

1984 BILL 19

Second Session, 20th Legislature, 33 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 19

FUEL OIL ADMINISTRATION AMENDMENT ACT, 1984

MR. DROBOT

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 19
Mr. Drobot

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1984

FUEL OIL ADMINISTRATION AMENDMENT ACT, 1984

(Assented to _____, 1984)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

- 1 *The Fuel Oil Administration Act is amended by this Act.*
- 2 *Section 1 is amended*
 - (a) *in subsection (1)*
 - (i) *in clause (c) by striking out “section 15(j)” and substituting “section 15(k)”;*
 - (ii) *by repealing clause (h) and substituting the following:*
 - (h) “farm truck” means a farm truck as defined in the regulations;
 - (iii) *in clause (i) by striking out “or” at the end of subclause (v.1), adding “or” at the end of subclause (vi) and adding the following after subclause (vi):*
 - (vii) the use of a vehicle registered under the *Motor Vehicle Administration Act* in the name of any person other than a farmer;
 - (iv) *by adding the following after clause (l):*
 - (l.1) “independent dealer” means a bulk dealer who sells fuel oil but does not do so on consignment for an agent-dealer;
 - (v) *by repealing clause (m);*
 - (vi) *by adding the following after clause (t):*
 - (t.1) “person” includes an Indian band and a Metis settlement association;
 - (b) *by repealing subsection (2) and substituting the following:*
 - (2) When a person
 - (a) is a resident of Alberta and has farming operations in respect of land outside Alberta, or

Explanatory Notes

1 This Bill amends chapter F-21 of the Revised Statutes of Alberta 1980.

2 Section 1(1)(h), (i) and (m) presently read:

1(1) In this Act,

(h) "farm truck" means a vehicle having an "F" classification under an order made pursuant to the Motor Transport Act and in respect of which an "F" licence or special farm truck licence, but no licence of any other class, has been issued pursuant to the Motor Vehicle Administration Act;

(i) "farming operations" means the production, or any step in the production, of livestock, grain, forage crops, poultry, furs, honey or any other agricultural product and, without limiting the generality of the foregoing, includes

(i) the personal use of a farm truck owned or operated by a farmer,

(ii) the heating of buildings located on a farm and used in connection with the production, or any step in the production, of livestock, grain, forage crops, poultry, furs, honey or any other agricultural product, and the heating of dwellings on that farm,

(iii) the transportation of livestock, grain, forage crops, poultry, furs, honey or any other agricultural product by the farmer who produced them, and

(iv) any operation designated by the regulations as a farming operation for the purposes of this clause,

but does not include

(v) any other type of business operation carried on by a farmer,

(v.1) any operation designated by the regulations as not being a farming operation for the purposes of this clause, or

(vi) the transportation of livestock, grain, forage crops, poultry, furs, honey or any other agricultural product by a processor or by any person other than the farmer who produced them, if the transportation is for hire or gain;

(b) holds land in Alberta and land outside Alberta and combines or integrates his farming operations in respect of the land in Alberta with his farming operations in respect of the land outside Alberta,

for the purposes of this Act, the farming operations in respect of the land outside Alberta shall be deemed to be farming operations in Alberta.

3 *Section 7 is amended*

(a) *by repealing subsection (1) and substituting the following:*

7(1) When an agent-dealer or bulk dealer sells marked fuel to a person for use in farming operations in Alberta the price that would otherwise be payable shall be reduced by the amount of the farm fuel distribution allowance for each litre sold.

(b) *in subsection (4) by repealing clauses (a) and (b) and substituting the following:*

(a) the point of delivery of the marked fuel is a place outside Alberta, unless the reduction in price is authorized in accordance with regulations made under section 15(o), or

(c) *by repealing subsection (6) and substituting the following:*

(6) The Minister may refuse to reimburse an agent-dealer or bulk dealer under subsection (5) if the agent-dealer or bulk dealer fails to properly account, by means of sales and volume throughput reconciliations, for the disposition of all marked fuel produced, purchased or otherwise received by him.

4 *Section 8 is repealed.*

5 *Section 9 is amended by striking out “allowance” and substituting “allowance separately”.*

(m) "licensed refiner" means a refiner of fuel oil licensed under section 2 of the Fuel Oil Licensing Act;

3 Section 7(1), (4) and (6) presently read:

7(1) When an agent-dealer sells marked fuel

(a) to a bulk dealer, or

(b) to a person for use in farming operations in Alberta,

the price that would otherwise be payable shall be reduced by the amount of the farm fuel distribution allowance for each litre sold.

