

SNL2001 CHAPTER P-10.1

PETROLEUM PRODUCTS ACT

Amended:

2004 c28; 2004 c36 s30; 2009 c38; 2022 c9

CHAPTER P-10.1

AN ACT RESPECTING PETROLEUM PRODUCTS

(Assented to May 24, 2001)

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Petroleum Products Act* .

2001 cP-10.1 s1

Interpretation

2. (1) In this Act

- (a) "board" means the Board of Commissioners of Public Utilities established under the *Public Utilities Act* ;
- (b) "consumer" means a person who acquires a petroleum product for that person's use and not for the purpose of selling, exchanging or otherwise disposing of it to another person, but does not include a person who acquires a petroleum product under a contract between the person and a retailer or wholesaler at a price that the person and the retailer or wholesaler have previously agreed on;
- (c) "heating fuel" means furnace oil, stove oil or propane of a type used primarily for generating heat and includes a liquid product distilled from petroleum used as a component of it;
- (d) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (e) "motor fuel" means gasoline, diesel fuel or propane of a type used primarily in internal combustion engines and includes a liquid product distilled from petroleum used as a component of it;

- (f) "outlet" means a station, shop, establishment, key lock facility, or other place where a petroleum product is sold at retail or kept for retail sale;
- (g) "petroleum product" means heating fuel and motor fuel and another liquid product, whether or not distilled from petroleum, used as a heating fuel or motor fuel or as a component in it;
- (h) "price" means the consideration, whether wholly or partly in money or otherwise, payable for a petroleum product and includes any component of the consideration;
- (i) "retailer" means a person who sells a petroleum product or keeps a petroleum product for sale directly to consumers; and
- (j) "wholesaler" means a person, other than a retailer, who sells a petroleum product or keeps a petroleum product for sale.

(2) This Act does not apply to a wholesaler in relation to the sale by the wholesaler of a petroleum product to a person other than a retailer or the keeping of a petroleum product by the wholesaler for sale to a person other than a retailer.

(3) The following petroleum products are exempt from the provisions of this Act:

- (a) motor fuel used for aviation purposes; and
- (b) motor fuel used for marine purposes except where the motor fuel is purchased from a retailer who sells that type of motor fuel for other purposes.

2001 cP-10.1 s2; 2004 c28 s1; 2009 c38 s1

Powers of board

3. (1) In addition to the powers conferred on the board under this Act, the powers, practices, procedures and immunities of the board under the *Public Utilities Act* apply to the board in carrying out its duties under this Act.

(2) Sections 13 and 14 of the *Public Utilities Act* apply, with the necessary changes, to the assessment by the board of wholesalers and retailers who refine petroleum products in the province or bring petroleum products into the province, or receive delivery of them in the province from a wholesaler or retailer outside the province who does not carry on business in the province, of amounts to defray the expenses of the board under this Act.

(3) In particular, in the application of section 13 of the *Public Utilities Act* to an assessment by the board to defray its expenses under this Act,

- (a) the reference in [section 13](#) to public utilities shall be read as including wholesalers and retailers who refine petroleum products in the province or bring petroleum products into the province, or receive delivery of them in the province from a wholesaler or retailer outside the province who does not carry on business in the province; and
- (b) the assessment under [section 13](#) shall be based on the volume of the designated petroleum products sold by the wholesaler or retailer in the province as determined by the board, whether or not the product is subject to regulation under this Act.

2004 c28 s2

Maximum prices

4. (1) The board has the authority

(a) to set, and shall set the maximum wholesale and retail prices that a wholesaler and a retailer may charge for heating fuel and motor fuel including different grades, derivatives or components of them; and

(b) to determine the minimum and maximum mark up between the wholesale price to the retailer and the retail price to the consumer of heating fuel and motor fuel.

(2) The board may divide the province into zones and may set a different maximum wholesale and retail price that a wholesaler and a retailer may charge for heating fuel and motor fuel for each zone.

(3) Notwithstanding subsection (2), the board may set a different maximum wholesale and retail price that a wholesaler and a retailer may charge for heating fuel and motor fuel within a zone taking into consideration the criteria prescribed for that purpose by the regulations.

2001 cP-10.1 s4; 2004 c28 s8; 2009 c38 s2

Prohibition

5. (1) A wholesaler shall not charge a price for heating fuel or motor fuel greater than the maximum price set by the board.

