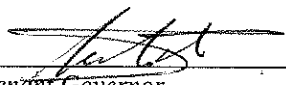


**PROVINCE OF BRITISH COLUMBIA**  
**ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL**

Order in Council No.

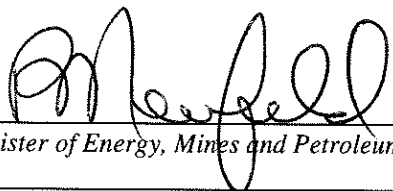
281

, Approved and Ordered **MAY - 8 2008**

  
\_\_\_\_\_  
Lieutenant Governor

**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the attached Net Profit Royalty Regulation is made.

  
\_\_\_\_\_  
Minister of Energy, Mines and Petroleum Resources

  
\_\_\_\_\_  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section:- *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361, ss. 73, 74 and 133

Other (specify):-

March 28, 2008

R/286/2008/88

# NET PROFIT ROYALTY REGULATION

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## SCHEDULE

### Interpretation

- 1 (1) In this regulation:

“**Act**” means the *Petroleum and Natural Gas Act*;

“**allowed capital cost**” means a capital cost amount, for a producer’s interest, where

- (a) the cost has been incurred by the producer,
- (b) eligibility of the cost is consistent with the capital cost eligibility criteria established by the administrator,
- (c) the cost relates to an approved project, and
- (d) the cost has not been deducted in the determination of a producer price;

“**allowed historical cost**” means an amount, for a producer’s interest, equal to the sum of the following:

- (a) an allowed capital cost or an allowed operating cost if the cost has been incurred by the producer in the 60 calendar months preceding the project application month;
- (b) seismic costs that are directly attributable to the project;
- (c) any allowed capital cost or allowed operating cost that has been incurred by the producer prior to the 60 calendar months preceding the project application month and is approved by the administrator under section 2 (g);

“**allowed operating cost**” means an operating cost amount, for a producer’s interest, for which

- (a) the cost has been incurred by the producer,

(b) eligibility of the cost is consistent with the operating cost eligibility criteria established by the administrator,

(c) the cost relates to an approved project, and

(d) the cost has not been deducted in the determination of a producer price;

**“closing net allowed cost balance”** means an amount, for a producer’s interest, in a project and calendar month, as at the last day of the calendar month, equal to the sum of the following:

(a) the opening net allowed cost balance for the calendar month;

(b) the net allowed cost for the calendar month;

**“force majeure”** means one or more of the following events from the initial occurrence through the period of duration:

(a) an act of God or action of a natural element;

(b) war, revolution, insurrection, riot, disturbance, blockade and other similar unlawful acts against public order or authority;

(c) a strike, lockout or other labour disturbance;

(d) a direction, order, injunction or law made by a court or government having or purporting to have jurisdiction, except directions, orders or injunctions of a court or government authority resulting from an unlawful act of a producer or operator of a project;

(e) another event of the nature of those events referred to in paragraphs (a) to (d);

**“gross revenue”** means gross revenue calculated under section 5;

**“long term bond rate”** means the monthly rate, stated as a percentage, of the Government of Canada 10-year benchmark bond yields, as published by the Bank of Canada in the calendar month in which the rate is being calculated;

**“natural gas by-products”** means natural gas by-products as defined in the Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation;

**“net allowed cost”** means an amount, for a producer’s interest, for a calendar month that is

(a) the first calendar month subsequent to the project approval month, determined by the following formula:

$$A + B + C - D$$

where

A means the amount of allowed historical cost,

B means the amount of allowed operating cost multiplied by a factor of 1.1,

C means the amount of allowed capital cost multiplied by a factor of 1.01, and

D means the amount of gross revenue, or

(b) any calendar month after the project application month, other than the first calendar month after the project application month, determined by the following formula:

$$A + B - C$$

where

A means the amount of allowed operating cost multiplied by a factor of 1.1,

B means the amount of allowed capital cost multiplied by a factor of 1.01, and

C means the amount of gross revenue;

