

Offshore Petroleum Royalty Act

CHAPTER 9

OF THE

ACTS OF 1987

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An Act Respecting Petroleum  
Royalties in the Offshore  
Short title

1 This Act may be cited as the Offshore Petroleum Royalty Act. 1987, c. 9, s. 1.

Interpretation

2 (1) In this Act,

(a) "assessment" includes reassessment;

(b) "Minister" means the Minister of Mines and Energy;

(c) "offshore area" means offshore area as defined in the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act;

(d) "prescribed" means prescribed by the regulations as amended from time to time;

(e) "representative" means a representative appointed or designated pursuant to Part II of the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act.

Incorporation by reference

(2) In this Act, unless the context indicates otherwise, words and expressions have the same meaning as in the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act. 1987, c. 9, s. 2.

Royalties received

3 (1) There is hereby reserved to Her Majesty in right of the Province, and each holder of a share in a production licence is liable for and shall pay, in accordance with the regulations, such royalties as may be

prescribed, at the rates prescribed, in respect of petroleum produced from the Nova Scotia lands in the offshore area and in respect of the periods prescribed.

#### Payment of royalty

(2) The Minister may require all or part of any royalty payable pursuant to this Act to be paid in money or in kind in accordance with the regulations.

#### Variation by regulation

(3) The Governor in Council may, by regulation, authorize the reduction of, or the exemption from the payment of, any royalty payable pursuant to this Act for such periods, in such amounts and subject to such conditions as may be specified in the regulations. 1987, c. 9, s. 3.

#### Default of payment

4 Each holder of a share in a production licence liable for and required to pay a royalty pursuant to this Act who is in default in accordance with the regulations in the payment of any amount payable pursuant to this Act on account of such royalty shall pay interest and penalties on such amounts in accordance with the regulations. 1987, c. 9, s. 4.

#### Payments as prescribed

5 Each holder of a share in a production licence liable for and required to pay royalties, penalties or interest pursuant to this Act shall make payments of or on account of such royalties, penalties or interest at the time and in the manner prescribed. 1987, c. 9, s. 5.

#### Prescribed returns

6 (1) Each holder of a share in a production licence shall file, at the time and in the manner prescribed, reports and returns in such form and containing such information as may be prescribed and shall submit such documentation in connection therewith as may be prescribed.

#### Representative to act

(2) Where the interest owner of a production licence consists of two or more interest holders, the representative of the interest owner shall, where required by the regulations,

(a) collect and remit on behalf of such interest holders any royalty due pursuant to this Act; and

(b) file on behalf of such holders, at the time and in the manner prescribed, consolidated reports and returns in the form and containing the information prescribed and submit such documentation in connection therewith as may be prescribed.

#### Information to representative

(3) Interest holders of a production licence shall provide their representative with the information necessary to file any reports and returns pursuant to clause (b) of subsection (2). 1987, c. 9, s. 6.

#### Maintenance of records

7 (1) Each holder of a share in a production licence shall, subject to such terms and conditions as may be prescribed, keep books, records, accounts, documents and other information necessary for or incidental to the calculation and verification of the amounts of royalties payable by the holder pursuant to this Act, including such books, records, accounts, documents and other information as may be prescribed.

#### Security of records

(2) Books, records, accounts, documents and other information required to be kept pursuant to subsection (1) shall be kept at the place and in the manner and during the periods prescribed. 1987, c. 9, s. 7.

#### Audits permitted

8 Persons required by this Act to file reports and returns are subject to such audit and examination as may be prescribed to be conducted at the times, in the circumstances and in the manner prescribed. 1987, c. 9, s. 8.

#### Assessment by Minister

9 (1) The Minister may, at any time, assess the royalty, interest or penalties payable pursuant to this Act in respect of any period and give a notice of such assessment to the interest holder required to pay the royalty.

#### Liability not affected

(2) Liability for the royalty payable pursuant to this Act and the interest and penalties, if any, payable in respect thereof is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

#### Minister not bound

(3) In making an assessment pursuant to subsection (1), the Minister is not bound by any report or return filed by or on behalf of an interest holder and in making an assessment the Minister may, notwithstanding a report or return so filed or that no such report or return has been filed, assess the royalty, interest and penalties payable pursuant to this Act.

#### Assessment valid and binding

(4) An assessment, subject to being varied or vacated on an objection or appeal pursuant to Sections 10 or 11 and subject to a reassessment, is valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding pursuant to this Act relating thereto.

#### Enforcement of assessment

(5) An assessment made by the Minister pursuant to this Section may be enforced in the same manner as an order of the Trial Division of the Supreme Court. 1987, c. 9, s. 9.

#### Objection to assessment

10 (1) An interest holder who objects to an assessment may, within ninety days after the date of mailing of the notice of assessment, give a notice of objection to the Minister by registered mail, in such form and manner as may be prescribed, setting out the reasons for the objection and all the relevant facts.

