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

1. PREAMBLE

This **Memorandum of Understanding (MOU)** between:

Natural Resources Canada, as represented by the Deputy Minister of Natural Resources;

Environment Canada, as represented by the Deputy Minister of the Environment;

Transport Canada, as represented by the Deputy Minister of Transport;

Fisheries and Oceans Canada, as represented by the Deputy Minister of Fisheries and Oceans;

Indian and Northern Affairs Canada, as represented by the Deputy Minister of Indian and Northern Affairs;

The Canadian Environmental Assessment Agency, as represented by the President of the Agency;

The Canadian Nuclear Safety Commission, as represented by the President of the Commission;

The National Energy Board, as represented by the Chair of the Board;

Hereafter, collectively the "Parties";

WHEREAS, the individual Parties may have statutory responsibilities relating to major resource projects; and

WHEREAS, the Parties wish to implement the provisions of the Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects, hereafter, referred to as the Major Projects Management Office Directive (the MPMO Directive); and

WHEREAS, the Parties wish to establish a cooperative framework within which each Party can exercise its respective jurisdiction over the environmental assessment and regulatory permitting of major resource projects while not fettering the statutory authorities or discretionary powers and functions of regulatory bodies or of their respective Ministers; and

WHEREAS, the Parties wish to avoid unnecessary duplication, contribute to clarity and certainty and facilitate the efficient use of resources in the timely delivery of their respective regulatory responsibilities; and

WHEREAS, the Parties wish 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 while at the same time safeguarding the environment; and

WHEREAS, the Parties recognize that, where required, Aboriginal consultation related to major resource projects should, to the greatest extent possible, be integrated into the overall regulatory process; and

WHEREAS, collaboration and cooperation is required amongst the Parties to realize significant improvements in the performance of the regulatory system that are expected by all stakeholders; and

WHEREAS, the Parties will report to Cabinet and to Canadians on the status of major resource projects within the federal regulatory system, and on the overall progress of this initiative, through the Minister of Natural Resources and their respective Ministers; and

WHEREAS, the Parties will pursue the timely, predictable and efficient preparation of high quality federal environmental assessments through the application of CEAA and the implementation of the Cabinet Directive on *Implementing the Canadian Environmental Assessment Act* (the CEAA Directive); and

WHEREAS, the Parties will adhere to the principles of the government's Cabinet Directive on Streamlining Regulations; and

WHEREAS, Clause 15 of the MPMO Directive encourages the Deputy Heads of the key regulatory departments and agencies with resource development-related responsibilities to enter into a MOU setting out specific actions to implement the MPMO Directive; and

THEREFORE, the Parties to this MOU wish to pursue the effective, coordinated and, to the extent appropriate, concurrent discharge of their regulatory and environmental assessment responsibilities in respect of major resource projects and are committed to the following provisions:

2. OBJECTIVE:

2.1 The objective of this MOU is to articulate the commitment of the Parties to work collaboratively to achieve the objectives of the MPMO Directive - to promote certainty and predictability in the regulatory system, avoid regulatory duplication and unnecessary delays in the review of major resource projects, and significantly

improve project regulatory review time lines, all while continuing to safeguard the environment;

2.2 This MOU will clarify the roles and responsibilities of the Parties in implementing the MPMO Directive. This includes providing further guidance on how the Parties will work together to improve the accountability, transparency, timeliness and predictability of the federal regulatory system for major resource projects.

2.3 These objectives will be achieved in a manner that respects the integrity of public policy objectives and is consistent with all applicable legislation and regulations, including the quasi-judicial mandates of the National Energy Board (NEB) and the Canadian Nuclear Safety Commission (CNSC).

3. APPLICATION OF THE MOU

3.1 The CEAA Directive and its related MOU create a frame work within which federal authorities can exercise their respective powers, duties, functions or discretion under the *Canadian Environmental Assessment Act* (the CEA Act) in a manner that places priority on the delivery of high quality environmental assessments in a predictable, certain and timely manner.

3.2 The MPMO Directive, in conjunction with this MOU, extends beyond the CEAA Directive and the environmental assessment process, to encompass the entire regulatory system for major resource projects.