**“net profit royalty project” or “project”** means a 3 dimensional area of petroleum and natural gas subsurface rights as approved by the administrator under section 2 (a);

**“net profit royalty project assets”** means any equipment item within the project ring fence that is directly associated with the production of oil, natural gas or natural gas by-products;

**“net profit royalty well event”** means a completion in a zone where the completion is within the project;

**“net revenue”** means an amount, for a producer’s interest, for a calendar month, equal to the sum of gross revenue less the following amounts:

- (a) allowed capital costs multiplied by a factor of 1.01;
- (b) allowed operating costs multiplied by a factor of 1.1;
- (c) an amount equal to the greater of zero and the opening net allowed cost balance;
- (d) an amount of allowed capital costs and allowed operating costs designated by the producer under section 10 (3) to be deducted from the reclamation and remediation cost bank in the calendar month;

**“oil or natural gas by-product transportation allowance”** means a monthly allowance calculated under subsection (2), deducted by a producer in determining a monthly producer price for oil or natural gas by-products, to offset the cost of oil or natural gas by-product pipelines and equipment that are

- (a) owned and operated by the producer,
- (b) located outside the project ring fence, and
- (c) used by the producer to process or deliver oil or natural gas by-products that the producer owns, produces and sells;

**“opening net allowed cost balance”** means an amount, for a producer’s interest, in a project and calendar month, as of the first day of the calendar month, equal to the sum of the net allowed cost amounts for each calendar month that is after the project application month and prior to the calendar month;

**“posted minimum price”** means the posted minimum price as defined in the Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation;

**“pre-payout closing balance”** means an amount, for a producer’s interest, as at the last day of a calendar month, equal to the sum of the following:

- (a) pre-payout opening balance for the calendar month;
- (b) net allowed cost for the calendar month;
- (c) pre-payout return on investment for the calendar month, if any;

**“pre-payout opening balance”** means an amount, for a producer’s interest, as at the first day of the calendar month, equal to the sum of the net allowed cost and

pre-payout return on investment amounts for each calendar month that is subsequent to the project application month and prior to the calendar month;

**“pre-payout return on investment”** means an amount for a producer’s interest, in a calendar month, calculated as follows:

- (a) where the calendar month is not a production month, an amount equal to zero, or
- (b) where the calendar month is a production month, an amount equal to the greater of zero and the amount determined by the following formula:

$$\frac{A + B}{2} \times \frac{C}{12}$$

where

A means the opening net allowed cost balance,

B means the closing net allowed cost balance, and

C means the long term bond rate;

**“pre-payout tier”** means a series of calendar months, for a producer’s interest, equal to the lesser of

- (a) the series of calendar months between the first calendar month subsequent to the project approval month and the calendar month which precedes the calendar month in which the pre-payout closing balance for a producer’s interest in a project becomes less than or equal to zero, and
- (b) the series of calendar months between the calendar month subsequent to the project approval month and the calendar month ending 10 years after the first calendar month in which oil or natural gas is first produced from a net profit royalty well event in the project;

**“producer”** means

- (a) a holder of a location within a project who markets or otherwise disposes of oil, marketable gas or natural gas by-products that have been produced by
  - (i) the holder of a location in the project, or
  - (ii) a person authorized to do so by the holder of a location in the project, or
- (b) a person authorized by a holder of a location in a project to produce and market or otherwise dispose of, on behalf of the holder of a location, oil, marketable gas or natural gas by-products;

**“producer price”** means

- (a) for natural gas, a price per  $10^3\text{m}^3$  of marketable gas volumes available for sale, for a producer’s interest, for a calendar month, equal to the greater of the following:
  - (i) the posted minimum price for the project;
  - (ii) a price determined by the administrator calculated in accordance with the method established by order of the administrator under section 2 (e), or

- (b) for oil or natural gas by-products, a price per m<sup>3</sup> of oil or natural gas by-product sales, for a producer's interest and calendar month, calculated in accordance with section 7;

**“producer's interest”** means the producer's reporting interest for reporting royalty to the government under this regulation for oil and natural gas produced from net profit royalty well events in a project;

