

New Exploration and Licensing Policy (NELP)



This document is a summary of the NELP policy introduced by the government in late 1990's and covers all the concepts related to it. The paper also explains the laws governing the policy and the competent authorities for their implementation.

K&T LAW OFFICES

**10, BABAR LANE, BABAR
ROAD, BENGALI MARKET,
NEW DELHI**

+91-11-23715751/52

+91-11-23715753

10/5/2016

Authors:

Adv Payal Kakra (Partner)

Adv Sushant Chaturvedi (Associate)

K&T Law Offices

**Credits: Rishab Rela (Batch of 2014-2019, Institute of Law,
Nirma University)**

INDEX

Sr. No.	TOPICS	PAGE NUMBER
1.	Abbreviations	3
2.	NELP (New Exploration and Licensing Policy)	4-5
3.	E&P (Exploration and Production)	6-7
4.	MWP (Minimum Work Program)	8
5.	Regulations in petroleum and natural gas sector	9
6.	Government bodies in oil and gas sector	11-13
7.	Delays	13-15
8.	Conclusion	16

ABBREVIATIONS-

S.No.	Abbreviated term	Term
1.	NELP	New Exploration and Licensing Policy
2.	E&P	Exploration and Production
3.	PEL	Petroleum Exploration Licenses
4.	NOC	National Oil Companies
5.	PSU	Public Sector Units
6.	MPSC	Model Production Sharing Contract
7.	ONGC	Oil and Natural Gas Corporation Limited
8.	OIL	Oil India Limited
9.	OVL	ONGC Videsh Limited
10.	PSC	Production Sharing Contract
11.	PML	Petroleum Mining Lease
12.	MWP	Minimum Work Program
13.	CBM	Coal Bed Methane
14.	OIDB	Oil India Development Board
15.	DRDO	Defense Research and Development Organization
16.	DGH	Director General of Hydrocarbons
17.	DGSM	Director General of Safety and Mines
18.	DGCA	Director General of Civil Aviation
19.	GOI	Government of India

NEW EXPLORATION AND LICENSING POLICY (“NELP”)-

New Exploration and Licensing Policy was introduced and conceptualized by the Government of India in 1997-98 to enhance the natural and oil resources of the country.

It was institutionalized by the Government with Director General of Hydrocarbons as the nodal agency for its implementation, to provide an equal platform to the Public and Private sector units in exploration and production of the Hydrocarbons. The main aim of the NELP is to boost the production of oil and natural gas and to provide an equal and level playing field for all participants irrespective of whether they are from the Government, Semi-Government or Private Sector. The policy’s area of focus is also on influencing the Indian and Foreign Companies to invest a substantial amount of risk capital into exploration and production activities and to introduce new technologies and geological concepts with best management practices for exploring the ever increasing demands of oil and natural gas.

The licenses for the Exploration and Production Contracts (“E&P Contracts”) are distributed among the prominent players through the process of effective Competitive Bidding System, where all the participants irrespective of them being National Oil Companies (NOC’s) or Private Companies are to be at equal footing for obtaining the Petroleum Exploration Licenses (“PEL’s”).¹

Some salient features of NELP are-

1. 100% FDI is allowed under NELP.
2. State participation (ONGC/ OIL) is not mandatory. Private sector units are on an equal footing as the PSU’s. PSU’s such as ONGC and OIL are to have same fiscal and contract terms as Private Companies.
3. International competitive bidding for awarding Blocks.²

¹Available at- <http://www.petroleum.nic.in/docs/exp.policy.NELP2015.pdf> (last visited on 9/05/2016).

²“BLOCKS” refer to areas or sedimentary basins which have the potential of producing resources that the government allots under the NELP for the process of exploration and production of natural resources.

4. Contractors are free to market crude oil in the domestic market.
5. Royalty at the rate of 12.5% for the on land areas and 10% for offshore areas.
6. Royalty to be charged at half the prevailing rate for deep water areas beyond 400 m bathymetry for the first 7 years after commencement of commercial production.
7. Cess to be exempted on the production from blocks acquired through NELP.
8. No import duty is to be charged on good imported by the companies for operations relating to the petroleum exploration.
9. For every NELP round a Model Production Sharing Contract (“MPSC”) is reviewed.
10. The contracts are to be governed by the laws applicable in Indian Laws.

However, the new policy approved by the Government of India on 10th March, 2016 is going to replace NELP which will popularly be known as Hydrocarbon Exploration and Licensing Policy (“HELP”). This policy is a developed version of NELP and incorporates all the provisions of it with the changes suggested by the Stakeholders.