#### Reconsideration of assessment

(2) On receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the assessment and confirm, vary or vacate the assessment and give notice thereof by registered mail to the interest holder who gave the notice of objection. 1987, c. 9, s. 10.

#### Appeal

11 (1) Where the Minister confirms or varies an assessment pursuant to subsection (2) of Section 10 or fails, within ninety days after the date of mailing by the interest holder of the notice of objection, to notify the interest holder that the Minister has confirmed, varied or vacated the assessment, the interest holder may appeal to the Trial Division of the Supreme Court in the prescribed manner to have the assessment varied or vacated.

#### Time for appeal

(2) No appeal pursuant to subsection (1) may be instituted after the expiration of ninety days after the date of mailing of a notice confirming or varying an assessment or, where no such notice is given, after the expiration of one hundred and eighty days after the date of mailing of the notice of objection.

#### Minister to forward copies to Court

(3) Where an appeal is taken pursuant to subsection (1), the Minister shall forthwith forward to the Court copies of all reports or returns, notices of assessment, notices of objection and other documents, if any, that are relevant to the appeal.

#### Minister a party

(4) In a proceeding in an appeal to the Supreme Court pursuant to this Section, the Minister shall be a party, may be represented by counsel and may participate fully in the proceeding.

#### Powers of Court

(5) The Court may dispose of an appeal pursuant to subsection (1) by dismissing it or by allowing it and vacating or varying the assessment and may make such orders as are necessary for giving effect to any such disposition.

#### Hearing may be private

(6) Proceedings in an appeal to the Supreme Court pursuant to subsection (1) may be held in private on request made to the Court by a party to the appeal. 1987, c. 9, s. 11.

#### Court may extend time

12 (1) Notwithstanding subsection (1) of Section 10 and subsection (2) of Section 11, the Supreme Court may, on application, make an order, subject to any terms it deems just, extending the time within which a notice of objection to an assessment may be given pursuant to subsection (1) of Section 10 or an appeal to the Supreme Court may be instituted pursuant to subsection (2) of Section 11 where, in the opinion of the Court, the circumstances of the case are such that it would be just and equitable to do so.

#### Minister may suspend requirement to pay

(2) Where notice of objection to an assessment is given pursuant to subsection (1) of Section 10 or an appeal to the Supreme Court is instituted pursuant to subsection (1) of Section 11, the Minister may suspend, pending disposition of the objection or appeal, the requirement to pay any amount on account of royalty, interest or penalty payable pursuant to this Act, the liability for which the interest holder disputes in the notice of objection or on appeal.

#### Minister may require security

(3) The Minister may, as a condition of suspending payment of any amount in dispute, require the relevant interest holder to furnish security for such payment in a form and amount acceptable to the Minister. 1987, c. 9, s. 12.

#### Referral to Court by agreement

13 Where the Minister and the holder of a share in a production licence agree in writing that a question of law, fact or mixed law and fact arising pursuant to this Act should be determined by the Supreme Court, that question shall be determined by the Court. 1987, c. 9, s. 13.

#### Refund of overpayment

14 The Minister shall, at the times and in the circumstances prescribed, refund any overpayment made on account of royalties, interest or penalties payable pursuant to this Act and interest at a prescribed rate per annum shall be paid thereon in accordance with the regulations. 1987, c. 9, s. 14.

#### Set-off

15 Where a person is indebted to Her Majesty in right of the Province pursuant to this Act, the Minister may require the retention by way of deduction or set-off of such amount as the Minister may specify out of any amount that is or may become payable to such person by Her Majesty in right of the Province. 1987, c. 9, s. 15.

#### Avoidance of payment

16 (1) Where, in the opinion of the Minister, the holder of a share in a production licence is attempting to avoid payment of royalties pursuant to this Act, the Minister may, in writing, direct that all royalties, interest and penalties payable by that holder be paid forthwith.

#### Payments due forthwith

(2) Where the Board orders the cancellation of a production licence pursuant to the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act, all royalties, interest and penalties payable pursuant to this Act in respect of that production licence shall be paid forthwith. 1987, c. 9, s. 16.

#### Calculation where artificial reduction

17 Where, in the opinion of the Minister, the result of one or more acts, agreements, arrangements, transactions or operations is to artificially or unduly reduce the amount of any royalties payable pursuant to this Act, such royalties shall be calculated as though the act, agreement, arrangement, transaction or operation had not taken place or had taken place at fair market value between parties dealing at arms length. 1987, c. 9, s. 17.

#### Joint and several liability

18 (1) Where an interest holder (in this subsection referred to as the "successor") acquires a production licence or a share in a production licence from another interest holder (in this subsection referred to as the "predecessor"), the successor is jointly and severally liable with the predecessor for all royalties, interest and penalties pursuant to this Act that are payable by the predecessor at the time of such acquisition unless the successor has obtained prior to such acquisition a certificate from the Minister certifying that

(a) all such royalties, interest and penalties have been paid;

(b) security for the payment of such royalties, interest and penalties has been accepted by the Minister; or

(c) arrangements for the payment of such royalties, interest and penalties acceptable to the Minister have been made.

