



Province of Alberta

## MINES AND MINERALS ACT

# **OIL SANDS TENURE REGULATION, 2020**

### **Alberta Regulation 92/2020**

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### **Extract**

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**ALBERTA REGULATION 92/2020**

**Mines and Minerals Act**

**OIL SANDS TENURE REGULATION, 2020**

*Table of Contents*

- 1 Definitions
- 2 Existing designation as producing and non-producing
- 3 Application of Regulation

**Part 1  
Oil Sands Agreements**

- 4 Rights conveyed
- 5 Maximum area
- 6 Rental
- 7 Application for lease issued out of permit
- 8 Term of primary lease

**Part 2  
Continued Leases**

- 9 Continuation of primary leases
- 10 Designation as producing or non-producing
- 11 Liability to pay escalating rental
- 12 Determination of escalating rental

**Part 3  
Notices and Directions**

- 13 Notice respecting production
- 14 Obligation to comply
- 15 Other minerals in oil sands
- 16 Withdrawal of Crown from unit agreement

**Part 4  
Transitional, Repeal, Expiry and  
Coming into Force**

- 17 Transitional
- 18 Repeal
- 19 Expiry
- 20 Coming into force

**Definitions****1** In this Regulation,

- (a) “3-term year period” means the period comprising the first 3 term years for which a lease is designated as non-producing, commencing with the effective date of the lease first being designated by the Minister as non-producing, and each subsequent 3 term years in which the lease is designated as non-producing, whether or not those term years are consecutive;
- (b) “Act” means the *Mines and Minerals Act*;
- (c) “continued lease” means a lease that is continued, or has been continued, or has been treated as having been continued pursuant to
  - (i) section 9 of this Regulation,
  - (ii) the *Oil Sands Tenure Regulation, 2010* (AR 196/2010),
  - (iii) the *Oil Sands Tenure Regulation* (AR 50/2000), or
  - (iv) any previous regulation with respect to oil sands tenure,as the case may be;
- (d) “crude bitumen” means a viscous mixture, mainly of hydrocarbons heavier than pentanes, that may contain sulphur compounds and that is obtained from oil sands;
- (e) “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;
- (f) “lease” means an agreement issued in the form of a lease that grants rights in respect of oil sands;
- (g) “lessee” means the holder of a lease according to the records of the Department;
- (h) “oil sands agreement” means a permit or a lease;
- (i) “oil sands product” has the meaning given to it in section 1(1)(u) of the *Oil Sands Royalty Regulation, 2009* (AR 223/2008);
- (j) “permit” means an agreement issued in the form of a permit on or before November 30, 2020 that grants rights in respect of oil sands;

- (k) “permittee” means the holder of a permit according to the records of the Department;
- (l) “primary lease” means
  - (i) a lease issued by the Minister on or after December 1, 2020, or
  - (ii) a lease issued on or before November 30, 2020 that was a primary lease for the purposes of the *Oil Sands Tenure Regulation, 2010* (AR 196/2010) or the *Oil Sands Tenure Regulation* (AR 50/2000), provided that the lease was not continued under either of those regulations;
- (m) “producing”, as it relates to the designation of a lease, means a minimum level of production established by the Minister pursuant to section 10(1);
- (n) “Regulator” means the Alberta Energy Regulator;
- (o) “solution gas” has the meaning given to it in section 1(1)(rr) of the *Oil Sands Royalty Regulation, 2009* (AR 223/2008);
- (p) “surface mineable oil sands area” means
  - (i) an area identified or defined as such by the Regulator, and
  - (ii) any amendment to that area made from time to time by the Regulator, whether by addition to or substitution for the lands within that area or otherwise;
- (q) “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 except where the agreement is cancelled during a 12-month period, in which case that term year ends on the effective date of cancellation as set out in section 8(2);
- (r) “zone” means a stratum or series of strata considered by the Minister to be a zone for the purposes of this Regulation.