**“production month”**, in relation to a project, means a calendar month after the project approval month in which a quantity of oil, natural gas or water is produced from a net profit royalty well event within the project;

**“project application month”** in relation to a project, means the calendar month in which a producer submitted an application for a project to the administrator under section 2 (a);

**“project approval month”**, in relation to a project, means the calendar month in which the administrator approved the project under section 2 (a) (i);

**“project expansion”**, in relation to a project, means an extension of the project ring fence;

**“project reclamation period”** means a series of 36 calendar months for a project, commencing with the first calendar month after the last calendar month in which a net profit royalty well event within the project produced oil or marketable gas;

**“project ring fence”** means the two-dimensional surface representation of the project geographic area as approved by the administrator under section 2 (a):

**“sales volume”** means the following:

- (a) for oil, the volume sold by a producer during a production month;
- (b) for marketable gas, the volume that is available for sale in a production month or injected into a storage facility;
- (c) for natural gas by-products, the volume sold by a producer in a production month;

**“tier 1”** means a series of calendar months, for a producer's interest, commencing with the first calendar month subsequent to the last calendar month in the pre-payout tier and ending with the calendar month that precedes the first calendar month that the tier 1 closing payout balance is less than or equal to zero;

**“tier 1 closing payout balance”** means an amount, for a producer's interest, as at the last day of the calendar month, equal to the sum of the following:

- (a) tier 1 opening payout balance for the calendar month;
- (b) net allowed cost for the calendar month;
- (c) tier 1 return on investment for the calendar month, if any;

**“tier 1 opening payout balance”** means an amount, for a producer's interest, as at the first day of the calendar month, equal to the sum of the net allowed cost and tier 1 return on investment amounts for each calendar month that is subsequent to the project application month and prior to the calendar month;

**“tier 1 return on investment”** means an amount, for a producer's interest, in a calendar month

- (a) where the month is not a production month, an amount equal to zero, and

- (b) where the month is a production month, an amount equal to the greater of zero and an amount determined by the following formula:

$$\frac{A + B}{2} \times \frac{C}{12}$$

where

A means the opening net allowed cost balance,

B means the closing net allowed cost balance, and

C means the sum of the long term bond rate and 25%;

**“tier 2”** means a series of calendar months, for a producer’s interest, commencing with the first calendar month after tier 1 and ending with the calendar month which precedes the first calendar month in which the tier 2 closing payout balance is less than or equal to zero;

**“tier 2 closing payout balance”** means an amount, for a producer’s interest, as at the last day of a calendar month, equal to the sum of the following:

- (a) tier 2 opening payout balance for the calendar month;
- (b) net allowed cost for the calendar month;
- (c) tier 2 return on investment for the calendar month;

**“tier 2 opening payout balance”** means an amount, for a producer’s interest, as at the first day of a calendar month, equal to the sum of the net allowed cost and tier 2 return on investment amounts for each calendar month that is subsequent to the project application month and prior to the calendar month;

**“tier 2 return on investment”** means an amount, for a producer’s interest, in a calendar month, calculated as follows:

- (a) where the calendar month is not a production month, a amount equal to zero, or
- (b) where the calendar month is a production month, an amount equal to the greater of zero and the amount determined by the following formula:

$$\frac{A + B}{2} \times \frac{C}{12}$$

where

A means the opening net allowed cost balance,

B means the closing net allowed cost balance, and

C means the sum of the long term bond rate and 100%;

**“tier 3”** means a series of calendar months, for a producer’s interest, commencing with the first calendar month after tier 2 and ending in the calendar month which is the last calendar month in which a net profit royalty well event in the project produced marketable gas.

- (2) The oil or natural gas by-product transportation allowance is to be calculated by multiplying the monthly oil or natural gas by-product sales volume by the annual oil or natural gas by-product transportation rate per m<sup>3</sup> of sales volume as approved by the collector.

- (3) Words and expressions used but not defined in this regulation have the same meanings as in the *Petroleum and Natural Gas Act* and the *Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation*.

