

Transparency Guidelines for Information under the *Canada Oil and Gas Operations Act*

1.0 Background and Purpose

On 27 February 2016, certain sections of the *Energy Safety and Security Act* (ESSA) came into force. Among other things, the ESSA amends the *Canada Oil and Gas Operations Act* (COGOA) and *Canada Petroleum Resources Act* (CPRA) to give the National Energy Board (NEB) new tools for increasing transparency.

Much of the information and documentation provided for the purposes of the COGOA or its regulations is privileged under subsection 101(2) of the CPRA. However, the amendments to the COGOA and CPRA enable the NEB to:

- publicly disclose information regarding the applicants for operating licences¹ and authorizations², and the scope, purpose, location, timing and nature of the proposed work or activity – CPRA subsection 101 (8);
- conduct a public hearing in relation to the exercise of any of its powers or the performance of any of its duties – COGOA section 5.331;
- publicly disclose information or documentation provided for the purposes of a public hearing – CPRA subsection 101 (9); and
- disclose information or documentation related to safety or environmental protection that is not commercially sensitive or risks impairing security – CPRA subsection 101 (10).^{3,4}

As part of the NEB's commitment to transparency, the NEB intends to use these new tools to significantly increase the public disclosure of information under the COGOA. The purpose of these guidelines is to clarify the NEB's expectations with respect to the disclosure of information under the COGOA.

¹ In these guidelines "operating licence" refers to what the NEB issues under paragraph 5(1)(a) of the COGOA.

² In these guidelines "authorization" refers to what the NEB issues under paragraph 5(1)(b) of the COGOA.

³ This is a high level summary. Refer to the legislation for full details and exact requirements.

⁴ The amendments from the ESSA do not change the types of information that may be disclosed under subsection 101(7) of the CPRA (e.g. information from exploratory wells, delineation wells, development wells, geological work, geophysical work, or geotechnical work, etc.).

2.0 Implementing ESSA's Transparency Provisions

The NEB's implementation of the above amendments to the COGOA and CPRA will include the following measures:

Operating Licences

The NEB will publish the names of companies who have received an operating licence under paragraph 5(1)(a) of COGOA on the NEB website annually.

Authorizations

1. Brief Project Description

The NEB expects applicants for authorizations to file a brief project description (approximately 1-5 pages) that includes the name of the applicant, scope, purpose, location, timing and nature of the proposed work or activity. This information is not privileged and will be publicly disclosed. Applicants are expected to e-file⁵ brief project descriptions on the NEB website.

The NEB will use the brief project description to make an early determination of whether a hearing should be conducted. If the applicant fails to provide a brief project description, it will result in delays to accommodate additional process steps.

2. Public Hearings

The NEB will determine if a public hearing is warranted based on the information provided by the applicant, either in the brief project description or in the application itself, using the following criteria:

- Is an environmental assessment required under the *Canadian Environmental Assessment Act, 2012* (i.e., is the project designated under the *Regulations Designating Physical Activities*)?
- Is the project novel, unique, or unusual?
- Is there likely to be significant public interest in the application?

If the NEB decides to conduct a hearing, information provided for the purposes of the hearing is not privileged (e.g., the application, written evidence, responses to information requests, motions, reply, argument, etc.). This information will be publicly disclosed unless the NEB grants confidentiality under sections 5.34 and 5.35 of the COGOA for information that is commercially sensitive or risks impairing security. Applicants are expected to e-file information

⁵ To e-file, go to the NEB website www.neb-one.gc.ca. Under the section called "Regulatory Documents" click on "Submit Applications and Regulatory Documents" and then the "File under COGOA/CPRA/OGOA" button.

provided for the purposes of the hearing on the NEB website, except for confidential information under sections 5.34 and 5.35 of the COGOA.

