



Benefits Plan Guidelines for Northwest Territories Petroleum Lands

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1. INTRODUCTION

1.1 Purpose and Scope of Guidelines

The *Oil and Gas Operations Act*, S.N.W.T. 2014, c.14 (OGOA) regulates the exploration and drilling for and the production, conservation, processing and transportation of oil and gas in the Northwest Territories (NWT) onshore lands.

Fundamental to the regulatory regime under the OGOA is the requirement for a Benefits Plan. A Benefits Plan represents a documented commitment by an Operator to provide employment to Canadians and full and fair opportunity to Canadian Businesses. It also provides for priorities in training, employment and opportunities to identified disadvantaged individuals, groups and corporations. The objective of the *Benefits Plan Guidelines for Northwest Territories Petroleum Lands* (“Guidelines”) is to assist an Operator to develop a Benefits Plan that meets the requirements of the OGOA as well as the *Petroleum Resources Act*, S.N.W.T. 2014, C.15 (PRA).

These Guidelines do not limit the Minister’s discretion to alter or amend any condition as a requirement for approval of a Benefits Plan. In addition, the OGOA and the PRA will prevail in the event of any inconsistency with the content of these Guidelines.

Lastly, the scope of these Guidelines is limited to a Benefits Plan in relation to an oil and gas work or activity in the Petroleum Lands.

1.2 Legislative Reference

Oil and Gas Operations Act

The OGOA promotes, in respect of the exploration for and exploitation of oil and gas, worker safety, protection of the environment, petroleum resources conservation, joint production arrangements, and economically efficient infrastructures.

Section 17 of the OGOA establishes the requirement for a Benefits Plan and its subsequent approval, concurrent with an application for approval of a development plan under subsection 14(1) or an application for an authorization of any work or activity under paragraph 10(1)(b). Once a Benefits Plan is approved by the Minister, an Operator is obligated to endeavour to fulfill the commitments therein.

The relevant sections of the OGOA are indicated here:

Definition of "Benefits Plan"

17(1) In this section, "Benefits Plan" means a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the Benefits Plan.

Benefits Plan

(2) No approval of a development plan shall be granted under subsection 14(1) and no authorization of any work or activity shall be issued under paragraph 10(1)(b), until the Minister has approved, or waived the requirement of approval of, a Benefits Plan in respect of the work or activity.

Affirmative action programs

(3) The Minister may require that any Benefits Plan submitted pursuant to subsection (2) include provisions to ensure that disadvantaged individuals or groups have access to training and employment opportunities and to enable such individuals or groups or corporations owned or cooperatives operated by them to participate in the supply of goods and services used in any proposed work or activity referred to in the Benefits Plan.

Ministerial Guidelines and interpretation notes

18(2) The Minister may issue and publish, in any manner the Minister considers appropriate, Guidelines and interpretation notes with respect to the application and administration of section 17(1).

Not statutory instruments

(3) For greater certainty, Guidelines and interpretation notes issued pursuant to subsections (1) and (2) are not statutory instruments as defined in the Statutory Instruments Act.

Petroleum Resources Act

The PRA regulates interests in petroleum in relation to Petroleum Lands. The relevant section of the PRA is indicated here:

Benefits Plan

20. No work or activity on any petroleum lands that are subject to an interest shall be commenced until the Minister has approved, or waived the requirement of approval of, a Benefits Plan in respect of the work or activity pursuant to subsection 17(2) of the Oil and Gas Operations Act.

1.3 Other Legislation and Obligations

There may be other federal and territorial legislation and obligations under comprehensive land claim agreements that apply to an oil and gas work or activity on Petroleum Lands. It is an Operator's responsibility to ensure that it complies with any applicable legislation and obligations.

2. DEFINITIONS WITHIN THESE GUIDELINES

Benefits Plan means a plan for the employment of Canadians and for providing Canadian companies with a full and fair opportunity to participate in the supply of goods and services for oil and gas work or activities on Petroleum Lands.

Benefits Plan Report means a report detailing how the requirements of the OGOA and the commitment approved by the Minister in a Benefits Plan were fulfilled.

Canadian Business means a business other than a NWT Indigenous Business or a NWT Business that makes a representation or that provides reasonably reliable evidence that it either:

- 1) is incorporated under the laws of Canada or of a province or territory and that has an ongoing operation in Canada; or
- 2) complies with the legal requirements to carry on business in Canada, is an incorporated company, unincorporated joint venture, partnership, proprietorship or cooperative of Canadians, and complies with the following criteria:
 - a) maintains an approved place of business in Canada by leasing or owning office, commercial, or industrial space or in the case of a service-oriented business maintains residential space in Canada on an annual basis for the primary purpose of operating the subject business; or
 - b) undertakes most of its management and administrative functions for its Canadian Businesses in Canada.