**Powers of administrator**

- 2 For the purposes of this regulation, the administrator may do all or any of the following:
- (a) on application by a producer under section 4, approve
    - (i) the project,
    - (ii) the net profit royalty on production of oil and natural gas produced from net profit royalty well events, and
    - (iii) the project ring fence;
  - (b) on application by a producer, approve a project expansion;
  - (c) determine administrative procedures, eligibility criteria, terms, conditions and deadlines related to the application and approval of a project;
  - (d) determine procedures for the calculation of a net profit royalty;
  - (e) establish, by order, the method by which producer prices for marketable gas are determined;
  - (f) determine administrative procedures for reconsiderations under section 18 (2);
  - (g) on application by a producer, approve an allowed capital cost or an allowed operating cost that has been incurred prior to the 60 calendar months preceding the project application month to be included as an allowed historical cost if the cost was directly attributable to the project and was not incurred during the 60 calendar months preceding the net profit royalty project application month due to force majeure;
  - (h) establish, by order, the eligibility criteria for allowed historical costs, allowed capital costs and allowed operating costs to be determined in the calculation of a net profit royalty;
  - (i) establish, by order, the method by which an annual gas cost allowance rate per  $10^3\text{m}^3$  of marketable gas is determined for a producer and project;
  - (j) establish, by order, the method by which an oil or natural gas by-product transportation rate per  $\text{m}^3$  is determined for a producer and project;
  - (k) establish, by order, the method for calculating a posted minimum price for a project and calendar month.

**Powers of collector**

- 3 For the purposes of this regulation, the collector may do all or any of the following:
- (a) determine administrative procedures for the calculation, invoicing, assessment, collection and reporting of a net profit royalty;
  - (b) determine administrative procedures for reconsiderations under section 18 (1);
  - (c) determine the number of decimal places for all calculations required under this regulation;



- (d) approve an annual gas cost allowance rate per  $10^3\text{m}^3$  of raw gas in accordance with the method established by the administrator under section 2 (i);
- (e) approve an annual oil or by-product transportation rate per  $\text{m}^3$  of oil or natural gas by-product sales in accordance with the method established by the administrator under section 2 (j);
- (f) assess a person for interest and penalties referred to in sections 11 and 13.

#### **Application for net profit royalty**

- 4** A holder of a petroleum lease issued under the Act may apply to the administrator, in the manner determined by the administrator, to pay a net profit royalty on production of oil and natural gas produced from wells drilled on the lease within a proposed project.

#### **Gross revenue**

- 5** (1) Gross revenue is an amount, for a producer's interest and calendar month, equal to the sum of the following:
  - (a) the sum of the producer's marketable gas, natural gas by-product and oil sales values;
  - (b) any consideration received by the producer from a loss of revenue insurance policy directly related to the operations of the project;
  - (c) any consideration received by the producer from technology developed in the project, where the cost of developing the technology has been included as an allowed capital cost or an allowed operating cost in the calculation of the producer's closing net allowed cost balance;
  - (d) a grant, subsidy or other form of assistance received by the producer from a government, municipality or other public body.
- (2) Sales value amounts referred to in subsection (1) (a) are to be calculated as the sales volumes multiplied by the appropriate producer price.
- (3) The gross revenue calculated under this section is a number equal to or greater than zero.

#### **Net profit royalty calculation**

- 6** (1) A producer must pay a net profit royalty, for each calendar month in respect of the producer's interest in oil and natural gas produced from net profit royalty well events within a project in accordance with subsection (2).
- (2) The amount of net profit royalty payable by a producer's interest under subsection (1), for a calendar month that is a calendar month in
  - (a) a pre-payout tier, is an amount equal to 2% of gross revenue,
  - (b) tier 1, is an amount equal to the greater of 5% of gross revenue and 15% of net revenue,
  - (c) tier 2, is an amount equal to the greater of 5% of gross revenue and 20% of net revenue, and
  - (d) tier 3, is an amount equal to the greater of 5% of gross revenue and 35% of net revenue.

