

# Underground Hydrocarbons Storage Act

## CHAPTER 37

### OF THE

### ACTS OF 2001

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#### An Act Respecting the Storage of Hydrocarbons in Underground Formations

##### Short title

1 This Act may be cited as the Underground Hydrocarbons Storage Act. 2001, c. 37, s. 1.

##### Interpretation

2 In this Act,

- (a) "Board" means the Nova Scotia Utility and Review Board;
- (b) "Directorate" means the Nova Scotia Petroleum Directorate;
- (c) "hydrocarbon" means an organic compound containing carbon and hydrogen and includes oil and natural gas;
- (d) "hydrocarbon storage-area licence" means a licence issued pursuant to Section 9;
- (e) "hydrocarbon storage-area lease" means a lease granted pursuant to Section 16;
- (f) "mineral" means mineral as defined in the Mineral Resources Act;
- (g) "Minister" means the Minister responsible for the Directorate;
- (h) "Nova Scotia lands" means Nova Scotia lands as defined in the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act;
- (i) "Province" includes Nova Scotia lands;
- (j) "salt formation" means a rock formation composed predominantly of salt;
- (k) "storage area" means an area that has the geological potential to contain one or more storage reservoirs;
- (l) "storage reservoir" means space or spaces in geological formations, whether occurring naturally or otherwise, that may be used for the storage of hydrocarbons, but does not include underground tanks for the storage of fuels. 2001, c. 37, s. 2.

#### Application of Act

3 This Act applies to the storage of hydrocarbons in underground formations in the Province. 2001, c. 37, s. 3.

#### Supervision and management of Act

4 (1) The Minister has the general supervision and management of this Act and the regulations.

(2) The Minister may establish and administer policies, programs, standards, guidelines, objectives, codes of practice, directives and approval processes under this Act. 2001, c. 37, s. 4.

#### Registrar and areas

5 (1) The Registrar appointed under Section 4 of the Petroleum Resources Act shall serve as Registrar under this Act.

(2) An area for a hydrocarbon storage-area licence or hydrocarbon storage-area lease shall be described by reference to mining tracts and claims as provided in the Mineral Resources Act. 2001, c. 37, s. 5.

#### Advisory committee and experts

6 (1) The Minister may establish an advisory committee or retain experts to advise the Minister, the Directorate or the Board.

(2) The Minister may

(a) specify the functions an advisory committee is to perform, including the seeking of input from the public and the manner and time period in which those functions are to be performed; and

(b) provide for the remuneration of and payment of expenses to experts, witnesses and members of an advisory committee.

(3) The Board may retain experts and provide for the remuneration of and payment of expenses to experts. 2001, c. 37, s. 6.

#### Prohibition

7 No person shall develop, construct, operate or abandon a storage reservoir unless authorized by this Act or the regulations. 2001, c. 37, s. 7.

#### Applications

8 (1) An application for a hydrocarbon storage-area licence shall be made to the Minister and contain the requirements set out in the regulations.

(2) Before the Minister proceeds with an application pursuant to subsection (1), the applicant shall provide the Minister with a written statement from the Minister of Natural Resources approving the use of the geological formation for the development of a storage reservoir.

(3) The Registrar shall record and file all applications for licences. 2001, c. 37, s. 8.

#### Hydrocarbon storage-area licences

9 (1) Upon receipt of an application pursuant to Section 8, the Minister may

(a) require an applicant to submit any additional information the Minister considers necessary;

(b) issue a hydrocarbon storage-area licence to the applicant, subject to such terms and conditions as the Minister determines;

(c) amend a hydrocarbon storage-area licence previously issued to or held by the applicant, subject to such terms and conditions as the Minister determines;

- (d) refuse to issue a hydrocarbon storage-area licence to the applicant; or
- (e) cancel a hydrocarbon storage-area licence previously issued to or held by the applicant.

(2) The Registrar shall record and file all licences issued pursuant to this Section. 2001, c. 37, s. 9.

