



Province of Alberta

## MINES AND MINERALS ACT

# OIL SANDS ROYALTY REGULATION, 2009

### **Alberta Regulation 223/2008**

With amendments up to and including Alberta Regulation 52/2019

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### Office Consolidation

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(Consolidated up to 52/2019)

**ALBERTA REGULATION 223/2008**

**Mines and Minerals Act**

**OIL SANDS ROYALTY REGULATION, 2009**

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## **Part 1 General**

### **Interpretation**

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

- (a) "Act" means the *Mines and Minerals Act*;
- (b) "allowed cost" means costs or other amounts that are allowed costs under the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);
- (c) "blended bitumen" means cleaned crude bitumen blended or deemed to have been blended with diluent;
- (d) repealed AR 89/2013 s38;
- (e) "cogeneration plant" means a plant that is approved under the *Hydro and Electric Energy Act* and produces electricity concurrently with thermal energy;
- (f) "core or supporting asset" means, in relation to a Project,
  - (i) a capital asset or engineering system without which oil sands or oil sands products to be recovered or obtained pursuant to the Project could not physically be so recovered or obtained, or
  - (ii) a capital asset or engineering system necessary for the operation and maintenance of a capital asset or engineering system described in subclause (i),but does not include an overhead asset;
- (g) "cost of diluent" means the cost of diluent determined under section 22(3);
- (h) "crude bitumen" means, despite section 1(1)(d) of the Act, a viscous mixture, mainly of hydrocarbons, that may contain sulphur compounds, that is obtained from oil

sands and that may or may not flow to a well, and includes cleaned crude bitumen;

- (h.1) “cumulative cost” means, in relation to a Project, the cumulative cost of the Project determined under section 11(5.3) or 25(2);
- (h.2) “cumulative revenue” means, in relation to a Project, the cumulative revenue of the Project determined under section 11(5.3) or 25(3);
- (i) “description of the Project” means,
  - (i) in relation to a Project other than a Prior Project, the description specified for the Project pursuant to sections 11(4)(b) and 14, and
  - (ii) in relation to a Prior Project, the description specified for the Prior Project pursuant to sections 16(2)(a)(i) and 17(1)(d) of the Prior Regulation or pursuant to a contract under section 9(a) of the Act relating to the Prior Project,as that description may be amended from time to time;
- (j) “development area” means
  - (i) in relation to a Project other than a Prior Project, the area and strata described pursuant to section 14(1)(d), and
  - (ii) in relation to a Prior Project, the area and strata described pursuant to section 17(1)(d)(i) of the Prior Regulation,from which oil sands or oil sands products are to be recovered pursuant to the Project, as that area and strata may be amended from time to time;
- (k) “diluent” means hydrocarbon substances used to dilute crude bitumen;
- (l) “diluent recovery unit” means a processing plant or part of a processing plant at which diluent is separated from blended bitumen;
- (m) “effective date” means,
  - (i) in respect of a Prior Project, the effective date referred to in section 1(1)(i) of the Prior Regulation or deemed by a contract under section 9(a) of the Act to have been specified for the Prior Project,

- (ii) in respect of a Project other than a Prior Project, the effective date specified under section 11(4)(d),
  - (iii) in respect of a Prior Project expansion, the effective date referred to in section 1(1)(ii) of the Prior Regulation, and
  - (iv) in respect of a Project expansion, the effective date specified under section 11(5)(d) for the amendment relating to the Project expansion;
- (m.1) “engineering system” means a regularly interacting or interdependent group of assets with a defined common output, including, without limitation, the following systems:
- (i) boiler feed water treatment system;
  - (ii) raw water system;
  - (iii) fuel gas system;
  - (iv) steam generation system;
  - (v) electricity transmission system;
  - (vi) control system;
  - (vii) cooling water system;
  - (viii) instrument air system;
  - (ix) fire water system;
  - (x) emergency power system;
  - (xi) potable water lines;
  - (xii) waste water lines;
  - (xiii) sewer lines;
  - (xiv) sour water lines;
  - (xv) slop oil lines;
  - (xvi) pipe racks;
- (n) “gross revenue” means, in relation to a Project, the gross revenue of the Project determined in accordance with section 22(2);

- (o) Repealed AR 52/2019 s5;
- (o.1) “integrated project” means a project designated as such by the Minister under section 8.1, comprising a Project, integrated shared operations and an integrated upgrader;
- (o.2) “integrated shared operations” means, in relation to an integrated project, those operations such as utilities and off sites that provide services to the Project as well as to the integrated upgrader as more particularly described in section section 14(1)(c.2);
- (o.3) “integrated upgrader” means that portion or portions of an integrated project that, in the Minister’s opinion, forms upgrader operations as more particularly described in section 8.1 or section 14(1)(c.2);
- (p) “lessee” means,
  - (i) in relation to a Project, a lessee of an agreement, the location of which includes the whole or a part of the development area of a Project,
  - (ii) in relation to a non-Project well event, a lessee of the agreement pursuant to which an oil sands product is or may be recovered from the non-Project well event, and
  - (iii) in relation to a non-Project mining operation, a lessee of the agreement pursuant to which oil sands is or may be recovered by the non-Project mining operation;
- (p.1) “measured use assets” means one or more of the following engineering systems:
  - (i) boiler feed water treatment system;
  - (ii) raw water system;
  - (iii) fuel gas system;
  - (iv) steam generation system;
  - (v) electricity transmission system;
- (q) “net loss” means, in relation to a Project, the net loss of the Project determined in accordance with section 24(3);
- (r) “net revenue” means, in relation to a Project, the net revenue of the Project determined in accordance with section 24(2);

- (s) “non-Project mining operation” means a mining operation, as defined in the *Oil Sands Conservation Act*, that is not part of a Project;
- (s.1) “non-Project well” means a well that contains one or more non-Project well events;
- (t) “non-Project well event” means a well event that is not part of a Project and from which an oil sands product is or may be recovered;
- (u) “oil sands product” means
  - (i) any product recovered from oil sands,
  - (ii) any product obtained by processing oil sands, and
  - (iii) any other product obtained directly or indirectly from a product referred to in subclause (i) or (ii),but does not include solution gas;
- (v) “operator” means the person who from time to time is shown in the records of the Department as the operator of a Project, proposed Project, non-Project mining operation or the well containing a non-Project well event, as the case may be, or if no such person is shown in the records of the Department, the person who from time to time is shown in those records as the lessee of the Project, proposed Project, non-Project mining operation or non-Project well event, respectively;
- (w) “other net proceed” means an amount specified, determined or deemed to be an other net proceed under section 23;
- (x) “overhead asset” means, in relation to a Project, a capital asset that is used in connection with the functions and other items described in section 1(1)(b)(i) to (vi) of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);
- (y) “Period” means each calendar year or partial calendar year comprising the months between the effective date of a Project and the date the approval of the Project under section 16 of the Prior Regulation, a contract under section 9(a) of the Act or section 11 of this Regulation, as the case may be, is revoked, except that where the Project payout date of a Project occurs during the calendar year or partial calendar year, the months of the portion of the calendar year or partial calendar year that ends on the day

before the Project payout date and the months of the portion of the calendar year or partial calendar year that commences on the Project payout date shall each be considered separate Periods;

- (y.1) “person” includes a firm, trust, partnership, joint venture, government and government agency;
- (z) “post-payout Period” means each Period commencing on or after the Project payout date;
- (aa) “pre-payout Period” means each Period commencing before the Project payout date;
- (bb) “Prior Approval” means an approval given under section 16 of the Prior Regulation and subsisting on January 1, 2009, whether given pursuant to an application under section 15 of the Prior Regulation or pursuant to the provisions of a contract under section 9(a) of the Act;
- (cc) “prior net cumulative balance” means,
  - (i) in relation to a Project that is not a Prior Project, the amount determined under section 15 or 16 as the prior net cumulative balance of the Project,
  - (ii) in relation to a Project expansion, the amount determined under section 15 or 16 as the prior net cumulative balance of the Project expansion,
  - (iii) in relation to a Prior Project, the amount specified under section 16(2)(a)(iii) of the Prior Regulation as the prior net cumulative balance of the Prior Project, and
  - (iv) in relation to a Prior Project expansion, the amount specified under section 16(2)(b)(iii) of the Prior Regulation as the prior net cumulative balance of the Prior Project expansion,as that amount has been or is amended from time to time pursuant to this Regulation or the Prior Regulation, as the case may be;
- (dd) “Prior Project” means, subject to section 50(2), a scheme or operation approved in a Prior Approval;
- (ee) “Prior Project expansion” means an addition to a Prior Project that is included in the description of the Project under section 16 of the Prior Regulation by virtue of section 16(2)(b)(i) of that Regulation;

- (ff) “Prior Regulation” means the *Oil Sands Royalty Regulation, 1997* (AR 185/97);
- (gg) “processing plant” means a facility
- (i) for obtaining crude bitumen from oil sands that have been recovered, or
  - (ii) for obtaining oil sands products from oil sands, crude bitumen or a derivative of crude bitumen that have been recovered,
- that is either approved under the *Oil Sands Conservation Act* or designated by the Minister, by order or an instrument in writing that the Minister considers appropriate, as a processing plant for the purposes of this Regulation;
- (hh) “Project” means a project approved in one or more subsisting approvals under section 11, and includes a Prior Project;
- (ii) “Project expansion” means an addition to a Project that is included or incorporated in the description of the Project under section 11 by virtue of section 11(5)(b);
- (jj) “Project lands” means, in relation to a Project,
- (i) the development area of the Project, and
  - (ii) the surface areas occupied by the Project
- specified from time to time in the description of the Project;
- (kk) “Project operations” means
- (i) in relation to a single Project other than a single Prior Project, the description referred to in section 14(1)(a) of the approval granted under section 11 in respect of the single Project, as that description may be amended from time to time, and
  - (ii) in relation to a single Prior Project, the operations described in the description of the Project for the single Prior Project, as that description may be amended from time to time;
- (ll) “Project payout date” means the date a Project achieves payout in accordance with section 25;