### **Producer price for oil and natural gas by-products**

- 7 (1) The monthly prices to be used for valuing a producer's sales of oil and natural gas by-products for purposes of calculating gross revenue are the greater of

- (a) zero, and
- (b) the actual unit selling price

where the actual unit selling price is equal to

- (c) the consideration received by a producer for the disposition of the oil or natural gas by-products less eligible costs identified in subsection (3) for transporting the oil and natural gas by-products from the project ring fence to the point of sale, or
- (d) if the collector has, under subsection (2), fixed a unit selling price for the oil or natural gas by-products disposed of in a producing month, the deemed value of the oil or natural gas by-products so disposed of, divided by the corresponding volume of the oil or natural gas by-products.

- (2) If

- (a) there is no actual unit selling price for the disposition of oil or natural gas by-products referred to in subsection (1), or
- (b) the consideration received for the disposition of the oil or natural gas by-products is, in the opinion of the collector, less than the fair market value,

the collector may fix a producer price for the disposition of the oil or natural gas by-products at a level not exceeding the highest unit selling price received by any producer under the Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation during the calendar month in which the disposition takes place.

- (3) For the purpose of determining gross revenue from dispositions of oil and natural gas by-products under subsection (1), the producer may deduct from the oil and natural gas by-product sales values the eligible costs incurred by the producer for transporting the oil and natural gas by-products from the project ring fence to the point of sale.

- (4) Eligible costs referred to in subsection (3) include

- (a) tariffs charged by a contract carrier and incurred by the producer for transporting or processing oil or natural gas by-products, but such costs must relate to activities occurring between the project ring fence and the point of sale of the oil or natural gas by-products,
- (b) trucking, processing and rail transportation charges incurred by the producer for transporting or processing oil or natural gas by-products, but such costs must relate to activities occurring between the project ring fence and the point of sale of the oil or natural gas by-products, and
- (c) an oil or natural gas by-product transportation allowance, calculated by multiplying the monthly oil or natural gas by-product sales volume by the annual oil or natural gas by-product transportation rate as approved by the collector,

unless the cost items listed in paragraph (a), (b) or (c) have been used in establishing the consideration received under subsection (1) (c).

### **Royalty payment**

- 8
- (1) On approval of a net profit royalty by the administrator, all producers must pay royalty under this regulation.
  - (2) On or before the 25th day of the second calendar month following a producing month in which a net profit royalty well event produces oil or natural gas, a producer must pay to the collector an estimated monthly net profit royalty equal to an estimate of the net profit royalty due under section 6 (2) for the calendar month.
  - (3) On or before the later of the 25th day of the calendar month in which government invoices are delivered under section 16 and 15 days after the date on which the government invoices are delivered, a producer to whom government invoices are delivered, in respect of their producer's interest, must pay the total of those invoiced amounts less the estimated net profit royalty amounts paid for each production month in the calendar year under subsection (2).
  - (4) A producer may deduct an overpayment in accordance with section 16 (7).

### **Reporting**

- 9
- (1) A producer must, on or before the last day of the second calendar month following the end of each calendar month that is a production month, deliver to the collector, a report in the form and manner required by the collector, which includes a calculation of the amount of net profit royalty payable to the government under section 6 (2) for the calendar month.
  - (2) An operator of a project must, on or before the 20th day of the calendar month after the first calendar month in which a net profit royalty well event within the project produces oil or natural gas, file a report indicating each producer's interest in the project.
  - (3) A producer who has acquired an interest in a project must, on or before the 20th day after the second calendar month after the calendar month in which the closing date of the acquisition of interest occurs, file a report with the collector indicating the producer's interest in the project.
  - (4) A producer that, under section 8, makes a payment on account of a net profit royalty calculated under section 6 must, on or before the last day of the calendar month in which the payment is made, file a report respecting that payment indicating the amounts paid
    - (a) by producing month for net profit royalties,
    - (b) by producing month for estimated net profit royalties, and
    - (c) for penalties and interest.
  - (5) Subject to subsection (6), a person may amend a report filed under subsection (1) by filing an amended report with the collector.
  - (6) A person must not file an amended report under subsection (5) more than 72 months after the production month in relation to which the amended report is being filed.
  - (7) Every operator of a net profit royalty well event must, on or before the 20th day of the calendar month following the calendar month in which operations at the

well event began or were suspended, file a report indicating the commencement or suspension of operations.