(4) Subsections (1) and (3) do not apply when

(a) the point of delivery of the marked fuel is a place outside Alberta,

(b) the sale is made to a bulk dealer for delivery by him to a place outside Alberta, or

(c) the sale is made to the Government of Canada or any agency of that Government.

(6) The Minister may refuse to reimburse an agent-dealer or bulk dealer under subsection (5) if the agent-dealer or bulk dealer fails to properly account for the allowances on sales made by him by the submission of returns or the production of other records in accordance with this Act and the regulations.

4 Section 8 presently reads:

8(1) When a bulk dealer buys marked fuel at the reduced price, the bulk dealer shall, on a resale of that marked fuel to

(a) any person for use in farming operations in Alberta, or

(b) another bulk dealer,

pass on the benefit of the farm fuel distribution allowance by reducing the price otherwise payable by the amount of the allowance on each litre re-sold.

(2) Subsection (1) does not apply when

(a) the point of delivery of the marked fuel is a place outside Alberta,

(b) the sale is made to a bulk dealer for delivery by him to a place outside Alberta, or

(c) the sale is made to the Government of Canada or any agency of that Government.

5 Section 9 presently reads:

9 When a sale of marked fuel is made at the reduced price under section 7 or 8, an invoice or receipt given in connection with the sale shall show the allowance as a deduction from the price that would otherwise be charged.

6 *Section 11 is amended*

(a) *by repealing subsection (10) and substituting the following:*

(10) In an action arising under subsection (1) or (6), it is a defence for the buyer to prove that he did not receive the allowance on the marked fuel bought or used and did not know that the marked fuel bought or used was marked fuel.

(b) *by repealing subsection (11) and substituting the following:*

(11) In an action arising under subsection (4) or (5), it is a defence for the bulk dealer to prove that he did not know that the fuel oil sold or used by him, as the case may be, was blended fuel.

(c) *in subsection (12) by striking out “receives” and substituting “receives or produces”.*

7 *Section 13(b) is amended by adding “or bulk dealer” after “agent-dealer”.*

8 *Section 14 is amended*

(a) *in subsections (1)(b), (3), (8) and (9) by striking out “licensed”;*

(b) *by repealing subsection (5) and substituting the following:*

(5) A person who buys marked fuel at a price reduced, in accordance with regulations made under section 15(o), by the amount of the farm fuel distribution allowance shall not sell or dispose of that marked fuel otherwise than by using it himself.

(c) *in subsection (10) by adding “, and that the accused did not receive the allowance or claim reimbursement for the allowance on the fuel oil” after “be”.*

6 Section 11(10), (11) and (12) presently read:

(10) In an action arising under subsection (1) or (6), it is a defence for the buyer to prove that he did not know that the marked fuel bought or used, as the case may be, by him was in fact marked fuel.

(11) In an action arising under subsection (4) or (5), it is a defence to prove that the agent-dealer or bulk dealer did not know that the fuel oil sold or used was blended fuel.

(12) When an agent-dealer or bulk dealer receives marked fuel but is unable to account to the Minister for any of that fuel by showing that it was sold or used by him in accordance with this Act, the agent-dealer or bulk dealer is liable to pay to the Crown an amount equal to the allowance for each litre not so accounted for.

7 Section 13(b) presently reads:

13 The Minister may, on behalf of the Crown, enter into an agreement with a person who carries on business as a dealer in fuel oil in Alberta providing for the following:

(b) the making of accountable advances by the Minister to the agent-dealer for purposes in connection with the provision of farm fuel distribution allowances;

8 Section 14(1), (3), (5), (8), (9) and (10) presently read:

14(1) No person shall be in possession of marked fuel unless he

(a) is in possession of it for use in farming operations in Alberta carried on by him and then only if the fuel

(i) is in the fuel system of a farm truck or farm machinery of which he is the owner or operator,

(ii) is being transported or kept in storage by him,

(iii) is contained in heating equipment for a building or dwelling referred to in section 1(1)(i)(ii), or

(iv) is contained in a domestic appliance or in heating or lighting equipment in premises referred to in section 6(1)(c),

