



Province of Alberta

## MINES AND MINERALS ACT

# COAL ROYALTY REGULATION

### **Alberta Regulation 295/1992**

With amendments up to and including Alberta Regulation 197/2015

### Office Consolidation

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(Consolidated up to 197/2015)

**ALBERTA REGULATION 295/92**

**Mines and Minerals Act**

**COAL ROYALTY REGULATION**

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**Definitions**

**1(1)** In this Regulation,

- (a) "Act" means the *Mines and Minerals Act*;
- (b) "bituminous coal" means coal recovered or obtained from a coal mine located in the areas of Alberta described in the maps accompanying Regulator publication ERCB ST 92-31 as the Foothills Region or the Mountain Region;
- (c) repealed AR 89/2013 s9;
- (d) "coal" means coal as defined in the *Coal Conservation Act*;
- (e) "coal mine" means mine as defined in the *Coal Conservation Act*;
- (f) "coal processing plant" means coal processing plant as defined in the *Coal Conservation Act*;

- (g) “coal project” means any project for the extraction and recovery of coal for which a permit, license or other approval issued by the Regulator under the *Coal Conservation Act* is in effect, and includes
  - (i) a coal mine located in Alberta,
  - (ii) any coal processing plant in Alberta which is directly associated with a coal mine and in which coal recovered from the mine is processed prior to delivery for the purposes of the first sale, consumption or other disposition of that coal, and
  - (iii) any coal storage or delivery facility located in Alberta which is directly associated with a coal mine and from which coal recovered or obtained from the mine is delivered for the purposes of the first sale, consumption or other disposition of that coal;
- (h) “Crown” means Her Majesty the Queen in right of Alberta;
- (i) “marketable coal” means bituminous coal and any product obtained from bituminous coal, that is suitable for sale or consumption;
- (j) “production year” means 1992 and each subsequent calendar year in which coal is recovered pursuant to an agreement;
- (j.1) “Regulator” means the Alberta Energy Regulator;
- (k) “subbituminous coal” means coal recovered or obtained from a coal mine located in the area of Alberta described in the maps accompanying Regulator publication ERCB ST 92-31 as the Plains Region;
- (l) “tonne” means 1000 kilograms.

AR 295/92 s1;89/2013

**Royalty**

**2(1)** The royalty to be computed, levied and collected by the Crown on subbituminous coal won, worked, recovered or obtained pursuant to an agreement granting coal rights shall be the amount of money per tonne of such coal recovered or obtained from each coal mine during each month, calculated in accordance with Schedule 1.

**(2)** The royalty to be computed, levied and collected by the Crown on bituminous coal won, worked, recovered or obtained pursuant to

an agreement granting coal rights shall be that part of the marketable coal recovered or obtained from each coal project during each month, calculated in accordance with Schedule 2.

AR 295/92 s2

#### **Royalty not applicable**

**3** No royalty is payable to the Crown on coal or marketable coal that is consumed in the operation of the coal project from which it is recovered or obtained, without having been sold or otherwise disposed of to another person.

AR 295/92 s3

#### **Fee simple and agreement coal**

**4** Where a coal project relates

- (a) partly to the location of an agreement granting coal rights, and
- (b) partly to coal rights held in fee simple,

the lessee shall determine, subject to the approval of the Minister, the portion of the coal or marketable coal recovered or obtained from the coal project that is attributable to the location of the agreement, and the portion so determined shall, for the purposes of this Regulation, be deemed to be recovered or obtained from the location of the agreement.

AR 295/92 s4

#### **Crown's royalty share on sale or disposition**

**5(1)** If any marketable coal that is subject to the payment of royalty to the Crown is sold, consumed or otherwise disposed of to another person, unless the Minister otherwise directs in a particular case,

- (a) the lessee and any agent of the lessee who actually sells, consumes or otherwise disposes of the marketable coal shall act as agents of the Crown for the purpose of selling, consuming or otherwise disposing of the Crown's royalty share of the marketable coal, and
- (b) the Crown's royalty share of the marketable coal shall be included in the sale, consumption or other disposition.