#### **Reclamation and remediation cost bank**

- 10** (1) Each producer that has incurred allowed capital costs and allowed operating costs for a project during the project reclamation period has, for that project, a reclamation and remediation cost bank.
- (2) The balance in a producer's reclamation and remediation cost bank for a project at the end of a calendar month that is within the project reclamation period is equal to the amount determined by the following formula:

$$A + B - C$$

where

- A means the balance for a producer, if any, in the reclamation and remediation cost bank for the project at the end of the immediately preceding calendar month,
- B means an amount, for the calendar month, equal to the sum of a producer's
- (i) allowed capital costs multiplied by a factor of 1.01, and
  - (ii) allowed operating costs multiplied by a factor of 1.10, and
- C means the amount, if any, designated by the producer under section 10 (3) to be deducted in the calendar month from the producer's reclamation and remediation cost bank.
- (3) For a calendar month in the project reclamation period, a producer may designate an amount not greater than A + B under section 10 (2) to be deducted from the reclamation and remediation cost bank in calculating net revenue for any calendar month or calendar months that are within 72 calendar months of the calendar month first referred to in this subsection.

#### **Interest on royalty payments**

- 11** (1) The annual rate of interest during a quarterly period for penalties, royalties and unpaid interest is 3.0% above the prime lending rate of the principal banker to the government on the 15th day of the month immediately preceding the quarterly period commencing on January 1, April 1, July 1 and October 1 of each calendar year.
- (2) The annual rate of interest during a quarterly period for overpayments is the prime lending rate of the principal banker to the government on the 15th day of the month immediately preceding the quarterly period commencing on January 1, April 1, July 1 and October 1 of each calendar year.
- (3) If, under subsection (2), interest is to be calculated on an amount, that interest must be calculated in accordance with the following formula:

$$A \times I \times \left( \frac{D}{365.25} \right)$$

where

A means the amount on which interest is to be calculated,

I means the applicable interest rate under subsection (1) or (2), and

D means the number of days, from and excluding the 25th day of the calendar month at the end of which A is owing, to and including the 25th day of the following calendar month.

(4) Interest on overpayments, penalties, interest and unpaid net profit royalties for a calendar month is to be calculated as follows:

- (a) if, at the end of a calendar month, an amount is owing by a net profit royalty producer for net profit royalty, interest is to be calculated on the amount owing in accordance with subsection (3);
- (b) if the amount of an estimate payment made on or before the end of a calendar month under section 8 (2) is greater than or less than the net profit royalty that is invoiced to the producer for that calendar month under section 15 (1), interest on the difference between the payment and the invoice amount is to be calculated in accordance with subsection (3);
- (c) if an estimate payment is made after the due date for the estimated payment, interest is to be calculated, for each day that the estimate payment is late, in accordance with subsection (3);
- (d) if net profit royalties are overpaid by a net profit royalty producer in a calendar month and the overpayment is not reimbursed or credited on or before the end of that calendar month, interest on that overpayment is to be calculated in accordance with subsection (3).

(5) No charge is to be made if an interest charge is less than \$5.

#### **Power to demand information**

- 12 The collector or the administrator may, for any purpose related to the administration or enforcement of this regulation, by notice served personally or by registered or certified mail, require a producer to provide, within 30 days or another reasonable time stipulated in the notice,
- (a) any information or additional information relating to a producer or project including a report under this regulation, or
  - (b) any document.

#### **Penalties**

- 13 The penalty under section 74 (5) of the Act for failure to file a report required under section 9 within the required time is \$100 for each day that the failure to file continues, or for any lesser number of days that the collector considers appropriate, up to a maximum amount payable under this section of \$6 000 for each report.