#### Duration and renewal of licences

10 (1) A hydrocarbon storage-area licence shall be for one year.

(2) Upon application and provided the terms and conditions of the licence are met, a hydrocarbon storage-area licence may be renewed a total of four times. 2001, c. 37, s. 10.

#### Effect of licence

11 A hydrocarbon storage-area licence gives the holder an exclusive right to conduct those activities required by the regulations or the licence to evaluate the potential for underground storage use of the lands covered by the licence. 2001, c. 37, s. 11.

#### Restrictions and prohibitions

12 (1) No application for a hydrocarbon storage-area licence shall be accepted for areas

- (a) that are subject to a lease or special lease granted to a third party pursuant to the Mineral Resources Act;
- (b) that are subject to a production agreement granted to a third party pursuant to the Petroleum Resources Act;
- (c) for which a prohibition on exploration or development activity is in force; or
- (d) identified in the regulations.

(2) The holder of a hydrocarbon storage-area licence or a person acting under the authority of the holder or the licence shall not

- (a) enter upon or perform work upon lands other than lands owned by the Crown without the consent of the owner or person entitled to grant consent; or
- (b) enter upon or perform work upon lands owned by the Crown without the consent of the minister responsible for those lands.

(3) The holder of a hydrocarbon storage-area licence or a person acting under the authority of the holder or the licence shall not undertake or perform any geophysical or geochemical work, diamond or other drilling, trenching or stripping of overburden on lands in respect of which a licence has been granted under the Mineral Resources Act or an agreement has been granted under the Petroleum Resources Act without the consent of the right holder of the licence or agreement.

(4) All drilling and geophysical work on the lands covered by the hydrocarbon storage-area licence shall be conducted under the authority of a drilling or geophysical permit or as prescribed under the authority of the Petroleum Resources Act and regulations. 2001, c. 37, s. 12.

#### Surface-rights permits

13 (1) In this Section, "Minister" includes a person designated by the Minister.

(2) The holder of a hydrocarbon storage-area licence or a person acting under the authority of the holder or the licence who is unable to obtain consent under Section 12 to

(a) pass over lands other than Crown lands for the purpose of gaining access to the lands covered by the licence or any part thereof;

(b) pass over, enter upon or work the lands covered by the licence or any part thereof; or

(c) pass over, enter upon or work lands held by the holder of a right referred to in subsection 14(3),

may apply to the Minister, after giving notice to the owner or occupier, for a surface rights permit to pass over, enter upon and work such lands.

(3) The Minister, after hearing the parties, may grant a surface rights permit subject to such terms and conditions as the Minister determines, and determine the amount of any compensation to be paid to such owner or occupier and the manner and time of payment of the same.

(4) Where the owner or occupier of the private land cannot be located, the Minister may grant a surface-rights permit on the terms and conditions determined by the Minister.

(5) The Minister may order the applicant for a surface-rights permit to give security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further passage over, entry upon or work by the holder of the hydrocarbon storage-area licence, the holder's legal representative or any person acting on behalf of the holder.

(6) Where there are several owners or occupiers of the lands sought to be entered upon or passed over and there are, in the opinion of the Minister, special difficulties in effecting service of any notice pursuant to this Section, the Minister may order substituted service in such manner as the Minister may determine.

(7) There is no appeal from the granting by the Minister of a surface rights permit, from the Minister's determination as to the amount of compensation, from any order for security or from any order or decision or ruling in respect thereto.

(8) Where a person is delayed in the performance of work on the land covered by the hydrocarbon storage-area licence by refusal of the owner or occupier to permit the person to pass over, enter upon or work the lands and the Minister has granted the person a surface rights permit pursuant to this Section, the time within which the person is required to perform work under the licence shall be extended by a period equal to the delay resulting from the refusal of the owner or occupier to permit the person to pass over, enter upon and work the land.

(9) A surface rights permit granted pursuant to this Section is a decision made by the Minister and may be made a rule or order of the Supreme Court of Nova Scotia in the same manner as provided in the Mineral Resources Act, 2001, c. 37, s. 13.