Till now 10 NELP projects have been undertaken by the Government of India (“GOI”) which has signed around 310 Blocks out of which 28 belong to Production Sharing Contracts (“PSC’s”), 28 Blocks were awarded under the pre-NELP regime and 254 Blocks under the NELP with National Oil Companies and private companies.

*[Pre-NELP regime refers to the period where the Petroleum Exploration License (“PML”) were granted for small or medium sized field PSC’s during 1991-1993.]*³

Out of 310 blocks, 121 exploration blocks were abandoned and currently 189 blocks are in the process of E&P.

Table showing details of the blocks awarded under pre-NELP and NELP regime⁴

Bidding Rounds	Active Blocks	Relinquished Blocks	Total Blocks
Pre-NELP Field	27	1	28
Pre-NELP Exploration	14	14	28
NELP I	4	20	24
NELP II	4	19	23
NELP III	8	15	23
NELP IV	7	13	20
NELP V	10	10	20
NELP VI	33	19	52
NELP VII	34	7	41
NELP VIII	29	3	32
NELP IX	19	0	19
TOTAL	189	121	310

EXPLORATION AND PRODUCTION (“E&P”)-

E&P policy is introduced by the Government of India considering the rising demand of the country for crude oil and natural gas to enhance the social and economic development of the country. The main objective was to match the present demand and production of natural gas and oil. The E&P policy was expected to be an accelerator for the production of these depleting resources.

³ Available at- <http://www.petroleum.nic.in/docs/blocksawarded.pdf> (last visited on 9/05/2016).

⁴ *Id.*

To enhance the efficiency of NELP, Government has adopted a multi way strategy to give a boost to the E&P. under NELP Government has also considered the following-

1. Offering of Blocks for exploration and production through NELP.
2. Acquisition of oil gas assets abroad.
3. Promoting substitutes of Hydrocarbons, like Coal Bed Methane (CBM) and exploration of new resources, like Shale and Gas Hydrate.
4. Conducting E&P in a friendly manner in safe environment.

Presently the two National Oil Companies i.e. ONGC and OIL are the dominant players in the production sector of oil and gas. They contribute almost to 68% of the total production share. On the other hand the private players also play a significant role by contributing to almost 32% of the total production of these natural resources.

In order to match with the unfavorable demand-supply balance of Hydrocarbons, acquisition of equity oil and gas assets overseas has proved to be of a great benefit. Oil and Natural Gas Corporation Videsh Limited (“OVL”) has produced about 8.357 million metric tonnes of oil and equivalent gas during the year 2013-14 by exploring its assets situated in Sudan, Venezuela, Vietnam, Russia, etc. Various National Oil Companies (“NOC’s”) like OVL, OIL, IOC, BPCL, etc have acquired E&P assets in more than 20 countries.

Not only does it help by ensuring enhanced production of Hydrocarbons but also attracts a lot of Foreign Direct Investment (“FDI”) since the government has left the bracket open for FDI till 100%.⁵

Other Benefits of an E&P investment

1. Prospectively-

- Helps in discovering large reserves which can possibly be trapped in the Indian Sedimentary Basins.

⁵ Available at- <http://www.petroleum.nic.in/docs/explore.pdf> (last visited on 10/05/2016).

2. Demand-

- Helps in matching the demand and supply of Oil and Gas.

3. Price-

- International crude oil price.

4. Infrastructure-

- E&P projects helps in infrastructure development.

5. Uniform Licensing Policy-

- Develops a uniform licensing policy for both the private and public sector units.

6. FDI-

- 100% FDI is allowed in E&P projects.

MINIMUM WORK PROGRAMME (“MWP”)-

The process of exploration and production under the NELP is done in various phases, and the PSC's provide a minimum work programme for each exploration phase. MWP basically refers to the minimum amount of work to be done by the contractor within the stipulated time as per the contract terms failing to which a penalty can be imposed on the contractor.

The MWP's cover the seismic surveys and the certain amount of work as per the contract related to exploratory wells. The PSC's require the contractor to accomplish certain MWP for the related phase and failing to which contractor is liable to pay an amount of money as penalty to the Government for the unfinished MWP in accordance with the terms of the PSC's.⁶

For the completion of work the Government has put forward an extension policy in place, wherein the contractors, in case of non completion or delay, provide to Government either a Bank security or pay liquidated damages for the extension of time period for achieving the MWP's. For this purpose, if the Governments deems fit the reasons for delay in the exploration and

⁶ Available at- <http://www.petroleum.nic.in/polmer2.pdf> (last visited on 10/05/2016).

production work, than may grant an extension of time period not exceeding 18 months.⁷

So if the focus is made on the benefits that can be availed by investing in an E&P policy, the outcome is a win-win situation.

