

RSNL1990 CHAPTER P-10
PETROLEUM AND NATURAL GAS ACT
[Sections 10-19 to be Proclaimed]

Amended:

1992 c48 s20; 1994 c28 s28; 1997 c13 s52; 2001 c41; 2004 cL-3.1 s54; 2006 c40 s21; 2011 c14 s1
CHAPTER P-10

**AN ACT RESPECTING PETROLEUM AND
NATURAL GAS**

Analysis

1. Short title
2. Definitions
- 2.1 Labrador Inuit rights
- PART I
- PETROLEUM AND NATURAL GAS
3. Petroleum separate from soil
4. Development area
5. Rights of lessee
6. Payments to owner of undeveloped petroleum
7. Cancellation of order
8. Licences, permits and leases
9. Regulations
- 9.1 Fees and forms
10. Proof of financial responsibility
11. Fisheries Compensation Board for Petroleum Related Damages
12. Compensation fund
13. Assessment
14. Contribution for fund
15. Prevention of damages

16. Subrogation
 17. Regulations
 18. Limitation
 19. Trial Division
 20. Fees, etc.
 21. Survey, prospecting and exploration
 22. Assurances of Crown lands to lessee
 23. Acquisition of privately owned lands
 24. Licensees and permittees
 25. Arbitration
 26. Order to protect life
 27. Order for entry
 28. Offence
 29. Penalty
- PART II
- ROYALTIES

30. Definitions
31. Royalty reservation
32. Royalty share
33. Royalty agreement
34. Royalty share in kind
35. Lien for royalties
36. Liability on payment
37. Artificial transactions
38. Rep. by 2001 c41 s8
39. Regulations
40. Notice to pay Crown
41. Reports, returns and audit

- 42. Assessment
- 43. Additional powers
- 44. Fees and forms
- 45. Penalty
- 46. Offence and penalty
- 47. Application
- 48. Commencement

Short title

1. This Act may be cited as the Petroleum and Natural Gas Act.

RSN1970 c294 s1

[Back to Top](#)

Definitions

2. In this Act

- (a) "Crown petroleum" means petroleum which is vested in the Crown under this Act;
- (b) "development area" means an area declared to be a development area by order of the Lieutenant-Governor in Council made under subsection 4(1);
- (c) "gas" means natural gas and includes substances, other than oil, that are produced in association with natural gas;
- (c.1) "lease" means a lease issued under the regulations;
- (d) "lessee" means a person to whom a lease has been issued under the regulations;
- (e) "licensee" means a person to whom a licence has been issued under the regulations;
- (f) "minister" means the minister appointed under the Executive Council Act to administer this Act;
- (g) "oil" means
 - (i) crude petroleum regardless of gravity produced at a well head in liquid form, and
 - (ii) other hydrocarbons, except coal and gas, and hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from other types of deposits on the seabed or subsoil of the offshore area;
- (h) "permittee" means a person to whom a permit has been issued under the regulations;
- (i) "person" includes a natural person, a company or other corporation as well as the heirs, executors, administrators, trustees, guardians or other legal representatives of them;
- (j) "petroleum", in addition to its ordinary meaning, includes oil and gas;
- (k) "privately owned petroleum" means petroleum or a right, title or interest in it which is held by a person other than the Crown;
- (l) "undeveloped petroleum" means petroleum which has been declared undeveloped under subsection 4(2); and
- (m) "well" means an orifice in the ground made by drilling, boring or in another manner, from which petroleum is obtained or obtainable, or which is being made for the purpose of seeking or obtaining petroleum or ascertaining the presence of petroleum.

RSN1970 c294 s2; 1973 No33 Sch; 1986 c40 s1; 1987 c28 Sch B; 1989 c23 Sch B; 2001 c41 s1; 2006 c40 s21

[Back to Top](#)

Labrador Inuit rights

2.1 This Act and regulations made under this Act shall be read and applied in conjunction with the Labrador Inuit Land Claims Agreement Act and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the Labrador Inuit Land Claims Agreement Act, the provision, term or condition of the Labrador Inuit Land Claims Agreement Act shall have precedence over the provision of this Act or a regulation made under this Act.

PART I

PETROLEUM AND NATURAL GAS

[Back to Top](#)

Petroleum separate from soil

3. (1) Petroleum which exists or which may be found in or under land or land covered by water, including the bed of the sea, and which is within the jurisdiction of the Legislature of the province is declared to be and to have always been property separate from the soil.

(2) Petroleum referred to in subsection (1) is declared to be vested in the Crown and to have always been vested in the Crown, whether the land, or land covered by water, including the bed of the sea, in or under which the petroleum is located was

(a) alienated from the Crown by a statute of the province or by deed, lease, licence or other instrument made under or ratified by a statute of the province;

(b) acquired by or under a statute or law relating to prescription, the limitation of actions, suits or proceedings, or a possessory right; or

(c) acquired by devolution of law or by another means.