- (mm) “Project revenue” means the amount determined as the Project revenue of the Project under section 22;
- (nn) “Project substances” means oil sands and oil sands products recovered, whether before, on or after the effective date of a Project, from the development area of the Project;
- (oo) “Project use threshold” means the requirements of section 1.1;
- (oo.1) “Regulator” means the Alberta Energy Regulator;
- (pp) “royalty calculation point” means,
  - (i) in relation to an oil sands product, or blended bitumen containing crude bitumen, obtained pursuant to a Project that is a Project substance, the place specified in section 30(1), (2) or (2.1) at which the Crown’s royalty share of the oil sands product or crude bitumen is to be calculated, or
  - (ii) in relation to an oil sands product, or blended bitumen containing crude bitumen, obtained pursuant to a Project that is not a Project substance, the place specified in section 30(3) as the royalty calculation point for the oil sands product or the blended bitumen, as the case may be;
- (qq) “royalty compensation” means money payable to the Crown under this Regulation as compensation in respect of the Crown’s royalty share of oil sands or oil sands products, the Crown’s title to which is transferred pursuant to sections 26, 27 or 31;
- (rr) “solution gas” means gas dissolved in crude bitumen under initial reservoir conditions and includes any of that gas that evolves as a result of changes in pressure due to human disturbance, but does not include gas produced through chemical alteration of crude bitumen using high temperature, high pressure, a catalyst or otherwise;
- (ss) “synthetic crude oil” means a mixture, mainly of pentanes and heavier hydrocarbons, that may contain sulphur compounds, that is obtained from upgrading crude bitumen and that is liquid at a temperature of 15 degrees Celsius and at a pressure of 101.325 kilopascals;
- (ss.1) “third party disposition” means the first disposition of an oil sands product obtained pursuant to a Project and

delivered at a royalty calculation point for the product, made

- (i) in an arm's length transaction, whether or not the transaction is preceded by one or more non-arm's length transactions in which the oil sands product is disposed of, and
  - (ii) before the oil sands product is processed in order to produce other oil sands products or is otherwise consumed or used;
- (tt) "unit price" means, in relation to each oil sands product obtained pursuant to a Project and delivered at a royalty calculation point of the Project for that kind of product during a month or Period, including blended bitumen containing crude bitumen so obtained or recovered and delivered, the price determined under section 32 in respect of that product for that month or Period, as the case may be;
- (uu) "well event" means
- (i) a part of a well completed in a zone and given a unique well identifier by the Regulator,
  - (ii) parts of a well completed in 2 or more zones and given a single unique well identifier by the Regulator,
  - (iii) a part of a well completed in and recovering an oil sands product from a zone but which has not yet been given a unique well identifier by the Regulator, or
  - (iv) parts of a well completed in and recovering an oil sands product from 2 or more zones during the period when the parts are considered by the Minister as a single well event for the purposes of this Regulation and before the Regulator makes a decision whether or not to give the parts a single unique well identifier.
- (2)** In this Regulation, "cleaned crude bitumen" means
- (a) crude bitumen from which impurities have been removed sufficiently to allow it, when blended with diluent, to be transported by pipeline,
  - (b) crude bitumen delivered from

- (i) a Project to a processing plant that is not included in the description of the Project, or
- (ii) the part of a processing plant that is included in the description of a Project to another part of the processing plant that is not included in the description of the Project,

where the processing plant is, for the purposes of this clause, designated by the Minister in a subsisting designation as an integrated upgrader, and

- (c) the aggregate of oil sands products delivered from a diluent recovery unit that is the last facility of a Prior Project from which the product is permanently removed from the Prior Project.

**(3)** In using the definition of “cleaned crude bitumen” for the purposes of this Regulation, crude bitumen described in subsection (2)(b) and oil sands products described in subsection (2)(c) are deemed to have had impurities removed from them.

AR 223/2008 s1;11/2012;88/2013;89/2013;26/2017;52/2019

#### **Project use threshold rules**

**1.1** For the purposes of any provision of this Regulation that refers to a Project use threshold, a capital asset or engineering system meets the Project use threshold if

- (a) in the opinion of the Minister, the sustained use, for the purposes of a single Project, of the capital asset or engineering system over its remaining useful life, expressed as a percentage of the total use for all purposes of the capital asset or engineering system over its remaining useful life, is likely to be at least 75%, or
- (b) the capital asset or engineering system
  - (i) is used on 2 or more Projects that are owned or operated by the same lessees or one or more affiliates of the same lessees, and
  - (ii) in the opinion of the Minister, is likely to be almost exclusively used on those Projects over the remaining useful life of the capital asset or engineering system.

AR 88/2013 s3

**Affiliate rules**

**2(1)** For the purposes of this Regulation, a person is affiliated with another person if, under subsection 1206(5) of the *Income Tax Regulations* under the *Income Tax Act* (Canada), the person is considered to be connected with the other person, but in making that determination, paragraph 1206(5)(a) shall be read as if it were replaced by the following:

- (a) a person and another person (in this paragraph referred to as “that other person”) are connected with each other if
  - (i) the person and that other person are not dealing at arm’s length,
  - (ii) the person has an equity percentage in that other person that is not less than 10%, or
  - (iii) where the person is a corporation, the corporation and that other person are linked by another person who has an equity percentage in each of them of not less than 10%;

**(2)** For the purposes of subsection (1)(a)(i), persons are not dealing at arm’s length with each other if, under the *Income Tax Act* (Canada), they would not be considered to be dealing at arm’s length.

**(3)** For the purposes of this Regulation, other than subsection (1)(a)(i), a transaction is, subject to subsection (4), a non-arm’s length transaction if

- (a) a party to the transaction is affiliated with any other party to the transaction,
- (b) any party to the transaction is in a position to compel any other party to the transaction to enter into the transaction,
- (c) the consideration for any party under the transaction is in whole or in part based on or tied to
  - (i) any other contractual or other obligation with another party to the transaction, or
  - (ii) any consideration under a contractual or other obligation described in subclause (i), or
- (d) the transaction involves self-dealing with respect to a party,

but does not include any transaction to which the only parties are the Crown and another party.

(4) Despite subsection (3), the Minister may, on application by the operator of a Project or on the Minister's own initiative, determine that a transaction is an arm's length transaction or a non-arm's length transaction.

(5) The Minister may revoke a determination made under subsection (4) effective as of the date of any change in the circumstances relied on by the Minister to make the determination or as of any later date.

(6) For the purposes of this Regulation, other than subsection (1)(a)(i), a transaction is an arm's length transaction if it is not a non-arm's length transaction under subsection (3) or so long as it is determined by the Minister to be an arm's length transaction pursuant to a subsisting determination under subsection (4).

AR 223/2008 s2;11/2012

3 Repealed AR 88/2013 s4.

#### **Recovery and disposition presumption**

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

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

#### **Submissions**

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

(2) Any document required or permitted to be furnished to the Minister under this Regulation must be in the form determined by the Minister or in a form otherwise acceptable to the Minister.

(3) Unless otherwise directed by the Minister, any document required or permitted to be furnished under this Regulation must

- (a) contain all the information called for by the form determined by the Minister, if any, for the document,

- (b) be completed in accordance with any directions given by the Minister or any instructions shown in the form determined by the Minister, if any, for the document, and
- (c) be accompanied by any additional information or documents called for by the form of the document or by any directions given by the Minister.

**(4)** Subject to section 10(6), the Minister may reject a document that does not meet the requirements of subsections (2) and (3), and in that case the document shall, for the purposes of this Regulation, be considered not to have been furnished.

#### **Measurement**

**6(1)** Subject to subsections (2) and (3), measurement and calculation of oil sands, oil sands products or blended bitumen for the purposes of this Regulation shall be undertaken in accordance with

- (a) the regulations under the Act governing such measurement or calculation,
- (b) the enactments governing such measurement or calculation, administered from time to time by the Regulator, to the extent such measurement or calculation
  - (i) is not addressed by the regulations referred to in clause (a), and
  - (ii) is, in relation to the use of the results of the measurement or calculation for the purposes of this Regulation, the *Oil Sands Allowed Costs (Ministerial) Regulation (AR 231/2008)* or the *Bitumen Valuation Methodology (Ministerial) Regulation (AR 232/2008)*, acceptable to the Minister,

or

- (c) the directions of the Minister governing such measurement or calculation, to the extent such measurement or calculation is not addressed under clauses (a) and (b).

**(2)** If a measurement or calculation is not undertaken in accordance with subsection (1) or at all, the Minister may authorize calculation in accordance with the directions of the Minister, in lieu of measurement or calculation in accordance with subsection (1).

- (3) If calculation is not undertaken in accordance with subsection (2), the Minister may undertake the calculation.

AR 223/2008 s6;11/2012;89/2013

#### **Other royalty liability**

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

#### **Prescribed components**

- 8 The Minister may, by order, with respect to any month, prescribe the following:
- (a) an amount per tonne as the par price for oil sands;
  - (b) a percentage as the estimated "annual NRPF", as calculated under section 29(2)(b);
  - (c) a percentage as the estimated annual  $R_G\%$  for the month;
  - (d) a percentage as the Third Party Disposition Threshold for the month;
  - (e) a transportation allowance or a methodology for determining a transportation allowance for a Project for the month for a kind of oil sands product obtained pursuant to a Project.

AR 223/2008 s8;11/2012;26/2017

#### **Designation of integrated project and integrated upgrader**

- 8.1 The Minister may, by order or otherwise,
- (a) designate a Project as being part of an integrated project for the purposes of this Regulation and the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);
  - (b) designate a processing plant or a proportion, part or a proportion of a part of a processing plant as being an integrated upgrader.

AR 11/2012 s5;88/2013

**Application of Regulation**

- 9** Unless otherwise provided in this Regulation, this Regulation applies
- (a) to oil sands products recovered from a non-Project well event on or after January 1, 2009,
  - (b) to oil sands recovered by a non-Project mining operation on or after January 1, 2009,
  - (c) to oil sands products recovered or obtained pursuant to a Project and delivered at a royalty calculation point for the product on or after January 1, 2009,
  - (d) to each Period of a Project that commences on or after January 1, 2009, and
  - (e) to the determination of the Crown's royalty share, and of the royalty compensation payable in relation to the Crown's royalty share, of the oil sands and oil sands products referred to in clauses (a), (b) and (c).

## **Part 2 Projects**

**Applications**

**10(0.1)** In this section, "Class 3 Estimate" means a Class 3 Estimate as set out in the current version of AACE International Recommended Practice No. 17R-97 Cost Estimate Classification System, as amended or superseded from time to time, in conjunction with the current version of AACE International Recommended Practice No. 18R-97 Cost Estimate Classification System — As Applied in Engineering, Procurement, and Construction for the Process Industries, as amended or superseded from time to time.

- (1)** Subject to subsection (4.3) and (4.4), the lessees of an agreement may apply to the Minister for approval of a proposed Project for the recovery of oil sands and oil sands products from the whole or a part of the location of the agreement if the proposed Project
- (a) includes the whole or a part of one or more schemes or operations for such recovery, approved by the Regulator under the *Oil Sands Conservation Act*,
  - (b) contemplates such recovery only from oil sands rights owned by the Crown in right of Alberta, and

- (c) includes a processing plant for obtaining crude bitumen from oil sands so recovered, if a scheme or operation referred to in clause (a) is a mining operation.

