



Province of Alberta

## MINES AND MINERALS ACT

# MINERAL RIGHTS COMPENSATION REGULATION

### Alberta Regulation 317/2003

With amendments up to and including Alberta Regulation 55/2015

#### Office Consolidation

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(Consolidated up to 55/2015)

**ALBERTA REGULATION 317/2003**

**Mines and Minerals Act**

**MINERAL RIGHTS COMPENSATION REGULATION**

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**Interpretation**

**1(1)** In this Regulation,

- (a) “Act” means the *Mines and Minerals Act*;
- (b) “cancel” means, with respect to an agreement,
  - (i) to accept the surrender of, cancel or refuse to renew the agreement as to the whole or part of its location pursuant to section 8(1)(c) of the Act, or
  - (ii) to cancel or amend the agreement pursuant to section 24(b) of the Act;
- (c) “close-off date” means, with respect to an agreement, the date specified in a notice given under section 2 of this Regulation or under section 4 of the *Mineral Rights Compensation Regulation* (AR 161/78) in respect of the agreement;

- (d) “demonstrable interest” means an interest that can be established to the satisfaction of the Minister;
- (e) “development allowance” means a development allowance determined in accordance with section 6;
- (f) “interest allowance” means an interest allowance determined in accordance with section 8;
- (g) “lessee of record” means the lessee of the agreement when it is cancelled;
- (h) “location” means
  - (i) the surface area of the tract described in an agreement as its location, and
  - (ii) the subsurface area underlying that surface area where rights to minerals are granted by the agreement;
- (i) “Metis agreement” means an agreement issued pursuant to the process in the Co-management Agreement or an existing mineral lease, as defined in section 111 of the *Metis Settlements Act* in respect of which the lessee of record is not able to obtain for the purpose of the agreement
  - (i) the consent of the occupants of the surface of the location to any surface access to the location, or
  - (ii) a right of entry to any part of the surface of the location under an order of the Land Access Panel or Existing Leases Land Access Panel, appointed under the *Metis Settlements Act*;
- (j) “misdescribed zone” means the zone or zones described in a notice given under section 2(1)(b) as having been misdescribed in an agreement;
- (k) “original agreement” means a cancelled agreement that does not have a predecessor or a predecessor agreement;
- (l) “original lessee” means the person to whom an original agreement was issued;
- (m) “part of the location” means
  - (i) part of the surface area of the tract described in an agreement as its location, and

- (ii) the subsurface area underlying that part where rights to minerals are granted by the agreement;
  - (n) “predecessor agreement” means
    - (i) any predecessor of a cancelled agreement that was issued as a result of the division or consolidation of the predecessor, if the predecessor itself was not issued as a result of a division or consolidation,
    - (ii) any predecessor on the expiry of which the cancelled agreement was issued as a renewal agreement, or
    - (iii) any licence, reservation, permit or lease out of which the cancelled agreement was issued other than pursuant to subclause (i) or (ii);
  - (o) “reclamation allowance” means a reclamation allowance determined in accordance with section 7;
  - (p) “surface area”
    - (i) where it is used in connection with the location of an agreement, means location as defined in clause (h)(i), and
    - (ii) where it is used in connection with a part of the location of an agreement, means part of the location as defined in clause (m)(i);
  - (q) “transfer date” means, with respect to an agreement, the effective date of the registration under the Act of the transfer of the agreement to the lessee of record.
- (2)** For the purposes of this Regulation,
- (a) sections 3, 4 and 11 apply only to the cancellation of an agreement pursuant to section 8(1)(c) of the Act, and
  - (b) section 5 applies only to the cancellation or amendment of an agreement pursuant to section 24(b) of the Act.