(3) Subsection (2) does not apply to petroleum or a right, title or interest in petroleum which, before April 15, 1965, was expressly assured to a person other than the Crown by a statute of the province which is not repealed or by a valid and subsisting deed, lease, licence or other instrument made under or ratified by a statute of the province.

RSN1970 c294 s3

[Back to Top](#)

Development area

4. (1) The Lieutenant-Governor in Council may by order declare an area of the province to be a development area, and the development area shall be defined in the order.

(2) When a development area is defined under subsection (1), the Lieutenant-Governor in Council may in the order defining it or by a subsequent order declare all or a part of privately owned petroleum in the development area which

(a) is not held under an existing permit or lease issued under this Act or the regulations; and

(b) has not, in the opinion of the Lieutenant-Governor in Council, been satisfactorily explored, prospected or developed during the immediately preceding 3 years, to be undeveloped petroleum.

(3) Subject to the approval of the Lieutenant-Governor in Council, undeveloped petroleum may be dealt with and disposed of by the minister representing the Crown in accordance with the regulations, as if it were Crown petroleum.

RSN1970 c294 s4

[Back to Top](#)

Rights of lessee

5. (1) In respect of undeveloped petroleum, the minister and a lessee shall have the same rights they would have, if the minister were the owner in fee simple of the petroleum and the lessee were his or her tenant.

(2) Subject to the terms and conditions of a licence or permit issued to him or her under the regulations, a licensee and permittee has for the period prescribed in the instrument issued to him or her the right to deal with undeveloped petroleum as if it were Crown petroleum.

RSN1970 c294 s5

[Back to Top](#)

Payments to owner of undeveloped petroleum

6. (1) The minister shall, during the currency of a lease issued by him or her in respect of undeveloped petroleum, pay to the owner of that petroleum royalties received by the minister from the lessee in respect of the undeveloped petroleum which remain in his or her hands after deducting expenses incurred by or on his or her behalf in connection with prospecting, developing or producing the undeveloped petroleum, deducting a management fee not exceeding 10% of the balance remaining after deducting those expenses which may be

prescribed by the Lieutenant-Governor in Council and deducting taxes and other money lawfully payable to the Crown by the owner.

(2) Deductions made by the minister for expenses incurred by or on his or her behalf, for management fees and in respect of taxes and other money shall be paid into the Consolidated Revenue Fund of the province.

RSN1970 c294 s6

[Back to Top](#)

Cancellation of order

7. An order may be made by the Lieutenant-Governor in Council cancelling an order made under section 4 relating to the whole or a part of a development area in respect of which there is no existing permit or lease issued under this Act or the regulations, and where an order is made under this section the area to which the order of cancellation relates shall stop being a development area, and the rights of the owner of undeveloped petroleum in the area to which the order relates shall be restored immediately, without the necessity of an assurance of title other than this section, but a further order may be made under section 4 with respect to that area.

RSN1970 c294 s7

[Back to Top](#)

Licences, permits and leases

8. (1) A person shall not undertake or begin an operation relating to the exploration for or exploitation of petroleum within the jurisdiction of the Legislature, except in accordance with an existing licence, permit or lease, issued under the regulations, which relates to the area in which the operation is carried on.

(2) Until regulations are made under section 9 providing for the issue of licences and permits, and with the prior approval of the Lieutenant-Governor in Council, the minister may issue an interim permit to a person authorizing him or her to search, prospect and explore for petroleum in an area in the province described in the interim permit.

(3) An interim permit issued under subsection (2) may be issued for the term and subject to the terms and conditions that, with the prior approval of the Lieutenant-Governor in Council, the minister may prescribe, and the terms and conditions shall be mentioned in the permit.

(4) With the prior approval of the Lieutenant-Governor in Council, the minister may, in an interim permit issued under subsection (2), prescribe, as or as part of the terms and conditions of the interim permit

(a) that the person to whom the permit is issued shall be entitled to receive a permit issued under the regulations when made, where the person so requests within the period prescribed in the interim permit;

(b) the minimum benefits which shall accrue to that person under the permit issued under the regulations; and

(c) that the person to whom the permit is issued shall have and may exercise the rights conferred on a permittee by section 21,

or the terms and conditions referred to in paragraphs (a), (b) and (c), but where the rights referred to in paragraph (c) are conferred by an interim permit, there shall be imposed on the person to whom the permit is issued the liability to pay compensation to be determined in the manner and paid to the persons and in circumstances prescribed or provided in section 21 with respect to the payment of compensation under that section.

(5) A person holding a valid interim permit issued under this section shall have and may exercise the rights and privileges vested in and conferred on the person by the permit and shall fulfil and discharge the duties, obligations and liabilities imposed on him or her by this Act and the interim permit.

