Province of Alberta

MINES AND MINERALS ACT

OIL SANDS TENURE REGULATION, 2010

Alberta Regulation 196/2010

With amendments up to and including Alberta Regulation 89/2013

Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 89/2013)

ALBERTA REGUALTION 196/2010

Mines and Minerals Act

OIL SANDS TENURE REGULATION, 2010

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Interpretation

1(1) In this Regulation,

(a) "Act" means the *Mines and Minerals Act*;

(b) "appropriate minimum level of evaluation" means

(i) if section 8(2) or 13(2) is applicable, the minimum level of evaluation requested by the permittee under section 8(2) or by the lessee under section 13(2), or

(ii) if section 9(1)(d), 13(3)(d), 14(4)(c) or 15(b) is applicable, the minimum level of evaluation determined or prescribed by the Minister under section 9(1)(d), 13(3)(d), 14(4)(c) or 15(b);

(c) repealed AR 89/2013 s45;

(d) "continued lease" means a primary lease or deemed primary lease that is continued under section 13, an existing oil sands lease that is continued under section 14 or a lease that is continued under section 13 of the *Oil Sands Tenure Regulation* (AR 50/2000);

(e) "crude bitumen" means a viscous mixture, mainly of hydrocarbons heavier than pentanes, that may contain sulphur compounds and that is obtained from oil sands;

(f) "deemed primary lease" includes

(i) a second term oil sands lease, other than a second term oil sands lease that is subject to a development plan approved under section 9 of the former *Oil Sands Regulation*,

(ii) an oil sands lease issued out of a permit pursuant to the former *Oil Sands Regulation*, and

(iii) an oil sands development lease issued pursuant to section 13 of the former *Oil Sands Regulation*;

(g) "development" means all activities undertaken on the location of a lease, following the date an oil sands well has been drilled in every quarter section or part of a quarter section in the location of an oil sands agreement, that bring the oil sands agreement up to the point of production, including, without limitation, the drilling of development wells on the location of the oil sands agreement, but before the point of actual recovery of oil sands or crude bitumen from the location of the oil sands agreement;

(h) "development well" means an oil sands well drilled on a quarter section or part of a quarter section in the location of an oil sands agreement, the drilling of which commences following the date an oil sands well has been drilled in every quarter section or part of a quarter section in the location of that oil sands agreement;

(i) "escalating rental" means the amount calculated pursuant to Part 2 that must be paid in respect of each term year of a continued lease that is designated as non-producing;

(j) "evaluation well" means, in respect of the minimum level of evaluation requirements under sections 3(1) and 9(2), a well that is drilled and logged for the purposes of evaluating, in their entirety, each of the oil sands zones granted pursuant to an oil sands agreement, regardless of whether that well was drilled for purposes of producing oil, gas or crude bitumen;

(k) "existing oil sands lease" means a first term oil sands lease, second term oil sands lease or third term oil sands lease;

(l) "exploration" means all activities undertaken to identify the existence of an oil sands deposit and to determine the thickness and areal extent of an oil sands deposit, including, without limitation, the drilling of exploration wells on the location of an oil sands agreement, that commence prior to the date an oil sands well has been

drilled in every quarter section or part of a quarter section in the location of that oil sands agreement;

(m) "exploration well" means each oil sands well drilled on the location of an oil sands agreement, the drilling of which commences before an oil sands well has been drilled in every quarter section in the location of that oil sands agreement;

(n) "feedstock bitumen" means crude bitumen that is inputted into an upgrader for processing and measured at the inlet of the upgrader;

(o) "first term oil sands lease" means a lease of oil sands rights that is in force before March 8, 2000 and has been issued pursuant to one of the following repealed regulations, but does not include a lease issued on the renewal of a lease:

(i) the *Oil Sands Regulation, 1978* (AR 317/78);

(ii) the *Oil Sands Regulations, 1969* (AR 298/69);

(iii) the *Oil Sands Regulations, 1962* (AR 378/62);

(iv) the *Bituminous Sands Regulations, 1962* (AR 342/62);

(v) *The Oil Sands Regulations* (AR 144/61);

(vi) *Regulations Governing Disposition of Bituminous Sands Rights the Property of the Crown* (AR 333/57);

(p) "former *Oil Sands Regulation*" means the *Oil Sands Regulation* (AR 228/91) that was repealed by the *Oil Sands Tenure Regulation* (AR 50/2000);

(q) "lease" means an agreement issued in the form of a lease that grants rights in respect of oil sands;

(r) "lessee" means the holder of a lease according to the records of the Department;

(s) "oil sands" has the meaning given to it in section 1(1) of the Act;

(t) "oil sands agreement" means a permit or a lease;

(u) "oil sands product" has the meaning given to it in section 1(1)(u) of the *Oil Sands Royalty Regulation, 2009* (AR 223/2008);

(v) "oil sands well" means a well licensed by the Regulator for the purpose of evaluating or producing from an oil sands zone or zones;

(w) "oil sands zone" means a zone or formation that, in the opinion of the Minister, potentially contains crude bitumen;

(x) "permit" means an agreement issued in the form of a permit that grants rights in respect of oil sands;

(y) "permittee" means the holder of a permit according to the records of the Department;

(z) "primary lease" means

(i) a lease issued out of a permit in accordance with this Regulation,

(ii) a lease issued as a result of an application under section 11, or

(iii) any other lease that is issued under section 16 of the Act on or after March 8, 2000,

but does not include a deemed primary lease;

(aa) "producing", as it relates to the designation of a lease, means a minimum level of production established by the Minister pursuant to section 13(4);

(aa.1) "Regulator" means the Alberta Energy Regulator;

(bb) "second term oil sands lease" means a lease of oil sands rights that, prior to March 8, 2000, was issued on the renewal of a first term oil sands lease and is in force;

(cc) "surface mineable oil sands area" means

(i) an area identified or defined as such by the Regulator, and

(ii) any amendment made from time to time to that area by the Regulator, whether by addition to or substitution for the lands within that area or otherwise;

(dd) "term year" means the first 12 consecutive months following the commencement of the term of an oil sands agreement and each consecutive 12-month period thereafter, ending on the expiry date of the oil sands agreement;

(ee) "third term oil sands lease" means a lease of oil sands rights that, prior to March 8, 2000, has been issued on the renewal of a second term oil sands lease and is in force;

(ff) "upgrader" means a facility for upgrading that is located on the surface of land in Alberta;

(gg) "upgrading" means any process whereby the American Petroleum Institute gravity of feedstock bitumen is increased, but does not include

(i) any in situ process whereby the American Petroleum Institute gravity of crude bitumen is increased prior to its recovery, or

(ii) any process whereby the American Petroleum Institute gravity of feedstock bitumen is increased solely through the addition of diluent.

