



Province of Alberta

## MINES AND MINERALS ACT

# **OIL SANDS ROYALTY REGULATION, 1997**

### **Alberta Regulation 185/1997**

With amendments up to and including Alberta Regulation 89/2013

### Office Consolidation

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(Consolidated up to 89/2013)

**ALBERTA REGULATION 185/97**

**Mines and Minerals Act**

**OIL SANDS ROYALTY REGULATION, 1997**

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## **Part 1 General**

### **Definitions**

**1** For the purpose of section 90 of the *Mines and Minerals Act* and this Regulation,

- (a) “allocable costs” means allocable costs as defined in the *Innovative Energy Technologies Regulation*;
- (a.1) “allowed cost” means a cost described in Schedule 1 and Schedule 2;
- (b) “blended bitumen” means cleaned crude bitumen blended with diluent and suitable for transport by pipeline;
- (c) repealed AR 89/2013 s17;
- (d) “cleaned crude bitumen” means crude bitumen from which impurities have been removed sufficiently to allow it, when blended with diluent, to be transported by pipeline;

- (d.1) “cogeneration plant” means a plant that is approved under the *Hydro and Electric Energy Act* and produces electric energy concurrently with thermal energy;
- (e) “cost of diluent” means, in respect of diluent blended with cleaned crude bitumen obtained pursuant to a Project to form the blended bitumen that is delivered during a month at a royalty calculation point for the cleaned crude bitumen, the cost determined in accordance with the following formula

$$\text{Cost} = V \times \text{WAC}$$

where

V is the total volume of the diluent;

WAC is the weighted average cost per unit volume of that diluent calculated in accordance with the Minister’s directions;

- (f) “Crown’s share” means
- (i) in respect of a Project the development area of which includes oil sands rights vested in the Crown and oil sands rights vested in a person other than the Crown, the proportion of the Project substances that is allocated under a unit agreement to the tracts in the development area in which oil sands rights are vested in the Crown, and
  - (ii) in respect of any other Project, 100%;
- (g) “crude bitumen” means, despite section 1(1)(d) of the *Mines and Minerals Act*, a viscous mixture, mainly of hydrocarbons heavier than pentanes, that may contain sulphur compounds and that is obtained from oil sands;
- (h) “cumulative cost” means the aggregate of
- (i) the prior net cumulative balance of the Project,
  - (ii) the Crown’s share of
    - (A) allowed costs of the Project, other than allowed costs described in section 4 of Schedule 1 or 2, as the case may be, and
    - (B) allowed costs of the Project described in section 4(c) of Schedule 1 or 2, as the case may be,

and

- (iii) the proceeds paid to the Crown in respect of royalty reserved under section 90(2) of the *Mines and Minerals Act* on Project substances;
- (i) “cumulative revenue” means the aggregate of the Crown’s share of
  - (i) the Project revenue of the Project from and after the effective date, and
  - (ii) other net proceeds received or receivable in respect of the Project from and after the effective date;
- (j) “development area” means the area and strata described under section 17(1)(d)(i) in respect of a Project, and includes, from and after the effective date of a Project expansion relating to the Project, any area and strata added by virtue of the Project expansion to the area and strata so described;
- (k) “diluent” means hydrocarbon substances used to dilute crude bitumen for the purpose of transport from a royalty calculation point for crude bitumen;
- (l) “effective date” means
  - (i) in respect of a Project, the effective date specified under section 16(2)(a)(ii), and
  - (ii) in respect of an amendment of a Project and any Project expansion contemplated by the amendment, the effective date specified under section 16(2)(b)(ii);
- (m) “gross revenue” means the Project revenue of a Project minus the cost of diluent contained in any blended bitumen included in the calculation of that Project revenue;
- (n) “interim Crown Agreement” means a contract under section 9 of the *Mines and Minerals Act* designated by the Minister as an interim Crown Agreement;
- (o) “net loss” means the amount by which the allowed costs of a Project for a Period exceed the aggregate of the Project revenue and other net proceeds of the Project for the Period;
- (p) “net revenue” means the amount by which Project revenue of a Project for a Period exceeds the amount by which the allowed costs of the Project for the Period

exceed the other net proceeds of the Project for the Period;

- (q) “oil sands product” means crude bitumen, cleaned crude bitumen, synthetic crude oil or any other product obtained from oil sands by processing, reprocessing or otherwise, but does not include natural gas and solution gas;
- (r) “operator” means the person specified under section 16(2)(a)(v) as being the initial operator of a Project, or any person subsequently identified by the Minister as being the operator of the Project;
- (s) “other net proceeds” of a Project for a Period means the amount described in section 22(1);
- (t) “participating interest” means the proportion of the ownership in the whole of a Project that is held by a Project owner;
- (u) “Period” means each calendar year or partial calendar year that occurs between the effective date of a Project and the date the approval of the Project under section 16(1) is revoked, except that where the Project payout date occurs during the calendar year or partial calendar year, the portion of the calendar year or partial calendar year that ends on the day before the Project payout date and the portion of the calendar year or partial calendar year that commences on the Project payout date shall each be considered separate Periods;
- (v) “person” includes a firm, trust, partnership, joint venture, association, government or government agency;
- (w) “post-payout Period” means each Period commencing on or after the Project payout date;
- (x) “pre-payout Period” means each Period commencing before the Project payout date;
- (y) “prior net cumulative balance” means
  - (i) in relation to a Project expansion, the amount specified under section 16(2)(b)(iii) as the prior net cumulative balance of the Project expansion, and
  - (ii) in relation to a Project for which the Project payout date has not occurred, the aggregate of the amount specified under section 16(2)(a)(iii) as the prior net cumulative balance of the Project and any amounts

specified under section 16(2)(b)(iii) as the prior net cumulative balances of any Project expansions included in the Project;

- (z) “processing plant” means
- (i) a facility for the extraction of crude bitumen or other oil sands product from oil sands,
  - (ii) a facility in which crude bitumen is processed to obtain cleaned crude bitumen, and
  - (iii) a facility for the extraction and upgrading to synthetic crude oil or any other oil sands product of crude bitumen, cleaned crude bitumen or blended bitumen,

that is approved or deemed to be approved under the *Oil Sands Conservation Act*;

- (aa) “Project” means a scheme or operation for the recovery within Alberta of crude bitumen or any other oil sands product from oil sands, whether or not in conjunction with the further processing of the crude bitumen or other oil sands product, where the scheme or operation is approved in one or more subsisting approvals under section 16;
- (bb) “Project expansion” means an addition to a Project that comes within the description of the Project under section 16 by virtue of section 16(2)(b)(i), but does not include a Project that is being amalgamated with another Project;
- (cc) “Project owner” means
- (i) a lessee of oil sands rights with respect to the whole or a part of the development area of a Project, and
  - (ii) a person who, according to the records at the Land Titles Office, has the right to recover oil sands from part of the development area of the Project;
- (dd) “Project payout date” means, subject to section 36(2),
- (i) the effective date of a Project in the case of a Project for which the prior net cumulative balance as of the day preceding the effective date is a negative amount, or
  - (ii) the first day of the month during which the cumulative revenue of a Project first equals the cumulative cost of the Project, in the case of any other Project;

- (ee) “Project revenue” means the aggregate of the products obtained by multiplying
- (i) each quantity of
    - (A) blended bitumen that contains crude bitumen recovered pursuant to a Project from the Project’s development area, and
    - (B) each oil sands product, other than crude bitumen referred to in paragraph (A), recovered pursuant to the Project from the Project’s development area,that is delivered at a royalty calculation point for the crude bitumen or other oil sands product, as the case may be, then disposed of, consumed or used on or before December 31, 2008, whether before or after being further processed,
- by
- (ii) the unit price applicable to the quantity;
- (ff) “Project substances” means oil sands and oil sands products recovered, whether before, on or after the effective date of a Project, from the development area of the Project;
- (gg) “Qualifying Joint Venture Project” means a Project specified under section 16(2)(a)(iv) as being a Qualifying Joint Venture Project;
- (gg.1) “Regulator” means the Alberta Energy Regulator;
- (hh) “royalty calculation point” means,
- (i) in respect of each oil sands product recovered from the development area of a Project, the place determined under section 23 at which the Crown’s royalty share of the product is to be calculated, and
  - (ii) in respect of each oil sands product recovered pursuant to a Project from other than the development area of the Project, the place determined under section 23 at which the Crown’s royalty share of the product would be calculated if the product were recovered from the development area of the Project;
- (ii) “synthetic crude oil” means a mixture, mainly of pentanes and heavier hydrocarbons, that may contain sulphur compounds, that is obtained from crude bitumen and that

is liquid at the conditions under which its volume is measured;

- (hh.1) “solution gas” means
- (i) gas that is separated from crude bitumen after recovery from a well, and
  - (ii) gas that is dissolved in crude bitumen under initial reservoir conditions and includes any of that gas that evolves as a result of changes in pressure or temperature, or both, due to human disturbance;
- (jj) “unit price” means, in relation to each kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for that kind of product, including blended bitumen containing crude bitumen so obtained and delivered, the price determined from time to time under section 21.

AR 185/97 s1;52/2000;156/2001;251/2001;250/2004;208/2006;  
95/2007;254/2007;223/2008;89/2013

#### **Affiliate rules**

**2(1)** 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%.

**(2)** For the purposes of subsection (1)(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.

**Month**

**3** Where any reference is made in this Regulation to a month, whether by its name or not, the reference shall, except to the extent otherwise specified by the Minister in respect of any particular Project, be construed as being the period commencing at 8:00 a.m. on the first day of that month and ending immediately before 8:00 a.m. on the first day of the next month, except that the month of December of 2008 shall be construed as ending at midnight on December 31, 2008.

AR 185/97 s3;223/2008

**Recovery and disposition presumption**

**4(1)** Where any reference is made in a provision of this Regulation to any oil sands product recovered from a place specified in the provision, the reference shall be construed as referring to an oil sands product obtained from oil sands recovered from that place.

**(2)** Where any reference is made in this Regulation to the disposing or disposition of any thing, the reference shall be construed as referring to a sale or any other disposition of the thing to a person who by reason of the sale or disposition becomes its owner.

**Provision of information**

**5(1)** If this Regulation requires anything to be furnished, or an amount to be paid, to the Minister on or before a day, the thing shall be considered furnished or the amount shall be considered paid, as the case may be, if it is received by the Department on or before that day.

**(2)** An application, report or statement required or permitted to be furnished to the Minister under this Regulation shall be in a form acceptable to the Minister.

