

Memorandum of Understanding

**Respecting the Coordination of
Investigations with Regard to Transportation Occurrences**

Between

**Human Resources and Skills Development Canada,
as represented by the Deputy Minister of Labour
(HRSDC-Labour)**

And

**The Transportation Safety Board of Canada
(TSB)**

1.0 Authorities and responsibilities

- 1.1 The Chair of the Transportation Safety Board (TSB) is responsible for the administration of the *Canadian Transportation Accident Investigation and Safety Board Act (CTA/ISB Act)*. TSB is an independent agency, separate from other government agencies and departments that reports to Parliament through the President of the Queen's Privy Council for Canada.
- 1.2 TSB's mandate is to advance transportation safety in the marine, pipeline, rail and aviation modes of transportation by conducting independent investigations, including public inquiries when necessary, into selected transportation occurrences in order to make findings as to their causes and contributing factors; to identify safety deficiencies, as evidenced by transportation occurrences; to make recommendations designed to eliminate or reduce any such safety deficiencies; and to report publicly on its investigations and on its findings in relation thereto.
- 1.3 There is a TSB Director of Investigation for each mode of transportation. These Directors of Investigations (Aviation, Marine and Rail/Pipeline) have exclusive authority to direct the conduct of investigations on behalf of the TSB under the *CTA/ISB Act*. TSB appoints an Investigator-In-Charge for every investigation.
- 1.4 The Minister of Labour is solely and primarily responsible for the enforcement and administration of Part II of the *Canada Labour Code (Code)* in respect of employment upon or in connection with the operation of any federal work, undertaking or business and in respect of the Public Service of Canada, as defined in the *Public Service Labour Relations Act*, and of which the TSB is part, and for that purpose will from time to time designate qualified persons as Health and Safety Officers.
- 1.5 The Minister of Labour's policy objective on occupational health and safety is the prevention of accidents and injury to health arising out of, linked with or occurring in the course of employment. In the application of that policy, Health and Safety Officers designated by the Minister of Labour may, in discharging their legal mandate, conduct inspections and investigations for the purposes of determining whether violations to Part II of the Code have occurred. Where violations have taken place, corrective measures or prosecution action may be recommended.

2.0 Purpose

- 2.1 The purpose of this MOU is to provide:
 - for the coordination of the activities of the TSB and Human Resources and Skills Development Canada - Labour Program (HRSDC-Labour) (including HRSDC-Labour's extended jurisdiction) with respect to the concurrent investigation of transportation occurrences and hazardous occurrences; and
 - agreement as contemplated by section 17 of the *CTA/ISB Act*, including investigation procedures and practices, and the reporting of such occurrences.

3.0 Principles

- 3.1 TSB and HRSDC-Labour recognize that in some circumstances, powers exercised by TSB Investigators and Health and Safety Officers within their respective mandates may overlap.
- 3.2 Each party's activities are relative to their legal obligations generally, and to occupational health and safety specifically, which will be supported as per the procedures outlined in Schedule A, thereby promoting and facilitating cooperation, consultation, mutual assistance and permitting access to information regarding the coordination of all activities with respect to the concurrent investigation of transportation occurrences and hazardous occurrences where the investigations of each party overlap.

- 3.3 In accordance with subsection 15(2) of the *CTA/ISB Act*, and because of the need for the safety investigation by the TSB to obtain timely and uncontaminated information in order to effectively identify safety deficiencies, the requirements and interest of the TSB shall take precedence where conflicting interests arise between the parties in coordinating their activities pursuant to this MOU. Recognizing that HRSDC-Labour is time limited in its investigative activity pursuant to subsection 149(4) of the Code, the TSB will not unduly delay access by HRSDC-Labour to witnesses or evidence.
- 3.4 For greater clarity, the implementation of this MOU must reflect, in fact and in spirit, the partnership role played by each of the parties in the course of parallel investigations occurring within their respective mandates. As a result of being partners working towards similar safety goals, no party to this MOU shall unduly limit the lawful and necessary exercise of each other's responsibilities.

