



THE NEWFOUNDLAND GAZETTE

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NEWFOUNDLAND REGULATIONS

84/01

85/01



NEWFOUNDLAND REGULATION 84/01

Royalty Regulations
under the
Petroleum and Natural Gas Act
(O.C. 2001-735)

(Filed December 7, 2001)

Under the authority of section 39 of the *Petroleum and Natural Gas Act*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, December 6, 2001.

Deborah E. Fry
Clerk of the Executive Council

REGULATIONS

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Short title

1. These regulations may be cited as the *Royalty Regulations*.

Interpretation

2. (1) In these regulations

- (a) "Act" means the *Petroleum and Natural Gas Act*;
 - (b) "barrel" means 0.1589873 cubic metres or 42 US gallons or 34.9723 Canadian gallons measured at 101.325 kPa and a temperature of 15° Celsius;
 - (c) "basic royalty" means the royalty share required to be paid in accordance with section 7;
 - (d) "board" means the Canada-Newfoundland Offshore Petroleum Board established under the *Canada-Newfoundland Atlantic Accord Implementation Act (Canada)* and the *Canada-Newfoundland Atlantic Accord Implementation Newfoundland Act*;
 - (e) "incremental royalty" means the royalty share required to be paid in accordance with sections 10 and 11;
 - (f) "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;
 - (g) "loading point" means the final point of measurement of the production facilities of a lease prior to the loading of oil for transportation or transferring for processing;
 - (h) "required form" means the form required by the minister and includes the information and records that the minister requires to accompany that form; and
 - (i) "royalty share" means royalty on petroleum and interest, penalties and other amounts payable to the Crown by an interest holder.
- (2) In these regulations a reference to the "Crown" shall be considered to be a reference to "Her Majesty in Right of the province".
- (3) In these regulations, a reference to dollars, money or an amount of money shall be considered to be a reference to those dollars, that money or amount of money in Canadian currency.
- (4) In these regulations, unless otherwise is expressed, all accounting terms and practices shall have the meaning assigned to them

that is in accordance with Canadian generally accepted accounting principles and good petroleum industry practices and all costs shall be accounted for on a cash basis of accounting.

Application **3.** These regulations shall apply to all leases issued after April 1, 1990 and before November 30, 2001.

Liability for royalty **4.** (1) An interest holder is liable for and shall pay royalty share to the Crown in accordance with these regulations.

(2) The royalty portion of royalty share shall include, when required to be paid under these regulations, basic royalty and incremental royalty.

(3) An interest holder shall determine gross revenue, eligible project costs, net revenue, simple payout, Tier I payout and Tier II payout for a lease separate from

(a) other interest holders in the same lease; and

(b) other leases in which that interest holder may have a share,

and that determination is subject to audit and a redetermination by the minister.

(4) Where 2 or more leases have been issued for the same reserve, the minister may designate those leases as one lease for the purpose of these regulations or a provision of these regulations.

Payment of royalty **5.** (1) Royalty share shall be paid by an interest holder on the last day of the month following the month to which the payment relates.

(2) Royalty share payable by an interest holder to the Crown shall be paid in money.

Basic royalty **6.** (1) An interest holder shall pay a basic royalty in accordance with section 5 and that basic royalty with respect to a lease is the sum of the gross revenue for the month referred to in section 5 multiplied by the basic royalty rate in effect under subsection (2).

(2) The basic royalty rate for an interest holder in a lease

- (a) before the month in which simple payout for that interest holder occurs, is
 - (i) until the interest holder's share of the first 50 million barrels of oil is transferred to the interest holder at the loading point under the lease, 1 %, and
 - (ii) after the transfer to the interest holder at the loading point of the interest holder's share of the first 50 million barrels of oil until simple payout occurs, 2.5%; and
- (b) commencing at the beginning of the month in which simple payout for that interest holder occurs, is
 - (i) until the interest holder's share of the first 100 million barrels of oil is transferred to the interest holder at the loading point after simple payout, 5%, and
 - (ii) for the interest holder's share of the next 100 million barrels of oil transferred to the interest holder at the loading point under the lease, 7.5%; and
- (c) after completion of the application of subparagraph (b)(ii), 10%.