REGULATIONS IN PETROLEUM AND NATURAL GAS SECTOR-

There are various laws that govern and regulate the E&P activities in India. These are basically sectoral policy regulations. The following laws should be strictly complied with for smooth functioning of the E&P activities-

1. The Oil Field (Regulation and Development) Act, 1948
2. Petroleum and Natural Gas Rules 1959 (govern the grant of mining leases, Petroleum Exploration Licenses and Royalty, etc.)
3. Allotment of Blocks for E&P activities through the process of international competitive bidding under NELP was initiated in 1997-98.
4. Coal Bed Methane (CBM) policy 1997 for allotment of coal blocks for extraction of methane gas through international competitive bidding.
5. The Industries (Development and Regulation) Act, 1951 which govern the industrial production.
6. The Petroleum Act, 1934 which govern the import, transport, storage, production, refining and blending of petroleum.

⁷ *Id.*

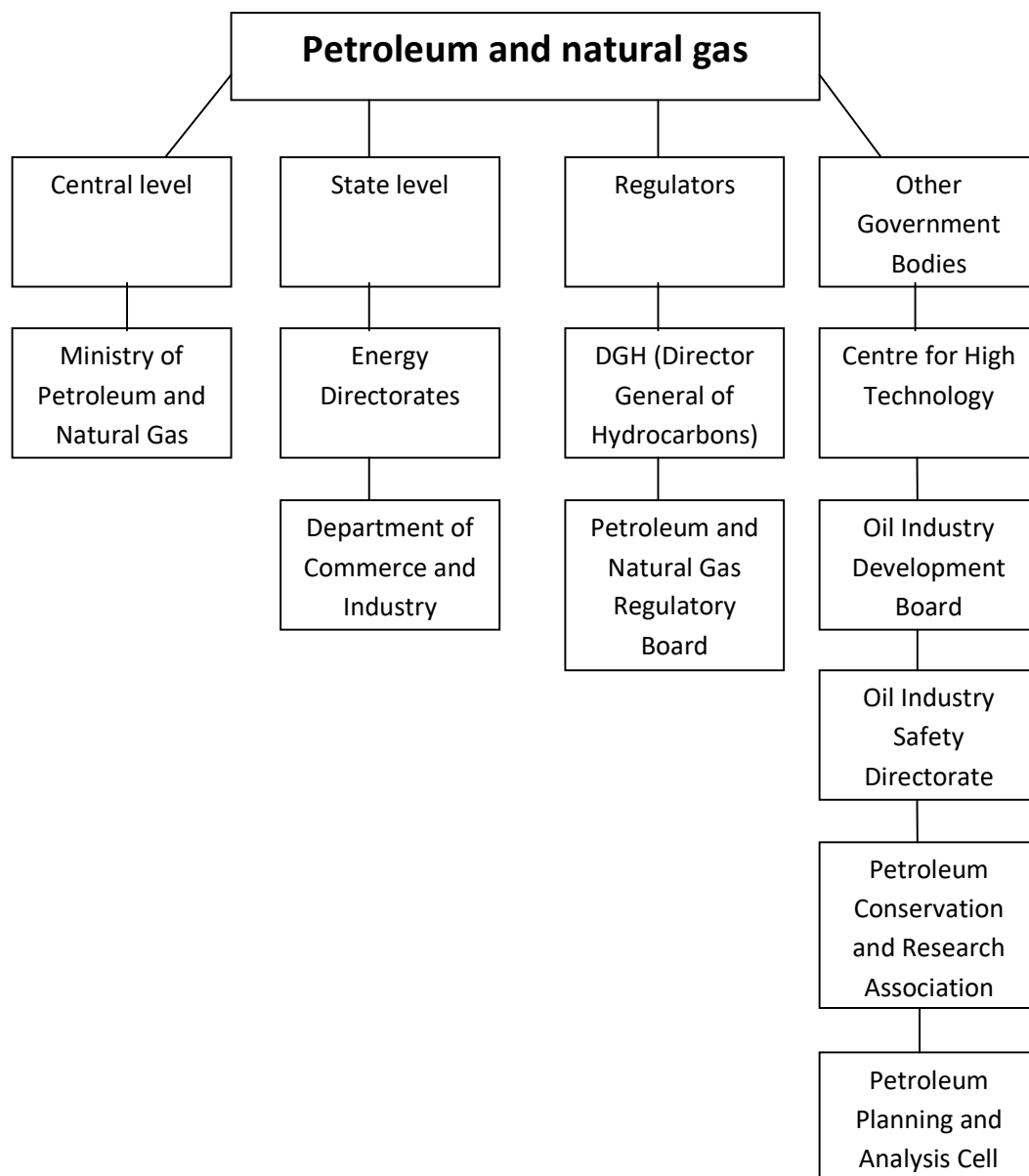
7. The Marketing Regulations prescribing that for gaining marketing rights to transport fuel by private investors, including foreign investment, a threshold of 2000 Crore investment is to be made.
8. Many regulations prescribing various conditions for specific products under the ambit of Petroleum Act, 1934 and are to ensure the quality of product.⁸
9. Petroleum and Minerals Pipeline Act, 1962 which govern the rights relating to the user rights on any particular land where the petroleum or and mineral pipelines is to be laid.
10. Oil Industry (Development) Act, 1974 which created the Oil Industry Development Board (“OIDB”) to promote self reliance in oil and gas sector and for the development of the sector.
11. One of the most recent legislation that is Petroleum and Natural Gas Regulatory Board (PNGRB) Act 2006 to establish a regulatory body for downstream petroleum.⁹