### **Existing 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 designated as producing for the purposes of the *Oil Sands Tenure Regulation, 2010* (AR 196/2010), and
- (b) that has been designated as non-producing includes a lease that is designated as non-producing for the purposes of the *Oil Sands Tenure Regulation, 2010* (AR 196/2010).

### **Application of Regulation**

#### **3** This Regulation applies

- (a) to all leases issued by the Minister on and after December 1, 2020,
- (b) to all permits issued under the *Oil Sands Tenure Regulation, 2010* (AR 196/2010),
- (c) to leases issued before December 1, 2020 that have not been continued under the *Oil Sands Tenure Regulation, 2010* (AR 196/2010) or the *Oil Sands Tenure Regulation* (AR 50/2000), and
- (d) to leases that have been continued or have been treated as having been continued under the *Oil Sands Tenure Regulation, 2010* (AR 196/2010), the *Oil Sands Tenure Regulation* (AR 50/2000) or any previous regulation in respect of oil sands tenure.

## **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 oil sands agreement, or
- (b) if the oil sands 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 oil sands 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 at 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.

**Application for lease issued out of permit**

**7(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)** 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.

**(3)** Any application received by the Minister under section 8(1) of the *Oil Sands Tenure Regulation, 2010* (AR 196/2010) 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, 2020 shall be considered to be an application received by the Minister under subsection (1).

- (4) 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 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;
  - (b) if the sections or parts of sections referred to in clause (a) 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.

#### **Term of primary lease**

- 8(1) The term of a primary lease is 15 years.
- (2) The effective date of cancellation of an oil sands agreement is the date of the notification from the Minister to the permittee or lessee confirming the cancellation.

## **Part 2 Continued Leases**

#### **Continuation of primary leases**

- 9(1) A lessee of a 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 in accordance with this section.
- (2) An application made under subsection (1) must contain the sections and parts of sections that the lessee wishes to continue.
- (3) The following rules apply in respect of the continuation of a primary lease:
- (a) the Minister shall refuse to continue a primary lease if in the application for continuation of the primary lease the lessee has not indicated the sections and parts of sections to which the application pertains;
  - (b) a primary lease shall not be continued unless 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;

- (c) if the sections or parts of sections referred to in clause (a) do not corner or are not laterally adjoining, those sections or parts of sections may be issued out of a primary lease only as the location of separate continued leases;
  - (d) the lessee shall provide to the Minister all production data in respect of those sections or parts of sections included in an application made under subsection (1).
- (4) The Minister shall, through a written notice to the lessee,
- (a) designate the sections and parts of sections of the primary lease that are continued,
  - (b) indicate the continued lease in which those sections and parts of sections will be contained, and
  - (c) indicate, for the purposes of section 10, whether each continued lease is designated as producing or non-producing.
- (5) If a lessee of a 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 except for those portions of a lease that are continued without application under subsections (6) or (7).
- (6) If a producing well, or portion of a producing well, is producing from one or more drilling spacing units located on one or more leases, those portions of a lease eligible for continuation and on which a drilling spacing unit is situated will be continued.
- (7) If a producing well, or portion of a producing well, is producing from one or more leases that are part of a unit agreement, those portions of a lease eligible for continuation and that are included under the unit agreement will be continued.
- (8) An application received by the Minister under section 13(1) of the *Oil Sands Tenure Regulation, 2010* (AR 196/2010) to have a lease continued for which the Minister has not made a decision on or before November 30, 2020 shall be considered to be an application received by the Minister under subsection (1).

#### **Designation as producing or non-producing**

**10(1)** 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 9(4), and the minimum level of

production may differ among geological zones or geographical areas, or both.

(2) If crude bitumen is being produced from an interval of a borehole of a well, and that interval intersects 2 or more oil sands agreements, and does not intersect any oil sands not owned by the Crown in right of Alberta, the production from the well shall be allocated to each of those oil sands agreements in a manner that in the Minister's opinion best approximates the recovery contributed from each oil sands agreement to the total production of the well, considering any technical information readily available to the Minister, including that submitted by a lessee or permittee in support of an allocation.

