Implementing Changes to NWT Petroleum Legislation

Significant Discoveries

Background

There are two tools in use to define and administer significant discoveries of petroleum in the NWT—Significant Discovery Licences (SDLs) and Significant Discovery Declarations (SDDs).

If an interest holder believes they have made a "significant discovery" — meaning a discovery of enough petroleum in its interest to potentially allow for sustained production — that interest holder would apply to the Regulator for a SDD under section 27 of the *Petroleum Resources Act* (PRA).

The Regulator will consider the application, seeking expert advice as required. If satisfied that a significant discovery has been made, the Regulator will make a SDD describing the land to which the declaration applies. SDDs remain in force until the results of future drilling demonstrate that the discovery no longer meets the definition of a "significant discovery" under the PRA.

The area of land covered by the SDD is called the "Significant Discovery Area" (SDA). Over the years, the potential size of an SDA has increased due to advances in technology, particularly the use of modern techniques such as horizontal drilling.

Before the Regulator makes a decision on whether to issue the SDD, section 28 of the PRA requires the Regulator to notify all Directly Affected Persons (DAPs) who may be affected by that decision. The DAPs, who are generally neighboring interest holders, can then ask to have the SDD apply to the land subject to their interest as well.

This could allow a DAP interest holder to obtain a SDL without having explored or drilled for petroleum on the lands covered by that SDL.

Once the SDD is made and the SDA is established, interest holders that have an interest included in the SDA can apply for a SDL pursuant to section 30 of the PRA. That application would be reviewed by the Minister of Industry, Tourism and Investment and granted if the application meets the criteria outlined in that section.

The SDL term was effectively indefinite. In principle, the term of a SDL may be limited if the SDD is amended or revoked, the SDL is converted to a production licence, or by way of a "drilling order." A drilling order is an extraordinary measure in which the Minister may step in and force a company to drill or relinquish their interest if they do not comply.

Significant Discovery Licences

Before passage

The PRA allowed interest holders to obtain SDLs providing exclusive interests to potentially large areas of petroleum lands for an indefinite period of time without any obligation to undertake any work to advance towards production.

The PRA also allowed an interest holder to obtain a SDL without having explored or drilled for petroleum on the lands covered by that SDL.

After passage

Amendments to the PRA change the way SDLs are issued and maintained.

These amendments require every company to fulfill the drilling requirement of an exploration licence before being eligible for a SDL. This would mean completing work requirements and submitting geological information to the GNWT before getting the licence and being able to hold that interest for a long period of time.

SDL terms are now also limited to 15 years. The Minister will have the discretion to extend the term of the SDL for one or more terms of 15 years should the Minister determine that such an extension is appropriate. Things the Minister could consider would be whether work is being undertaken or whether there is work planned in the future.

What to expect

For the public

The public can expect that their land will be utilized in more beneficial ways by preventing land from being tied up indefinitely without any activity ongoing.

For companies

Companies applying for ***new*** SDLs will no longer receive them without fulfilling the drilling requirement of the underlying exploration licence. They will also need to satisfy the requirements for extension before the Minister will extend the term of their SDL.

Administrative and Technical Amendments

Authority to Issue Guidelines and Interpretation Notes

Before passage

Section 18 of the *Oil and Gas Operations Act* (OGOA) unnecessarily constrained the ability of the Regulator to issue guidelines and interpretation notes.

Guidelines and interpretation notes provide clarity on what different parts of the act and regulations mean in-practice — helping reduce uncertainty for companies, and helping the public understand what is required from companies.

After passage

The amendments to section 18 remove this constraint and instead allow the Regulator to issue guidelines and interpretation notes related to any section of the OGOA and its regulations.

What to expect

For the public

The public can expect more guidelines and interpretation notes from the Regulator providing clarity on what different parts of the act and regulations mean in-practice.

For example, the Office of the Regulator of Oil and Gas Operations has already released draft Public Hearing Guidelines and Interpretation Notes providing guidance on when and how public hearings will be held under section 19.2 of the OGOA. It has also released draft Public Access to Information Guidelines and Interpretation Notes providing guidance on the application and administration of the new confidentiality provisions in section 22 of the OGOA.

The Regulator did not have the authority to issue and publish these guidelines and interpretation notes under the previous version of section 18 of the OGOA.

For companies

Companies can likely expect guidelines to be more responsive to new developments in the petroleum regulatory regime in the future. They will all be posted on the Office of the Regulator of Oil and Gas Operations' or the Canadian Energy Regulator's website.