#### **Producer change of address**

- 14 A producer holder must notify the collector and administrator of a change in its permanent address.

#### **Service of notices**

- 15 (1) If service of a request, notice, demand for information or other document is to be made under this regulation on a producer, it may be served
- (a) in person, or

- (b) by mailing it by registered mail to the last known address of the producer.
- (2) If service is by registered mail, the request, notice, demand for information or other document is deemed to be served on the eighth day after mailing.
- (3) This section does not apply if a court orders another mode of service.

#### **Notice of assessment**

- 16**
- (1) After receiving a report filed by a producer under section 9 (1) for a production month, the collector, on or about the 10th day of the third calendar month following the production month, is to deliver a Crown invoice to the producer for the amount of net profit royalty that is payable to the government by that producer.
  - (2) If the collector, on examining a report filed under section 9 (1) or an amended report filed under section 9 (5), disagrees with the information or calculations in it, the collector may do either or both of the following:
    - (a) request the producer who filed the report or amended report to submit, within 60 days after the date of the request, a report based on the information the collector believes is correct;
    - (b) assess or reassess the producer for net profit royalty payable to the government based on the information the collector believes is correct.
  - (3) The collector may make the assessment or reassessment referred to in subsection (2)
    - (a) at any time, if the producer has made a misrepresentation or committed fraud in making the report or supplying information under this regulation, or
    - (b) in any other case, not more than 72 months after the date of the receipt of the report on which the assessment or reassessment is based.
  - (4) The notice of assessment must contain the determination made by the collector of the amount of net profit royalty and interest payable and the due date for payment of that amount.
  - (5) On assessing or reassessing the net profit royalty payable by a producer who has not filed a report or has filed a report containing information with which the collector disagrees, the collector must mail a notice of assessment to the producer.
  - (6) The producer assessed must pay to the collector the amount of net profit royalty owing as set out in the notice of assessment within 60 days after the date shown on the notice of assessment.
  - (7) In the case of an overpayment, the producer may deduct from net profit royalty payments due after the date of the notice of assessment the amount of the overpayment indicated in the notice of assessment.

#### **Requirement to maintain records**

- 17**
- Every producer required by section 76 (1) of the Act to keep records must retain the records, for a particular calendar year, for the longer of the following in respect of a calendar year:
- (a) 7 years after the end of a calendar year for which a report has been filed;

- (b) 2 years after the date of the producer's receipt of a notice of assessment under this regulation.

#### **Reconsideration by collector or administrator**

- 18** (1) The collector may reconsider or vary an invoice or assessment of a net profit royalty, interest or penalty made under section 16 on the request of a producer who objects in writing to the amount assessed.
- (2) The administrator may reconsider or vary a producer price on the request of a producer who objects in writing to the producer price as determined.

#### **Appeals**

- 19** (1) A producer may appeal a decision of the collector under 18 (1) or a decision of the administrator under section 18 (2) to the Minister of Small Business and Revenue by mailing by registered mail, within 60 days after the decision of the collector or administrator, a notice of appeal addressed to the Minister of Small Business and Revenue.
- (2) The notice must state the name and address of the producer, the date of the collector's or administrator's decision and the amount of net profit royalty, interest or penalty assessed under section 16, if any, and must set out the reasons for the appeal and the facts on which it is based.
- (3) On receipt of the notice of appeal and all relevant information from the office of the collector or administrator, the Minister of Small Business and Revenue, with or without a hearing, must confirm, vary or reverse the decision of the collector or administrator.
- (4) The Minister of Small Business and Revenue must convey the decision to the collector who must mail to the person who made the appeal notification of that minister's decision and must include, if applicable, a notice of assessment reflecting that minister's decision.

#### **Successor requirements**

- 20** (1) A transferor must, before an intended transfer of all or a portion of an interest in a project, give notice to the administrator of the intended transfer.
- (2) A notice under subsection (1) must
- (a) be in writing,
  - (b) state the effective date of the proposed transfer of the interest in the project,
  - (c) state the identity of the transferee, and
  - (d) state the exact portion of the interest in the project that is to be retained by the transferor and the interest in the project that is being transferred to the transferee.
- (3) The transferor and transferee of an interest in a project are jointly and severally liable for net profit royalty payable under section 6 (2) as of the effective date of the transfer of an interest in a project and until that net profit royalty is paid.
- (4) The transferee is liable for and must pay all net profit royalty on an interest in a lease that is transferred after the effective date of the transfer.