(2) For the purposes of this Regulation, a person is affiliated with another person if, under subsection 1206(5) of the *Income Tax Regulations* under the *Income Tax Act* (Canada), the person is considered to be connected with the other person, but in making that determination, paragraph 1206(5)(a) shall be read as if it were replaced by the following:

(a) a person and another person (in this paragraph referred to as "that other person") are connected with each other if

(i) the person and that other person are not dealing at arm's length,

(ii) the person has an equity percentage in that other person that is not less than 10%, or

(iii) where the person is a corporation, the corporation and that other person are linked by another person who has an equity percentage in each of them of not less than 10%;

(3) For the purposes of subsection (2)(a)(i), persons are not dealing at arm's length with each other if, under the *Income Tax Act* (Canada), they would not be considered to be dealing at arm's length.

(4) For the purposes of this Regulation, other than subsection (2)(a)(i), a transaction is, subject to subsection (5), a non-arm's length transaction if

(a) a party to the transaction is affiliated with any other party to the transaction,

(b) any party to the transaction is in a position to compel any other party to the transaction to enter into the transaction, or

(c) the consideration for any party under the transaction is in whole or in part based on or tied to

(i) any other contractual or other obligation with another party to the transaction, or

(ii) any consideration under a contractual or other obligation described in subclause (i),

but does not include any transaction to which the only parties are the Crown and another party.

(5) Despite subsection (4), the Minister may, on application by a lessee or on the Minister's own initiative, determine that a transaction is an arm's length transaction or non-arm's length transaction.

(6) The Minister may revoke a determination made under subsection (5) effective as of the date of any change in the circumstances relied on by the Minister to make the determination or as of any later date.

(7) For the purposes of this Regulation, other than subsection (2)(a)(i), a transaction is an arm's length transaction if it is not a non-arm's length transaction under subsection (4) or so long as it is determined by the Minister to be an arm's length transaction pursuant to a subsisting determination under subsection (5).

AR 196/2010 s1;89/2013

Designation as producing and non-producing

2 A reference in this Regulation to a lease

(a) that has been designated as producing includes a lease that is deemed to have been designated as producing, and

(b) that has been designated as non-producing includes a lease that is deemed to have been designated as non-producing.

Minimum level of evaluation

3(1) In an application by a permittee pursuant to section 8(1), or a lessee pursuant to section 13(1) ("the applicant"), the applicant may meet the minimum level of evaluation required for issuance of a lease pursuant to section 9(1), or for continuation of a lease pursuant to section 13(3), by evaluating each of the oil sands zones

within the area that is the subject of the application in accordance with subsection (2) or (3) or in accordance with the requirements approved by the Minister under subsection (8).

(2) For the purpose of this subsection, and subject to subsections (8), (9), (10), (12), (13) and (14), the minimum level of evaluation in respect of an application under subsection (1) consists of

(a) the drilling of at least one evaluation well in each section and parts of sections referred to in the application,

(b) the evaluation wells being located in a pattern that, in the opinion of the Minister, is sufficiently even and uniform, and

(c) obtaining data from the oil sands zone or zones from evaluation wells from at least 25% of the sections or parts of sections on which at least one evaluation well is located by coring through each of the oil sands zones, in their entirety, within the locations of those evaluation wells and submitting that data to the Department.

(3) For the purpose of this subsection, and subject to subsections (8), (9), (10), (12), (13) and (14), the minimum level of evaluation in respect of an application under subsection (1) consists of

(a) the drilling of evaluation wells in not less than 60% of the sections and parts of sections referred to in the application,

(b) the evaluation wells being located in a pattern that, in the opinion of the Minister, is sufficiently even and uniform,

(c) obtaining data from the oil sands zone or zones from evaluation wells from at least 25% of the sections or parts of sections in the application by coring through the oil sands zone or zones, in their entirety, within the location of those evaluation wells and submitting that data to the Department, and

(d) obtaining, from within each section or part of a section referred to in the application in which an evaluation well was not drilled, seismic data in accordance with subsection (6) or electromagnetic data in accordance with subsection (7) and submitting that data to the Department.

(4) An application by a permittee shall also be subject to the requirements set forth in section 9(2).

(5) For the purpose of this section, if

(a) crude bitumen was produced from one or more oil sands zones in the section or part of a section within the location of the oil sands agreement and in which a substantial portion of the perforated sections of the borehole of the producing oil sands well is situate, and

(b) the production referred to in clause (a) was at a level equal to or greater than the level and duration of production the Minister has established pursuant to section 13(4) for the purpose of designating a lease as a continued lease,

the Minister shall, in respect of that producing well, waive the requirement under subsections (2)(a) and (3)(a) for that well to be drilled through the oil sands zones, and the Minister shall waive the requirement under subsections (2)(c) and (3)(c) to core the oil sands zone and deem the producing oil sands well as having satisfied the requirements of an evaluation well.

(6) Seismic data referred to in subsection (3)(d) must be obtained in accordance with the following requirements:

(a) there must be 3.2 kilometres of seismic line in each section referred to in subsection (3)(d) and a length of seismic line in each part of a section that is in the same ratio to 3.2 kilometres that the part of the section is in area to a section;

(b) the seismic lines must have a fold and a station and group interval adequate, in the opinion of the Minister, to image the crude bitumen reservoir and the immediately underlying strata;

(c) the seismic lines must be tied to the evaluation wells in a manner and to an extent that the Minister considers adequate.