#### Requirements on licence holders

14 (1) The holder of a hydrocarbon storage-area licence shall perform work in the area covered by the licence to the extent and value as prescribed in the regulations.

(2) The holder of a hydrocarbon storage-area licence may be requested to provide financial or other security, in a form and amount acceptable to the Minister, for its activities under the licence.

(3) The holder of a hydrocarbon storage-area licence shall satisfy the Minister that the holder has complied with subsection (1) by submitting a report and statement of expenditures as prescribed in the regulations or directed by the Minister.

(4) Where a dispute arises as to what reports or expenditures are acceptable, the decision of the Minister is final.

(5) Where the holder of the hydrocarbon storage-area licence fails to comply with subsection (1), (2), (3) or (4), the Minister may revoke the licence. 2001, c. 37, s. 14.

#### Hydrocarbon storage-area leases

15 (1) The holder of a hydrocarbon storage-area licence may apply to the Minister for a hydrocarbon storage-area lease for the rights to a storage area covered by the licence or a part thereof.

(2) Application requirements for a hydrocarbon storage-area lease shall be as set out in the regulations.

(3) The process described in Section 9 applies *mutatis mutandis* with respect to an application for a hydrocarbon storage-area lease.

(4) A hydrocarbon storage-area lease gives the lessee the exclusive right to develop and utilize the storage area for the injection, storage or withdrawal of hydrocarbons in a storage reservoir.

(5) The Registrar shall record and file all applications for hydrocarbon storage-area leases. 2001, c. 37, s. 15.

#### Granting of hydrocarbon storage-area lease

16 (1) Where the Minister is satisfied by a holder of a hydrocarbon storage-area licence that a storage area included in an application under Section 15 may be suitable for the storage of hydrocarbons, the Minister may grant a hydrocarbon storage-area lease to the person applying.

(2) A hydrocarbon storage-area lease shall be in such form and contain such conditions as are determined by the Minister, including financial or other security for its activities under the lease.

(3) The Registrar shall record and file copies of all hydrocarbon storage-area leases that are granted.

(4) A hydrocarbon storage-area lease does not authorize the sale, barter, gift or exchange of any mineral.

(5) A hydrocarbon storage-area lease shall be for a maximum term of twenty years, renewable for further maximum periods of twenty years, for such consideration and subject to such terms and conditions as the Minister may determine.

(6) Where at any time during the hydrocarbon storage-area lease, the holder of the lease or a person acting on behalf of the holder fails to develop or ceases to operate a storage reservoir, the Minister may give notice to the holder of the lease to commence, within one year of the date of the notice, the work necessary to establish the existence of a storage reservoir or to operate a storage reservoir.

(7) Where the holder of a hydrocarbon storage-area lease fails to comply with a notice given pursuant to subsection (6), the Minister may cancel the lease.

(8) Upon the cancellation of a hydrocarbon storage-area lease pursuant to subsection (7), the former holder of the lease has thirty days from the date the lease was cancelled to apply for a hydrocarbon storage-area licence during which time no other application for the area shall be accepted. 2001, c. 37, s. 16.

#### Vesting orders

17 (1) Whenever a lessee requires land, or a right or interest in land, for a storage area or any purpose connected with or incidental to a storage area and no agreement can be made for the acquisition thereof, or a right-of-way or easement in respect to the land, the lessee may present an application to the Minister stating that

(a) the lessee is the holder of a valid hydrocarbon storage-area lease under this Act;

(b) the lessee requires certain land or some right or interest therein, of which a plan and description is attached, for one or more of the above purposes in connection with the area covered by the hydrocarbon storage-area lease;

(c) the person named is the owner of the land, and the lessee is willing to make an arrangement with the owner for the acquisition of the land, right or interest, stating the nature of the proposed agreement and the price that the lessee is willing to pay, but the owner is unwilling to accept; and

(d) the lessee requests that the Minister make an order that the right or interest in the lands required by the lessee be vested in the lessee.

