

BILL 79 – THE PETROLEUM PRODUCT PRICING ACT

1. General Information about Regulation.

Bill 79, the *Petroleum Products Pricing Act* establishes the authority of the Province of Nova Scotia, by regulation, to set the price of petroleum products (defined as gasoline and diesel fuel only) to be sold to the general public in Nova Scotia.

Effective July 1st, 2006 the price of gasoline and diesel fuel sold to the general motoring public will be regulated. Commercial contracts, card-locks and other methods of bulk fuel delivery of 5,000 liters or more annually, and not available to the general motoring public, are not subject to regulation.

Heating fuel and other petroleum products are also not subject to regulation at this time

Service Nova Scotia and Municipal Relations will act as the interim regulator effective July 1st, 2006 until November 1st, 2006. At that point the authority for regulation under Bill 79 will be turned over to the Utility And Review Board after public hearings tentatively scheduled for September, 2006 have been held. SNSMR has been designated to enforce the regulations as long as they are in effect.

There will be no requirement to submit a pricing bid, or other type of application for a price change. The Regulator will set the wholesale and consumer prices and provide the information to the industry through a secure website (please see supplementary bulletin regarding this website). The public will be notified via a public website.

The secure web based system will track who has logged on and accessed the pricing information. Coded identification numbers and passwords will be provided to wholesalers within the next three days.

Under regulation it is the responsibility of the wholesaler to provide regulated pricing information to their agents, retailers or any other wholesalers to whom they supply product. This notice must be provided in a timely manner that allows for compliance with pricing regulations.

The first regulated pricing period will begin Saturday, July 1st, at 12:01 a.m. and is anticipated to continue until Wednesday, July 12th at midnight. At 12:01 on Thursday, July 13th a new regulated price will take effect if necessary and every two weeks thereafter (every second Thursday) as required.

The Department will do its best to provide industry with two business days of regulated pricing information when setting the initial price. This is in order to allow any difficulties in the information process to be identified and corrected.

After the initial price setting, the regulated pricing information will be supplied to wholesalers one business day in advance, i.e. every second Wednesday morning by 9:00 a.m. The new price will take effect at 12:01 of the following day i.e. every second Thursday morning.

There will be no prior public notice of the exact change in price prior to it coming into

effect at 12:01 a.m. of the designated pricing period. The new regulated price will be posted on the Department website at the time it comes into effect.

It is an offence for any wholesaler, any agent of a wholesaler, or any retailer to publicly disclose in any way the regulated price of gasoline or diesel fuel in advance of that price coming into effect as of 12:01 a.m. of any pricing period.

The penalty for a retailer who violates the *Petroleum Products Pricing Act* is a maximum fine of five thousand dollars (\$5,000) for each offence, with each day in violation constituting a separate offence subject to penalty.

The penalty for a wholesaler who violates the *Petroleum Products Pricing Act* is a maximum fine of five hundred thousand dollars (\$500,000) for each offence, with each day in violation constituting a separate offence subject to penalty.

With the exception of the zone differentials, the general motoring public will pay the same price within the one and one-half (1.5) cents per litre range to allow for competition, regardless of what community they live in.

These prices will remain stable for two weeks except when significant price changes occur. Should this occur, an "Interrupter" formula will be used to re-set the regulated price at the mid-point of the normal regulated pricing period (i.e. the interim Thursday). The trigger for the interrupter formula to be used is four cents (4.0) per litre up or down over the previous five day period. Even in the event of these price changes, the cost of gasoline in Nova Scotia will remain stable a week at a time.

In the worst-case scenario, such as Hurricane Katrina, the Regulator has the ability to change the regulated price on a daily basis.

For more information on the interrupter please see the Supplementary Bulletin on this topic.

2. The Pricing Model and How it Works.

During consultations regarding Nova Scotia's regulatory model, both wholesalers and retailers identified the importance of establishing a mathematically based formula that was both transparent and predictable in order to set the price of gasoline and diesel fuel in Nova Scotia.

This was considered to be an important step in establishing the integrity of the pricing model so that consumers and the industry would be able to determine that they were receiving fair and reasonable price treatment.

The pricing model also has to accommodate ongoing volatility of gasoline prices. This is a global phenomena certain to continue well into the future. As such, the pricing model needs to include tools that will allow for adjustments in the event shrinking margins put supply at risk.

The Regulator will use the New York harbour daily spot price as reported in Platts as the benchmark to establish the base price of gasoline and diesel fuel in Nova Scotia. If

Platt's is unavailable, the Regulator will use Bloomberg's Daily Spot price to establish the base price of gasoline and diesel oil in Nova Scotia.

