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Proposed Text for Yukon's *Act to Amend the Oil and Gas Act*

FOR INFORMATION PURPOSES ONLY

Summer and Fall 2009

INTRODUCTION

The Yukon government is currently consulting on proposed amendments to Yukon's *Oil and Gas Act*. To assist in the review, the following proposed text for an *Act to Amend the Oil and Gas Act* has been prepared.

The government has also prepared a summary document providing an overview of the proposed amendments and further information on the review process. The summary document, along with this document, is available online at www.yukonoilandgas.com or by request from the Oil and Gas Resources Branch.

The review process will include discussions and meetings with First Nations, industry representatives, conservation groups and interested members of the public. Meetings will be arranged as they are requested by respondents. The government encourages all of those interested in this matter to submit written comments before the end of the consultation period.

The consultation period will conclude September 14, 2009 at 5:00 p.m. PDT

For more information on how you can provide comments please see the summary document or contact Oil and Gas Resources.

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PROPOSED TEXT FOR AN ACT TO AMEND THE OIL AND GAS ACT

The Commissioner of Yukon, by and with the advice and consent of the Legislative Assembly, enacts as follows

1 This Act amends the *Oil and Gas Act*.

Section 1 amended

2 Subsection 1(1) is amended by repealing the definitions of “oil and gas facility” and replacing it with the following

“oil and gas facility” means a well, a pipeline, a gas processing plant or anything designated as an oil and gas facility for the purposes of this Act by regulations under paragraph 65(1)(f) or by a direction under subsection 65(3); « *installation de pétrole et de gaz* ».”

(2) Subsection 1(1) is amended by repealing the definition of “pipeline” and replacing it with the following

“pipeline” means

(a) a pipeline located entirely within Yukon (as defined in the *Yukon Act* (Canada)) for the transportation of

- (i) oil or gas or both, with or without any other commingled substance,
- (ii) any product obtained from oil or gas by processing or otherwise, with or without any other commingled substance, or
- (iii) any other substance intended to be used for a purpose related to an oil and gas activity; and

(b) prescribed installations and facilities associated with the pipeline,

but does not include a pipeline designated as an oil and gas facility or as part of an oil and gas facility by a direction under subsection 5(3); « *pipeline* »”.

(3) Subsection 1(1) is amended by repealing the definition of “pre-transfer well”.

(4) Subsection 1(1) is amended by repealing the definition of “security notice” and replacing it with the following

“security notice” means a security notice in a form determined or approved by the Minister; « *avis de sûreté* »”

(5) Subsection 1(1) is amended by repealing paragraph (b) of the definition “transfer” and replacing it with the following

“(b) a transfer of the disposition or a specified undivided interest in the disposition made by the Minister pursuant to subsection 20.1(8) or pursuant to regulations made under paragraph 29(c);”.

(6) Subsection 1(1) is amended by repealing the definition of “working interest” and replacing it with the following

““working interest”, except in Division 4 of Part 3, means a right, or a share of a right, to recover oil or gas from a pool or part of a pool and dispose of the oil or gas so recovered, whether that right is

(a) held as an incident of ownership in fee simple of the oil or gas, or

(b) held under or derived from a lease; « *intérêt économique direct* »”.

(7) Subsection 1(1) is amended by repealing the definition of “Yukon oil and gas lands” and replacing it with the following

““Yukon oil and gas lands” means lands in Yukon in respect of which oil and gas is under the administration and control of the Commissioner; « *terres pétrolifères et gazéifères du Yukon* »”.

Section 10 amended

3 Subsection 10(2) is amended

(a) by adding the expression “and” at the end of paragraph (a); and

(b) by repealing paragraph (b).

Section 13 repealed

4 Section 13 is repealed.

Section 20 amended

5 Section 20 is amended by adding the following subsection after subsection (5)

“(6) Where two or more persons are co-holders of a disposition,

(a) those co-holders are in relation to the Government jointly responsible for the obligations and liabilities arising under the disposition; and

(b) a judgment in favour of the Government against one or more of those co-holders or a release by the Government in favour of one or more of those co-holders does not preclude the Government from obtaining judgment from the other co-holders in the same or a separate proceeding.”

Section 20.1 added

6 The following new section is added after section 20

“Legal ownership of dispositions

20.1(1) The Division Head may give a direction to the holder of a disposition to furnish to the Division Head a statement showing, as of the date of the statement, the names and addresses of the persons owning working interests in the disposition and their respective percentage shares.