RSN1970 c294 s8; 1974 No93 s2

[Back to Top](#)

Regulations

9. The Lieutenant-Governor in Council may make regulations

(a) providing for the issue and renewal of exploratory licences to search for petroleum generally throughout the province and to drill those wells and do other acts and things prescribed in the regulations;

(b) providing for the issue and renewal of permits authorizing a person to prospect and explore for petroleum in a defined area of the province and to drill the wells and do other acts and things in that area that may be prescribed in the regulations;

- (c) providing for the issue and renewal of leases to permittees over that part of the area covered by a permit which may be prescribed in the regulations empowering the lessee to
 - (i) carry out exploratory work and drill wells in the lands comprised in the lease, and
 - (ii) produce, mine, quarry or extract petroleum from the lands comprised in the lease;
- (d) prescribing the procedure for applying for licences, permits and leases and renewals of them, and the limitations in respect of time and area;
- (e) prescribing the terms and conditions upon which licences, permits and leases may be issued and renewed;
- (f) prescribing bonds or cash deposits instead of bonds, to be given to the Crown for the Crown's benefit or that of others, conditioned upon the performance by a person of a term or condition of a licence, permit or lease or the carrying out of an undertaking entered into in relation to it;
- (g) prescribing the causes for which licences, permits and leases may be suspended and cancelled;
- (h) prescribing limitations upon the assignment or other transfer and the devolution of licences, permits and leases and an interest in them, and requiring the consent of the minister, before an assignment or other transfer of a devolution is effective;
- (i) prescribing rentals for licences, permits and leases and renewals of them;
- (j) providing that the permission of the minister shall be obtained by licensees, permittees and lessees in respect of each well drilled or operated, or proposed to be drilled or operated and prescribing the terms and conditions upon which the permission shall be given;
- (k) prescribing the manner in which records of licences, permits and leases, returns from licensees, permittees and lessees, and other matters under this Act shall be kept in the Department of Mines and Energy;
- (l) prescribing the information to be gathered, the records to be kept, and the returns to be made by licensees, permittees and lessees concerning a phase of their operations;
- (m) prescribing where, within the area covered by a permit or lease issued under this Act, or by another method of concession or grant, including a concession or grant under special statute, a well may or may not be drilled and to what depth and in what manner, and how wells may be located in relation to each other;
- (n) prescribing the methods and the equipment and materials to be employed in drilling operations and in the operation of wells;
- (o) prescribing the safeguards to be applied in drilling operations and in the operation of wells for the protection and conservation of a petroleum field pool or deposit or source or a part of the preceding, or for the protection of life or property;
- (p) for the inspection of drilling operations and of petroleum wells and the operation of them and of works and other things related to them;
- (q) restricting the production of wells generally or of a particular class of wells or of a particular well;
- (r) for establishing or providing for the establishment of areas as Crown reserves;
- (s) providing for the disposal of the whole or a part of a Crown reserve and prescribing the manner, terms and conditions and stipulations of the disposal;
- (t) prescribing that an area shall not be available for licences, permits or leases or shall be so available only for purposes of geological or geophysical examination;
- (u) assigning to officers and employees in the Department of Mines and Energy duties under this Act;
- (v) providing that in the areas of the province that may be designated in the regulations, licensees, permittees or lessees shall not enter upon Crown lands or private lands without first obtaining the permission of the minister or other person that may be designated in the regulations, and prescribing the terms and conditions upon which the permission shall be given; and
- (w) generally, to give effect to the purpose of this Act and for securing the orderly and efficient development of a supply of petroleum found in the province.

RSN1970 c294 s9; 1973 No33 Sch; 1986 c40 s3

[Back to Top](#)

Fees and forms

9.1 The minister may set fees and prescribe forms for the purpose and administration of this Part.
1997 c13 s52; 2001 c41 s2

[Sections 10 -19 to be proclaimed]
[Back to Top](#)

Proof of financial responsibility

10. (1) A lessee, licensee or permittee involved in petroleum exploration, development or production activities shall provide in a form satisfactory to the Minister of Finance, proof of financial responsibility in an amount prescribed by the regulations, sufficient to meet the costs of clean-up and rehabilitation incurred as a result of the activities of that lessee, licensee or permittee.

(2) A lessee, licensee or permittee involved in petroleum exploration, development or production activities is strictly liable for

- (a) a loss which may occur as a result of pollution caused by that lessee, licensee or permittee; and
- (b) the costs of clean-up and rehabilitation incurred by the province or a person.

1983 c19 s1
[Back to Top](#)

Fisheries Compensation Board for Petroleum Related Damages

11. (1) The Lieutenant-Governor in Council may establish a board to be known as the Fisheries Compensation Board for Petroleum Related Damages consisting of a chairperson and 6 other members.

(2) The members appointed under subsection (1) shall include representatives of fishers, fishing companies and the petroleum industry.

(3) The board established under subsection (1) is a corporation.

(4) In sections 11 to 17, "board" means the board established under this section.

1983 c19 s1
[Back to Top](#)

Compensation fund

12. (1) The board shall administer a fund to compensate fishers for damage to fishing equipment or boats involved in the fishery or losses consequential to the fishery including lost fishing time in harvesting arising out of petroleum exploration, development or production activities.

(2) Compensation and other expenses to fishers under subsection (1) and the regulations shall be paid out of a fund to be called the Fisheries Compensation Fund for Petroleum Related Damages that shall be held by the Minister of Finance on behalf of the board.