⁸Available at- <http://www.petroleum.nic.in/fdi.pdf> (last visited on 10/05/2016).

⁹Available at- <http://www.teriin.org/projects/nfa/pdf/working-paper-15-Governance-of-the-petroleum-and-natural-gas-sector-in-india-a-status-note.pdf> (last visited on 10/05/2016).

GOVERNMENT BODIES IN THE OIL AND GAS SECTOR-

Bodies that govern the Oil and Gas sector are at both the Central and State level. The following table shows the various bodies at Central and State level which are involved in the oil and gas sector-



Various clearances needed prior to the commencement of the E&P activities-

Merely winning the competitive bidding process by the contractor does not allow him to proceed with the E&P activities. Any contractor after getting the Petroleum Exploration License (“PEL”) has to obtain various clearances from various ministries before starting the actual E&P activities on the Block allotted.

1. **Ministry of Environment and Forest-** since there are a lot of Reserve Forests, National Parks, Eco sensitive zones a clearance is required for starting the E&P activity. Also a clearance by Pollution Control Board.
2. **Ministry of Home Affairs-** it is involved since the operations are largely carried out by International services companies.
3. **Ministry of Defense-** these include clearance from DRDO, Air force, etc.
4. **Department of Space-** clearances required as the Block may lie in the satellite testing zones.
5. **Ministry of Civil Aviation and Director General of Civil Aviation (“DGCA”)** - clearance required for conducting Gravity, Magnetic and Airborne survey.
6. **Director General Safety and Mines (“DGMS”)-** permission is required for keeping explosives in Geophysical fields and Well logging operations should be provided in a fixed time frame.
7. **State Governments-** when the exploration is to be done on an onland area then the licenses are to be granted by the respective State Governments on the basis of recommendations made by the Central Government.¹⁰

Although this process is a safe procedure as various aspects are covered as safety measures before indulging into the exploration activity and all the

¹⁰Available at- http://dipp.nic.in/English/Investor/Ease_DoingBusiness/ONGC_31August2015.pdf (last visited on 10/05/2016).

concerns are notified to the government, but taking clearances from all these ministries is a long complex process and takes a lot of time due to which the work is delayed and the contractors are generally not able to complete MWP for any related phase on time and then have to pay fine to the government and request for extension of time.

To avoid such a situation it is suggested that there should be a single window clearance system implemented by the Central Government which would deal with all the issues pertaining to the E&P related clearances and approvals and would be under the direct purview of Central Government.

Considering all these points ONGC wrote a paper to the Central authority stating certain suggestions to improve the condition. The aforesaid paper stated as follows-

1. DGH can be empowered to deal into matters related to necessary licenses, clearances and approvals.
2. Online submission can be allowed for the applications in a prescribed format where tracking of the progress can also be done.
3. A time limited can be provided beyond which if not updates the status, the application should be considered approved.¹¹

DELAYS-

Delays in exploration and production activities are very common. These are numerous reasons that cause delay in completion of work in accordance with the desired timeline and hence also affects the Minimum Work Programme, as decided to be accomplished by the contractor for any particular phase.

However these delays are of different nature depending upon the reason for that delay. These delays can be categorized as-

¹¹ Available at- http://dipp.nic.in/English/Investor/Ease_DoingBusiness/ONGC_31August2015.pdf (last visited on 10/05/2016).

