

## QUESTIONS AND ANSWERS

### PROOF OF FINANCIAL RESPONSIBILITY GUIDELINES AND INTERPRETATION NOTES

#### **What are guidelines and interpretation notes?**

Guidelines and interpretation notes are documents that clarify the Regulator's expectations for companies. They can also be a way to improve everybody's understanding of the way oil and gas resources are regulated in the Northwest Territories.

Interpretation notes explain the Regulator's views on the legal requirements for different activities.

Guidelines explain how companies can meet the legal requirements for their activities.

#### **Who issues guidelines and interpretation notes?**

The Regulator issues guidelines and interpretation notes. Section 18 of the *Oil and Gas Operations Act* gives the Regulator the authority to do so.

#### **What are the objectives of the *Proof of Financial Responsibility Guidelines and Interpretation Notes* (guidelines)?**

The objectives of the guidelines are to explain the purpose and uses of Proof of Financial Responsibility (PFR) and to explain how the Regulator determines the amount of PFR required for different types of oil and gas operations. The guidelines also clarify who can make claim under PFR and the claims process, as well as the format and information that should be included in the financial instruments used to post Proof of Financial Responsibility with the Regulator.

#### **What topics are covered in the guidelines?**

The guidelines provide information on:

- Purpose and scope of PFR;
- PFR requirements for different types of oil and gas operations;
- Who can make a claim under PFR and the process to make a claim; and
- Appropriate formats of Proof of Financial Responsibility.

## **How were the guidelines developed?**

The guidelines were developed by the Office of the Regulator of Oil and Gas Operations (OROGO).

OROGO reviewed guidelines used by regulators in other jurisdictions, notably:

- *Guidelines Respecting Financial Requirements* jointly developed by the Canada-Newfoundland and Labrador Offshore Petroleum Board, Canada-Nova Scotia Offshore Petroleum Board and the Canadian Energy Regulator; and
- *Pipeline Financial Requirements Guidelines* developed by the Canadian Energy Regulator.

## **What is the operator responsible for?**

The *Oil and Gas Operations Act* requires operators to clean up any spills or debris caused by their operations. They are also required to repair anything that led to the spills or debris and to take action to prevent future spills and debris.

This is consistent with the “polluter pays” principle.

## **What if the spill or debris was the operator’s fault?**

Spills and debris may result from negligence or otherwise be the fault of the operator. In this case, there are no limits to the amount the operator may be required to pay to compensate for loss or damages and clean-up costs and expenses.

A claim for compensation in an “at fault” situation is processed through the courts.

## **What if the spill or debris was not the operator’s fault?**

If the spills and debris did not result from negligence or the fault of the operator, the operator’s liability is limited to the amounts set out in the *Oil and Gas Spills and Debris Regulations*.

A claim for compensation in a “no fault” situation can be processed through the Regulator, for the amount held as PFR.

## **What is the purpose of Proof of Financial Responsibility?**

The purpose of PFR is to have funds available that can be paid out to persons suffering “actual loss or damage” from a spill or debris or to the GNWT or any other person if it reasonably incurs “costs or expenses taking any action or measure in relation to the spill or remedial action in relation to debris”.

The terms “spill”, “debris” and “actual loss or damage” are defined in the *Oil and Gas Operations Act*. The purpose of PFR is to have funds available from which these losses, damages, costs or expenses can be paid out without having to prove the fault of the operator. The maximum amount that the Regulator can pay out for a given activity is set out in the *Oil and Gas and Debris Liability Regulations*.

### **How does the Regulator assess the amount of PFR required for oil and gas operations?**

The amount of PFR required depends on what type of oil and gas operation is being conducted. Operations that could cause more extensive spills and debris, spills and debris that would be more difficult to clean up, or spills and debris that could have a greater potential for loss or damages require a higher amount of PFR.

The Regulator cannot request more PFR than the maximum amount specified under the *Oil and Gas Spills and Debris Liability Regulations*. These amounts are defined by the geographical location of the proposed activity (for example, within 200 meters of a body of inland water).

### **What is the relationship between the amount of PFR held by the Regulator and the maximums set out in the *Oil and Gas Spills and Debris Liability Regulations* (Regulations)?**

The Regulator may hold PFR in an amount up to the maximum set out in the Regulations. However, the Regulator is not required to hold the maximum amount.

If the Regulator holds less than the maximum amount and claims are made that exceed the amount of PFR the Regulator holds, the remaining amount, up to the maximum, can be pursued through the courts.