(2) The Minister may request that the application be accompanied by a deposit of such sum as directed for costs or expenses that may be ordered to be paid by the lessee to the owner.

(3) Upon application, the Minister may, by a vesting order, vest in the lessee the property right claimed by the lessee or such other right as the Minister may determine.

(4) A vesting order issued by the Minister shall be filed at the registry of deeds for the registration district in which the land to which the order relates is situate and the filing thereof is deemed to be a deposit of expropriation documents pursuant to the Expropriation Act.

(5) Upon the filing of a vesting order by the Minister, the lessee named in the order is and is deemed to be the expropriating authority within the meaning of the Expropriation Act. 2001, c. 37, s. 17.

#### Application of Expropriation Act

18 In connection with the proceedings under Section 17,

(a) the Expropriation Act applies mutatis mutandis to the expropriation;

(b) notwithstanding Section 4 of the Expropriation Act, whenever that Act conflicts with the expropriation provisions of this Act, the expropriation provisions of this Act prevail;

(c) the lessee is deemed to be the statutory authority for the purpose of the Expropriation Act; and

(d) the Minister is deemed to be the approving authority for the purpose of the Expropriation Act. 2001, c. 37, s. 18.

#### Compensation for property damage

19 (1) Where property is damaged by any activity undertaken pursuant to a hydrocarbon storage-area lease granted under this Act, the owner of the property has a right to receive compensation from the holder of the lease.

(2) Any question as to whether property is damaged by the storage of hydrocarbons pursuant to a lease granted under this Act or as to the amount of compensation shall be determined by arbitration and the Arbitration Act applies. 2001, c. 37, s. 19.

#### Transfer or assignment of licences or leases

20 (1) No person shall transfer or assign a hydrocarbon storage-area licence or hydrocarbon storage-area lease without the written approval of the Minister.

(2) The assignee of a hydrocarbon storage-area licence or hydrocarbon storage-area lease is subject to the duties, obligations and liabilities of the original holder and any further duties, obligations and liabilities that may be imposed by the Minister, and the assignor is relieved of the duties, obligations and liabilities under the licence or lease.

(3) The Registrar shall record and file all transfers or assignments of a licence or lease. 2001, c. 37, s. 20.

#### Surrender of licences or leases

21 Subject to this Act, upon application by the holder of a hydrocarbon storage-area licence or hydrocarbon storage-area lease, the Minister may accept the surrender of

(a) two or more licences or leases and issue a licence or lease for the whole or any portion of the claims or tracts covered by the surrendered licence or lease; or

(b) the licence or lease. 2001, c. 37, s. 21.

Construction or operation of storage reservoirs

22 (1) The holder of a valid hydrocarbon storage-area lease under this Act may apply to the Board to construct or operate a storage reservoir.

(2) No person shall construct or operate a storage reservoir without first obtaining an approval from the Board.

(3) The Board may prescribe procedures and forms to be used in applications pursuant to this Section.

(4) The Board may prescribe information required on an application for an approval or an application for an amendment, transfer or assignment of an approval. 2001, c. 37, s. 22.

Suspension or abandonment of reservoir

23 No person shall suspend or discontinue the operation of or abandon a storage reservoir or a portion thereof without obtaining the prior written approval of the Board. 2001, c. 37, s. 23.

Codes of practice, guidelines and standards

24 (1) The Minister may prepare or adopt a code of practice respecting public safety and the design, construction, operation and abandonment of hydrocarbon storage in underground formations and associated equipment.

(2) The Minister or the Board may incorporate by reference any codes of practice, guidelines or standards respecting hydrocarbon storage in underground formations in any hydrocarbon storage-area licence, hydrocarbon storage-area lease or approval given under this Act. 2001, c. 37, s. 24.

Reports and returns

25 (1) A person who holds a hydrocarbon storage-area licence, hydrocarbon storage-area lease or approval given under this Act shall make such reports and returns as the Minister or the Board requires.