(2) A direction given under subsection (1)

(a) must specify the deadline by which the statement must be furnished; and

(b) may require that the statement

(i) be completed in accordance with any instructions contained in the direction, and

(ii) be verified in the manner provided for in the direction.

(3) If a disposition holder is given a direction under subsection (1) and the statement required by the direction is not received in the office of the Division Head by the deadline specified in the direction, the holder is liable to pay a penalty of \$1000 and an additional penalty of \$1000 for all or part of each subsequent month during which the failure continues.

(4) If a disposition holder furnishes a statement pursuant to a direction given under subsection (1), whether before or after the deadline specified in the direction, and the statement

(a) is not completed in accordance with the instructions contained in the direction;

(b) is not verified in the manner provided for in the direction; or

(c) contains inaccurate information,

the Division Head may impose on that holder a penalty not exceeding the prescribed maximum.

(5) If a statement furnished to the Division Head under this section shows

(a) that the working interest owner, or one or more of the working interest owners, is not the holder or one of the holders, as the case may be, of the disposition; or

(b) that any working interest owner who is also a co-holder of the disposition has a percentage share of the working interests in the disposition that differs from that owner's specified undivided interest in the disposition according to the records of the Department,

the Division Head may give a direction to that holder or co-holder in accordance with subsection (6).

(6) A direction under subsection (5) may, as the case requires,

(a) require the holder to submit to the Division Head for registration, by the deadline specified in the direction, a registrable transfer of the disposition to the owner or owners of the working interests in the disposition;

(b) require a co-holder of the disposition to submit to the Division Head for registration, by the deadline specified in the direction, a registrable transfer of all or part of the co-holder's specified undivided interest in the disposition to the person or persons named in the direction, so that the transfer, on being registered, will result in the transferee or transferees holding specified undivided interests in the disposition that are proportionate to their respective percentage shares of the working interests in the disposition.

(7) If a holder or co-holder of a disposition to whom a direction is given under subsection (5) fails to comply with the direction by the specified deadline, the Division Head

(a) may impose on that holder or co-holder a penalty not exceeding the prescribed maximum and an additional penalty not exceeding the prescribed maximum for each month or part of a month during which the failure continues; and

(b) shall send the holder or co-holder an invoice for the penalty showing the reason for the penalty.

(8) If a penalty imposed on a holder or co-holder pursuant to subsection (7) is not paid within the period specified in the penalty invoice, the Minister, on the recommendation of the Division Head, may transfer the disposition or the specified undivided interest in the disposition in accordance with the direction under subsection (5) to the working interest owner or owners specified in the direction.

(9) Subject to the *Regulations*,

(a) a penalty imposed by subsection (3) may be waived in whole or in part by the Division Head; and

(b) a penalty imposed by or pursuant to this section may be appealed to the Minister.”

Section 33 repealed

7 Section 33 is repealed.

Section 35 amended

8(1) Subsection 35(1) is amended by repealing the expression “in the location has been begun” and replacing it with the expression “is commenced”.

(2) Subsection 35(3) is amended by repealing the expression “in the location is begun” and replacing it with the expression “is commenced”.

Section 37 amended

9 Subsection 37(3) is repealed and replaced with the following

“(3) The location of a lease issued under this section

(a) subject to paragraph (b), shall consist of these portions of the permit location within

(i) a spacing area containing one or more productive zones, or

(ii) a partial spacing area if any part of the spacing area contains one or more productive zones; and

(b) in respect of each spacing area or partial spacing area referred to in paragraph (a), shall extend down to the base of the productive zone that is stratigraphically the deepest in the spacing area.”

Section 39 amended

10 Subsection 39(3) is repealed and replaced with the following

“(3) When a lease is renewed for a further term, the location of the lease at the commencement of that further term

(a) subject to paragraph (b), shall consist of those portions of the location, as it stood at the expiration of the previous term, within

(i) a spacing area containing one or more productive zones, or

(ii) a partial spacing area if any part of the spacing area contains one or more productive zones; and

(b) in respect of each spacing area or partial spacing area referred to in paragraph (a), shall extend down to the base of the productive zone that is stratigraphically the deepest in the spacing area.”

Section 46 amended

11 Paragraph 46(1)(e) is repealed and replaced with the following

“(e) respecting the determination of costs or allowances that may be deducted from amounts payable to the Government in relation to the Commissioner’s royalty share of oil or gas;”.