3.3 The Parties recognize that the NEB and the Canadian Nuclear Safety Commission, as quasi-judicial tribunals, are subject to the rules of natural justice and that they may have to recuse themselves or restrict their involvement in discussions under this MOU where their participation might jeopardize their independence or objectivity in respect of any application that may come before them.

3.4 For the purposes of this MOU, all terms defined in the MPMO Directive apply. These definitions are included in ANNEX A to this MOU. The definitions include that of the regulatory system as "the environmental assessment (EA) process (the project planning phase); subsequent permitting, licensing 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." The definition of a major resource project is provided as "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*."

3.5 This MOU is to be read with and interpreted in a manner consistent with all applicable statutes, regulations and rules of natural justice and does not create any new legal powers or duties, or fetter in any way, the jurisdiction, powers and duties of the Parties.

4. GOVERNANCE

A. THE MAJOR PROJECTS DEPUTY MINISTERS' COMMITTEE

The Major Projects Deputy Ministers' Committee, as described in the MPMO Directive, will serve as the governance body for the implementation of that directive and this MOU. The Committee will ensure their respective departments adhere to the objectives of the Cabinet Directive and this MOU. Where there are issues impeding the regulatory review of a project, which cannot be resolved through the other mechanisms available, the Committee will also provide coordination and guidance for their resolution.

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.

When the matters to be discussed by the Committee relate to project management, to pipeline projects under federal jurisdiction, or to oil and gas development in non-Accord areas, the Chair of the NEB may participate in committee meetings at the invitation of the Chair of the DM Committee.

When the matters to be discussed by the Committee relate to project management, to the development, production and use of nuclear energy or to the production, possession and use of nuclear substances, prescribed equipment and prescribed information, the President of the CNSC may participate in committee meetings at the invitation of the Chair of the DM Committee.

Deputy Ministers whose departments have specific responsibilities for a project will be the signatories for that Project Agreement and for amendments to the Project Agreement, as required. Federal entities that have quasi-judicial functions may elect to enter into Project Agreements where possible, but are not mandated to do so.

Terms of reference for the Committee will be developed during the initial Committee meetings.

B. THE MAJOR PROJECTS MANAGEMENT OFFICE (MPMO)

The MPMO has been established to provide overarching project management and accountability and to facilitate improvements to the regulatory system for major resource projects. It will achieve this by working with the other Parties to enhance transparency, implement an accessible monitoring and tracking system, develop and implement time lines and other service standards where appropriate and legally acceptable. The MPMO will also provide support to the Major Projects Deputy Ministers' Committee, through the provision of data, analysis and information.

The MPMO will provide a single point of entry into the federal regulatory process for all stakeholders, in order to provide an overview of the entire federal regulatory system for major resource projects, and to provide guidance and advice to project proponents and others on how to navigate through this system. It will work collaboratively with other Parties to identify areas where the consistency, efficiency and effectiveness of the federal regulatory process for major resource projects can be improved, both in the short and longer term.

C. THE PARTIES

The Parties are committed to working collaboratively with the MPMO in achieving the objectives of the MPMO Directive. They will also provide support, as needed, to the Major Projects Deputy Ministers' Committee and in addressing the reporting requirements of Ministers. Each Party is responsible for demonstrating that capacity funding received through this initiative has been directed towards furthering the objectives of this initiative.

The MPMO will establish an interdepartmental coordination network with all the Parties to ensure effective communication with them on key issues and to facilitate collaboration and coordination between Parties. Members of the network will be the primary points of contact between the MPMO and their respective organizations and will be responsible for ensuring that their organizations are apprised of all discussions. They will also be responsible for identifying appropriate individuals within their respective organizations to participate with the MPMO on different initiatives, such as the development of Project Agreements, guidance materials, or studies for example.

5. DELIVERABLES

5.1 PROVIDING A SINGLE POINT OF ENTRY INTO THE FEDERAL REGULATORY SYSTEM

As a service to Canadians, the MPMO will provide a single point of entry into the federal regulatory system for all stakeholders interested in major resource projects.