(2) Where the person fails to make a report or return requested under subsection (1), the Minister or the Board, as the case may be, may suspend or cancel the hydrocarbon storage-area licence, hydrocarbon storage-area lease or approval given by the Minister or the Board. 2001, c. 37, s. 25.

Orders respecting contraventions

26 (1) Where the Minister believes on reasonable and probable grounds that a person has contravened, or will contravene, any part of this Act or the regulations or any term or condition of any hydrocarbon storage-area licence or hydrocarbon storage-area lease, the Minister may, whether or not the person has been charged or convicted in respect of the contravention, issue an order requiring the person to cease the specified activity.

(2) The Board has the same powers of the Minister as outlined in subsection (1) with respect to approvals which the Board gives pursuant to Section 22.

(3) An order pursuant to subsections (1) or (2) remains in effect until it is revoked, in writing, by the Minister or the Board.

(4) A copy of an order made pursuant to subsections (1) or (2) shall be served as prescribed in the regulations.

(5) Where an order is served on a person to whom it is directed, that person shall comply with the order forthwith or, where a period for compliance is specified in the order, within the time period specified.

(6) Where the person to whom an order is directed does not comply with the order or a part of the order, the Minister or the Board, as the case may be, may take whatever action the Minister or the Board considers necessary to carry out the terms of the order.

(7) An order made pursuant to this Section remains in effect notwithstanding that the order is challenged in a court. 2001, c. 37, s. 26.

#### Suspension or cancellation of licence or lease

27 (1) Where the Minister believes on reasonable and probable grounds that a person has contravened or will contravene this Act or the regulations or a term or condition of a hydrocarbon storage-area licence or hydrocarbon storage-area lease, the Minister may cancel or suspend the licence or lease.

(2) The Board has the same powers of the Minister as outlined in subsection(1) with respect to approvals given by the Board pursuant to Section 22.

(3) The Minister or the Board, as the case may be, shall forthwith on cancellation or suspension of a hydrocarbon storage-area licence, hydrocarbon storage-area lease or approval give notice, in writing, together with reasons for the cancellation or suspension to the holder of the licence, lease or approval. 2001, c. 37, s. 27.

#### Inspectors

28 (1) The Minister or the Board may appoint a person to be an inspector for the purpose of this Act.

(2) An inspector, in carrying out duties pursuant to this Act, has and may exercise in any part of the Province all the powers, authorities and immunities of a peace officer as defined in the Criminal Code (Canada).

(3) The holder of a hydrocarbon storage-area licence, hydrocarbon storage-area lease or approval shall forthwith, on request, permit an inspector to carry out an inspection of any place, other than a dwelling place, to which the licence, lease or approval relates.

(4) The holder of a hydrocarbon storage-area licence, hydrocarbon storage-area lease or approval or the owner or occupier of any place in respect of which an inspector is exercising powers or carrying out duties pursuant to this Section shall

(a) give the inspector all reasonable assistance to enable the inspector to exercise those powers and carry out those duties; and

(b) furnish all books, records and information relative to the exercising of those powers and the carrying out of those duties that the inspector may reasonably require. 2001, c. 37, s. 28.

#### Exemption from liability

29 Notwithstanding anything contained in this Act, no action for damages may be commenced or maintained and no cause of action lies against the Minister, a person designated by the Minister, the Board or any member of the Board or an employee or agent acting under the direction of the Minister or the Board, including an inspector, or member of an advisory committee or expert, if the action arises out of any act or omission of that person that occurs while that person is carrying out duties or exercising powers pursuant to this Act in good faith and, without restricting the generality of the foregoing, no person referred to in this Section is liable for damages caused by a system of inspection or the manner in which inspections are to be performed or the frequency, infrequency or absence of inspections. 2001, c. 37, s. 29.