(3) Notwithstanding paragraph (2)(a), once simple payout occurs, basic royalty shall be paid in accordance with paragraph (2)(b).

Gross revenue,
gross sales etc.

7. (1) The gross revenue for an interest holder for a month shall be the gross sales revenue less the eligible transportation costs for that interest holder for that month.

(2) The gross sales revenue of an interest holder for a month shall be the sum of

- (a) revenue from sales of oil by that interest holder in that month; plus
- (b) deemed sales by that interest holder in that month; less
- (c) revenue in that month from sales of oil that were included in the calculation of gross sales revenue in a previous month.

(3) The eligible transportation costs for an interest holder for a month shall, after consultation with the interest holder, be determined by the minister, in writing, before the end of the month following the month in which those costs were incurred.

(4) For the purpose of paragraph 2(b), oil transferred to the interest holder at the loading point that has not been sold shall be deemed sold at the end of the month referred to in subsection (2), with the exception of

(a) oil in inventory that was transferred to the interest holder at the loading point within 60 days before the end of the month for which the royalty is calculated; and

(b) all allowed shrinkage as described in section 8.

(5) The minister shall determine the value of deemed sales under subsection (4).

(6) In a month in which oil previously deemed sold under subsections (4) and (5) is actually sold, gross revenue for that month shall be adjusted to reflect the difference between the actual sale value of the oil and the value previously determined under those subsections.

Allowed shrinkage

8. (1) Allowed shrinkage is the reduction in volume of oil that is incidental to the transportation of that oil from the loading point under a lease directly to an entry valve at a transshipment facility in the province or other initial discharge point for that oil and is the lesser of

(a) actual shrinkage incurred; or

(b) 0.2% of the bill of lading net standard volume quantity of oil loaded at the loading point.

(2) Notwithstanding subsection (1), where the minister has not approved the measurement facilities and practices at the loading point and discharge point as being in compliance with industry standards acceptable to him or her, the allowed shrinkage shall be considered to be zero.

Simple payout

9. For the purposes of these regulations simple payout occurs for an interest holder when, for the first time, the sum of the cumulative

(a) gross revenue; and

(b) incidental revenue,

exceeds the sum of

(c) pre-development costs;

(d) eligible capital costs;

(e) eligible operating costs;

(f) eligible marketing costs; and

(g) basic royalty paid,

for that interest holder.

Tier I incremental
royalty

10. (1) An interest holder shall calculate and pay a Tier I incremental royalty to the Crown every month, starting at the beginning of the month in which Tier I payout for that interest holder occurs.

(2) Tier I incremental royalty payable by an interest holder under a lease for a month shall be

(a) the interest holder's cumulative net revenue under the lease from the start of the period to the end of that particular month in the period, multiplied by 30%; less

(b) the cumulative basic royalty paid by the interest holder for the period to the end of the previous month, to the extent that the cumulative basic royalty paid is less than or equal to the amount calculated under paragraph (a); less

(c) the cumulative Tier I incremental royalty paid for the period to the end of the previous month.

(3) Tier I payout for an interest holder occurs when, for the first time, the sum of cumulative

(a) gross revenue; and

(b) incidental revenue,

equals the sum of cumulative

- (c) eligible pre-development costs;
- (d) eligible capital costs;
- (e) eligible marketing costs;
- (f) eligible operating costs;
- (g) Tier I return allowance; and
- (h) basic royalty paid.

(4) Tier I return allowance for an interest holder for each month after project commencement, until the month in which Tier I payout occurs, shall be calculated as the product of the Tier I return allowance factor multiplied by the amount by which the sum of an interest holder's cumulative

- (a) eligible pre-development costs;
- (b) eligible capital costs;
- (c) eligible marketing costs;
- (d) eligible operating costs
- (e) basic royalty paid; and
- (f) Tier I return allowance to the end of the previous month,

exceeds the sum of cumulative

- (g) gross revenue; and
- (h) incidental revenue.

