Province of Alberta

MINES AND MINERALS ACT

INNOVATIVE ENERGY TECHNOLOGIES REGULATION

Alberta Regulation 250/2004

With amendments up to and including Alberta Regulation 89/2013

Office Consolidation

Alberta Queen's Printer
5th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Note

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(Consolidated up to 89/2013)

ALBERTA REGULATION 250/2004

Mines and Minerals Act

INNOVATIVE ENERGY TECHNOLOGIES REGULATION

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Interpretation

1(1) In this Regulation,

(a) "allocable cost" means an allocable cost established by the Minister under this Regulation;

(b) "approved project" means an innovative technology project approved by the Minister under section 3;

(c) "crude bitumen" has the same meaning as in the *Oil Sands Royalty Regulation, 2009*;

(d) "eligible costs", with reference to an approved project, means the costs of that project determined in accordance with section 5;

(e) "innovative technology" means

(i) technology that, in the opinion of the Minister, is novel and likely to

(A) materially increase the total amount of crude oil or natural gas, or crude bitumen by in situ

operation, as the case may be, that is recovered from a pool, reservoir, deposit or coal seam beyond the amount that would otherwise be recovered without that technology, or

(B) enable the concurrent production of natural gas and crude bitumen from an oil sands deposit where production of natural gas is otherwise subject to constraint under an order of the Alberta Energy Regulator in order to conserve the crude bitumen,

(i.1) oil sands mining technology, including tailings management, that, in the opinion of the Minister, is novel, and

(ii) other technology prescribed as innovative technology by the Minister from time to time;

(f) "in situ operation" has the same meaning as in the *Oil Sands Conservation Act*;

(g) "operator", with reference to an approved project, means the operator of the approved project from time to time according to the records of the Department;

(h) "program maximum" means $200 000 000 less the total credits established for all approved CO_2 projects under the *CO_2 Projects Royalty Credit Regulation* (AR 120/2003);

(i) "Project" has the same meaning as in the *Oil Sands Royalty Regulation, 2009*;

(j) "royalty client" has the same meaning as in the *Natural Gas Royalty Regulation, 2009*;

(k) "well event" has the same meaning as in the *Petroleum Royalty Regulation, 2009*.

(2) An application under this Regulation must

(a) be made in and contain all the information that is called for by the form, if any, prescribed by the Minister for the application, and

(b) be accompanied by all the information that is required by that form or is otherwise required by the Minister to accompany the application.

(3) For the purposes of this Regulation, an approved project is considered to have commenced when the Minister is satisfied that it has commenced.

AR 250/2004 s1;254/2007;222/2008;223/2008;22/2011;89/2013

Authority for allocable costs

2(1) The Minister is authorized, in accordance with this Regulation, to establish allocable costs equal to not more than 30% of any or all of the eligible costs of an approved project.

(2) The total allocable costs established for all approved projects under this Regulation may not exceed the program maximum.

(3) If the Minister is satisfied that any grant or benefit has been provided by any government, including the Government of Alberta or the Government of Canada, or any agency of government, and the grant or benefit is referable in whole or in part to an approved project, the Minister may reduce by an amount that does not exceed the amount of the grant or benefit

(a) any allocable cost established for the approved project, and

(b) the maximum amount of allocable costs specified in the approval under section 3 for the project.

Approval of innovative technology projects

3(1) The Minister may, on application by the operator, approve a project for the purposes of this Regulation if the Minister is satisfied

(a) that the project is a pilot or demonstration of innovative technology, and

(b) that approving the project for the purposes of this Regulation is in the public interest.

(2) The Minister shall, in the approval under subsection (1) for an approved project, specify

(a) a description of the project, including

(i) the innovative technology of the project,

(ii) the subsurface area and strata affected by the project,

(iii) the surface area occupied by the project, and

(iv) the equipment and facilities of the project,

(b) the maximum amount of allocable costs that may be established for the project, which in the case of any project may not exceed $10 000 000,

(c) the maximum amount of allocable costs that may be established for the project for a year,

(d) the eligible costs and categories of eligible costs for which allocable costs may be established for the project,

(e) the percentage, not exceeding 30%, that will be used to establish allocable costs in relation to each eligible cost and category of eligible costs specified under clause (d), and

(f) any terms and conditions to which the approval will be subject.