**(2)** No person has any of the rights, privileges, prerogatives or immunities of the Crown by reason only of acting as an agent of the Crown under this section.

AR 295/92 s5

**Fair value of marketable coal**

**6(1)** For the purposes of this Regulation, the Minister may, in accordance with subsection (2), determine an amount as the fair value of marketable coal

- (a) if the marketable coal is sold for a consideration consisting only of money and the Minister is satisfied that the actual price at which it is sold is less than the amount that the Minister considers to be the fair value of the marketable coal, or
- (b) if the marketable coal is
  - (i) sold for consideration other than money or for a consideration consisting only partly of money,
  - (ii) disposed of to another person otherwise than by sale, or
  - (iii) consumed, other than as described in section 3, without having been sold or otherwise disposed of to another person.

**(2)** For the purposes of this Regulation, the Minister shall determine the fair value of any marketable coal as an amount that the Minister considers would be a reasonable price for the marketable coal having regard to the market conditions that would reasonably be expected to affect that price and the public interest of Alberta.

AR 295/92 s6

**Selling price**

**7** For the purposes of this Regulation, if marketable coal is sold, consumed or otherwise disposed of, and the place at which the actual price or fair value, as the case may be, is determined is not the place from which the marketable coal is delivered from the coal project for the purposes of the sale, consumption or other disposition, the actual price or fair value, as the case may be, shall be reduced to reflect the reasonable cost, as approved by the Minister, of transporting the marketable coal from the place from which it is so delivered to the place at which the actual price or fair value is determined.

AR 295/92 s7

**Royalty reporting**

**8(1)** A lessee of an agreement granting coal rights shall submit to the Minister

- (a) before January 1 of each production year in respect of the agreement and before such other times during the production year as specified by the Minister, reports in the forms determined by the Minister containing estimates and other information relating to the whole and any part of the production year as may be called for by the form or as may be otherwise required by the Minister, and
  - (b) on or before March 31 of the year following each production year in respect of an agreement,
    - (i) reports in the forms determined by the Minister containing
      - (A) information relating to the whole and any part of the production year, and
      - (B) estimates and other information relating to the date of project payback, as defined in Schedule 2, in respect of any coal project from which coal recovered pursuant to the agreement is obtained,  
  
as may be called for by the forms or as may be otherwise required by the Minister, and
    - (ii) an audit report satisfactory to the Minister and prepared by a professional accounting firm as defined in the *Chartered Professional Accountants Act*, concerning the accuracy of the reports submitted under subclause (i).
- (2)** If a lessee contravenes subsection (1) by failing to submit a report on or before the deadline prescribed by or pursuant to that subsection, the Minister may impose a pecuniary penalty on the lessee by reason of the contravention, subject to the following:
- (a) the Minister must give a notice to the lessee describing the contravention, specifying the period within which the report must be submitted to the Minister in order to avoid liability for the penalty and specifying the penalty for which the lessee will be liable if the report is not submitted before the end of that period;
  - (b) the “default period” for the purposes of this subsection is the period
    - (i) commencing on the day after the expiration of the period specified in the notice given pursuant to clause (a), and