#### Certificate of payment

(2) Every assignee, liquidator, administrator, executor and other like person, other than a trustee in bankruptcy, shall, before distributing any property under that persons control belonging to the holder of a share in a production licence, obtain a certificate from the Minister certifying that all royalties, interest and

penalties pursuant to this Act that are payable by such interest holder have been paid or that security for the payment thereof has been accepted by the Minister.

Personal liability where no certificate

(3) Distribution of property without a certificate required by subsection (2) renders the person required to obtain the certificate personally liable for the unpaid royalties, interest and penalties. 1987, c. 9, s. 18.

Minister may direct Board

19 Notwithstanding any other provision of this Act or Part III of the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act, where a person is in default in accordance with the regulations in the payment of any amount payable pursuant to this Act in respect of any interest issued in relation to any portion of the offshore area, the Minister may, for so long as the amount remains unpaid, direct the Board to

(a) refuse to issue to that person any interest in relation to any portion of the offshore area; and

(b) refuse to authorize, pursuant to Part III of the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act, that person to carry on any work or activity related to the exploration for or the production of petroleum on any portion of the offshore area and may suspend any such authorization already given. 1987, c. 9, s. 19.

Income Tax Act applies

20 Sections 231 to 231.5 of the Income Tax Act (Canada) apply, with such modifications as the circumstances require, in respect of the administration and enforcement of this Act and, without restricting the generality of the foregoing, as if

(a) the references therein to "tax" were read as a reference to "royalty";

(b) the references therein to "Minister" were read as a reference to "Minister" as defined in this Act;

(c) the references therein to the "Department of National Revenue" were read as a reference to the "Department of Mines and Energy";

(d) the references therein to the "Tax Court of Canada" were read as a reference to the "Supreme Court of Nova Scotia"; and

(e) the references therein to a "return of income or a supplementary return" were read as a reference to "a report or return" filed pursuant to this Act. 1987, c. 9, s. 20.

## Remedies unaffected

21 The existence or exercise of any remedy that the Board or Her Majesty in right of the Province has pursuant to this Act does not affect any other remedy that the Board or Her Majesty has at law, including any remedy that the Board may exercise pursuant to Section 103 of the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act, 1987, c. 9, s. 21.

## Powers of Minister

22 The Minister may

(a) enter into an agreement with each holder of a share in a production licence respecting administrative and operational matters, such agreement to be subject to the regulations respecting administrative and operational matters necessary for carrying out this Act and to an agreement referred to in clause (b);

(b) with the approval of the Governor in Council, enter into an agreement with each holder of a share in a production licence pertaining to any matter in respect of which the Governor in Council may make regulations and providing that in the event of an inconsistency between the agreement and the regulations, the agreement prevails;

(c) enter into an agreement with the Board and the federal Government for the collection and administration of royalties with the ability to delegate any ministerial power, duty or function pursuant to this Act, 1987, c. 9, s. 22.

## Regulations

23 (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without restricting the generality of the foregoing, may make regulations

(a) prescribing royalties payable pursuant to this Act and the rates at which such royalties are payable;

(b) prescribing the manner of calculating or determining any royalty prescribed pursuant to clause (a) and any component thereof or value in relation thereto, including the valuation of petroleum produced and any costs, expenses, allowances, credits and other amounts that may be deducted in calculating or determining the amount of royalty payable and generally providing for any other matter or thing necessary for or incidental to such calculation or determination;

(c) exempting, conditionally or unconditionally, any person or persons of any class from the payment of, in whole or in part, any royalty pursuant to this Act or exempting any petroleum produced from the offshore area from the application of this Act;

(d) prescribing the circumstances in which and the terms and conditions subject to which the Minister may require all or part of any royalty payable pursuant to this Act to be paid in money or in kind and prescribing the manner of calculating or determining the payment in kind;

(e) prescribing or prescribing the manner of calculating or determining penalties for failure to comply with this Act;

(f) prescribing the rate at which interest on arrears of royalties, interest and penalties owing to Her Majesty in right of the Province pursuant to this Act or on amounts of refunds payable by the Minister pursuant to this Act is payable and the manner of determining or calculating the interest payable; and

(g) prescribing anything that, by this Act, is to be prescribed.

#### Types of regulation

(2) Regulations made pursuant to subsection (1) may be made in respect of all petroleum or any class thereof produced from the offshore area.

#### Application of regulations

(3) Regulations made pursuant to subsection (1) may apply generally to the offshore area or any portion thereof.

#### Regulations Act

(4) Regulations made pursuant to this Section shall be regulations within the meaning of the Regulations Act, 1987, c. 9, s. 23.

#### Proclamation

24 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation. 1987, c. 9, s. 24.

Proclaimed - January 4, 1990

In force - January 5, 1990

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