(3) Without restricting the generality of subsection (2)(f), terms and conditions specified in an approval under that subsection may require the operator to

(a) notify the Minister in writing of the removal or replacement of any equipment and facilities specified in the approval for the project under subsection (2)(a)(iv),

(b) provide the Minister with written reports or other information regarding the approved project, as required by the Minister from time to time,

(c) provide the Minister with authorization to disclose the reports and information referred to in clause (b), and

(d) provide the Crown with an indemnification in a form satisfactory to the Minister for any claims against the Crown arising from

(i) the approved project,

(ii) the establishing and applying of allocable costs under this Regulation,

(iii) the disclosure by the Minister of reports and information relating to the project, or

(iv) any other matter specified by the Minister.

(4) The Minister shall not approve any innovative technology project under subsection (1) after the date on which the aggregate of the maximum amount of allocable costs that may be established for all approved projects reaches the program maximum.

(5) Notwithstanding subsection (4), the Minister may approve further projects in circumstances that would otherwise contravene subsection (4) as long as the Minister is satisfied that the approval would not result in the maximum amount of allocable costs actually established for all approved projects exceeding the program maximum.

(6) The Minister may amend an approval given under this section, but may not increase the maximum amount of allocable costs specified for an approved project to an amount that the Minister has reason to believe would result in the maximum amount of allocable costs actually established for all approved projects exceeding the program maximum.

AR 250/2004 s3;22/2011;170/2012

Intellectual property

4 The Minister may require the operator to enter into an agreement with the Crown in a form satisfactory to the Minister in respect of intellectual property arising from the innovative technology of a project prior to the Minister approving a project under section 3(1) or as a condition specified in an approval under section 3(2)(f).

Eligible costs

5(1) Subject to this section, the eligible costs of an approved project for the purposes of this Regulation are, as determined by the Minister, the costs that are

(a) directly attributable to the innovative technology of the approved project or are otherwise necessary to carry out the approved project, and

(b) specified as eligible costs in the approval for the project in accordance with section 3(2)(d).

(2) If a capital item for which an eligible cost is incurred is not new, the amount of the eligible cost is the fair market value of the capital item, as determined by the Minister.

(3) Costs are not eligible costs in respect of an approved project for the purposes of this Regulation if

(a) the costs are incurred before June 2, 2004 or after December 31, 2016,

(b) the costs are not actually incurred,

(c) the approved project has not commenced,

(d) the costs are in relation to equipment or facilities located outside of the Province of Alberta, or

(e) a credit, as defined under the *CO_2 Projects Royalty Credit Regulation* (AR 120/2003) or *Gas Processing Efficiency Assistance Regulation* (AR 275/89), as the case may be, has been or is established in respect of the same costs.

(4) For the purpose of this Regulation, the eligible costs of an approved project do not include any of the following:

(a) administration, management or financing costs;

(b) amortization of capital assets;

(c) the cost of borrowed money that is deductible from income under section 21 of the *Income Tax Act* (Canada);

(d) amounts that would be deductible under the *Income Tax Act* (Canada) or the *Income Tax Regulations* under that Act as a capital cost of property;

(e) expenses incurred for salaries, wages or other remuneration or benefits paid or provided to an employee in respect of services rendered by the employee, to the extent the services are not wholly and directly related to the approved project.

(5) Eligible costs of an approved project shall be reduced to the extent of

(a) amounts reimbursed under a policy of insurance, as proceeds of litigation or otherwise, and

(b) the fair market value determined by the Minister of equipment replaced by new approved equipment.

(6) The Minister may in respect of any approved project

(a) disallow as eligible costs any expenditure that the Minister considers is unreasonable,

(b) reduce the amount of any eligible cost in relation to any item or service obtained from a person who is connected to the operator or any owner of the approved project, or

(c) reduce the amount of any eligible cost to an amount that the Minister considers reasonable.

AR 250/2004 s5;22/2011

Connected persons

6(1) For the purposes of section 5(6)(b), an operator or owner of an approved project and another person are connected with each other if, under subsection 1206(5) of the *Income Tax Regulations* under the *Income Tax Act* (Canada) as that provision read on October 1, 2004, they are considered to be connected with each other 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 this Regulation, an operator or owner of an approved project and another person do not deal 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.

Applications for and establishing of allocable costs

7(1) The operator of an approved project may apply to the Minister for the establishing of allocable costs for the project after the end of each month the whole or any part of which occurs on or after the date the approved project commences.

(2) The Minister may establish allocable costs for an approved project for a month in respect of which an application has been made under subsection (1) equal to not more than the applicable percentage specified in the approval for the project under section 3(2)(e) in relation to any or all of the eligible costs and up to amounts that are not more than the maximum amounts specified in the approval under section 3(2)(b) and (c).