**(3)** In addition to the information required by this Regulation to be contained in an application, report or statement, any application, report or statement furnished to the Minister under this Regulation shall also contain any other information called for by the form of the application, report or statement.

**Measurement**

**6(1)** All measurements of oil sands, oil sands products or blended bitumen shall be in accordance with the legislation and regulations administered from time to time by the Regulator.

**(2)** To the extent that the legislation and regulations referred to in subsection (1) do not provide for the manner of measuring oil sands, oil sands products or blended bitumen in any particular

situation, measurement shall be in a manner acceptable to the Regulator and the Minister.

AR 185/97 s6;89/2013

### Cost rules

**7(1)** This section applies to any cost that is part of a calculation or determination under this Regulation or section 90 of the *Mines and Minerals Act*.

**(2)** For the purposes of this Regulation, a cost described in subsection (1) that becomes payable on or before December 31, 2008 is deemed to be incurred

- (a) in the month in which the cost is payable, if
  - (i) the month occurs during a pre-payout Period and the cost is paid not more than 12 months after the end of that month, or
  - (ii) the month occurs during a post-payout Period and the cost is paid before the end of the calendar year following the Period,

or

- (b) in the month in which the cost is paid, in any other case.

**(3)** Despite subsection (2), if services or materials have been supplied in relation to a Project by a Project owner, the operator or an affiliate of either of them and no invoice for those services or materials is subsequently sent by the Project owner, the operator or the affiliate, the cost of the services or materials is deemed to be incurred in the month in which the services were supplied or the materials were received at any part of the surface areas occupied by the Project.

**(4), (5)** Repealed AR 52/2000 s3.

AR 185/97 s7;52/2000;251/2001;223/2008

### Application and interpretation for cost rules

**7.1(1)** This section and sections 7.2 to 7.4 apply to a cost described in section 7(1) in relation to a capital asset, good or service, other than a capital asset, good or service obtained from a person who is not affiliated with the Project owner, operator or an affiliate of either.

**(2)** In this section and sections 7.2 to 7.4,

- (a) “amount charged to the Project” means, in relation to a capital asset, good or service, the lesser of any of the following that apply:
- (i) the price that a Project owner or operator charges other Project owners in relation to the capital asset, good or service;
  - (ii) the amount charged to a Project owner, operator or affiliate of either, by the person who provided the capital asset, good or service to the Project owner, operator or affiliate;
  - (iii) the amount reported by the Project owner or operator to the Crown in relation to the capital asset, good or service as an
    - (A) allowed cost in relation to the capital asset, good or service, or
    - (B) amount deducted in relation to the capital asset, good or service in the calculation of the unit price of an oil sands product;
- (b) “basic service” means, in relation to a Project, a service performed
- (i) in order for
    - (A) oil sands or oil sands products to be recovered or obtained pursuant to the Project, or
    - (B) cleaned crude bitumen to be obtained from oil sands products obtained pursuant to the Project, whether the obtaining of the cleaned crude bitumen occurs pursuant to the Project or otherwise,
- and
- (ii) utilizing a capital asset that is not part of the Project;
- (c) “cost of service” means, in respect of a service performed by any person, the actual cost to the person to perform the service, except that the portion of the actual cost attributable to the use of a capital asset to perform the service is
- (i) an amount determined in accordance with the Minister’s directions in respect of depreciation of the capital asset, and

- (ii) a rate of return determined in accordance with subsection (3) on the undepreciated portion of the cost of the capital asset.

**(3)** Unless otherwise specified by the Minister in any particular case, the rate of return referred to in subsection (2)(c)(ii) is

- (a) the return allowance rate provided for in section 90(7) of the *Mines and Minerals Act* that is applicable from time to time, in the case of a capital asset utilized to perform a basic service in relation to a Project, or
- (b) the return allowance rate referred to in clause (a) plus an additional amount, if any, specified by the Minister from time to time by order or otherwise in respect of the capital asset or the applicable class of capital asset, in the case of a capital asset utilized to perform any other kind of service.

**(4)** For the purposes of this section and sections 7.2 to 7.4,

- (a) the providing of thermal energy for the purposes of a Project is a service,
- (b) the transmission and distribution of electricity and the provision of system support services as defined in the *Electric Utilities Act* are services, and
- (c) electricity is a good.

AR 52/2000 s4;251/2001

#### **Cost of goods and services**

**7.2(1)** The cost of a good or service, other than a basic service, is,

- (a) where the Minister is satisfied that a fair market value can reasonably be determined for the good or service, the lesser of
  - (i) the amount charged to the Project for the good or service, and
  - (ii) the fair market value of the good or service,

or

- (b) where the Minister is satisfied that a fair market value cannot reasonably be determined for the good or service, and that the service is performed without utilizing a capital asset, the lesser of

- (i) the amount charged to the Project for the good or service,
- (ii) the actual cost incurred by the Project owner, operator or affiliate of either to produce the good or perform the service, if it is not obtained by the Project owner, operator or affiliate from another person, and
- (iii) the actual cost incurred by the person from whom the good or service was obtained by the Project owner, operator or affiliate of either to produce the good or perform the service.

**(2)** The cost of

- (a) a basic service, or
- (b) any other service for which the Minister is satisfied that a fair market value cannot reasonably be determined and that is performed utilizing a capital asset

is the lesser of the amount charged to the Project for the service and the cost of service of the person who performs the service.

**(3)** If a service is performed in order to produce a good referred to in subsection (1)(b) and that service is performed utilizing a capital asset, the portion of the actual cost incurred to produce the good that is attributable to the service is

- (a) the fair market value of the service, if the Minister is satisfied that a fair market value can reasonably be determined for the service, or
- (b) the cost of service of the person who performed the service, in any other case.

AR 52/2000 s4

**Fair market value**

**7.3(1)** Subject to this section, in determining for the purposes of section 7.2(1)(a) the fair market value of a good or service, other than the transporting of an oil sands product by means of a pipeline, the Minister may, without limiting any other method of determining fair market value, adopt

- (a) the price of comparable goods or services, if that price is published and generally adopted by buyers and sellers of such goods or services,

- (b) a price for comparable goods or service prescribed by the Minister pursuant to a regulation under the Act other than this Regulation, or
- (c) an average of the prices paid for comparable goods or services in transactions in which the buyers and sellers of the goods or services are not affiliates of each other.

**(2)** The Minister may adjust a price or average of prices referred to in subsection (1) to reflect the cost, if any, of delivery to the surface area of the Project from the place at which the price is determined.

**(3)** Subject to this section, in determining for the purposes of section 7.2(1)(a) the fair market value of transporting an oil sands product by means of a pipeline, the Minister may, without limiting any other method of determining fair market value, adopt

- (a) a tariff charged for the service, if the tariff is fixed or approved for such service by a regulatory authority having jurisdiction to do so,
- (b) the tariff charged for the service by the owner of the pipeline if, in the Minister's opinion,
  - (i) clause (a) does not apply,
  - (ii) the pipeline is subject to regulation on a complaints basis,
  - (iii) the tariff is generally agreed to and paid by persons who obtain the service of the pipeline and are not affiliated with the owner of the pipeline,
  - (iv) the tariff is just and reasonable in the circumstances,
  - (v) all tariffs charged for transporting oil sands products by means of the pipeline are published, and
  - (vi) no tariff or any other term for transporting oil sands products by means of the pipeline unjustly discriminates among persons seeking to obtain or obtaining such service,

or

- (c) the weighted average of the prices paid by persons who are not affiliated with the owner of the pipeline for comparable service, or if the Minister is satisfied no comparable service is provided, for transporting oil sands products by means of the pipeline, if, in the Minister's opinion,

- (i) clauses (a) and (b) do not apply,
- (ii) the pipeline is subject to regulation on a complaints basis,
- (iii) not less than 2/3 of the quantities of oil sands products transported by means of the pipeline during the period the weighted average is adopted are owned by persons who are not affiliated with the owner of the pipeline, and
- (iv) the weighted average of prices is just and reasonable in the circumstances.

(4) The Minister may adjust a tariff or weighted average of prices referred to in subsection (3) to reflect differences between the terms of service applicable in respect of the tariff or weighted average of prices and the terms of service applicable in respect of the transportation service actually provided.

(5) For the purposes of subsection (3), “subject to regulation on a complaints basis” means subject to a process pursuant to legislation whereby a customer or potential customer for the transportation service can complain regarding the charge for or terms of such service, or both, to a regulatory authority having jurisdiction to hear such a complaint and to fix the charge and terms of service.

(6) Subject to subsection (7), a price, an average of prices or a tariff may be adopted by the Minister pursuant to subsection (1) or (3) for such period or periods as the Minister may specify from time to time.

(7) A price, average of prices or tariff adopted by the Minister pursuant to subsection (1) or (3) ceases to apply prior to the end of the period or periods specified under subsection (6) if any requirement specified in subsection (1) or (3) with respect to the adoption of the price, average of prices or tariff ceases to be met.

AR 52/2000 s4

#### **Cost of capital assets**

**7.4(1)** The cost of a capital asset is the lesser of

- (a) the amount charged to the Project for the capital asset,
- (b) the fair market value of the asset, where the Minister is satisfied that a fair market value can reasonably be determined, and
- (c) the net book value of the asset

- (i) to the Project owner or operator, as the case may be, if the asset is not obtained by either from another person, or
- (ii) to any other person from whom the asset is obtained by the Project owner or operator,

when the asset is delivered to the Project site.

**(2)** The net book value of an asset for the purposes of this section is the undepreciated portion of the cost to the Project owner, operator or other person for whom net book value is being determined, according to the records of

- (a) the Department, if any amount payable or that would otherwise be payable, as the case may be, to the Crown under the *Mines and Minerals Act*, other than under this Regulation, has been reduced, satisfied, exempted from payment, waived or remitted on the basis of the whole or any portion of that cost, or
- (b) the Project owner, operator or other person, respectively, in any other case.

AR 52/2000 s4

#### **Revenue rules**

**8(1)** This section applies to any consideration that is received or receivable and that is part of a calculation or determination under this Regulation or section 90 of the *Mines and Minerals Act*.

**(2)** When consideration other than money is received or receivable, whether alone or in addition to money, the amount of the consideration is deemed to be the greater of

- (a) its fair market value, and
- (b) the value agreed to by the persons giving and receiving the consideration.

**(3)** When consideration, whether in the form of money or otherwise, is received or receivable by a Project owner, the operator or a person affiliated with either of them from another member of that group of persons, the amount of the consideration is deemed to be the greater of

- (a) the fair market value of the thing for which the consideration is received or receivable, and
- (b) the aggregate of the amount of money received or receivable and the amount determined in accordance with

subsection (2) with regard to any consideration other than money.

