# CABINET DIRECTIVE ON IMPROVING THE PERFORMANCE OF THE REGULATORY SYSTEM FOR MAJOR RESOURCE PROJECTS

## INTRODUCTION

The Government of Canada is committed to addressing the challenges facing the federal regulatory system for major resource projects in order to help improve Canada's competitiveness and enable more effective examination and mitigation of environmental, human health and social impacts. Providing a more efficient and effective regulatory system is key to creating the conditions for an innovative and prosperous economy, protecting the health and safety of Canadians and conserving the environment.

The Directive sets out an administrative process, in the form of *Project Agreements*, the *Major Projects Management Office*; the *Major Project Deputy Ministers' Committee*; as well as a *Memorandum of Understanding* which will be developed between the federal entities. Collectively, these four instruments are designed to facilitate the achievement of the Directive's objective: to improve the effectiveness and efficiency of the regulatory system for major resource projects. Federal entities will use this process to facilitate the effective, coordinated, and concurrent discharge of their statutory duties, functions and obligations. It encourages them to work together to identify areas where the consistency, efficiency and effectiveness of the federal regulatory system can be improved and to develop and implement system improvements. These activities will improve the accountability, transparency, timeliness and predictability of the federal regulatory system for major resource projects.

This Directive is subject to the statutes, regulations and other regulatory instruments that may be in force from time to time. It does not and is not intended to impinge on or fetter the statutory authorities or discretionary powers and functions of Ministers or federal entities. In fulfilling their regulatory responsibilities, federal entities retain responsibility for ensuring that relevant statutes and regulations, as well as decisions from Cabinet and Treasury Board, are respected.

This Directive is intended to complement other government directives such as the Cabinet Directive on Streamlining Regulation and the Cabinet Directive on Implementing the Canadian Environmental Assessment Act.

It is expected that the improvements in federal project management and enhancements to the federal regulatory system to result from implementation of this Cabinet Directive will facilitate closer collaboration with provincial, territorial and other jurisdictions which also have regulatory responsibilities for major resource projects.

**DEFINITIONS**

In this Directive,

"Major Projects Deputy Ministers' Committee" means the committee of deputy ministers and chaired by the Deputy Minister of Natural Resources;

"Federal entities" means a Minister, an agency or a department, or any other body having or exercising jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown in relation to a major resource project;

"Major Projects Management Office" means the office established by Natural Resources Canada under Part I of this Directive;

"Major resource project" means a large resource project which is subject to a comprehensive study, a panel review or a large or complex multi-jurisdictional screening, as defined under the Canadian Environmental Assessment Act;

"Monitoring and tracking system" means the system identified in Part I of this Directive that is to be developed by the Major Projects Management Office in collaboration with relevant federal entities and which will track the progression of major resource projects through the regulatory system;

"Project Agreement" means the agreement, referred to in Part I of this Directive, that describes the roles, obligations and best effort commitments of relevant federal entities in relation to a specific major resources project;

"Project Management" means the steps to be taken by relevant federal entities to streamline and coordinate the progress of otherwise independent decision-making through the regulatory system;

"Project Proponent" in respect of a project, means the person, body, private or public organization that proposes the project;

"Regulatory System" means the environmental assessment (EA) process (the project planning stage), subsequent permitting, licencing and authorizations which allow physical work to be initiated or operations to commence, and compliance monitoring and enforcement throughout the life-cycle of a project; and,

"Work plan" means a plan which identifies various key tasks and processes in the regulatory system that would apply to a specific Major Resource Project, the relevant federal entities and the requisite target time lines, where such time lines are appropriate and legally acceptable. A work plan may be subject-matter specific or generic. Note: The Environmental Assessment Work Plan refers to the plan described in the Cabinet Directive on Implementing the *Canadian*

*Environmental Assessment Act*, where applicable.

**PART I - IMPROVING THE PERFORMANCE OF THE REGULATORY SYSTEM FOR MAJOR RESOURCE PROJECTS**

**A) Project Agreements**

1. Each major resource project progressing through the regulatory system should be accompanied by a Project Agreement. The Project Agreement will be entered into solely by federal entities to facilitate the effective, coordinated, and concurrent discharge of their statutory duties, functions and obligations. Federal entities that have quasi-judicial functions may elect to enter into Project Agreements where possible, but are not mandated to do so. Project Agreements provide the roles and responsibilities and details of the best effort commitments of federal entities related to the project management of a specific major resource project within the regulatory system, including timelines for regulatory reviews, approvals and permitting. Project Agreements will not and are not intended to be legally binding nor will they create any legal obligations or be a source of liabilities for the Crown. They are solely designed to facilitate the evolution of a proponent's major resource project through the regulatory system.