(7) Electromagnetic data referred to in subsection (3)(d) must be obtained in accordance with the following requirements:

(a) the section or part of a section from within which it is obtained must be within an area that the Regulator has determined to be a surface mineable oil sands area or must be approved by the Minister as a site from within which electromagnetic data may be obtained;

(b) each section or part of a section from within which electromagnetic data is obtained must be evaluated to the base of the deepest part of the deepest oil sands zone in the section or the part of a section.

(8) The Minister may prescribe a proposed minimum level of evaluation that differs from that established under subsection (2) or (3) by waiving or varying any of the requirements established under subsection (2) or (3), or by imposing requirements that are in addition to those requirements.

(9) If an applicant is of the opinion that the minimum level of evaluation requirements established under subsection (2) or (3) cannot reasonably be applied in respect of a portion of a given permit or lease, as the case may be, and the applicant is of the opinion that an alternative methodology is available that will satisfy the requirements of subsection (2) or (3), the applicant may apply to the Minister for approval of the applicant's proposed methodology for making such an allocation.

(10) The Minister may approve an applicant's proposed methodology for evaluation if

(a) the application under subsection (9) is received by the Minister before both

(i) the last term year of the agreement that is subject to the application, and

(ii) the evaluation wells required to be drilled under subsection (2) or (3) and that form part of the application under subsection (9) have commenced drilling,

(b) the application is accompanied by technical information supporting the application, demonstrating, to the Minister's satisfaction, why the requirements established under subsection (2) or (3) cannot reasonably be applied in respect of that portion of the given agreement,

(c) the Minister is satisfied that the requirements established under subsection (2) or (3) cannot reasonably be applied to the portion of the given agreement, and

(d) the Minister is satisfied that approving the methodology proposed by the applicant will allow the portion of the given agreement to be reasonably evaluated.

(11) Within 120 days of receiving an application under subsection (9), the Minister shall provide to the applicant a written notice advising the applicant of the Minister's determination.

(12) If an applicant is of the opinion that one or more oil sands zones may be absent within a section or part of a section of an oil sands agreement, the applicant may apply to the Minister to waive

or vary either or both of the drilling and coring requirements under subsections (2) or (3).

(13) An application pursuant to subsection (12) must be supported by technical information supporting the applicant's application.

(14) The Minister may approve an application made pursuant to subsection (12) if the Minister is satisfied that one or more oil sands zones are absent in the sections or parts of sections to which the application relates.

(15) Within 120 days of receiving an application under subsection (12), the Minister shall provide to the applicant a written notice advising the applicant of the Minister's determination.

AR 196/2010 s3;89/2013

Part 1
Oil Sands Agreements

Rights conveyed

4 An oil sands agreement conveys the exclusive right to drill for, win, work, recover and remove oil sands that are the property of the Crown

(a) within the location of the agreement, or

(b) if the agreement relates to one or more specified zones, in the specified zone or zones within the location,

in accordance with the terms and conditions of the agreement.

Maximum area

5 The maximum area of the location of an oil sands agreement issued under this Regulation is 9216 hectares, but the boundaries of the area are in the discretion of the Minister.

Rental

6 The annual rental for a term year of an oil sands agreement is

(a) the amount payable at the rate prescribed in the *Mines and Minerals Administration Regulation* (AR 262/97), and

(b) any escalating rental payable under Part 2.

Term of permit

7 The term of a permit is 5 years.

Application for lease issued out of permit

8(1) A permittee may, during the term of the permit, apply for one or more primary leases of oil sands rights in the location of the permit as follows:

(a) application for a single primary lease, if the location of that lease comprises the entire location of the permit;

(b) application for a single primary lease, if the location of that lease does not include the entire location of the permit, but where each section or part of a section in the lease being applied for adjoins or corners with at least one other section or part of a section within the lease being applied for;

(c) applications for 2 or more primary leases, if the amalgamation of the locations of those leases does not include the entire location of the permit and if, for each lease being applied for, each section or part of a section adjoins or corners with at least one other section or part of a section within the lease being applied for;

(d) applications for 2 or more primary leases, if the amalgamation of the locations of those leases comprises the entire location of the permit and if, for each lease being applied for, each section or part of a section adjoins or corners with at least one other section or part of a section within the lease being applied for.

(2) The permittee must set out in each application the minimum levels of evaluation established under section 3 that the permittee wishes to have applied in respect of the oil sands in the sections or parts of sections to which the application pertains.

(3) Each application must be accompanied by one or more technical reports containing the information and data that the Minister considers necessary to determine whether the appropriate minimum level of evaluation in respect of that application has been met.

(4) If a permittee is relying on a producing well described in section 3(5) to satisfy the minimum level of evaluation requirements established under section 3(2) or (3), the permittee must provide all production data in respect of that well that arose during the term of the oil sands agreement to the time the application is made.

(5) If the Minister approves an application for a primary lease under subsection (1) after the term of the permit has expired, the term of the permit is deemed to be continued and the

commencement date of the resulting primary lease is deemed to be the expiry date of the permit from which it arose.

(6) Any application received by the Minister under section 8(1) of the *Oil Sands Tenure Regulation* (AR 50/2000) to have a primary lease of oil sands rights issued in the location of a permit for which the Minister has not made a decision on or before November 30, 2010 shall be considered to be an application received by the Minister under subsection (1).