4.0 Definitions

In this MOU, unless otherwise stated, the following words mean:

- **Code** means Part II of the *Canada Labour Code*.
- **Coordinator** means an official appointed by either party as the point of liaison for the purpose of information exchange regarding an occurrence when a Minister's Observer is not appointed.
- **CTA/ISB Act** means the *Canadian Transportation Accident Investigation and Safety Board Act*.
- **Employee** means a person covered by occupational health and safety provisions in the Code and its regulations.
- **Extended jurisdiction** means authorization for Transport Canada (TC) and the National Energy Board (NEB) to carry out the administration of the Code on behalf of HRSDC-Labour for certain employees on the following basis:
 - Transport Canada for on-board employees in an aircraft, a vessel, or rolling stock on a railway;
 - the National Energy Board for employees in the federal oil and gas (pipeline industry) and the frontier oil and gas sector, excluding those at Head and Regional Offices.
- **Hazardous occurrence** means an accident, occupational disease and other situation involving hazards to the health and safety of employees relating to the operation of an aircraft, a ship (or vessel), a pipeline or rolling stock on a railway, and stems from Part XV of the Canada Occupational Health and Safety Regulations, Part IX of the Aviation Occupational Safety and Health Regulations, Part XIV of the Maritime Occupational Health and Safety Regulations, Part XVI of the Oil and Gas Occupational Safety and Health Regulations and Part XI of the On Board Trains Occupational Safety and Health Regulations.
- **Health and Safety Officer** means a person who is designated as a Health and Safety Officer under section 140 of Part II of the Code and given the powers of section 141 of the Code.
- **Investigator** means a person referred to in Sections 9 and 10 of the *CTA/ISB Act* and given the powers of Section 19 of the *CTA/ISB Act*.
- **Investigator-in-Charge** means a person appointed by, and accountable to, a TSB Director of Investigation for the management, conduct and control of a TSB investigation.
- **Minister's Observer** is a departmental official appointed to observe a transportation or hazardous occurrence investigation.
- **Occurrence**, when used alone, refers simultaneously to both a hazardous occurrence and a transportation occurrence.
- **Occurrence Site** means a place where an occurrence happens and includes the location of any wreckage or victims.
- **Ship** is interpreted as in the *Canadian Transportation Accident Investigation and Safety Board Act*.
- **Site Safety Officer** means a person appointed by the TSB, or acting on behalf of the TSB, who is responsible for ensuring that all activities conducted at occurrence sites are conducted safely in accordance with Part II of the Code and TSB policies and procedures.

- **Transportation occurrence** means a) any accident or incident associated with the operation of an aircraft, ship (or vessel), pipeline, or rolling stock on a railway; and b) any situation or condition that the TSB has reasonable grounds to believe could, if left unattended, induce an accident or incident described in (a), above.
 - Note: More detailed definitions can be found in Section 2 of *CTAISB Act* and Section 2 of the TSB Regulations.
- **TSB Observer** means observer appointed by the TSB to participate in a hazardous occurrence investigation carried out by HRSDC-Labour.
- **Vessel** is interpreted as in the *Maritime Occupational Health and Safety Regulations*.

5.0 Application

5.1 This MOU applies to all transportation and hazardous occurrences.

5.2 This MOU recognizes that HRSDC-Labour and the National Energy Board, pursuant to an existing MOU between those parties creating an “extended jurisdiction”, are responsible for the investigation of hazardous occurrences in the federal oil and gas (pipeline industry) and the frontier oil and gas sector for the application and enforcement of Part II of the *Code*, as follows:

- National Energy Board is responsible on behalf of HRSDC-Labour for employees in the federal oil and gas (pipeline industry) and the frontier oil and gas sector, excluding those at Head and Regional Offices;
- HRSDC-Labour is responsible for employees in the federal oil and gas (pipeline industry) and the frontier oil and gas sector at Head and Regional Offices.

5.3 This MOU recognizes that HRSDC-Labour and Transport Canada, pursuant to an existing MOU between those parties creating an “extended jurisdiction”, are responsible for the investigation of hazardous occurrences in the aviation, marine, and railway industries for the application and enforcement of Part II of the *Code*, as follows:

- Transport Canada on behalf of HRSDC-Labour is responsible for on-board employees;
- HRSDC-Labour is responsible for off-board employees.