(2) A retailer shall not charge a price for heating fuel or motor fuel greater than the maximum price set by the board.

(3) Where the board determines the minimum and maximum mark up between the wholesale price to the retailer and the retail price to the consumer of heating fuel and motor fuel, a wholesaler or retailer shall not set a mark up different from that determined by the board.

2001 cP-10.1 s5; 2004 c28 s8

Base fuel prices

6. (1) The board shall establish a petroleum product base wholesale and retail price for each type of heating fuel and motor fuel sold by a wholesaler and a retailer using the criteria prescribed for that purpose by the regulations.

(2) The petroleum product base wholesale and retail price set by the board for each type of heating fuel and motor fuel, as adjusted periodically under [section 7](#), shall constitute the maximum price chargeable by a wholesaler or retailer for those types of heating fuel or motor fuel.

2001 cP-10.1 s6; 2004 c28 s8

Price adjustment mechanism

7. (1) The board shall establish a procedure for determining adjustments to the petroleum product base wholesale and retail price of each type of heating fuel and motor fuel applying for the purpose the criteria prescribed by the regulations.

(2) The board shall periodically, using the procedure referred to in subsection (1), adjust the petroleum product base wholesale and retail price for each type of heating fuel and motor fuel to set the maximum allowable retail and wholesale prices for each type of heating fuel and motor fuel.

(3) The board shall inform wholesalers and retailers of the new maximum allowable prices for each type of heating fuel and motor fuel as determined under subsection (2) and the date on which the price comes into force.

2001 cP-10.1 s7; 2004 c28 s8

Release of information

7.1 The board shall, in the manner prescribed in the regulations, make available to the public the information prescribed in the regulations respecting

- (a) the maximum wholesale and retail prices under paragraph 4(1)(a);
- (b) the minimum and maximum mark up between the wholesale price and the retail price under paragraph 4(1)(b);
- (c) the procedure for determining adjustments to the petroleum product base wholesale and retail price under subsection 7(1); and
- (d) any other matters prescribed in the regulations.

2022 c9 s1

Application for change in price

8. (1) A wholesaler or a retailer may apply to the board for a change in the price of a type of heating fuel or motor fuel setting out

- (a) the price last approved by the board;
- (b) the proposed new price;
- (c) the date on which the proposed new price is to take effect;
- (d) the reasons for the proposed change in price; and
- (e) the other information that may be prescribed by the regulations.

(2) The board, following the investigation the board considers necessary, including the holding of a hearing where the board considers one is desirable, may

- (a) deny the application;
- (b) approve the application and set a new price as proposed by the applicant; or
- (c) set another price that the board considers appropriate in the circumstances.

(3) A price change ordered under subsection (2) takes effect on the date set out in the order.

(4) Only one application may be made by a wholesaler or a retailer in a 12 month period.

(5) Where the board makes an order under paragraph (2)(b) or (c), the board, after giving notice of the application and an opportunity to be heard, may order the price change to apply to other wholesalers or retailers in addition to the applicant.

(6) The board may order that an applicant pay the costs in relation to an application, and those costs shall be paid within 30 days of the order of the board.

2001 cP-10.1 s8; 2004 c28 s8; 2009 c38 s3

Review by board

8.1 (1) The board may, on its own motion, conduct a review of the maximum mark up between the wholesale price to the retailer and the retail price to the consumer or allowed service costs to ensure they are justified, and may order adjustments to the mark up or the allowed service costs after the review is completed.

(2) The board may, on the request of a wholesaler or retailer or on its own motion, review the suitability of the pricing mechanism for benchmark prices, and may provide the minister with its recommendation on the matter.

(2.1) Prior to the commencement of a review under subsection (1) or subsection (2), the board shall give written notice to the minister of the subject matter and scope of the review.

(3) The minister may request that the board review one or more of the following:

- (a) the suitability of the pricing mechanism for benchmark prices;
- (b) the maximum mark up between the wholesale price to the retailer and the retail price to the consumer or allowed service costs to ensure they are justified;
- (c) the different maximum wholesale and retail prices that a wholesaler and a retailer may charge for heating fuel and motor fuel for each zone under subsection 4(2) to ensure they are justified; and
- (d) the different maximum wholesale and retail prices that a wholesaler and a retailer may charge for heating fuel and motor fuel within a zone under subsection 4(3) to ensure they are justified.

