOU:

"assurance of voluntary compliance" (AVC) means an employer's or employee's written commitment to a safety officer that a contravention of the Code 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;

"direction" means a verbal or written order by a safety officer made pursuant to the Code;

"federal oil and gas sector" means those works, undertakings or businesses related to the frontier oil and gas industry and to the pipeline industry;

“frontier oil and gas industry” means works or activities on or in connection with the exploration or drilling for or the production, conservation, processing or transportation of oil or gas in frontier lands, as defined in the *Canada Petroleum Resources Act*, and are covered by the *Oil and Gas Occupational Safety and Health Regulations*;

“hazardous occurrence” means an accident, occupational disease or other hazardous situation affecting or likely to affect the health and safety of employees in relation to work;

“interpretation policy guidelines” (IPGs) means documents designed to provide guidance and clarification to safety officers on specific issues related to the application and enforcement of the Code;

“Labour Operations Information System” (LOIS) means the HRDC-Labour computerised data-collection system used for recording assignments of safety officers;

“operations program directives” (OPDs) means written directives that provide safety officers with uniform and effective operational and administrative policies, procedures and guidelines on the application and enforcement of the Code;

“performance-based management system” means a process involving the use of performance measures and standards developed under the guidance of the Treasury Board to improve the reporting of results, rather than activities, to Parliament by federal departments and agencies;

“pipeline industry” means works or activities on or in connection with the transportation of oil or gas through pipelines, as defined in the *National Energy Board Act*, and are covered by the *Canada Occupational Safety and Health Regulations*; and

“safety officer” means a person designated by the Minister of Labour pursuant to Subsection 140(1) of the Code.

#### 4. AUTHORITIES AND RESPONSIBILITIES

4.1 The Minister of Labour<sup>1</sup>, has sole responsibility to Parliament for the application of the Code.

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<sup>1</sup> As per the *Department of Human Resources Development Act*, where no Minister of Labour is specifically appointed, references to the Minister of Labour in legislation or in orders, regulations or other instruments made under legislation is to be read as a reference to the Minister of Human Resources Development, who in turn exercises the powers and performs the duties and functions of the Minister of Labour.

- 4.2 The Minister of Natural Resources, or such other Minister as is designated by the Governor in Council, has sole responsibility to Parliament for the application of the *National Energy Board Act*.
- 4.3 The Minister of Natural Resources and the Minister of Indian Affairs and Northern Development have sole responsibility to Parliament for the application of the following:
  - (a) the *Canada Oil and Gas Operations Act*, and
  - (b) the *Canada Petroleum Resources Act*.
- 4.4 The Ministers are jointly responsible for making recommendations in respect of OSH regulations made pursuant to the Code covering employees working in the federal oil and gas sector.
- 4.5 Subject to the *Canadian Transportation Accident Investigation and Safety Board Act*, the NEB is responsible for the investigation of hazardous occurrences in the federal oil and gas sector and for the application and enforcement of the Code while HRDC-Labour is responsible for the investigation of hazardous occurrences and for the application and enforcement of the Code at the Head Offices and Regional Offices of the federal oil and gas sector which are located in metropolitan centres in Canada.
- 4.6 HRDC-Labour and the NEB are responsible for ensuring that the Code is applied and enforced in accordance with the IPGs and OPDs issued by HRDC-Labour in consultation with the NEB.
- 4.7 The NEB may issue policy documents on the application and enforcement of the Code in the federal oil and gas sector only after it has ensured, through consultation with HRDC-Labour, that the documents are consistent with the overall federal program and policies on OSH.

## 5. INTERVENTIONS

- 5.1 Every request for assistance from an employer or an employee shall receive prompt response from HRDC-Labour or the NEB.
- 5.2 Upon receiving a request for assistance from an employer or an employee and determining responsibility over the request, HRDC-Labour or the NEB shall promptly ensure that such request is appropriately dealt with by the responsible administration.

5.3 Safety officers exercise all the powers, duties and functions required to apply and enforce the Code and the Regulations made thereunder, including:

- (a) advising employers and employees in the federal oil and gas sector on the prevention of safety and health hazards and on the means of compliance with the requirements of 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, and fatalities in accordance with the OPDs;
- (d) investigating complaints related to safety and health, and hazardous occurrences in accordance with the compliance policy, including obtaining an AVC from an employer or employee where there has been a contravention that does not constitute a danger to an employee and issuing directions to employers and employees where required; and
- (e) as described in prosecution guide contained in the OPDs, seeing to the preparation of all prosecutions for non-compliance with the provisions of the Code and its regulations, and appearing in court and giving evidence when required.