Delegation Authority of the Minister

Before passage

The OGOA differed from the *Petroleum Resources Act* (PRA) by not expressly authorizing the Minister to delegate the powers, duties and functions assigned to the Minister under the OGOA or its regulations.

After passage

Amendments to the OGOA and the PRA now provide delegation authority to the Minister that is consistent across both Acts. Each Act now allows the Minister to delegate the powers, duties and functions assigned to the Minister under the Act or its regulations to any employee of the NWT public service.

In practice, this would likely be staff from the Department of Industry, Tourism and Investment because the Minister responsible for administering the Acts is currently the Minister of Industry, Tourism and Investment.

What to expect

In practice, not a great deal will change. This is an administrative amendment designed to allow the Minister to delegate more activities to trusted employees of the public service to make sure tasks are completed efficiently.

Delegation Authority of the Regulator

Before passage

The OGOA did not provide the Regulator enough authority to delegate the powers, duties or functions assigned to the Regulator under the OGOA or its regulations.

After passage

The changes now allow the Regulator to delegate the powers, duties and functions assigned to the Regulator under the OGOA or its regulations to any person.

These changes also require the Regulator to communicate what is being delegated and to whom.

These are simple changes designed to increase efficiency in administration of oil and gas operations.

What to expect

For the public

The public can expect information about the Regulator's delegation of powers, duties and functions, including identification of who is being assigned a power, duty or function, to be communicated publicly.

Proof of Financial Responsibility

What is Proof of Financial Responsibility?

Proof of financial responsibility is a tool that can be used by the Regulator to respond to requests for compensation for damages from oil and gas-related activities **without having to go to court to prove the fault or negligence of the operator.** This is one tool that the Regulator can use to address an issue quickly. It does ***not*** place a limit on any legal liability of the operator. The operator is responsible for all

loss, damage or clean-up costs that result from spills or debris that are the operator's fault, even if the costs are greater than the proof of financial responsibility held by the Regulator.

It is important to note that proof of financial responsibility is separate from amounts collected by land and water boards to provide security for the costs of reclamation at oil and gas sites.

Before passage

Subsection 64(1) of the OGOA requires an applicant for an authorization under paragraph 10(1)(b) to provide the Regulator with proof of financial responsibility. However, subsection 64(2) only required that the holder of the authorization (i.e., the operator) ensure that the proof of financial responsibility remained in force "for the duration of the work or activity in respect of which the authorization is issued."

This language could have potentially released operators from the obligation to provide proof of financial responsibility for suspended wells that are not subject to a current authorization under paragraph 10(1)(b).

After passage

Subsection 64(2) of the OGOA was amended so any person authorized for oil and gas activity is required to provide the Regulator with proof of financial responsibility that remains valid until at least one year ***after*** the Regulator confirms that all work under that authorization - which includes any wells, facilities, and pipelines - has been successfully abandoned or decommissioned in accordance with the Act and its regulations.

What to expect

For the public

The public can now expect that the Regulator will now be able to deal with claims for compensation from any person who has experienced loss or damage from spills or debris, or paid to help clean up spills or debris, until one year after the Regulator confirms that all works have been successfully abandoned or decommissioned.

For companies

Companies will now need to maintain their proof of financial responsibility with the Regulator until one year after the Regulator confirms that all works associated with an authorization under paragraph 10(1)(b) have been successfully abandoned or decommissioned.

Transparency and Public Accountability

Confidentiality in the *Petroleum Resources Act* and the *Oil* and *Gas Operations Act*

Before Passage

All information provided for the purposes of the *Petroleum Resources Act* (PRA) or the *Oil and Gas Operations Act* (OGOA) was deemed privileged and is kept confidential subject to a limited number of exceptions.

This was largely due to broadly-drafted confidentiality provisions in section 91 of the PRA and sections 22 and 23 of the OGOA (collectively, the Confidentiality Provisions).

After Passage

Amendments to the Confidentiality Provisions were passed to ensure both the PRA and the OGOA better align with global transparency standards and best practices in relevant petroleum legislation.

These amendments reverse the process of the past – all information that is required to be provided to the Minister or Regulator under the PRA or the OGOA will be made available to the public in accordance with the Confidentiality Provisions, unless:

- the recipient of the information – either the Minister or the Regulator - determines that the information meets the criteria for confidentiality outlined in the Confidentiality Provisions; or
- subsection (9) of the applicable Confidentiality Provision provides special rules about when certain types of information must be made available to the public.

In order for information to meet the criteria for confidentiality under subsection (2) of the Confidentiality Provisions, all of the following four conditions would need to be met:

- it must contain financial, commercial, scientific or technical information;
- it must be treated as confidential information by the person providing the information;
- the need for confidentiality must outweigh the public interest in the disclosure of the information; and
- it must not already be publicly available.

