

*What We Heard Report: System Options*  
First Nations & Stakeholder Engagement  
Regulatory Enhancement Project

September 27, 2010

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## 1. EXECUTIVE SUMMARY

This is a report of the stakeholder feedback from a session held for First Nations and stakeholder groups in the afternoon on August 12, 2010.

### 1.1. Background

*Energizing Investment*, the March 2010 report on Alberta's competitiveness in the oil and gas industry pointed to a need for improvement in Alberta's regulatory system. The policy assurance (or regulatory) system currently in place for oil and gas in Alberta has become increasingly complex and is characterized by a lack of integrated policies and delivery mechanisms. The Regulatory Enhancement Project (REP) will deliver recommendations for a renewed and integrated policy assurance system that will contribute to Alberta's overall competitiveness while protecting the environment, ensuring public safety and conservation of resources. This project will gather and consider First Nations and stakeholder input on relevant Government of Alberta (GoA) policies and initiatives as system design recommendations are being developed.

The project will help accelerate a shift to an oil and gas policy assurance system. This will assure provincial policy objectives are met, while enabling developers to use cost-effective and innovative approaches to improve environmental performance and meet required outcomes.

The REP will culminate with a final report with recommendations for:

- Aligning the policy assurance system with government policy direction (policy integration);
- A renewed policy assurance/regulatory system, with a policy assurance performance measures framework; and
- Implementation strategies.

### 1.2. Key Findings

The First Nations and stakeholder participants brought a broad range of perspectives to the discussion on the materials presented in the workshops. This was reflected in the diversity of opinion on the options. Some key findings that emerged:

- In response to the structural options there were a number of ideas on strengths and weaknesses. In general the participants are most interested in how the organizations will work after restructuring.
- In the discussion on policy assurance approaches there was a great deal of concern expressed about changing to less prescriptive approaches under a new policy assurance system. At the root of this concern was an apparent lack of confidence that regulators would determine the appropriate level of tolerance for impact, make the right assessment of risk and manage it to the satisfaction of those affected.

## 2. INTRODUCTION

### 2.1. Background

*Energizing Investment*, the March 2010 report on Alberta's competitiveness in the oil and gas industry pointed to a need for improvement in Alberta's regulatory system. The Regulatory Enhancement Project (REP) has been undertaken with the belief that Alberta can be more competitive while maintaining a high level of commitment to safety and environmental standards. The REP includes three rounds of engagement sessions with First Nations and stakeholders from the oil and gas industry, government and other broad interest groups. These broad interest groups include: environmental non-government organizations (ENGOS), landowners, and municipalities. Over the course of the project First Nations and stakeholders will have opportunities to provide input on a variety of topics pertaining to the design of Alberta's policy assurance (or regulatory) system.

A policy assurance system refers to the systems, processes and capacities government uses to assure that the intended results of public policy are being achieved. Policy assurance may use a variety of tools, including regulation, program evaluation, performance standards, incentives, and cross-compliance mechanisms.

### 2.2. First Nations & Stakeholder Engagement

To meet the project stakeholder engagement objectives the REP is hosting three rounds of First Nations and stakeholder engagement sessions. The first round of sessions consisted of workshops with First Nations and broad stakeholder groups, and meetings with industry stakeholders from March to August 2010. The second round of engagement consisted of a workshop on August 12, 2010 with First Nations and stakeholders, including ENGOS, industry, landowners, and municipalities. In the workshop, hosted and attended by the MLA Task Force that is leading the Regulatory Enhancement Project, First Nations and stakeholders were invited to participate in discussions about the future of Alberta's policy assurance system and provide feedback on preliminary system design work.

A Regulatory Enhancement Project (REP) Stakeholder website was created as an alternate method of communicating with, and capturing the feedback of more interested parties. This includes those that participated in the workshops and the general public. The website solicited feedback on topics similar to what was presented during the second phase of the engagement process. Feedback was received through a questionnaire posted on the website from Friday, August 27, 2010 until Friday, September 10, 2010. A total of 5 completed questionnaires were received. The small number of responses creates some concerns about confidentiality of the respondents. Analysis and assessment of the feedback is also difficult because of the low numbers. For these reasons, the narrative responses from the web questionnaire have been compiled and share with the REP team, but are not incorporated into this report.

