



Province of Alberta

MINES AND MINERALS ACT

CO₂ PROJECTS ROYALTY CREDIT REGULATION

Alberta Regulation 120/2003

With amendments up to and including Alberta Regulation 226/2008

Office Consolidation

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Note

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(Consolidated up to 226/2008)

ALBERTA REGULATION 120/2003

Mines and Minerals Act

CO₂ PROJECTS ROYALTY CREDIT REGULATION

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Interpretation

1(1) In this Regulation,

- (a) “approved CO₂ project” means a CO₂ project approved by the Minister under section 3;
- (b) “approved equipment” means the equipment, pipelines and facilities specified in an approval under section 3 as approved equipment in relation to the approved CO₂ project;
- (c) “approved process” means the injection of CO₂ into an underground formation or coal seam that the Minister is satisfied is for the purpose of increasing the recovery of crude oil or natural gas from the underground formation or coal seam;
- (d) “CO₂” means a gaseous mixture consisting mainly of carbon dioxide;

- (e) “CO₂ project” means a scheme approved under the *Oil and Gas Conservation Act*
- (i) for enhanced recovery of petroleum or natural gas from any underground formation through the injection of CO₂ into the formation, or
 - (ii) for the injection of CO₂ into a coal seam to recover natural gas from the coal seam,
- where CO₂ was not injected into the underground formation or coal seam, as the case may be, for the purposes of the scheme before January 1, 2003;
- (f) “credit” means a credit established by the Minister under this Regulation;
- (g) “Crown percentage”, means in relation to an approved CO₂ project, the proportion of production from well events in the project that is recovered pursuant to an agreement, as shown in the records of the Department;
- (h) “eligible capital costs”, with reference to approved equipment, means the eligible capital costs of that equipment determined in accordance with section 5;
- (i) “eligible CO₂ expenses”, with reference to an approved CO₂ project, means the expenses determined in accordance with section 7;
- (j) “operating cost allowance”, with reference to an approved CO₂ project, means the allowance for operating costs determined in accordance with section 6;
- (k) “operator”, with reference to a CO₂ project, means the operator of the project from time to time according to the records of the Department;
- (l) “quarter” means each period of 3 consecutive months during a year, each of which commences with either the month of January, April, July or October of that year;
- (m) “royalty client”, “royalty client account” and “royalty compensation” have the same meaning as in the *Natural Gas Royalty Regulation, 2002* (AR 220/2002);
- (n) “well event” has the same meaning as in the *Petroleum Royalty Regulation* (AR 248/90).

(2) An application under this Regulation must

- (a) be made in and contain all the information called for by the form, if any, prescribed by the Minister for the application, and
 - (b) be accompanied by all the information required by that form, or otherwise required by the Minister, to accompany the application.
- (3)** For the purposes of this Regulation,
- (a) equipment is considered to have commenced operation when the Minister is satisfied that it has commenced operation, and
 - (b) injection of CO₂ is considered to have commenced when the Minister is satisfied injection has commenced.

Authority for credits

2(1) The Minister is authorized, in accordance with this Regulation, to establish credits equal to not more than 30% of any or all of the following categories of items in relation to an approved CO₂ project:

- (a) the eligible capital costs of approved equipment;
- (b) the operating cost allowance;
- (c) the eligible CO₂ expenses.

(2) The Minister shall not establish credits under this Regulation totalling more than \$15 000 000 for all approved CO₂ projects.

(3) If the Minister is satisfied that any grant or benefit, other than a credit under this Regulation, has been provided by the Government of Alberta or the Government of Canada or any agency of either government that is referable in whole or in part to an approved CO₂ project, the Minister may reduce by an amount that does not exceed the amount of the grant or benefit

- (a) any credit established under subsection (1), and
- (b) the maximum amount of credits specified in the approval under section 3 for the project.

Approval of CO₂ projects

3(1) The Minister may, on application by the operator, approve a CO₂ project for the purposes of this Regulation if the Minister is satisfied that the project will employ an approved process and 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 CO₂ project, specify

- (a) the maximum amount of credits that may be established for the project, which in the case of any project shall not exceed \$5 000 000,
- (b) the maximum amount of credits that may be established for the project for a quarter,
- (c) the categories of items in section 2(1) in relation to which credits may be established for the project,
- (d) the percentage, not exceeding 30%, that will be used to establish credits for the project in relation to the costs, allowances or expenses, as the case may be, of the categories of items specified under clause (c) for the project,
- (e) the percentage, not exceeding 20%, that will be used to determine the allowance for operating costs for the project under section 6;
- (f) the approved equipment for the project, and
- (g) any terms and conditions to which the approval will be subject.

(3) Without restricting the generality of subsection (2)(g), 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 approved equipment,
- (b) provide the Minister with written reports or other information regarding the approved CO₂ 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 for any claims against the Crown arising from
 - (i) the approved CO₂ project,
 - (ii) the establishing and applying of credits under this Regulation,

- (iii) the disclosure by the Minister of information relating to the project, and
- (iv) any other matter specified by the Minister.