(5) In this section, the Tier I return allowance factor for a month is the amount determined by the following formula

$$(1.1 + X)^{1/12} \text{ minus } 1$$

where X equals the percentage increase, expressed as a decimal, in the consumer price index for the month that is 2 months before the month for which the calculations are being made, from the consumer price index for the same month in the preceding year.

(6) If, in a period after Tier I payout, the sum of the interest holder's

- (a) gross transfer revenue; and
- (b) incidental revenue,

is exceeded by the sum of the interest holder's

- (c) eligible capital costs;
- (d) eligible marketing costs; and
- (e) eligible operating costs,

the amount of that excess shall be carried forward as an eligible cost in the next period after Tier I payout occurs.

Tier II incremental royalty

11. (1) An interest holder shall calculate and pay a Tier II incremental royalty to the Crown every month, starting at the beginning of the month in which Tier II payout for that interest holder occurs.

(2) Tier II incremental royalty payable by an interest holder under a lease for a month shall be

- (a) the interest holder's cumulative net revenue under the lease from the start of the period to the end of that particular month in the period, multiplied by 12.5%; less
- (b) the cumulative Tier II royalty paid for the period to the end of the previous month.

(3) Tier II payout for an interest holder occurs when, for the first time, the sum of cumulative

- (a) gross revenue; and
- (b) incidental revenue,

equals the sum of cumulative

- (c) eligible pre-development costs;
- (d) eligible capital costs;
- (e) eligible marketing costs;
- (f) eligible operating costs;
- (g) Tier II return allowance;
- (h) basic royalty paid; and
- (i) incremental royalty paid.

(4) Tier II return allowance for an interest holder for each month after project commencement, until the month in which Tier II payout occurs, shall be calculated as the product of the Tier II return allowance factor multiplied by the amount by which the sum of an interest holder's cumulative

- (a) eligible pre-development costs;
- (b) eligible capital costs;
- (c) eligible marketing costs;
- (d) eligible operating costs;
- (e) basic royalty paid;
- (f) incremental royalty paid; and
- (g) Tier II return allowance to the end of the previous month,

exceeds the sum of the interest holder's cumulative

- (h) gross revenue; and
- (i) incidental revenue.

(5) In this section, the Tier II return allowance factor for a month is the amount determined by the following formula

$$(1.18 + X)^{1/12} \text{ minus } 1$$

where X equals the percentage increase, expressed as a decimal, in the consumer price index for the month that is the 2 months before the month for which the calculations are being made from the consumer price index for the same months in the preceding year.

(6) In a period after Tier II payout, where no Tier I incremental royalty is payable, the basic royalty paid in that period shall be deducted from the net revenue of the interest holder for that period for the purpose of calculating the Tier II incremental royalty payable by the interest holder.

(7) In section 10 and this section, "period" means a year except that for the purposes of subsections 10(2) and 11(2) in the years in which Tier I payout or Tier II payout occurs

- (a) the time from the beginning of the year to the end of the month preceding the month in which Tier I payout or Tier II payout occurs shall be one period; and
- (b) the remainder of that year shall be another period.

Net revenue

12. Net revenue for an interest holder for a month is the amount by which the sum of

- (a) gross revenue; and
- (b) incidental revenue,

of the interest holder for the month, exceeds the sum of

- (c) eligible capital costs for that interest holder for the month;
- (d) eligible marketing costs; and
- (e) eligible operating costs.