This report is a summary of the input and feedback received at the August 12, 2010 workshop. It is important to note that all First Nations and stakeholder groups were not equally represented at the session. The intent of the session was to receive input on materials presented by REP project team members. There was not an attempt to move participants to a consensus response.

The output from the stakeholder sessions will be provided for consideration to the REP team. While this report contains specific issues that were raised in the First Nations and stakeholder engagement session regarding the policy assurance system, it is important to note that not all of the issues are in scope for the Regulatory Enhancement Project; or that they may be addressed at a strategic level in the system design work. The issues described in this report have not been validated.

## 3. SYSTEM OPTIONS

### 3.1. Regulatory Approaches

#### 3.1.1. Regulatory Approaches Presentation

The following overview of the preliminary system design work related to regulatory approaches was provided by REP team members. The current policy assurance system focuses on an “approvals” process to ensure that risks to health and safety of Albertans and the environment are appropriately managed. However, because some concerns have been raised about the existing regulatory approvals process a review of regulatory approaches has been included within the REP. The preliminary system design work identified that shifting from an emphasis on approvals to one that makes better use of other policy assurance tools may allow for a more effective, efficient and innovative approach to regulating oil and gas activity in the province. It was noted, however, that these tools need to reflect the level of risk that is posed by an activity wherein more oversight and a prescriptive approach is required for activities that pose greater risks. Tools such as codes of practice, planning, regulations, standards, inspections, monitoring and reporting could be utilized for activities that pose lesser risks. It was noted that any new tool must be appropriately evaluated in order to ensure that it does not increase risks to the environment or the health and safety of Albertans. Participants contributed their thoughts to this preliminary work during the two breakout sessions; which has been summarized below in four general topic areas: *Risk Definition; Risk Tolerance; System for Managing and Assessing Risk; and Trust.*

#### 3.1.2. Participant Responses

##### **Risk Definition**

Participants expressed the need for further clarity on how risk was being defined with respect to policy assurance approaches. Participants noted that, depending upon one’s perspective, the perception of risk as it relates to one situation (or project) can be very different for each of the affected parties. Further to this, it was noted that the level of risk may differ at various points in the process. Participants expressed concern over using a probability-based formula to define risk; especially given the previous point that acceptable levels of risk differ for affected parties. An ENGO participant noted that a risk-based system needs to consider both cumulative risk and incremental risk and that assessing incremental risk on its own is unacceptable.

##### **Risk Tolerance**

Related to the above discussion, participants noted that the amount of tolerance that participants have for risk is also relative to one’s perspective. The example that was provided was that the concept of broad risk means something different to each of the affected parties. It was emphasized that community / personal safety concerns are paramount to landowners.

General concern over the impacts of setting the standard for risk at too low of a level was also discussed. A First Nations participant expressed concern over how a risk-based system would respond to either an error in risk assessment or the identification of new risks at a point when it is too late to build a response into the process. Echoing previous comments related to setting the standard for risk at too low a level, it was suggested that responding to new or overlooked

risks could be best mitigated at the outset of the process by setting a high standard for assessing risk.

The importance of the role of compliance was also discussed in the context of the Deepwater Horizon example. It was felt that, in this example, a high level of risk was assumed by the company yet ultimately the outcome of the situation was the result of the actions of the staff on the oil rig who took a short-cut. It was identified that crises / disasters are not planned but occur nonetheless and, as such, a fail-safe needs to be in place.

A landowner representative discussed a decreased level of trust with emergency planning zones (EPZ), as the size of the EPZ's are decreasing while emission (parts per million (ppm)) thresholds are increasing. A landowner participant also suggested incorporating the industry / landowner agreements into licensing as a way to support the landowners in implementing agreements that affect them.

### **System for Managing and Assessing Risk**

Participants provided many suggestions regarding system design elements as they relate to managing and assessing risk. Specific to regulators, participants noted that there is duplication of effort by the Energy Resources Conservation Board (ERCB) and the Surface Rights Board (SRB) which needs to be reviewed and addressed. A landowner participant identified that the SRB needs to be included in the list of regulators that will be affected by system changes.

Specific to process, participants identified that reclamation plans need to be developed early in a project's lifecycle in order to ensure that they reflect the appropriate level of priority. When developing a reclamation plan is left to the end of a project lifecycle, company economics tend towards making reclamation less of a priority.