1983 c19 s1
[Back to Top](#)

Assessment

13. For the purposes of creating and monitoring the fund established under section 12, the Lieutenant-Governor in Council shall establish an assessment or other contributory process to accumulate the fund in the manner and amount that may be prescribed in the regulations.

1983 c19 s1
[Back to Top](#)

Contribution for fund

14. A lessee, licensee or permittee involved in petroleum exploration, development or production activities in the area as prescribed in the regulations shall contribute to the fund established under section 12.

1983 c19 s1
[Back to Top](#)

Prevention of damages

15. The board shall advise the minister of measures for the prevention and mitigation of petroleum pollution damage to the fishery including the implementation of training programs for fishers and persons involved in petroleum exploration, development or production activities.

1983 c19 s1
[Back to Top](#)

Subrogation

16. Where a fisher or fishing company claims compensation under this Act and compensation is paid by the board, the board is subrogated to the rights of the fisher or the fishing company and may maintain an action in the name of the fisher or the company or in the name of the board against the person whom the action lies for the whole or an outstanding part of the claim of that fisher or that fishing company.

1983 c19 s1

[Back to Top](#)

Regulations

17. The Lieutenant-Governor in Council may make regulations

(a) prescribing the amount of financial responsibility and the form of the proof of financial responsibility under section 10;

(b) prescribing the term of office of persons for appointment as members of the board and the rates of compensation of those members;

(c) providing the board with the powers, duties and functions that may be necessary;

(d) prescribing the manner and amount of an assessment or other contributory process under section 13;

(e) prescribing those persons who may be required to pay assessments or make contributions to the fund under section 14;

(f) defining the sources and types of damage for which compensation may be paid by each lessee, licensee or permittee;

(g) prescribing the criteria for establishing the eligibility of persons to claim compensation from a lessee, licensee or permittee;

(h) prescribing the classes of claimants eligible to make claims for compensation from a lessee, licensee or permittee and the procedures to be followed in making those claims;

(i) prescribing the area in which regulations shall apply;

(j) providing for the payment of clean-up and rehabilitation costs;

(k) providing for certificates of proof of financial responsibility;

(l) [Rep. by 1997 c13 s52]

(m) providing for the manner in which claims are to be proven and assignment to the board of a person's claim against the party causing the damage where compensation is made by the board; and

(n) generally, to give effect to the purpose of sections 10 to 16.

1983 c19 s1; 1997 c13 s52

[Back to Top](#)

Limitation

18. A claim may not be presented nor an action started for losses recoverable under sections 10 to 17 unless the claim is presented or the action is started within 3 years after the date of the discovery of the loss for which the claim is asserted.

1983 c19 s1

[Back to Top](#)

Trial Division

19. Actions under sections 10 to 18 shall be started in the Trial Division.

1983 c19 s1

[Back to Top](#)

Fees, etc.

20. (1) Fees, rentals and other payments due the Crown under this Part or the regulations in respect of Crown petroleum or undeveloped petroleum shall bear interest at the rate of 6% annually on the sums outstanding from the time they become due until they are paid.

(2) Fees, rentals, payments and interest referred to in subsection (1) may be recovered as a debt in a court.

(3) The fees, rentals, payments and interest referred to in subsection (1) until paid shall constitute a 1st and paramount lien upon the subject matter of the permit or lease and upon works, equipment and material constructed or brought upon the land covered by the permit or lease by the permittee or lessee, subject only to precedence of the claim of a worker asserted and prosecuted under the Mechanics' Lien Act.

(4) This section does not apply to a lease issued under this Act before April 1, 1990 .

RSN1970 c294 s10; 1986 c40 s4; 1990 c23 s8; 2001 c41 s3

[Back to Top](#)

Survey, prospecting and exploration

21. A permittee or lessee shall, while the permit or lease exists, have the rights accruing to him or her under the permit or lease in respect of and limited to petroleum in and under the area to which it applies and may enter upon and survey and prospect and explore lands, whether lands belonging to the Crown or another person, in that area or a part of it by all means which may be necessary to prove the existence, value and extent of the petroleum there whether by geochemical, geological or geophysical or other surveys, diamond drilling, surface or subterranean prospecting, excavations, or works pertaining to the execution of an active exploration and development program, making compensation for damage or injury sustained by the owner of surface, mineral or other rights or the holder of a timber licence within the area, and the compensation shall, unless settled by private agreement, be determined by arbitration in the manner provided in section 25.

RSN1970 c294 s11

[Back to Top](#)

Assurances of Crown lands to lessee

22. (1) The Lieutenant-Governor in Council shall assure to a lessee the surface Crown lands that may be reasonably necessary in connection with the production of petroleum by that person, including the lands that may be reasonably necessary for rights of way, telegraphs, telephones, electric power transmission lines, railways, tramways, roads, waste dump areas, or sites for mills, works, factories, warehouses, townsites, wharves, piers, docks or other shipping facilities, for the purpose of the efficient construction, maintenance or operation of the production of petroleum under this Act, the regulations and a lease, or for another purpose which may be incidental to the efficient production of petroleum, on the terms and conditions as to the rental or otherwise that may be mutually agreed upon as reasonable and equitable between the Lieutenant-Governor in Council and the lessee.