Canadian Resident

means a person having Canadian citizenship or permanent residency.

Contractor

means a person or business that has entered into a contract with an Operator to deliver a required good or service.

Subcontractor

refers to a third party that enters into a contract with a Contractor, or another Subcontractor, to perform all or part of a good or service.

Decision Report

means a document that conveys the Minister's approval of a Benefits Plan. A Decision Report may include certain conditions accessory to the approval of a Benefits Plan.

Minister

means the Minister of Industry, Tourism and Investment (ITI)

NWT Business

means a business other than a NWT Indigenous Business that makes a representation or that provides reasonable reliable evidence that it complies with the legal requirements to carry out business in the NWT, is an incorporated company, unincorporated joint venture, partnership, proprietorship or cooperative of NWT Residents, and complies with the following criteria:

- 1) maintains an approved place of business in the NWT by leasing or owning an office, commercial, or industrial space or in the case of a service-oriented business, residential space in the NWT on an annual basis for the primary purpose of operating the subject business; or
- 2) undertakes most of its business management and administrative functions in the NWT.

NWT Indigenous Business

means a business that makes a representation or that provides reasonably reliable evidence that it is either:

- 1) effectively owned or controlled by a NWT Indigenous person and complies with the legal requirements to carry out business in the NWT; or
- 2) listed on a NWT Indigenous business listing.

NWT Indigenous Government or Indigenous Organization

means a NWT Indigenous Government or Indigenous Organization established pursuant to a comprehensive land claim agreement in the NWT.

NWT Indigenous Resident

means a person of an Aboriginal people of Canada that has Aboriginal and/or Treaty rights in the NWT as recognized under Section 35 of the *Constitution Act, 1982*, who makes a representation or who provides reasonably reliable evidence that they primarily reside in a self-contained domestic establishment in the NWT other than a residence at a work site, and have done so for the past three months unless due to full-time attendance at an educational institution outside of the NWT.

NWT Resident

means a person other than a NWT Indigenous Resident who makes a representation or who provides reasonably reliable evidence that they primarily reside in a self-contained domestic establishment in the NWT other than a residence at a work site, and have done so for the past three months unless due to full-time attendance at an educational institution outside of the NWT.

NWT Stakeholder

means a resident or group in the NWT, including the Government of the

Northwest Territories, which demonstrates an interest in a proposed oil and gas work or activity.

Operator

means a person, corporation, or other body that is seeking to apply for OGOA authorization to carry out oil and gas work or activity on Petroleum Lands.

Petroleum Lands

for the purposes of these Guidelines and ease of reference, means the onshore lands, described by the federal *Northwest Territories Act*, which are all NWT lands except for the lands within the Inuvialuit Settlement Region or areas that remain regulated by the federal government.

Total Direct Employment

means the total number of persons hired directly attributed to oil and gas work or activity referred to in an approved Benefits Plan.

Total Direct Program Expenditures

means the total value of the program expenditures directly attributed to oil and gas work or activity referred to in an approved Benefits Plan.

Total Direct Wages

means the total value of the wages directly attributed to oil and gas work or activity referred to in an approved Benefits Plan.

Total Direct Work Hours

Means the total number of hours directly attributed to oil and gas work or activity referred to in an approved Benefits Plan.

3. ADMINISTRATION

3.1 Review and Approval Process

The Department of Industry, Tourism and Investment (ITI) is responsible for the administration of Benefits Plans and these Guidelines.

An Operator is responsible to submit a Benefits Plan to ITI well in advance of the anticipated start date of a proposed oil and gas work or activity to allow ITI a sufficient period of time to internally review a Benefits Plan. Failure to do so may result in a delay to the start of a work or activity as the authorization of an oil and gas work or activity will not be granted until the Minister has approved, or waived the requirement for the approval of, a Benefits Plan.

Generally, the greater the scale and the scope of a work or activity referred to in a Benefits Plan, the greater the period of time required by ITI for internal review. Early communication with ITI by an Operator is encouraged in order to assess an adequate review and approval process period of time.

The decision by the Minister to approve or to waive the requirement for approval of a Benefits Plan will be conveyed to an Operator by way of a Decision Report.

Any other arrangement or agreement that is required under other legislation or obligations under a comprehensive land claim agreement and that is entered into between an Operator and another party in relation to an oil and gas work or activity on Petroleum Lands is not a substitute for a Benefits Plan that is required under the OGOA.