#### Offences

30 A person who contravenes

- (a) a term or condition of a hydrocarbon storage-area licence, hydrocarbon storage-area lease or approval;
- (b) an order made pursuant to this Act; or
- (c) this Act or the regulations,

is guilty of an offence. 2001, c. 37, s. 30.

#### Penalties

31 (1) A person who is guilty of an offence under this Act or the regulations is liable on summary conviction to a fine of not more than one million dollars or to imprisonment for a term of not more than two years, or to both.

(2) Where an offence under this Act or the regulations is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed.

(3) Where a corporation is guilty of an offence under this Act or the regulations, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the penalties provided for in this Section.

(4) In a prosecution for an offence under this Act or the regulations, 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.

(5) A prosecution for an offence under this Act or the regulations shall be commenced within two years from the date on which the subject-matter of the prosecution arose.

(6) No person shall be convicted of an offence under this Act if the person establishes that the person

(a) exercised all due diligence to prevent the commission of the offence; or

(b) reasonably and honestly believed in the existence of facts that, if true, would render the conduct of that person innocent. 2001, c. 37, s. 31.

#### Effect of existing licences, leases or permits

32 (1) A licence or lease issued pursuant to the Gas Storage Exploration Act is deemed to be issued pursuant to this Act.

(2) A person who holds a valid permit under the Gas Storage Exploration Act on the coming into force of this Act is deemed to hold a hydrocarbon storage-area licence under this Act. 2001, c. 37, s. 32.

#### Regulations

33 (1) The Governor in Council may make regulations

(a) respecting the information required on an application for a hydrocarbon storage-area licence or hydrocarbon storage-area lease, or an application for an amendment, transfer or assignment of a licence or lease;

(b) respecting areas where a hydrocarbon storage-area licence or hydrocarbon storage-area lease may not be issued;

(c) respecting financial or other security to be provided by an applicant for a hydrocarbon storage-area licence or hydrocarbon storage-area lease;

- (d) respecting the role of the Registrar in the preparation and filing of documents;
  - (e) respecting a review of applications, application fees to be charged and cost recovery for services;
  - (f) respecting the terms and conditions, including public safety, and time periods for issuing a hydrocarbon storage-area licence or granting a hydrocarbon storage-area lease;
  - (g) respecting rent, royalty or other user fees or charges to be imposed under the Act;
  - (h) respecting work performance and benefits;
  - (i) respecting measurements, monitoring and reporting requirements under the Act;
  - (j) respecting orders under Section 13;
  - (k) respecting requests for a vesting order under Section 17, the matters and things necessary to satisfy the Minister that lands required by a holder of a hydrocarbon storage-area licence or hydrocarbon storage-area lease should be vested in the holder and the contents of the vesting order;
  - (l) respecting compensation under Section 19;
  - (m) respecting the design, construction, inspection, testing, operation, maintenance and repair of storage reservoirs and equipment, materials and installations used therein and works, fittings, machines or plants associated or connected therewith;
  - (n) respecting the confidentiality of records, returns and other information provided pursuant to this Act and the communicating and access to those records, returns and information;
  - (o) respecting orders and the service of orders issued pursuant to this Act;
  - (p) respecting the appointment, duties and powers of inspectors under this Act and cost recovery of services provided;
  - (q) respecting offences under this Act;
  - (r) vesting in the Board any authority and powers considered necessary or advisable for the purpose of enabling the Board to conduct and perform its duties pursuant to this Act, including cost recovery for services;
  - (s) defining any word or expression used but not defined in this Act;
  - (t) deemed necessary or advisable to carry out effectively the intent and purpose of this Act.
- (2) The exercise by the Governor in Council of the authority contained in subsection(1) is regulations within the meaning of the Regulations Act. 2001, c. 37, s. 33.

#### Repeal

34 Chapter 181 of the Revised Statutes, 1989, the Gas Storage Exploration Act, is repealed. 2001, c. 37, s. 34.

#### Proclamation

35 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2001, c. 37, s. 35.

Proclaimed - December 6, 2002

In force - December 6, 2002