(2) The assurances executed under subsection (1) may be by grant, lease or licence and a lessee may for the purpose of the efficient production of petroleum or for another purpose incidental to that production cut and use Crown timber or take and use Crown quarry material.

(3) Subsections (1) and (2) shall not have the effect of preventing the Lieutenant-Governor in Council from granting to a person, by way of grant, lease, licence or permit, surface or mineral rights in Crown lands, including timber, minerals and quarry materials, together with the right to cut down, carry away or win and get them, where the rights have not been granted or specifically agreed to be granted to the lessee.

RSN1970 c294 s12

[Back to Top](#)

Acquisition of privately owned lands

23. Where a lessee wishes to acquire private lands or rights in them or over them reasonably necessary for the purposes referred to in subsection 22(1), the Lieutenant-Governor in Council shall acquire those lands or rights by purchase, expropriation under the Expropriation Act, or otherwise, and the mode of acquisition shall be determined by mutual agreement, and shall transfer title and possession of those lands or rights to the lessee at cost.

RSN1970 c294 s13

[Back to Top](#)

Licensees and permittees

24. (1) A licensee and permittee may produce, mine, quarry or extract from the lands described in his or her licence or permit those quantities of petroleum which, in the opinion of the minister, are necessary for test purposes or for another purpose authorized by the licence or permit.

(2) A lessee may produce, mine, quarry or extract the petroleum from the lands comprised in the lease and do other things that are authorized by his or her lease.

RSN1970 c294 s14

[Back to Top](#)

Arbitration

25. (1) For an arbitration prescribed in section 21, the permittee or lessee and the owner shall each appoint 1 arbitrator, and where either party fails to appoint an arbitrator after 7 clear days' notice in writing has been given to it by the other requiring it to do so, then the party who has given the notice may apply to the Trial Division or a judge of it, and the court or judge after notice to the party in default shall appoint the arbitrator and the 2 arbitrators so appointed shall appoint a 3rd arbitrator or umpire, and where they fail to appoint the 3rd arbitrator or umpire after 7 clear days' notice in writing from either party to do so, the Trial Division or a judge of it shall, on the application either of the permittee or lessee or the owner, appoint the 3rd arbitrator or umpire, and the 3 so appointed shall proceed to hear the parties on the matter in dispute and make their decision and award.

(2) The award in an arbitration held under this Act shall be made in writing and delivered promptly to the parties, and the decision and award of the arbitrators or of 2 of them shall be final and binding on the parties, except that either party may appeal to the Court of Appeal on questions of law only by giving notice of the appeal to the other party within 1 month following the receipt of the award.

(3) Costs of the arbitration including reasonable compensation for the arbitrators shall be borne and paid equally by the parties or as the arbitrators may otherwise direct.

(4) The Arbitration Act applies in respect of an arbitration under this Act to which the Crown or a minister of the Crown is a party.

RSN1970 c294 s16; 1974 No57 Sch D; 1986 c42 Schs A&B

[Back to Top](#)

Order to protect life

26. Where the Lieutenant-Governor in Council may make a regulation of general or particular application, the minister may, where it appears necessary to do so for the preservation or protection of life or property, of a petroleum field or part of it, of a well or other work or of an investment, make a specific order directed to a particular person, and the order shall, without publication in the Gazette, be of the same effect as a regulation for a period not exceeding 30 days that the minister specifies in the order, but the Lieutenant-Governor in Council or the minister may revoke or suspend the order.

RSN1970 c294 s17

[Back to Top](#)

Order for entry

27. (1) Where resistance or opposition is made by a person to the entry on land, whether the land is Crown land or owned by a person other than the Crown, of a permittee or lessee who is authorized to make the entry by this Part or an order made under this Part, the Provincial Court judge resident in the district where the land is located or, in his or her absence, another Provincial Court judge may, on the application of the person proposing to enter and on proof of a right to do so, order the sheriff or a peace officer to put down the resistance or opposition and allow the entry to be made.

(2) When a person applies for an order under subsection (1), the Provincial Court judge to whom the person applies may require him or her to give security satisfactory to the judge for the payment of the compensation referred to in section 21, and the judge may refuse to issue the order until the security is given.

(3) The sheriff or peace officer shall carry out an order made under subsection (1) and directed to him or her, and shall immediately make a return to the Provincial Court judge stating the manner in which he or she executed it.

RSN1970 c294 s18; 2001 c41 s4

[Back to Top](#)

Offence

28. A person who

(a) contravenes this Part or an order made under this Part;

(b) fails otherwise to comply with a requirement or obligation imposed upon him or her under this Part or an order made under this Part; or

(c) makes a false statement in a form or return completed or made under this Part or a licence, permit or lease,

is guilty of an offence under this Part, and every day during which the contravention or failure to comply continues or every false statement relating to a separate transaction constitutes a separate offence.