(4) When no consideration is received or receivable under a transaction, consideration in the amount of the fair market value of the thing for which no consideration is received or receivable is deemed to have been received or receivable.

AR 185/97 s8;251/2001

#### **Fair market value**

9 For the purposes of this Regulation, a reference to fair market value shall be the value determined by the Minister on the basis of transactions occurring in comparable open markets among persons who are not affiliated.

#### **GST and hedging**

10 The following shall be excluded from any cost, revenue, price, value, consideration or proceeds that is part of a calculation or determination under this Regulation or section 90 of the *Mines and Minerals Act*:

- (a) the amount of any taxes paid, payable or collected under Part IX of the *Excise Tax Act* (Canada) by or on behalf of the Project owners of a Project;
- (b) the amount of any revenues, payments and costs arising in relation to transactions that are, in the Minister's opinion, entered into to hedge price risk in relation to a commodity or money, but not including
  - (i) contracts of insurance, surety, guarantee or indemnity,
  - (ii) contracts for the forward disposition or acquisition of a commodity where delivery or receipt, respectively, of the commodity actually occurs under the contract, or
  - (iii) contracts that hedge price risk specifically in relation to allowed costs of a Project or currency required to pay such costs.

AR 185/97 s10;52/2000;251/2001

#### **GAAP**

11 Subject to this Regulation, Canadian generally accepted accounting principles shall apply in the calculation or determination of any amount under this Regulation.

**Other royalty liability**

- 12** Nothing in this Regulation operates to relieve a lessee from
- (a) the lessee's liability to the Crown under an agreement for the payment of royalty, or
  - (b) the lessee's liability under this Regulation to pay to the Crown the proceeds of royalty in respect of the Crown's royalty share of oil sands or an oil sands product.

**Application of this Regulation**

**12.1** Unless otherwise provided in this Regulation, this Regulation applies to

- (a) each Period of a Project that ends on or before December 31, 2008,
- (b) each oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product and disposed of, consumed or used on or before December 31, 2008, and
- (c) the determination of the Crown's royalty share, and of the proceeds payable in relation to the Crown's royalty share, of the oil sands products referred to in clause (b).

AR 223/2008 s53

**Oil Sands Royalty Regulation, 1984**

**13** The *Oil Sands Royalty Regulation, 1984* (AR 166/84) does not apply to Project substances recovered pursuant to a Project from the effective date of the Project until the approval under section 16(1) in respect of the Project is revoked.

**Experimental Oil Sands Royalty Regulation**

**14** If a Project or Project expansion includes the whole or any part of an experimental project as defined in the *Experimental Oil Sands Royalty Regulation* (AR 347/92), that regulation does not apply to oil sands and oil sands products recovered or obtained pursuant to the experimental project, or the part of the experimental project included in the Project or Project expansion on or after the effective date of the Project or Project expansion, as the case may be.

## Part 2 Projects

### Application for approval

**15(1)** The lessees of the agreements pursuant to which oil sands are to be recovered pursuant to a proposed Project may, on or before December 31, 2008, apply to the Minister for approval of the proposed Project for the purposes of this Regulation and section 90 of the *Mines and Minerals Act*.

**(2)** If a proposed Project includes the recovery of oil sands from oil sands rights not vested in the Crown, the application must also be made by the persons who, according to the records at the Land Titles Office, have the right to recover oil sands from the oil sands rights that are not vested in the Crown.

**(3)** The Project owners may, on or before December 31, 2008, apply for approval of an amendment to their Project.

**(4)** If a proposed amendment to a Project provides for a proposed Project expansion, the application for approval of the amendment must also be made by

- (a) the lessees of the oil sands rights with respect to any area and strata being added to the development area of the Project by the proposed expansion, and
- (b) the persons who, according to the records at the Land Titles Office, have the right to recover oil sands from any area and strata being added to the development area of the Project by the proposed expansion,

to the extent those lessees or persons are not already Project owners of the Project.

**(5)** A person who has made an application under this section in relation to a proposed Project, or a proposed amendment to a Project, must

- (a) whenever requested to do so by the Minister, consent to an examination of the records of the person that are or may be relevant to the determination of
  - (i) the prior net cumulative balance of the proposed Project or any proposed Project expansion, as of the effective date of the Project or of the Project expansion, as the case may be, or
  - (ii) the cumulative cost and cumulative revenue of a Project that is being amalgamated with another

Project pursuant to the amendment, as of the effective date of the amendment,

and

- (b) co-operate with and give all reasonable assistance to the person conducting the examination requested under clause (a) for the purpose of enabling that person to conduct the examination satisfactorily.

AR 185/97 s15;251/2001;223/2008

#### **Approval of Project or amendment**

**16(1)** The Minister may, on or before December 31, 2008, approve a proposed Project or a proposed amendment to a Project unless

- (a) the proposed Project or a Project expansion proposed by the amendment contemplates the recovery of oil sands from oil sands rights not vested in the Crown, and
- (b) the Minister has not entered into a unit agreement that provides for the recovery of oil sands or oil sands products from those oil sands rights and from oil sands rights vested in the Crown.

**(2)** An approval under subsection (1) must specify the following:

- (a) if the approval is in respect of a Project,
  - (i) a description of the Project,
  - (ii) the effective date of the Project,
  - (iii) the prior net cumulative balance of the Project,
  - (iv) whether or not the Project is a Qualifying Joint Venture Project,
  - (v) the initial operator of the Project, and
  - (vi) any terms and conditions to which the approval of the Project is made subject;
- (b) if the approval is in respect of an amendment to a Project,
  - (i) an amended description of the Project,
  - (ii) the effective date of the amendment,

- (iii) the prior net cumulative balance of any Project expansion, if the amendment provides for such an expansion,
- (iv) whether or not the Project, if it was a Qualifying Joint Venture Project prior to the amendment, remains a Qualifying Joint Venture Project despite the amendment, and
- (v) any terms and conditions to which the approval of the amendment is made subject.

**(3)** Subject to subsection (4), the effective date specified for a proposed Project or proposed amendment to a Project must not be earlier than any of the following:

- (a) the first day of the month in which the application for approval of the Project or amendment is received by the Minister;
- (b) the first day of the month following the month in which the proposed Project or amendment is approved by the Regulator under the *Oil Sands Conservation Act*;
- (c) the first day of the month that precedes by 9 months the month in which the Project or amendment is approved by the Minister.

**(4)** Repealed AR 223/2008 s53.

AR 185/97 s16;223/2008;89/2013

#### **Project description**

**17(1)** A description or amended description specified for a Project under section 16(2)(a)(i) or (b)(i)

- (a) must correspond to a scheme or operation approved under the *Oil Sands Conservation Act*,
- (b) subject to clause (c), must not include any processing plant, well or other facility not approved for development under the *Oil Sands Conservation Act*,
- (c) may include wells and related transportation and measurement facilities not presently approved for development under the *Oil Sands Conservation Act* if the wells and facilities are on lands expressly contemplated for future development by the approval under the *Oil Sands Conservation Act*, and
- (d) must include a description of

- (i) the area and strata from which oil sands may be recovered pursuant to the Project,
- (ii) the surface areas occupied by the Project, and
- (iii) the facilities included in the Project.

**(2)** If the ownership of a processing plant is held by one or more Project owners of a Project along with one or more persons who are not Project owners, the Minister may include in the facilities of the Project a proportion of the plant that is the same as the proportion of the ownership of the plant that is held by Project owners.

**(2.1)** Subject to subsection (2.2), the Minister may include in the facilities of a Project the whole or any part of a cogeneration plant or a proportion of the plant or part of the plant.

**(2.2)** In making a decision under subsection (2.1), the Minister must, without limiting any other factors that the Minister may consider, take into consideration the following:

- (a) the extent to which thermal energy, electricity or both, produced from the plant will, in the Minister's opinion, be utilized for the purposes of the Project;
- (b) the proportionate ownership of the plant by Project owners and persons who are not Project owners, where the plant is owned by both kinds of persons.

**(3)** In specifying a description or amended description for a Project under section 16(2)(a)(i) or (2)(b)(i), the Minister must, without limitation, take into consideration at least the following:

- (a) whether the activities, facilities and other assets of the Project are all under common management;
- (b) whether any processing plant of the kind described in section 1(z)(iii) (in this subsection called an "upgrader") proposed to be included in the Project is located outside of Alberta or includes facilities to process synthetic crude oil into more refined products;
- (c) whether each part of the Project, other than an upgrader, is or is not more than 50 kilometres distant from every other part of the Project;
- (d) whether the inclusion in the Project of each part of the Project can be demonstrated to be economically justified, without taking into consideration any royalty that may be or become payable under the *Mines and Minerals Act*;

- (e) in a case where
  - (i) any area or strata containing oil sands rights,
  - (ii) any surface areas, or
  - (iii) any facilities other than an upgrader,that are proposed to be added to a Project by a proposed amendment will be more than 50 kilometres distant from every other part of the Project, whether those areas, strata or facilities are substantially geographically contiguous with other parts of the Project that are not more than 50 kilometres distant from any other part of the Project.
- (f) the impact of the proposed description of the Project or of the proposed amended description of the Project on royalty payable to the Crown.