- (ii) ending on the day immediately before the day on which the report is submitted to the Minister;
  - (c) the notice shall not specify a penalty in excess of
    - (i) \$10 000 in respect of the first day of the default period, or
    - (ii) \$1000 in respect of the 2nd and each subsequent day of the default period;
  - (d) if the report is not submitted to the Minister within the period specified in the notice, the lessee is liable to pay to the Minister the penalty specified in the notice.
- (3)** A lessee of an agreement granting coal rights shall
- (a) on or before the last day of the month following each month of a production year in respect of the agreement, pay the Minister
    - (i) the amount payable under section 2(1) and Schedule 1 in respect of subbituminous coal recovered or obtained pursuant to the agreement from a coal mine during the month of the production year,
    - (ii) the amount payable under section 7 of Schedule 2 in respect of the Crown's royalty share of marketable coal that
      - (A) is obtained pursuant to the agreement from a coal project,
      - (B) arises under section 6(a) of Schedule 2, and
      - (C) is sold, consumed, other than as described in section 3, or otherwise disposed of during that month of the production year,
- and
- (iii) the amounts estimated by the lessee as being payable to the Crown under section 7 of Schedule 2 as the aggregate of the royalty payments in respect of the Crown's royalty share of marketable coal that
    - (A) is obtained pursuant to the agreement from a coal project,
    - (B) arises under section 6(b) of Schedule 2, and

- (C) is sold, consumed, other than as described in section 3, or otherwise disposed of during that month of the production year,

and

- (b) on or before March 31 of the year following a production year in respect of the agreement, pay the Minister the excess of the aggregate of the amounts payable by the lessee in respect of the Crown's royalty share of marketable coal that
  - (i) is obtained pursuant to the agreement from a coal project,
  - (ii) arises under section 6(b) of Schedule 2, and
  - (iii) is sold, consumed, other than as described in section 3, or otherwise disposed of during the production year,

over the aggregate of the amounts paid under subsection (3)(a)(iii) in respect of such royalty share.

AR 295/92 s8;262/97;197/2015

### Interest

**9(1)** Interest is payable to the Crown in accordance with the following:

- (a) if a payment required by section 8(3)(a) in respect of a month of a production year is not received by the Minister on or before the date such payment is required, interest is payable to the Crown on the amount of the payment, with the computation of interest commencing on the day following the date such payment is required, and, unless sooner paid in full, ending on
  - (i) March 31 of the year following the production year, in the case of an amount payable under section 8(3)(a)(iii), and
  - (ii) the date the payment is received by the Minister, in the case of an amount payable under section 8(3)(a)(i) and (ii);
- (b) if pursuant to section 38 of the Act, the Minister recalculates or makes additional calculations of
  - (i) any amount payable under section 2(1) and Schedule 1 in respect of subbituminous coal recovered or

obtained pursuant to an agreement from a coal mine,  
or

- (ii) any amount payable under section 2(2) and Schedule 2 in respect of marketable coal obtained pursuant to an agreement from a coal project and sold, consumed or otherwise disposed of,

interest is payable to the Crown on any amount determined by the recalculation or additional calculation to be payable to the Crown, with the computation of interest commencing on April 1 of the year following the production year in respect of which the amount is payable and ending when the amount is received by the Minister.

**(2)** Interest is payable by the Crown to a person who has made an overpayment to the Crown, in accordance with the following:

- (a) if the aggregate of the amounts paid pursuant to an agreement and under section 8(3)(a)(iii) in respect of the months of a production year is determined by the Minister to have been more than 110% of the aggregate of the amounts payable to the Crown under section 7 of Schedule 2 in respect of the Crown's royalty share of marketable coal that
  - (i) is obtained pursuant to the agreement from a coal project,
  - (ii) arises under section 6(b) of Schedule 2, and
  - (iii) is sold, consumed, other than as described in section 3, or otherwise disposed of during the production year,

interest is payable on the overpayment, with the computation of interest commencing April 1 of the year following the production year and ending on the date of requisition by the Minister of a cheque for that overpayment, and

- (b) if pursuant to section 38 of the Act, the Minister recalculates or makes additional calculations of any amount described in subsection (1)(b)(i) or (ii), interest is payable by the Crown on any amount by which the amount paid under section 2(1) and Schedule 1 or section 2(2) and Schedule 2 exceeds the amount payable under those respective provisions, with the computation of interest commencing on April 1 of the year following the production year in respect of which the overpayment was

made and ending on the date of requisition by the Minister of a cheque for that overpayment.