6.0 Notification of Occurrences

6.1 The party first informed of a transportation occurrence or of a hazardous occurrence will notify the other party as soon as practicable, in accordance with the procedures set out in Schedule A to this MOU and using the contact information provided as per clause 12.3.

6.2 Each party shall immediately advise the other party of any investigation, remedial measure or action it plans to conduct, including its scope, using the procedures specified in Schedule A.

7.0 Information Gathering and Exchange

7.1 The parties will exchange appropriate information in accordance with the provisions of the applicable legislative authorities governing privacy and access to information.

7.2 When requesting information from HRSDC-Labour, the TSB will send a written request in accordance with the procedures specified in clause 6.0 of Schedule A, in which case HRSDC-Labour will expedite the provision of the information.

7.3 With respect to occurrences, the exchange of information between Transport Canada, the National Energy Board and the TSB is managed by their respective offices, as specified in clause 6.3 of Schedule A.

8.0 Media Relations and Release of Information

8.1 Subject to clause 8.2 of this MOU, where both parties are conducting investigations concerning the same occurrence for their respective purposes, the release of information to the media will be coordinated between both parties.

8.2 It is agreed that each party will have the authority to release information concerning its respective jurisdiction, but only the TSB may release information pertaining to the causes and contributing factors of an occurrence, that the TSB has investigated or has decided to investigate.

9.0 Dissemination

9.1 Both parties agree to disseminate the working arrangements made under this MOU, and any subsequent modifications, to their respective regional counterparts and to any other affected party involved with occurrences.

10.0 Means of Conflict Resolution

10.1 Issues arising out of this MOU that cannot be resolved at the staff level of both HRSDC-Labour and TSB will be referred to the signatories or respective designated delegates for resolution.

11.0 Consultation

11.1 Both parties may meet as frequently as necessary to discuss issues of concern and to review or amend this MOU as required. Such meetings may be convened at the request of either party. The desired frequency of meeting is once per year.

12.0 Amendments and Termination

12.1 This MOU may be terminated with three months written notice to the other party.

12.2 This MOU and attached Schedule A may be amended from time to time, separately or jointly, on the written agreement of the Assistant Deputy Minister, Compliance, Operations and Program Development of the Labour Program, and of the Chief Operating Officer of the Transportation Safety Board.

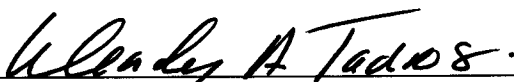
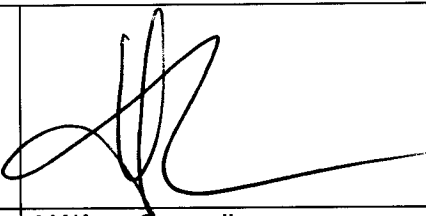
12.3 Every six months from the date of signature of this MOU, the TSB will provide to each party an updated contact list for all transportation modes including HRSDC-Labour and extended jurisdictions (as defined above), and if applicable, HRSDC-Labour will provide updated contact information for its Access to Information and Privacy office.

Any notice if directed to Transportation Safety Board:

Chair
Transportation Safety Board of Canada
200 Promenade du Portage
4th Floor
Gatineau, Québec
K1A 1K8

Any notice if directed to HRSDC-Labour:

Deputy Minister
Human Resources and Skills Development Canada
Labour Program
11th Floor, Place du Portage Phase II
165 Hôtel-de-Ville Street
Gatineau, QC
K1A 0J2

	
Wendy A. Tadros Chair The Transportation Safety Board of Canada	Hélène Gosselin Deputy Minister of Labour
Signed on this 27 th day of January 2011	Signed on this 07 day of February 2011

SCHEDULE A

1.0 Purpose

The purpose of this Schedule is to outline the specific responsibilities of the HRSDC-Labour and the TSB regarding the implementation of the MOU.