(3) An application under this section must not be made after March 31, 2017.

AR 250/2004 s7;22/2011

Allocable cost allocation

8(1) The operator of an approved project shall show in an application under section 7, an allocation of

(a) the percentage, if any, of the allocable costs to be allocated to well events,

(b) the percentage, if any, of the allocable costs to be allocated to royalty clients, and

(c) the percentage, if any, of the allocable costs to be allocated to Projects,

such that the aggregate of the percentages so allocated equals 100%.

(2) If the operator has indicated in an application under section 7 that allocable costs established for an approved project are to be allocated to well events as described in subsection (1)(a), the operator shall also show in the application the well events to which those allocable costs are to be allocated and the percentage to be allocated to each well event.

(3) If the operator has shown in an application under section 7 that any allocable costs established for an approved project are to be allocated as described in subsection (1)(b), the operator shall also show in the application the royalty clients to whom those allocable costs are to be allocated and the percentage to be allocated to each royalty client.

(4) If the operator has shown in an application under section 7 that any allocable costs established for an approved project are to be allocated as described in subsection (1)(c), the operator shall also show in the application the Projects to which those allocable costs are to be allocated and the percentage to be allocated to each Project.

(5) Unless the Minister otherwise determines in a particular case, the Minister may allocate allocable costs established under this Regulation for an approved project in accordance with the allocation shown in an application under section 7 in respect of that approved project.

Records

9(1) Subject to subsection (2), where the operator of an approved project has made an application under section 3 in respect of the project and that application is approved by the Minister, all records that relate to the approved project or that are otherwise specified by the Minister and that are in the possession of the operator must be kept by the operator until the expiration of the 5-year period following the final month in which an allocable cost is established by the Minister under section 7(2) in relation to the approved project.

(2) If the Minister is of the opinion that it is necessary for the administration of the *Mines and Minerals Act* or this Regulation, the Minister may, by a direction sent by registered mail or served personally, require any person required to keep records under subsection (1) to keep records referred to in that subsection for any longer period specified in the direction.

(3) A person required to keep records pursuant to this section shall, on the request of the Minister, submit to the Minister within the time specified by the Minister any information or record the Minister requires.

Artificial transactions and non-compliance

10(1) Notwithstanding any other provision of this Regulation, if the Minister is of the opinion that

(a) one or more acts, agreements, arrangements, transactions or operations were effected, whether before or after the coming into force of this Regulation, for the purpose of improperly, artificially or unduly obtaining or increasing the amount of any allocable costs, or

(b) the operator of an approved project has not complied with the terms and conditions of any approval in relation to the project, any provision of this Regulation, or any provision of the Act in relation to the project,

the Minister may take any or all of the actions specified in subsection (2).

(2) The actions the Minister may take in relation to an approved project in the circumstances described in subsection (1) are any or all of the following:

(a) revoke the approval for the approved project;

(b) determine that all of the allocable costs applied for are not to be established or allocated;

(c) determine that the amount of allocable costs applied for was improperly, artificially or unduly increased and is to be reduced accordingly;

(d) determine that all of the allocable costs established or allocated should not have been established or allocated;

(e) determine that the amount of allocable costs established or allocated was improperly, artificially or unduly increased and is to be reduced accordingly.

(3) If the Minister makes a determination under subsection (2), a person in whose favour allocable costs have been allocated is not entitled to the allocable costs or to the amount by which the amount of allocable costs is or was improperly, artificially or unduly increased, as the case may be, and the Minister may recalculate the royalty otherwise reduced by virtue of those allocable costs, disregarding those costs in doing so.

Amends AR 220/2002

11(1) The *Natural Gas Royalty Regulation, 2002* (AR 220/2002) is amended by this section.

(2) Section 1 is amended by adding the following after clause (a):

(a.1) "allocable costs" means allocable costs as defined in the *Innovative Energy Technologies Regulation*;

(3) Section 19(7) is amended by adding "or in respect of allocable costs" **after** "conservation gas".

(4) Section 21(3.1) is amended by adding "or in respect of allocable costs" **after** "conservation gas".

(5) Schedule 1 is amended

(a) in section 7(1) by striking out "the cost of conservation gas of the royalty client for the production month" **and substituting** "firstly, the cost of conservation gas of the royalty client for the production month, and secondly, any allocable costs established and allocated to the royalty client in the month following the production month";

(b) in section 7(3) by adding "or by any allocable costs" **after** "conservation gas";

(c) in section 7(4) by adding "or in respect of any allocable costs" **after** "conservation gas".