Rules for issuing leases out of permits

9(1) The following rules apply in respect of the issuance of a primary lease out of a permit:

(a) the Minister shall refuse to issue a primary lease out of a permit if

(i) in the application for issuance of the primary lease the permittee has not indicated the sections and parts of sections to which the application pertains, or

(ii) the application is not accompanied by a technical report containing the information and data that the Minister considers necessary to determine whether the appropriate minimum level of evaluation has been met;

(b) a primary lease shall not be issued out of a permit unless the Minister is satisfied with the configuration of the primary lease or leases and of the sections and parts of sections that may be contained in the location of the primary lease or leases that results from the application of clause (e);

(c) if the sections or parts of sections referred to in clause (a)(i) do not corner or are not laterally adjoining, those sections or parts of sections may be issued out of a permit only as the location of separate primary leases, and will be ascribed or attributed to those locations by the Minister for the purpose of clause (e) and section 3;

(d) if no minimum level of evaluation is requested under section 8(2), or when such a request is made and the Minister disagrees in whole or in part with the request, the Minister shall, subject to section 3(8), (9), (10), (12), (13) and (14), determine whether either minimum level of evaluation or the alternate methodology minimum level of evaluation, as the case may be, can be satisfied in respect of the oil sands in the sections and parts of sections to which the application pertains;

(e) a primary lease may be issued by the Minister out of a permit if, and to the extent that, the permittee has, in the opinion of the Minister, attained the appropriate minimum level of evaluation in the sections and parts of sections approved for or attributed or ascribed to the location of the primary lease by the Minister under this section.

(2) In determining the extent or degree to which the appropriate minimum level of evaluation has been attained in respect of an application by a permittee under section 8(1), the Minister may refuse to take into consideration, for the purpose of subsection (1)(e), any of the following that did not occur during the term of the permit:

(a) the date on which the drilling of any evaluation well was completed;

(b) any coring through oil sands zones and obtaining data from such coring;

(c) any well referred to in section 3(5) that did not produce crude bitumen at a level equal to or greater than the level of production the Minister has established under section 13(4) for the purpose of designating a lease as a continued lease;

(d) any well referred to in section 3(5) that did not produce between the start of the term of the permit and the date the application under section 8 is made to the Minister;

(e) the acquiring, processing or reprocessing of seismic data or electromagnetic data.

Notice of refusal to issue lease

10(1) If the Minister refuses to issue a primary lease out of a permit pursuant to section 9, the Minister shall forthwith give to the applicant a written notice advising the applicant of the reasons for the refusal and specifying the period of time within which the permittee is entitled to respond to the notice.

(2) If

(a) the permittee does not respond to a notice given by the Minister under subsection (1) within the period of time specified in the notice, or

(b) the Minister disagrees with a response given by a permittee,

the Minister's decision to refuse to issue a primary lease out of a permit is final.

(3) If, prior to December 1, 2010, a permittee has not responded to a notice provided by the Minister under section 10(1) of the *Oil Sands Tenure Regulation* (AR 50/2000), and the period of time specified in the notice has not expired, that period of time will continue as if it were provided in a notice from the Minister under subsection (1).

Application for primary lease out of first term oil sands lease

11(1) A lessee of a first term oil sands lease may,

(a) within the last term year of the lease, or

(b) with the consent of the Minister, at any time before the last term year of the lease,

apply to the Minister for a primary lease of oil sands rights in the location of the first term oil sands lease.

(2) If the Minister receives an application under subsection (1), the Minister shall issue the primary lease with a term that begins at the end of the term of the first term oil sands lease.

(3) An application received by the Minister under section 11(1) of the *Oil Sands Tenure Regulation* (AR 50/2000) to have primary lease of oil sands rights issued in the location of a first term oil sands lease for which the Minister has not made a decision on or before November 30, 2010 shall be considered to be an application received by the Minister under subsection (1).

Term of primary lease

12(1) The term of a primary lease is 15 years.

(2) The term of a deemed primary lease that is an oil sands development lease issued under section 13 of the former *Oil Sands Regulation* is extended from 10 years to 15 years.

(3) The term of any deemed primary lease other than an oil sands development lease or a first term oil sands lease is not changed by this Regulation.

Part 2
Continued Leases

Continuation of primary leases and deemed primary leases

13(1) A lessee of a primary lease or a deemed primary lease may

(a) within the last term year of the lease, or

(b) with the consent of the Minister, at any time before the last term year of the lease,

apply to the Minister for approval of the continuation of the lease pursuant to this section.

(2) A lessee may, in an application under subsection (1), request from among the minimum levels of evaluation established under section 3(2) or (3) the minimum level of evaluation that the lessee wishes to have applied in respect of the oil sands in the sections or parts of sections to which the application pertains.

(3) The following rules apply in respect of the continuation of a primary lease or a deemed primary lease:

(a) the Minister shall refuse to continue a primary lease or deemed primary lease if

(i) in the application for continuance of the primary lease or deemed primary lease the lessee has not indicated the sections and parts of sections to which the application pertains, or

(ii) the application is not accompanied by a technical report containing the information and data that the Minister considers necessary to determine whether the appropriate minimum level of evaluation has been met;

(b) a primary lease or deemed primary lease shall not be continued unless

(i) the Minister has determined the sections and parts of sections that may be continued pursuant to clause (e), and

(ii) the Minister is satisfied with the configuration of the continued lease or leases and of the sections and parts of sections that may be continued in the location of that lease or those leases that results from the application of clause (e);

(c) if the sections or part of sections referred to in clause (a)(i) do not corner or are not laterally adjoining, those sections or parts of sections may be issued out of a primary lease or deemed primary lease only as the location of separate continued leases, and will be ascribed or attributed to those locations by the Minister for the purpose of clause (e) and section 3;

(d) if no minimum level of evaluation is requested under subsection (2), or when such a request is made and the Minister disagrees in whole or in part with the request, the Minister shall, subject to section 3(8), (9), (10), (12), (13) and (14), determine whether either minimum level of evaluation set forth in section 3(2) or (3) or the minimum level of evaluation under section 3(2) or (3) that was not applied for, as the case may be, can be satisfied in respect of the oil sands in the sections and parts of sections to which the application pertains;

(e) a continued lease may be issued by the Minister out of a primary lease or a deemed primary lease

(i) if, and to the extent that, the lessee has, in the opinion of the Minister, attained the appropriate minimum level of evaluation in the sections and parts of sections approved for or attributed or ascribed to the location of the continued lease by the Minister under this section, and

(ii) if the lessee has provided to the Minister all production data in respect of those sections or parts of sections.

