

REGULATORY  
ENHANCEMENT PROJECT:  
Stakeholder & First Nations  
Engagement Summary

December, 2010

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### Background

Realizing the full benefits of Alberta's oil and gas resources depends on Alberta's ability to continue attracting significant levels of investment. As part of broad efforts under the *Alberta Competitiveness Act*, the Government of Alberta is working to enhance Alberta's competitiveness.

In response to changes in the marketplace, Alberta Energy led a study of Alberta's investment competitiveness for oil and gas development.

In March 2010, the Government reported to Albertans in *Energizing Investment: A Framework to Improve Alberta's Natural Gas and Conventional Oil Competitiveness*, which summarized the findings of this study. It outlined a series of actions and initiatives to position Alberta as one of the most competitive jurisdictions in North America for upstream oil and gas development.

A key issue identified in *Energizing Investment* was the need to improve Alberta's regulatory system for oil and gas development. To remain competitive, Alberta needs an effective regulatory system that delivers the results Albertans want, while ensuring environmental, health, and public safety outcomes are not compromised.

To take action on these goals, the Minister of Energy established the Regulatory Enhancement Task Force. The Task Force was mandated to implement a comprehensive review of Alberta's regulatory system for natural resource development, with a focus on upstream oil and gas.

As part of these efforts the Regulatory Enhancement Project (REP) was established. Sponsored by Alberta Energy, the REP was undertaken by a team of government representatives from Alberta Energy, Alberta Environment, Alberta Sustainable Resource Development, the Energy Resources Conservation Board and Alberta Justice and Attorney General.

The objective of the REP was to examine ways of ensuring Alberta's regulatory system for upstream oil and gas is modern, efficient, performance-based and competitive, and provides clarity and predictability of process.

The REP has focused on developing an enhanced **Policy Development and Policy Assurance System** (an "Enhanced System") for upstream oil and gas. That is, the system used by government to develop sound public policy for upstream oil and gas, and to assure the intended results of those public policies are being achieved.

### Engagement Approach

Informing the REP was a thorough program of engagement with stakeholders and First Nations, conducted during the months of April 2010 through November 2010. All 47 First Nations and the three Treaty Organizations were invited to participate. Key stakeholders invited to participate included landowners and landowner associations; municipal governments and associations; and representatives from environmental non-governmental organizations, the upstream oil and gas industry, and other interest groups.

Between March 31, 2010 and October 1, 2010 the REP hosted three rounds of engagement through a series of briefings, meetings, workshops and a forum. The stakeholders and First Nations provided input on:

- Issues and opportunities to improve the current regulatory system and the principles that should guide system design, in round one;
- Early work on potential enhancements to the system, in round two; and
- Preferred system enhancements, in round three.

In addition, a REP website was created as another method of communicating with Albertans and accepting their feedback. A list of engagement events and dates are provided in Appendix A.

The input and advice gathered through the stakeholder and First Nations engagement was documented in detailed reports, and provided for consideration by the Regulatory Enhancement Task Force. These are available at [www.energy.alberta.ca/Initiatives/RegulatoryEnhancement.asp](http://www.energy.alberta.ca/Initiatives/RegulatoryEnhancement.asp)

### **Purpose of this Report**

This report is intended to provide an overview of the extensive and valuable input provided by stakeholders and First Nations through the REP engagement process. This report only reflects what was heard from participants through the engagement process; it does not represent Government of Alberta policy.

The extensive and valuable input across the REP engagement process has been distilled and summarized under these key headings:

- ❖ Issues, Challenges and Opportunities in the Current System
- ❖ Feedback on System Enhancements
- ❖ First Nations Input
- ❖ What is Required to Achieve Future Success

### Issues, Challenges and Opportunities in the Current System

Through the REP engagement process, participants identified a number of issues and opportunities for improvement in the current system:

**Simplify the System** – Participants indicated the structure and processes of the current system are onerous, complex and uncoordinated among multiple government departments and agencies. This has contributed to several challenges, including:

- ❖ Differing, inconsistent and sometimes contradictory policies and regulatory practices among the multiple government departments and agencies;
- ❖ A long, cumbersome and complicated approvals and appeals process;
- ❖ Confusion about roles, responsibilities and mandates of the various government departments and agencies; and
- ❖ Uncertainty about who does what and where to go for information, help or to address environmental and safety concerns.

