

Coal Act

[SBC 2004] CHAPTER 15

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Definitions

1 In this Act:

"**coal land**" means land in which the coal or the right to explore for, develop and produce coal is vested in or reserved to the government;

"**coal land reserve**" means coal land reserved under section 21;

"**lease**" means a valid and subsisting lease issued under section 18;

"**licence**" means a valid and subsisting licence issued under section 12;

"**location**" means the area of land specified in a licence or lease;

"**owner**" means

(a) the government for land owned by the government,

(b) a person registered in the land title office as the registered owner of the surface area or as its purchaser under an agreement for sale, and

(c) a person to whom a disposition of Crown land has been issued under the *Land Act*;

"**produce**" means mining and removing coal for use, marketing or sale;

"**protected heritage property**" has the meaning in the *Mineral Tenure Act*;

"**recorded holder**" means a person whose name appears as the owner of a coal licence or coal lease on the record of that title in the chief gold commissioner's office;

"**surface area**" means surface area of land;

"**unit**" means a unit as defined under the *Petroleum and Natural Gas Act*.

Right of entry of recorded holder

2 (1) A recorded holder may enter, occupy and use coal land and prospect for, explore for, develop and produce coal.

(2) The right of entry under subsection (1) does not extend to any of the following:

(a) land occupied by a building;

(b) the curtilage of a dwelling house;

(c) protected heritage property, except as authorized by the minister or local government responsible for the protection of the heritage property;

(d) orchard land;

(e) land under cultivation.

(3) Unless the location is one of the following, a land use designation or objective does not preclude application by a recorded holder for any form of permission, or approval of that permission, required in relation to mining activity by the recorded holder:

(a) an area in which mining is prohibited under the *Environment and Land Use Act*;

- (b) a park under the *Park Act* or a regional park under the *Local Government Act*;
 - (c) a park or ecological reserve under the *Protected Areas of British Columbia Act*;
 - (d) an ecological reserve under the *Ecological Reserve Act*;
 - (e) an area of Crown land if
 - (i) the area is designated under section 93.1 of the *Land Act* for a purpose under that section, and
 - (ii) the order under that section making the designation, or an amendment to the order, precludes the application by the recorded holder;
 - (f) a protected heritage property.
- (4) Despite this or any other Act, the minister may restrict the use of surface rights by a person who holds a licence if, after inspection and giving reasonable notice to that person, the minister considers that the surface area is so situated that it should be used for purposes other than mining.
- (5) If surface rights are restricted under subsection (4), the minister must serve the licensee with a notice of the restriction.
- (6) No compensation is payable as a result of a restriction under subsection (4).

Right of entry on private land and compensation

- 3 (1) A recorded holder must not begin the exploration for or development or production of coal unless the recorded holder first gives notice, in the prescribed form and manner and within the prescribed period, to every owner of surface area on which the recorded holder intends to carry out that activity.
- (2) A recorded holder is liable to pay compensation to the owners of surface area for loss or damage caused by the recorded holder entering, occupying or using the surface area.
- (3) On application of a recorded holder or owner, the Mediation and Arbitration Board under the *Petroleum and Natural Gas Act* has authority to settle disputes arising from rights acquired under this Act in respect of entry, use or occupation, security, rent and compensation and, for this purpose, the relevant provisions of Part 3 of the *Petroleum and Natural Gas Act* apply.
- (4) In an arbitration under subsection (3) involving a conflict between rights acquired under this Act and rights acquired under the *Land Act*, the Mediation and Arbitration Board must take into account which of the rights were applied for first and must give the holder of those rights some priority in its consideration of the dispute between the parties.
- (5) A copy of an order made by the Mediation and Arbitration Board under subsection (3) may be filed at any time in a Supreme Court registry and enforced as if it were an order of the court.

Compensation

- 4 (1) If, after the coming into force of this section, the minister responsible for the administration of the *Park Act* expropriates under section 11 of the *Park Act* the rights of the licensee under a licence or of the lessee under a lease, compensation is payable to the licensee or lessee, as the case may be, in an amount equal to the value of the rights expropriated, to be determined under the regulations.
- (2) If the minister responsible for the administration of this Act and the licensee or lessee, as the case may be, do not agree as to the amount of compensation that is payable under subsection (1), the minister, the licensee or the lessee may require the dispute to be settled by a single arbitrator who has the prescribed qualifications and is to be appointed by the minister.

(3) The award of the single arbitrator appointed by the minister responsible for the administration of this Act is binding on the parties to the arbitration.

