

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE
CANADA ENERGY REGULATOR (CER) AND TRANSPORT CANADA (TC)
(HEREINAFTER REFERRED TO INDIVIDUALLY AS “PARTICIPANT” AND
COLLECTIVELY AS “THE PARTICIPANTS”)**

Background

WHEREAS, Pursuant to the *Canadian Energy Regulator Act* (CER Act), the Canada Energy Regulator (CER) regulates aspects of the energy industry in Canada including the construction and operation of interprovincial and international pipelines; pipeline traffic, tolls and tariffs; the construction and operation of international and designated interprovincial power lines and offshore renewables; the export and import of natural gas; the export of oil and electricity. In addition, the CER studies and reviews energy production, recovery, manufacturing, processing, transmission, transportation, distribution, sale, purchase, exchange, and disposal of energy and sources of energy in and outside Canada and regularly with other government departments and agencies in the interest of policy development and delivery of its legislated mandate; Pursuant to the *National Energy Board Export and Import Reporting Regulations* (EIRR), the CER collects information by persons exporting oil, gas or electricity or importing gas.

AND WHEREAS, Pursuant to the *Canada Transportation Act*, TC is responsible for developing and overseeing the Government of Canada’s transportation policies and programs and has a mandate to see that all Canadians have access to a transportation system that is safe and secure, green and innovative, and efficient. Pursuant to the *Marine Liability Act* (MLA), TC collects information under the *Marine Liability and Information Return Regulations* (MLIRR) to capture data on annual receipts of oil and Hazardous and Noxious Substances (HNS)¹ as well as exports of oil by ship from Canada in bulk as cargo.

AND WHEREAS, The CER and TC recognize that much of their work with respect to fulfillment of their respective mandates under their independent legislative frameworks is linked via data received through export/import information returns, meaning name of the company, the type of oil, and the quantity of oil received.

AND WHEREAS, in consideration of the foregoing, the Participants came together to develop this Memorandum of Understanding (MOU) to establish an administrative framework for the exchange of information between the Participants. The sharing of this information is not expected to be used for enforcement purposes and only for the reason it is being shared, to verify compliance.

¹ HNS commodities include non-persistent oil, Liquefied Natural Gas (LNG), Liquefied Petroleum Gas (LPG), and other bulk solid HNS products.

FOR THE PURPOSES OF THIS MOU, THE PARTICIPANTS CONCUR AS FOLLOWS:

1.0 Purpose

The purpose of this MOU is to

- 1.1 The purpose of this MOU is to establish an administrative framework for the exchange of information between the Participants related to the export of oil and other petroleum products. The exchange of information is for compliance verification purposes and includes all relevant aspects of collection, use, disclosure, retention and destruction.

Area of Cooperation and Collaboration

- 1.2 Cooperation under this agreement will include the sharing of data and information collected by the respective organizations under their regulations.
- 1.3 Cooperation will include sharing of data received through export/import information returns comprising the name of the exporter or company, and the type and quantity of oil exported by ship (collectively called “Disclosed Information”).

2.0 Mandate and Authorities

The TC Authority:

- 2.1 TC is responsible for developing and overseeing the Government of Canada’s transportation policies and programs and has a mandate to see that all Canadians have access to a transportation system that is safe and secure, green and innovative, and efficient. TC collects information under the MLIRR to capture data on oil exported by ship from Canada in bulk as cargo.
- 2.2 The information TC proposes to share with the CER is obtained from information returns filed in accordance with the MLA and the MLIRR by exporters and other persons required to do so under the MLA.
- 2.3 The MLA sets out, at subsections 74.4(2), 117.1(1), and 117.1(1.1) the obligation of receivers, exporters and certain persons to file information returns with the Minister. The MLIRR sets out more specifically who is required to file information returns with TC or the Administrator based on the cargo received or exported as well as when to file the information returns and their contents.
- 2.4 TC will share, on an annual basis, or mutually agreed on a case-by-case basis:
 - the name of the exporter;
 - the type of oil exported by ship; and
 - the quantity of oil exported by ship.

The CER Authority:

- 2.5 The CER is a departmental corporation and agent of the Crown established under the CER Act. The CER is subject to broader Government of Canada policy, as applicable, and respecting the Commission's independent adjudicative authority. The CER collects information under the EIRR to capture data on any persons exporting oil, gas or electricity or importing gas.
- 2.6 The information the CER proposes to share with TC is obtained from filings filed in accordance with the CER Act, under the EIRR, by persons exporting oil, gas or electricity or importing gas.
- 2.7 The CER Act², sets out, at subsection 389(1), the requirement for persons exporting oil, gas or electricity or importing oil or gas. The EIRR regulations set out more specifically the returns and information to be submitted by persons exporting oil, gas or electricity or importing gas.
- 2.8 The CER will share on an annual basis, or mutually agreed on a case-by-case basis:
 - the name of the exporter or company;
 - the type of oil exported by ship; and
 - the quantity of oil exported by ship.