(2) In addition to satisfying the requirements of section 5(2) and (3), an application under subsection (1) must include at least the following:

- (a) a proposed description of Project operations;
  - (a.1) a listing and description of the wells to be included, if the production is solely from specified wells;
  - (a.2) a description of the integrated project, including the integrated shared operations and the integrated upgrader, if the proposed Project forms part of an integrated project;
- (b) a listing of the kinds of oil sands products to be recovered or obtained pursuant to the Project;
- (c) a description of the capital assets and engineering systems proposed to be included in the Project, including whether any such capital assets and engineering systems will be located other than on Project lands and, in the lessee's opinion and subject to subsection (2.1), the proposed allocation of costs based on the proportion, part or proportion of a part of those capital assets and engineering systems that are used by the Project, the integrated shared operations, if any, and the integrated upgrader, if any;
  - (c.1) a description of any measured use assets that support the Project but which are not proposed to be included in the Project pursuant to clause (c), and, subject to subsection (2.1), the proposed allocation of costs as among allowed costs of the Project, costs of integrated shared operations, if any, and costs of the integrated upgrader, if any, in using such measured use assets to support the Project;
- (d) a description of all other assets that are expected to be of material relevance to Project operations;
  - (d.1) subject to subsections (4.1) and (4.2), if
    - (i) the application includes one or more new, or modifications to one or more existing, processing plants as defined in the *Oil Sands Conservation Act*, and
    - (ii) the total estimated capital cost of the new processing plants or modifications, or both, is \$50 000 000 or more,

a Class 3 Estimate;

- (e) a description of the area and strata from which oil sands or oil sands products will be recovered pursuant to the Project and the surface areas, if any, to be occupied by the Project;
- (f) a listing and description of non-arm's length transactions expected to occur for the supply of any capital assets, engineering systems, goods or services for the Project, or for the supply of any capital assets, engineering systems, goods or services produced or generated pursuant to the Project other than for the purposes of the Project;
- (g) a proposed effective date for the Project;
- (h) a proposed calculation of the prior net cumulative balance for the Project;
- (i) the name of the operator of the Project.

**(2.1)** The allocation methodologies set out in Schedules 2 and 3 of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008) must be used to determine

- (a) the proportion, part or proportion of a part of capital assets and engineering systems for the purposes of subsection (2)(c), and
- (b) the allocation of costs for purposes of subsection (2)(c.1).

**(2.2)** Despite subsection (2.1), where a methodology requires measured data to satisfy the methodology and the measured data is not available, the lessee shall use estimates based on engineering design intent at normal operating conditions.

**(3)** Subject to subsections (4.3) and (4.4), an application may be made for approval of a proposed amendment to a Project by

- (a) the lessees of the Project, and
- (b) any lessees of agreements, the whole or a part of the location of which are proposed to be added to the development area of the Project by the proposed amendment,

if the requirements in subsection (1)(a), (b) and (c) would continue to be satisfied despite the amendment.

**(4)** In addition to satisfying the requirements of section 5(2) and (3), an application under subsection (3) must include at least the following contemplated by or relating to the amendment:

- (a) a description of any material changes to Project operations and whether, in the lessee's opinion, the Project operations would form part of an integrated project for the purposes of this Regulation and the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);
  - (a.1) if the proposed amendment relates to a Project that forms part of an integrated project, any changes to the description of the Project, and those changes, if any, to the integrated shared operations and the integrated upgrader;
  - (b) a description of any change in the kinds of oil sands products to be recovered or obtained pursuant to the Project;
  - (b.1) a description of any changes to the measured use assets that support the Project, and, subject to subsection (2.1), any changes to the proposed allocations to be used to determine allowed costs of the Project, the integrated shared operations, if any, and the integrated upgrader, if any, using the methodologies set out in Schedules 2 and 3 of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);
  - (c) in respect of the addition of, removal of, or change of use of any capital asset or engineering system of the Project, or any proportion, part or proportion of a part of any capital asset or engineering system of the Project referred to in section 14(5), (6), (8), (11) or (14),
    - (i) a description of what is to be added, removed or changed,
    - (ii) for each such capital asset or engineering system, or any proportion, part or proportion of a part of a capital asset or engineering system, whether it will be located other than on Project lands, and
    - (iii) in the lessee's opinion, for each such capital asset or engineering system, a description of the proportion, part or proportion of a part of the capital asset or engineering system to be used on the Project, the integrated shared operations, if any, and the integrated upgrader, if any, using the methodologies set out in Schedules 2 and 3 of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);
- (d) a description of any other assets that are expected to be of material relevance to Project operations and that were not disclosed in a previous application for which an approval was granted under section 11 in respect of the Project;

- (d.1) subject to subsections (4.1) and (4.2), if
- (i) the proposed amendment includes one or more new, or modifications to one or more existing, processing plants as defined in the *Oil Sands Conservation Act*, and
  - (ii) the total estimated capital cost of the new processing plants or modifications, or both, is \$50 000 000 or more,
- a Class 3 Estimate;
- (e) a description of any addition to or deletion from Project lands;
  - (f) any addition or other change to the listing and description of non-arm's length transactions described in subsection (2)(f) disclosed in a previous application for which an approval was granted under section 11 in respect of the Project;
  - (g) a proposed effective date for the amendment;
  - (h) a proposed calculation of the prior net cumulative balance of a Project expansion, if any;
  - (i) a proposed calculation of other net proceeds arising in relation to any capital assets or engineering systems to be removed from the Project.
  - (j) if the application relates to the amalgamation of 2 or more Projects, and the Project payout date has not occurred for any of the Projects, a proposed cumulative cost and cumulative revenue for the amalgamated Project.

**(4.1)** If, in the opinion of the Minister, a Class 3 Estimate is no longer appropriate for the purposes of this Regulation, the Minister may, by order, specify the form of estimate that is required to be included instead of a Class 3 Estimate.

**(4.2)** If, in the opinion of the Minister,

- (a) the estimate included in an application does not meet the definition of a Class 3 Estimate because the estimate follows an earlier version instead of the current version of
  - (i) AACE International Recommended Practice No. 17R-97 Cost Estimate Classification System, as amended or superseded from time to time, or

- (ii) AACE International Recommended Practice No. 18R-97 Cost Estimate Classification System — As Applied in Engineering, Procurement, and Construction for the Process Industries, as amended or superseded from time to time,

and

- (b) the estimate does not vary in a material way from what would have been provided had a Class 3 Estimate been included,

the Minister may accept the estimate.

**(4.3)** Subject to subsection (4.5), a non-Project well is not eligible to form part of the description of a Project if

- (a) the Crown's royalty share on production from that non-Project well has ever been determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016) or the *Natural Gas Royalty Regulation, 2017* (AR 211/2016) and the royalty share was determined using the rate under the regulation that applies until the well's total revenue from all hydrocarbon products as determined by the Minister equals C\*, as C\* is determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016) or the *Natural Gas Royalty Regulation, 2017* (AR 211/2016), as the case may be,
- (b) one or more non-Project well events of the non-Project well is included in a pending application or an approved application under the *Enhanced Hydrocarbon Recovery Royalty Regulation* (AR 210/2016),
- (c) the non-Project well is included in a pending application or an approved application under the *Emerging Resources Royalty Regulation* (AR 209/2016), or
- (d) the non-Project well, or a non-Project well event in respect of that well, is included in a pending application or an approved application under any other program under the *Petroleum Royalty Regulation, 2017* (AR 212/2016) that provides royalty relief or a royalty credit in respect of oil sands products recovered from a well event.

**(4.4)** On and after January 1, 2017, an application may not be made under subsection (1) for an approval of a proposed well-based Project, unless the proposed Project includes at least two wells for the recovery of crude bitumen.

**(4.5)** Subsection (4.3)(a) does not apply

- (a) if, within the 12-month period beginning on the first day of the month in which royalty share for that non-Project well is determined pursuant to the *Petroleum Royalty Regulation, 2017* (AR 212/2016) or the *Natural Gas Royalty Regulation, 2017* (AR 211/2016), the lessees apply to have that non-Project well included in the description of a Project,
  - (b) in respect of a non-Project well that has royalty share determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016) or the *Natural Gas Royalty Regulation, 2017* (AR 211/2016), during the period beginning on the first day of the month in which an application is made under this section and ending on the last day of the month in which the application is approved, if the Minister approves the application, or
  - (c) in respect of wells that had been included in the description of a Project that have been removed from the description of a Project pursuant to section 12 or 17.
- (5)** Each lessee who has made an application under this section or section 15(1) or (3) of the Prior Regulation, and the operator of the Project or proposed Project to which the application relates shall, whenever requested to do so by the Minister,
- (a) provide the Minister in accordance with the request, with any additional information specified in the request that is not already required to be provided pursuant to section 5(2) or (3),
  - (b) consent to, and provide access in accordance with the request for, an examination of the records of the lessee or operator that, in the Minister's opinion, are or may be relevant to any information required to be provided in or with the application or required to be provided pursuant to clause (a), and
  - (c) co-operate with and give all reasonable assistance in accordance with the request, to the person conducting the examination under clause (b).
- (6)** If an application under subsection (1) or (3) does not satisfy the requirements of section 5(2) and (3) or of subsection (1), (2), (2.1), (3) or (4) of this section, as the case may be, or if a lessee or operator does not comply with subsection (5) in relation to an application, the Minister may, by written notice,
- (a) reject the application, or

- (b) notify the lessees of the deficiencies or non-compliance and the period of time within which the lessees must rectify the deficiencies or non-compliance, and reject the application if the deficiencies or non-compliance are not rectified within that period.

(7) Subject to section 11(7), an application that is rejected by the Minister may not be revived, however nothing in this section precludes the lessees who made the rejected application from submitting a new application under this section in relation to the proposed Project or amendment.

AR 223/2008 s10;11/2012;89/2013;26/2017

### Approvals

**11(1)** The Minister may by order approve a Project for which an application for approval is made under section 10(1) of this Regulation or section 15(1) of the Prior Regulation, or reject the application, and in doing so shall, without limitation, take into consideration at least the following:

- (a) whether the Project will be substantially operationally integrated and operated under common management;
- (b) whether any part of the Project, other than a processing plant for the obtaining of synthetic crude oil from oil sands or crude bitumen, is more than 50 kilometres distant from any other part of the Project;
- (c) whether all the parts of the Project, other than a processing plant referred to in clause (b), are substantially geographically contiguous;
- (d) whether any parts of the Project will be located outside Alberta;
- (e) whether the Project, if it is not an experimental or demonstration project,
  - (i) will predominantly generate net revenue rather than net losses during the period in which the Project is expected to be conducted, and
  - (ii) can be expected to achieve payout, as described in section 25, within a period of time that the Minister considers reasonable;
- (e.1) the volume of the production from those wells specifically listed in the application;

- (f) whether the Project is likely to exceed the maximum production capacity that the Minister considers appropriate to specify under subsection (4)(e);
- (g) if the Minister considers it appropriate to specify a date referred to in subsection (4)(f)(i) or (ii) or both in respect of the Project, what the date or dates should be.