(b) is a licensed refiner,

(c) is an agent-dealer,

(d) is a bulk dealer,

(e) is in possession of it for the purpose only of transporting it to a person mentioned in clause (a), (b), (c) or (d) and then only in a container that is not connected to any fuel system of an internal combustion engine in or on the vehicle or railway car transporting the marked fuel in a way that permits the marked fuel to enter or be used as fuel in that fuel system,

(f) is a purchaser of a farm truck or farm machinery and then only if the marked fuel is in the fuel system of the farm truck or farm machinery at the time of its delivery to the purchaser, or

(g) is an officer or other person employed or engaged in the administration or enforcement of this Act and then only for purposes related to

9 Section 15 is amended by repealing clause (o) and substituting the following:

(o) authorizing a reduction in price of marked fuel by the amount of the farm fuel distribution allowance when the point of delivery of the marked fuel is a place outside Alberta, and respecting any terms and conditions on which the reduction may be made.

- (i) *sampling or testing the marked fuel,*
 - (ii) *the prosecution of an offence under this Act or the regulations,*
 - (iii) *the forfeiture and disposition of marked fuel following a conviction for an offence under this Act or the regulations, or*
 - (iv) *an action by the Crown arising under section 11.*
- (3) *Subject to subsection (4), no person shall sell marked fuel in Alberta unless he is a licensed refiner, an agent-dealer or a bulk dealer.*
- (5) *When regulations are made under section 15(o), a person permitted under those regulations to buy marked fuel for farming operations outside Alberta shall not sell or otherwise dispose of that marked fuel.*
- (8) *No person shall*
- (a) *unless he is a licensed refiner or is authorized to do so by the Minister in writing, introduce into any fuel oil a dye, agent or other substance or thing for the purpose of, or having the effect of, colouring or identifying the fuel oil;*
 - (b) *add any substance to marked fuel, or subject marked fuel to any process, if the result of doing so*
 - (i) *removes, affects or changes the colour of the marked fuel,*
 - (ii) *affects or changes the identity of the marked fuel, or*
 - (iii) *affects or changes the marked fuel so that it is no longer coloured or identified as marked fuel in accordance with the regulations;*
 - (c) *mix or blend any marked fuel with any other fuel oil that is not marked fuel;*
 - (d) *without justification, sell or be in possession of blended fuel;*
 - (e) *sell or pass off as marked fuel any fuel oil that is not marked fuel.*
- (9) *A licensed refiner or a person authorized to colour or identify fuel oil as marked fuel pursuant to subsection (8)(a) shall not colour or identify fuel oil as marked fuel*
- (a) *in a manner not in compliance with the regulations,*
 - (b) *by using a substance acquired from any person other than the Minister, or*
 - (c) *if the fuel oil is not of a kind designated by regulations under section 15(h) or is not fuel oil that is authorized by the Minister to be coloured or identified as marked fuel pursuant to regulations under section 15(i).*
- (10) *In a prosecution for a contravention of subsection (1), (2), (3), (4), (6) or (7) or of subsection (8)(c) or (d) it is a defence to prove that the accused did not know that the fuel oil concerned was marked fuel or blended fuel, as the case may be.*

9 Section 15(o) presently reads:

15 *The Lieutenant Governor in Council may make regulations*

- (o) *notwithstanding anything in this Act, respecting the provision by the Minister of allowances in respect of marked fuel bought by residents of Alberta for use in farming operations outside Alberta.*

10 Section 18(5) is amended by adding “separately” after “allowance”.

11 Section 21 is amended

(a) by striking out “an agent-dealer” wherever it occurs and substituting “a dealer”;

(b) in clauses (a) and (b) by striking out “agent-dealer” and substituting “dealer”.

12 Section 23 is amended by adding the following after clause (c):

(d) prescribing any records and books of account required to be kept by refiners, agent-dealers and bulk dealers, the manner in which those records and books of account are to be kept and the period of time for which they are to be kept;

(e) defining any word required by section 1(1) to be defined in the regulations.

13 The following is added after section 24:

24.1(1) Every refiner, agent-dealer and bulk dealer shall keep records and books of account, including inventory records, in the manner prescribed by the regulations.

(2) Records and books of accounts required to be kept under subsection (1) shall be kept

(a) at the refiner’s, agent-dealer’s or bulk dealer’s place of business or residence in Alberta, or

(b) at a place in Alberta or elsewhere approved by the Minister in writing under any terms and conditions he may impose.

(3) If a refiner, agent-dealer or bulk dealer has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require him to keep those records and books of account that the Minister may specify and the refiner, agent-dealer or bulk dealer shall keep the records and the books of account so specified.