**Notice re development**

- 2(1)** The Minister may give a lessee a notice indicating that
- (a) the Minister is of the opinion that any, or any further, exploration for or development of a mineral in the location or part of the location of the lessee’s agreement is not in the public interest, or

- (b) the lessee's agreement contains a misdescription of a zone, describing the misdescribed zone and indicating the action that the Minister proposes to take under section 24 of the Act,

and indicating that if the agreement is cancelled as to the location or a part of the location or amended to remove a misdescribed zone in the location or part of the location, no compensation will be paid as a development allowance in respect of money expended after a date specified in the notice in the exploration for or development of a mineral or minerals in the location, the part of the location or the zone.

(2) The date specified under subsection (1) may be the date the notice is given or any subsequent date.

#### **Cancel re original lessee**

**3(1)** If an agreement is cancelled as to its location and the lessee of record is the original lessee, the compensation payable to the lessee by the Crown is the sum of

- (a) the amount of money paid to the Crown
  - (i) as a bonus to acquire the original agreement,
  - (ii) as rental with respect to the agreement and its original agreement, and
  - (iii) as application fees for the acquisition of and fees for the issuance of, the agreement and its original agreement,
- (b) a development allowance,
- (c) a reclamation allowance, and
- (d) an interest allowance.

(2) If a cancelled agreement is not an original agreement, the bonus referred to in subsection (1)(a)(i) is deemed to be an amount that is in the same proportion to the bonus paid to the Crown to acquire the original agreement as the surface area of the location of the cancelled agreement that was part of the location of the original agreement is to the surface area of the location of the original agreement.

(3) If an agreement is cancelled as to part of the location and the lessee of record is the original lessee, the compensation payable to the lessee of record by the Crown is the sum of

- (a) that part of the amounts determined under and in accordance with subsections (1)(a) and (2) that is the same proportion of all of those amounts as the surface area of the part of the location is to the surface area of the location of the agreement,
- (b) a development allowance,
- (c) a reclamation allowance, and
- (d) an interest allowance.

**Cancel re transferee**

**4(1)** If an agreement is cancelled as to its location and the lessee of record is not the original lessee, the compensation payable to the lessee of record by the Crown is the sum of

- (a) subject to subsections (2) and (3), an amount equal to the value of the consideration paid or given by the lessee of record to acquire the cancelled agreement,
- (b) the amount of money paid to the Crown as fees in connection with
  - (i) registration of the transfer of the cancelled agreement to the lessee of record under Part 6 of the Act, and
  - (ii) the issue of the cancelled agreement as a result of a division or consolidation of a predecessor agreement made after the effective date under the Act of the registration of the transfer of the predecessor agreement to the person who becomes the lessee of record,
- (c) the amount paid to the Crown as rental with respect to the cancelled agreement after the transfer date,
- (d) a development allowance,
- (e) a reclamation allowance, and
- (f) an interest allowance.

**(2)** The value of the consideration referred to in subsection (1)(a) in relation to a cancelled agreement shall not exceed the aggregate of the amounts of money

- (a) paid to the Crown as a bonus to acquire the cancelled agreement or its predecessor agreement,

- (b) paid to the Crown as application fees in connection with the acquisition of the cancelled agreement and its predecessor agreement,
- (c) paid to the Crown as rentals with respect to the cancelled agreement and its predecessor agreement before the transfer date of the cancelled agreement, and
- (d) determined by the Minister as fairly and reasonably expended in the exploration for or development of minerals in the location by prior lessees or others having a demonstrable interest in the agreement before the transfer date.

**(3)** For the purposes of subsection (1)(a), the Minister

- (a) must determine the amount of any money paid by the lessee of record as the whole or part of the consideration paid or given to acquire the cancelled agreement, and
- (b) may include or exclude from the determination of the compensation any consideration, other than money, given by the lessee of record to acquire the cancelled agreement and may determine the valuation of any consideration so included,

but the Minister shall not include in the consideration any right conferred on any person to receive any portion of the minerals recovered from the location, any products derived from those minerals, or any proceeds of sale of either.

**(4)** If the agreement is cancelled as to part of the location and the lessee of record is not the original lessee, the compensation payable to the lessee of record by the Crown is the sum of

- (a) that part of the amounts determined under and in accordance with subsections (1)(a), (b) and (c), (2) and (3) that is the same proportion of all of those amounts as the surface area of the part of the location is to the surface area of the location of the agreement,
- (b) a development allowance,
- (c) a reclamation allowance, and
- (d) an interest allowance.