**(2)** Subject to subsection (3), the Minister may by order approve an amendment to a Project for which an application for approval is made under section 10(3) of this Regulation or section 15(3) of the Prior Regulation, or reject the application, and in doing so shall, without limitation, take into consideration at least

- (a) the items referred to in subsection (1)(a) to (e.1),
  - (a.1) whether the Project is likely to exceed the maximum production capacity specified in an order issued under this section,
  - (a.2) if an order under this section does not specify a date referred to in subsection (4)(f)(i) in respect of the Project, whether a date referred to in subsection (4)(f)(i) should be specified in respect of the Project,
  - (a.3) if an order under this section does not specify a date referred to in subsection (4)(f)(ii) in respect of the Project, whether a date referred to in subsection (4)(f)(ii) should be specified in respect of the Project,
  - (a.4) if an order under this section specifies a date referred to in subsection (4)(f)(i), a date referred to in (4)(f)(ii) or both in respect of the Project, whether any change should be made to the specified date or dates, and
- (b) the overall impact the Minister anticipates the amendment will have on royalty payable to the Crown, in relation to both the Project and otherwise, where the Minister makes the determination of overall impact using, as the discount rate to determine the present value of future royalty payments, the Minister's estimate of the return allowance rate, as defined in the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008), for the period for which the present value is being determined by the Minister.

**(3)** Subsection (2)(b) does not apply if

- (a) the amendment that is the subject-matter of the application relates to a proposed Project expansion for a Project, and

- (b) the Minister,
  - (i) in approving the Project pursuant to subsection (1), has already considered the proposed Project expansion when considering the Project for the purposes of the consideration referred to in clause (e) of that subsection, or
  - (ii) in approving the Project pursuant to section 16(1) of the Prior Regulation, has already considered the proposed Project expansion when considering the Project for the purposes of the consideration referred to in section 17(3)(f) of that Regulation,

and determined that the Project, contemplating the potential inclusion of the proposed Project expansion, was acceptable in relation to that consideration.

**(4)** Subject to subsection (5.1), an order under subsection (1) approving a Project must specify at least the following:

- (a) a name for the Project;
- (b) a description of the Project;
- (c) the prior net cumulative balance of the Project;
- (d) the effective date of the Project;
- (e) the maximum production capacity of the Project;
- (f) any other terms and conditions to which the approval is subject, which may include, without limitation, terms and conditions specifying either or both of the following:
  - (i) the latest date on which an application under subsection (2) may be made for an order approving an amendment that would increase the maximum production capacity of the Project;
  - (ii) the latest date that may be specified as the effective date in an order under subsection (2) approving an amendment that increases the maximum production capacity of the Project.

**(5)** Subject to subsections (5.1) and (5.2), an order under subsection (2) approving an amendment to a Project must specify at least the following contemplated by or relating to the amendment:

- (a) any change to the name of the Project;

- (b) any change to the description of the Project, or a restated description of the Project that combines the description of the Project prevailing immediately prior to approval of the amendment with any changes to that description arising from the amendment;
- (c) the prior net cumulative balance of a Project expansion, if any;
- (d) the effective date of the amendment;
- (e) any changes to, or any new, terms and conditions to which the approval for the Project is subject, which may include, without limitation, terms and conditions specifying any or all of the following:
  - (i) the maximum production capacity of the Project;
  - (ii) the latest date on which an application under subsection (2) may be made for an order approving an amendment that would increase the maximum production capacity of the Project;
  - (iii) the latest date that may be specified as the effective date in an order under subsection (2) approving an amendment that increases the maximum production capacity of the Project.

**(5.1)** An order under subsection (2) approving an amendment to a Prior Project

- (a) must include terms and conditions specifying a maximum production capacity of the Prior Project if one has not previously been specified, and
- (b) may include terms and conditions specifying either or both of the following:
  - (i) the latest date on which an application under subsection (2) may be made for an order approving an amendment that would increase the maximum production capacity of the Prior Project;
  - (ii) the latest date that may be specified as the effective date in an order under subsection (2) approving an amendment that increases the maximum production capacity of the Prior Project.

**(5.2)** If an order pursuant to subsection (2) approves an amendment that amalgamates 2 or more Projects, and the Project payout date has not occurred for any of the Projects, the

amendment must specify the cumulative cost and cumulative revenue for the amalgamated Project.

**(5.3)** In determining the cumulative cost and cumulative revenue to be specified pursuant to subsection (5.2) the Minister may

- (a) make the determination pursuant to section 25(5)(b), or
- (b) may in his discretion make such determination based on the amounts provided under section 10(4)(j).

**(6)** In specifying the content of an order under subsection (1) or (2), the Minister

- (a) shall do so taking into consideration, without limitation, at least the items referred to in those respective subsections required to be taken into consideration in making the decision to approve the Project or amendment, as the case may be, and
- (b) is not required to conform to the content or information provided in, or in relation to, the application in respect of matters addressed or required to be addressed in the order.

**(7)** If the Minister decides to reject an application made under section 10(3) of this Regulation or section 16(1) of the Prior Regulation for reasons other than those referred to in section 10(6) and the application was for approval of a proposed Project expansion,

- (a) the Minister may treat the application as one made under section 10(1) for approval of the proposed Project expansion as a separate Project from that proposed to be amended in the application, and
- (b) the provisions of this Part that apply in relation to an application under section 10(1) shall apply in relation to the application if the Minister chooses to treat the application as described in clause (a),

if the lessees have requested in the application that the application be treated as described in clause (a) in those circumstances.

**(8)** If the Minister decides to reject an application for reasons other than those referred to in section 10(6), the Minister shall, by written notice, inform the lessees who made the application of the Minister's decision

- (a) to treat the application in accordance with subsection (7), in the case of an application to which that subsection applies, or

- (b) to reject the application and of the reasons for the decision.

AR 223/2008 s11;335/2009;11/2012;88/2013;26/2017

#### **Cost allocation order**

**11.1(1)** The Minister may, at any time provided for in subsection (1.1), issue an order in respect of a Project specifying

- (a) the measured use assets that support the Project,
- (b) the proportion, part or proportion of a part of all other capital assets or engineering systems referred to in section 14(4) that form part of the description of a Project, and
- (c) the methodology for allocating costs in respect of the Project.

**(1.1)** An order under subsection (1) may be issued in respect of a Project

- (a) at the time of issuing an approval order under section 11(1) or an amendment order under section 11(2) in respect of the Project, and
- (b) at any time after issuing an approval order under section 11(1) in respect of the Project, if at that time no amendment order under section 11(2) having an effective date on or after January 1, 2013, has been issued in respect of the Project.

**(2)** Repealed AR 88/2013 s7.

**(3)** The Minister shall notify the operator of the Minister's intention to issue an order under subsection (1) at least 30 days, or at least the number of days agreed to by the operator of the Project if the operator has agreed to a shorter time period, before issuing the order.

**(4)** Repealed AR 88/2013 s7.

**(5)** In an order made under subsection (1), the Minister shall specify the methodology for allocating a portion of the cost of a capital asset or engineering system that is an allowed cost, as determined under section 8.1 or 8.2 of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008).

**(6)** In an order made under subsection (1), the Minister may specify the measurement requirements for each engineering system, including but not limited to

- (a) the type of meter or measuring equipment required,

- (b) the location of meters or measuring equipment,
- (c) the number of meters or measuring equipment required,
- (d) the kinds and specifications of tools and materials that may be used for measurement,
- (e) standards and other requirements respecting the installation, operation and maintenance of the tools and materials referred to in clause (d),
- (f) methods and procedures for conducting sampling, analyses, tests, verification and monitoring in relation to measurement, calculation or estimation, and the standard conditions to which those measurements, calculations or estimates are to be converted,
- (g) the type, location and number of secondary meters, if required, and
- (h) the use of engineering calculations, including but not limited to the calculation of mass balances to determine flow volumes in an engineering system in lieu of or in addition to metering requirements.

(7) If the Minister considers it warranted, the Minister may, by order, amend the specifications of an engineering system referred to in subsection (1)(b) and may declare that the effective date of the amendment is earlier than, the same as or later than the date the order is made.

(8) An order issued pursuant to this section is deemed to be part of the approval order issued under section 11 in respect of the Project.

AR 11/2012 s8;88/2013;26/2017

#### **Ministerial amendments**

**12(1)** Subject to this section, the Minister may, by order on the Minister's own initiative, amend one or more orders issued under section 11, 11.1 or this section or a Prior Approval.

(2) The Minister may not, pursuant to subsection (1), amend the description of the Project specified in an order issued under section 11, 11.1 or this section or in a Prior Approval unless

- (a) the amendment corrects a clerical error in the description of the Project, or an error in the description that the Minister is satisfied arises as a result of a clerical error in the application or in any other information that the Minister relied on to specify the description,

- (b) the amendment removes from the description of the Project a capital asset or engineering system, or a proportion, part or proportion of a part of a capital asset or engineering system,
  - (i) that has been disposed of to a person who is not a lessee in respect of the Project,
  - (ii) that is used to produce, gather, compress, process or reprocess solution gas recovered through Project operations, if the Minister is of the opinion that the use of the capital asset, engineering system, proportion or part exceeds what is required to produce, gather, compress, process or reprocess solution gas for consumption by the Project,
  - (iii) that, in the opinion of the Minister, no longer has a remaining useful life, or
  - (iv) that, in the opinion of the Minister, has a remaining useful life but no longer meets the Project use threshold,
- (c) the amendment relates to any other part of the Project description that, in the Minister's opinion, should be changed as a result of the removal of a capital asset, engineering system, proportion or part from the description of the Project pursuant to clause (b),
  - (c.1) the amendment is to revise the allocation of costs between the Project operations, the integrated shared operations, if any, and the integrated upgrader, if any, which revision is, in the Minister's opinion, required due to the removal of a capital asset or engineering system, or a proportion, part or proportion of a part of a capital asset or engineering system, from the description of the Project,
  - (c.2) the amendment is to revise the allocation of costs to the Project operations, which revision is, in the Minister's opinion, required due to the addition, removal or change of use of a capital asset or engineering system, or a proportion, part or proportion of a part of a capital asset or engineering system, forming part of the integrated shared operations or the integrated upgrader, if any,
  - (c.3) the amendment is to revise
    - (i) the description of the Project, or

- (ii) the allocation of costs between the Project operations, the integrated shared operations, if any, and the integrated upgrader, if any,

or both, and the revision is, in the Minister's opinion, required due to the fact that a capital asset or engineering system, or a proportion, part or proportion of a part of a capital asset or engineering system, included in the Project description or forming part of the integrated shared operations or the integrated upgrader, if any, is being constructed or operated in a manner that, in the Minister's opinion, is not in accordance with the Project description or the allocation of costs,

- (c.4) the amendment is to remove a well that is no longer located entirely within the development area of the Project, or
- (d) a Regulator approval relating to the whole or any part of the Project is amended by the Regulator and the Minister is of the opinion that the amendment to the description of the Project should be made to make the description conform to the Regulator approval.

**(3)** Section 14(3) applies in relation to the formulation of an opinion by the Minister for the purposes of subsection (2)(b)(iii) and (iv).

**(4)** An order under subsection (1) must specify at least the following:

- (a) any change to the name of the Project;
- (b) any change to the description of the Project, or a restated description of the Project that combines the description of the Project prevailing immediately prior to the making of the order with any changes to that description arising from the order;
- (c) the effective date of any changes to the description of the Project, which may be earlier than, the same as or later than the date the order is made;
- (d) any amendment determined by the Minister to any prior net cumulative balance;
- (e) any change to the effective date of the Project, Project expansion or Prior Project expansion, as the case may be;
- (f) any changes to, or any new, terms and conditions of the approval to which the order relates.