In fulfilling this role, the MPMO will provide all interested parties with general information relevant to the federal government's regulatory responsibilities for major resource project development. The Parties will support the MPMO by ensuring it is kept abreast of key issues and by directly responding to information requests related to their areas of responsibility forwarded to them by the MPMO, or, as appropriate, forwarding information to the MPMO to respond to information requests on the Parties' behalf.

The MPMO will apprise all Parties of any relevant information requests pertaining to their respective areas of responsibility in a timely manner through the interdepartmental coordination network.

Likewise, all Parties will ensure that the MPMO is informed of any discussions with proponents pertaining to potential, new or existing major resource project proposals or other related discussions that would enable the MPMO to carry out its responsibilities more effectively.

5.2 EARLY DISCUSSIONS WITH PROJECT PROPONENTS AND INFORMATION EXCHANGES

To improve understanding of the information requirements of the federal regulatory system, the Parties will ensure that appropriate guidance documents concerning their various licences, permits and authorizations will be made available for the MPMO to share with prospective proponents. Such guidance documents include, inter alia:

- General requirements for the preparation of a project description;
- Guidelines / requirements for individual permits, approvals, certificates and authorizations;
- General guidelines for the preparation of an environmental impact statement.

Upon receipt of a project proposal, the MPMO will ensure that a copy is immediately sent to all Parties. Should other Parties receive a project proposal, they will also ensure the MPMO receives a copy forthwith.

To aid in early engagement with project proponents, all Parties will ensure that all other Parties are apprised of new major resource project development proposals as early in the development stage as possible. This information will be distributed via the interdepartmental coordination network.

Subject to a Party's administrative, legal or procedural processes and practices and the principles of natural justice as applicable, the Parties commit to a full and open dialogue with the proponent of a major resource project prior to the filing of a project description and throughout the regulatory process.

5.3 ESTABLISHING SERVICE STANDARDS

In collaboration with all Parties, the MPMO will develop performance measures and service standards, including target time lines and other benchmarks where appropriate and legally acceptable. These standards will be incorporated into the Project Agreements. Service standards will be designed to "guide federal regulatory departments and agencies in measuring the impact of their regulations and developing plans to improve their efficiency" (Advantage Canada).

The Parties will use their best efforts to develop appropriate service standards that are reflective of the minimum time required to issue their respective licences, authorizations, certificates and permits, while continuing to maintain all environmental standards. In addition to time lines, service standards will be developed to evaluate different aspects of the regulatory system, as well as its overall performance. For example, service standards may be developed to evaluate such matters as: overall satisfaction of all stakeholders with the regulatory review process; the harmonization of federal environmental assessments with provincial reviews; factors contributing to time lines being met or not met; the integration of Aboriginal Crown consultation into the environmental assessment phase; the use of substitution; and the number of information requests following submissions of the project description.

Measures could also be developed to evaluate the results of the mandatory follow-up programs under the CEA Act for Comprehensive Study and Panel Review environmental assessments and the follow-up programs for screening environmental assessments should they be undertaken, as such programs serve to verify the accuracy of the environmental assessment of a project, and determine the effectiveness of any measures taken to mitigate the environmental effects of the project.

In applying the service standards to a specific major resource project through its Project Agreement, the MPMO will, in collaboration with all Parties, establish target time lines in relation to the regulatory process for that project.

Parties will strive to achieve the commitments in Budget 2007 to cut in half the average regulatory review period for large natural resource projects, from four years to about two years, and if possible over time, exceed them. Such time line targets will have regard to existing statutory authorities and the rules of natural justice.

5.4 PROJECT AGREEMENTS

A Project Agreement will be developed for each major resource project entering through the regulatory system. Following receipt of a project description that is

acceptable to all relevant Parties, these Parties will work collaboratively with the MPMO to develop the Project Agreement.

Project Agreements will include, as appropriate:

- The Environmental Assessment work plan adopted pursuant to clause 2 of the CEAA Directive, or when appropriate, any substitution agreements;
- A description of the extent of each relevant Party's roles, statutory obligations, mandated responsibilities and commitments;
- Where necessary, a schedule for the submission of any additional information which may be required from a project proponent in order to complete the regulatory review within the time frames outlined;
- An Aboriginal consultation and engagement work plan;
- A Permitting, Authorizations and Approvals work plan;
- Project specific service standards, including agreed upon target time lines for the various processes in the regulatory system; and
- A description of project management responsibilities.