(3) If the aggregate of the amounts paid under section 8(3)(a)(iii) pursuant to an agreement in respect of the months of a production year is determined by the Minister to have been less than 90% of the aggregate of the amounts payable to the Crown under section 7 of Schedule 2 in respect of the Crown's royalty share of marketable coal that

- (a) is obtained pursuant to the agreement from a coal project,
- (b) arises under section 6(b) of Schedule 2, and
- (c) is sold, consumed, other than as described in section 3, or otherwise disposed of during the production year,

interest is payable to the Crown on the difference between those aggregate amounts, with the computation of interest commencing on April 1 of the year following the production year and ending on the day payment is received by the Minister of the amount of the difference between those aggregate amounts.

(4) For the purposes of this section, if interest is payable under this section in respect of any day, the rate of interest in respect of that day is the yearly rate that is 1% greater than the rate of interest established by the Province of Alberta Treasury Branches as its prime lending rate on loans payable in Canadian dollars and in effect on the first day of the month in which that day occurs.

AR 295/92 s9;262/97;251/2001;27/2002;203/2003

#### **Minister's decision final**

**10** Where any question arises pertaining to the interpretation or application of this Regulation, the Minister is the sole judge of the question and there shall be no appeal from his decision.

AR 295/92 s10

#### **Transitional**

**11** Notwithstanding any provisions of the *Coal Royalty Regulations* (Alta. Reg. 193/76) or any other provision of this Regulation,

- (a) the amount payable to the Crown in respect of subbituminous coal won, worked, recovered or obtained pursuant to an agreement from a coal mine from July 1, 1992 until the last day of the month in which this Regulation comes into force shall be the lesser of

- (i) the amount payable under section 2(1) and Schedule 1 of this Regulation in respect of such coal, and
  - (ii) the proceeds payable under the *Coal Royalty Regulations* (Alta. Reg. 193/76) in respect of the Crown's royalty share of such coal payable under those Regulations, and
- (b) the amount payable to the Crown on marketable coal obtained pursuant to an agreement from a coal project and that is sold from July 1, 1992 until the last day of the month in which this Regulation comes into force shall be the lesser of
- (i) the proceeds payable under this Regulation in respect of the Crown's royalty share of such coal determined under this Regulation, other than this section, and
  - (ii) the proceeds payable under the *Coal Royalty Regulations* (Alta. Reg. 193/76) in respect of the Crown's royalty share of such coal determined under those Regulations.

AR 295/92 s11;20/93

**Expiry**

**11.1** 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 June 30, 2020.

AR 56/2015 s1

**Repeal**

**12** The *Coal Royalty Regulations* (Alta. Reg. 193/76) are repealed.

AR 295/92 s12

**Schedule 1****Subbituminous Coal**

- 1** For the purposes of this Schedule, the Minister may
- (a) determine a Crown royalty adjustment factor for each coal mine in Alberta from which subbituminous coal may be recovered pursuant to an agreement and the period of time ending before January 1, 1994, in respect of which the factor applies, and

- (b) determine a Crown royalty adjustment factor for all coal mines in Alberta from which subbituminous coal may be recovered pursuant to an agreement and the period of time commencing on or after January 1, 1994, in respect of which the factor applies.

**2** The royalty on subbituminous coal recovered from a coal mine in a month pursuant to an agreement is the lesser of

- (a) \$2 per tonne of such coal, or
- (b) the amount of money per tonne of such coal, calculated in accordance with the following equation:

$$R = \$2 \times \text{CRAF}$$

where

R is the amount of money payable per tonne of such coal;

CRAF is the Crown royalty adjustment factor determined under section 1 of this Schedule in respect of the coal mine from which such coal was recovered and that is applicable in respect of the month.