**Cancel re misdescribed zone**

**5(1)** If an agreement is cancelled as to its location due to a misdescribed zone and the lessee of record is the original lessee,



the compensation payable to the lessee of record by the Crown is an amount determined under and in accordance with section 3(1).

**(2)** If an agreement is cancelled as to a part of the location due to a misdescribed zone and the lessee of record is the original lessee, the compensation payable to the lessee of record by the Crown is an amount determined under and in accordance with section 3(3).

**(3)** If an agreement is amended to remove a misdescribed zone in its location, and the lessee of record is the original lessee, the compensation payable to the lessee of record by the Crown is

- (a) 1/2 of the sums of the amounts described in section 3(1)(a),
- (b) a development allowance, and
- (c) an interest allowance.

**(4)** If an agreement is amended to remove a misdescribed zone in a part of the location, and the lessee of record is the original lessee, the compensation payable to the lessee of record by the Crown is

- (a) 1/2 of the sum of the part of the amounts referred to in section 3(1)(a), that are in the same proportion to all of those amounts as the surface area of the part of the location that contains the misdescribed zone is to the surface area of the location of the agreement,
- (b) a development allowance, and
- (c) an interest allowance.

**(5)** If an agreement is cancelled as to its location due to a misdescribed zone, and the lessee of record is not the original lessee, the compensation payable to the lessee of record by the Crown is an amount determined under and in accordance with section 4(1), (2) and (3).

**(6)** If an agreement is cancelled as to a part of its location due to a misdescribed zone, and the lessee of record is not the original lessee, the compensation payable to the lessee of record by the Crown is an amount determined under and in accordance with section 4(4).

**(7)** If an agreement is amended to remove a misdescribed zone from its location, and the lessee of record is not the original lessee, the compensation payable to the lessee of record by the Crown is

- (a) 1/2 of the sum of the amounts determined under and in accordance with section 4(1)(a), (b) and (c), (2) and (3),

(b) a development allowance, and

(c) an interest allowance.

**(8)** If an agreement is amended to remove a misdescribed zone in a part of the location, and the lessee of record is not the original lessee, the compensation payable to the lessee of record by the Crown is

(a) 1/2 of the part of the amount determined under and in accordance with section 4(1)(a), (b) and (c), (2) and (3) that is in the same proportion to the whole of the amount so determined as the surface area of the part of the location that contains the misdescribed zone is to the surface area of the location of the agreement,

(b) a development allowance, and

(c) an interest allowance.

#### **Development allowance**

**6(1)** In this section,

(a) “drilling costs” means, in respect of a cancelled agreement, the amount of money determined by the Minister to have been fairly and reasonably expended during the qualifying period by the lessee of record or others having a demonstrable interest in the agreement when it was cancelled and that the Minister considers to have been expended specifically to drill a well;

(b) “qualifying period” means, in respect of a cancelled agreement,

(i) if the lessee of record is the original lessee, a period ending on the close-off date during which the location or part of the location that is cancelled was the location or a part of the location of the cancelled agreement or of a predecessor agreement, or

(ii) if the lessee of record is not the original lessee, the period commencing on the transfer date and ending on the close-off date.

**(2)** Subject to subsections (3), (4), (5) and (6), the development allowance for an agreement that is cancelled as to the location or part of the location is the amount of money determined by the Minister to have been fairly and reasonably expended during the qualifying period, other than as a penalty or interest paid to the Crown, by the lessee of record or others having a demonstrable

interest in the agreement when it was cancelled, in exploring for or developing a mineral or minerals in the location or part of the location, respectively.