AR 185/97 s17;52/2000;95/2007

#### **Prior net cumulative balance**

**18(1)** In determining the prior net cumulative balance of a Project or of a Project expansion the Minister must, without limitation, take into consideration at least the following:

- (a) with respect to amounts to be included in determining prior net cumulative balance,
  - (i) the Crown's share of
    - (A) the costs of the Project or of the expansion, respectively, incurred during the period of 3 years preceding the effective date of the Project or expansion,
    - (B) the costs of the Project or of the expansion, respectively, incurred during the period comprising the whole or the portion of the 4th and 5th years preceding the effective date of the Project or expansion, as the case may be, during which diligent and substantial action was, in the Minister's opinion, taken toward obtaining the approval of the Regulator under the *Oil Sands Conservation Act* for a scheme or operation included in the Project or expansion subsequent to the 4th year preceding the effective date of the Project or expansion, as the case may be, and

- (C) the costs of the assets of the Project or of the expansion, respectively, incurred prior to the periods referred to in paragraphs (A) and (B), to the extent the Minister is satisfied that the use of the assets in relation to the Project after the effective date will clearly result in significant savings of costs to the Project,
- (ii) the aggregate of the proceeds of royalty paid to the Crown
  - (A) pursuant to an interim Crown Agreement on Project substances recovered from the development area of the Project or of the expansion, as the case may be, prior to the effective date of the Project or expansion, respectively,
  - (B) pursuant to the *Oil Sands Royalty Regulation, 1984* (AR 166/84) on Project substances recovered from the development area of the Project or expansion, as the case may be, prior to the effective date of the Project or expansion, respectively, to which an interim Crown Agreement would have applied had the Agreement not expired, and
  - (C) pursuant to the *Oil Sands Royalty Regulation, 1984* (AR 166/84) on Project substances recovered from the development area of the Project or expansion, as the case be, prior to the effective date of the Project or expansion, respectively,

where the corresponding costs of so obtaining those substances have been included in prior net cumulative balance, and

- (iii) the amount of return allowance, if any, that should be included in prior net cumulative balance of the Project or expansion, as the case may be, in respect of the term of an interim Crown Agreement, if any, to which the whole or a substantial part of the Project or expansion is or was subject;
- (b) with respect to amounts to be excluded or deducted in determining prior net cumulative balance,
  - (i) the costs referred to in clause (a)(i)(A), (B) and (C),

- (A) incurred during any portion of the periods referred to in those clauses when development of oil sands in the development area of the Project or the area and strata to be added to the development area by virtue of the Project expansion, as the case may be, was, in the Minister's opinion, substantially suspended or abandoned,
  - (B) incurred to recover or obtain oil sands or oil sands products to which the *Experimental Oil Sands Royalty Regulation* (AR 347/92) applied, or
  - (C) the whole or any part of which would not be allowed costs under Schedule 1 or 2, as the case may be, if they had been incurred after the effective date of the Project or Project expansion, as the case may be,
- (i.1) any costs in respect of which allocable costs have been established,
- and
- (ii) the Crown's share of
- (A) any amounts received or receivable in respect of the Project or expansion, as the case may be, during the periods referred to in clause (a)(i)(A), (B) and (C) that, had they been received or receivable after the effective date of the Project or expansion, respectively, would have comprised other net proceeds of the Project, and
  - (B) any consideration received or receivable during the periods referred to in clause (a)(i)(A), (B) and (C) in respect of Project substances if the Minister is of the opinion that costs incurred to recover such substances are included in prior net cumulative balance of the Project pursuant to clause (a).

**(2)** If the amounts to be included in prior net cumulative balance under subsection (1)(a) exceed, or are exceeded by, the amounts to be excluded or deducted under subsection (1)(b) in determining prior net cumulative balance, the amount of the prior net cumulative balance shall be treated as a positive amount or negative amount, respectively.

AR 185/97 s18;250/2004;89/2013

**Qualifying Joint Venture Project**

**19** A Project may be specified as a Qualifying Joint Venture Project if the Minister is satisfied that

- (a) the Project is owned by 2 or more Project owners by way of a joint venture of those owners,
- (b) the operation and management of the Project will be the sole business activity that the person who is appointed as the operator of the Project is engaged in,
- (c) the joint venture referred to in clause (a) is established for the sole purpose of producing oil sands products as described in the approvals of the Regulator for the schemes, operations and processing plants and other facilities comprising the Project,
- (d) the proportionate ownership of each Project owner, relative to the ownership of the other Project owners, is
  - (i) the same with respect to every agreement, oil sands right not vested in the Crown and facility, that is included in the Project, and
  - (ii) the same as the proportion that the specified undivided interest held by the Project owner in those agreements, according to the records of the Department, is of all the specified undivided interests in those agreements,
- (e) the person appointed as operator of the Project is assessed for the purposes of the *Income Tax Act* (Canada) as having no income and no deductions,
- (f) no Project owner or group of affiliated Project owners holds a majority of participating interests in the Project, and
- (g) there is a substantial degree of independence among the Project owners.

AR 185/97 s19;89/2013

**Amendment of approval**

**20** The Minister may, on or before December 31, 2008, amend or revoke an approval granted under section 16(1) but may not amend an approval in respect of the items referred to in section 16(2)(a)(i) or (b)(i), unless

- (a) the Project owners have applied to the Minister for an amendment of the approval in that respect, or

- (b) the nature of the amendment is to delete an asset from the description of the Project that has been disposed of to a person who is not a Project owner.

AR 185/97 s20;223/2008

## **Part 3 Royalty**

### **Division 1 Unit Price and Other Net Proceeds**

#### **Unit price**

**21(1)** In this section,

- (a) “oil sands product”, in addition to the meaning given to it in section 1(q), includes blended bitumen that contains crude bitumen obtained pursuant to a Project;
- (b) “third party disposition” means
- (i) the initial disposition of an oil sands product obtained pursuant to a Project, made by or on behalf of a Project owner or the operator of the Project to a person who is not an affiliate of either of them, or
  - (ii) a disposition of an oil sands product obtained pursuant to a Project, made by or on behalf of a person to whom the product was initially disposed of by or on behalf of the Project owner or operator, if the person is an affiliate of the Project owner or operator and disposes of the product to another person who is not an affiliate of the person or of the Project owner or operator.

**(2)** Subject to this section, the unit price applicable in respect of a period of time to an oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product is the price calculated in accordance with the following formula:

$$\text{Unit price} = \frac{\text{TC} - \text{HC}}{\text{TD}}$$

where

TC is the total consideration, calculated in accordance with the Minister’s directions, received or receivable by the seller under all third party dispositions of the oil sands product during that

period, whether those dispositions occur before or after the oil sands product is further processed;

HC is all handling charges, export charges, pipeline tariff charges, processing charges and charges of a similar nature that

are paid to transport the oil sands product so disposed of from the royalty calculation point for the product to the place where those dispositions occur, and to process the oil sands product at any place between those two places, and

are not allowed costs of the Project or costs taken into account in determining prior net cumulative balance of the Project or of a Project expansion;

TD is the total quantity of the oil sands product so disposed of.

**(3)** Despite subsection (2), if the Minister is of the opinion that the quantity of an oil sands product delivered at a royalty calculation point and disposed of in third party dispositions is insufficient to determine a reasonably accurate unit price pursuant to subsection (2), the unit price for the product shall be the price determined by the Minister as the fair market value of the product.

**(4)** Despite subsection (2), if the oil sands product for which a unit price is calculated is crude bitumen that is not cleaned crude bitumen (in this subsection called “dirty crude bitumen”),

(a) the fair market value of the cleaned crude bitumen that is or could be obtained from the dirty crude bitumen shall be used for the purposes of the calculation of unit price rather than the consideration received or receivable from dispositions of the dirty crude bitumen, and

(b) the charges referred to in subsection (2) shall, for the purposes of the calculation of unit price, include charges of the kind described in that subsection that the Minister is of the opinion would have been incurred to transport the dirty crude bitumen from the place at which it is disposed of to the place at which it is or could be processed to produce cleaned crude bitumen, and to so process the dirty crude bitumen to produce cleaned crude bitumen.

**(5)** Charges referred to in subsection (2) or (4) shall not include any marketing costs or charges, brokerage fees or other like costs or charges.

**Other net proceeds**

**22(1)** The “other net proceeds” of a Project for a Period are

(a) the aggregate of the amounts described in subsection (2),  
excluding

(b) any amounts described in subsection (3).

**(2)** The following are the amounts for the purposes of subsection (1)(a):

(a) any consideration received or receivable during the Period from the sale, lease, license or other disposition of any

(i) substances or assets of the Project, other than oil sands products, or

(ii) technology of the Project,

costs of which are allowed costs or were costs taken into account in determining prior net cumulative balance of the Project;

(b) any proceeds received or receivable during the Period

(i) under a policy of insurance, to the extent of the proportion of the proceeds that is the same as the proportion of the corresponding insurance premiums that are allowed costs or were costs taken into account in determining prior net cumulative balance of the Project, or

(ii) pursuant to a judgement of a court, or in settlement of litigation or threatened litigation, in relation to the Project, other than a judgment or litigation or threatened litigation against the Crown in respect of amounts paid or payable under section 90 of the *Mines and Minerals Act* or this Regulation in relation to the Project;

(c) any consideration received or receivable during the Period for transporting, or for granting the right to transport, by means of the transportation facilities of the Project, oil sands or oil sands products not owned by or on behalf of the Project owners;

(c.1) any consideration received or receivable during the Period for

- (i) processing, or granting the right to process, in a processing plant, the whole or a proportion of which is included in the facilities of the Project, oil sands or oil sands products not owned by or on behalf of the Project owners, or
- (ii) producing steam in a cogeneration plant, or a part of a cogeneration plant, the whole or a proportion of which is included in the facilities of the Project, that is not utilized for the purposes of the Project,

to the extent that such processing or production utilizes any part of the capacity of the plant or of the part of the plant, as the case may be, that corresponds to the proportion of the plant or part, respectively, included in the facilities of the Project;

- (d) the aggregate of the products obtained by multiplying
  - (i) each quantity of
    - (A) blended bitumen that contains crude bitumen recovered pursuant to the Project from substances that are not Project substances but that are owned by or on behalf of the Project owners, or
    - (B) each oil sands product, other than crude bitumen referred to in paragraph (A), recovered pursuant to the Project from substances that are not Project substances but that are owned by or on behalf of the Project owners,

that is delivered during the Period at a royalty calculation point for the crude bitumen or other oil sands product, as the case may be,

by

- (ii) the unit price applicable to the quantity;
- (e) the amount, if any, by which the other net proceeds determined for the Project pursuant to this section for the preceding Period exceed the allowed costs of the Project for that preceding Period, if that preceding Period is a post-payout Period;
- (f) an amount determined by the Minister as the fair market value attributable to the use of an asset of the Project during the Period, other than for the purposes of the Project;

- (g) the net amount of any other proceeds and recoveries relating to the Project.
- (3)** The following are the amounts for the purposes of subsection (1)(b):
- (a) any consideration received or receivable during the Period for a disposition of a participating interest, an overriding royalty interest, a carried interest, a net profit interest or any other like interest in the Project;
  - (b) Project revenue of the Project for the Period;
  - (c), (d) repealed AR 52/2000 s7;
  - (e) the consideration received or receivable during the Period for the sale or other disposition of an asset of the Project from a Project owner to another Project owner.

AR 185/97 s22;52/2000;251/2001

## **Division 2 Crown's Royalty Share**

### **Royalty calculation point**

**23(1)** If crude bitumen that is a Project substance is disposed of without being processed into other oil sands products, the royalty share of the crude bitumen shall be calculated at the last point of measurement before the crude bitumen is permanently removed from the surface areas occupied by the Project.