3.2 Coverage Period

The coverage period of a Benefits Plan should accurately reflect the entirety of a proposed oil and gas work or activity referred to in a Benefits Plan.

3.3 Benefits Plan Amendments

In the event of an amendment to an oil and gas work or activity that may significantly differ from the work or activity that was referred to in a previously approved Benefits Plan, an Operator may be required to provide ITI with a Benefits Plan amendment to the previously approved Benefits Plan. An Operator may also be required to provide

to ITI an assessment of the potential impact that the amendment may have on the commitments approved by the Minister in the previously approved Benefits Plan.

If ITI determines that a Benefits Plan amendment is required, the review and approval process requirements in these Guidelines would come into effect.

The format of a Benefits Plan amendment will depend upon the scale and scope of the potential impact on a previously approved Benefits Plan.

Where, in an Operator's view, a Benefits Plan amendment is not required, an Operator is required to submit its rationale to ITI for a decision prior to the continuation of an oil and gas work or activity.

3.4 Monitoring and Auditing

ITI reserves the right to undertake reasonable monitoring and/or auditing activities of an Operator and its Contractors and/or Subcontractors to verify that the objectives and principles in a Benefits Plan have been followed, and that the commitments approved by the Minister have been fulfilled.

Verification expenses may be recovered by ITI.

To ensure the accuracy and completeness of a Benefits Plan, an Operator should create controls for monitoring and reporting procedures and consider conducting compliance audits of its Contractors and/or Subcontractors.

Also, it is important that Contractors and/or Subcontractors who undertake an oil and gas work or activity referred to in a Benefits Plan understand the requirements of the OGOA and follow the principles and objectives in the Guidelines, and fulfill the commitments approved by the Minister in a Benefits Plan. An Operator is responsible to ensure that its Contractors and/or Subcontractors fulfill all the commitments.

4. PRINCIPLES AND OBJECTIVES

An Operator engaged in oil and gas work or activity is expected to follow the principles and objectives outlined below. These are intended to assist an Operator to develop a Benefits Plan to meet the requirements of the OGOA.

4.1 Communication

It is important for an Operator to initiate early communication and to maintain communication with interested NWT Stakeholders and/or NWT Indigenous Government or Indigenous Organizations during the development of a Benefits Plan. Sharing information about a proposed oil and gas work or activity builds strong community relationships and facilitates local participation.

The extent of communication during the development of a Benefits Plan will depend on the nature and scope of the oil and gas work or activity.

In accordance with this principle, an Operator should apply the following objectives:

- meet early and adequately for the purpose of interested NWT Stakeholders and/or NWT Indigenous Government or Indigenous Organizations and NWT Businesses to share information concerning potential training, employment and business opportunities;
- employ a variety of communication techniques that effectively facilitate two-way dialogue and that take into account the particular needs of interested NWT Stakeholders and/or NWT Indigenous Government or Indigenous Organizations; and
- keep a record of any meetings and include information regarding benefits issues discussed, advice identified, and mitigation measures proposed and planned.

During the review and approval process of a Benefits Plan, ITI may contact interested NWT Stakeholders and/or NWT Indigenous Government or Indigenous Organizations and NWT Indigenous and other NWT Businesses to verify that an Operator has followed this principle and its objectives.

4.2 NWT Benefits

Businesses in the NWT face increased operating costs and other challenges that put them at a disadvantage compared to other Canadian Businesses when seeking to participate in the supply of goods and services to Operators. In addition, residents of the NWT are at a disadvantage in terms of access to training and employment opportunities compared to other Canadian Residents.

A Benefits Plan should ensure that NWT Indigenous Residents and NWT Indigenous Businesses, as well as other NWT Residents and NWT Businesses, are provided an opportunity to participate in and benefit directly from oil and gas work or activities on Petroleum Lands.

An Operator is encouraged to develop and implement training and employment strategies as well as business and procurement processes that maximize NWT benefits.

4.2.1 Training and Employment Strategies

During the development of a Benefits Plan an Operator should consider training and employment strategies to apply the following objectives:

- support opportunities for education and training;
- provide sufficient lead time for necessary education and training; and
- promote transferrable skills and succession planning.

4.2.2 Business and Procurement Processes

To the extent practicable, an Operator should consider business and procurement processes to apply the following objectives:

- employ a transparent and fair procurement and contract award process;
- promote bid requests and opportunities in a timely manner to support participation of local suppliers; and
- use best efforts to remove any impediments that could limit local suppliers from participating economically.

4.2.3 Preference Priority

Oil and gas work or activities can provide direct benefits to NWT Indigenous Residents and NWT Indigenous Businesses and other NWT Residents and NWT Businesses to improve their social and economic well-being while contributing to the NWT's economic development.