AR 295/92 Sched.1

## **Schedule 2**

### **Bituminous Coal**

**1** In this Schedule,

- (a) “allowance for indirect costs” means in respect of any period and any coal project, 10% of allowed direct operating costs of the project for that period;
- (b) “allowed capital cost” means a cost determined by the Minister pursuant to this Schedule to be an allowed capital cost;
- (c) “allowed direct operating cost” means a cost determined by the Minister pursuant to this Schedule to be an allowed direct operating cost;
- (d) “allowed cumulative project cost” means in respect of any day and any coal project, the aggregate of
  - (i) the allowed capital costs, the allowed direct operating costs and the proceeds received by the Crown in respect of the sale, consumption or other

- disposition of the Crown's royalty share of marketable coal obtained from the project, for the period commencing on the commencement date of the project and ending on that day,
- (ii) the allowance for indirect costs on the allowed direct operating costs referred to in subclause (i), and
  - (iii) the unrecovered capital of the project;
- (e) "commencement date" means
- (i) July 1, 1992, in the case of any coal project in respect of which marketable coal obtained from the project has, in the Minister's opinion, been sold on a sustained basis on or before that date, and
  - (ii) the date on which sales of marketable coal obtained from the coal project have, in the Minister's opinion, commenced on a sustained basis, in the case of any other coal project;
- (f) "cumulative minemouth revenue" means in respect of any day and any coal project, the minemouth revenue of the project from the commencement date to that day;
- (g) "cumulative return allowance" means in respect of any day and any coal project, the aggregate of all return allowances of the project from the commencement date to that day;
- (h) "date of project payback" means in respect of any coal project, the last day of the month in which the cumulative minemouth revenue of the project first equals or exceeds the aggregate of the allowed cumulative project costs and the cumulative return allowance of the project;
- (i) "minemouth price" means the actual price or fair value, as the case be, of marketable coal that is sold, consumed or otherwise disposed of, adjusted in accordance with section 7 and stated as an amount of money per tonne of such coal;
- (j) "minemouth revenue" means in respect of any coal project, the aggregate of the product revenue of the project and the other net proceeds and recoveries of the project;
- (k) "net loss" means in respect of any production year of a coal project, the amount by which the minemouth revenue

- of the coal project for that production year is exceeded by the aggregate of
- (i) the allowed direct operating costs of the project for the year,
  - (ii) the allowance for indirect costs in respect of those allowed direct operating costs,
  - (iii) the allowed capital costs of the project for the year,
  - (iv) the aggregate of the products derived by multiplying each volume of the Crown's royalty share of marketable coal referred to in section 6(b)(i) of this Schedule, as the case may be, payable in respect of each month of the year by the minemouth price of such volume, and
  - (v) any amount determined under this provision in respect of the coal project for the prior production year, if any;
- (l) "net revenue" means in respect of any production year of a coal project, the amount by which the minemouth revenue of the coal project for that production year exceeds the aggregate of
- (i) the allowed direct operating costs of the project for the year,
  - (ii) the allowance for indirect costs in respect of those allowed direct operating costs,
  - (iii) the allowed capital costs of the project for the year,
  - (iv) the aggregate of the products derived by multiplying each volume of the Crown's royalty share of marketable coal referred to in section 6(b)(i) of this Schedule, as the case may be, payable in respect of each month of the year by the minemouth price of such volume,
  - (v) the net loss of the project for the preceding production year, if any, and
  - (vi) the amount or portion of an amount calculated under section 5.1(3) that is applied for the production year under section 5.1(4);
- (m) "other net proceeds and recoveries" means in respect of any coal project, any net proceeds and recoveries, other than product revenues, received or receivable in relation

to or as a result of the coal project, including without limitation, revenues received or receivable