Surrender of licence or lease

5 (1) A recorded holder may surrender any of the following by notifying the minister:

- (a) a licence or part of a licence;
- (b) a lease or part of a lease.

(2) A refund of fees or rentals must not be paid as a result of a surrender under subsection (1).

Assignments

6 (1) A provision in a disposition by a recorded holder that has the effect of dividing the interest in the licence or lease on the basis of the stratification, physical position or characteristics of the coal under the location is void.

(2) A grantee under a disposition of a licence or lease, or part of it, must

- (a) record the document effecting the disposition with the chief gold commissioner, and
- (b) pay for the recording a fee the Lieutenant Governor in Council may prescribe.

(3) As between the parties to a document referred to in subsection (2), failure to record the document does not invalidate the document.

(4) A disposition of a licence or lease, or of an interest in either of them, is not enforceable and must not be recorded unless the disposition is in writing and signed by the transferor or by the transferor's agent as authorized in writing.

Property on locations

7 (1) If a licence or lease expires, is surrendered or is cancelled under this Act, the former licensee or former lessee, not more than 12 months after the date of the expiry, surrender or cancellation, and subject to the consent of the chief gold commissioner, may enter the location and remove any mining plant, machinery, personal property and other material placed by the former licensee or former lessee on the location.

(2) If a licensee or lessee has complied with this Act, the regulations and the licence or lease and paid to the government all money due by the licensee or lessee under this Act and the *Mines Act*, the chief gold commissioner must not refuse to consent.

(3) Any mining plant, machinery, personal property or other material not removed within the 12 month period specified in subsection (1) is vested in the government on order of the chief gold commissioner, and the chief gold commissioner, on behalf of the government, may take possession of and sell it or otherwise dispose of it subject to the terms the chief gold commissioner considers appropriate.

Technical information

8 (1) A licensee, a lessee or a person exploring for, developing or producing coal on land other than coal land, must submit to the minister the information or data required by regulation, respecting the exploration, development and production of coal.

(2) If a licence or lease expires, is surrendered or is cancelled under this Act, the licensee or lessee, not more than 90 days after the date of the expiry, surrender or cancellation, must submit to the minister the information or data required under subsection (1) as if the licence or lease were valid and subsisting.

Rights under licence

9 (1) A licensee, under this Act and the licence, has the exclusive rights

(a) to explore for and develop coal on the licence location, and

(b) with the approval of the chief inspector appointed under the *Mines Act*, to mine and remove those quantities of coal the licensee may reasonably require for testing, to a maximum of 100 000 tonnes.

(2) A licensee is entitled to explore for and develop only the coal that is inside the boundaries, continued vertically downward, of the licence location.

(3) The holder of a licence is entitled

(a) to enter, occupy and use the surface area of the location for the purpose of exploring for and developing coal on the location,

(b) subject to entering into an agreement in the form of a free use permit under the *Forest Act* or a licence to cut under that Act, to use and remove timber that, at the time the holder of the licence enters into the agreement, is on the location, and

(c) to the non-exclusive right to use sand, gravel and rock from the location for use on the location for a construction purpose approved under the *Mines Act*, without the necessity of obtaining under the *Land Act* a licence, lease, permit or other authorization.

Certainty of access

10 (1) A licensee must be issued a special use permit under the *Forest Practices Code of British Columbia Act*, subject to any terms and conditions set by the issuing authority, for the construction of appropriate access to the area of that licence for mining exploration, if the licensee

(a) is the holder of a permit under the *Mines Act* for the mining exploration,

(b) applies for and receives the written approval of the Chief Inspector of Mines to the issue under the *Forest Practices Code of British Columbia Act* of the special use permit, and

(c) applies under the *Forest Practices Code of British Columbia Act* for the special use permit.

(2) For the purpose of this section, the Chief Inspector of Mines, after considering practicable alternative means of access, may grant or refuse the written approval referred to in subsection (1) (b).

Licence location

11 (1) The boundaries of every new or amended licence location must conform to the regulations under the *Petroleum and Natural Gas Act* that define the petroleum and natural gas grid, unless the minister orders otherwise.

(2) A licence location must be located or must be acquired from the government in accordance with the regulations.

(3) The licence location must consist of adjoining units and must not include more than 20 units.

(4) A recorded holder, by notifying the minister, may reduce the size of the licence location as prescribed by regulation.

(5) The recorded holder is not entitled to any compensation or refund of the annual rental as a result of reducing the size of a licence location under subsection (4).

Application and issue of licence

12 (1) A person may apply to the minister for a licence, in the form and manner the minister specifies.