Guidance materials, templates and service standards to be used in the development of Project Agreements will be developed collaboratively between the MPMO and other Parties and may be revised from time to time as necessary. The required contents of the Project Agreements may also be amended from time to time.

Project Agreements are 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.

Deputy Ministers whose departments have specific responsibilities for a project will sign the Project Agreement. Federal entities that have quasi-judicial functions may also elect to enter into Project Agreements, but are not mandated to do so. Once signed, the Project Agreements will be posted publicly on the Internet, excluding any information that is otherwise protected from disclosure by law.

The Parties will cooperate with the MPMO, which will lead the development of the Project Agreements. This includes respecting timeframes that may be established for the completion of the agreements.

In general, receipt of a complete project description which is acceptable to the Parties, together with an acceptable schedule for the submission of supplementary information for the regulatory approval process (when necessary), will trigger a project's formal entry into the federal regulatory process and the start of the federal regulatory clock. "Time outs," when the federal clock will be paused, may occur, for example:

a) if the review is delayed at the request of the proponent or another jurisdiction;

b) if the proponent is required to provide additional information necessary for completion of the environmental assessment, a regulatory review or approval, or if information provided is insufficient;

c) if the regulatory process cannot proceed as a result of circumstances related to the Aboriginal Crown consultation process;

d) if appropriate, where litigation or other court action prevents the completion or continuation of the federal review process.

Note: When the proponent is required to provide additional information, the time frames will normally be suspended only if the required information is substantial enough that the assessment cannot effectively proceed until the information is submitted. If additional information is required on a particular issue, but work can still effectively proceed on all other aspects of the review, the review period would not normally be suspended.

5.5 ABORIGINAL CROWN CONSULTATIONS

The MPMO will ensure that Aboriginal Crown consultation requirements triggered by regulatory decisions pertaining to major resource project developments are integrated to the greatest extent possible into the overall regulatory process by incorporating such requirements into the overall Project Agreements negotiated with the other Parties. This will be done by working in collaboration with the other Parties, and in particular with the Canadian Environmental Assessment Agency which has responsibility for integrating Aboriginal Crown consultation into the environmental assessments it coordinates under this initiative.

The project committee established for the environmental assessment of a major resource project (pursuant to subsection 12.3[a] of the *Canadian Environmental Assessment Act*) will, informed by consideration of the specific circumstances of the project and advice from the Department of Justice, allow the work to be done for the purpose of the environmental assessment to further expand as appropriate, to include Aboriginal Crown consultations.

Where this occurs, the roles and responsibilities of the Parties involved will generally be similar to those for the purpose of the environmental assessment, i.e. a process which is coordinated by the Canadian Environmental Assessment Agency that is responsive to each Party's decision-making authority.

The project committee referred to above, working with the MPMO, will also be responsible for developing the Aboriginal consultation and engagement work plan, to be included in the Project Agreement.

5.6 MONITORING AND TRACKING PROGRESS

The MPMO will establish and manage a transparent monitoring and tracking system for all major resource projects entering the federal regulatory process. This system, 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 major resource project.

To the extent possible, the monitoring and tracking system will incorporate and build upon the efforts of the other Parties that have developed methods to monitor and track the progress of major resource projects through their respective regulatory processes.

The Parties will work cooperatively with the MPMO in the development and maintenance of the tracking and monitoring system. This includes using the system to track the performance of their respective departments within the overall regulatory system, and providing all information deemed necessary in a timely manner.

5.7 RESEARCH AND ANALYSIS

The MPMO will lead, on a priority basis, an interdepartmental process to develop legislative options, including possible structural changes, to streamline the regulatory system for major resource projects.

The MPMO will lead collaborative research and policy analysis on short, medium and longer term initiatives to improve the performance of the regulatory system, such as cost recovery models, cumulative effects research, regional assessment processes, risk management approaches, and energy infrastructure corridors.