**(3)** If an agreement is cancelled as to its location under section 24(b) of the Act, the Minister must, in determining drilling costs to be included in the development allowance for the agreement, multiply the amount of the drilling costs that would otherwise be included in the development allowance under subsection (2) by

- (a) one, if
  - (i) the only zone in the location of the agreement that was in the Minister's opinion tested to determine its productivity was the misdescribed zone, or
  - (ii) the only zone in the Minister's opinion to commence being tested was the misdescribed zone but the testing of that zone was not completed before the close-off date,
- (b) 0 if, in the Minister's opinion, testing of the misdescribed zone to determine its productivity did not commence before the close-off date, or
- (c) 0.5, if the misdescribed zone and one or more other zones were in the Minister's opinion tested before the close-off date to determine its productivity.

**(4)** If an agreement is cancelled as to a part of the location under section 24(b) of the Act, the drilling costs to be included in the development allowance for the agreement is that part of the drilling costs determined under and in accordance with subsection (3) that is in the same proportion to the drilling costs so determined as the surface area of the part of the location being cancelled is to the surface area of the location of the agreement.

**(5)** If an agreement is amended to remove a misdescribed zone from its location, the development allowance for the agreement is the amount determined by multiplying the amount of drilling costs for the agreement by

- (a) 0.5, if
  - (i) the only zone in the location of the agreement that was in the Minister's opinion tested to determine its productivity was the misdescribed zone, or
  - (ii) the only zone in the Minister's opinion to commence being tested was the misdescribed zone, but the

testing of that zone was not completed before the close-off date,

- (b) 0 if, in the Minister's opinion, testing of the misdescribed zone to determine its productivity did not commence before the close-off date, or
- (c) 0.25, if the misdescribed zone and one or more other zones were in the Minister's opinion tested before the close-off date to determine their productivity.

(6) If an agreement is amended to remove a misdescribed zone from a part of the location, the development allowance for the agreement is that part of the development allowance determined under and in accordance with subsection (5) that is in the same proportion to the development allowance so determined as the surface area of the part of the location that contains the misdescribed zone is to the surface area of the location of the agreement.

(7) Despite subsections (2), (5) and (6), the development allowance for a cancelled agreement that is a Metis agreement is nil.

#### **Reclamation allowance**

**7(1)** In this section, "eligibility period" means, in respect of a cancelled agreement,

- (a) the period commencing on the close-off date for the agreement and ending on the earlier of
  - (i) the day that follows that date by 5 years, or
  - (ii) the day the agreement is cancelled,if the lessee of record is the original lessee, or
- (b) the period commencing on the later of the transfer date or close-off date for the agreement and ending on the earlier of
  - (i) the day that follows that date by 5 years, or
  - (ii) the day the agreement is cancelled,if the lessee of record is not the original lessee.

(2) The reclamation allowance for an agreement that is cancelled as to the location or part of the location is the amount of money determined by the Minister to have been fairly and reasonably expended during the eligibility period, other than as a penalty or

interest paid to the Crown, by the lessee of record or by any other person having a demonstrable interest in the agreement when it was cancelled, on abandonment or reclamation work that is necessitated by the exploration for and development of minerals in the location or part of the location, respectively.

(3) Despite subsection (2), the reclamation allowance for a cancelled agreement that is a Metis agreement is nil.

#### **Interest allowance**

**8(1)** An interest allowance referred to in section 3, 4 or 5 is the interest determined in accordance with this section on the amount of compensation determined under those provisions, excluding any interest allowance.

(2) Subject to subsection (3), if, on the close-off date, abandonment or reclamation work remains, in the Minister's opinion, to be performed as a result of the exploration for or development of minerals in the location or the part of the location to which the notice relates, the Minister may determine interest for the purposes of section 3 or 4 with respect to the period commencing 15 years prior to the date the agreement is cancelled and ending on the earlier of

- (a) 2 years after the date determined by the Minister as the date on which the abandonment and reclamation work was completed, or
- (b) 7 years after the close-off date.

(3) If

- (a) subsection (2) does not apply, or
- (b) subsection (2) does apply, but none of the reclamation or abandonment work referred to in the subsection is subsequently performed in whole or in part before the agreement is cancelled,

the Minister may only determine interest for the purposes of section 3 or 4 with respect to the period commencing 10 years prior to the date the agreement is cancelled and ending 2 years after the close-off date.