RSN1970 c294 s19; 2001 c41 s5

[Back to Top](#)

Penalty

29. A person who is guilty of an offence under this Part is liable on summary conviction to a fine not exceeding \$1,000 and in default of payment of the fine, to imprisonment for a term not exceeding 12 months, or to both a fine and imprisonment.

RSN1970 c294 s20; 2001 c41 s6

PART II

ROYALTIES

[Back to Top](#)

Definitions

30. (1) In this Part

(a) "debtor" means a person owing royalty share to the Crown under this Part;

(b) "interest holder" with respect to a lease or a share in a lease, means the holder of that lease or share as recorded in the appropriate registry for that lease or share;

(c) "lease" includes a production licence issued by the Canada-Newfoundland and Labrador Offshore Petroleum Board under the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act and the Canada-Newfoundland Atlantic Accord Implementation Act (Canada);

(d) "royalty share" means royalty on petroleum and interest, penalties and other amounts payable to the Crown by an interest holder under this Part;

(e) "secured creditor" means a person who has a security interest in the assets of another person or who acts for or on behalf of that person with respect to the security interest and includes a receiver or a receiver-manager appointed by a secured creditor or by a court on the application of the secured creditor, a trustee appointed under a trust deed relating to a security interest or another person performing a similar function; and

(f) "security interest" means an overriding royalty, a deemed or actual trust, assignment or encumbrance not resulting in a complete transfer of title and beneficial ownership, and an interest in property that secures payment or performance of an obligation created by or arising out of a debenture, mortgage, lien, judgment, pledge, charge and a retention of title, however or wherever arising, deemed to arise or otherwise provided for and whether absolute, contingent, fixed, floating, perfected or not perfected.

(2) In this Part

(a) a reference to the "Crown" shall be considered to be a reference to "Her Majesty in Right of the province";

(b) a reference to "Part" shall be considered to include a reference to regulations made under this Part; and

(c) a reference to "royalty" shall be considered to include basic royalty, incremental royalty, another royalty on petroleum produced under a lease and a combination of these.

2001 c41 s7

[Back to Top](#)

Royalty reservation

31. Royalty share determined under this Part is reserved to the Crown on all petroleum recovered under a lease.

2001 c41 s8

[Back to Top](#)

Royalty share

32. Petroleum produced under a lease is subject to and an interest holder is liable for and shall pay royalty share to the Crown in an amount and in a manner prescribed by regulation.

2001 c41 s8

[Back to Top](#)

Royalty agreement

33. (1) The Lieutenant-Governor in Council may make an agreement with an interest holder, with one or more holders of shares in a lease or with another person, including an agreement that is inconsistent with regulations made under this Part.

(2) Where an agreement made under subsection (1) is inconsistent with regulations made under this Part the agreement shall prevail.

2001 c41 s8

[Back to Top](#)

Royalty share in kind

34. (1) The Crown is entitled to take royalty share or a portion of royalty share in kind.

(2) The Crown shall give notice to an interest holder of its intent to take royalty share in kind under subsection (1) and upon receipt of that notice the interest holder shall deliver the royalty share in kind in the time and manner required by regulation.

(3) After a notice has been delivered under subsection (2), the Crown may, in accordance with the regulations, give notice

(a) to another interest holder in the lease from which the Crown is taking in kind to deliver the royalty share in kind owed by the interest holder referred to in subsection (2); and

(b) requiring a person to make available to the Crown all facilities, assets and services in which that person has an interest, that are being used for the handling, storage or transportation of petroleum produced under a lease from which the Crown is in whole or in part taking royalty share in kind.

(4) The Crown shall, in accordance with the regulations made under this Part, pay for facilities, assets and services used to take royalty share in kind.

2001 c41 s8

[Back to Top](#)

Lien for royalties

35. (1) Notwithstanding a provision of this or another Act or regulation, royalty share due to the Crown under this Part, until paid, shall constitute a first and paramount lien in favour of the Crown on all assets of the person owing the royalty share, and on assets held by a secured creditor of that person that, but for a security interest, would be assets of the person owing the royalty share.

(2) A lien created under this section shall attach on the date that the royalty share is due and payable to the Crown and continues in force until paid or released by the Crown.

(3) Notwithstanding subsections (1) and (2), where the Lieutenant-Governor in Council is satisfied that the Crown has sufficient security for royalty share, the Lieutenant-Governor in Council may

(a) restrict the lien to a portion of the assets of the person owing that royalty share; and

(b) postpone, subordinate or release the rights of the Crown under the lien, in whole or in part, under terms and conditions that the Lieutenant-Governor in Council may establish.

(4) The minister may register a notice of a lien created under this section in a registry established under

(a) this Act;

(b) the Registration of Deeds Act ;

(c) the Personal Property Security Act ; and

(d) the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act and the Canada-Newfoundland Atlantic Accord Implementation Act (Canada), but failure to register that notice in a registry established under an Act referred to in paragraphs (a) to (d) shall not be necessary to perfect the lien.