3.0 Disclosure and use of Information

- 3.1 The Participants will restrict access of shared "Disclosed Information" to their employees who have the appropriate security clearance and who require access for the purposes for which that information was provided (need-to-know).
- 3.2 The employees of both organizations will mark the appropriate security classification and protect the Disclosed Information in accordance with its security classification. Participants will respect any caveats placed upon the Disclosed Information regarding its use, classification or further dissemination.
- 3.3 Classified or protected Disclosed Information exchanged by the organization will be transferred only through secure Government channels or through channels approved by the designated security authorities of the organizations.
- 3.4 Each organization will ensure that the standards and requirements of the Policy on Government Security, the *Library and Archives of Canada Act*, the *Security of Information Act*, and any other applicable laws and relevant government of Canada (GoC) policies are adhered to.
- 3.5 Procedures with respect to the collection, use, disclosure, retention and disposal of personal information and customs information will conform to all relevant Canadian legislation, regulations and government policies including the *Access to*

² Regulations made under the National Energy Board Act remain in force under the Canadian Energy Regulator Act until they are repealed, or others made in their stead, as per the Interpretation Act (paragraphs 44(g-h)), and references to the National Energy Board Act are to be read and construed as a reference to the Canadian Energy Regulator Act.

Information Act, the Privacy Act, the Customs Act and the Canadian Charter of Rights and Freedoms.

- 3.6 Any onward dissemination of the Disclosed Information to organizations other than TC, the CER or the Administrator of the Ship-source Oil Pollution Fund (SOPF) will need to adhere to the Treasury Board (TB) policy on the sharing of personal information, policies relating to the management of information and any other applicable Canadian federal laws. In the event that either Participant receives a request under the *Privacy Act* or the *Access to Information Act* to disclose the Disclosed Information supplied by the other Participant, it will notify and consult the other Participant prior to processing the request in accordance with the law.
- 3.7 Each Participant will use the Disclosed Information to verify compliance only and will not use it for enforcement purposes.

4.0 Disclaimers

- 4.1 This MOU is not legally binding and does not impose, nor is it intended to impose, any legal commitments on, or give rise to any legal rights not otherwise held by the Participants.
- 4.2 Nothing in this MOU is intended to impose any funding obligations on either of the Parties, however if costs do arise, each Participant is to pay for its own costs related to the activities under this MOU.
- 4.3 Nothing in this MOU is intended to diminish or otherwise affect the authority of either Participant to carry out its statutory, regulatory, or other official functions or to commit either Participant to providing a particular service they would not otherwise provide in the scope of each Participant's individual mission and functions.

5.0 Effective date, Review, Amendment, Termination

- 5.1 This MOU will come into effect on the date on which it is signed by the last of the Participants and will remain in effect until it is terminated in accordance with the procedure set out in clause 5.2. to 5.5.
- 5.2 The Participants intend to jointly review this MOU every five (5) years and renew or amend it as required.
- 5.3 Amendment to this MOU may be made at any time, in writing, including the addition of or amendment to any Agreement(s) in relation to the purpose of this MOU, as jointly agreed to by the Participants.
- 5.4 Each Participant will notify the other Participant of any change to its enabling legislation, related regulations or policies that may impact this MOU as soon as practicable after having discovered the change.
- 5.5 Either Participant may terminate this MOU upon providing the other with advance written notice of no less than sixty (60) business days. All Disclosed

Information that is obtained up to the date of termination must continue to be treated in accordance with the MOU.

6.0 Languages

6.1 This agreement is written in English and French, each text being equally valid.

7.0 Effective Date

7.1 This MOU and any amendments are effective as of the date they have been executed by the CER and TC.

7.2 This MOU and any amendments may be signed in one or more counterparts, each of which is deemed an original, and all of which together constitute the same arrangement.

8.0 Approval and Signatures

FOR CANADA ENERGY REGULATOR:

*Anastassia Manuilova
Vice President, Energy Information
CER*

*Signature: Original signed by
Anastassia Manuilova*

Date: 02/03/2022

FOR TRANSPORT CANADA:

*Marc-Yves Bertin
Director General, Marine Policy
TC*

*Signature: Original signed by
Marc-Yves Bertin*

Date: 2022-02-15