**(2)** If cleaned crude bitumen

- (a) is obtained from oil sands or crude bitumen that is a Project substance without having first been disposed of and whether or not the processing plant at which it is obtained is part of the Project, and
- (b) is then
  - (i) disposed of without being processed into one or more other oil sands products,
  - (ii) delivered to a processing plant or other facility that is not part of the Project or into a transportation facility for delivery to a processing plant or other facility that is not part of the Project, or
  - (iii) consumed or used, other than in the Project,

the royalty share of the cleaned crude bitumen shall be calculated at the last point of measurement before it is delivered from the processing plant referred to in clause (a), at which it is obtained.

**(3)** If an oil sands product, other than crude bitumen or cleaned crude bitumen,

- (a) is obtained at a processing plant that is part of the Project from crude bitumen, cleaned crude bitumen or another oil sands product that is a Project substance without having first been disposed of, and
- (b) is then
  - (i) disposed of without being further processed into one or more other oil sands products at a processing plant that is part of the Project,
  - (ii) delivered to a processing plant or other facility that is not part of the Project or into a transportation facility for delivery to a processing plant or other facility that is not part of the Project, or
  - (iii) consumed or used, other than in the Project,

the royalty share of the oil sands product shall be calculated at the last point of measurement before it is delivered from the processing plant referred to in clause (a).

#### **Royalty free and clear**

**24** The royalty on oil sands products shall be free and clear of all deductions.

#### **Disposition of Crown's royalty share**

**25** If any oil sands product that is subject to the payment of royalty to the Crown under this Regulation is sold or otherwise disposed of to another person, unless the Minister otherwise directs in a particular case,

- (a) the Project owners, and any agent of the Project owners, who actually sells or otherwise disposes of the oil sands product must act as the agent of the Crown for the purpose of selling or otherwise disposing of the Crown's royalty share of the oil sands product, and
- (b) the Crown's royalty share of the oil sands product must be included in the sale or other disposition.

**Limited agency**

**26** 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 section 25.

## **Part 4 Reporting and Payment**

### **Division 1 Reporting**

**Operator's forecast**

**27** The operator of a Project must, unless the Minister otherwise directs in a particular case, furnish to the Minister by December 15 of each calendar year prior to 2008 a report that contains the operator's forecast of the information regarding the Project called for by the form of the report and relating to

- (a) the Periods that occur during the calendar year and that may occur during the following 4 calendar years, and
- (b) when the Project payout date of the Project is expected to occur.

AR 185/97 s27;223/2008

**Monthly report**

**28(1)** The operator of a Project must, unless the Minister otherwise directs in a particular case, furnish a report to the Minister for each month of a Period ending on or before December 31, 2008, containing the information regarding the Project called for by the form of the report.

**(2)** A report under subsection (1) must be furnished by the last day of the month following the month for which the report is required.

**(3)** Despite subsections (1) and (2), a report under subsection (1) must, if the report is in respect of a month that precedes the month during which the Project is first approved under section 16, be furnished by the last day of the month following the month during which the Project is so approved.

**(4)** A report required to be furnished under section 27 or subsection (1) of this section may call for the furnishing of actual information, estimated or forecasted information or any combination of actual and estimated or forecasted information.

AR 185/97 s28;223/2008

**End of Period statement**

**29(1)** The operator of a Project must, unless the Minister otherwise directs in a particular case, furnish to the Minister within 3 months after the end of each Period ending on or before December 31, 2008 a statement in respect of the Period containing the information called for by the form of the statement.

**(2)** A statement under subsection (1)

- (a) must be signed by the operator of the Project or by the operator's representative, and
- (b) unless the Minister otherwise directs, must, if the aggregate quantity of crude bitumen and cleaned crude bitumen recovered pursuant to the Project and delivered at a royalty calculation point during the Period, whether as part of blended bitumen or otherwise, is greater than the product of the number of days in the Period and 10,000 barrels per day, be accompanied by
  - (i) an opinion by the auditors retained by the operator, and
  - (ii) if the Project is not a Qualifying Joint Venture Project, an opinion by the auditors retained by each Project owner to report to the shareholders of the Project owner,

as to whether the operator, in the case of the opinion referred to in subclause (i), and the Project owner, in the case of the opinion referred to in subclause (ii), have complied with the requirements of this Regulation, and whether the information submitted in the statement is presented fairly in accordance with section 11.

AR 185/97 s29;223/2008

**Records**

**30** The Project owners and the operator of a Project must keep and maintain, and cause those persons affiliated with them to keep and maintain, records satisfactory to the Minister relating to the Project or used to prepare any application, report, statement or opinion permitted or required to be submitted or furnished under this Regulation.

## Division 2 Payment

### Payment of royalty proceeds

**31(1)** The operator of a Project must, in respect of the Crown's royalty share payable under section 90(2) of the *Mines and Minerals Act* for each oil sands product that

- (a) is recovered from the development area of the Project, and
- (b) is delivered at a royalty calculation point during a month of a pre-payout Period ending on or before December 31, 2008,

pay to the Crown the proceeds of disposition for that royalty share on or before the last day of the month following the month in which it is disposed of, consumed or used.

**(2)** Subject to subsections (3) to (8), the operator of a Project must, in respect of the Crown's royalty share payable under section 90(3) of the *Mines and Minerals Act* for each oil sands product that

- (a) is recovered from the development area of the Project, and
- (b) is delivered at a royalty calculation point during a post-payout Period ending on or before December 31, 2008,

pay to the Crown the proceeds of disposition for that royalty share on or before the last day of the 4th month following the Period in which it is disposed of, consumed or used.

**(3)** The proceeds of disposition for the purposes of subsections (1) and (2) shall, subject to subsections (3.1) and (3.2), respectively, be calculated by

- (a) multiplying the quantity of the Crown's royalty share of the oil sands product so disposed of, consumed or used by the unit price applicable to the quantity (or, if the product is cleaned crude bitumen contained in blended bitumen, the unit price applicable to the blended bitumen), and
- (b) if the oil sands product is cleaned crude bitumen that is contained in blended bitumen when so disposed of, consumed or used, deducting from the amount determined under clause (a) the cost of diluent for the diluent included in the quantity.

**(3.1)** The aggregate of the proceeds payable under subsection (1) in respect of a Project for a month shall be reduced to an amount

not less than zero by subtracting the allocable costs established and allocated to the Project during the month.

**(3.2)** The aggregate of the proceeds payable under subsection (2) in respect of a Project for a Period shall be reduced to an amount not less than zero by subtracting the allocable costs established and allocated to the Project during the months of the Period.

**(4)** The operator of a Project must pay to the Crown in respect of each month of a post-payout Period ending on or before December 31, 2008, as an instalment with respect to the aggregate of the proceeds required to be paid by the operator under subsection (2) for the Period as reduced under subsection (3.2), the amount calculated by subtracting from the greater of 1% of the gross revenue of the Project for the portion of the Period ending with the month and the amount calculated in respect of the Project for the month in accordance with subsection (4.1),

- (a) the aggregate of the amounts paid by the operator under this subsection in respect of the preceding months of the Period and not repaid under subsection (7), and
- (b) if the amount remaining after subtracting the aggregate amount referred to in clause (a) is greater than zero, the lesser of the amount remaining and the allocable costs established and allocated to the Project during the month.

**(4.1)** The amount referred to in subsection (4) to be calculated in accordance with this subsection for the Project for a month of a post-payout Period shall be calculated in accordance with the following formula:

$$P = \frac{.25ENR}{EGR} \times GR$$

where

P is the amount to be paid under subsection (4) in respect of the month, prior to subtracting the amounts referred to in subsection (4)(a) and (b) in respect of the month;

ENR is the amount estimated in the report furnished under section 28(1) by the operator for the month as the net revenue of the Project for the Period;

EGR is the amount estimated in the report furnished under section 28(1) by the operator for the month as the gross revenue of the Project for the Period;

GR is the gross revenue of the Project for the portion of the Period ending with the month.

(5) An amount required to be paid by the operator of a Project to the Crown under subsection (4) in respect of a month of a Period must be paid by the last day of the following month.

(6) If the amount required to be paid by the operator under subsection (4) in respect of a month of a Period is a negative amount, the amount must, subject to subsection (7), be deducted by the operator from the amounts required to be paid by the operator under subsection (4) in respect of the next ensuing month or months of the Period until the amount is fully deducted.

(7) If the amount required to be deducted under subsection (6) is, in the Minister's opinion, likely to exceed the amounts payable by the operator under subsection (4) in the remaining months of the Period, the amount must be paid by the Minister to the operator by the last day of the month following the month in which the report provided under section 28(1) first identifies the amount.

(8) If the aggregate of the proceeds payable to the Crown under subsection (2) in respect of the royalty share disposed of during a Period as indicated in a statement furnished under section 29(1) exceeds the proceeds paid to the Crown under subsection (4) that have not been repaid under subsection (7) in respect of the months of the Period, the operator must pay the excess amount to the Crown by the last day of the 4th month following the end of the Period.

(9) If the aggregate of the proceeds payable to the Crown under subsection (2) in respect of the royalty share disposed of during a Period as indicated in a statement furnished under section 29(1) is less than the proceeds paid to the Crown under subsection (4) that have not been repaid under subsection (7) in respect of the months of the Period, the Minister must pay the deficiency to the operator by the last day of the 4th month following the end of the Period.

(10) A reference in this section to "the last day of the month" means, in respect of the month of March, the last day of March on which the offices of the Department are open.

AR 185/97 s31;251/2001;250/2004;47/2007;223/2008

### **Division 3**

#### **Penalties and Interest**

##### **Penalties**

**32(1)** If an operator of a Project is required to furnish to the Minister any of the following and fails to do so by the respective dates required by this Regulation, the Minister may by notice

impose on the operator a penalty of \$1000 for each month or part of a month during which the failure continues:

- (a) a report required to be furnished under section 27 or 28;
- (b) a statement required to be furnished under section 29(1);
- (c) an auditors' opinion required to be furnished under section 29(2)(b).

**(2)** The Minister may waive a penalty imposed under subsection (1), on being satisfied that the failure to furnish the report, statement or opinion by the deadline was due to circumstances beyond the control of the operator required to furnish it.

**(3)** Where, as a result of an audit or examination conducted by or on behalf of the Minister under the Act, the Minister determines that the proceeds of royalty actually payable to the Crown in respect of a Period ending on or before December 31, 2008 on oil sands products recovered from the development area of a Project are greater than the aggregate proceeds paid to the Crown in respect of such royalty, the Minister may give a notice to the operator describing the deficiency and what, in the Minister's opinion, was the cause giving rise to the deficiency.