If all four of these conditions are met, the confidential information will not be disclosed without the written consent of the person who provided the information.

Subsection (9) of the Confidentiality Provisions also provides special rules about when certain types of information must be made available to the public. Many of the time periods have been carried over from the old subsection 91(8) of the PRA but there are some notable differences.

A list of the information made available by the Minister under section 91 of the PRA will also be required to be published in the Minister's annual oil and gas report.

Non-exclusive surveys

There is now a distinction between "non-exclusive survey" - which is a survey conducted to collect data about the physical properties of rocks for the purposes of selling that data to the public – and other types of information in respect of geological work or geophysical work. Non-exclusive surveys now must be made available to the public 15 years after completion.

Environmental studies

The periods for the disclosure of information in respect of an environmental study have been shortened, with the information now required to be made available to the public:

- once completed if the study was funded by the Environmental Studies Research Fund (the Fund);
- after 90 days if related to a drilled well; or
- after two years if not related to a drilled well.

Hydraulic fracturing fluid information

There is also a requirement that information in respect of hydraulic fracturing fluid information be made available to the public ***30 days after*** the well termination date.

This includes information on the fluid ingredients and a description of the purpose of each, when and where the hydraulic fracturing took place, how deep the drilling was, how much water was injected during the hydraulic fracturing treatment, and how much fluid was recovered from the well.

What to Expect

For companies

When **new** information is submitted to the Minister or Regulator, companies should expect to have that information scrutinized by the recipient – either the Minister or the Regulator – to determine whether that information will be made publicly available. If the information does not meet the criteria for confidentiality, that information will be made publicly available.

Draft guidelines from the Office of the Regulator of Oil and Gas Operations are available here.

For the public

Members of the public should expect documents submitted to the Minister and the Regulator ***after*** these changes come into force which does not meet the standards for confidentiality to be posted on

the Department of Industry, Tourism and Investment and the Office of the Regulator of Oil and Gas Operations websites, respectively. This will include hydraulic fracturing fluid information.

The Canadian Energy Regulator, which handles oil and gas regulation offshore, in the Norman Wells Proven Area oil field, and the Inuvialuit Settlement Region, will also make this information available.

The Department of Industry, Tourism and Investment's website will be revamped to accommodate searchable, filterable navigation of this information.

Environmental Studies Management Board Composition

The Environmental Studies Research Fund is established under the PRA. It supports environmental and social studies relating to oil and gas exploration, development and production in the NWT. It is fully funded through levies paid by oil and gas companies with interests in the NWT's onshore.

The Fund is directed by the Environmental Studies Management Board which establishes guidelines and procedures for determining which environmental and social studies the Fund should support, and selects the persons to conduct those studies.

Before passage

The member imbalance on the Board was identified as an issue. The Board's two government members, two industry members, and one public member currently did not reflect the principles of public representation called for in today's modern context.

These limitations existed because Subsection 70(5) of the PRA previously only allowed the Minister to appoint one member of the public to the Board.

Engagement also highlighted concerns with the lack of Indigenous input on the appointment of members to the Board and the exercise of the Board's duties and functions.

After passage

An amendment to subsection 70(5) of the PRA now helps balance industry, government and public representation on the Board by requiring the Minister to appoint a specific number of members of the public depending on the size of the Board.

Amendments to subsections 70(3) and 70(4) also offer more opportunities for Indigenous input and traditional knowledge consideration in Board appointments.

What to expect

Board composition

If the Board is fixed at five or less members, the Minister will appoint one member of the public to the Board.

If the Board is fixed at six or more members, the Minister will appoint two members of the public to the Board.

Indigenous input
Indigenous governments or organizations will now be able to offer nominations for members of the Board to the Minister alongside oil and gas interest owners.

Traditional Knowledge
Indigenous traditional knowledge and experience relevant to the purpose of the Fund will now be considered by the Minister when selecting Board members.

Environmental Studies Research Fund

Before passage
This special purpose fund did not have explicit measures to prevent conflict of interest by Board members, encourage transparency, and follow territorial government finance principles.

After passage
Several changes were passed to address these issues.

An amendment to subsection 70(7) of the PRA will help ensure Board members' expenses follow the same rules as the rest of the GNWT.

Subsection 70(8) was added to the PRA to clarify that the *Conflict of Interest Act* applies to Board members.

An amendment to subsection 71(3) of the PRA now requires the Board to include specific details about the Fund in its annual report to the Minister, including the amount of each contribution to the Fund and a description of each project funded by the Fund.