2. A Project Agreement will include:

- An agreement on the contents of a project description that is acceptable to the relevant federal entities. Where applicable, this will encompass the guidance described in clause 4 of the Cabinet Directive on Implementing the Canadian Environmental Assessment Act;

- The Environmental Assessment work plan adopted pursuant to the Cabinet Directive on Implementing the Canadian Environmental Assessment Act, (clause 2);

- A description of the extent of each relevant federal entity's roles, statutory obligations and commitments;

- An Aboriginal consultation and engagement work plan;

- A Permitting, Authorizations and Approvals work plan;

- Project-specific service standards, including time lines; and

- A description of project management responsibilities.

3. The Project Agreement will be posted publicly. However, any information contained in Project Agreement that is otherwise protected from disclosure by law will be severed prior to posting and will not be otherwise accessible, except in accordance with law.

**B) The Major Projects Deputy Ministers' Committee**

4. A Major Projects Deputy Ministers' Committee will serve as the governance body for the implementation of this Directive. The role of this Committee will primarily be to coordinate the application of this Directive, and of any related Memoranda of Understanding, and to uphold their objectives to improve the performance of the regulatory system for major resource projects. Membership of the Major Projects Deputy Ministers' Committee shall include the Deputy Minister of Natural Resources, who will chair the Committee, the Deputy Minister of Fisheries and Oceans, the Deputy Minister of the Environment, the President of the Canadian Environmental Assessment Agency, the Deputy Minister of Transport, and the Deputy Minister of Indian and Northern Affairs. The Chair may add other members to the committee, as appropriate, from time to time.

5. The Major Projects Deputy Ministers' Committee will provide coordination and guidance for the resolution of issues of project-specific problems in the regulatory system. Members of the Committee will also be authorizing signatories for each Project Agreement.

**C) The Major Projects Management Office**

6. The Minister of Natural Resources [has established] a Major Projects Management Office within the Department of Natural Resources. The objective of the Office is to improve public oversight of the regulatory system for major resource projects by enhancing transparency and monitoring; and its public accountability through the use of timelines and other service standards where appropriate and legally acceptable. It will achieve this by leading the coordination of an administrative process with federal entities to facilitate improvements in the performance of the regulatory system.

7. The Major Projects Management Office will carry out its responsibilities in collaboration with the other federal entities, without infringing on the statutory responsibilities of these federal entities or duplicating the ongoing efforts of other federal entities. Its responsibilities include project coordination; project monitoring and tracking; problem solving and support for the Deputy Ministers' Committee; and research and analysis.

8. The Major Projects Management Office will work collaboratively with relevant federal entities to enhance the accountability of the regulatory system, to improve the transparency of the federal regulatory system, to respect targeted time lines, and to improve the overall predictability of the regulatory system by:

- Providing a single, initial point of entry into the federal regulatory system;

- Engaging in early discussions and information exchanges with project proponents on

proposed projects in order to arrive at a common understanding of the major resource project proposal;

- Developing, in collaboration with federal entities, after consultation with the project proponent, a consensus-based Project Agreement for each major resource project;

- Facilitating the integration of Aboriginal / Crown consultations related to major resource projects into the overall regulatory process, working in collaboration with federal entities, and in particular, with the Canadian Environmental Assessment Agency which leads the environmental assessment component of the regulatory system and has responsibility for integrating Aboriginal / Crown consultation into the environmental assessment process;

- Although not the author of such reports, maintaining the official record of Aboriginal / Crown consultation for the Government of Canada;

- Implementing and managing a transparent monitoring and tracking system to provide information to all stakeholders on major resource projects progressing through the regulatory system;

- Supporting the Deputy Ministers' Committee in fulfilling its mandate to improve the performance of the regulatory system;

- Leading collaborative research and policy analysis on short, medium and longer term initiatives to improve the performance of the regulatory system, such as legislative options, cost recovery, cumulative effects, regional assessment processes, and energy infrastructure corridors.