(5) The Minister shall give the operator notice of the Minister's intention to make an amendment pursuant to subsection (1) at least 30 days, or at least the number of days agreed to by the operator of the Project if the operator has agreed to a shorter time period, before making the amendment.

(6) The Minister shall notify the operator of the Project of

- (a) any amendment made pursuant to subsection (1), and
- (b) any decision by the Minister not to make an amendment in respect of which a notice was given to the operator under subsection (5).

(7) The Minister may at any time, for administrative convenience, issue an amended and restated Project approval order for a Project, consolidating any Prior Approval or approval order issued under section 11(1) in respect of the Project and all amendment approval orders issued under section 11 and this section in respect of the Project.

AR 223/2008 s12;335/2009;11/2012;88/2013;89/2013;  
26/2017

#### **Effective date**

**13** Subject to an amendment of an effective date pursuant to section 12, the effective date of a Project or Project expansion must not be earlier than any one of the following:

- (a) the first day of the month in which the application for approval of the Project or amendment relating to the expansion is received by the Minister;
- (a.1) the first day of the month following the month in which the proposed Project or amendment relating to the expansion is approved by the Regulator under the *Oil Sands Conservation Act*;
- (b) the first day of the month that precedes by 9 months the month in which the Project or amendment relating to the expansion is approved by the Minister.

AR 223/2008 s13;335/2009;11/2012;89/2013

#### **Project description**

**14(1)** A description of a Project specified or amended under section 11 or 12 must include

- (a) a description of the operations that will be undertaken pursuant to the Project, including the major activities to be undertaken, and the principal technologies and

methodologies to be employed, for or in respect of the operations,

- (b) a listing of the kinds of oil sands products that will be recovered or obtained pursuant to the Project,
- (c) except when an order has been issued under section 11.1(1.1)(b) for that Project,
  - (i) a description of any measured use assets that support the Project, and which of these measured use assets form part of the Project, and
  - (ii) a description of any proportion, part or proportion of a part referred to in subsection (5), (6), (8), (11) or (14) that forms part of the Project,
- (c.1) a description of any core or supporting assets that meet the Project use threshold and that are not already included under clause (c),
- (c.2) a description, by map or otherwise, of the geographic boundary of the Project, the integrated shared operations, if any, and the integrated upgrader, if any,
- (c.3) the percentage of the costs of the integrated shared operations, if any, that is to be allocated to the Project pursuant to Schedule 3 of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008), and
- (d) a description of the area and strata from which oil sands or oil sands products will be recovered pursuant to the Project and of the surface areas, if any, to be occupied by the Project.

**(1.1)** If a well is spud on or after January 1, 2017, and all of the well events in respect of the well are located entirely within the development area of a Project and satisfy the requirements to form part of Project operations, that well is included in the description of that Project.

**(1.2)** In respect of a well included in the description of a Project, if a new well event in respect of that well is spud on or after January 1, 2017, and all or a portion of the new well event is located outside of the development area of the Project, the Minister may, pursuant to section 12 or 17, remove that well from the description of the Project and, in that case, royalty in respect of that well shall be determined pursuant to section 27(1.1).

- (2)** Subject to subsections (10) and (10.1), a capital asset or engineering system may be included in the description of a Project only if
- (a) the capital asset or engineering system is a core or supporting asset or is being partially included under this section,
  - (b) the capital asset or engineering system, or in the case of a partial inclusion under subsection (5), (6) or (8), the proportion or part being included, meets the Project use threshold and, in the opinion of the Minister, has a remaining useful life,
  - (c) the Minister is of the opinion that, on a balance of probabilities, the capital asset or engineering system, or in the case of a partial inclusion pursuant to subsection (4), the proportion or part being included, will not, over its remaining useful life, be removed from the description of the Project pursuant to section 12(2)(b)(ii), and
  - (d) all approvals required by law in relation to the capital asset or engineering system, or the proportion or part being included, are subsisting.
- (3)** In forming an opinion for the purposes of subsection (2)(b) or (c), the Minister
- (a) may, without limitation, base the Minister's opinion on measures of relative use such as
    - (i) time of use for the purposes of one or more Projects and for other purposes, or
    - (ii) proportion of delivery of output for one or more Projects and for other purposes,
- and
- (b) shall, in the case of a partial inclusion of a processing plant or cogeneration plant referred to in subsection (5), (6) or (8), form the Minister's opinion in respect of the proportion or part being included.
- (4)** A capital asset or engineering system may be partially included in the description of a Project only in accordance with subsections (5) to (14).
- (5)** Subject to subsection (10), where a processing plant, other than a processing plant referred to in subsection (6), is owned partly by persons who are lessees of a Project and partly by persons who are

not lessees of the Project, the Minister may include in the description of the Project a proportion of the processing plant that is the same as the lessees' proportion of the ownership of the processing plant.

**(6)** Subject to subsection (10), where a processing plant or a proportion, part or a proportion of a part of a processing plant is designated under section 8.1(b) as an integrated upgrader for the purposes of this section, the Minister may include in the description of a Project the processing plant, part or proportion.

**(7)** In deciding whether to include in the description of a Project a processing plant, part or proportion referred to in subsection (6), the Minister shall take into consideration

- (a) the extent to which the processing plant or any part of it would comprise a core or supporting asset in relation to the kinds of oil sands products to be recovered or obtained pursuant to the Project, and
- (b) the proportionate ownership of the processing plant by persons who are lessees of the Project and persons who are not lessees of the Project, where the processing plant is owned by both kinds of persons,

and may take into consideration any other factor the Minister considers relevant.

**(8)** The Minister may include in the description of a Project, other than a Project that forms part of an integrated project, a proportion, part or a proportion of a part of the cogeneration plant.

**(9)** In deciding whether to include in the description of a Project a part or proportion referred to in subsection (8), the Minister shall take into consideration

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

and may take into consideration any other factor the Minister considers relevant.

**(10)** The Minister shall not include in the description of a Project a diluent recovery unit that is part of a processing plant unless

- (a) the whole of the processing plant is included in the description of the Project, or
- (b) a proportion of the whole of the processing plant has been included in the description of the Project pursuant to subsection (5) or (6) and the proportion of the diluent recovery unit included in the description of the Project is the same as the proportion of the processing plant included in the description of the Project.

**(10.1)** The Minister shall not include in the description of a Project a measured use asset that supports the Project unless the measured use asset meets the Project use threshold.

**(11)** The Minister may include in the descriptions of 2 or more Projects a proportion, part or proportion of a part of a well where

- (a) the entire well is within the area and strata from which oil sands products will be recovered or obtained pursuant to each of those Projects,
- (b) the specified undivided interests of each of the agreements, the locations of which include the entire well, are commonly held according to the records of the Department, and
- (c) the Minister is satisfied that each well event in the well is involved with production or injection from the area and strata of each of those Projects, which include the well in the Project description.

**(12)** In deciding whether to include in the description of a Project a proportion or part referred to in subsection (11), the Minister shall, without limiting any other factors that the Minister may consider, take into consideration the length of the well used for the purposes of production or injection in relation to each of those Projects, relative to the entire length of the well that is used for the purposes of production or injection, as determined by the Minister.

**(13)** The Minister may at any time in the Minister's absolute discretion amend a decision under subsection (11) as to the proportion of a well, the part of a well or the proportion of part of a well that is included in the descriptions of each of those Projects so as to reflect additional considerations or information.

**(14)** The Minister may include in the description of a Project a proportion, part or proportion of a part of any of the following capital assets or engineering systems:

- (a) control system;

- (b) cooling water system;
- (c) instrument air system;
- (d) fire water system;
- (e) emergency power system;
- (f) potable water lines;
- (g) waste water lines;
- (h) sewer lines;
- (i) sour water lines;
- (j) slop oil lines;
- (k) pipe racks;
- (l) roads, parking lots, camps and airstrips and associated facilities.

AR 223/2008 s14;220/2009; 335/2009;11/2012;88/2013;26/2017

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

**15(1)** The Minister shall determine the prior net cumulative balance of a Project, other than a Prior Project, or of a Project expansion in accordance with this section.

**(2)** In determining the prior net cumulative balance of a Project or of a Project expansion, the Minister shall, without limitation, take into consideration at least the following with respect to amounts to be included in determining the prior net cumulative balance:

- (a) the costs of the Project or of the expansion, respectively, incurred during the period of 5 years preceding the effective date of the Project or expansion;
- (b), (c) repealed AR 26/2017 s9;
- (d) the aggregate of the proceeds of royalty and the royalty compensation paid to the Crown
  - (i) pursuant to the *Oil Sands Royalty Regulation, 1984* (AR 166/84) on Project substances recovered from the development area of the Project or expansion, as the case be, prior to the effective date of the Project or expansion, respectively, and
  - (ii) pursuant to section 26 or 27 of this Regulation on oil sands or oil sands products recovered from the

development area of the Project or expansion, as the case may be, prior to the effective date of the Project or expansion, respectively.

**(3)** In determining the prior net cumulative balance of a Project or of a Project expansion, the Minister shall, without limitation, take into consideration at least the following with respect to amounts to be excluded in determining the prior net cumulative balance:

- (a) the costs referred to in subsection (2)(a),
  - (i) incurred during any portion of the period referred to in that clause when development of oil sands in the development area of the Project or the area and strata to be added to the development area by virtue of the Project expansion, as the case may be, was, in the Minister's opinion, substantially suspended or abandoned,
  - (ii) incurred to recover or obtain oil sands or oil sands products to which the *Experimental Oil Sands Royalty Regulation* (AR 347/92) applies,
  - (iii) to the extent they would not be allowed costs under the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008) if they had been incurred after the effective date of the Project or Project expansion, as the case may be, or
  - (iv) to the extent they are not evidenced by original invoices, receipts, contracts, timesheets or other like original documentation;
- (b) Repealed AR 52/2019 s5;
- (c) the costs of a well to the extent that drilling royalty credits have been calculated for the well pursuant to the *Drilling Royalty Credit Regulation* (AR 245/2009).

**(4)** In determining the prior net cumulative balance of a Project or of a Project expansion, the Minister shall, without limitation, take into consideration at least the following with respect to amounts to be deducted in determining the prior net cumulative balance:

- (a) any consideration received or receivable in respect of the Project or Project expansion, as the case may be, during the period referred to in subsection (2)(a) that, had they been received or receivable after the effective date of the Project or Project expansion, respectively, would have comprised other net proceeds of the Project;

- (b) any consideration received or receivable during the period referred to in subsection (2)(a) in respect of Project substances.

(5) If the amounts included by virtue of subsection (2) and not excluded by virtue of subsection (3) in determining a prior net cumulative balance exceed, are equal to, or are exceeded by, the amounts deducted in determining the prior net cumulative balance, the amount of the prior net cumulative balance shall be considered a positive amount, zero or a negative amount, respectively.