*Opportunity:* Participants suggested creating a single point of contact between interested parties and the system, to improve navigation and access to information. Participants suggested better coordination of approvals, monitoring and compliance processes as a way to reduce complexity in the system.

The ERCB should not be replicating the work of SRD and Environment – this adds to process complexity and time delays.

**Enhance Policy Clarity** – There are concerns that Alberta’s natural resource policies are often not clear and not well aligned or integrated. Participants indicated that this has contributed to:

- ❖ Overlaps, conflicts or gaps in some of Alberta’s natural resource policies;
- ❖ Inconsistent interpretation and implementation of policy in regulatory practices among the numerous departments and agencies responsible for regulatory delivery; and
- ❖ Inappropriate use of prescriptive regulation to address perceived gaps in policies.

There should be ‘one number’ that you could call to access information or resolve issues.

*Opportunity:* Participants highlighted the need to establish formal processes to ensure consistency and integration in the way the Government of Alberta develops policies and assures that the intended results of those policies are being achieved.

Not all GoA departments and agencies seem to be following the same “rule book” or they apply policies in different ways.

**Improve Public Engagement Processes** - Participants indicated that the system needs to do a better job of providing opportunities for interested parties to have their voices heard – on specific upstream oil and gas projects that are proposed, and on broader public interest issues. In the current system, it is difficult for interested parties to determine when and how to best provide input into policies and decisions. Issues identified by participants included:

- ❖ A perception that important common interest issues are not adequately being heard and considered in policy development;
- ❖ Use of the approvals process to address broader policy issues or concerns related to upstream oil and gas development generally;
- ❖ Disagreement about status for standing in the hearing and appeals processes for specific upstream oil and gas projects; and
- ❖ Concerns that Albertans’ private interest rights are being diminished.

The public engagement process should result in meaningful and visible results.

*Opportunity:* Participants suggested the need for a common and proactive approach to public engagement, and to define the common interest. This would include identifying and addressing public issues and concerns during policy development. Participants also indicated there needs to be clear and fair requirements and processes for addressing concerns when specific project applications are being considered at the policy assurance stage.

**Enhance Accountability** – There is a perception that the upstream oil and gas industry and the Alberta government need to be more responsible for ensuring social, economic and environmental outcomes are achieved. Participants noted a number of issues, including:

- ❖ A lack of clarity outside of government about roles and responsibilities in the current system;
- ❖ Unsatisfactory, lengthy and complicated processes, such as the approval process; and
- ❖ Eroding public confidence in the system. There are views that companies are not adequately adhering to requirements and meeting environmental and safety standards. There are also concerns regarding the adequacy of inspections and the sufficiency of enforcement through meaningful fines and penalties for violations.

Increasing accountability within government and industry is critical to improving the system.

*Opportunity:* To improve government accountability, participants suggested roles and responsibilities of the departments and agencies need to be more clearly defined, and that performance measures and standards for the system be established. Suggestions to enhance industry accountability and compliance included: better enforcement of consequences for violations; clear public reporting of environmental and safety performance; and rewards for companies with superior performance.

**Improve Knowledge and Information Sharing** – There was broad agreement among participants that it is challenging to access relevant and easy-to-interpret information about the system, including information about the environmental and safety performance of the upstream oil and gas industry. We heard this has resulted in:

- ❖ Difficulty for the public to understand how the system works;
- ❖ Declining confidence that social, economic and environmental outcomes are being achieved; and
- ❖ Inefficient use of knowledge and information, such as information from Environmental Impact Assessments (EIAs), among government departments and agencies.