(4) The Minister may only determine interest for the purposes of section 5 with respect to the period of 10 years preceding the date the agreement is cancelled or amended pursuant to section 24(b) of the Act.

(5) An interest allowance under section 3, 4 or 5 determined for any day during the period of time under subsection (2), (3) or (4) for which a determination may be made must be determined

- (a) at the yearly rate that is 1% greater than the time weighted average of the rate of interest established by Alberta Treasury Branches as its prime lending rate on loans payable in Canadian dollars, and
- (b) without compounding.

#### **Successors**

9 If a person becomes a lessee under an agreement by reason of being a beneficiary under the will of a deceased lessee of record or as a consequence of the intestacy of a deceased lessee of record, that person is deemed to be the lessee of record for the purposes of this Regulation.

#### **Duty to provide information**

10 If the lessee claims to be entitled to compensation as a development allowance or reclamation allowance, the lessee must

- (a) provide evidence satisfactory to the Minister of the particulars of the expenditures in the form of a statutory declaration, and
- (b) provide any other information that the Minister requires with respect to those expenditures.

#### **Disposition of cancelled rights**

11(1) Subject to subsection (4), if the Minister cancels an agreement before, on or after this Regulation comes into force, as to the location or part of the location, pursuant to section 8(1)(c) of the Act, and the Minister decides within

- (a) 10 years after the agreement was cancelled, if the agreement was cancelled before this Regulation comes into force, or
- (b) 20 years after the agreement is cancelled, if the agreement is cancelled on or after this Regulation comes into force,

to make available for disposition an agreement granting rights to any of the minerals that were the subject of the cancelled agreement, and having as its location any part of the location of the cancelled agreement, the Minister must first offer to issue the agreement to the lessee of record, subject to any conditions prescribed by the Minister in the offer.

(2) If the mineral rights referred to in subsection (1) consist of petroleum, natural gas, oil sands or coal rights, the offeree must pay to the Crown for those rights a sum of money determined through the procedure described in section 16(a) of the Act.

(3) If the mineral rights referred to in subsection (1) consist of mineral rights other than petroleum, natural gas, oil sands and coal rights, the offeree must pay to the Crown as a bonus for the acquisition of the agreement an amount equal to the aggregate of

- (a) the compensation paid by the Minister in respect of the cancelled agreement
  - (i) pursuant to the *Mineral Rights Compensation Regulation* (AR 161/78), in the case of an agreement cancelled before this Regulation came into force, or
  - (ii) pursuant to this Regulation, if an agreement is cancelled on or after this Regulation comes into force,

if the entire surface area of the location of the cancelled agreement is contained within the surface area of the location of the agreement offered pursuant to subsection (1),

- (b) if the surface area of the location of the agreement offered pursuant to subsection (1) is comprised of only a part of the surface area of the location of the cancelled agreement, a portion of the compensation referred to in clause (a)(i) or (ii) in the proportion that the area of the cancelled agreement part of the offered agreement surface area has to the cancelled agreement surface area, and
- (c) an amount determined by the Minister as the equivalent of compounded interest that could have been earned on the amount referred to in clause (a)(i) or (ii) or (b) from the date on which it was paid.

(4) The Minister is not required to make an offer under subsection (1) if the lessee of record cannot be contacted at the lessee's official service address under the *Mines and Minerals Administration Regulation* (AR 262/97).

**Data disclosure**

**12** On the payment of compensation pursuant to this Regulation, the Minister must disclose all the geological and geophysical data directly related to the payment of compensation to the Alberta Energy Regulator which may, on request, disclose the data to the public.

AR 317/2003 s12;254/2007;89/2013

**Repeal**

**13** The *Mineral Rights Compensation Regulation* (AR 161/78) is repealed.

**Expiry**

**14** 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 April 30, 2020.

AR 317/2003 s14;162/2010;208/2012;55/2015











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