Amends AR 185/97

12(1) The *Oil Sands Royalty Regulation, 1997* (AR 185/97) is amended by this section.

(2) Section 1 is amended by relettering clause (a) as (a.1) and by adding the following before clause (a.1):

(a) "allocable costs" means allocable costs as defined in the *Innovative Energy Technologies Regulation*;

(3) Section 18(1)(b) is amended by striking out "and" **at the end of subclause (i) and by adding the following after subclause (i):**

(i.1) any costs in respect of which allocable costs have been established,

and

(4) Section 31 is amended

(a) in subsection (3) by adding ", subject to subsections (3.1) and (3.2), respectively," **after** "subsections (1) and (2) shall";

(b) by adding the following after subsection (3):

(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.

(c) by repealing subsection (4) and substituting the following:

(4) The operator of a Project must pay to the Crown in respect of each month of a post-payout Period, 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) Schedules 1 and 2 are amended in section 3(j)(ii) of both Schedules by adding "or in the form of a reduction of royalty, royalty proceeds or royalty compensation by virtue of allocable costs" **after** "income tax payable".

Amends AR 50/2000

13(1) The *Oil Sands Tenure Regulation* (AR 50/2000) is amended by this section.

(2) Schedule 1 is amended

(a) in section 4(2)(b) by adding "or in the form of a reduction of royalty, royalty proceeds or royalty compensation by virtue of allocable costs established under the *Innovative Energy Technologies Regulation* **after** "income tax payable";

(b) by adding the following after section 4(2):

(3) A cost is not an "allowable cost" if any allocable costs as defined in the *Innovative Energy Technologies Regulation* have been established under that Regulation in relation to the cost.

Amends AR 248/90

14(1) The *Petroleum Royalty Regulation* (AR 248/90) is amended by this section.

(2) Section 1(1) is amended by adding the following after clause (a.05):

(a.051) "allocable costs" means allocable costs as defined in the *Innovative Energy Technologies Regulation*;

(3) Section 2(1)(a) is repealed and the following is substituted:

(a) that part of the crude oil obtained from the petroleum in each month calculated

(i) where sections 4, 5 and 5.2 do not apply, in accordance with Schedule 1,

(ii) where section 4 applies, in accordance with section 4,

(iii) where section 5 applies, in accordance with section 5, or

(iv) where section 5.2 applies, in accordance with section 5.2,

and reduced, subject to section 3.1, to an amount not less than that part by subtracting the adjustment quantity calculated for the well event pursuant to section 2.1,

and

(4) The following is added after section 2:

Calculation of adjustment quantity

2.1 The adjustment quantity for a well event for a month is the amount determined by dividing the allocable costs established and allocated to the well event during the following month by the par price prescribed under section 1.1(4) applicable to the calculation of royalty under section 2(1)(a) on crude oil obtained during the month from petroleum recovered from the well event.

(5) The following is added after section 3:

Recalculation of royalty

3.1(1) Since the adjustment quantity for a well event for a month is determined after the month, the royalty calculated under section 2(1)(a) in respect of the well event and required to be delivered in accordance with section 86 of the *Mines and Minerals Act* for the month shall, subject to subsection (2), be calculated under section 2(1)(a) without regard to any reduction in relation to an adjustment quantity.

(2) The Minister shall, after the adjustment quantity for a well event for a month is determined, recalculate the royalty for the well event for the month under section 2(1)(a) taking into account the adjustment quantity, and shall at the Minister's sole option

(a) deliver to the operator of the well event by the end of the next month a quantity of crude oil equal to any quantity determined as a result of the recalculation to have been over delivered for the month, or

(b) instead of delivering crude oil in accordance with clause (a), pay to the operator of the well event by the end of the next month proceeds calculated in accordance with subsection (3) and obtained as a result of the disposition of the over delivered crude oil.

(3) Proceeds to be paid pursuant to subsection (2)(b) in respect of crude oil determined to have been over delivered for a month shall be calculated by multiplying the quantity of the crude oil determined to have been over delivered by the par price prescribed under section 1.1(4) applicable to the calculation of royalty on crude oil obtained during the month from petroleum recovered from the well event.

(4) Section 22 of the *Mines and Minerals Administration Regulation* (AR 262/97) does not apply in respect of any over delivery of crude oil determined as a result of a recalculation under subsection (2).

Expiry

15 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on October 31, 2017.

AR 250/2004 s15;22/2011

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