(4) The Minister may designate a continued lease as producing or non-producing and may establish a minimum level of production, including the duration of production, required for the designation of a continued lease as producing for the purpose of subsection (5) and section 26(2), which minimum level of production may differ among geological zones or geographical areas, or both.

(5) Where the Minister has made a determination under subsection (3)(e), the Minister shall, through a written notice to the lessee,

(a) designate the sections and parts of sections of the primary lease or deemed primary lease that are continued,

(b) indicate the continued lease in which those sections and parts of sections will be contained, and

(c) indicate whether each continued lease is designated as producing or non-producing.

(6) If the perforated portions of a borehole of a producing well intersect 2 or more agreements, the production from the well shall be allocated to each of those agreements

(a) equally, if the Minister is of the opinion that the distribution of the perforated portions is reasonably equal between or among the agreements, or

(b) in a manner that in the Minister's opinion best approximates the recovery contributed from each agreement to the total production of the well, considering any technical information readily available to the Minister, including that submitted by the lessee in support of an allocation.

(7) If a lessee of a primary lease or deemed primary lease does not apply to continue the lease on or before its term expires, the lease expires at the end of its term and any right of renewal is extinguished.

(8) An application received by the Minister under section 13(1) of the *Oil Sands Tenure Regulation* (AR 50/2000) to have a lease continued for which the Minister has not made a decision on or before November 30, 2010 shall be considered to be an application received by the Minister under subsection (1).

Continuation of existing oil sands leases

14(1) Second term oil sands leases that are subject to a development plan approved under section 9 of the former *Oil Sands Regulation* and third term oil sand leases are, as of March 8, 2000,

(a) continued leases, and

(b) deemed to be designated as producing.

(2) For the purpose of subsection (3), if a development plan has been altered following the approval under section 9 of the former *Oil Sands Regulation*, the revised development plan the Minister has most recently consented to in writing is the development plan referred to in that subsection.

(3) If the lessee of a lease continued under subsection (1) that is subject to a development plan fails to comply with and meet the milestones in the development plan or alters the development plan without the prior written consent of the Minister, the Minister may cancel any part or parts of the location of that lease then being held as a result of the attribution of crude bitumen reserves to the development plan.

(4) If a lease that is subject to a development plan is transferred,

(a) the lease ceases, effective as of the date of registration of the transfer, to be continued or to be designated as producing pursuant to subsection (1),

(b) effective as of the date of registration of the transfer, the lease is a deemed primary lease and, except to the extent

they are inconsistent with this section, is subject to the provisions of this Regulation that pertain to deemed primary leases,

(c) the Minister shall, from among the minimum levels of evaluation established under section 3, determine if either of the appropriate minimum level of evaluation criteria is met in respect of the oil sands in the location of the lease,

(d) if the appropriate minimum level of evaluation described in clause (c) has not been achieved, the Minister shall give a notice in writing to the transferee stating that, within one year from the date of the notice, the transferee must provide proof satisfactory to the Minister that the appropriate minimum level of evaluation has been achieved in the location of the lease, and

(e) if, at the end of the one-year period referred to in clause (d), the transferee does not provide the proof required by clause (d), the Minister shall cancel the lease.

(5) Subject to sections 15 and 16, if part of the location of a lease that is subject to a development plan is transferred,

(a) the lease issued for the part of the location ("the partial location lease") ceases, effective as of the date of registration of the transfer, to be continued or to be designated as producing pursuant to subsection (1),

(b) the partial location lease is deemed a primary lease and is subject to the provisions of this Regulation that pertain to deemed primary leases, and

(c) the partial location lease is subject to all of the provisions and requirements of this section.

Transfer of oil sands lease location

15 If part of the location of a lease situated within a surface mineable oil sands area is transferred,

(a) effective as of the date of registration of the transfer, the partial location lease is a deemed primary lease and, except to the extent that they are inconsistent with this section, is subject to the provisions of this Regulation that pertain to deemed primary leases,

(b) the Minister shall, from among the minimum levels of evaluation established under section 3, determine if either of the appropriate minimum level of evaluation criteria is

met in respect of the oil sands in the location of the partial location lease,

(c) if the appropriate minimum level of evaluation described in clause (b) has not been achieved, the Minister may give a notice in writing to the transferee stating that, within one year from the date of the notice, the transferee must provide proof satisfactory to the Minister that the appropriate minimum level of evaluation has been achieved in the location of the partial location lease, and

(d) if, at the end of the one-year period referred to in clause (c), the transferee cannot provide the proof required by clause (c), the Minister shall cancel the partial location lease.

Authority to transfer continued lease

16 Despite section 14(4), 2 or more lessees holding 2 or more continued leases, the locations of which are within the surface mineable oil sands areas and are designated as producing under section 13(4) or deemed to be designated as producing under section 14(1)(b), may transfer part of the location of those leases from one to the other without creating a status for the agreements issued in respect of the parts of the locations transferred that differs in any respect from the status of the continued leases if, in the opinion of the Minister,

(a) the potential reserves of oil sands held by the lessees under the continued leases prior to the transfer of part of the locations of those leases are approximately equivalent,

(b) the transfers will result in the economic, orderly and efficient development, and may result in an increase in the recovery, of the potential reserves of oil sands held by the lessees under the continued leases, and

(c) if one or more of the continued leases are subject to a development plan, the Minister is satisfied that

(i) in each case of an agreement in respect of a partial location being issued to a holder of a continued lease that is subject to a development plan the agreement can and will be consolidated into the continued lease, and

(ii) the consolidation of an agreement in respect of a partial location into a continued lease will not affect the milestones in the development plan that includes the continued lease.

Liability to pay escalating rental

17(1) The lessee of a continued lease that is designated as non-producing is liable to pay to the Crown an escalating rental calculated under section 18.

(2) Subject to section (3), escalating rental for a term year of a lease is due and payable 30 days after the last day of that term year.

(3) If a lease that is subject to the payment of escalating rental is cancelled during a term year of that lease, the escalating rental for that term year will be calculated as the quotient of the number of days in that term year during which the lease was subsisting prior to cancellation divided by 365 and multiplied by the escalating rental for that lease for that term year.