5.4 A person designated as the regional safety officer at HRDC-Labour headquarters shall be responsible for reviewing, in accordance with Section 146 of the Code, directions issued by any safety officers.

5.5 A safety officer shall not voluntarily give testimony in any civil suit regarding information obtained in the discharge of the officer's duties without the written permission of the Minister of Labour.

5.6 A safety officer employed by the NEB shall advise his or her NEB manager of each circumstance in which an action taken by that safety officer pursuant to the Code, or any regulations enacted under that Code, is made the subject of a legal proceeding in a court of law.

## 6. COMPLIANCE MEASURES

6.1 OSH compliance activities shall be conducted in accordance with OPDs, IPGs, and the compliance policy.

- 6.2 HRDC-Labour and the NEB will co-operate in the development and implementation of OSH promotional activities aimed at employers and employees in the federal oil and gas sector.
- 6.3 HRDC-Labour and the NEB will co-operate in the production of OSH educational and information material and in the provision of any other applicable assistance, such as technical services or OSH-related educational services, as required.
- 6.4 The NEB shall lead in providing assistance to safety and health committees for companies in the oil and gas sector.

## **7. SAFETY OFFICER TRAINING**

- 7.1 Persons who meet the standard of knowledge and skills required to carry out effectively the duties and responsibilities of safety officers may be recommended by the NEB to the Minister of Labour for designation as safety officers.
- 7.2 HRDC-Labour and the NEB shall ensure that safety officers receive the training necessary to continue to be able to carry out their duties and responsibilities effectively. HRDC-Labour and the NEB are responsible for providing training to the NEB staff that are or may become safety officers.
- 7.3 HRDC-Labour and the NEB will work together and support each other's training sessions by providing technical expertise (on request and with appropriate notice), sharing training plans and course calendars, and making training sessions available to each other's employees (as space permits and with the appropriate sharing of costs).

## **8. SUPPORT SERVICES**

- 8.1 HRDC-Labour maintains a number of central and regional technical OSH support services to assist in the application and enforcement of the Code. These include:
  - (a) industrial hygiene engineering and laboratory services;
  - (b) industrial safety engineering services; and
  - (c) OSH information services, such as HRDC-Labour's resource centre and links with the Canadian Centre for Occupational Health and Safety.
- 8.2 The NEB safety officers will have access to the above services and arrangements for these services are to be made on a case-by-case basis.

- 8.3 On request, HRDC-Labour will provide the NEB with timely advice and opinions regarding the application and enforcement of the Code, and the dissemination of such advice and opinions shall be in accordance with HRDC-Labour instructions.

## 9. INTERDEPARTMENTAL CO-ORDINATION

- 9.1 An interdepartmental committee on occupational safety and health (ICOSH) will be established to ensure the co-ordinated, effective and consistent application and enforcement of the Code in the federal OSH jurisdiction.
- 9.1.1 ICOSH is chaired by HRDC-Labour and is composed of the functional authorities (the directors general or their designated alternates) responsible for the application and enforcement of the Code.
- 9.1.2 The specific responsibilities of ICOSH will include, but not be limited to, participating or assisting in:
- (a) strategic planning, including the use of performance measures and reporting systems, regarding the application and enforcement of federal OSH legislation;
  - (b) the development, review and revision of standards and policies (e.g. OPDs, IPGs, compliance policy);
  - (c) the review, development and recommendation of changes to federal OSH legislation and regulations governing the federal oil and gas sector;
  - (d) the establishment of priorities in areas of mutual concern relating to federal OSH legislation;
  - (e) the approval of amendments to Annexes of this MOU; and
  - (f) the examination and resolution of policy and other issues as they may relate to the administration of this MOU.
- 9.1.3 ICOSH shall meet at least twice annually, or at the request of the chair.
- 9.1.4 The secretariat function for ICOSH will be provided by HRDC-Labour.
- 9.2 An ICOSH will be established for each HRDC region to consult, co-ordinate and discuss matters of mutual concern relating to application and enforcement of the Code.



- 9.2.1 The regional HRDC-Labour office will chair committee meetings and will be responsible for providing secretariat support.
- 9.2.2 ICOSH membership includes managers responsible for the delivery of the federal OSH program in each region.
- 9.2.3 Each regional ICOSH shall meet at least annually.
- 9.2.4 The regional offices of HRDC-Labour and the NEB shall annually exchange their respective work plans pertaining to the application of Part II of the Code.
- 9.3 HRDC-Labour and the NEB will consult with each other in the preparation of briefing materials for their respective ministers or the Board on issues directly related to the application and enforcement of the Code.
- 9.4 HRDC-Labour and the NEB will provide each other with copies of the final briefing materials submitted to their respective ministers or the Board.