(2) An application must be accompanied by all of the following:

- (a) the prescribed application fee;
- (b) a prescribed rent in respect of the location;
- (c) a plan and description of the location under section 11.

(3) On receipt of an application that complies with subsection (2), the minister may issue a licence to the applicant containing terms and conditions required by the minister.

(4) If the minister does not issue a licence, the minister must refund the rent paid under subsection (2) (b).

Term and extension of licence

13 (1) A licence is valid for a term of one year from the date of its issue.

(2) If a licensee complies during the term of the licence with every provision of this Act and the licence, the minister, on application by the licensee under this section, must extend the term of the licence for further one year terms.

(3) The application must be made before the licence expires and must be accompanied by all of the following:

- (a) a prescribed rent in respect of the location;
- (b) the information and data required under section 8 (1).

(4) If an application is made under subsection (2) and the licensee satisfies the minister that it is impracticable to file the information and data required under subsection (3) (b), the minister may allow the licensee to file the information and data during a period not exceeding 90 days from the date of the application.

Late application for extension

14 If a licensee has not applied under section 13 (2) to extend the term of the licence, the licensee, not more than 30 days after the date the licence expires and on payment of the prescribed late application fee, may apply under section 13 (2) to extend the term of the licence.

Licence anniversary change

15 On application of a licensee, the minister may change the anniversary date of a licence, and if the minister changes the date, the rent must be prorated for the terms affected by the change.

Rights under leases

16 (1) Subject to subsection (2), a lessee has the exclusive right, in accordance with this Act and the lease, to explore for, develop and produce coal on the lease location.

(2) Subject to subsection (3), a lessee does not acquire, under the lease, any right, title or interest in the surface area of the lease location.

(3) If the surface area of a lease location is owned by the government and is used or occupied by the lessee, the lessee is entitled

(a) to enter, occupy and use the surface area of the location to produce coal,

(b) subject to entering into an agreement in the form of a free use permit under the *Forest Act* or a licence to cut under that Act, to use and remove timber that, at the time the holder of the lease enters into the agreement, is on the

location, and

(c) to the non-exclusive right to use sand, gravel and rock from the location for use on the location for a construction purpose approved under the *Mines Act*, without the necessity of obtaining under the *Land Act* a licence, lease, permit or other authorization.

Lease location

17 (1) The boundaries of a lease location must conform to the boundaries of licence locations.

(2) The lease location may contain one or more units.

(3) The minister may require an applicant under section 18

(a) to have the lease location surveyed by a British Columbia land surveyor, and

(b) to file a copy of the survey notes and plots of the survey with the Surveyor General.

Application for lease

18 (1) A licensee or lessee may apply for a lease, in the form and manner the minister specifies.

(2) An application under subsection (1) must be made to the minister and must be accompanied by all of the following:

(a) the prescribed application fee;

(b) a prescribed rent in respect of the location;

(c) a plan and description of the location under section 17;

(d) a plan of operations showing the exploration, development and production to be carried out on the location during the term of the lease, supported by the data, feasibility studies and other information the minister may require to evaluate the application.

(3) If the minister is satisfied that the application is made in accordance with subsections (1) and (2), the minister must issue a lease, containing terms and conditions required by the minister, to the applicant.

Term, extension and amendment of lease

19 (1) Subject to a contrary provision in this Act, a lease is valid for the term requested by the applicant, not to exceed 30 years from the date of its issue.

(2) If a lessee complies during the term of the lease with every provision of this Act and the lease, the minister, on application by the lessee under this section, must extend the lease for terms requested by the lessee, not to exceed 15 years from the date the extension is issued.

(3) An application under subsection (2) must be made before the term of the lease expires, in the form and manner the minister specifies, and must be accompanied by all of the following:

(a) the application fee, if prescribed;

(b) a prescribed rent in respect of the location;

(c) the information or data the minister requires to evaluate the application.

(4) Despite any provision of a lease and on the request of the recorded holder, the minister may extend the term of a lease subject to the terms and conditions respecting the extension that the minister considers appropriate.

Payment of rent for lease

20 A lessee must pay to the government, in advance of the year for which it is payable, a prescribed rent in respect of the location.

Coal land reserves

21 (1) The chief gold commissioner, by regulation, may designate an area of coal land as a coal land reserve.

(2) Unless a regulation designating coal land as a coal land reserve provides otherwise,

(a) a person must not explore for, develop or produce coal on a coal land reserve, and

(b) a licence or lease must not be issued for a coal land reserve.

(3) The chief gold commissioner, by regulation, may cancel at any time all or part of a coal land reserve subject to the terms and conditions the chief gold commissioner prescribes.