A landowner participant discussed their need for the system to provide them with more support. Currently the onus for hazard identification is on the landowner and they felt that it should be the system itself that identifies and manages risks. A landowner participant also identified that landowners cannot afford to participate in consultation processes for the length of time that large business is able to do so.

An Industry participant commented that their understanding of the REP process is to "straighten the road" in order to simplify the process. The participant noted that the Canadian Association of Petroleum Producers (CAPP) has communicated that the current regime for compensation, regulations, etc., is not conducive to business and that if regulations become more stringent then business will leave the province.

A representative of a municipality noted that the dynamic nature of a risk-based system is beneficial to the process; however they also cautioned that it is unacceptable for post-approval risk to be transferred to them. In order to embed the principle of fairness into the system it has to be included throughout the project lifecycle, including post-review.

An ENGO representative expressed the importance increased transparency and honesty within the new system. That is, that the GoA needs to be honest about why certain choices are made and needs to provide the public with explicit justification of the risks that are being accepted. With respect to technology, an ENGO representative noted that the strength of technology should be evaluated on its own as opposed to the current system which seems to censor with respect to the environment at two different points in the process. Further, all trade-offs

(environment, economy and health) need to occur at one, as opposed to multiple, points in the system.

A First Nations participant suggested that the Design Team not rely too much on Best Management Practices or Codes of Practice because this causes difficulties with aboriginal consultation.

Additionally it was noted that it should be the GoA (not industry) that bears the liability costs associated with the system because this would help to ensure objectivity in decision-making and mitigate undue influence on the policy assurance process. It was noted by a participant that the tool (regulations) for managing risk is in place, but is currently not being properly implemented. Another participant noted that the inconsistent application of regulations leads to delays in the process.

### Trust

Issues were raised about the level of trust that First Nations and stakeholders maintain with respect to the GoA and industry. Representatives from several of the participant groups expressed concern that their input would not be addressed by the REP. It was also communicated that it felt like participants were being asked to make decisions without enough information and that there was a perception that industry was actually a strong, driving force behind the REP. A First Nations representative expressed concern over the feeling that government had already determined their path forward and that the information obtained during this feedback session will not be used because “the ball is already rolling.” A landowner representative identified that the concept of building trust into the system needs to be augmented with the integration of respect for landowners as stakeholders in the process.

## 3.2. Regulatory Structures

### 3.2.1. Regulatory Structures Presentation

The following overview of the preliminary system design work related to regulatory structures was provided by REP team members.

The Regulatory Enhancement Project is exploring opportunities to make structural and organizational changes which would:

- Improve performance through better alignment among the various bodies currently conducting policy assurance activities, by reducing duplication and variability.
- Address the lack of a “single entry point”, “single decision making process”, “single relationship management” or “single application/permit” across the whole of the policy assurance system.

The policy assurance structure discussion focused on four options that are being investigated by the REP team. These included:

- Current state
  - Activities in all four stages of the disposition lifecycle (Application, Review, Response and Post Approval) are conducted with some degree of coordination between agencies. This coordination is internal within government/regulators.

- Group's, companies 'or Individual's contact is with each agency or its components. Responses are delivered by each agency.
- One submission
  - The Application stage is conducted through a single Window that could be part of one of the regulating bodies or be separate from all the current regulators.
  - Process alignment takes place within the Review stage between regulators (internal).
  - The single Window for Applications is not possible without an Aligned Review stage.
  - The Response and Post Approval stages remain either independent or coordinated.
- One window
  - Applications are conducted through a single Window.
  - Responses are conducted through a single Window.
  - Review stage is aligned.
  - Post Approval stage is aligned, and the interface with regulated parties (related to post approval activities) is conducted through a single Window.
  - The one window interface for applications, responses and post approval activities may use the same or a different single Window.
- One regulator
  - There is a policy assurance delivery organization (regulator) which receives direction from the policy system and conducts all four stages on an integrated basis.

### 3.2.2. Participant Responses

The following are participant input on the strengths and weaknesses of each of the options, and what is required for each of the options to be successful.