(4) Section 20 of the *Mines and Minerals Administration Regulation* (AR 262/97) does not apply to escalating rental.

Determination of escalating rental

18(1) For the purposes of this section,

(a) "Area A" means those areas defined by the Regulator as the Peace River Oil Sands Area and the Athabasca Oil Sands Area, excepting from the Athabasca Oil Sands Area

(i) the lands identified by the Regulator as surface mining areas, and

(ii) that block of land that is between ranges 16 and 26 inclusive and townships 76 and 86 inclusive, west of the 4th Meridian;

(b) "Area B" means the area defined by the Regulator as the Cold Lake Oil Sands Area, those lands identified by the Regulator as the surface mining areas of the Athabasca Oil Sands Area and that block of land that is between ranges 16 and 26 inclusive and townships 76 and 86 inclusive, west of the 4th Meridian.

(2) Subject to sections 20 to 25, the escalating rental is,

(a) in respect of each term year of the first 3-term year period of a continued lease that is not designated as a producing lease, an amount calculated at the rate set out in subsection (3) for each hectare in the area of the location of the lease, and

(b) in respect of each term year of each subsequent 3-term year period of a continued lease that is not designated as a

producing lease, an amount for each hectare in the area of the location of the lease that is the lesser of

(i) an amount calculated at a rate that is double the amount per hectare for the immediately preceding 3-term year period of the continued lease, and

(ii) $96, where the hectare or part of the hectare is in Area A or $224, where the hectare or part of the hectare is in Area B,

minus the research costs, exploration costs and development costs that qualify and are eligible for application in the calculation of escalating rental under sections 20, 21, 22 and 23 and Schedule 1.

(3) The rate referred to in subsection (2)(a) is

(a) $3.00 per hectare, where the hectare or part of the hectare is in Area A, and

(b) $7.00 per hectare, where the hectare or part of the hectare is in Area B.

(4) The calculation of escalating rental payable in respect of a continued lease

(a) that has been designated under section 26 as producing, and

(b) that is then designated as non-producing under section 27

is an amount calculated at, and based on, the rate per hectare that was being paid during the period when the lease was non-producing that preceded the effective date of the change of designation under section 26.

AR 196/2010 s18;89/2013

Timing of costs

19(1) When a reference is made in section 20, 21 or 22 or in Schedule 1 to a cost being incurred, the cost is deemed to be incurred

(a) if the cost is paid not more than 90 days after the date of the invoice pertaining to the cost, in the earlier of

(i) the month in which the cost is actually paid, or

(ii) the month in which the cost is payable,

and

(b) if the cost is paid more than 90 days after the date of the invoice pertaining to such cost, in the month in which the cost is paid.

(2) Despite subsection (1), if, in connection with research, exploration or development related to the location of a continued lease,

(a) services or materials have been supplied by the lessee or an affiliate of the lessee, and

(b) no invoice is furnished to the Minister respecting those services or materials,

the cost of the services or materials is deemed to be incurred either in the month the services were supplied with respect to the location of the continued lease or in the month the materials were received on the location of the continued lease, as the case may be.

(3) In the event that a cost that would have been deductible from the calculation of escalating rental under the *Oil Sands Tenure Regulation* (AR 50/2000) is no longer deductible in the calculation of escalating rental pursuant to this Regulation, that cost will continue to be deductible in the calculation of escalating rental in accordance with the provisions of the *Oil Sands Tenure Regulation* (AR 50/2000).

Research costs

20(1) A project is not a research project for the purpose of this Regulation unless the particulars of the project have been set out to the satisfaction of the Minister in a corporate budgetary document that has been accepted and approved by the Minister.

(2) In this section, the term of a research project is

(a) the actual number of years that the project is in effect up to a maximum of 5 years, and

(b) if the research project is operated for more than 5 years, any 5 consecutive years of the project that is selected by the lessee for the purposes of this section.

(3) Research costs described in Schedule 1 may be subtracted from the amount otherwise calculated under section 18 as escalating rental, subject to the following rules:

(a) the lessee of the continued lease or leases in respect of which the research costs will be applied pursuant to this section must identify the leases in the corporate budgetary

document accepted and approved by the Minister under subsection (1);

(b) if the research costs pertain to research conducted off the location of the continued lease, the lessee must provide the Minister with written reasons satisfactory to the Minister supporting the technical rationale for conducting the research off the location;

(c) research costs incurred in a year of the term of a research project may be used as a deduction in calculating escalating rental in any term year of a continued lease that falls in whole or in part within the term of the research project or the 2 years next following the term of the research project;

(d) if, in the opinion of the Minister, the research costs incurred in a year of the term of a research project pertain to research that has a direct connection and application to one or more continued leases that are subject to a development plan ("total yearly development plan research costs"), the portion of those research costs that may be available for allocation among continued leases that have been acquired after March 8, 2000 shall not exceed an amount equal to the difference between

(i) the total yearly development plan research costs, and

(ii) the total of the escalating rentals that would have been payable under section 18 in respect of continued leases subject to the development plan from the location of which no production was obtained during that year of the term of the research project, calculated in respect of the term year or term years of those continued leases that fall within that year of the term of the research project and as if those continued leases had been designated by the Minister under this Regulation as non-producing;

(e) subject to clause (f), the research costs applied to reduce the escalating rental must be incurred after the lease is continued;

(f) costs incurred on research conducted during the last 5 term years of a primary lease or deemed primary lease that would, in relation to that lease, have been research costs if that lease had then been a continued lease may be used as a deduction in calculating escalating rental of any of the first 10 term years of the lease after it is continued under section 13;

(g) 2 or more continued leases may be identified as being pooled for allocation of research costs from a research project

(i) in the corporate budgetary document accepted and approved by the Minister under section 20(1), and

(ii) before a reduction in escalating rental is made;

(h) if the Minister approves the pooling, research costs incurred in a year of the research project may be allocated

(i) to any term year or term years of any of the leases so pooled that fall in whole or in part within the term of the research project or within the 2 years next following the term of the research project, and

(ii) in the calculation of the escalating rental attributed to those term years of the pooled leases;

(i) no item or portion of research costs may be applied in the calculation of escalating rental more than once.