Recorded holder must notify of change of permanent address

22 A recorded holder must notify the chief gold commissioner of a change in the holder's permanent address.

Service of notices

23 (1) If service of a notice, an order or another document is required under this Act, the notice, order or document is deemed to have been served

(a) if served on the person, or

(b) if sent by registered mail to the last known address of the person.

(2) If service is by registered mail, the notice, order or other document is deemed to be served on the eighth day after posting.

(3) This section does not apply if a court orders another mode of service.

Survey rules

24 The Association of British Columbia Land Surveyors may make rules under section 75 of the *Land Surveyors Act* respecting the surveying of land and locations under this Act.

Compliance

25 (1) If a recorded holder does not comply with any of the following, the minister may notify the recorded holder by registered mail of the failure to comply and may require the recorded holder to comply within the period specified in the notice:

(a) this Act or a licence or lease under it;

(b) the *Mines Act* or a permit under it.

(2) If the failure to comply is not remedied to the satisfaction of the minister within the time specified in a notice under subsection (1), the minister, by order, may

(a) suspend the operations of the recorded holder until the default is remedied,

- (b) refuse to renew any licence or lease held by the recorded holder until the recorded holder complies, and
- (c) after the failure of the recorded holder to remedy the default during a period of suspension ordered under paragraph (a), cancel the licence or lease.

Power to make regulations

26 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) respecting the transportation, storage, use, examination and analysis of core samples;
- (b) respecting the confidentiality of information required to be supplied under the regulations;
- (c) respecting the technical qualifications required by a person who prepares reports describing technical activity or who supervises the preparation of those reports;
- (d) empowering the chief gold commissioner to waive the requirements prescribed under paragraph (c) in prescribed circumstances;
- (d.1) respecting notices and periods for the purposes of section 3 (1);
- (e) for the purposes of section 4,
- (i) determining value and defining the components that comprise value,
- (ii) prescribing methods of evaluation for use in determining value, that may differ according to different components of value,
- (iii) prescribing factors to be taken into account in an evaluation,
- (iv) defining the role of evaluators in a determination of value and prescribing qualifications for evaluators that are prerequisite to their participation in the determination of value, and
- (v) prescribing the qualifications for a single arbitrator referred to in section 4;
- (f) respecting the submission of reports to the minister relating to coal exploration activities;
- (g) respecting fees and rentals to be paid under this Act and the method of calculating fees and rentals;
- (h) respecting units and coal licences, including a reduction in the size of a licence;
- (i) defining a word or phrase used but not defined in this Act.

Ministerial orders

27 (1) The minister, by order, may establish any form required, and any procedural rule for the use of a form required, under this Act.

(2) If the minister considers that a person, through no fault of the person, is unjustly prejudiced by a time limit or requirement under this Act, the minister, by order, may extend the time limit whether or not it has expired.

Offence

28 A person commits an offence who does any of the following:

- (a) explores for, develops or produces coal other than under this Act;

- (b) contravenes a provision of this Act or the regulations;
- (c) refuses to submit any information required under this Act;
- (d) makes, assents to or acquiesces in making a false or deceptive return of any information required under this Act.

Transition for leases issued under section 24 of the former Act

29 (1) In this section, "**former Act**" means the *Coal Act*, R.S.B.C. 1996, c. 51.

(2) Section 19 of this Act does not apply to a lease issued under section 24 of the former Act.

(3) A lease issued under section 24 of the former Act must not be renewed and no compensation is payable for the loss of any right to renew the lease.

(4) Subsection (3) does not prevent a person from applying under section 12 of this Act for a licence, or under section 18 of this Act for a lease, in respect of a location for which the person held a lease under section 24 of the former Act.

(5) This section is repealed on a date to be set by regulation of the Lieutenant Governor in Council.

Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 30 to 32.]

Section(s)	Affected Act
30	<i>Coal Act</i>
31	<i>Land Surveyors Act</i>
32	<i>Mineral Land Tax Act</i>

Spent

33 *[Repeal. Spent. 2004-15-33.]*

Commencement

34 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 and 2 (1), (2) and (3) (a) to (d)	By regulation of the Lieutenant Governor in Council
3	Section 2 (3) (e)	On the coming into force of section 7 of the <i>Land Amendment Act, 2003</i> , S.B.C. 2003, c. 74
4	Section 2 (3) (f) and (4) to (6)	By regulation of the Lieutenant Governor in Council
5	Sections 3 to 29	By regulation of the Lieutenant Governor in Council
6	Section 30	January 21, 2005

7	Sections 31 to 33	By regulation of the Lieutenant Governor in Council
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