Section 50 amended

12 Section 50 is repealed and replaced with the following

“Continuing liability following a transfer

50(1) Where a transfer is registered with respect to a disposition, a specified undivided interest in a disposition or part of the location of a disposition,

(a) any obligation or liability arising under the disposition that existed before the registration of the transfer continues, after the registration of the transfer, to run with the disposition, interest or part of the location so transferred; and

(b) the transferee and the transferor and any other co-holders of the disposition are jointly responsible for any obligation or liability referred to in paragraph (a).

(2) With respect to any obligation or liability referred to in subsection (1),

(a) any judgment in favour of the Government in respect of that obligation or liability against one or more of the persons referred to in paragraph (1)(b); or

(b) any release by the Government in respect of that obligation or liability in favour of one or more of the persons referred to in paragraph (1)(b),

does not preclude the Government from obtaining judgment against any of the other persons referred to in paragraph (1)(b) in the same or a separate proceeding.”

Section 55 amended

13(1) Subsection 55(2) is repealed and replaced with the following

“(2) The Division Head shall register a security notice submitted for registration if the regulations respecting its registration are complied with.”

(2) Subsection 55(3) is amended by repealing the expression “Subject to subsections (4) and (5), a security interest” and replacing it with the expression “A security interest”.

(3) Subsections 55(4) and (5) are repealed.

Section 56 amended

14 Subsection 56(1) is amended by repealing the expression “prescribed by the regulations”.

Section 57 amended

15(1) Subsection 57(2) is repealed and replaced with the following

“(2) The Division Head shall register a notice submitted for registration under subsection (1) if the regulations respecting its registration are complied with.”

(2) Subsection 57(3) is amended by repealing the expression “prescribed”.

Section 60.1 added

16 The following new section is added after section 60

“Constructive notice

60.1 The registration of a security notice, a notice referred to in subsections 56(2) or 57(1) or a certified copy of an order or judgment referred to in paragraph 58(9)(b) or subsection 60(1) constitutes actual notice of it to all persons as of the time of its registration and, in the case of a security notice, also constitutes actual notice to all persons who may serve a demand for information under section 58 in respect of the security notice of the contents of the documents described in the security notice.”

Section 65 amended

17(1) Subsection 65(1) is amended by repealing paragraph (d) and replacing it with the following

“(d) respecting the construction, operation, maintenance, relocation, suspension or discontinuance of operation, or abandonment of a pipeline, gas processing plant or other oil and gas facility except a well;

(d.1) respecting tariffs relating to pipeline transportation services and the tolls charged for those services, respecting the hearing and determination of complaints regarding those tariffs and tolls and defining “tariff” and “toll” for the purpose of those *Regulations*;

(d.2) respecting the construction of facilities along, over or under pipelines or within prescribed distances from pipelines and the protection of pipelines from ground disturbances, and defining “facility” and “ground disturbance” for the purposes of those *Regulations*.”.

(2) Subsection 65(1) is also amended by adding the following after paragraph (q)

“(r) respecting the designation by the Minister of a public official or body, or the appointment by the Minister of a panel of one or more members, to hear and determine

(i) a complaint referred to in paragraph (d.1) of this subsection,

(ii) a matter referred to in paragraphs 69(2)(b) or (c) or 70(3)(b) or (c), or

(iii) an application referred to in section 77;

(s) respecting the determination of remuneration payable to members of panels appointed pursuant to regulations under paragraphs (q) or (r);

(t) respecting the imposition of pecuniary penalties for contraventions of

(i) paragraph 64(1)(a),

(ii) a provision of the *Regulations* under this Part, if the regulations provide that its contravention is subject to the imposition of a pecuniary penalty, or

(iii) a condition of a licence.”

(3) Section 65 is also amended by adding the following after subsection (2)

“(3) Notwithstanding paragraph (1)(f), the Chief Operations Officer, by a special or general direction, may designate any pipeline or any class of pipelines

(a) as an oil and gas facility for the purposes of this *Act*; or

(b) as part of an oil and gas facility designated pursuant to paragraph (1)(f).”

Section 66 amended

18 Paragraph 66(3)(d) is repealed and the replacing it with the following

“(d) if the licensee fails to comply with paragraph (a), the Minister may, on giving reasonable notice and an opportunity to make representations,

(i) suspend the oil and gas activity authorized by the licence until the financial assurance required by the Minister is furnished to the Minister in accordance with this section, or

(ii) terminate the oil and gas activity authorized by the licence.”