(6) Despite subsections (2) through (5), the Minister may determine as the prior net cumulative balance of a Project or of a Project expansion the amount determined in the proposed calculation specified under section 10(2)(h) or (4)(h), respectively, if the Minister is satisfied that the amount so determined would be less than the prior net cumulative balance that would be determined pursuant to subsections (2) through (5).

AR 223/2008 s15;11/2012;89/2013;26/2017;52/2019

#### **Amendment of prior net cumulative balance**

**16(1)** Subject to this section, the Minister may, on the request of the operator of the Project or on the Minister's own initiative, amend a prior net cumulative balance in relation to a Project, Project expansion or Prior Project expansion, other than a prior net cumulative balance determined under section 15(6).

(2) The Minister may not amend a prior net cumulative balance pursuant to subsection (1) on the request of the operator of the Project if the request is received by the Department after the earlier of

- (a) the date the Minister notifies the operator that the examination of records pursuant to section 10(5) in respect of that prior net cumulative balance has concluded, and
- (b) the later of
  - (i) December 31, 2009, and
  - (ii) the last day of the 4th year following the year in which the effective date of the Project, Project expansion or Prior Project expansion, as the case may be, falls.

(3) Subject to subsection (4), the Minister may not amend a prior net cumulative balance pursuant to subsection (1) on the Minister's own initiative after the earlier of

- (a) the date the Minister notifies the operator of the Project that the examination of records pursuant to section 10(5) in respect of that prior net cumulative balance has concluded, and
  - (b) the later of
    - (i) December 31, 2009, and
    - (ii) the last day of the 4th year following the year in which the effective date of the Project, Project expansion or Prior Project expansion, as the case may be, falls.
- (4)** Subsection (3) does not apply
- (a) if an amendment to the prior net cumulative balance of a Project or Project expansion beyond the time limit specified in that subsection is made necessary by reason of
    - (i) fraud, or
    - (ii) misrepresentation attributable to neglect, carelessness or wilful defaultin the creation, maintaining or concealment of a record subject to examination pursuant to section 10(5) of this Regulation or section 15(5) of the Prior Regulation, or in the filing or submission of any report or other information in connection with the determination of the prior net cumulative balance, or
  - (b) if the Minister is of the opinion that full access to any record for examination in accordance with section 10(5) of this Regulation or section 15(5) of the Prior Regulation, or complete co-operation in relation to an examination in accordance with either of those sections, was not provided.
- (4.1)** The Minister may, on the Minister's own initiative, amend a prior net cumulative balance determined under section 15(6) in relation to a Project, Project expansion or Prior Project expansion if
- (a) the Minister is satisfied that
    - (i) fraud, or
    - (ii) misrepresentation attributable to neglect, carelessness or wilful default

occurred in the creation, maintaining or concealment of a record subject to examination pursuant to section 10(5) of this Regulation or section 15(5) of the Prior Regulation, or in the filing or submission of any report or other information in connection with the determination of the prior net cumulative balance, or

- (b) the Minister is of the opinion that full access to any record for examination in accordance with section 10(5) of this Regulation or section 15(5) of the Prior Regulation, or complete co-operation in relation to an examination in accordance with either of those sections, was not provided.

(5) The Minister shall, unless otherwise agreed to by the operator, at least 30 days before amending the prior net cumulative balance of a Project, Project expansion or Prior Project expansion on the Minister's own initiative under subsection (1) or under subsection (4.1), give notice of the Minister's intention to make the amendment to the operator of the Project.

(6) The Minister shall notify the operator of the Project of

- (a) any amendment made to a prior net cumulative balance relating to the Project,
- (b) the Minister's refusal of a request by the operator to amend a prior net cumulative balance relating to the Project, and
- (c) a decision by the Minister not to make an amendment described in a notice given under subsection (5).

(7) Nothing in this section affects the authority of the Minister to amend a prior net cumulative balance pursuant to section 12.

AR 223/2008 s16;11/2012;26/2017

### **Revocation**

**17(1)** The lessees of a Project may apply for the revocation by the Minister of an approval or part of an approval made under section 11, or of a Prior Approval or part of a Prior Approval, in respect of the Project.

(2) The Minister may, in respect of a Project, revoke by order an approval or part of an approval made under section 11, a Prior Approval or part of a Prior Approval, or an order or part of an order made under section 12 if

- (a) the lessees of the Project have applied for revocation of the approval or part of the approval and the overall impact

the Minister anticipates revocation of the approval or part of the approval will have on royalty payable to the Crown, in relation to both the Project and otherwise, is acceptable to the Minister,

- (b) the Minister is satisfied that
  - (i) fraud, or
  - (ii) misrepresentation attributable to neglect, carelessness or wilful default

occurred in the filing or submission of the application for the approval or of any other information in connection with the application, or in the creation, maintaining or concealment of a record subject to examination pursuant to section 10(5) or section 15(5) of the Prior Regulation, or otherwise relating to the application, order or Project,

- (c) a requirement set out in section 10(1)(a), (b) or (c) ceases to be satisfied in relation to the Project,
- (d) any term or condition of the approval or order has been breached and, if the breach is capable of rectification, the breach has not been rectified within the period of time specified in a notice given to the operator of the Project informing the operator of the breach,
- (e) the operator or a lessee of the Project has materially or repeatedly breached any provision of the Act, of any regulations under the Act or of any enactment referred to in section 6(1)(b),
- (f) the Project or part of the Project has been abandoned, substantially suspended or sold, transferred or otherwise disposed, or
- (g) any of the agreements granting the right to recover oil sands or oil sands products from the development area of the Project have expired or been cancelled, sold, transferred or otherwise disposed.

**(3) The Minister shall**

- (a) give the operator notice of the Minister's intention to revoke an approval or order or part of an approval or order pursuant to subsection (2)(b) to (g) at least 30 days, or at least the number of days agreed to by the operator of the Project if the operator has agreed to a shorter time period, before revoking the approval or order or part of the approval or order,

- (b) notify the operator of the Project of the revocation of any such approval or order or part, and
  - (c) in the case of a revocation requested under subsection (1), notify the lessees of the revocation of an approval or part of an approval, or of the Minister's refusal to revoke an approval or part of an approval.
- (4) An order made under subsection (2) may include any terms and conditions to which the order is subject, and the effective date of the order may be earlier than, the same as, or later than the date the order is made.
- (5) The lessees of those agreements, the location of which contained the area and strata included in the development area of a Project for which an approval or order or part of an approval or order is revoked under this section, shall comply with any terms and conditions in the order effecting the revocation.

AR 223/2008 s17;11/2012;88/2013;26/2017

### **Part 3 Costs and Revenues**

#### **Timing of costs**

**18(1)** For the purposes of this Regulation, an allowed cost

- (a) is, in the case of a cost that becomes payable on or after January 1, 2009, deemed to be incurred
  - (i) in the month in which the cost is payable, to the extent of the amount of the cost that is paid within 90 days after the cost becomes payable, or
  - (ii) in the month in which the cost is paid, to the extent of the amount of the cost that is paid more than 90 days after the cost becomes payable,

or

- (b) is deemed to be incurred when the cost is paid, if the cost becomes payable before January 1, 2009, is paid on or after that date, and is not deemed by section 7(2)(a) of the Prior Regulation to be incurred before that date.

(2) Despite subsection (1), if services or materials have been supplied in relation to a Project by a lessee or the operator of the Project, or an affiliate of either of them, and no invoice for those services or materials is subsequently sent by the lessee, the operator or the affiliate, the cost of the services or materials is deemed to be incurred in the month in which the services were supplied or the

materials were received at any part of the surface areas occupied by the Project.

**(3)** For the purposes of this Regulation, a cost considered in determining prior net cumulative balance under Part 2 is deemed to be incurred

- (a) in the month in which the cost is payable, to the extent of the amount of the cost that is paid within 90 days after the cost becomes payable, or
- (b) in the month in which the cost is paid, to the extent of the amount of the cost that is paid more than 90 days after the cost becomes payable.

**(4)** Despite subsection (3), if services or materials have been supplied in relation to the Project by a lessee or the operator of the Project or an affiliate of either of them prior to the effective date of the Project or of an amendment to the Project, and no invoice for those services or materials is subsequently sent by the lessee, the operator or the affiliate, then the cost of the services or materials is, for the purposes of determining prior net cumulative balance under Part 2, deemed to be incurred in the month in which the services were supplied or the materials were received at any part of the surface areas occupied by the Project.

AR 223/2008 s18;88/2013

#### **General rules for costs and revenues**

**19(1)** Subsection (2) applies to the determination of any consideration that is part of the calculation or determination of TC, as described in section 32(2), (3), (4) or (5), and subsections (2), (2.1), (2.2), (3) and (4) apply in the determination of other net proceeds or prior net cumulative balance under this Regulation.

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

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

**(2.1)** Despite subsection (2), if the lessee or operator of a Project uses a capital asset or engineering system of the Project to provide a service pursuant to a non-arm's length transaction to a lessee or operator of another Project for Project operations of the other Project, the amount of the consideration received or receivable by the lessee or operator of the Project providing the service is deemed to be the greater of

- (a) the fair market value of the service, if the Minister is satisfied that the fair market value can reasonably be determined,
- (b) the value of the consideration agreed to by the lessee or operator of the Project providing the service and the lessee or operator of the Project receiving the service, and
- (c) an amount equal to the cost of service to the Project receiving the service as calculated under section 12.2(1)(a) of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008) whether or not that amount is determined to be the allowed cost to the Project receiving the service under Part 2 Division 2 of that Regulation.

**(2.2)** Despite subsection (2), if the lessee or operator of a Project uses a capital asset or engineering system of the Project to provide a service pursuant to a non-arm's length transaction other than a transaction described in subsection (2.1), the amount of consideration received or receivable by the lessee or operator of the Project providing the service is deemed to be the greater of

- (a) the fair market value of the service, if the Minister is satisfied that the fair market value can reasonably be determined,
- (b) the value of the consideration agreed to by the lessee or operator of the Project providing the service and the person receiving the service, and
- (c) an amount equal to the cost of service for the capital asset or engineering system providing the service as calculated under section 12.2(1)(a) of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008) as though that Regulation applied and the service were provided to a Project.

**(3)** Subject to subsections (2.1), (2.2) and (4), when consideration, whether in the form of money or otherwise, is received or receivable under a non-arm's length transaction by a lessee or operator of a Project, or a person affiliated with either of them, the amount of the consideration is deemed to be the greater of

- (a) the fair market value of the thing for which the consideration is received or receivable, and
- (b) the aggregate of the amount of money received or receivable and the amount determined in accordance with subsection (2) with regard to any consideration other than money.

- (4) When an asset is
- (a) removed from the description of a Project, and
  - (b) included in the description of another Project,

and any of the lessees of either Project are the lessees of the other Project or are affiliated with the lessees of the other Project, or the removal and inclusion of the asset constitutes a non-arm's length transaction in accordance with section 2(3) or (4), the Minister may, instead of determining the fair market value of the asset pursuant to section 20 and subsection (3)(a) of this section as the amount of the consideration received or receivable for the asset for the purposes of section 23(2)(a)(i), determine as the amount of the consideration the amount of the allowed costs for the asset of the Project referred to in clause (b).