**(4)** If the Minister gives a notice under subsection (3) to an operator in respect of a Period, and

- (a) has previously given another notice to the operator under subsection (3) in respect of a deficiency for not more than one earlier Period where the cause giving rise to the whole or a part of the deficiency for the earlier Period is, in the Minister's opinion, the same as or similar to the cause giving rise to the whole or a part of the deficiency for the Period first referred to in this subsection, or
- (b) has previously given notices to the operator under subsection (3) for more than one earlier Period in respect of the deficiencies for those earlier Periods where the cause giving rise to the whole or a part of the deficiencies for those earlier Periods is, in the Minister's opinion, the same as or similar to the cause giving rise to the whole or a part of the deficiency for the Period first referred to in this subsection,

the Minister may impose on the operator a penalty in an amount not exceeding

- (c) 10%, in a case where clause (a) applies, or
- (d) 50%, in a case where clause (b) applies,

of the whole or that part, as the case may be, of the deficiency for the Period first referred to in this subsection that the Minister considers attributable to that cause.

(5) The Minister may waive the whole or a part of a penalty imposed under subsection (4) if the Minister is of the opinion that the circumstances warrant such a waiver.

(6) No penalty may be imposed under subsection (4) if the amount of the penalty is less than \$1000.

(7) A penalty imposed by the Minister under subsection (1) or (4) must be paid within 30 days after the Minister gives the operator notice of imposition of the penalty.

AR 185/97 s32;223/2008

### Interest

**33(1)** If any of the following amounts are not paid by an operator of a Project by the date required by this Regulation, interest is payable by the operator to the Crown in accordance with this section on the amount, computed from the day following the due date until the day the amount is paid to the Crown:

- (a) an amount required to be paid by the operator under section 31(1) or (4), 38.1(3) or 38.2(2) or (7) in respect of the Project;
- (b) a penalty required to be paid by the operator under section 32 in respect of the Project;
- (c) any interest required to be paid under this section by the operator in respect of the Project.

(2) Interest is payable by the operator of a Project to the Crown in accordance with this section on any of the following amounts required to be paid in respect of the Project, computed from the day following the last day of the 4th month following the Period in respect of which the amount is required to be paid until the amount is paid to the Crown:

- (a) an amount required to be paid by the operator under section 31(2) or (8) in respect of the Project;
- (b) the amount of a deficiency referred to in section 32(3) in respect of the Project;
- (c) the amount of any underpayment of proceeds of royalty payable in respect of a Period ending on or before December 31, 2008 to the Crown in respect of oil sands products recovered from the development area of the

Project, other than an amount described in clause (a) or (b), where the underpayment is identified in a recalculation by the Minister under the *Mines and Minerals Act*.

**(3)** Interest payable under this section by the operator of a Project to the Crown in relation to any amount must be paid by the last day of the month following the month in which the due date prescribed in this Regulation for payment of the amount occurs.

**(4)** Interest is payable by the Crown to the operator of a Project in accordance with this section on

- (a) an amount required to be paid by the Crown to the operator under section 31(7) in respect of the Project, computed from the day following the last day of the Period in respect of which the amount is required to be paid, and
- (b) the amount of
  - (i) any deficiency payable under section 31(9), or
  - (ii) any overpayment of proceeds of royalty payable in respect of a Period ending on or before December 31, 2008 by the operator to the Crown in respect of oil sands products recovered from the development area of the Project, other than an amount described in subclause (i) or clause (a), where the overpayment is identified in a recalculation by the Minister under the *Mines and Minerals Act*,

computed from the day following the last day of the 4th month following the Period in respect of which the deficiency is payable or overpayment has been paid, respectively,

until the date the Minister requisitions a cheque for the amount or notifies the operator to deduct the amount from an amount required to be paid by the operator under this Regulation.

**(5)** For the purposes of this section,

- (a) interest payable to or by the Crown on any amount is payable, subject to subsection (1)(c), on a simple interest basis on the balance of that amount remaining unpaid from time to time until the date on which the entire balance of the unpaid amount is received by the Minister or dealt with by the Minister in accordance with subsection (4), respectively, and

- (b) if interest is payable under this section by or to the Crown 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.

(6) Repealed AR 262/97 s36.

AR 185/97 s33;262/97;223/2008

## **Division 4 Application of Payments**

### **Application of payments**

**34** Unless the Minister directs otherwise, if money is paid to the Crown by the operator of a Project on or before December 31, 2008, the money must be applied in the following order:

- (a) first, on penalties owing by the operator under this Regulation;
- (b) 2nd, on interest owing by the operator under this Regulation;
- (c) 3rd, on proceeds of royalty owing by the operator under this Regulation.

AR 185.97 s34;223/2008

## **Part 5 Disputes**

### **Referral of disputes**

**35** If

- (a) the Minister specifies terms and conditions under which the Minister will, pursuant to section 7 of the *Government Organization Act*, establish a committee or board to hear a dispute between the Minister and the Project owners or operator of a Project with respect to a matter under this Regulation, and
- (b) the operator of a Project makes a written request, in accordance with those terms and conditions, to refer a dispute to such a committee or board that is of a kind permitted by the terms and conditions to be so referred,

the Minister shall not make a decision with respect to the matter in dispute until the Minister has established the committee or board,

the matter has been referred to the committee or board and its recommendations have been received and considered by the Minister.

## **Part 6 Transitional Provisions**

### **Long term Crown Agreements**

**36(1)** In this section,

- (a) “Alberta Crown Agreement” means the Alberta Crown Agreement, as amended from time to time, referred to in Order in Council numbered O.C. 469/76;
- (b) “Allowed Cumulative Project Costs”, “Allowed Cumulative Project Cost”, “Cumulative Deemed Gross Revenue”, “Cumulative Return Allowance” and “Date of Project Payout” have, in respect of a Project that was subject to a long term Crown Agreement on the day preceding the effective date of the Project, the same meaning as in the long term Crown Agreement;
- (c) “long term Crown Agreement” means a contract under section 9 of the *Mines and Minerals Act* designated by the Minister as a long term Crown Agreement for the purposes of this section;
- (d) “return allowance rate” means in respect of any period of time, the return allowance rate determined in accordance with section 90(7) and (8) of the *Mines and Minerals Act* in relation to that period of time.

**(2)** If any of the following Projects are approved under section 16 or deemed in a contract under section 9 of the Act to have been approved for the purposes of this Regulation, the effective date of the Project is, despite section 1(dd), deemed to be the Project payout date for the Project:

- (a) a Project that comprises or includes a project that was subject to a long term Crown Agreement up to the day preceding the effective date of the Project and had a Date of Project Payout that occurred before that effective date;
- (b) a Project that comprises or includes the “Oil Sands Project”, as defined in the Alberta Suncor (O.S.G.) Crown Agreement, as amended from time to time, referred to in Order in Council numbered O.C. 155/88;
- (c) a Project that comprises or includes the Syncrude Project within the meaning of the Alberta Crown Agreement.

(3) If an excess amount referred to in section 301(3) of a long term Crown Agreement arises in respect of a project for the last Period, as defined in the Agreement, preceding the effective date of a Project that comprises or includes that project, the aggregate of

- (a) the excess amount, and
- (b) the amount determined by multiplying the return allowance rate for that Period by
  - (i) the product of 183/365 and the excess amount, if an excess amount referred to in section 301(3) of the Agreement did not also arise in respect of the project for the preceding Period, as defined in the Agreement, or
  - (ii) the excess amount, if an excess amount referred to in section 301(3) of Agreement also arose in respect of the project for the preceding Period, as defined in the Agreement,

is an allowed cost of the Project for the Period that commences on the effective date of the Project.

(4) Repealed AR 223/2008 s53.

AR 185/97 s36;251/2001;223/2008

#### **Amalgamated Project**

**37(1)** In this section and in section 4(f) of Schedules 1 and 2,

- (a) “amalgamated Project” means the Project that arises from the amalgamation of 2 or more Projects pursuant to an amendment approved under section 16(1);
- (b) “amendment Period” means the Period of a Project during which the effective date of an amendment to the Project occurs that amalgamates it with one or more other Projects to form an amalgamated Project;
- (c) “first amalgamated Period” means in respect of an amalgamated Project that arises from the amalgamation of 2 or more Projects pursuant to an amendment approved under section 16(1), the period of time that commences on the earliest day that an amendment Period of those Projects commences, and that ends on the earlier of
  - (i) the last day of the calendar year during which the effective date of the amendment occurs, and

- (ii) the date on which the approval under section 16(1) in respect of the amalgamated Project is revoked.

**(2)** If, as of the day preceding the effective date of an amendment approved under section 16(1) that amalgamates 2 or more Projects, the Project payout date has occurred for at least one of the Projects being amalgamated,

- (a) the amalgamated Project is deemed to be a Project for which the Project payout date has occurred, and
- (b) the net revenue and net loss of the amalgamated Project for its first amalgamated Period shall be determined on the basis of
  - (i) the aggregate allowed costs, the aggregate Project revenues and the aggregate other net proceeds, of the Projects being amalgamated, for the portions of their respective amendment Periods that precede the effective date of the amendment, and
  - (ii) the allowed costs, Project revenue and other net proceeds of the amalgamated Project for the portion of the first amalgamated Period of the Project that commences on the effective date of the amendment.

**(3)** If, as of the day preceding the effective date of an amendment approved under section 16(1) that amalgamates 2 or more Projects, the Project payout date has not occurred for any of the Projects,

- (a) the amalgamated Project is deemed as of the effective date to be a Project for which the Project payout date has not occurred, and
- (b) the aggregate of the cumulative costs of the Projects as of the day preceding the effective date of the amendment and the aggregate of the cumulative revenues of the Projects as of the same day shall, for the purpose of determining the Project payout date of the amalgamated Project, be the cumulative cost and cumulative revenue, respectively, of the amalgamated Project as of the commencement of the effective date of the amendment.

#### **Previously paid royalty**

**38(1)** If a Project is approved under section 16, any proceeds of royalty in respect of oil sands and oil sands products recovered from the development area of the Project paid to the Crown, other than pursuant to this Regulation, for each month during the period, if any, commencing with the effective date of the Project and ending with the last day of the month in which the Project is

approved under section 16, shall for the purposes of this Regulation be considered

- (a) an amount paid in respect of that month pursuant to section 31(1), if the month is part of a pre-payout Period, or
- (b) an amount paid in respect of that month pursuant to section 31(4), if the month is part of a post-payout Period.