Section 67 repealed

19 Section 67 is repealed.

Section 69 amended

20 Section 69 is repealed and replaced with the following

“**69(1)** Subject to the *Regulations*, a person who

(a) proposes to apply, or has applied, for a licence for an oil and gas facility;

(b) is a licensee of an oil and gas facility who proposes or is required to relocate the facility; or

(c) is an employee or agent of a person mentioned in paragraph (b) or (c),

has the right to enter on land as necessary to carry out surveys to fix the boundaries of land that may be acquired under section 70 for purposes related to the proposed facility or relocated facility, or to carry out examinations of that land to determine its suitability as the route or site for the facility.

(2) *Regulations* under this section may, without limitation, provide for

(a) the conditions to be met by a person before exercising a right under subsection (1);

(b) the determination and payment of compensation for actual damage caused by a person exercising a right under subsection (1); and

(c) the hearing and determination of disputes between a person referred to in subsection (1) and a person owning or occupying land.

(3) This section does not apply to settlement land as defined in the Umbrella Final Agreement.”

Section 70 amended

21 Section 70 is repealed and replaced with the following

“Acquisition of land

70(1) Subject to section 69, the licensee of an oil and gas facility has no right to enter or use any land for any purpose related to the facility unless the licensee has, in accordance with this section, acquired an interest in the land that conveys those rights.

(2) If the licensee of an oil and gas facility requires an interest in land for purposes related to the facility, then, subject to the regulations, the licensee may acquire the interest

(a) by agreement; or

(b) if the interest cannot reasonably be acquired by agreement, by expropriation in accordance with the regulations.

(3) *Regulations* under this section may, without limitation, provide for

(a) the purposes for which licensees may acquire interests in land by expropriation under this section;

(b) the procedures related to applications for expropriation orders and the hearing and determination of those applications and of disputes arising under expropriation orders; and

(c) the determination of compensation for the interests expropriated and the persons to whom the compensation is payable.

(4) This section does not apply to gas processing plants.

(5) The *Expropriation Act* does not apply to an expropriation under this section.”

Section 77 amended

22 Section 77 is repealed and replaced with the following

“Determination of tolls and costs

77(1) If the Commissioner in Executive Council has declared the licensee of an oil pipeline to be a common carrier and agreement cannot be reached between the licensee and a person desiring to have oil transported in the pipeline as to the toll to be charged for the transportation, either party may apply to the Minister to have the toll determined.

(2) If the Commissioner in Executive Council has declared a licensee to be a common processor and agreement cannot be reached between the licensee and a person desiring to have gas processed, as to the costs, charges or deductions for the processing of the gas, either party may apply to the Minister to have the costs, charges or deductions determined.

(3) If the Commissioner in Executive Council has declared the licensee of a gas pipeline to be a common carrier and agreement cannot be reached between the licensee and a person desiring to have gas transported in the pipeline as to the toll to be charged for the transportation, either party may apply to the Minister to have the toll determined.

(4) An application under this section shall be heard and determined in accordance with the regulations.”

Section 89 amended

23 Subsection 89(1) is amended by repealing the definition of “working interest” and replacing it with the following

““working interest”, in relation to a well, means a right, or a share of a right, to recover oil or gas from the pool or part of the pool in which the well is or was completed and dispose of the oil or gas so recovered, whether that right is

- (a) held as an incident of ownership in fee simple of the oil or gas, or
- (b) held under or derived from a lease.”

Section 105 amended

24(1) Paragraph 105(e) is repealed and replaced with the following

“(e) section 64, except paragraph (1)(a);
(e.1) subsection 101(3) or section 103;”

(2) Paragraph 105(1)(f) is amended by repealing the expression “provides” and replacing it with the expression “provide”.

Section 113 amended

25 Section 113 is repealed and replaced with the following

“Recovery of pecuniary penalties

113 If a person fails to pay a pecuniary penalty imposed on that person by or pursuant to the regulations within the time prescribed by or pursuant to the regulations, the Government may recover the penalty by an action in debt and in the action the court may

- (a) determine whether the person is liable for the penalty;
- (b) if it is determined that the person is liable for the penalty, confirm or vary the amount of the penalty; and
- (c) give judgment for the amount of the penalty so confirmed or varied.”

Part 5 repealed

26 Part 5 is repealed.

Coming into force

27(1) The following provisions come into force on January 1, 2010

- (a) subsection 1(1);
- (b) subsection 13(1);
- (c) section 14;
- (d) section 15.

(2) The following provisions come into force on April 1, 2010

- (a) subsection 17(2);
- (b) subsection 24(1);
- (c) section 25 to the extent that it enacts paragraph 65(1)(t).