Lien property

13. (1) The assets of an interest holder that are subject to a lien established under the Act shall be:

- (a) that interest holder's divided and undivided share of all oil produced from the lease;
 - (b) all money and proceeds that may at any time be due, owing or payable to that interest holder with respect to
 - (i) that interest holder's divided and undivided share in all oil and agreements in effect or entered into after by that interest holder that relates to the sale, use or disposition of that interest holder's divided or undivided share of oil produced from that lease, and
 - (ii) the sale, assignment other than by way of security, transfer or disposition, in whole or in part, of the share of that interest holder in the lease, including all book debts, accounts receivable, negotiable and non-negotiable instruments, judgments, securities and choses in action from the sale or disposition of oil or a share of the lease;
 - (c) the lease and all rights derived under the lease or resulting from the issue of the lease; and
 - (d) records with respect to the assets referred to in paragraphs (a) to (c) including those pertaining to the sale of oil under the interest holder's lease.
- (2) The assets of an interest holder other than those specified in subsection (1) are released from the lien established under the Act.
- (3) Where an interest holder of a share in a lease is in violation of its royalty share payment obligation under the Act and these regulations, the minister shall give notice of that violation and the lien existing as a result of that violation, including the amount payable by that interest holder, to the other interest holders and the minister shall not exercise his or her rights under that lien until 180 or more days after that notice has been given.
- (4) Where a lien exists because an interest holder has violated its royalty share payment obligations under the Act and these regulations and subsequently the royalty payment is paid so that the interest holder is no longer in violation of its royalty share payment obligations

under the Act and these regulations, the lien imposed under the Act as a result of the violation shall be considered to be released.

Report

14. (1) When an interest holder first transfers oil at the loading point under a lease, royalty share payable each month by that interest holder under that lease shall be remitted accompanied by a statement and monthly report in the required form and shall provide sufficient information for the minister to determine the amount of royalty share payable.

(2) A report and other statements and information required under subsection (1) shall be submitted to the minister not later than the last day of the month immediately following the month to which the report relates.

(3) After reviewing a report, statements and information provided under subsection (2), the minister may issue a reassessment of royalty share owed.

Non filing

15. Where an interest holder does not file with the minister a monthly report within the time provided by these regulations, the minister may assess the royalty share amounts owing by the interest holder under the Act and shall, in writing, notify the interest holder of those assessed amounts.

Measurement standards

16. All measurements of oil and other petroleum substances, including all meters which are used to measure them, shall be in accordance with the legislation and regulations administered by the board unless otherwise is required by the minister.

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ST. JOHN'S, FRIDAY, DECEMBER 7, 2001



NEWFOUNDLAND REGULATION 85/01

Proclamation bringing Act into force
under the
Citizens' Representative Act

(o.c. 2001-736)

(Filed December 7, 2001)

*ELIZABETH THE SECOND, by the Grace of God of the
United Kingdom, Canada and Her Other Realms and Territories
QUEEN, Head of the Commonwealth, Defender of the Faith.*

ARTHUR MAXWELL HOUSE
Lieutenant-Governor

JOHN R. CUMMINGS
Deputy Minister of Justice

TO ALL TO WHOM THESE PRESENTS SHALL COME,

GREETING;

A PROCLAMATION

WHEREAS in and by section 49 of the *Citizens' Representative Act*, S.N. 2001, c-14.1 (the "Act") it is provided that the Act shall come into force on a day to be fixed by Proclamation of Our Lieutenant-Governor in Council;

AND WHEREAS it is deemed it expedient that the Act shall now come into force.

NOW KNOW YE, THAT WE, by and with the advise of Our Executive Council of Our Province of Newfoundland and Labrador, do by this Our Proclamation declare and direct that the *Citizens' Representative Act*, S.N. 2001, c-14.1 shall come into force on December 7, 2001.

OF ALL WHICH OUR LOVING SUBJECTS AND ALL OTHERS whom these Presents may concern are hereby required to take notice and to govern themselves accordingly.

IN TESTIMONY WHEREOF WE have caused these Our Letters to be made Patent and the Great Seal of Newfoundland and Labrador to be hereunto affixed.

ST. JOHN'S, FRIDAY, DECEMBER 7, 2001

WITNESS: Our trusty and well-beloved the Honourable A. M. House, Lieutenant-Governor in and for Our Province of Newfoundland and Labrador.

AT OUR GOVERNMENT HOUSE in Our City of St. John's this 7th day of December, in the year of Our Lord two thousand and one in the fiftieth year of Our Reign.

BY COMMAND,

ROBERT F. SMART
Registrar General

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