(2) If a Project, as defined in the *Oil Sands Royalty Regulation, 2009*, is approved under section 11(1) of that regulation, any proceeds of royalty in respect of oil sands and oil sands products recovered from the development area of the Project paid to the Crown, other than pursuant to this Regulation, for each month during the period, if any, commencing with the effective date of the Project and ending on December 31, 2008 shall, for the purposes of this Regulation, be considered

- (a) an amount paid in respect of that month pursuant to section 31(1), if the month is part of a pre-payout Period, or
- (b) an amount paid in respect of that month pursuant to section 31(4), if the month is part of a post-payout Period.

AR 185/97 s38;223/2008

#### **Pre-2009 inventory**

**38.1(1)** For the purposes of this Regulation, an oil sands product,

- (a) that is obtained pursuant to a Project and delivered at a royalty calculation point for the product before January 1, 2009, and
- (b) that is not disposed of, consumed or used before that date,

is, along with the Crown's royalty share of the oil sands product, deemed to be disposed of during December of 2008.

(2) Despite section 21, the unit price applicable to the quantity of an oil sands product referred to in subsection (1) is the simple average of the unit prices that

- (a) would be determined under section 32 of the *Oil Sands Royalty Regulation, 2009* for the months of 2009, and
- (b) would apply to an oil sands product of that kind obtained pursuant to the Project and delivered at a royalty calculation point under that Regulation for the product during those months,

if those months were part of a pre-payout Period of the Project.

**(3)** Despite section 31, the proceeds of disposition of the Crown's royalty share of an oil sands product referred to in subsection (1) shall be paid to the Crown by April 30, 2010 by the operator of the Project pursuant to which the oil sands product is recovered.

AR 223/2008 s53

#### **Pre-2009 transitional inventory**

**38.2(1)** In this section, "transitional crude bitumen" means crude bitumen that is

- (a) described in section 1(2)(b) or (c) of the *Oil Sands Royalty Regulation, 2009*,
- (b) a Project substance, and
- (c) obtained before January 1, 2009 pursuant to a Project referred to in section 36(2)(b) or (c),

in respect of which royalty is not reserved under section 90 of the Act, as that section stood on October 1, 2008, on the crude bitumen or on oil sands products obtained from the crude bitumen.

**(2)** Despite section 31, if on or before December 31, 2008, an oil sands product other than transitional crude bitumen is

- (a) obtained pursuant to a Project referred to in section 36(2)(b) or (c),
- (b) delivered at a royalty calculation point for the oil sands product, and
- (c) is not disposed of, consumed or used on or before that date,

the operator of the Project shall pay the Crown the proceeds of the Crown's royalty share of the oil sands product by April 30, 2010.

**(3)** Subject to subsections (4) and (5), the proceeds of the Crown's royalty share of an oil sands product referred to in subsection (2) shall, despite section 21 and 31, be calculated by multiplying the quantity of the Crown's royalty share by the price calculated in accordance with the following formula:

$$(C - T) \div Q$$

where

C is the total consideration, calculated in accordance with the Minister's directions, received or receivable

by the seller under all third party dispositions, as defined in section 21(1)(b), during 2009, of that kind of oil sands product obtained pursuant to the Project;

T is all handling charges, export charges, pipeline tariff charges and charges of a similar nature that are paid to transport the oil sands product disposed of in the dispositions referred to in the definition of C from the royalty calculation point for the oil sands product to the place where those dispositions occur;

Q is the total quantity of the oil sands product disposed of in the dispositions referred to in the definition of C.

**(4)** If the oil sands product referred to in subsection (3) is cleaned crude bitumen contained in blended bitumen, the price for the purposes of that subsection shall be calculated in accordance with the formula set out in that subsection, except that

- (a) “C” is the total consideration, calculated in accordance with the Minister’s directions, received or receivable by the seller under all third party dispositions, as defined in section 21(1)(b), during 2009, of blended bitumen containing cleaned crude bitumen obtained pursuant to the Project,
- (b) “T” is all handling charges, export charges, pipeline tariff charges and charges of a similar nature that are paid to transport the blended bitumen disposed of in the dispositions referred to in clause (a) from the royalty calculation point for the cleaned crude bitumen contained in the blended bitumen to the place where those dispositions occur, and includes the cost of diluent contained in that blended bitumen, and
- (c) “Q” is the quantity of cleaned crude bitumen contained in the blended bitumen disposed of in the dispositions referred to in clause (a).

**(5)** If the Minister is of the opinion that the quantity of an oil sands product disposed of in third party dispositions referred to in subsection (3) or (4) is insufficient to determine a reasonably accurate price for the purposes of subsection (3), the price used for the purposes of subsection (3) shall be the price determined by the Minister as the fair market value of the product.

**(6)** The royalty reserved to the Crown on transitional crude bitumen is the same percentage of the quantity of the transitional crude bitumen as the percentage of the royalty reserved under section 90(3) of the Act, as that section stood on October 1, 2008,

on other oil sands products obtained pursuant to the Project during the 2008 Period.

(7) The proceeds payable to the Crown for the Crown's royalty share of transitional crude bitumen is the product of the quantity of the Crown's royalty share and the simple average of the unit prices that

- (a) would be determined under section 32 of the *Oil Sands Royalty Regulation, 2009* for the months of 2009, and
- (b) would apply to crude bitumen described in section 1(2)(b) or (c) of the *Oil Sands Royalty Regulation, 2009* obtained pursuant to the Project and delivered at a royalty calculation point under that Regulation for the product during those months,

if those months were part of a pre-payout Period of the Project.

(8) The proceeds referred to in subsection (7) shall be paid to the Crown by April 30, 2010.

AR 223/2008 s53;334/2009

## **Part 7 Consequential Amendments, Expiry and Coming into Force**

### **Consequential Amendments**

#### **Consequential**

**39** The *Experimental Oil Sands Royalty Regulation* (AR 347/92) is amended by repealing section 1(1)(b) and substituting the following:

- (b) "experimental project" means a scheme or operation that
  - (i) is the subject of a subsisting approval given by the Board under the *Oil Sands Conservation Act* before August 1, 1997, and
  - (ii) is described in that approval as an experimental scheme for the recovery of oil sands or crude bitumen.

### **Expiry**

#### **Expiry**

**40** This Regulation expires on June 30, 2014.

AR 185/97 s40;95/2007;223/2008

## Coming into Force

### Coming into force

**41** This Regulation is deemed to have come into force on July 1, 1997.

## Schedule 1

### Allowed Costs of Non-qualifying Joint Venture Projects

**1** This Schedule applies to Projects that are not Qualifying Joint Venture Projects.

**2** Subject to the other sections of this Schedule, a cost is an allowed cost of a Project only to the extent that

- (a) it is directly attributable to the Project,
- (b) it is reasonable in relation to the circumstances under which it is incurred,
- (c) it is incurred by or on behalf of the Project owners of the Project,
- (d) it is incurred on or after the effective date of the Project and on or before December 31, 2008, and
- (e) it is incurred to
  - (i) recover oil sands from the development area of the Project,
  - (ii) purchase oil sands products for processing or reprocessing in one or more processing plants that are part of the Project,
  - (iii) process or reprocess oil sands or oil sands products in one or more processing plants that are part of the Project,
  - (iv) process
    - (A) oil sands or oil sands products recovered from the development area of the Project, or
    - (B) oil sands products purchased and previously processed in one or more processing plants that are part of the Project,

in one or more processing plants that are not part of the Project, before the oil sands products obtained as a result of such processing are delivered at a royalty calculation point,

- (v) transport oil sands and oil sands products from one part of the Project to another,
- (vi) transport oil sands and oil sands products described in subclause (iv)(A) or (B) from the Project to the processing plant or plants referred to in subclause (iv) that are not part of the Project,
- (vii) market an oil sands product obtained pursuant to the Project,
- (viii) conduct planning, designing and engineering in relation to expansions of the Project,
- (ix) conduct research that is directly attributable to the Project, other than basic research referred to in section 3(g) of this Schedule, or
- (x) provide field, office, administrative or other services in relation to the activities described in subclauses (i) to (vi) and (ix).

**3** A cost is not an allowed cost of a Project

- (a) if it is in respect of overhead or an administrative expense, including internal audit, “in-house” legal and other like expenses, of the operator, a Project owner or an affiliate of either, and is not allowed under section 2(e)(x) of this Schedule,
- (b) if it is on account of, in lieu of or in satisfaction of interest or any other borrowing or financing cost or any penalty or charge for late or deficient payment,
- (c) if it is in respect of an overriding royalty interest, a carried interest, a net profit interest or any similar interest, other than an Overriding Royalty described in section 101(n) of Schedule 3 to the *Metis Settlements Act*,
- (c.1) if it is an escalating rental paid under the *Oil Sands Tenure Regulation*,
- (d) if it is incurred to acquire an interest or estate in mineral rights, except to the extent such cost is incurred to perform work on or in respect of the mineral rights included in the Project or to create wells, facilities, roads,

- pipelines or other assets or infrastructure that are part of the Project in order to earn the interest or estate,
- (e) if it is in respect of depletion or depreciation,
  - (f) if it results from an act or omission that is a breach of any applicable laws, rules or regulations of a government or government agency,
  - (g) if it is incurred to conduct basic research,
  - (h) if it is a fee or expense of dispute resolution, including a referral under section 35 of this Regulation, of arbitration or of litigation, of any dispute with the Crown in connection with any matter relating to royalty, proceeds of royalty, interest or any penalty payable or paid to the Crown in relation to the Project,
  - (i) to the extent it would not be allowed as a deduction in computing income under the *Income Tax Act* (Canada), if it is in respect of the human consumption of food or beverages or the enjoyment of entertainment, or
  - (j) to the extent that
    - (i) any credits or discounts that are intended to reduce or offset a cost described in section 2 of this Schedule are actually received by the operator, a Project owner or an affiliate of either of them,
    - (ii) 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) that is intended to reduce or offset costs described in section 2 of this Schedule is provided by the Province of Alberta or the Government of Canada, or an agency of either, to the operator, a Project owner or an affiliate of either of them,
    - (iii) it is an allowed cost in respect of another project, or
    - (iv) it is a cost deducted in the determination of unit price under this Regulation or in the determination of unit price under section 32 of the *Oil Sands Royalty Regulation, 2009*.
  - (k) repealed AR 52/2000 s8.