This more detailed annual report will be made available to the public in accordance with section 91 of the PRA.

What to expect

For Board member conduct and finances
Board members have to follow the same conflict of interest standards as other members of public boards and municipal councils and will have to be more transparent about the way they use the Fund's money than before.

For the public
The public can expect a more detailed annual report to be published on the Department of Industry, Tourism and Investment's website each year.

Licence Transparency

Before passage

There were few requirements in the PRA or the OGOA to make key information on petroleum exploration and production public. That included the terms and conditions of licences or the licences themselves. While the GNWT has reported on issuances of new licences, it did not publish the signed terms of those licences.

After passage

Section 18.1 has been added to the PRA requiring the Minister to publish publicly all active exploration licences, significant discovery licences, and production licences. These licences will be published on the Department of Industry, Tourism and Investment's website.

What to expect

For the public

Members of the public can expect to find licence information on the Department of Industry, Tourism and Investment's website, as well as a list of interests made public each year in the Minister's annual report.

For companies

All companies that currently have active licences should expect their licences to be available online through the Department of Industry, Tourism and Investment's website.

Those looking to apply for interests should expect this information to be posted soon after the interest is granted.

Expanding and Modernizing the Publication of Notices

Before passage

While the PRA requires the Minister to publish notices when the Minister exercises certain powers under the Act, two areas of improvement were identified with the way these notices were communicated.

First, the requirement to publish notices was limited to events surrounding the initial issuance of interests or certain amendments to exploration licences.

Second, the PRA required the notices to be published only in summary form, with the full text of the information only available for inspection upon request. This wasn't very user-friendly.

After passage

Amendments addressed the first issue by expanding the list of notices that the Minister must publish. In addition to the notices currently required to be published, the Minister would now also be required to publish notices related to:

- the issuance of significant discovery licences;
- the amendment of significant discovery licences;
- the extension of the term of a significant discovery licences;
- the issuance of production licences;
- the consolidation of production licences; and
- the extension of the term of a production licence.

The amendments address the second issue by allowing the Minister to publish the full text of the notice rather than just a summary of what's in the notice. They will also need to include a list of all Notices published in an annual report.

What to expect

The public

The public can expect all of these notices of to be published on the Department of Industry, Tourism and Investment website. Web solutions are being developed to accommodate a useable database for the documents.

For companies

Industry can expect to have the full text of notices related to their interests to be published online.

Annual Report on the Regulator's Activities

Before passage

OROGO voluntarily submitted an annual report on its activities. However, the submission of OROGO's report was not a statutory requirement under either the PRA or the OGOA.

After passage

The changes passed included a statutory requirement for the Regulator to submit an annual report on its activities and for the Minister to provide that report to the Legislative Assembly of the Northwest Territories at the earliest opportunity.

The amendment also allows Cabinet to make regulations outlining the required form or content for the Regulator's annual report if it chooses to do so in the future.

What to expect

For the public
Not much will change as this report has been voluntarily published. It will simply now be published by law. However, the information in the report may change in the future based on changing realities in the NWT's oil and gas industry.

Public Hearings

Before passage

The *Canada Oil and Gas Operations Act* provides the Commission of the Canadian Energy Regulator with the authority to conduct public hearings in relation to the exercise of any of its powers or the performance of any of its duties and functions under that Act.

This authority was provided after devolution and as a result, the OGOA did not include a provision providing the Regulator with a similar authority to conduct public hearings.

After passage

The OGOA has been amended to provide the Regulator with the authority to conduct public hearings in relation to the exercise of any of its powers or the performance of any of its duties and functions under the Act.

It has been amended to provide the Regulator with the same powers as a court when the Regulator holds an inquiry, hearing or appeal or makes an order, including the power to:

- order witnesses to attend a hearing;
- order the disclosure and inspection of documents;
- enter and look at property; and
- enforce its orders.

What to expect

For companies
Companies can expect the possibility of having projects or applications subject to a public hearing where the Regulator needs more information regarding a project or application which could only be gained by holding a public hearing, and/or determines that the public interest would be served by conducting a public examination of potential concerns and impacts regarding an application or a project.

For the public
The public can expect information on any public hearings to be held related to oil and gas to be advertised publicly for a reasonable time ahead of a hearing. Examples of applications that might require a public hearing could include:

- an application for construction of a new pipeline;
- an application for abandonment of a pipeline; and
- an application to develop an oil and gas pool or field.

OROGO's draft guidelines for implementing this new process can be found here.

For the regulatory system

These changes provide the Regulator with a tool to obtain information so that it can make the best informed decision while also using the principles of fairness, transparency and objectivity in making its decision.