1. Excusable delays

2. Non excusable delays

Distinction between both the delays is necessary to decide the burden of liability on either of the parties. If the burden lies on the government side than it is a part of excusable delays whereas on the other hand if the delay is caused by the negligence of the contractor then it is a part of non excusable delay and can even lead to termination of E&P contract. The nature or type of delay decides if the time extension is to be granted or not for any work on any phase.

Now talking about the delays, excusable delays are the ones which are unforeseeable and are beyond the control of contractors. These can be further classified as-

- a. Non-compensable delays

- b. Compensable delays

A non-compensable delay covers all such factors which are beyond the control of the contractor such as strikes, unusual severe weather, acts of God, fires, floods etc. These are the factors which cannot be anticipated and considered at the time of commencement of the E&P activity. The Ministry of Petroleum and Natural Gas also in the 16th Lok Sabha, 2014-2015 in its fourth report (DEMAND FOR GRANTS) on page 55, answered a query w.r.t. Force Majeure and stated that some force majeure issued that once can face are waiting on the weather, bandh/barricade, waiting for ready sites/ locations and contractual issues.

For resorting to any such delay, it is the liability of the contractor to demonstrate that an unusual condition was in force which was far from his control and prediction. Non-compensable delays are one where the contractor generally gets a time extension.

On the other hand compensable delays are more or less similar to the non-compensable delays wherein the only difference lies is regarding the

compensation to be provided to the contractor along with the time extension. In compensable delays along with time extension, the contractor is also entitled for certain amount as compensation. These basically refer to delays on the part of Governments. For any contractor to claim extension under this category has to prove that the government was the main reason for non completion of the proposed work in the timeline.

Whereas Non-excusable delays are those that are totally dependent on the factors which are within the control of the contractor and are generally caused by negligence on his part. For such delays no extension is granted and rather any fine can be imposed on the contractor for causing such delay.

The Ministry of Petroleum and Natural Gas has directed the DGH to look into the matters of extension proposals considering the following directions-

1. DGH should closely monitor all the proposals for the extension of time period for the Block work and also to reject approvals where the contractor is not found to make decent efforts for the E&P activities.
2. Comprehensive guidelines are to be adopted by DGH for calculating the money to be recovered from contractors to ensure a fair and transparent approach.
3. DGH while considering the extension approvals should provide with sufficient details regarding the proposal and the type under which the proposal falls. In case of excusable delays, the DGH should check whether the contractor has made sincere efforts for the activities on the Block and should ensure that the contractor will be able to complete the remaining work within the extension to be granted.¹²

CONCLUSION-

¹² Available at- <http://www.petroleum.nic.in/docs/exp/circulars%20&%20notifications51.pdf> (last visited on 10/05/2016).

The aforesaid policy introduced by the Government of India for granting the licenses for exploration and production of oil and natural gas is a success. It comprehensively covers all the important aspects relating to the activities done for E&P purposes.

After the above analysis of the policy following pros can be observed-

- a. A comprehensive policy covering all the aspects relating to exploration and production of oil and natural gas.
- b. Provide for all the provisions for efficient working of the contractors on the Blocks without misusing the resources.
- c. It contains a provision of heavy fines on the contractors and even the termination of the E&P contract, in case of any default on the part of contractor.
- d. It allows the contractors to claim for time extensions in case the work is not been completed in accordance with the timeline submitted by the contractor.
- e. It provides for completion of Minimum Work Program (MWP) for each phase of work on the Block, failing to which the contractor has to either pay a fine or the contract is terminated.
- f. The policy provides a fair opportunity to private sector units as the allocation of the blocks is done through a process of international competitive bidding process.
- g. The policy promotes and encourages the production of natural resources which, to some extent tries to balance the increasing demand and limited supply of oil and natural gas.
- h. The policy also encourages asset formation in foreign countries as under this policy many NOC's have acquired E&P assets in more than 240 countries.

Even though all these pros are observed, still the policy lacks behind in certain areas which are-

- a. As suggested by ONGC, there is no single window dealing with all the matter related to approvals and clearances which leads to delay in commencing the work.

- b. The procedure involves a very complex and lengthy process for obtaining the permission from various ministries. To resolve this, as suggested by ONGC, online system for applications could be initiated.
- c. Also there is a possibility that the contractors may misuse the provisions of the policy by seeking unnecessary extensions and causing delays.

Although there are some flaws in the policy, but comparatively the benefits of the policy outnumber them. If a strict check is kept by the competent authorities over the NELP contracts, it can help in implementing policy in a better way without it being misused. Overall the policy turns to be a good outcome for enhancing the Oil and Natural gas resources for the country.