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

(6) The following is excluded from any cost, charge, revenue, price, value, consideration, proceeds or royalty compensation that is part of a calculation or determination under this Regulation:

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

AR 223/2008 s19;335/2009;11/2012;26/2017

**Fair market value for revenues**

**20(1)** The amount of any fair market value referred to in this Regulation is the value determined by the Minister in accordance with this section.

**(2)** In determining fair market value of anything under this Regulation, other than pipeline transportation service or an oil sands product, the Minister may, without limiting any other method for determining fair market value,

(a) adopt any of the following methodologies if the Minister is of the opinion that comparable open markets exist in relation to the thing for which fair market value is required to be determined:

- (i) the price of comparable things, if that price is published and generally adopted by buyers and sellers of such things;
- (ii) a price for comparable things prescribed or determined pursuant to a regulation or statute other than this Regulation;
- (iii) an average of the prices paid for comparable things in arm's length transactions,

or

(b) adopt any of the following methodologies if the Minister is of the opinion that comparable open markets do not exist in relation to the thing for which fair market value is required to be determined:

- (i) the amount charged by the lessees or operator of a Project, or an affiliate of either of them for the thing;
- (ii) the actual cost incurred by the lessees, operator or affiliate of either of them to produce the thing, if it is not obtained by the lessees, operator or affiliate from another person;
- (iii) the actual cost incurred by the person from whom the thing was obtained by the lessees, operator or affiliate of either of them to produce the thing;
- (iv) the net book value of the thing according to the records of the Department, or if the Department has no such records, the records of the owner of the thing.

(3) In determining, for the purposes of this Regulation, the fair market value of pipeline transportation service provided using a pipeline that is included in the description of a Project, the Minister may, without limiting any other method of determining fair market value but subject to subsections (5) to (7), adopt

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

or

- (c) the weighted average of the prices paid for comparable service by persons under arm's length transactions or, if the Minister is satisfied no comparable service is provided, the weighted average of the prices paid by persons under arm's length transactions with the lessee or operator for pipeline transportation service provided using the pipeline if, in the Minister's opinion,
  - (i) clauses (a) and (b) do not apply,
  - (ii) the pipeline is subject to regulation on a complaints basis,
  - (iii) not less than 2/3 of the quantities of substances transported by means of the pipeline during the period the weighted average is adopted obtain that service under arm's length transactions, and
  - (iv) the weighted average of prices is just and reasonable in the circumstances.

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

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

(6) In determining the fair market value of an oil sands product, the Minister may, without limiting any other method for determining fair market value,

- (a) adopt a value determined by the Minister on the basis of arm’s length transactions occurring in comparable open markets in relation to the oil sands product or similar commodities if the Minister is of the opinion that a comparable open market exists in relation to the oil sands product or the similar commodities, or
- (b) adopt any of the following prices or methodologies if the Minister is of the opinion that comparable open markets do not exist in relation to the oil sands product or a similar commodity:
  - (i) a price for that kind of oil sands product, or a similar kind of commodity, prescribed or determined pursuant to a regulation or statute other than this Regulation,
  - (ii) a price derived from the prices of products that could be obtained from the oil sands product or from the prices of commodities similar to those products, or
  - (iii) a price derived from prices for the feedstock from which the oil sands product or products similar to the oil sands product could be obtained, or from prices for similar feedstock.

(7) Subject to subsection (8), a price, average of prices, cost, charge, value, methodology or a tariff may be adopted by the Minister pursuant to subsection (2), (3) or (6) for such period or periods as the Minister may specify from time to time.

(8) A price, average of prices, cost, charge, value, methodology or tariff adopted by the Minister pursuant to subsection (2), (3) or (6)

ceases to apply prior to the end of the period or periods specified under subsection (7) if any requirement specified in subsection (2), (3) or (6) with respect to the adoption of the price, average of prices, cost, charge, value, methodology or tariff ceases to be met.

AR 223/2008 s20;11/2012

#### **Calculated value**

**21(1)** If the Minister is of the opinion that a fair market value referred to in a provision of this Regulation, other than section 20, cannot reasonably be determined pursuant to section 20, the Minister may, employing engineering, economic or financial principles, determine a calculated value for the thing for which the provision contemplated the use of a fair market value.

**(2)** If the Minister has determined a calculated value pursuant to subsection (1), the calculated value shall be used in the provision referred to in that subsection in place of the fair market value.

#### **Revenue**

**22(1)** The Project revenue of a Project is, in respect of a post-payout Period or a month of a pre-payout Period, the aggregate of the products calculated by multiplying

- (a) each quantity of
  - (i) blended bitumen that contains crude bitumen recovered pursuant to the Project from the Project's development area, and
  - (ii) each oil sands product, other than crude bitumen referred to in subclause (i), recovered pursuant to the Project from the Project's development area,

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

by

- (b) the unit price applicable to the blended bitumen or the oil sands product referred to in clause (a)(ii), as the case may be, for the Period or month respectively.

**(2)** The gross revenue of a Project in respect of a post-payout Period or a month of a pre-payout Period is the Project revenue of the Project for that Period or month, respectively, minus the cost of diluent contained in any blended bitumen included in the calculation of the Project revenue.

(3) The cost of diluent referred to in subsection (2) is the product of the total volume of the diluent contained in the blended bitumen at the royalty calculation point multiplied by the weighted average cost per unit volume of that diluent calculated in accordance with the Minister's directions.

(4) For the purpose of calculating Project revenue pursuant to this section and for the purpose of calculating the cost of diluent pursuant to subsection (3), where crude bitumen or blended bitumen is delivered at a royalty calculation point,

- (a) any volume of diluent that is added by the lessee or operator to such crude bitumen or blended bitumen after the royalty calculation point and prior to disposition may be deemed by the Minister to have been added at the royalty calculation point equal to the proportion of diluent at the point of disposition, and
- (b) the volume of such diluent deemed to be added pursuant to clause (a) is to be included in the quantity of blended bitumen referred to in subsection (1)(a)(i) and is to be included in the total volume of diluent referred to in subsection (3).

AR 223/2008 s22;335/2009;11/2012;26/2017

#### **Other net proceeds**

**23(1)** The "other net proceeds" of a Project are

- (a) the amounts described in subsection (2),

excluding

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

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

- (a) any consideration received or receivable from the sale, lease, licence or other disposition of any
  - (i) substances or assets of the Project, other than oil sands products, or
  - (ii) technology developed pursuant to, or for the purposes of, the Project;
- (b) any proceeds received or receivable
  - (i) under a contract of insurance, as defined in the *Insurance Act*, providing for insurance in relation to the Project, and including property insurance in

relation to profits, earnings, pecuniary interests and indirect losses of the lessees or operator of the Project, except where the premiums for the insurance have been excluded under Column 2 of Schedule 1.1 of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);

- (ii) pursuant to a judgment of a court, or in settlement of litigation or threatened litigation, in relation to the Project, other than a judgment or litigation or threatened litigation against the Crown in respect of amounts paid or payable to the Crown under section 90 of the Act as that section stood on October 1, 2008 or under this Regulation in relation to the Project;
  - (iii) as a refund of a deposit paid to secure the performance of reclamation or abandonment in relation to the Project;
- (c) any consideration received or receivable for transporting, or for granting the right to transport, by means of the transportation facilities of the Project, oil sands or oil sands products not owned by or on behalf of the lessees of the Project;
- (d) any consideration received or receivable for
- (i) processing, or granting the right to process, oil sands or oil sands products not owned by or on behalf of the lessees of the Project, in a processing plant or a part of a processing plant, the whole or a proportion of which is included in the description of the Project, or
  - (ii) producing thermal energy or electricity in a cogeneration plant, or a part of a cogeneration plant, the whole or a proportion of which is included in the description of the Project where the thermal energy or electricity is not utilized for the purposes of the Project,
- to the extent that such processing or production utilizes any part of the capacity of the plant or of the part of the plant, as the case may be, that corresponds to the proportion of the plant or part, respectively, included in the description of the Project;
- (e) the aggregate of the products obtained by multiplying
- (i) each quantity of

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

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

by

- (ii) the unit price applicable to the quantity;
- (f) the amount, if any, by which the other net proceeds determined for the Project pursuant to this section for the preceding Period exceed the allowed costs of the Project for that preceding Period, if that preceding Period is a post-payout Period that commences on or after January 1, 2009;
- (g) the amount, if any, by which the other net proceeds for 2008, determined for the Project pursuant to section 22 of the Prior Regulation, exceed the allowed costs of the Project for that same year, where “other net proceeds” and “allowed costs” have the same meaning as in the Prior Regulation;
- (h) any consideration received or receivable for the use of an asset of the Project, other than for the purposes of the Project;
- (i) an amount equal to the fair market value of an asset that is removed from the description of the Project without being sold, leased, licensed or otherwise disposed of;
- (j) an amount equal to the net book value, determined by the Minister, of an asset that is used to gather, compress, process or reprocess any solution gas recovered through Project operations and that, without being sold, leased, licensed or otherwise disposed of, is removed from the description of the Project;
- (k) repealed AR 11/2012 s18;

- (l) the additive inverse of the prior net cumulative balance of the Project determined under section 15 or 16, excluding any expansions of the Project, if that prior net cumulative balance is a negative amount;
  - (m) the additive inverse of the prior net cumulative balance of a Project expansion of the Project determined under section 15 or 16 if
    - (i) the Project payout date of the Project precedes the effective date of the Project expansion, and
    - (ii) that prior net cumulative balance is a negative amount;
  - (n) the amount by which the cumulative revenue of a Project exceeds the cumulative cost of the Project if
    - (i) the excess amount arises as a result of the approval of a Project expansion of the Project,
    - (ii) the prior net cumulative balance of the Project expansion is a negative amount, and
    - (iii) the Project payout date is the same day as the effective date of the Project expansion by virtue of the approval of the Project expansion;
  - (o) the net amount of any other proceeds and recoveries relating to the Project.
- (3)** The following are the amounts for the purposes of subsection (1)(b):
- (a) any consideration received or receivable for a disposition of a participating interest, an overriding royalty interest, a carried interest, a net profit interest or any other like interest in the Project;
  - (b) Project revenue of the Project;
  - (c) the consideration received or receivable for the sale or other disposition of an asset of the Project from a lessee of the Project to another lessee of the Project, if the asset remains in the description of the Project.
- (4)** Repealed AR 26/2017 s14.

AR 223/2008 s23;11/2012;26/2017

**Net revenue and net loss****24(1)** In this section and section 25,

- (a) “amalgamated Project” means the Project that arises from the amalgamation of 2 or more Projects pursuant to an amendment approved under section 11(2);
- (b) “amendment Period” means the Period of a Project during which the effective date of an amendment to the Project occurs that amalgamates it with one or more other Projects to form an amalgamated Project;
- (c) “first amalgamated Period” means, in respect of an amalgamated Project that arises from the amalgamation of 2 or more Projects pursuant to an amendment approved under section 11(2), the period of time that commences on the earliest day that an amendment Period of those Projects commences, and that ends on the earlier of
  - (i) the last day of the calendar year during which the effective date of the amendment occurs, and
  - (ii) the date on which the approval under section 16 of the Prior Regulation, a contract under section 9(a) of the Act or section 11 of this Regulation in respect of the amalgamated Project, as the case may be, is revoked.