(3) If crude bitumen is being produced from an interval of a borehole of a well, and that interval intersects one or more oil sands agreements and oil sands not owned by the Crown in right of Alberta, the production from the well shall be allocated to each oil sands agreement in a manner that in the Minister's opinion best approximates the recovery contributed from each oil sands agreement to the total production of the well, considering any technical information readily available to the Minister, including that submitted by a lessee or permittee in support of an allocation.

(4) 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.

(5) 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 (4), and
- (b) the lease is producing.

(6) Any application received by the Minister under section 26(1) of the *Oil Sands Tenure Regulation, 2010* (AR 196/2010) to have a lease designation changed from non-producing to producing for which the Minister has not made a decision on or before November 30, 2020 shall be considered to be an application received by the Minister under subsection (4).

(7) 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 at an average rate of production greater than or equal to the minimum level of production for a period of 3 term years or more, the Minister may change the designation of the lease to non-producing by giving written notice of the change to the lessee.

- (8) A change in the Minister's designation of a lease is effective on the anniversary of the term commencement date of the lease that follows the date on which the Minister changes the designation.
- (9) If the Minister changes the designation of a lease,
- (a) from non-producing to producing, from the effective date of a change in designation under subsection (8), 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, or
  - (b) from producing to non-producing, from the effective date of a change in designation under subsection (8), the lease is subject to the payment of escalating rental until the Minister changes the designation of the lease back to producing.

#### **Liability to pay escalating rental**

- 11(1)** The lessee of a continued lease that is designated as non-producing is liable to pay to the Crown an escalating rental for the term year calculated under section 12, which shall be calculated on the basis of the area of the location of the lease as it stood at the beginning of that term year.
- (2) Escalating rental determined under this Regulation for a term year of a lease commencing on or after December 1, 2020 is due and payable on the commencement of the term year.
- (3) If a lease that is subject to the payment of escalating rental determined under this Regulation is cancelled during a term year of that lease, there shall be no refund of escalating rental already paid.
- (4) If a lessee had an obligation to pay escalating rental under the *Oil Sands Tenure Regulation, 2010* (AR 196/2010), where such payment was due on or after December 1, 2020,
- (a) escalating rental for that lease, under the *Oil Sands Tenure Regulation, 2010* (AR 196/2010), will be due no later than December 31, 2020, and
  - (b) no deductions or credits under sections 21, 22 or 25 of the *Oil Sands Tenure Regulation, 2010* (AR 196/2010) will be permitted.
- (5) If a lessee had an obligation to pay escalating rental under the *Oil Sands Tenure Regulation, 2010* (AR 196/2010) and has an obligation to pay escalating rental determined under this Regulation, the escalating rental determined under this Regulation shall be based on the same rate for the same term year within the

same 3-term year period that would have applied under the *Oil Sands Tenure Regulation, 2010* (AR 196/2010).

**(6)** If the escalating rental in respect of a lease due under this Regulation or the *Oil Sands Tenure Regulation, 2010* (AR 196/2010) has not been paid prior to the cancellation of that lease, such escalating rental shall continue to be payable to the Minister.

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

#### **Determination of escalating rental**

**12(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 mineable oil sands 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 mineable oil sands 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)** The escalating rental is,

- (a) in respect of each term year of the first 3-term year period of a continued lease that is designated as a non-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 designated as a non-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.

**(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)** If a lease being designated as non-producing was previously designated non-producing, the escalating rental calculated under this section shall be based on the following:

- (a) if prior to the last change in the Minister's designation of a lease to non-producing becoming effective, a lessee was in the first term year of a 3-term year period, the amount payable will be as if the 2nd year of the 3-term year period has commenced;
- (b) if prior to the last change in the Minister's designation of a lease to non-producing becoming effective, a lessee was in the 2nd term year of a 3-term year period, the amount payable will be as if the 3rd year of the 3-term year period has commenced;
- (c) if prior to the last change in the Minister's designation of a lease to non-producing becoming effective, a lessee was in the 3rd term year of a 3-term year period, the amount payable will be as if the first year of the next 3-term year period has commenced.

