

Superintendent of
Financial
Services



surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c. P.8, as amended (the “*PBA*”)

AND IN THE MATTER OF a Proposal of the Superintendent of Financial
Services to Make an Order under section 69 of the *PBA* relating to the Imperial
Oil Retirement Plan, Registration Number 0347054

TO: **IMPERIAL OIL LIMITED**
111 St. Clair Avenue West
Toronto, Ontario
M5W 1K3

Attention: J.B. MacIntyre
Payroll, Plans and Administration
Human Resources

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under sections 69(1)(d) and (e) that the Imperial Oil Limited Retirement Plan Registration, Number 0347054 (the “Plan”) be wound up in part in relation to those members and former members of the Plan who were employed by Royal Polymers Co. (“Royal Polymers”) at its Sarnia PVC Plant and who ceased employment with Royal Polymers between February 25, 2009 and November 25, 2009 as a result of the closure of the Sarnia Plant.

REASONS:

- 1) Imperial Oil Limited (“IOL”) is the employer and the administrator of the Plan.
- 2) IOL sold its Process Operators to Royal Polymers effective December 16, 1998 . In conjunction with the sale, 35 former IOL employees became employees of Royal Polymers (the “Transferred Employees”) and became members Royal Polymers Pension Plan Registration Number 1047703.
- 3) The pension benefits accrued by the Transferred Employees prior to the date of the sale remained in the Plan.
- 4) Royal Polymers closed the Sarnia Plant August 31, 2009. In connection with this closure, it terminated 31 of the 35 Transferred Employees, and filed a wind up report regarding the Royal Polymers Pension Plan with the Pension Plans Branch of the Financial Services Commission.
- 5) Under paragraph 69(1)(d) of the PBA the Superintendent of Financial Services (the “Superintendent”) may require the wind up of a pension plan, in whole or in part, if a significant number of the members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

- 6) Under paragraph 69(1)(e) of the PBA the Superintendent may require the wind up of a pension plan where all or a significant portion of the business carried on by an employer at a specific location is discontinued.
- 7) For the purposes of the PBA, the word “employer” as it is used in subsection 69, in respect of an employee with benefits in more than one plan, refers to both the predecessor and successor employer, as held by the Pension Commission of Ontario in *Gencorp Canada Inc.* (“*Gencorp*”) and affirmed by the Divisional Court and the Court of Appeal.¹
- 8) Paragraph 80(1)(a) of the PBA provides that when an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the assets of its business, a member of the pension plan who in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and a member of the successor employer’s pension plan, continues to be entitled, without further accrual, to the benefits provided under the predecessor employer’s pension plan, to the effective date of the sale, assignment or disposition.
- 9) Subsection 80(3) of the PBA provides that where a transaction as described in subsection 80(1) above takes place, the employment of the employee shall be deemed, for the purposes of the *Act*, not to be terminated by reason of the transaction.

¹*Consolidated Gencorp Canada*, P.C. O. Decision Aug. 31, 1994, confirmed Divisional Court, [1995 O.J. No. 3768], Dec. 7, 1995, confirmed Ontario Ct. of Appeal [1998 O.J. No. 961] March 11, 1998.

- (10) As held in *Gencorp*, subsection 80(3) deems the non-termination for the purpose of ensuring continuity of membership for the Transferred Employees and to prevent them from losing their previous years of service in the calculation of future benefits.
- 11) The effect of subsection 80(3) of the PBA, for the Transferred Employees, is that IOL continues to be their employer for the purpose of the Plan.
- 12) Accordingly, IOL is an employer who may be ordered to partially wind up a pension plan under section 69 of the PBA, due to the discontinuance of the business by Royal Polymers at the Sarnia Plant in Sarnia.
- 13) A significant number of the members of the plan at the Sarnia Plan ceased to be employed as a result of the discontinuance or reorganization of the business of Royal Polymers at its Sarnia Plant, within the meaning of paragraph 69(1)(d) of the PBA.
- 14) All or a significant portion of the business carried on by Royal Polymers at its Sarnia Plant was discontinued, within the meaning of paragraph 69(1)(e) of the PBA.
- 4) Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the *PBA*. **To request a hearing, you must deliver to**

the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you. ²

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416-590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE PROPOSAL AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **5th** day of **January 2010**.

K. David Gordon
Deputy Superintendent, Pensions

copy: Michael Mazzuca
Koskie Minsky

Ian McSweeney
Osler Hoskin & Harcourt

² NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.