Exploration costs

21 Exploration costs described in Schedule 1 may be subtracted from the amount otherwise calculated under section 18 as escalating rental, subject to the following rules:

(a) exploration costs incurred in a term year of a continued lease may be used as a deduction in calculating escalating rental attributed to that term year of the continued lease;

(b) exploration costs can be used as a deduction in calculating escalating rental attributed to a term year of a continued lease only if, in the opinion of the Minister, the costs have been physically incurred on the location of the lease or, in the opinion of the Minister, for the exploration of the oil sands in the location of the lease;

(c) no item or portion of exploration costs may be used as a deduction in calculating escalating rental more than once.

Development costs

22 Development costs described in Schedule 1 may be subtracted from the amount otherwise calculated under section 18 as escalating rental, subject to the following rules:

(a) development costs incurred in a term year of a continued lease may be used as a deduction in calculating escalating rental attributed to that term year of the continued lease;

(b) development costs can be used as a deduction in calculating escalating rental attributed to a term year of a continued lease only if, in the opinion of the Minister, the costs have been physically incurred on the location of the lease or, in the opinion of the Minister, for the development of the oil sands in the location of the lease;

(c) development costs physically incurred on the location of or, in the opinion of the Minister, for the development of the oil sands within the location of a primary lease or deemed primary lease during the last 5 term years of the lease may be used as a deduction in calculating escalating rental of any of the first 10 term years of the lease after it is continued under section 13;

(d) no item or portion of development costs may be used as a deduction in calculating escalating rental more than once.

Documentation respecting costs

23(1) The Minister shall reject any claim by a lessee for using a research cost, exploration cost or development cost as a deduction in calculating escalating rental if the claim is not supported by documentation establishing, to the Minister's satisfaction, that

(a) the cost is a research cost, exploration cost or development cost as described in Schedule 1, and

(b) the research cost, exploration cost or development cost qualifies for application in the calculation of escalating rental pursuant to section 20, 21 or 22.

(2) If the documentation submitted by the lessee does not support the amount of the research costs, exploration costs or development costs being claimed by the lessee in the calculation of escalating rental for a term year of the lease, the Minister

(a) may reject the lessee's claim for the amount of costs that are not supported and require the lessee to submit further documentation and records to support those amounts, or

(b) subject to section 47 of the Act, may recalculate the escalating rental for the term year of the lease based on documentation or information obtained pursuant to

(i) section 24(2), or

(ii) section 47 of the Act.

Maintenance of records

24(1) The lessee must keep and maintain, and shall ensure that persons that are affiliated with or are agents of the lessee keep and maintain, records satisfactory to the Minister

(a) relating to the research costs, exploration costs and development costs that have been claimed in respect of a term year of the lease under sections 20, 21 and 22 and Schedule 1, and

(b) relating to, or used in connection with, any application, report or statement permitted or required to be submitted or furnished under this Regulation.

(2) The lessee must, on request of the Minister, submit to the Minister any of the records described in subsection (1) or any information that is the subject of the request.

Upgrader credits

25(1) A lessee who is upgrading crude bitumen derived from the oil sands within the location of the lessee's lease using either the lessee's upgrader or, under written contract, another person's upgrader may apply to the Minister for an upgrader credit.

(2) The Minister may award upgrader credits, determined in accordance with the formula in Schedule 2, to a lessee who has submitted an application under subsection (1), and the lessee may reduce the hectares of a continued lease for which an escalating rental is payable in an amount equal to the number of upgrader credits awarded.

(3) Despite anything in this section, bitumen or crude bitumen produced from a lease that was a second term oil sands lease that is subject to a development plan approved under section 9 of the former *Oil Sands Regulation* is not eligible for upgrader credits unless it is bitumen or crude bitumen that exceeds the level of production approved by the development plan for the lease.

(4) Subject to subsection (5), a lessee may apply the lessee's upgrader credits to any term year of any continued lease held by the lessee.

(5) A lessee may apply the lessee's upgrader credits to more than one lease only if

(a) the escalating rental of all of the leases to which the credits are applied is reduced to zero, or

(b) the escalating rental of all but one of the leases to which the credits are applied is reduced to zero.

(6) No portion of upgrader credits may be applied more than once to reduce the hectares subject to escalating rental.

Change of designation to producing

26(1) The lessee of a continued lease that has been designated as non-producing may apply to the Minister to have the designation of the lease changed to producing.

(2) The Minister may change the designation of the lease to producing by giving written notice to the lessee if

(a) the lessee applies for the change in designation in accordance with subsection (1), and

(b) the lease is producing.

(3) A change in the Minister's designation of a lease to producing is effective on the anniversary of the term commencement date of the lease that follows the date on which the Minister changes the designation.

(4) From the effective date of a change in designation under subsection (3), the lease ceases to be subject to the payment of escalating rental until the Minister changes the designation of the lease back to non-producing.

(5) Any application received by the Minister under section 21(1) of the *Oil Sands Tenure Regulation* (AR 50/2000) to have a lease designation changed from non-producing for which the Minister has not made a decision on or before November 30, 2010 shall be considered to be an application received by the Minister under subsection (1).

Change of designation to non-producing

27(1) If, at any time after the continuation of a lease that has been designated as producing, oil sands have, in the opinion of the Minister, not been produced from the location of the lease for a period of 3 term years or more, the Minister may change the designation of the lease to non-producing by giving notice in writing of the change to the lessee.

(2) A change in the Minister's designation of a lease to non-producing is effective on the anniversary of the term commencement date of the lease that follows the date on which the Minister changes the designation.

(3) From the effective date of a change in designation under subsection (1), the lease is subject to the payment of escalating rental until the Minister changes the designation of the lease back to producing.

Part 3
Ministerial Notices and Directions

Notice respecting production

28(1) The Minister may, if the Minister considers that it is warranted in the circumstances and notwithstanding that a lease has been designated as producing, at any time during the term or continuation of a lease give notice to the lessee requiring the lessee, within the time specified in the notice, to commence production or recovery of, or to increase the existing production or recovery of, bitumen or other oil sands products from the oil sands within the location of the lease.