**(5)** If a well is located on a drilling spacing unit that is subject to 2 or more oil sands agreements, and the well is not located on land where the oil sands are not owned by the Crown in right of Alberta, production will be allocated to each oil sands agreement in a manner that in the Minister's opinion best approximates the recovery contributed from each of those oil sands agreements, considering any technical information readily available to the Minister, including that submitted by a lessee or permittee in support of an allocation.

**(6)** If a well is located on a drilling spacing unit that is subject to one or more oil sands agreements and located on oil sands not owned by the Crown in right of Alberta, for the purposes of allocating production to each oil sands agreement, production will be allocated to each oil sands agreement in a manner that in the Minister's opinion best approximates the recovery contributed from each oil sands agreement, considering any technical information

readily available to the Minister, including that submitted by a lessee or permittee in support of an allocation

### **Part 3 Notices and Directions**

#### **Notice respecting production**

**13(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, crude bitumen or other oil sands products from the oil sands within the location of the lease.

**(2)** If the Minister considers it warranted in the circumstances, the Minister may withdraw a notice issued under subsection (1).

#### **Obligation to comply**

**14** If a lessee fails to comply with a notice given under section 13 within the time specified in the notice, the Minister may, in accordance with 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**

**15** 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.

#### **Withdrawal of Crown from unit agreement**

**16(1)** In this section,

- (a) "unit operations", in relation to a unit agreement, means any operations or activities conducted for the purpose of producing oil sands products or solution gas pursuant to the unit agreement or any other operations or activities conducted for the purpose of developing or exploiting oil sands products or solution gas pursuant to the unit agreement;
- (b) "unit operator" means the person who is the unit operator under a unit agreement according to the records of the Department.

**(2)** If no unit operations have been conducted under a unit agreement for a period of at least 12 consecutive months, the Minister may give a notice to

- (a) the unit operator, and
- (b) the persons who, according to the records of the Department, are the working interest owners under the unit agreement,

stating that the Crown intends to withdraw as a party to the unit agreement after the end of the 3-month period following the date of the notice.

**(3)** The unit operator or a person authorized for the purpose by the unit operator may apply to the Minister to withdraw the notice given under subsection (2).

**(4)** An application under subsection (3)

- (a) must be made before the end of the 3-month period following the date of the notice, and
- (b) must be accompanied by evidence showing
  - (i) that unit operations had not ceased before the date of the notice,
  - (ii) that unit operations have recommenced since the date of the notice and are continuing in good faith, or
  - (iii) that on the date of the notice, unit operations were suspended in circumstances where the obligation of the unit operator to perform those operations was suspended pursuant to the force majeure provisions of the unit agreement.

**(5)** The Minister may, on application, extend the 3-month period referred to in subsection (4)(a) if the Minister considers the extension warranted in the circumstances, whether the application is made before or after the expiry of the 3-month period.

**(6)** Unless the Minister withdraws a notice given under subsection (2), the Minister may make a declaration stating that the Crown has withdrawn as a party to the unit agreement as of the date specified in the declaration if

- (a) an application was not made under subsection (3) in accordance with subsection (4), or
- (b) an application was made under subsection (3) but the Minister considered that the evidence accompanying the

application was insufficient to support the request for the withdrawal of the notice or that the application was not made in good faith.

(7) The Crown ceases to be a party to a unit agreement as of the date specified in the declaration of withdrawal made by the Minister under subsection (6).

(8) A declaration of withdrawal made by the Minister under subsection (6) must be published in The Alberta Gazette.

## **Part 4**

### **Transitional, Repeal, Expiry and Coming into Force**

#### **Transitional**

**17** Despite the repeal of the *Oil Sands Tenure Regulation, 2010* (AR 196/2010), 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**

**18** The *Oil Sands Tenure Regulation, 2010* (AR 196/2010) is repealed.

#### **Expiry**

**19** 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 November 30, 2030.

#### **Coming into force**

**20** This Regulation has effect on December 1, 2020.









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