2.0 Notification of Occurrences

2.1 Upon learning of a hazardous occurrence, the appropriate HRSDC-Labour regional office (or Transport Canada or National Energy Board office, if applicable) in accordance with subsection 22(1) of the *CTA/ISB Act*, will:

- (a) without delay provide the appropriate TSB office, by telephone (using the contact information provided as per clause 12.3 of the MOU), with particulars of the hazardous occurrence;
- (b) after complying with (a) above, without delay advise (using the contact information provided as per clause 12.3 of the MOU), the appropriate TSB office of any investigation that HRSDC-Labour (or Transport Canada or National Energy Board, if applicable) plans to conduct and of any remedial measures or actions, and the scope thereof.

2.2 Upon learning of a transportation occurrence, in which the Minister of Labour has a direct interest for purposes of Part II of the Code as described in clause 2.3 below, and in accordance with subsection 23(1) of the *CTA/ISB Act*, the TSB will:

- (a) without delay provide the appropriate HRSDC-Labour regional office (or Transport Canada or National Energy Board office, if applicable), by telephone (using the contact information provided as per clause 12.3 of the MOU) with particulars of the transportation occurrence;
- (b) after complying with (a) above, without delay advise (using the contact information provided as per clause 12.3 of the MOU) the appropriate HRSDC-Labour regional office (or Transport Canada or National Energy Board office, if applicable) of any investigation it plans to conduct and the scope of the investigation.

2.3 For the purposes of clauses 2.2 and 4.3 of this Schedule, a transportation occurrence in which the Minister of Labour has a direct interest refers to:

- (a) any hazardous occurrence reported to the TSB that is required to be reported to a Health and Safety Officer under the Regulations made pursuant to Part II of the *Code*;
- (b) any occurrence that, because of the public interest it might generate, should be brought to the Minister of Labour's attention.

3.0 Observers and Health & Safety Officers

3.1 Upon being notified that one party will investigate an occurrence or that HRSDC-Labour (or Transport Canada or National Energy Board, on behalf of HRSDC-Labour) will take remedial measures, the other party will advise the party conducting the investigation or taking the remedial measures of whether it intends to appoint a Minister's Observer or a TSB Observer as the case may be and, if so, of the name of the Observer.

3.2 Where a Health and Safety Officer intends to investigate a hazardous occurrence or take remedial measures relative to a transportation occurrence that is being investigated by TSB, he/she shall inform the TSB investigator of his/her enforcement authority.

3.3 Where a Minister's Observer or a TSB Observer is not appointed, HRSDC-Labour (or Transport Canada or National Energy Board, if applicable) or TSB, as the case may be, may assign an official as Coordinator.

3.4 Neither a Minister's Observer nor a Health and Safety Officer shall participate in the interviewing of witnesses carried out by the TSB nor shall he/she be entitled to examine statements taken by the TSB. This does not, however, preclude a Minister's Observer or a Health and Safety Officer from seeking interviews with witnesses for the purpose of Part II of the *Code*.

3.5 The Minister's Observer will have the privileges provided for in Section 10 of the TSB Regulations; the HRSDC-Labour Coordinator will be entitled only to factual information related to the transportation occurrence. The information provided to the Minister's Observer or the HRSDC-Labour Coordinator by the TSB is not to be used for enforcement purposes.

4.0 Coordination of Investigative Activities

4.1 Each party shall keep the other informed of any significant progress in its own investigation where the other party is also conducting an investigation into the same occurrence or, upon request, if one party has expressed a direct interest in the subject matter of the investigation of the other. Normal points of contact are the Investigator-in-Charge, the Health and Safety Officer, and the Minister's Observer or the TSB Observer, as the case may be.

4.2 The TSB and HRSDC-Labour (or Transport Canada or National Energy Board, if applicable) will inform each other of any plans to disassemble products or equipment or to conduct tests or laboratory analysis, and provide an opportunity for appropriate technical specialists to attend.

4.3 After having determined that the Minister of Labour has a direct interest in a transportation occurrence in accordance with clause 2.3 above, the TSB will send a copy of the draft report on its findings and safety deficiencies to the Minister of Labour. The draft report will be treated in a confidential manner by the Minister of Labour in accordance with subsection 24(3) of the *CTA/ISB Act*.