- (i) as a result of the sale of any property included in, or rights in respect of, the project,
  - (ii) as a result of the processing, storage or other handling of substances in or through the project, or
  - (iii) as proceeds of insurance or litigation in respect of the project;
- (n) “product revenues” means in respect of any coal project, the aggregate of the products obtained by multiplying each volume of marketable coal obtained from the project that is sold, consumed, other than as described in section 3, or otherwise disposed of, by the minemouth price of such volume;
- (o) “return allowance” in respect of any coal project and any month during the period commencing the commencement date of the project and ending the date of project payback of the project, the product of 0.007974 and the amount by which the aggregate of
- (i) the allowed cumulative project costs of the project as of the last day of that month, and
  - (ii) the cumulative return allowance of the project as of the last day of the preceding month,
- exceeds the cumulative minemouth revenue of the project as of the last day of that month;
- (p) “unrecovered capital” means in respect of any coal project, the value of the project as determined by the Minister as of the commencement date of the project.

**2(1)** Allowed capital costs and allowed direct operating costs of a coal project shall be the amounts determined as such by the Minister under this section and sections 3, 4 and 5 of this Schedule.

**(2)** The Minister may determine a cost to be an allowed capital cost or an allowed direct operating cost of a coal project only to the extent the Minister is of the opinion that

- (a) the cost falls within a category of allowed capital cost or allowed direct operating cost identified in section 4 or 5 of this Schedule,

- (b) the cost is directly attributable to the coal project or operations or activities of the coal project,
- (c) the cost is reasonable, in nature and amount, in relation to the circumstances under which it is incurred and does not exceed the fair value of the matter in relation to which the cost arises,
- (d) the cost is incurred by or on behalf of the lessees of agreements pursuant to which marketable coal produced from the coal project is obtained,
- (e) the cost is incurred in connection with
  - (i) the production, processing or delivery of marketable coal from the coal project, or
  - (ii) reclamation activities necessitated by the production of marketable coal from the coal project,

and

- (f) the cost has been paid.

**(3)** The Minister shall not determine a cost to be an allowed capital cost or an allowed direct operating cost of a coal project if the Minister is of the opinion that

- (a) except to the extent that section 4 or 5 of this Schedule otherwise specifically provides, the cost is in respect of overhead or an administrative expense, including without limiting the foregoing, costs of marketing,
- (b) the cost is in respect of the obtaining of an interest in the project, including an overriding royalty interest, a carried interest, a net profit interest, or an interest similar to an overriding royalty interest, a carried interest or a net profit interest,
- (c) the cost is in respect of depletion, depreciation or amortization,
- (d) the cost is in respect of the remedying of environmental damage that is other than routine in nature, or
- (e) the cost results from any act or omission which is a breach of any applicable laws of a government or regulatory agency or body,

or to the extent the Minister is of the opinion the cost is on account of, instead of, or in satisfaction of, interest or any other borrowing or financing cost or any penalty or charge imposed for late or

deficient payment, or a fine or penalty imposed by a government or a regulatory agency or body.

**(4)** If a cost of a coal project in relation to rent or other lease payments in respect of an item exceeds \$100 000 for a production year of the project, it may only be determined by the Minister to be an allowed direct operating cost of the project until such time as the aggregate amount of the cost so determined for all production years resulting from the rent or lease of that item, equals, in the Minister's opinion, the cost that would have been incurred in respect of that item and would have been determined by the Minister to be an allowed capital cost of the project had the item been purchased instead of rented or leased, after which it shall not be determined by the Minister to be an allowed capital cost or allowed direct operating cost.

**3(1)** The Minister may reduce the amount of any cost determined by him to be an allowed capital cost or allowed direct operating cost by the amount of

- (a) any credits or discounts actually received in relation to the cost or matter in respect of which it is incurred,
- (b) any economic assistance, including grants, subsidies or credits, given by Her Majesty in right of Alberta or Canada, or any agency thereof, which are attributable to the cost or matter in respect of which it is incurred,

but no reduction shall be made in respect of any economic assistance in the form of a reduction of income tax payable by a lessee in respect of a coal project.

**(2)** Subject to section 4(2) of this Schedule, if the Minister can determine a cost to be either an allowed capital cost or an allowed direct operating cost, the Minister shall not determine the cost to be an allowed direct operating cost.