Access to quality, easy to understand information about projects and corporate environmental history is integral to managing risk, promoting accountability, and building public confidence.

*Opportunity:* Participants advocated the use of technology to increase accessibility to knowledge and information both within and outside of government.

**Promote Risk Management** – Several participants indicated that the current system does not adequately use scientific evidence to determine the potential for, and impact of, risks to the environment and to public safety posed by upstream oil and gas development. We heard that this has resulted in:

- ❖ Overuse of prescriptive regulation which impacts the ability for industry to be innovative and improve environmental performance through new technology; and
- ❖ Decreased public confidence in the system’s ability to support the achievement of social, economic and environmental outcomes.

Not having a consistent way of assessing risk is part of the problem.

The system should be designed to reward innovation and new technology.

*Opportunity:* Some participants suggested that a common and evidence-based *risk-management approach* be used by the system to appropriately select regulations and other policy assurance instruments, such as performance-based approaches, and to improve *risk management*. In addition, participants identified that industry must be provided the opportunity to innovate and continually improve its environmental performance. Some of the ways to do this are to use incentives to encourage more industry innovation and to use pilot projects to test new technology.

Continuous improvement, in the form of new knowledge and new data, needs to have an input point into the system.

**Set Clear Expectations** – Participants indicated that system should not act as a barrier to Alberta’s competitiveness but it should continue to set clear expectations for industry in regards to the environment, public safety and resource conservation.

*Opportunity:* Participants indicated that more coordinated and integrated policy development, a more consistent approach to risk management, and better coordinated regulatory delivery, would enhance the ability of the system to establish clear expectations.

## Feedback on System Enhancements

A number of potential system enhancements were discussed and developed to mitigate or eliminate identified issues and challenges in the current system. These enhancements were assessed with reference to the REP design principles of *Efficient, Effective, Adaptable, Predictable, Fair and Transparent*. Periodically throughout the project, the range of potential system enhancements were presented and discussed with stakeholders and First Nations. Input from these sessions was used to

further refine the options. Below are highlights of the feedback received on the potential system enhancements explored by the REP on the following topics:

### *Proposed System Enhancements*

*Participants in the REP engagement confirmed that policy at all levels needs to be clearer and better integrated within and across resource departments for application within the policy assurance system.*

*Options explored by the REP and discussed with stakeholders and First Nations included: creating an enhanced process for policy development; developing a formal authority that would be accountable for natural resource policy integration, and promoting continuous improvement in the system.*

- ❖ Policy Development & Policy Assurance
- ❖ Public Engagement Considerations
- ❖ Policy Assurance Structure
- ❖ Risk Management & Policy Assurance

## **Policy Development & Policy Assurance**

### *What We Heard*

Participants generally agreed that the proposed options for policy integration could address the issues that had been raised, such as the gaps and overlaps in current natural resource policies.

Some participants agreed that creating an authority that would be responsible for policy integration would be beneficial. Others felt that a better application of existing processes and structures could provide the desired improvements.

Advice regarding implementing any *policy development and policy assurance* process improvements highlighted a need for:

- ❖ Strong leadership, guided by overarching priorities and principles, to support policy integration. This is needed to enable the difficult trade-off decisions that will occur as the balance of social, economic and environmental outcomes is sought.
- ❖ Knowledgeable staff across policy areas if there is going to be a formalized process or structure that will be responsible for promoting policy alignment across ministries.
- ❖ Information technology, such as web portals, to support sharing information and policy integration across ministries.
- ❖ Performance measurements, such as client satisfaction results or score cards on system performance. This information should be used to support ongoing improvements to the system.