4.4 The final report of TSB on its findings and recommendations will be sent to the Minister of Labour, the appropriate Regional Director of HRSDC-Labour and the Minister's Observer and Coordinator, if any.

5.0 Concurrent Investigation Practices

5.1 In the event that HRSDC-Labour (or Transport Canada or National Energy Board, on behalf of HRSDC-Labour) and the TSB are investigating the same occurrence for their respective purposes, the TSB shall be the lead agency and shall allow HRSDC-Labour (or Transport Canada or National Energy Board, if applicable) concurrent access to the occurrence site for the purpose of conducting its investigation.

5.2 In the event that both parties are investigating the same occurrence for their respective purposes, each party shall protect for the other party the occurrence site and the evidence therein and, more specifically, before disturbing anything on the occurrence site, inform the other party, ensure that the conditions of the occurrence site and the evidence contained therein are recorded properly, and inform the other party of all actions taken with respect to the management of the occurrence site.

5.3 Each party shall inform the other party of any decision that may impact on the other party's investigation, including the prohibition to interfere with an occurrence site pursuant to Part II of the *Code* and the direction that may have been given by a Health and Safety Officer not to disturb anything or any place.

5.4 In the event that both parties are investigating the same occurrence for their respective purposes, each party shall consult with the other before releasing the occurrence site.

5.5 It is understood that while Health and Safety Officers are authorized by Part II of the Code to investigate any hazardous occurrence, they are under statutory obligation to investigate the death of an employee that occurs in the work place or while the employee is at work or that results from an injury suffered in the same manner. Furthermore, Health and Safety Officers may, in conjunction with the Site Safety Officer, if one has been appointed, conduct any inspection required or issue any direction related to any unsafe work activity observed at an occurrence site to ensure the health and safety of parties attending at an occurrence site, or to respond to a work refusal pursuant to Part II of the Code.

6.0 Access to Information Requests Procedures

6.1 To the extent that the exchange of information between HRSDC-Labour and TSB pursuant to this Memorandum of Understanding is subject to applicable legislative authorities governing privacy and access to information, the following procedure applies to requests by TSB to HRSDC-Labour involving the release of information comprised of personal information related to, or that may be restricted by section 144 of the *Canada Labour Code*.

- (a) The TSB will submit a written request identifying the information requested to the Regional Director, Labour Program (HRSDC-Labour Regional Directors: A mailing address can be found at: [Http://www.hrsdc.gc.ca/en/labour/contact_us/labour.shtml](http://www.hrsdc.gc.ca/en/labour/contact_us/labour.shtml), or can be obtained by using the toll-free telephone number 1-800-641-4049). The ATIP application fee requirement is waived.
- (b) The Regional Director will send TSB's request, and the relevant documents, to HRSDC-Labour ATIP staff.
- (c) The HRSDC-Labour ATIP staff will examine the request and the relevant documents against the provisions of the access to information legislation, and will then return the documents they have authorized for release to the Regional Director.
- (d) The HRSDC-Labour ATIP office will do everything possible to process the TSB request transmitted by the Regional Director within five working days from the date of receipt in their office. There may be circumstances where the HRSDC-Labour ATIP office will not be able to meet the five-day turn-around time. The Regional Director will be informed of unexpected delays, if applicable.
- (e) The Regional Director will then send the documents which have been authorized for release by HRSDC-Labour ATIP staff to TSB.
- (f) The Regional Director will ensure that records pertaining to requests received from the TSB are maintained so as to have an audit trail.

6.2 In respect of any personal information, release will only be authorized by the ATIP office if:

- (a) the individual to whom it relates consents to the disclosure;
- (b) the information is publicly available; or
- (c) the disclosure is in accordance with the *Department of Human Resources and Skills Development Act*

6.3 A Health and Safety Officer from an extended jurisdiction will disclose to the TSB evidence or the results of any inquiry made for the purpose of protecting the health and safety of employees; disclosure will be made in accordance with applicable legislative authorities governing privacy and access to information, including section 144 of the Code. The extended jurisdictions' respective offices will process such inquiries directly with the TSB.