**(3)** A cost determined by the Minister to be an allowed direct operating cost shall not be determined by him to be an allowed capital cost and, subject to section 4(2) of this Schedule, a cost determined by him to be an allowed capital cost shall not be determined by him to be an allowed direct operating cost.

**(4)** If a cost is incurred in a production year in respect of a coal processing plant or coal storage or delivery facility that is part of more than one coal project, the Minister may reduce the amount of that cost that is determined by him to be an allowed capital cost or allowed direct operating cost of any such project, to the proportion of the cost that is the same as the volume of coal that is recovered or obtained from the coal mine that is part of the project and

processed or handled, as the case may be, in that plant or facility during the production year, bears to the volume of all coal processed or handled, as the case may be, in the plant or facility during the production year.

**4(1)** Subject to subsections (2) and (3) and sections 2 and 3 of this Schedule, the following are the categories of allowed capital costs of a coal project:

- (a) costs of exploratory drilling,
- (b) costs to acquire or construct property, plant and equipment that are
  - (i) costs of equipment, materials and supplies before installation or assembly,
  - (ii) costs of purchasing land and buildings of the coal project, or
  - (iii) costs of constructing, installing, assembling or erecting plant, equipment and facilities,

including costs of direct labour, benefits and costs that are required by contract to be paid to a person other than a person who will operate the coal project and which are wholly and directly related to constructing, installing, assembling or erecting plant and equipment of the project and which cannot be identified with specific plant and equipment of the project,

- (c) repair and maintenance costs of an asset if those costs equal or exceed 50% of the cost of acquiring an equivalent new asset,
- (d) costs of salaries, wages, benefits, training and travel of employees whose work is wholly and directly attributable to the production, processing, storage and handling facilities of the coal project, to the extent of the portion of those costs that is directly attributable and charged to capital programs of the coal project, and
- (e) costs of municipal and regional improvements which are required by a government or government agency and which are directly attributable and charged to capital programs of the coal project.

**(2)** If the cost of an asset is less than \$1000, and the cost may be determined by the Minister to be an allowed capital cost, the

Minister may determine the cost to be an allowed direct operating cost and not an allowed capital cost.

**(3)** For the purpose of this section and section 5 of this Schedule, an asset is a unit of plant or equipment that performs or is capable of performing a complete operating function.

**5** Subject to sections 2 and 3 of this Schedule, the following are the categories of allowed direct operating costs of a coal project:

- (a) costs of salaries, wages, benefits, training, travel and relocation of employees whose work is wholly and directly attributable to the activities described in section 2(2)(e) of this Schedule in respect of the coal project, to the extent of the portion of those costs that are not allowed capital costs,
- (b) costs of safety equipment and safety training,
- (c) costs of contract labour, materials, supplies and services,
- (d) cost of rent or other lease payments in respect of equipment, plant and buildings,
- (e) costs of telecommunications, power, water, sewage disposal, and utility construction contribution payments,
- (f) costs determined by the Minister to be allowed direct operating costs pursuant to section 4(2) of this Schedule,
- (g) costs of insurance,
- (h) cost of municipal taxes,
- (i) cost of purchased fuel,
- (j) cost of surface lease rentals and costs of rentals under agreements granting the right to recover coal that will be produced by the coal project,
- (k) repairs and maintenance costs of an asset, including costs to replace material of the same kind or of a different kind without a change in operations, if those costs are less than 50% of the cost of an equivalent new asset, and
- (l) the category of allowed direct operating costs whose available amount is calculated in accordance with section 5.1(3).