(4) Where the minister makes a request under subsection (3), the board shall conduct the review and provide the minister with its recommendations on the matter being reviewed.

(5) Where the board conducts a review under subsection (3), the minister may direct that the board hold a hearing as part of the review.

2009 c38 s4; 2022 c9 s2

Interim order

9. (1) The board may, at any time after the filing of an application for approval of a price change and before making an order under [section 8](#), make an interim order setting a temporary price of the heating fuel or motor fuel that is the subject of the application.

(2) An interim order expires on the date an order made under [section 8](#) takes effect.

2001 cP-10.1 s9; 2004 c28 s8

Price change due to taxation

10. Where a price change with respect to the wholesale and retail price of heating fuel and motor fuel reflects a change in the price that is wholly attributable to changes in taxation, the board shall be considered to have issued an order approving the proposed price on the date on which the change in taxation is to be effective.

2001 cP-10.1 s10; 2004 c28 s8

Notice to appear

11. (1) The board may give notice to a wholesaler or a retailer directing the wholesaler or the retailer to appear before the board at a hearing for the purpose of making a submission to assist the board in determining whether or not the prices being charged by that wholesaler or retailer for heating fuel or motor fuel are in accordance with the prices set by the board.

(2) Where a wholesaler or retailer fails to appear at the hearing as directed under subsection (1), the board may proceed in the absence of the wholesaler or retailer.

2001 cP-10.1 s11; 2004 c28 ss3&8

Investigation into prices

12. (1) The board may conduct an investigation to determine whether a price being charged by a wholesaler or a retailer for heating fuel or motor fuel exceeds the maximum allowable price set under this Act.

(2) When the board as a result of an investigation conducted under subsection (1) believes that a wholesaler or a retailer has charged or is charging a price for heating fuel or motor fuel that exceeds the maximum price set by the board, the board shall order the wholesaler or retailer to sell or offer for sale the heating fuel or motor fuel at a price not to exceed the price set by the board.

2001 cP-10.1 s12; 2004 c28 s8

Inspection

13. (1) Where it is reasonably necessary to ensure compliance with this Act, a person authorized by the board may

- (a) at reasonable times enter a premises of a wholesaler or a retailer of heating fuel or motor fuel to determine whether the prices being charged by the wholesaler or retailer for heating fuel or motor fuel exceed the maximum prices set for either by the board;
- (b) require the production of books, records or other documents applicable to the sale of heating fuel or motor fuel and may examine those books, records or documents or remove them for the purpose of making copies of them; and
- (c) inquire into all matters relating to the sale by the wholesaler or retailer of heating fuel or motor fuel.

(2) Where a person authorized by the board under subsection (1) removes books, records or other documents under paragraph (1)(b), the person shall give to the person from whom those items were taken a receipt for those items and shall immediately make copies of those items and return the originals to the person who was given the receipt.

2004 c28 s4; 2022 c9 s3

Search with warrant

14. (1) Where a person authorized by the board believes on reasonable grounds that a person is contravening or has contravened this Act, or where entry onto a premises where a contravention of this Act is believed to occur or have occurred is refused or denied, the person authorized by the board may, with a warrant issued under subsection (2), enter those premises and do all those things referred to in [section 13](#).

(2) A Provincial Court judge who is satisfied on oath or affirmation that there are reasonable grounds for believing that a contravention of this Act has occurred or that entry onto a premises has been refused or denied, may issue a warrant authorizing the person named in the warrant to enter the premises and search for and inspect anything that will provide evidence with respect to a contravention of this Act and to do all those things referred to in [section 13](#).

(3) A wholesaler or a retailer or an employee of either and a person found there shall give the person named in the warrant reasonable help to enable the person named in the warrant to carry out duties and functions under this Act and shall provide the information that the person may reasonably require.

2004 c28 s4; 2004 c36 s30; 2022 c9 s4

Complaint hearing

15. (1) The board may hold a hearing in respect of a complaint made against a wholesaler or retailer and in that case shall notify the wholesaler or retailer complained of as to the nature of the complaint and the time, date and place of the hearing.

(2) In a hearing under this section, the wholesaler or retailer and the complainant shall be entitled to be heard and witnesses shall be permitted to attend to give evidence on their behalf.