(4) Subject to subsection (5), the Minister shall not approve any CO₂ project under subsection (1) after the date on which the aggregate of the maximum amount of credits that may be established for all approved CO₂ projects equals \$15 000 000.

(5) If the Minister is satisfied that the maximum amount of credits that will be established for all approved CO₂ projects will not exceed \$15 000 000 because the approval for one or more projects is revoked, because credits to be established for any projects will be less than maximum amount of credits that may be established for those projects as specified in the approvals for the projects, or for any other reason, the Minister may approve further projects such that the maximum amount of credits established for all approved CO₂ projects will not exceed \$15 000 000.

(6) The Minister may amend an approval given under this section, but in doing so, shall not increase the maximum amount of credits specified for an approved CO₂ project such that the maximum amount of credits that may be established for all approved projects exceeds \$15 000 000.

Approved equipment

4 The Minister may, for the purposes of an approval under section 3(1) or an amendment of an approval under section 3(6), specify as approved equipment for an approved CO₂ project, any equipment, pipelines and facilities the Minister is satisfied

- (a) will be used in an approved process employed in the project, or
- (b) will otherwise be necessary to carry out the project, although not used in an approved process employed in the project.

Eligible capital costs

5(1) Subject to this section, the eligible capital costs of approved equipment for the purposes of this Regulation are

- (a) the capital costs of the approved equipment, if the equipment is new, or
- (b) the fair market value of the approved equipment, as determined by the Minister, if the equipment is not new.

- (2) Costs are not eligible capital costs in respect of approved equipment for the purposes of this Regulation if
- (a) the costs are incurred before January 1, 2003 or after June 30, 2008,
 - (b) the costs are not incurred,
 - (c) the approved equipment has not commenced operation,
 - (d) the Crown is liable for any allowable costs, as defined in the *Natural Gas Royalty Regulation, 2002* (AR 220/2002), for any year in respect of the approved equipment, or
 - (e) a credit has been established under the *Gas Processing Efficiency Assistance Regulation* (AR 275/89) in respect of the approved equipment.
- (3) For the purpose of this Regulation, the eligible capital costs of approved equipment do not include any of the following:
- (a) administration, management or financing costs;
 - (b) depreciation;
 - (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.
- (4) Eligible capital costs for approved equipment 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.
- (5) The Minister may in respect of any approved equipment
- (a) disallow as eligible capital costs any expenditure that the Minister considers unreasonable,
 - (b) reduce the amount of any eligible capital costs in relation to any item or service obtained from a person connected to the operator or any owner of the approved CO₂ project, or

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

Operating cost allowance

6 The allowance for operating costs for an approved CO₂ project for any period of time is the percentage of the eligible capital costs of the project for the same period that is specified in the approval for the project under section 3(2)(e).

Eligible CO₂ expenses

7(1) Subject to this section, the eligible CO₂ expenses of an approved CO₂ project are the expenses that, in the Minister's opinion, are incurred to obtain CO₂ for the project.

(2) Expenses are not eligible CO₂ expenses for the purposes of this Regulation if the expenses are not actually incurred or if they are incurred before January 1, 2003 or after June 30, 2008.

(3) For the purpose of this Regulation, eligible CO₂ expenses do not include any of the following:

- (a) administration, management or financing costs;
- (b) 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 obtaining of CO₂.

(4) Eligible CO₂ expenses shall be reduced to the extent of amounts reimbursed under a policy of insurance, as proceeds of litigation or otherwise.

(5) The Minister may in respect of any CO₂,

- (a) disallow as eligible CO₂ expenses any expenditure that the Minister considers unreasonable,
- (b) reduce the amount of any eligible CO₂ expenses in relation to any item or service obtained from a person connected to the operator or any owner of the approved CO₂ project, or
- (c) reduce the amount of any eligible CO₂ expenses to an amount that the Minister considers reasonable.

Connected persons

8(1) For the purposes of sections 5(5)(b) and 7(5)(b), an operator or owner of an approved CO₂ 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), 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 CO₂ 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.

AR 120/2003 s8;212/2005

Applications for and establishing of credits

9(1) The operator of an approved CO₂ project may apply to the Minister for the establishing of credits for the project after the end of each quarter the whole or any part of which occurs on or after the date injection of CO₂ for the purposes of the project commences.

(2) The Minister may establish credits for an approved CO₂ project for a quarter in respect of which an application has been made under subsection (1) based on

- (a) the percentage specified in the approval for the project under section 3(2)(d),
- (b) the Crown percentage of the eligible capital costs, operating cost allowance or eligible CO₂ expenses of the project, whichever is specified in the approval under section 3(2)(c) as a category of item in relation to which credits may be established for the project and to the extent credits have not previously been established in relation to such items, and

- (c) the maximum amounts specified in the approval for the project under section 3(2)(a) and (b).