Applicants requesting confidentiality under sections 5.34 and 5.35 of the COGOA must file the following with the NEB:

1. A cover letter containing the request for confidentiality and reasons for the requests, as well as a summary of the nature of the information to be treated confidentially;
2. If possible, a redacted version of the filing (which does not contain the information requested to be kept confidential); and
3. Unredacted copies of the filing that the applicant requests to be kept confidential. The filings must be provided via hand delivery, ordinary mail, registered mail or courier to the Secretary of the Board in a double sealed envelope under confidential cover.

If the NEB issues an authorization after the public hearing, companies are expected to provide written consent to enable post-approval project information to be publicly accessible online. Apply the guidance in the Consent to Disclosure section with modifications where needed.

3. Consent to Disclosure

If the NEB decides not to conduct a hearing, applicants are expected to provide written consent to enable project information to be publicly accessible online. The attached COGOA template consent form in Appendix 1 encompasses the public disclosure of all the information or documentation provided in relation to the project, except for information that is commercially sensitive or will impair security. This includes the application, responses to information requests and condition compliance information.

Applicants are expected to e-file their consent form and redacted versions of project-related documents on the NEB website. Unredacted versions of documents with sensitive information must be sent via hand delivery, ordinary mail, registered mail or courier in a double sealed envelope under confidential cover to:

The Northern Applications Director
National Energy Board
517 Tenth Avenue SW
Calgary, Alberta
T2R 0A8

If the applicant does not consent to disclosure, it will result in delays to accommodate additional process steps. Even if an applicant consents to disclosure, unreasonable redactions can also result in delays.

4. Safety and Environmental Protection Information

If the applicant does not provide written consent to disclose information, the NEB will rely on subsection 101(10) of the CPRA to publicly disclose information related to safety or

environmental protection. The NEB will ask the person who provided the information for a waiver of the notice requirements under subsection 101.1(2) of the CPRA. If the waiver is not given, the NEB will then follow the notice requirements outlined in subsection 101.1 of the CPRA which could take months. This process includes steps for the NEB to provide notice of disclosure, the person to provide representations, the NEB to provide notice of its decision regarding disclosure, and potential review by the Federal Court. Without a waiver, this process must be followed each time the applicant provides information related to safety and environmental protection that the Board wishes to disclose, resulting in significant delays.

Appendix 1: Consent Form Template



Consent to Disclosure

Pursuant to subsection 101(2.1) of the *Canada Petroleum Resources Act* (CPRA)

Subject to section 101 of the CPRA, the National Energy Board (NEB) wishes to make more information provided under the *Canada Oil and Gas Operations Act* (COGOA) publicly accessible online.

_____ (the Applicant), is applying for an authorization under paragraph 5(1)(b) of the COGOA for

_____ (the Project).

By signing this form, the Applicant is consenting to the public disclosure of all the information or documentation provided in relation to the Project, except for what the Applicant determines to be:

- information that, if disclosed, could reasonably be expected to result in a material loss or gain to a person, or to prejudice their competitive position, and the potential harm resulting from the disclosure outweighs the public interest in making the disclosure;
- financial, commercial, scientific or technical information or documentation that is confidential and has been consistently treated as such by a person who would be directly affected by its disclosure, and for which the person's interest in confidentiality outweighs the public interest in its disclosure;
- information that, if disclosed, there is a real and substantial risk it will impair the security of pipelines, as defined in section 2 of the COGOA, buildings, installations, vessels, vehicles, aircraft or systems, including computer or communication systems, used for any work or activity in respect of which the COGOA applies — or methods employed to protect them — and the need to prevent its disclosure outweighs the public interest in its disclosure; or
- classes of information or documentation described in subsection 101(7) of the CPRA⁶.

The Applicant releases the NEB, its officers, agents or employees from any claims, demands, losses and liability arising out of or related to the disclosure of information under this consent.

⁶ For example, information in respect of exploratory wells, delineation wells, development wells, geological work, geophysical work, or geotechnical work, etc.

Name of Applicant

Date

Signature of Officer on behalf of
Applicant

Name of Officer