## 10. INFORMATION GATHERING AND EXCHANGE

- 10.1 HRDC-Labour gathers and analyses information used by federal OSH officials to monitor the performance of the federal OSH program. HRDC-Labour maintains LOIS in support of this activity.
- 10.2 Safety officers shall collect specific information for analysis. To ensure consistent reporting of this information, the LOIS data definitions will be used. Information gathered shall include, but not be limited to:
  - (a) hazardous occurrences;
  - (b) complaints;
  - (c) refusals to work;
  - (d) AVCs received;
  - (e) directions issued;
  - (f) inspections;
  - (g) investigations; and

(h) prosecutions.

10.3 The NEB shall provide HRDC-Labour's National Head Quarter (NHQ) with quarterly OSH activity reports for each of the frontier oil and gas industry and pipeline industry. The NEB shall supply this information in hard copy and, where available, in electronic format.

10.4 On request, HRDC-Labour and the NEB will exchange copies of records or investigation reports by safety officers.

10.5 Upon agreement by HRDC-Labour and the NEB, HRDC-Labour's NHQ will undertake a specific analysis of the following to monitor the application and enforcement of the Code in the federal oil and gas sector, and provide the results within a reasonable period of time:

(a) federal OSH performance;

(b) hazardous occurrences, injuries, illnesses or fatalities; or

(c) any other area.

## 11. EVALUATION

11.1 The Minister of Labour is responsible for reporting to Parliament on the performance of HRDC-Labour and the NEB as it relates to the application and enforcement of the Code.

11.2 HRDC-Labour, with the advice of the ICOSH, will define, develop and implement a performance-based management system to measure the effectiveness of the application and enforcement of the Code.

11.3 In evaluating the application and enforcement of federal OSH legislation, HRDC-Labour, with the advice of the ICOSH, will take into account the following factors in support of the performance-based management system:

(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 and cost-sharing practices related to arrangements contained in the MOU; and

- (d) joint HRDC-Labour and the NEB management of evaluation projects for the federal oil and gas sector, with evaluation/review groups from each HRDC-Labour and the NEB serving in objective capacities.

## **12. DISPUTE RESOLUTION**

12.1 Disputes between the HRDC-Labour and the NEB relating specifically to this MOU will be resolved by the following manner in the order given:

- (a) Headquarters (functional responsibilities concerned);
- (b) ICOSH; and
- (c) the Assistant Deputy Minister, HRDC-Labour, and the Chief Operating Officer, NEB.

12.2 Where no resolution of a dispute is achieved, the Deputy Minister of Labour will be responsible for rendering a decision.

## **13. AMENDMENTS AND TERMINATION**

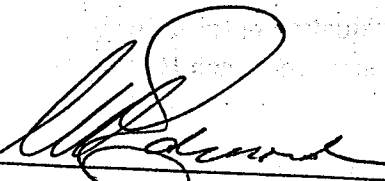
13.1 Amendments specific to this agreement shall be made in writing and signed by the Assistant Deputy Minister, HRDC-Labour, and the Chief Operating Officer, NEB.

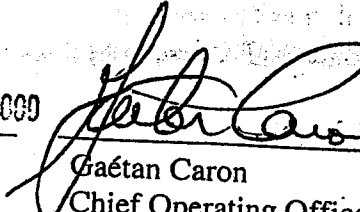
13.2 Amendments to this agreement shall be initiated by an exchange of letters between the Assistant Deputy Minister, HRDC-Labour, and the Chief Operating Officer, NEB.

13.3 This MOU shall remain in force until either HRDC-Labour or the NEB gives written notice of its intention to terminate the MOU and 180 days elapse.

## **14. ENTIRE AGREEMENT**

14.1 HRDC-Labour and the NEB agree that this MOU constitutes the entire agreement between them and supersedes all previous negotiations, communications and other agreements relating to the subject matter unless these are incorporated by reference in this MOU.

  
MAR 3 2000  
Date  
Warren Edmondson  
Assistant Deputy Minister (Labour)  
and Head of the Federal Mediation  
and Conciliation Service  
Human Resources Development  
Canada

  
February 17<sup>th</sup>, 2000  
Date  
Gaétan Caron  
Chief Operating Officer  
National Energy Board