## **Public Engagement Considerations**

### *Proposed System Enhancements*

*Participants suggested that there is benefit to a more thorough discussion of the common interest matters when natural resource policy is being developed. It was also highlighted that a transparent and fair process is needed for addressing private interest matters when specific upstream oil and gas project applications are being considered.*

*Options explored by the REP and discussed with stakeholders and First Nations sought to improve the integration and quality of policy by enhancing public engagement on common interest matters during policy development. This would ensure policies applying to all upstream oil and gas projects would reflect common interest considerations. This would also enable public engagement at the policy assurance stage to focus on private interests when specific upstream oil and gas projects are considered.*

*Providing clear and coordinated public engagement processes will provide better clarity and predictability for industry, landowners and the general public.*

### *What We Heard*

Participants generally approved with the direction of the proposed options. They noted that determination of the public interest is not easily accomplished and that it is important to have meaningful discussions, with tangible results, during *policy development*. Participants also reinforced the importance of handling Albertans' private interest matters more effectively in the policy assurance system, and were interested in having a better understanding of the proposed enhancements to that process. Improvements to the dialogue can be accomplished by:

- ❖ Adhering to principles such as fairness and transparency in the process;
- ❖ Using more standardized approaches with sufficient time for meaningful participation;
- ❖ Establishing forums for ongoing engagement;
- ❖ Increasing communication with stakeholders and the public, including the policy implications of what is being proposed and discussed;
- ❖ Opening diverse channels for input, such as additional one-on-one meetings, town halls and web technology; and
- ❖ Providing sufficient background information to participants to enable an informed discussion.



## Policy Assurance Structure

### *Proposed System Enhancements*

*Participants indicated that the current regulatory system is complex. This view was shared by industry and non-industry participants alike. The REP presented a few options for structural enhancements to policy assurance delivery, to reduce complexity and duplication while improving the coordination of policy assurance functions.*

*One of these structural enhancement options was a One Window structure which would create a single point of contact for all interactions between interested parties (including project proponents) and the three current regulatory agencies. Current regulatory agencies would continue to perform their current roles in the system, but they would work in strong alignment through all stages of the project lifecycle.*

*A second structural option takes the concept of further functional integration through the creation of a Single Regulator that would be assume all policy assurance functions for upstream oil and gas.*

### *What We Heard*

Participants appreciated the potential benefits of both the One Window and the Single Regulator options as positive responses to the issues of complexity. In general, participants were most interested in the roles and responsibilities within the modified structures, and advised that information sharing, retaining knowledge and expertise, and consistency in applying policy will be required in any structural option.

The primary advantage that participants saw in the One Window option was the potential for improvement in navigation of the policy assurance process. It was noted that there will be alignment challenges in the coordination of all activities behind the One Window, and in order to be successful there will need to be a major shift in the way business is conducted in the system.

The Single Regulator option was seen as offering potential for more significant integration, streamlined processes, efficiency, and clear accountability for policy assurance. The primary concern raised by participants was the ability of the regulator to reconcile the mandates of Alberta Energy, Alberta Environment and Alberta Sustainable Resource Development. Suggestions for addressing this issue included employing a clear process for providing direction to the regulator and ensuring the right expertise is in place.

## **Risk Management & Policy Assurance**

### *Proposed System Enhancements*

*The current regulatory system relies is largely focused on approvals and uses a lot of prescriptive regulations that state how things should be done. This approach leaves little room for innovation and does not easily allow for advances in technology or improved industry practices.*

*An option explored by the REP and discussed with stakeholders and First Nations was adopting a common risk-management approach throughout the system. This approach would include the use of a broader suite of policy assurance tools to achieve desired outcomes. Selection of appropriate policy tools would be informed by use of the common risk-management approach.*

*Activities with higher risks that require a higher degree of oversight may warrant the use of more prescriptive tools. Activities warranting lesser degrees of oversight may be managed with other tools that offer innovation and flexibility in achieving compliance.*

*The adoption of a common risk-Management approach would ensure that Alberta maintains high standards and clear expectations, while allowing for innovation and continuous improvement on the part of industry.*

### *What We Heard*

Participants accepted the concept of using a consistent *risk-management approach* and placing greater emphasis on higher risk activities. There was, however, concern expressed about how risks would be determined and tolerated by the system. Transparency in the development of a *risk-management approach* was suggested as way to improve public confidence.