2001 c41 s8

[Back to Top](#)

Liability on payment

36. (1) A receiver, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, shall, before distributing assets of an interest holder, obtain confirmation from the minister that all royalty share payable by that interest holder has been paid or that security for that payment has been accepted.

(2) A receiver, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, that distributes property without the confirmation required under subsection (1), is personally liable for the amount of the unpaid royalty share of the interest holder whose property has been distributed.

(3) A confirmation under this section shall be obtained in the manner required by regulation.

2001 c41 s8

[Back to Top](#)

Artificial transactions

37. (1) Where, in the opinion of the minister, the result of an action, agreement, arrangement, transaction or operation artificially or unduly reduces the amount of royalty share due to the Crown, that royalty share shall be calculated as if the action, agreement, arrangement, transaction or operation had not occurred or had occurred at fair market value between parties dealing at arms length.

(2) A decision of the minister under subsection (1) may be arbitrated in accordance with arbitration procedures and requirements established under the regulations made under this Part.

2001 c41 s8

[Back to Top](#)

Rep. by 2001 c41 s8

38. [Rep. by 2001 c41 s8]

2001 c41 s8

[Back to Top](#)

Regulations

39. (1) The Lieutenant-Governor in Council may make regulations

(a) prescribing royalty on petroleum and the type, structure and amount of royalty;

(b) designating two or more leases as a single lease for the purposes of this Part;

(b.1) allocating production, revenue, valuation of petroleum, costs, expenses, allowances, credits and other deductions between 2 or more leases subject to a unit agreement or unit operation order;

(c) prescribing that the quantity of the royalty on petroleum be calculated at a place other than the place where the petroleum is first measured after it is recovered;

(d) prescribing that the royalty on petroleum be delivered to the Crown in right of the province at a place other than that at which its quantity is calculated;

(e) prescribing the rate of interest on royalty share or overpayments of royalty share under this Part and the manner of determining the interest that is due;

(e.1) respecting the manner of determining royalty share, the components of royalty share and their values, including

(i) revenue, including the valuation of petroleum used in determining royalty share,

(ii) costs, expenses, allowances, credits and other deductions used in determining a royalty share, and

(iii) another matter related to a determination under subparagraphs (i) and (ii);

(e.2) respecting the retention of records and documents and respecting audits and examinations that may be required for the purposes of this Part;

(e.3) respecting the subordination of rights with respect to liens and the postponement and release of liens, in whole or in part;

(e.4) respecting the requirements for obtaining confirmation from the minister under subsection 36(1);

(e.5) respecting the assessment and reassessment of interest holder royalty share and respecting procedures for that assessment and reassessment of royalty share amounts owing under this Part, including procedures for the settlement of disputes with respect to assessments and reassessments;

(e.6) respecting the time for the completion of the filing of reports and returns and respecting the information and documentation to accompany reports and returns;

(e.7) respecting the giving of notice;

(e.8) respecting entry onto property or premises by the minister or a person authorized by the minister at reasonable times for the purpose of inspection or audit;

(e.9) respecting the search and seizure of documents, including the circumstances in which and the process by which an application may be made to the court to authorize that search and seizure;

(e.10) respecting the indemnification of the minister and other persons authorized under this Act or the regulations from legal liability in the lawful performance of his or her duties under this Act or the regulations;

(e.11) respecting restrictions against use or disclosure of information obtained by or on behalf of the minister under this Act and the regulations, and authorizing the creation of a summary conviction offence and the penalties which may be imposed where that provision is contravened;

(f) respecting the circumstances under which the amount of royalty share shall be calculated on all or any of the products obtained by processing the petroleum or by reprocessing any of those products instead of on the petroleum;

(g) respecting the waiver or variation of all or part of the royalty share;

(h) respecting the taking of royalty share in kind by the Crown including the requirements for notice, calculation of amounts and quantities to be delivered in kind, the handling, storage, transportation, delivery of amounts and quality of petroleum taken in kind and the costs of that taking in kind payable by the Crown;

(i) restricting, modifying or limiting the meaning of a word or phrase defined in the Act and used in the regulations made under this section;

(j) respecting the application of rules of arbitration under the Commercial Arbitration Act (Canada) or a part or schedule of that Act to matters arising under this Part;

(k) prescribing penalties that may be assessed or imposed for the purposes of this Part; and

(l) generally, to give effect to the purpose of this Part.

(2) Regulations made under this section may be related to a specified agreement or class of agreements.

(3) Subject to section 33, where regulations are made under this section respecting the calculation of royalty share on petroleum recovered under an agreement subject to a unit agreement or unit operation order, the regulations operate notwithstanding anything in the unit agreement or unit operation order.

(4) Regulations made under this section may be made with retroactive effect.

(5) Subsection (4) shall not apply to a regulation made under paragraph (1)(a).