**5.1(1)** In this section,

- (a) “accrued reclamation costs” means the amount by which the total amount allowed by the Minister before July 1, 1992 for the purpose of reclaiming the site in an eligible project of the mine referred to in subsection (2) exceeded the amount actually spent on that reclamation before that date;
- (b) “eligible non-producing year” means each of the 3 years of an eligible project next following the year in which production ceases from the mine in the eligible project;
- (c) “eligible project” means a project in respect of which royalties were paid under the *Coal Royalty Regulations* (AR 193/76) before July 1, 1992;
- (d) “unrecovered accrued reclamation costs” means the portion of accrued reclamation costs that, at the commencement of an eligible non-producing year referred to in subsection (2), has not yet been recovered through the application under subsection (3)(b) of reduced allowed direct operating costs.

(2) The amount of allowed direct operating costs in respect of an eligible non-producing year is the portion of the aggregate of the amounts specified in section 5(a) to (k) that is determined by the Minister to have been spent in that year for reclamation of the site of the mine.

(3) The amount of allowed direct operating costs determined for an eligible non-producing year that is available for application in accordance with subsection (4) shall be calculated

- (a) first, by reducing the amount of allowed direct operating costs determined for the eligible non-producing year by the total amount received or receivable in the eligible non-producing year from product revenues and other net proceeds and recoveries, and
- (b) 2nd, by applying the reduced amount of allowed direct operating costs determined under clause (a) to recover the amount of unrecovered accrued reclamation costs of the project until that reduced amount has been entirely applied in the recovery of unrecovered accrued reclamation costs.

(4) The amount or any portion of the amount of allowed direct operating costs that remains in respect of any eligible non-producing year after the recovery under subsection (3)(b) of unrecovered accrued reclamation costs may be applied, for the purposes of section 1(1)(vi), in the amendment of the net revenue of any production year of the project in respect of which an

amendment of a submitted record may be made under section 38 of the Act as at the end of the eligible non-producing year in question.

(5) No portion of the amount of allowed direct operating costs that is available for application under subsection (4) may be deducted more than once in the recalculation of net revenue.

**6** The Crown's royalty share of marketable coal obtained pursuant to an agreement from a coal project in a month of a production year is

- (a) in the case of each month up to and including that containing the date of project payback for that project, 1% of that marketable coal, or
- (b) in the case of each month following the date of project payback for that project, the aggregate of
  - (i) 1% of that marketable coal, and
  - (ii) the proportion of that marketable coal that is the same as 13% of the net revenue of the coal project for the production year is of the product revenue of the coal project for the production year.

**7** There shall be paid to the Crown in accordance with this Regulation in respect of each volume of the Crown's royalty share of marketable coal that is obtained from a coal project and that is sold, consumed, other than as described in section 3, or otherwise disposed of in a month of a production year, an amount of money equal to the product of the volume of the Crown's royalty share so sold, consumed or otherwise disposed of and the minemouth price of that volume.

**8** When payment other than product revenue is received or receivable in respect of a coal project other than in the form of money, such payment shall be included in other net proceeds and recoveries at the greater of its fair market value as determined by the Minister or the value agreed to by the person providing and the person receiving the payment.

**9** When in the opinion of the Minister, inadequate consideration is received or receivable under a transaction pursuant to which other net proceeds or recoveries arise, consideration shall be deemed to have been received and shall be included in minemouth revenue at the fair value determined by the Minister of the item or matter sold, leased, licensed or otherwise disposed of, or the service provided,

or of the right granted, as the case may be, pursuant to the transaction.

**10** Notwithstanding any other provision of this Schedule, the amount of any taxes paid, payable or collected under Part IX of the *Excise Tax Act* (Canada) in respect of the costs and revenues of a coal project shall, for the purposes of this Regulation, be excluded from the determination of allowance for indirect costs, allowed capital costs, allowed direct operating costs, allowed cumulative project costs, cumulative minemouth revenue, cumulative return allowance, minemouth price, minemouth revenue, net loss, net revenue, other net proceeds and recoveries, product revenues, return allowances and unrecovered capital of the project.

AR 295/92 Sched.2;356/93;10/2000;251/2001;203/2003;169/2015



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