#### Current State

The workshop participants identified the following *strengths* of the current policy assurance structure:

- It may provide a level of specialized expertise specific to the regulatory lifecycle that may not be available under the proposed structures, in which one agency may be responsible for multiple policy assurance functions.
- It was suggested that this structure may protect independent decision making because each branch of government is making decisions independently and is not influenced by other ministries and agencies. It was also recognized that this is a weakness because there is a lack of integration and consistency among decision makers for oil and gas approvals

The workshop participants identified the following *weaknesses* of the current regulatory structure:

- There are inconsistencies among ministries and regulators, and having to deal with multiple regulators results in additional costs and time for proponents, interested parties and government.

- There was concern expressed that certain interested parties, such as ENGOs and First Nations, are not involved at an early stage in the planning and disposition lifecycle process.

No input or feedback was gathered about what is needed for the current state to be successful.

### One Submission

The workshop participants identified the following *strengths* of the one submission policy assurance structure:

- It provides a single point of contact for the oil and gas companies, but still retains the technical expertise needed (i.e. retains the technical capacity necessary to ensure that the right people with the right training and knowledge are involved).
- It maintains the divisions of responsibility which might also ensure autonomy and independence among ministries.

The workshop participants identified the following *weaknesses* of the one submission policy assurance structure:

- The government appears to bear the burden of alignment in the application review process among the ministries, and there could be considerable administrative costs to government related to this.
- Many of the same issues with the current state still apply in this option.

No input or feedback was gathered about what is needed for one submission to be successful.

### One Window

The workshop participants identified the following *strengths* of the one window policy assurance structure:

- It provides alignment and coordination of the policy assurance process; and it may result in shorter approval timelines.
- This option is easier to understand and appears to simplify the process. It provides both proponents and stakeholders one point of contact or window which improves navigation of the system. There is increased transparency because there is a single point of contact to deal with.
- It maintains individual expertise and autonomy during project assessment, with unifying checkpoints.
- This option helps ensure one-voice and one-decision on all submissions and requests. For example, currently Aboriginal consultation has three different agencies determining if the consultation was appropriate. Each regulator has a different policy and different factors to consider which makes it difficult to have a single, consistent response. The one-window structure also eliminates the situation where one regulator will use the decision of another regulator as its own.

The workshop participants identified the following *weaknesses* of the one window policy assurance structure:

- This option could result in longer timeframes because there may be coordination challenges among the various ministries and agencies; and inefficient interaction between the ‘window’, and ministries and agencies.

In order for this option to be successful, participants indicated that it is important to ensure there are enough resources at the ‘window’ to meet the demand and the requirements (i.e. have the necessary capacity and expertise).

### **One Regulator**

The workshop participants identified the following *strengths* of the one regulator structure:

- This option could produce efficiencies by taking advantage of economies of scale and reducing duplication. For example, it would be effective to have one body undertake inspection as opposed to multiple ministries conducting separate inspections.
- There is clear accountability because there is only one regulator involved.

The workshop participants identified the following *weaknesses* of the one regulator structure:

- This option would require a large organization, with multiple departments, that could have many of the same issues that the current system with multiple regulators has.
- There is a risk of losing the mandates of the existing ministries. Concern was expressed that an appropriate balance between environmental, economic and social pillars will be challenging to maintain in this option.
- Implementing this option would be costly.

In order for this option to be successful, participants indicated that it is critical to maintain the expertise of the individual ministries related to each component of the regulatory lifecycle. It will also require strong integration and alignment between the policies set out by government and policy assurance system delivery.

A variation within this option that was suggested is to separate the approvals functions from monitoring and compliance.

## 4. CONCLUSIONS

There was active participation by attendees in the sessions on August 12. The feedback on structural options points to a need for more detail and discussion in subsequent sessions about how each of the policy assurance system options will work; rather than what they look like. The discussion on the approaches to managing risk indicated a need to fully explore and explain the range of policy assurance tools and how risk based approaches will work towards improving safety and protecting the environment.

### 4.1. Next Steps

The input from First Nations and stakeholders was heard by the MLA Task Force members directly and will be considered in REP system design work. As the work of the REP progresses there will be opportunities for stakeholders to provide additional input. In October of 2010 a forum that will include representatives from all groups, including industry and government, will meet to review and respond to the detailed system design work of the Regulatory Enhancement Project.