2001 cP-10.1 s15; 2004 c28 s8

Evidence

16. (1) The board shall have the power of summoning persons as witnesses and of requiring them to give evidence under oath or affirmation, orally or in writing, and to produce those documents and things that the board considers necessary to the full investigation of the matters into which the board is authorized to inquire.

(2) The board shall have the same power to enforce the attendance of persons as witnesses and to compel them to give evidence and produce documents and things that is vested in a board under the *Public Inquiries Act* .

(3) The board may administer the oath or affirmation to a witness.

2001 cP-10.1 s16; 2004 c28 ss5&8

Appeal

17. An appeal lies from a decision of the board to the Trial Division.

2001 cP-10.1 s17; 2004 c28 s8

Penalties

18. Where a person

- (a) violates or participates in violating this Act, its regulations, or an order of the board;
- (b) causes or participates in causing another person directly or indirectly to violate this Act, the regulations, or an order of the board;
- (c) fails, neglects, omits, or refuses to do an act or thing required of that person by this Act, the regulations, or an order of the board; or
- (d) causes or participates in causing another person, directly or indirectly, to fail, neglect, omit, or refuse to do an act or thing required of that retailer by this Act, the regulations, or an order of the board,

the person is liable to a penalty imposed by the board of not more than \$5,000.

2001 cP-10.1 s18; 2004 c28 s8

Continuing violation

19. Each day or part of a day during which a prohibited activity subject to a penalty under [section 18](#) is continued gives rise to a separate and distinct liability to a penalty under that section.

2001 cP-10.1 s19

Vicarious liability

20. The act, failure, neglect, omission or refusal of an officer, agent or other person acting for or employed by a wholesaler or a retailer, acting within the scope of the officer's, agent's or other person's employment, shall in every case be considered to be the act, failure, neglect, omission or refusal of the wholesaler or retailer.

2001 cP-10.1 s20; 2022 c9 s5

Recovery of penalty

21. Where the amount of a penalty imposed under this Act is not paid within 15 days after imposition, the board, in addition to other remedies under this Act, may proceed to recover the amount in the same manner as for the recovery of a debt.

2001 cP-10.1 s21; 2004 c28 s8

Contract may not exclude application of orders

22. A provision, term or condition in an agreement or contract that provides that the contract is terminated or that a wholesaler or a retailer is permitted or authorized, or purports to permit or authorize, a wholesaler or a retailer to reduce, limit or cease to supply a petroleum product or services on the ground that an enactment or an order of the board or a judicial body, prevents a price or change in the price provided from being effective or becoming effective is of no effect.

2001 cP-10.1 s22; 2004 c28 s8

Regulations

23. The Lieutenant-Governor in Council may make regulations

- (a) respecting the criteria to be employed by the board in establishing the petroleum product base wholesale and retail prices under [section 6](#);
- (b) respecting the procedure to be applied and the criteria to be considered by the board for determining changes to the petroleum product base wholesale and retail prices under [section 7](#);
- (c) respecting the conduct of an investigation or the holding of a hearing by the board;
- (d) respecting the manner of informing wholesalers and retailers for the purpose of [section 7](#);
- (d.1) prescribing the manner in which information shall be disclosed under [section 7.1](#);
- (d.2) prescribing information for the purposes of [section 7.1](#);
- (d.3) prescribing matters for the purposes of [paragraph 7.1\(d\)](#);
- (e) [Rep. by [2004 c28 s6](#)]
- (f) respecting the information required to be provided to the board by a wholesaler or a retailer;
- (f.1) defining a word or expression used but not defined in this Act; and
- (g) generally to give effect to the purpose of this Act.

2001 cP-10.1 s23; 2004 c28 ss6&8; 2009 c38 s5; 2022 c9 s6

Rep. by [2004 c28 s7](#)

24. [Rep. by [2004 c28 s7](#)]

[2004 c28 s7](#)

Rep. by [2004 c28 s7](#)

25. [Rep. by [2004 c28 s7](#)]

[2004 c28 s7](#)

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26. [Rep. by [2004 c28 s7](#)]

[2004 c28 s7](#)

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27. [Rep. by [2004 c28 s7](#)]

[2004 c28 s7](#)

(In force - May 30/01)