The Regulator’s decision on the amount of PFR does not change the maximum amounts set out in the Regulations.

### **Why doesn’t the Regulator just hold the maximum amount of PFR all the time, relieving individuals and governments of the need to go through the courts?**

The amount of PFR required by the Regulator should reflect the type of operation being conducted and be justifiable based on the evidence presented by the applicant and other parties. For example, suspension and abandonment operations generally have a lower probability of causing loss or damages due to a spill or debris and, for this type of oil and gas operation, the amount of PFR is assessed by the Regulator on a case-by-case basis.

**How does Proof of Financial Responsibility tie into OROGO's mandate to ensure that oil and gas operations are conducted in a manner that protects the environment for future generations?**

PFR is one part of OROGO's broader efforts to protect the environment and human safety.

Operators who apply to OROGO for an Operations Authorizations have to submit Environmental Protection Plans (EPP) that describe how the operation will be conducted while protecting the environment. Operations Authorizations may also include specific terms to ensure the operators conduct the operation to the Regulator's satisfaction.

OROGO conducts regular inspections of oil and gas operations to ensure that operators are complying with EPP's and other terms of their Operations Authorizations. If necessary, there are enforcement tools that the Regulator, Chief Safety Officer and Chief Conservation Officer may use to promote compliance.

The *Oil and Gas Operations Act* requires operators to clean up any spills or debris caused by their operations. They are also required to repair anything that led to the spills or debris and to take action to prevent future spills and debris. However, in the unlikely event that an operator does not fulfill its obligations, the Regulator holds PFR to compensate those affected. The Regulator cannot approve any oil and gas work or activity applied for under an Operations Authorization unless the applicant or operator provides Proof of Financial Responsibility in a form and amount satisfactory to the Regulator.

**How do the *Oil and Gas Operations Act* (OGOA) and Proof of Financial Responsibility consider Indigenous land use?**

OGOA recognizes that loss of hunting, fishing and gathering opportunities by Indigenous peoples is a specific form of loss or damage that can be compensated for using the PFR held by the Regulator.

OGOA also recognizes that activities to clean up spills or debris, if necessary, may be carried out by organizations other than the GNWT, including Indigenous governments or other organizations. The costs and expenses associated with clean-up activities by Indigenous governments or other organizations can be compensated for using the PFR held by the Regulator.

## **How does Proof of Financial Responsibility differ from security deposits required by the Land and Water Boards?**

PFR is for a different purpose than the security deposits that the Land and Water Boards require. The amount is held by the Regulator in the event of a hypothetical scenario where a spill or debris is not satisfactorily addressed by the operator and causes loss or damage or costs and expenses for clean-up. Reclamation amounts collected by the Land and Water Boards and other NWT regulators are based on the estimated actual costs of restoring lands to their original state.

OROGO does not consider Proof of Financial Responsibility to be “double bonding”, and notes that it should not be taken into consideration when other regulators are setting reclamation amounts for land and water uses.

## **Where can I get more information on the guidelines?**

OROGO’s website has a copy of the guidelines at [www.oro.go.gov.nt.ca](http://www.oro.go.gov.nt.ca)

OROGO staff can also answer questions about the guidelines. Call Peter Lennie-Misgeld at 867-767-9097 or email him at [Peter.Lennie-Misgeld@gov.nt.ca](mailto:Peter.Lennie-Misgeld@gov.nt.ca) for more information. Peter can also arrange presentations on the guidelines for your organization.

## **Who is providing feedback on the guidelines?**

Everyone is welcome to provide feedback on the guidelines.

OROGO has directly contacted Indigenous governments and organizations, companies operating in the NWT, other regulators, industry groups, the territorial and federal governments and environmental non-governmental organizations for their feedback. OROGO has also advertised in NWT newspapers to reach the general public.

## **How do I provide feedback on the guidelines?**

Please provide your feedback on the guidelines by writing to [oro.go@gov.nt.ca](mailto:oro.go@gov.nt.ca). You will receive a response confirming that OROGO has received your feedback.

## **What is the deadline for providing feedback?**

The deadline for providing feedback is **January 15, 2021**.

## **What will be done with the feedback received?**

The feedback received will be summarized and made public, along with OROGO’s responses. This summary document will be available in the first quarter of 2021.

**When will the guidelines be issued?**

OROGO expects to issue the guidelines in the first quarter of 2021.