The base price will be set by calculating the average daily price for gasoline each day over a ten day period and then take the average of those ten prices to arrive at the average price for the period(or average of the average prices). This will be the base the Regulator builds upon in setting the price of gasoline and diesel fuel in Nova Scotia.

Based on historical data, a fixed wholesale margin of 6.0 cents per litre has been identified by the Regulator to compensate wholesalers during the interim regulation period. A zone differential will be added to this margin to reflect the cost of transportation in Nova Scotia. The Regulator will reset the base wholesale price every two weeks to reflect any changes in the average New York harbour prices. Federal excise and provincial road taxes will be added to the base wholesale price to establish the wholesale selling price or the price at which wholesalers are required to sell to retailers.

The Regulator will also establish a minimum retail margin of four (4.0) cents-per-litre, and a maximum retail margin of five and one-half (5.5) cents-per-litre for retailers or those who sell self serve gasoline or diesel fuel directly to the general motoring public in Nova Scotia. These margins are before the applicable HST are included.

The minimum - maximum retail price includes a price range of one and one-half (1.5) cents-per-litre margin (not including the applicable tax) of pricing flexibility to allow for local market competition, with the actual "posted" and "pump price" to be determined by the retailer.

The minimum and maximum retail margins are used to define a range of the lowest, and the highest price (including applicable taxes) that a retailer can charge the general motoring public for gasoline or diesel fuel in Nova Scotia (please see pricing report attached for example of the pricing structure).

The Regulator will also establish an additional approved margin of two (2.0) cents-per-litre for attended service, or "full serve" gasoline and diesel oil sold to the general motoring public. The minimum retail margin for full service has been established at 4.0 cents per litre and the maximum is 7.5 cents per litre (before applicable taxes). As with the self serve retail margin, it is at the discretion of the retailer as to where he sets the consumer prices between the minimum and maximum allowable range.

The Regulator will also establish an additional approved margin of three (3.0) cents-per-litre for mid-grade gasoline, and six (6.0) cents-per-litre for premium-grade gasoline, over and above the regulated minimum and maximum margins for regular unleaded (all margins before taxes).

It is an offence for any wholesaler to sell a regulated product to any agent or retailer that sells to the general motoring public at a cost in excess of, or below the fixed wholesale selling price. It is also a violation for any retailer to sell gasoline or diesel fuel to the general motoring public for less than the minimum, or more than the maximum regulated selling price for each regulated type of petroleum product, whether it be sold self or full serve.

For more information on the pricing model or the regulations please see the

Supplementary Bulletins.

3. Wholesalers /Retailers and Existing Contracts.

Nova Scotia's new regulatory environment represents a re-balancing of the traditional relationship between wholesalers and retailers in Nova Scotia. It is designed to recognize the need, necessity and convenience of maintaining petroleum product infrastructure in the province.

Fuel transportation costs are to be borne by the wholesaler. In addition, retailers now have a minimum retail margin that ends the "squeeze" that takes place during times of rising product costs. Retailers also have a maximum retail margin that allows for some future competition that now occurs in local markets between retailers.

Under Bill 79, the regulations give retailers three important options:

- a) a retailer who already has a satisfactory contractual agreement with a wholesaler may file a "Declaration" (to be provided early in July) along with a copy of the existing contract, indicating to the Regulator that the retailer wishes to continue the contract until it expires. Under this option, the existing contract including the retailers total compensation, will continue in force.
- b) a retailer who wishes to be covered by regulation and is thereby entitled to the minimum and maximum retail margin may file a "Declaration" (to be provided early in July) stating the preference to abide by the regulated margins. Under this option the regulated margins take precedence over, and replace all the compensation terms in any existing contract. All other terms and conditions of the current contract apply until it expires.
- c) a retailer may also choose, with the agreement of his supplier, to negotiate a new contract that may provide for other compensation, inducements or incentives not included in the current contract or as established in regulation. Again, a "Declaration" (to be provided early in July) stating this preference must be provided to the Regulator along with a copy of the new contract to which both parties have agreed.

Effective July 1st, 2006 a Retailer will have 62 days, until August 31, 2006 to review their business plans, seek professional advice, and or consult with their supplier before making a "Declaration" specifying which of the three options the retailer and or wholesaler will be operating under in the future.

Once a "Declaration" has been filed, regardless of which option is selected, the retailer will not be able to change that selection until the existing contract in place with a wholesaler expires. In the absence of a "Declaration", effective September 1, 2006, a retailer shall be considered to be operating within the pricing requirements set out in the regulations.