The Parties will work collaboratively with the MPMO to identify, through ongoing monitoring and analysis, issues that may inhibit the efficiency and effectiveness of the regulatory system for major resource projects and propose potential solutions.

The Parties will participate, where feasible and warranted, in any research projects undertaken by the MPMO.

5.8 PROBLEM RESOLUTION

The Parties will make every reasonable effort to agree on the interpretation and application of this MOU in the regulatory review of each major resource project.

The Parties are committed to resolving any differences of opinion in the interpretation or application of the MOU in a timely manner, at the working level wherever practicable.

A senior-level committee chaired by the CEA Agency will continue to oversee implementation of the CEAA Directive, including discussion and, where possible, resolution of issues pertaining to individual or collective consideration of any provision of the CEAA Directive or CEA Act in relation to environmental assessment.

Where there remain unresolved problems in the environmental assessment or regulatory review of a major resource project, or any other issue exists which creates an impediment in the efficient and effective review of a project, these problems will be brought to the attention of the Major Projects Deputy Ministers' Committee. The Committee will provide coordination and guidance for the timely resolution of issues and project-specific problems in the regulatory system.

6. REPORTING ON THE REGULATORY SYSTEM FOR MAJOR RESOURCE PROJECTS

On a monthly basis, the MPMO, in collaboration with the other Parties, will report on the status of the regulatory review of major resource projects within the regulatory system at that time, to the Minister of Natural Resources and those Ministers representing departments/agencies involved in the regulatory process, and to the members of the Major Projects Deputy Ministers' Committee and any other involved Deputy Ministers.

Biannually, the MPMO will provide information on the progress of this initiative and on the achievement of time lines to the Minister of Natural Resources in support of his reporting responsibilities to Cabinet.

The MPMO 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.

The details of these reporting requirements, and the data and analysis required from the Parties will be determined in consultation with the Parties.

The Parties agree to support the MPMO in fulfilling these reporting requirements, by providing timely and thorough data and information. The MPMO will provide as long a lead time as possible in outlining information requirements pertaining to the reporting requirements listed above.

7. TRANSITION PROVISIONS

To ensure that the implementation of the MPMO Directive and this MOU is as smooth as possible, proposed major resource projects already within the regulatory system at the time the MPMO 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 MPMO may review the status of an existing major resource project within the regulatory process, in order to determine whether it would be appropriate for the project to continue its regulatory review through the new process outlined in this MOU.

8. EVALUATION AND REVIEW OF THIS MEMORANDUM OF UNDERSTANDING

The Parties will review this MOU following the first year of its application, and on a periodic basis thereafter. It can be reviewed at any time at the request of a Party.

This MOU may only be amended with the written consent of all the Parties. Unless otherwise indicated, an amendment will become effective upon its execution by the Parties.

The Parties may, from time to time, jointly develop guidance documents, operational procedures, or terms of reference to assist in the interpretation and implementation of this MOU.

9. EXECUTION IN COUNTERPARTS

The Parties hereto agree that this MOU may be executed and dated in counterparts, each of which counterpart when taken together will constitute the original MOU. The Parties further agree that the MOU shall become effective on the date on which the last counterpart is executed.

Deputy Minister
Natural Resources Canada

Aug 10/07
Date

Deputy Minister
Environment Canada

August 2, 2007
Date

Deputy Minister
Fisheries and Oceans Canada

AUG 0 9 2007
Date

Deputy Minister
Indian and Northern Affairs Canada

Aug 14/07
Date

Deputy Minister
Transport Canada

10 . 8 . 2007
Date

President
Canadian Environmental Assessment Agency

Oct. 9, 2007.
Date

President
Canadian Nuclear Safety Commission

Aug 2, 2007
Date

Chair
National Energy Board

August 2, 2007
Date

ANNEX A to this MOU

DEFINITIONS

In this MOU,

"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 the Cabinet Directive *on Improving the Performance of the Regulatory System for Major Natural Resource Projects* (the 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 the 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 the Directive, that describes the roles, obligations and best effort commitments of relevant federal entities in relation to a specific major resource 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, licensing 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.

Note: The definitions in this MOU are the same definitions used in the Cabinet Directive on *Improving the Performance of the Regulatory System for Major Resource Projects*.