1986 c40 s5; 1990 c23 s10; 1994 c28 s28; 2001 c41 s9; 2011 c14 s1

[Back to Top](#)

Notice to pay Crown

40. (1) Where, in the opinion of the minister, a person is or is about to become indebted or liable to make a payment of money to a debtor, the minister may, by notice in writing, require that person to pay money otherwise payable to the debtor, to the minister, on account of the liability for royalty share of the debtor, and on receipt of that notice the amount of money required to be paid to the Crown shall be paid to the Crown in priority to any security interest that may exist in that money.

(2) Where a notice is given to a person under subsection (1), the requirement to pay is applicable to all future payments by that person to the debtor until all liability with respect to royalty share owed to the Crown is paid.

(3) The receipt by the minister of payments under subsection (1) or (2) is a sufficient discharge of the liability of the person to the debtor to the extent of the payment received by the Crown.

(4) A person who discharges a liability to a debtor without complying with a notice given to that person under subsection (1) is liable to pay to the minister an amount equal to the liability discharged or the amount that person was required to pay to the minister, whichever is lesser.

2001 c41 s10

[Back to Top](#)

Reports, returns and audit

41. (1) A person required under this Part to file reports and returns shall

(a) file the reports and returns; and

(b) submit information and documentation related to reports and returns,

as required by the minister and by regulation.

(2) Reports, returns, information and documents required to be filed under this Part are subject to the audit and examination requirements that may be established by regulation.

2001 c41 s10

[Back to Top](#)

Assessment

42. (1) Unless otherwise prescribed by regulation, liability for royalty share is not affected by an incorrect or incomplete assessment or by the fact that an assessment has not been made.

(2) An assessment and reassessment are valid and binding notwithstanding an error, defect or omission that may occur in that assessment or reassessment.

(3) Notwithstanding subsection (2), an assessment and a reassessment may, in accordance with the regulations, be varied or vacated on objection or appeal.

2001 c41 s10

[Back to Top](#)

Additional powers

43. Sections 231 to 231.5 of the Income Tax Act (Canada), as amended from time to time, apply to this Part with those modifications that the circumstances require with respect to the administration and enforcement of this Part as if the references in that Act to

(a) "Canada Customs and Revenue Agency" were references to the department presided over by the minister;

(b) "Deputy Attorney General of Canada " or "Minister" were references to "minister" as defined in this Act;

(c) "return of income or a supplementary return" were references to "a report or return" filed under this Act; and

(d) "Tax Court of Canada" were references to the Trial Division or another court that is prescribed by regulation.

2001 c41 s10

[Back to Top](#)

Fees and forms

44. The minister may set fees and prescribe forms for the purpose and administration of this Part.

2001 c41 s10

[Back to Top](#)

Penalty

45. (1) Where a person has contravened a provision of this Part that is specified in the regulations, the minister or a person authorised by him or her may, in writing, notify that person that he or she is to pay to the Crown a penalty in the amount set out in the notice for each day that the contravention occurs.

(2) A person who pays a penalty under subsection (1) may not be charged with an offence under this Part with respect to a contravention that gave rise to that penalty.

(3) Where a person fails to pay a penalty in accordance with a notification under subsection (1), the minister may recover the amount as a debt owed to the Crown.

(4) For the purposes of this section a penalty is a monetary penalty imposed in accordance with the regulations.

2001 c41 s10

[Back to Top](#)

Offence and penalty

46. (1) A person who

(a) makes, participates in, assents to or acquiesces in the making of a false or deceptive statement in a return, certificate, statement or answer required to be submitted or filed under this Part;

(b) destroys, alters, mutilates, hides or disposes of records of account of an interest holder for the purpose of not complying with this Part;

(c) makes, participates in, assents to or acquiesces in the making of false or deceptive entries, records or books of account, including by omission, for the purpose of not complying with a provision or requirement under this Part; and

(d) does not pay or evades or attempts to evade the payment of royalty share that the person is required to pay under this Part,
is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of,

(a) not less than \$5,000; and

(b) not more than \$100,000 or an amount of royalty share that was attempted to be evaded by that offence, whichever is greater.

(3) A person who contravenes a provision of this Part as specified in the regulations, is guilty of an offence and liable on summary conviction to a fine that may be established by regulation.

(4) In a prosecution for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that all reasonable measures were taken to prevent the commission of the offence.

(5) Where a corporation has been convicted of an offence under this section, an officer, director or agent of that corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of that offence and liable on summary conviction to the penalties referred to in subsections (2) and (3).

(6) Notwithstanding section 7 of the Provincial Offences Act, an information or complaint with respect to an offence under subsection (1), (3) or (5) may be laid or made before a day 6 years from the day when the matter of the information or complaint arose.

2001 c41 s10

[Back to Top](#)

Application

47. (1) This Part shall apply to all leases issued after April 1, 1990 .

(2) A lease issued before April 1, 1990 is subject to the provisions of this Part in force immediately before the coming into force of this section.

2001 c41 s10

[Back to Top](#)

Commencement

48. Sections 10 to 19 of this Act shall come into force on a date to be proclaimed by the Lieutenant-Governor in Council.

2001 c41 s10

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