It is important to note that regardless of the option selected, a retailer must comply with the minimum and maximum retail prices as established under regulation or be in

violation of the *Act*.

For more information on these options please see the Supplementary Bulletins on this subject.

4. Zone Differentials/Transportation

The pricing model will include an allowance for transportation and storage costs for product delivered to various points in the province. Six zones have been established, each with a price differential to reflect the cost of transportation to that zone. These differentials are allowable costs to be included in the fixed wholesale margin. There is no regulatory requirement to document or supply actual transportation invoices. Fuel transportation costs are to be borne by the wholesaler.

The zone differential for the Metro area is three-tenths (0.3) cents-per-litre. As distance traveled increases an additional four-tenths (0.4) cents-per litre is allowed. An additional five-tenths (0.5) of a cent-per-litre is allowed for the south-eastern and north-western ends of the province. Another eight-tenths of a cent-per-litre is allowed for the Cape Breton region for a total cumulative zone differential of two (2.0) cents-per-litre to the farthest zone.

Please see the Supplemental Bulletin for the applicable differentials and a map of Nova Scotia designating the six zones.

5. Coupons in the Nova Scotia Marketplace.

Government directed that any inducements offered by the industry to consumers on the purchase of fuel should be continued. The regulator will not interfere anymore than absolutely necessary in restricting marketing and promotion tools which are pervasive in the marketplace in Nova Scotia.

Most coupons, loyalty programs, and well as other incentives such as discounts for cash will be allowed to continue after July 1, 2006. Some others that impact the price of product at the pump will be frozen as of June 1, 2006.

To be more precise, cross merchandising programs that existed in Nova Scotia prior to June 1, 2006 will be permitted to continue and may be expanded after July 1. Existing programs that lower the price of product at the pump such as Senior's Tuesday, two cents off for cash, or discounted premium grade gasoline on Thursdays will also be allowed to continue in the manner and to the value which they already exist.

Any existing incentive in the Nova Scotia market that reduces the cost of gasoline at the pump below the minimum retail price will be allowed to continue in the form and to the value as previously existed prior to regulation. The policy objective here is to maintain the status quo until the UARB assumes regulatory responsibility over this matter.

Any existing program in the Nova Scotia market that is used by a competitor may be adopted by any other participant in the Nova Scotia market, but no new incentives that would reduce the cost of gasoline at the pump, at the time of purchase, below the minimum allowable retail price will be permitted. It will be a violation of the *Act* to do so.

In the event of any uncertainty, any coupon, loyalty, or incentive program will be approved on an interim basis by the regulator (SNSMR) based on evidence of its prior existence in the marketplace. The program must be of an identical nature and value during this interim period.

Any new program (without evidence of prior use in the Nova Scotia marketplace) is prohibited until the Utility and Review Board has the opportunity to hold hearings and assume authority for setting the price of gasoline and diesel in Nova Scotia.

In the event of a complaint that a new program that has been introduced into the market is in violation of the regulations, the onus will be upon the wholesaler or company introducing the program to document its prior existence in the Nova Scotia marketplace and demonstrate it is being delivered in the same form and is of the same value.

In the event there is not sufficient evidence that any program was in prior existence, or is not being replicated in the same manner and of the same value, that program will be disallowed.

Please see the Supplementary Bulletin for more information on this subject.

6. The Utility and Review Board

Government has determined that the Nova Scotia Utility and Review Board will assume authority for setting the price of gasoline and diesel in Nova Scotia effective November 1, 2006.

Prior to the initial setting of price by the UARB, the Board is empowered to hold a public hearing on all matters it deems necessary in order to establish a fair and reasonable price. This hearing is tentatively scheduled for September, 2006.

The UARB will have the authority to alter, or if required, recommend changes to the regulations pertaining to the model used for setting price, the fixed wholesale margin, zone differentials, retail margins, application of the interrupter, contracts, coupons or the notification process and penalties.

7. The Cost of Regulation

Service Nova Scotia and Municipal Relations will collect a fee on behalf of the department and the Utility And Review Board to recover the cost of administration and enforcement of regulation projected at \$1.1 million in the first year and \$600,000 annually in each following year.

The fee will be collected in conjunction with the existing motive fuel tax collection process and should not present any substantial increase in resources to deal with this administrative function.

The fee has been set at just below one-tenth (0.09) cents-per litre on gasoline and diesel products to cover start-up and on-going costs of the UARB and the Department. The costs and fees will be reviewed annually as will the need for and administration of the pricing regulations.