(4) Any person required by this section to keep records and books of account shall retain

10 Section 18(5) presently reads:

(5) When a sale of heating oil is made at the allowance price, an invoice or receipt given in connection with the sale shall show the allowance as a deduction from the price that would otherwise be charged.

11 Section 21 presently reads:

21 An agreement with an agent-dealer under section 13 may also provide for the following:

(a) the designation of that agent-dealer as an agent of the Minister for the purposes of this Part;

(b) the making of accountable advances by the Minister to the agent-dealer for purposes in connection with the provision of domestic heating oil allowances;

(c) the manner in which and the times at which the dealer may be reimbursed for allowances provided by him on the sale of heating oil for domestic purposes in Alberta;

(d) any other matter related to the provision of domestic heating oil allowances considered necessary by the Minister.

12 Section 23 presently reads:

23 The Lieutenant Governor in Council may make regulations

(a) prescribing the records to be kept and the returns to be made to the Minister for the purposes of this Act;

(b) prescribing the persons required to keep or make those records and returns;

(c) prescribing the times at which or by which the returns are to be made.

13 Requirements re keeping records and books of account.

(a) the records and books of account in respect of which a period is prescribed pursuant to section 23(d), together with every account and voucher necessary to verify the information contained in any record or book of account, for the period prescribed by the regulations;

(b) all records and books of account other than those referred to in clause (a), together with every account and voucher necessary to verify the information contained in any record or book of account, until the expiration of 4 years from the end of the last year to which the records and books of account relate, unless otherwise authorized in writing by the Minister.

(5) Where the Minister is of the opinion that it is necessary for the administration of this Act, he may, by a demand served personally or by registered letter or certified mail, require any person required by this section to keep records and books of account to retain those records and books of account, together with every account and voucher necessary to verify the information contained in the records and books of account, for any period specified in the demand.

14 Section 25 is amended

(a) in subsection (1) by adding the following after clause (d):

(e) seal any pump or other fuel dispensing equipment if he has reason to believe that an offence has been committed under this Act or the regulations.

(b) in subsection (6) by striking out "seized" and substituting "seized or sealed".

15 Section 26 is repealed.

14 Section 25(1) and (6) presently read:

25(1) Subject to subsection (2), an officer, without warrant, may

(a) examine any records or documents wherever found;

(b) examine any internal combustion engine or its fuel system or any other thing that contains fuel oil or a substance that he believes to be fuel oil, and take and remove from it samples of fuel oil or any substance he believes to be fuel oil;

(c) temporarily remove any records or documents for the purpose of making copies of them, if a receipt is given in respect of them;

(d) seize and remove any thing if he has reason to believe that an offence has been committed under this Act or the regulations and the thing is required in connection with a prosecution of the offence.

(6) On the conviction for an offence under section 14(7) of the owner of any pump or dispensing equipment seized pursuant to this section, an order of a provincial judge under subsection (5) may declare that the pump or equipment is forfeited to the Crown in right of Alberta.

15 Section 26 presently reads:

26 The operator of a non-farm vehicle used in the business of transporting or delivering fuel oil

(a) shall have in his possession in that vehicle at all times an invoice or bill of lading

(i) covering the fuel oil cargo being carried on or by the vehicle,

(ii) identifying the fuel oil as marked fuel or unmarked fuel, as the case may be, and

(iii) containing any other information prescribed by the regulations,

and

(b) shall produce the invoice or bill of lading for inspection when required to do so by an officer.

16 Section 27 is repealed and the following is substituted:

27 A person who contravenes this Act or the regulations is guilty of an offence and liable

(a) for a first offence, to a fine of not more than \$1000,

(b) for a 2nd offence, to a fine of not more than \$2500, and

(c) for a 3rd or subsequent offence, to a fine of not more than \$5000.

17 This Act comes into force on July 1, 1984.

16 Section 27 presently reads:

27(1) Subject to subsection (2), a person who contravenes this Act or the regulations is guilty of an offence and liable to a fine of not more than \$1000.

(2) A person who contravenes section 14 or 19(4) is guilty of an offence and liable

(a) for a first offence, to a fine of not less than \$150 and not more than \$1000,

(b) for a 2nd offence, to a fine of not less than \$500 and not more than \$2500, and

(c) for a 3rd or subsequent offence, to a fine of not less than \$1000 and not more than \$5000.