**4** Despite sections 2 and 3 of this Schedule but subject to section 5 of this Schedule and section 16 of the *Oil Sands Allowed Costs (Ministerial) Regulation*,

- (a) the net loss of a Project for a post-payout Period is an allowed cost of the Project for the next post-payout Period,
- (b) any royalty paid under section 90(3)(a) of the *Mines and Minerals Act* in respect of a Project for a post-payout Period is, to the extent it exceeds the royalty calculated under section 90(3)(b) of the Act in respect of the Project for the same Period, an allowed cost of the Project for the next post-payout Period,
- (c) the product of
  - (i) the excess, if any, of
    - (A) the cumulative cost of a Project as of the last day of a month of a pre-payout Period of the Project,
    - over
    - (B) the cumulative revenue of the Project as of the same day,
  - times
  - (ii) the return allowance rate for the month,is an allowed cost of the Project for the following month,
- (d) the amount determined by multiplying the return allowance rate of a Project for a post-payout Period by
  - (i) the product of  $183/365$  and the net loss, if any, of the Project for the Period, if a net loss did not also arise in respect of the Project for the preceding post-payout Period,
  - (ii) the net loss, if any, of the Project for the Period, if a net loss also arose in respect of the Project for the preceding post-payout Period, or
  - (iii) the portion specified by the Minister of the net loss, if any, of the Project for the Period, in any other case,is an allowed cost of the Project for the next post-payout Period,

- (e) the prior net cumulative balance of a Project expansion is, to the extent it is a positive amount, an allowed cost of the Project to which the expansion relates, for the Period in which the effective date of the Project expansion occurs, if that Period is a post-payout Period, and
- (f) if an amendment is approved under section 16(1) of this Regulation that provides for the amalgamation of
  - (i) a Project for which the Project payout date has not occurred as of the day preceding the effective date of the amendment, and
  - (ii) one or more other Projects for at least one of which the Project payout date has occurred as of that preceding day,

the excess of the cumulative cost of the Project referred to in subclause (i) as of the last day preceding the amendment Period of the Project over the cumulative revenue of the Project as of that last day is an allowed cost of the amalgamated Project for the first amalgamated Period of the amalgamated Project,

and for the purposes of clauses (c) and (f), the cumulative cost and cumulative revenue shall, despite section 1(h) and (i) and section 18(1) of this Regulation, be determined without reducing any amount included therein to the Crown's share of that amount.

**5** The products referred to in section 4(c) and (d) of this Schedule in respect of any month of a pre-payout Period or in respect of a post-payout Period, as the case may be, are not an allowed cost of a Project if the Minister has notified the operator of the Project that the Minister is of the opinion that operations in respect of the Project have been or are substantially suspended or abandoned for a period of time and the month or post-payout Period, respectively, falls within that period.

AR 185/97 Sched.1;50/2000;52/2000;251/2001;250/2004;223/2008

## **Schedule 2**

### **Allowed Costs of Qualifying Joint Venture Projects**

**1** This Schedule applies to Projects that are Qualifying Joint Venture Projects.

**2** Subject to the other sections of this Schedule, a cost is an allowed cost of a Project only to the extent that

- (a) it is directly attributable to the Project,
- (b) it is reasonable in relation to the circumstances under which it is incurred,
- (c) it is incurred by or on behalf of the Project owners of the Project,
- (d) it is incurred on or after the effective date of the Project and on or before December 31, 2008, and
- (e) it is incurred to
  - (i) recover oil sands from the development area of the Project,
  - (ii) purchase oil sands products for processing or reprocessing in one or more processing plants that are part of the Project,
  - (iii) process or reprocess oil sands or oil sands products in one or more processing plants that are part of the Project,
  - (iv) process
    - (A) oil sands or oil sands products recovered from the development area of the Project, or
    - (B) oil sands products purchased and previously processed in one or more processing plants that are part of the Project,  
  
in one or more processing plants that are not part of the Project, before the oil sands products obtained as a result of such processing are delivered at a royalty calculation point,
  - (v) transport oil sands and oil sands products from one part of the Project to another,
  - (vi) transport oil sands and oil sands products described in subparagraph (iv)(A) or (B) from the Project to the processing plant or plants referred to in subparagraph (iv) that are not part of the Project,
  - (vii) market an oil sands product obtained pursuant to the Project,
  - (viii) conduct planning, designing and engineering in relation to expansions of the Project,

- (ix) conduct research that is directly attributable to the Project, or
- (x) provide field, office, administrative or other services in relation to the activities described in subclauses (i) to (ix).

**3** A cost is not an allowed cost of a Project

- (a) if it is in respect of management fees that are charged by a Project owner or affiliate of a Project owner and which are not costs of services or materials,
- (b) if it is on account of, in lieu of or in satisfaction of interest or any other borrowing or financing cost or any penalty or charge for late or deficient payment,
- (c) if it is in respect of an overriding royalty interest, a carried interest, a net profit interest or any similar interest, other than an Overriding Royalty described in section 101(n) of Schedule 3 to the *Metis Settlements Act*,
- (c.1) if it is an escalating rental paid under the *Oil Sands Tenure Regulation*,
- (d) if it is incurred to acquire an interest or estate in mineral rights, except to the extent such cost is incurred to perform work on or in respect of the mineral rights included in the Project or to create wells, facilities, roads, pipelines or other assets or infrastructure that are part of the Project in order to earn the interest or estate,
- (e) if it is in respect of depletion or depreciation,
- (f) if it results from an act or omission that is a breach of any applicable laws, rules or regulations of a government or government agency,
- (g) if it is incurred in relation to the marketing of an oil sands product by a person other than the operator of the Project,
- (h) if it is a fee or expense of dispute resolution, including a referral under section 35 of this Regulation, of arbitration or of litigation, of any dispute with the Crown in connection with any matter relating to royalty, proceeds of royalty, interest or any penalty payable or paid to the Crown in relation to the Project,
- (i) to the extent it would not be allowed as a deduction in computing income under the *Income Tax Act* (Canada) if

it is in respect of the human consumption of food or beverages or the enjoyment of entertainment, or

- (j) to the extent that
  - (i) any credits or discounts that are intended to reduce or offset a cost described in section 2 of this Schedule are actually received by the operator, a Project owner or an affiliate of either of them,
  - (ii) 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) that is intended to reduce or offset costs described in section 2 of this Schedule is provided by the Province of Alberta or the Government of Canada, or an agency of either, to the operator, a Project owner or an affiliate of either of them,
  - (iii) it is an allowed cost in respect of another Project, or
  - (iv) it is a cost deducted in the determination of unit price under this Regulation or in the determination of unit price under section 32 of the *Oil Sands Royalty Regulation, 2009*.
- (k) repealed AR 52/2000 s9.

**4** Despite sections 2 and 3 of this Schedule but subject to section 5 of this Schedule and section 16 of the *Oil Sands Allowed Costs (Ministerial) Regulation*,

- (a) the net loss of a Project for a post-payout Period is an allowed cost of the Project for the next post-payout Period,
- (b) any royalty paid under section 90(3)(a) of the *Mines and Minerals Act* in respect of a Project for a post-payout Period is, to the extent it exceeds the royalty calculated under section 90(3)(b) of the Act in respect of the Project for the same Period, an allowed cost of the Project for the next post-payout Period,
- (c) the product of
  - (i) the excess, if any, of

- (A) the cumulative cost of a Project as of the last day of a month of a pre-payout Period of the Project,
- over
- (B) the cumulative revenue of the Project as of the same day,
- times
- (ii) the return allowance rate for the month,
- is an allowed cost of the Project for the following month,
- (d) the amount determined by multiplying the return allowance rate of a Project for a post-payout Period by
- (i) the product of 183/365 and the net loss, if any, of the Project for the Period, if a net loss did not also arise in respect of the Project for the preceding post-payout Period,
- (ii) the net loss, if any, of the Project for the Period, if a net loss also arose in respect of the Project for the preceding post-payout Period, or
- (iii) the portion specified by the Minister of the net loss, if any, of the Project for the Period, in any other case,
- is an allowed cost of the Project for the next post-payout Period,
- (e) the prior net cumulative balance of a Project expansion is, to the extent it is a positive amount, an allowed cost of the Project to which the expansion relates, for the period in which the effective date of the Project expansion occurs, if that Period is a post-payout Period, and
- (f) if an amendment is approved under section 16(1) of this Regulation that provides for the amalgamation of
- (i) a Project for which the Project payout date has not occurred as of the day preceding the effective date of the amendment, and
- (ii) one or more other Projects for at least one of which the Project payout date has occurred as of that preceding day,
- the excess of the cumulative cost of the Project referred to in subclause (i) as of the last day preceding the

amendment Period of the Project over the cumulative revenue of the Project as of that last day is an allowed cost of the amalgamated Project for the first amalgamated Period of the amalgamated Project,

and for the purposes of clauses (c) and (f), cumulative cost and cumulative revenue shall, despite section 1(h) and (i) and section 18(1) of this Regulation, be determined without reducing any amount included therein to the Crown's share of that amount.

**5** The products referred to in section 4(c) and (d) of this Schedule in respect of any month of a pre-payout Period or in respect of a post-payout Period, as the case may be, are not an allowed cost of a Project if the Minister has notified the operator of the Project that the Minister is of the opinion that operations in respect of the Project have been or are substantially suspended or abandoned for a period of time and the month or post-payout Period, respectively, falls within that period.

### Table

The following is an illustrative but not exhaustive list of the kinds of costs that would, to the extent they fall within section 2 of Schedules 1 or 2 and are not excluded from allowed costs under section 3 of those Schedules, as the case may be, be allowed costs of a Project:

- (a) costs to acquire, construct or replace property plant and equipment for the purposes set out in section 2(e) of each Schedule, including
  - (i) laid down cost of equipment, materials and supplies before installation or assembly,
  - (ii) direct and allocated costs of constructing, installing, assembling or erecting plant and equipment, including the costs of direct labour, benefits and an allocation of plant overhead costs, and

NOTE: plant overhead costs allocated to property, plant and equipment are those costs directly related to constructing, installing, assembling or erecting plant and equipment that cannot be conveniently identified with a specific plant, and do not include any allocation of administrative and other costs that cannot be conveniently identified with constructing, installing, assembling or erecting plant and equipment.

- (iii) costs for work performed by other companies or individuals;
- (b) cost of deposits acceptable to the Crown in amounts sufficient to ensure to the satisfaction of the Crown proper reclamation of the lands involved in the Project;
- (c) costs of labour, services and supplies necessary for the operation of the Project, which labour, services and supplies may be obtained from the Project Owners and their affiliates, to the extent those costs are competitive in accordance with any applicable industry or professional fee structures;
- (d) costs of utilities services, including costs of utility service agreements and all other amounts billed by those providing such services;
- (e) costs of repairs and maintenance including but not limited to direct labour, including benefits, materials and supplies and work performed by other companies or individuals.

AR 185/97 Sched.2;50/2000;52/2000;251/2001;250/2004;223/2008





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