NWT preference represents a hierarchy in which first consideration for employment and business opportunities should be extended to qualified NWT Indigenous Residents and NWT Indigenous Businesses and then to other NWT Residents and NWT Businesses. Canadian Residents and Canadian Businesses should be then considered before residents and businesses from outside Canada.

In accordance with this principle, an Operator should apply preferences in the following priority:

- i. local NWT Indigenous Residents and local NWT Indigenous Businesses in the vicinity of a proposed oil and gas work or activity;
- ii. other NWT Indigenous Residents and NWT Indigenous Businesses
- iii. other NWT Residents and NWT Businesses; and
- iv. other Canadian Residents and Canadian Businesses
- v. residents and businesses outside Canada.

5. BENEFITS PLAN COMPONENTS

A Benefits Plan should clearly set out how an Operator proposes to meet the requirements of the OGOA and to follow the principles and objectives outlined in these Guidelines. A Benefits Plan should also clearly outline how an Operator will structure its internal best practices, processes and procedures to ensure the objectives of the Benefits Plan are achieved.

A Benefits Plan should include, but is not limited to, the following components.

5.1 Program Description

A Benefits Plan should describe a proposed oil and gas work or activity at a level of detail that is commensurate with the scope of the work or activity:

- descriptions of the activities that will be carried out;
- key activity timelines and major milestones;

- forecasts of the total program expenditures categorized by NWT preference priority;
- plans for engagement with interested NWT Stakeholders and/or NWT Indigenous Government or Indigenous Organizations; and
- location maps that depict the proposed activity.

5.2 Employment and Training Opportunities

A Benefits Plan should include a description of an Operator's training and employment strategies:

- timely communications of potential employment and training opportunities;
- forecasts of its training opportunities categorized by NWT preference priority;
- forecasts of its total planned hiring, total wages and total work hours categorized by NWT preference priority; and
- strategies for providing opportunities for advancement.

5.3 Procurement and Business Opportunities

A Benefits Plan should include a description of an Operator's procurement and contracting strategies:

- timely communications of potential business opportunities and the opportunity to bid on work;
- forecasts of its total planned procurement expenditures by major procurement category and by NWT preference priority; and
- strategies for providing business opportunities categorized by NWT preference priority.

5.4 Reporting

A Benefits Plan should include an overview of an Operator's monitoring and reporting strategies.

6. REPORT ON A BENEFITS PLAN

As a condition of the approval of a Benefits Plan by the Minister, an Operator is required to submit to ITI a report on the implementation of a Benefits Plan. The report should demonstrate how an Operator met the requirements of the OGOA, followed the principles and objectives in the Guidelines, and fulfilled the commitments approved by the Minister in a Benefits Plan.

For a single-season oil and gas work or activity, ITI will require a single final Benefits Plan Report. For a multi-season or multi-year work or activity, ITI will require an annual Benefits Plan Report.

6.1 Content of a Benefits Plan Report

Similar to the content of a Benefits Plan, an Operator should provide a report that includes:

- a summary of the work or activities undertaken;
- Total Direct Program Expenditures categorized by NWT preference priority;
- Total Direct Employment categorized by NWT preference priority;
- total number of trainees categorized by NWT preference priority;
- Total Direct Wages categorized by NWT preference priority;
- Total Direct Work Hours categorized by NWT preference priority;
- total value of goods and services categorized by NWT preference priority;
- description of engagement with NWT Stakeholders and/or NWT Indigenous Government or Indigenous Organizations; and
- a brief description of future projects, if applicable.

7. TRANSPARENCY

Subject to 91(2) of the PRA and 22(2) of the OGOA, Benefits Plans and Benefits Plan Reports submitted to ITI after July 23, 2020 will be reviewed on a case-by-case basis to determine if they meet the criteria for confidentiality under these sections. If the Minister determines that the information is not considered as confidential, the licence holder will be notified. The provider will be given five working days to advise

whether or not they want to withdraw the information or have it posted to the appropriate website. Full details on this confidentiality process can be found [here](#).

In order to streamline the above process, commercially confidential information should be avoided in Benefits Plans or Benefits Plan Reports. Rather, commitments and reporting should be organized according to the specifications put out in these Guidelines. An example of commercially confidential information to exclude from Benefits Plans and Benefits Plan Reports is information on specific contracts or the naming of companies or persons with whom contracts have been formed.

8. ADDITIONAL INFORMATION

For additional information about the Benefits Plan requirements in the Petroleum Lands, please contact:

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