9. The Major Projects Management Office will establish a transparent monitoring and tracking system for all major resource projects which, subject to any legal requirement relative to confidentiality of information, will allow all interested parties, including the general public, to monitor the progress through the regulatory system of any specific major resource project. To the extent possible, the monitoring and tracking system will incorporate and build upon the efforts of other federal entities that have developed methods to monitor and track the progression of major resource projects through their respective regulatory processes.

10. The monitoring and tracking system will significantly improve the transparency of the federal regulatory system and standardize milestones. It will clarify, for example, official “start” and “stop clock” provisions for tracking. It should also enable:

- identification of problems within the regulatory system by relevant federal entities and identification of options for resolving those problems, including, if necessary, referral of

the issue to the Major Project Deputy Ministers' Committee for the development of solutions;

- on going monitoring, including the establishment of baseline information for the regulatory system;
- documentation of performance and compliance with targeted time lines and Project Agreements by relevant federal entities; and,
- tracking of individual major resource projects, within government and by stakeholders.

11. In collaboration with relevant federal entities, the Major Projects Management Office will develop service standards, including target time lines and other benchmarks where appropriate and legally acceptable. Those standards will be incorporated in the Project Agreements. In developing the service standards for a specific Project Agreement, the Major Projects Management Office will, in collaboration with relevant federal entities, work closely with the federal environmental assessment coordinator who has the authority to establish target time lines in relation to the environmental assessment process for that project.

12. The Major Projects Management Office will work collaboratively with relevant federal entities to test and/or implement potential solutions to issues identified through on-going monitoring, in order to improve the performance of the regulatory system for resource projects.

**D) Reporting**

On a monthly basis, the Major Projects Management Office, in collaboration with the other relevant federal entities, will report the status of the major resource projects within the regulatory system at that time, and governed by this Cabinet Directive, to the Minister of Natural Resources and those Ministers involved in the regulatory process, and to the members of the Major Projects Deputy Ministers' Committee and any other involved Deputy Heads. Biannually, the Major Projects Management Office will provide information on the progress of this initiative and on the achievement of time lines to the Minister of Natural Resources and other appropriate regulatory ministers in support of their reporting responsibilities to Cabinet.

The Major Projects Management Office will report to Parliament and the public, through the Minister of Natural Resources' annual reporting requirements, on the performance of the federal regulatory system for major resource projects.

**E) Transition Provisions**

It is important that the implementation of this Directive be as smooth as possible. To this end:

13. New major resource projects entering the regulatory system after the Major Projects Management Office becomes operational will benefit from all the advantages the Office delivers, including the requirement to develop a Project Agreement and the use of the Major Projects Management Office as a single, initial point of entry into the regulatory system.

14. Proposed major resource projects already within the regulatory system at the time the Major Projects Management Office becomes operational will continue their progression as before, but will be tracked by the Monitoring and Tracking system once this system becomes operational. At the request of a proponent, the Major Projects Management Office may review an existing project for which the regulatory process has already started, in order to determine whether it would be appropriate for the project to continue its regulatory review through the Major Projects Management Office.

**F) Memorandum of Understanding**

Collaboration and cooperation will be required amongst all relevant federal entities to improve the performance of the regulatory system for major resource projects. A Memorandum of Understanding will be used to identify the specific means that will be used by federal entities to implement this Directive.

15. The Deputy Heads responsible for the federal entities identified in the Annex to the Cabinet Directive will enter into a Memorandum of Understanding setting out specific actions that they will take to implement this Directive. The Memorandum of Understanding will set out their respective roles and responsibilities in working together to improve the performance of the regulatory system for major natural resource projects.

**PART II - OTHER CABINET DIRECTIVES**

The Directive is to be interpreted consistently with the Cabinet Directive on Implementing the Canadian Environmental Assessment Act and the Cabinet Directive on Streamlining Regulation.

**ANNEX TO THE CABINET DIRECTIVE**

**FEDERAL DEPARTMENTS THAT ARE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING ON IMPROVING THE REGULATORY SYSTEM FOR MAJOR RESOURCE PROJECTS**

Indian and Northern Affairs Canada
Environment Canada
Canadian Environmental Assessment Agency
Transport Canada
Natural Resources Canada
Fisheries and Oceans Canada

Quasi-judicial bodies, such as the National Energy Board and the Canadian Nuclear Safety Commission, may elect to participate in and observe the requirements set up under the Directive and to become signatories to the Memorandum of Understanding to be entered into pursuant to this Directive. However, they are not required to do so.