Report on Active Regulatory Approaches in Canadian and International Jurisdictions
Request for Proposal

Prepared on behalf of and in participation with the Crown-Indigenous Working Group on the Proposed *Oil Sands Mining Effluent Regulations*, established by Environment and Climate Change Canada

1. Background

Environment and Climate Change Canada's primary tool for managing water pollution is the *Fisheries Act*. Under subsection 36(3) of the Act, deposits of deleterious substances to fish-frequented water are prohibited unless authorized by regulation. Subsection 36(5) of the Act allows the Governor in Council to make regulations prescribing:

- the deleterious substances authorized to be deposited;
- the waters or places where any deleterious substances are authorized to be deposited;
- the quantities or concentrations of any deleterious substances that are authorized to be deposited;
- the conditions or circumstances under which the requirements subject to which any deleterious substances or any quantities or concentrations of those deleterious substances authorized to be deposited in any waters or places or in the course or conduct of any works or undertakings; and
- the persons who may authorize the deposit of any deleterious substances in the absence of any other authority, and the conditions or circumstances under which and requirements subject to which those persons may grant the authorization.

Regulations made under the *Fisheries Act* generally grant industrial operations the authority to deposit deleterious substances to the environment as long as they meet certain conditions, such as substance concentration limits, acute lethality requirements, and environmental monitoring. Regulations like these (for example the *Metal and Diamond Mining Effluent Regulations*, the *Pulp and Paper Effluent Regulations*, and the *Wastewater Systems Effluent Regulations*) are usually passive in nature, meaning that the authority to deposit effluent is granted automatically to operations covered by the regulations. Under this type of regulation, operators maintain the authority to deposit as long as they meet the requirements, and their environmental performance is not assessed prior to release. Instead, performance is assessed through inspections and enforcement under the regulations. Releases of effluent are also managed by provincial and territorial governments.

The Crown-Indigenous Working Group (CIWG) has decided that this model of regulation is not appropriate for potential releases of oil sands mining effluent. Instead, the CIWG is interested in pursuing a more active approach to managing oil sands mining effluent, such as a permitting or authorization regime. This approach could include pre-release assessments, including an assessment of existing and potential cumulative effects of potential effluents before they are authorized. Under this approach, effluents could also be assessed for potential effects to the environment, ecosystems, human health, traditional land-use and Indigenous rights. Indigenous communities in the oil sands region and downstream could be given an opportunity to meaningfully participate in the decision-making process, and decisions could take into account the potential cumulative and sector-scale effects of oil sands mining effluent.

2. Project overview

The project will identify active regulatory approaches (e.g. permitting, authorization, or ongoing co-management regimes) in other jurisdictions that may be of relevance to the development of an

active regulatory approach for oil sands mining effluent. It will also identify best practices and lessons learned from these approaches. Preference will be given to active regulatory approaches in Canadian jurisdictions, but best-in-class approaches in international jurisdictions should also be included. Emphasis will be placed on active regulatory approaches that include Indigenous participation in decision-making. The CIWG Effluent Regulation Policy Review Subgroup (the Subgroup) will provide the contactor with a list of active regulatory approaches it would like included in the project, but the contractor will also be responsible for identifying examples independently.

3. Objectives

Produce a report on active regulatory approaches in Canadian and international jurisdictions that identifies best practices and lessons learned to inform the development of an active regulatory approach for oil sands mining effluent.

4. Scope of work

4.1. Compile examples of active regulatory approaches (preferably that include Indigenous participation in decision-making) in Canadian and international jurisdictions.

4.1.1. For each example, document how permits or authorizations are issued (i.e. application process, permitting requirements, the bodies responsible for making decisions, and the criteria taken into account) and how Indigenous communities are included in decision-making.

4.1.2. For each example, describe the monitoring, compliance and enforcement, and adaptive management systems.

4.1.3. For each example, identify best practices and lessons learned, including limitations (where documented).

4.1.4. Examples will be provided to the contractor by the Subgroup, but the contractor will also be responsible for identifying examples independently.

5. Deliverables

5.1 Project schedule including regular updates (minimum 2) to the CIWG. Updates should be linked to project milestones and allow for CIWG feedback to be incorporated.

5.2 Bi-weekly, minimum 2 hour meetings with the Subgroup to track progress and budget, discuss work methods, and provide status updates.

- The contractor is responsible to keep on budget and communicate regularly on the status of the proposed schedule and budget.

5.3 Draft report for review three weeks before end of project.

5.4 Documentation of review comments and reconciliation of issues noted.

5.5 Final report.

5.6 Presentation to the Subgroup on key findings.

6. Evaluation metrics and criteria

6.1 Project team expertise (including descriptions of previous experience with effluent regulations and Indigenous co-management frameworks) (40 points)

6.2 Understanding of scope of work (25 points)

6.3 Previous experience with multi-stakeholder projects (skills and management). If previous or current projects are identified, please provide a brief description of the project (25 points)

6.4 Proposed budget (10 points)

7. Submission and project requirements

7.1 Proposal (maximum 7 pages) describing:

- How will project goals be achieved
- Methods to complete the identified scope of work
- Project schedule including meetings, deliverables, responsibilities
- Research team biographies
- Project highlights from three previous projects
- Proposed budget (including GST)

7.2 Acceptable appendices:

- Project team resumes
- Supplemental information
- Project organization chart
- Project schedule

7.3 Proposal submission.

Proposals must be submitted electronically by August 1 to Ryan Abel at rabel@fortmckay.com

7.4 Anticipated contracting and project timelines

- RFP published (July 4, 2022)
- Proposal submission deadline (August 1, 2022)
- Contract awarded (By August 22, 2022)
- Project kick off (By August 29, 2022)
- Bi-weekly project updates (TBD with Contractor)
- Minimum two project updates to CIWG (TBD with Contractor)
- Draft report to Subgroup for review (September 24, 2022)
- Subgroup provides report comments to contractor (October 24, 2022)

- Final report and presentation to the Subgroup (November 7, 2022)

7.5 Contact information:
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