Participants proposed a number of desirable features of the monitoring system that would be necessary for enabling a *risk-management approach* throughout the system. These features include:

- ❖ A means to enable innovation by industry and promote continuous improvement;
- ❖ Sharing of monitoring and compliance data to enhance transparency and public confidence. This could be accomplished by including the academic and scientific community in the ongoing monitoring and reporting of the system;
- ❖ Consistency of *risk-management approaches* across departments, agencies and sectors; and
- ❖ Enhanced accountability and enforcement. This could include using incentives with companies that consistently perform well and enforcing meaningful penalties for those who are non-compliant.

## First Nations Engagement

First Nations were invited to, and several actively participated in, the engagement process for the Regulatory Enhancement Project. Some of the concerns raised by First Nations participants included:

- ❖ A high level of concern for historical and future environmental and social impacts by resource industries;
- ❖ A desire for improvements to consultation requirements and processes with more attention to treaty rights; and
- ❖ Concerns over accommodation measures and their impact on First Nations communities.

The REP also did not include an examination of First Nations consultation processes. The Government of Alberta is currently engaged with First Nations in a review of Alberta's First Nation Consultation Policy on Land Management and Resource Development and associated guidelines and is committed to consulting with First Nations in accordance with this Policy. The Government is committed to fulfilling its legal obligations to First Nations.

## What is Required to Achieve Future Success

A clear message delivered by stakeholders and First Nations throughout the REP engagement process was that the status quo is not good enough - changes must be made. Participants provided the following insights and advice to the Regulatory Enhancement Task Force on the critical factors needed to successfully bring about an Enhanced System.



**Sustain Leadership** – It is important there is clear guidance about the vision for the future and how we will get there. There needs to be robust and committed leadership from elected officials and senior levels of government in making changes to the system.

**Build Public Confidence** – There must be public confidence that any changes to the system will result in improved transparency and accountability towards achieving Alberta’s desired social, economic and environmental outcomes. A coordinated and comprehensive communications approach about changes to the system and the *risk-management approach*, along with meaningful engagement of the public, are suggested as ways to build public confidence.

**Transform Culture** – The culture within the Government of Alberta will need to change in order to bring down silos and support integration and coordination in an Enhanced System. There also needs to be openness in using various regulatory approaches to assure the public that social, economic and environmental outcomes are met.

**Manage Change** – Changing a system that has been in place for several decades will require adequate government resources, skills, knowledge and time to ensure the transformation is effectively managed. A formal effort to manage the required changes and provide role clarity are also imperative.

## Appendix A. Engagement Sessions

STAKEHOLDERS GROUPS & FIRST NATIONS	SESSION	DATE
<b>Issues and Opportunities</b>		
Municipalities and Municipal Associations	Briefing/Workshop	May 19
Environmental Non-Governmental Organizations (ENGOS)	Briefing/Workshop	May 19
Landowners and Landowner Associations	Briefing/Workshop	May 21
Government of Alberta Ministries and Agencies	Briefing	May 27
Landowners and Landowner Associations	Briefing/Workshop	June 24
First Nations	Briefing/Workshop	August 12
Oil & Gas Industry	Briefing/Meeting	March 30 & June 21
<b>System Enhancement Options</b>		
Government of Alberta Ministries and Agencies	Workshop	August 11
Landowners and Landowner Associations/ENGOS/Municipalities and Municipal Associations/First Nations/Oil & Gas Industry	Workshop	August 12
First Nations	Workshop	September 16 & September 17
ENGOS	Workshop	September 23
<b>Preferred System Enhancements</b>		
Landowners/ENGOS/Municipalities/First Nations/Oil & Gas Industry/Government of Alberta Ministries and Agencies	Forum	October 1

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ISBN 978-0-7785-6363-1  
PDF ISBN 978-0-7785-6366-2

DECEMBER 2010