- (5) The account balances of a transferor that are necessary to calculate net profit royalty payable must, upon the transfer of that transferor's interest in a project, become the account balances of the transferee of that interest in the project.
- (6) Where only a portion of an interest in a project is transferred, only the portion of the account balances related to the transferred interest in the project become the property of the transferee.
- (7) The consideration paid for the transfer of a producer's interest is not considered to be a royalty cost of the transferee or gross revenue to the transferor.
- (8) This section applies to a transfer of an interest in a project notwithstanding that the interest in the project may be transferred by a receiver, liquidator, administrator, executor or other like person, other than a trustee in bankruptcy.
- (9) In this section
  - (a) **"transfer"** includes a transfer by way of sale, assignment, conveyance or other disposition by a transferor, including a transfer that is a part of a consolidation, merger, dissolution or reorganization involving the transferor but does not include the granting of a security interest;
  - (b) **"transferee"** means a producer to whom all or a part of an interest in a project has been transferred;
  - (c) **"transferor"** means a producer who transfers all or a part of its interest in a project to another producer or intended producer.
- (10) The account balances referred to in subsection 5 include:
  - (a) pre-payout closing balance for the calendar month preceding the effective date of the transfer;
  - (b) tier 1 closing payout balance for the calendar month preceding the effective date of the transfer;
  - (c) tier 2 closing payout balance for the calendar month preceding the effective date of the transfer;
  - (d) closing net allowed cost balance for the calendar month preceding the effective date of the transfer.
- (11) A producer must provide reasonable notice to the minister of a change of name, amalgamation or other change that involves the producer's position in a project but does not otherwise qualify as a transfer under subsection (9) (a).



## SCHEDULE

### NET PROFIT SCHEDULE OF REVENUE AND COST CALCULATIONS

#### Calculation of Monthly Net Allowed Cost

(Greater of zero and net allowed cost calculation)

Historical Cost (1st year only)

+ Allowed Capital Cost x 1.01

+ Allowed Operating Cost x 1.10

- Gross Revenue

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= *Monthly Net Allowed Cost*

#### Calculation of Monthly Net Revenue

Gross Revenue

- Allowed Capital Cost x 1.01

- Allowed Operating Cost x 1.10

- Opening Net Allowed Cost Balance, if positive

- Designated Amount of Reclamation & Remediation Costs

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= *Monthly Net Revenue*

#### Calculation of Closing Net Allowed Cost Balance

Opening Net Allowed Cost Balance

+ Monthly Net Allowed Cost

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= *Closing Net Allowed Cost Balance*

#### Calculation of Annual Return on Investment (Pre-payout Tier, Tier 1 and Tier 2)

(Opening Net Allowed Cost Balance + Closing Net Allowed Cost Balance) / 2 x

long term bond rate for the pre-payout tier, or

the sum of the long term bond rate and 25%, for tier 1, or

the sum of the long term bond rate and 100% for tier 2.

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= *Monthly Return on Investment*

#### Calculation of Closing Payout Balance (Pre-payout Tier, Tier 1 and Tier 2)

Opening Payout Balance for Applicable Tier

+ Monthly Net Allowed Cost

+ Monthly Return on Investment for Applicable Tier

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= *Closing Payout Balance*

#### Notes:

- (1) Historical Allowed Cost is allowed once only, in first month of royalty calculation for the project.
- (2) In the first year of royalty calculation for the project, Cumulative Net Allowed Costs = Net Allowed Costs
- (3) In the first year of royalty calculation for the project, there is no cumulative payout balance for the preceding year.
- (4) Allowed capital cost, allowed operating cost and gross revenue will be numbers equal to or greater than zero.