Credit allocation and application

10(1) Credits established under this Regulation may be applied in accordance with this section against the payment of royalty or royalty compensation owing to the Crown in right of Alberta under the *Petroleum Royalty Regulation* (AR 248/90) or the *Natural Gas Royalty Regulation, 2002* (AR 220/2002), respectively.

(2) The operator of an approved CO₂ project shall show in an application under section 9, an allocation of

- (a) the percentage, if any, of the credits to be applied in satisfaction of obligations to pay royalty owing by the operator under the *Petroleum Royalty Regulation* (AR 248/90), and
- (b) the percentage, if any, of the credits to be applied in satisfaction of obligations to pay royalty compensation owing by royalty clients under the *Natural Gas Royalty Regulation, 2002* (AR 220/2002),

such that the aggregate of the percentages so allocated shall equal 100%.

(3) If the operator has shown in an application under section 9 that any credits established for a project are to be applied as described in subsection (2)(b),

- (a) the operator shall also show in the application, the royalty clients to whom those credits are to be allocated and the percentage to be allocated to each royalty client, and
- (b) the Minister shall apply the credits as they are established by him, by including the credits in the royalty client accounts, if any, of royalty clients in accordance with the allocation under clause (a), to be set off against royalty compensation debited to the account.

(4) To the extent that credits included in a royalty client account at any time result in a net credit balance in the royalty client's favour, the Minister shall not pay the royalty client an amount equal to the credit balance in accordance with section 18(7) of the *Natural Gas Royalty Regulation, 2002* (AR 220/2002) but shall instead carry over the amount of those credits in the royalty client account until they are fully set off against royalty compensation that is subsequently debited to the account.

(5) If the operator has indicated in an application under section 9 that credits established in relation to an approved CO₂ project are to be applied in satisfaction of obligations described in subsection (2)(a), the Minister shall apply the credits so allocated under that subsection by refunding to the operator in accordance with subsection (6), proceeds received by the Crown for royalty paid by the operator under the *Petroleum Royalty Regulation* (AR 248/90) on the operator's own account for the quarter for which the credits are established.

(6) The amount to be refunded to an operator under subsection (5) for each quarter is the lesser of

- (a) the amount of the credits established for the approved CO₂ project for the quarter, allocated in accordance with subsection (2)(a), that have not been previously applied under this section, and
- (b) the proceeds, calculated by multiplying the royalty on crude oil paid by the operator under the *Petroleum Royalty Regulation* (AR 248/90) on the operator's own account for the quarter by the simple average of the par prices applicable to that royalty under that Regulation for the months of the quarter, to the extent the proceeds so calculated have not been previously refunded under this section.

(7) Any credits referred to in subsection (6)(a) shall, to the extent they are not applied in accordance with subsections (5) and (6) in relation to a quarter, be carried over and may be applied in accordance with those subsections in relation to the next and each subsequent quarter until they are fully applied.

(8) Credits not applied in accordance with this section shall expire and shall not be applied after December 31, 2008.

Records

11(1) Subject to subsection (2), where the operator of an approved CO₂ project has made an application under this Regulation in respect of the project and that application is approved by the Minister, all records that relate to the application 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 day on which the application is filed.

(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

12(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 credits, or
- (b) the operator of an approved CO₂ 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 CO₂ project in the circumstances described in subsection (1) are any or all of the following:

- (a) revoke the approval for the approved CO₂ project;
- (b) determine that all of the credits applied for are not to be established or allocated;
- (c) determine that the amount of credits applied for was improperly, artificially or unduly increased and is to be reduced accordingly;
- (d) determine that all of the credits established or allocated should not have been established or allocated;
- (e) determine that the amount of credits 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 credits have been allocated or transferred is not entitled to the credits or to the amount by which the amount of

credits is or was improperly, artificially or unduly increased, as the case may be.

Recovery of unauthorized credits

13(1) If any credits are applied under section 10 in satisfaction of an obligation, and

- (a) subsequently credits related to the same approved CO₂ project are eliminated or reduced by reason of a determination under section 12(2), or
- (b) it is subsequently determined by the Minister that some or all of the credits so applied should not have been established for any reason, the operator and royalty clients for whose benefit the credits were applied are liable to pay to the Crown an amount equal to the credits that should not have been so applied.

(2) On receiving a notice of liability under subsection (1), the person to whom it is addressed shall pay to the Crown, within the time specified in the notice, the amount specified in the notice together with interest computed from the date on which the credits were applied pursuant to this Regulation until the date on which the amount is fully paid.

(3) If interest is payable under subsection (2) 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 that is established by the Province of Alberta Treasury Branches as its prime lending rate on loans payable in Canadian dollars and is in effect on the first day of the month in which that day occurs.

(4) 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 refunded to an operator under section 10 in respect of credits for which an amount is repayable to the Crown under subsection (1), or
- (b) the lessee's liability to the Crown under an agreement for the payment of royalty compensation in satisfaction of which credits have been applied for which an amount is repayable to the Crown under subsection (1).

Expiry

14 This Regulation expires on June 30, 2014.

AR 120/2003 s14:226/2008