(2) A notice given by the Minister to lessee under section 23 of the *Oil Sands Tenure Regulation* (50/2000) shall be considered to be a notice given by the Minister to the lessee under subsection (1).

Obligation to comply

29 If a lessee fails to comply with a notice given under section 28 within the time specified by the notice, the Minister may, pursuant to section 45 of the Act, cancel the lease as to all or part of its location or as to any zone or subsurface area underlying all or part of its location.

Other minerals in oil sands

30 The Minister may direct a lessee to test for, evaluate and extract from oil sands any mineral substance in association with the oil sands within and under the location of the lessee's lease and the lessee must comply with that direction.

Part 4
Transitional, Repeal, Expiry and Coming into Force

Transitional

31 Despite the repeal of the *Oil Sands Tenure Regulation* (AR 50/2000), a decision made by the Minister under that Regulation before its repeal continues to be valid regardless of the effective date of that decision.

Repeal

32 The *Oil Sands Tenure Regulation* (AR 50/2000) is repealed.

Expiry

33 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on December 1, 2015.

Coming into force

34 This Regulation comes into force on December 1, 2010.

Schedule 1

1 A cost is a "research cost" for the purpose of section 20 of this Regulation

(a) if it is incurred in respect of any research project that, in the opinion of the Minister,

(i) has a direct connection and application to a continued lease,

(ii) is incurred to solve or overcome economic, environmental or technical problems or obstacles associated with the recovery of oil sands from a continued lease, and

(iii) is being done with the intention or the purpose of fostering or promoting activities related to the recovery of oil sands from a continued lease or with the intention of obtaining an approval from the Crown for a proposed scheme or operation that could include the lease,

and

(b) if it qualifies as an allowable cost under section 4 of this Schedule.

2 A cost is an "exploration cost" for the purpose of section 21 of this Regulation

(a) if it is incurred in respect of any exploration work that, in the opinion of the Minister,

(i) has a direct connection and application to a continued lease, and

(ii) is incurred for the purpose of exploration of the lease,

(b) if, in the opinion of the Minister, it is incurred by or on behalf of the lessee of the continued lease, and

(c) if it qualifies as an allowable cost under section 4 of this Schedule.

3 A cost is a "development cost" for the purpose of section 22 of this Regulation

(a) if it is incurred in respect of development of oil sands that, in the opinion of the Minister,

(i) has a direct connection and application to a continued lease, and

(ii) is necessary to develop the lease or to bring the lease into production,

(b) if, in the opinion of the Minister, it is incurred by or on behalf of the lessee of the continued lease, and

(c) if it qualifies as an allowable cost under section 4 of this Schedule.

4(1) Subject to this Schedule and sections 19, 20, 21 and 22 of this Regulation, the research costs, exploration costs and development costs that are deductible in the calculation of escalating rental payable in respect of a term year of a continued lease are those costs to which the Minister consents and which the Minister determines to be deductible for the purposes of that calculation.

(2) In order for a cost to qualify as an "allowable cost",

(a) the lessee must provide documentation satisfactory to the Minister showing that the cost is a real financial transaction,

(b) the Minister must be satisfied that the cost is reasonable, in nature and amount, in relation to the circumstances under which it is incurred and that it does not exceed the fair value of the matter in relation to which it arises,

(c) the claim for a specific cost for a term year must be identified in the form prescribed by the Minister, accompanied by any documentation required by the Minister, and submitted to the Minister prior to the due date for the payment of escalating rental for that term year, and

(d) the specific cost must have been paid by or on behalf of the lessee.

(3) A cost is not an "allowable cost" to the extent that

(a) any credits or discounts that are intended to reduce or offset the cost are actually received by the lessee or the operator or owner of the project in which the cost was incurred or by an affiliate of any of them,

(b) any economic assistance (other than economic assistance in the form of a reduction in income tax payable or in the form of a reduction of royalty, royalty proceeds or royalty compensation by virtue of allocable costs established under the *Innovative Energy Technologies Regulation* (AR 250/2004)) that is intended to reduce or offset the cost has been provided by the Province of Alberta or the Government of Canada, or any agency of either of them, to the lessee or the operator or owner of the project in which the cost was incurred or to an affiliate of any of them,

(c) any allocable costs as defined in the *Innovative Energy Technologies Regulation* (AR 250/2004) have been established under that Regulation in relation to the cost, or

(d) the Minister specifies or determines pursuant to subsection (1) that the cost is not deductible in the calculation of escalating rental.

(4) For the purpose of this section, "fair value" means the value determined by the Minister.

Schedule 2
Formula for Determining Upgrader Credits

1 In this Schedule, "API" means the American Petroleum Institute.

2 The formula for determining upgrader credits is as follows:

$$UC = BI \times 0.1 \times AF$$

where

UC is the amount of upgrader credits expressed in hectares for a term year of a lease;

BI is the average barrels per day of feedstock bitumen inputted to the upgrader during that term year of the

lease, based on the number of days the upgrader is in operation during that term year;

AF is the allocation factor determined by the level of upgrading of feedstock bitumen during that year based on the difference in API gravity between the feedstock bitumen and the upgraded product in accordance with the following table:

Table

API Gravity of Upgraded Bitumen	Allocation Factor
10º or less	0.00
11º	0.02
12º	0.04
13º	0.06
14º	0.08
15º	0.10
16º	0.12
17º	0.14
18º	0.16
19º	0.18
20º	0.20
21º	0.24
22º	0.28
23º	0.32
24º	0.36
25º	0.40
26º	0.52
27º	0.64
28º	0.76
29º	0.88
30º or more	1.00

NOTE: The above Table assumes the API Gravity of the feedstock bitumen is 10º API or less. Where the gravity of the feedstock bitumen is greater than 10º API, credit is granted only for the incremental improvement in gravity by subtracting the Allocation Factors for the feedstock and upgraded bitumen, respectively.

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