**(2)** Subject to subsection (4), the net revenue of a Project for a Period is the amount by which Project revenue of the Project for the Period exceeds the amount by which the allowed costs of the Project for the Period exceed the other net proceeds of the Project for the Period.

**(3)** Subject to subsection (4), the net loss of a Project for a Period is the amount by which the allowed costs of the Project for the Period exceed the aggregate of the Project revenue and other net proceeds of the Project for the Period.

**(4)** If, as of the day preceding the effective date of an amendment approved under section 11(2) that amalgamates 2 or more Projects, the Project payout date has occurred for at least one of the Projects being amalgamated, the net revenue and net loss of the amalgamated Project for its first amalgamated Period shall be determined on the basis of

- (a) the aggregate allowed costs, the aggregate Project revenues and the aggregate other net proceeds, of the Projects being amalgamated, for the portions of their respective amendment Periods that precede the effective date of the amendment, and
- (b) the allowed costs, Project revenue and other net proceeds of the amalgamated Project for the portion of the first

amalgamated Period of the Project that commences on the effective date of the amendment.

### **Payout**

**25(1)** Subject to subsections (4) and (5), a Project achieves payout on

- (a) the effective date of the Project, in the case of a Project for which the prior net cumulative balance is zero or a negative amount, or
- (b) the first day of the month during which the cumulative revenue of the Project first equals the cumulative cost of the Project, in the case of any other Project.

**(2)** The cumulative cost of a Project referred to in subsection (1)(b) is the aggregate of the following amounts:

- (a) the prior net cumulative balance of the Project;
- (b) the prior net cumulative balance of any Prior Project expansions or Project expansions included in the Project;
- (c) the aggregate of the proceeds, and royalty compensation, paid to the Crown in respect of royalty
  - (i) on Project substances reserved under section 29(1), and
  - (ii) on Project substances, as defined in the Prior Regulation, reserved under section 90(2) of the Act, as that section stood on October 1, 2008, if the Project is a Prior Project;
- (d) allowed costs of the Project, other than allowed costs under Part 3 of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008), incurred on or after January 1, 2009;
- (e) allowed costs of the Project described in sections 15(3) and 16(2) of the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);
- (f) if the Project is a Prior Project, the aggregate of
  - (i) allowed costs of the Project incurred before January 1, 2009, other than allowed costs described in section 4 of Schedule 1 or 2 to the Prior Regulation, as the case may be, and

- (ii) allowed costs of the Project described in section 4(c) of Schedule 1 or 2 to the Prior Regulation, as the case may be, for a month prior to January 1, 2009,

where “allowed cost” and “incurred” have the same meaning as in the Prior Regulation.

- (3)** The cumulative revenue of a Project referred to in subsection (1) is the aggregate of the following:

- (a) the Project revenue of the Project for the month commencing on the later of January 1, 2009 and the effective date of the Project, and for each subsequent month;
- (b) other net proceeds of the Project arising on or after the later of January 1, 2009 and the effective date of the Project, other than other net proceeds described in section 23(2)(f) or (g);
- (c) if the Project is a Prior Project, the aggregate of
  - (i) the Project revenue of the Project for all months prior to January 1, 2009, and
  - (ii) the other net proceeds of the Project arising prior to January 1, 2009, other than other net proceeds described in section 22(2)(e) of the Prior Regulation,

where “Project revenue” and “other net proceeds” have the same meaning as in the Prior Regulation.

- (4)** If, as of the day preceding the effective date of an amendment approved under section 11(2) that amalgamates 2 or more Projects, the Project payout date has occurred for at least one of the Projects being amalgamated, the amalgamated Project is deemed to be a Project that has achieved payout, and the cumulative cost for such amalgamated Project shall be deemed to be equal to its cumulative revenue.

- (5)** If, as of the day preceding the effective date of an amendment approved under section 11(2) that amalgamates 2 or more Projects, the Project payout date has not occurred for any of the Projects,

- (a) the amalgamated Project is deemed as of the effective date to be a Project that has not yet achieved payout, and
- (b) the Minister shall determine the cumulative cost of the amalgamated Project and the cumulative revenue of the amalgamated Project as of the commencement of the effective date of the amendment, and in so doing shall

take into consideration at least the aggregate of the cumulative costs and cumulative revenues of the Projects as of the day preceding the effective date of the amendment.

AR 223/2008 s25;11/2012

## **Part 4 Royalty**

### **Division 1 Non-Projects**

#### **Non-Project mining operations**

**26(1)** The royalty reserved to the Crown on oil sands recovered by a non-Project mining operation pursuant to an agreement granting oil sands rights and delivered in a month at the boundary of the location of the agreement is 20% of the oil sands.

**(2)** Royalty on oil sands under subsection (1) shall be free and clear of all deductions.

**(3)** The Crown's title to the Crown's royalty share of any oil sands recovered by a non-Project mining operation pursuant to an agreement and delivered in a month at the boundary of the location of the agreement is automatically transferred to the lessee of the agreement immediately downstream from the place at the boundary where the oil sands is so delivered.

**(4)** When the Crown's title to the Crown's royalty share of oil sands delivered in a month at the boundary of the location of the agreement pursuant to which the oil sands was recovered is transferred pursuant to subsection (3), the lessee to whom the title is transferred shall, not later than the last day of the following month, pay to the Crown, in respect of that royalty share, an amount equal to the product of the quantity of the royalty share measured in tonnes multiplied by the par price for oil sands prescribed for the month pursuant to section 8(a).

#### **Non-Project well events**

**27(1)** Subject to subsection (1.3), the royalty reserved to the Crown on an oil sands product recovered from a non-Project well event pursuant to an agreement granting oil sands rights and delivered in a month from the well containing the well event is the royalty that would be reserved to the Crown under the *Petroleum Royalty Regulation, 2009* (AR 222/2008) or the *Petroleum Royalty Regulation, 2017* (AR 212/2016), as the case may be, as if the oil sands product were crude oil.

**(1.1)** In respect of a well that is removed from the description of a Project or Prior Project pursuant to section 12 or 17

- (a) if its first well event was spud prior to January 1, 2017, the royalty reserved to the Crown on oil sands products recovered from the well shall be calculated
  - (i) pursuant to the *Petroleum Royalty Regulation, 2009* (AR 222/2008) on and after the day it is removed from the description of a Project or Prior Project until December 31, 2026, and
  - (ii) pursuant to the *Petroleum Royalty Regulation, 2017* (AR 212/2016) after December 31, 2026, as though the well's total revenue from all hydrocarbon products, as determined by the Minister, were equal to C\*, as C\* is determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016),

and

- (b) if its first well event was spud on or after January 1, 2017, the royalty reserved to the Crown on oil sands products recovered from the well on and after the date the well no longer forms part of the description of the Project shall be calculated pursuant to the *Petroleum Royalty Regulation, 2017* (AR 212/2016) as though the well's total revenue from all hydrocarbon products, as determined by the Minister, were equal to C\*, as C\* is determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016).

**(1.2)** A well referred to in subsection (1.1)

- (a) is deemed for the purposes of section 10(4.3) never to have received a C\* before it was removed from the description of a Project or Prior Project, and
- (b) is not eligible to receive a C\* after it is removed from the description of a Project or Prior Project.

**(1.3)** If a well included in an application referred to in section 10(4.3) is approved by the Minister as forming part of the description of a Project,

- (a) the royalty to the Crown on oil sands products recovered from that well shall be recalculated by the Minister commencing the first day of the month in which the royalty share for that well is determined pursuant to the *Petroleum Royalty Regulation, 2017* (AR 212/2016) until the effective date of the Project, as though the well's total revenue from all hydrocarbon products, as determined by

the Minister, were equal to C\*, as C\* is determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016), and

- (b) the well is deemed never to have received a C\* prior to being approved by the Minister as forming part of the description of the Project.

(2) Royalty on an oil sands product under subsection (1), (1.1) or (1.3) shall be free and clear of all deductions.

(3) The Crown's title to the Crown's royalty share of any oil sands product recovered from a non-Project well event is automatically transferred to the lessee of the well event at the point immediately downstream from the well containing the well event.

(4) When the Crown's title to the Crown's royalty share of an oil sands product delivered in a month from a well is transferred pursuant to subsection (3), the lessee to whom the title is transferred shall, not later than the last day of the following month, pay to the Crown, in respect of that royalty share, an amount equal to the product of the quantity of the royalty share multiplied by the greater of zero and the unit value determined under subsection (5) for that kind of oil sands product for that month.

(5) The unit value applicable to the Crown's royalty share for a month of each kind of oil sands product recovered from a non-Project well event is the value determined by the Minister as of the time the Crown's royalty share is transferred pursuant to subsection (3) taking into consideration, without limitation, dispositions during that month of that kind of oil sands product recovered from the well event, notwithstanding the consideration actually given for the Crown's royalty share when it was sold or otherwise disposed of.

(6) The Minister may require the licensee, as defined in the *Petroleum Royalty Regulation, 2017* (AR 212/2016), or the operator of a non-Project well to provide to the Minister all or a portion of the information required to be provided to the Minister under the *Petroleum Royalty Regulation, 2017* (AR 212/2016) as if that Regulation applied, and all or a portion of the information required to be provided to the Minister under the *Enhanced Hydrocarbon Recovery Royalty Regulation* (AR 210/2016) or under the *Emerging Resources Royalty Regulation* (AR 209/2016) to the extent those regulations apply, to the non-Project well, and if the licensee or the operator does not provide the information to the Minister, or fails to provide the information in the time specified in the applicable regulation, the Minister may impose a penalty in accordance with section 44(2.1).

AR 223/2008 s27;11/2012;26/2017

**Trucking costs and allowances**

**28(1)** The costs and allowances to which the Minister consents for a month in respect of the costs that are paid by the lessee of a non-Project well event during the month in trucking the Crown's royalty share of crude bitumen recovered from the well event

- (a) from the last facility at which impurities are removed from the crude bitumen before the crude bitumen is delivered into a pipeline, and
- (b) to an unloading facility connected to a pipeline,

shall, subject to subsections (2), (3), (4) and (6), and despite the transfer of the royalty share pursuant to section 27(3), be deducted from the royalty compensation payable by the lessee in respect of crude bitumen recovered from non-Project well events during that month.

**(2)** The Minister may determine the amount of the costs and allowances referred to in subsection (1).

**(3)** Subject to subsections (4) and (6), the Minister may, for the purposes of this section,

- (a) estimate the amount of the costs and allowances for a lessee for a month and, subject to clause (b)(ii), consent to that estimated amount, and
- (b) after the 3rd month following the month referred to in clause (a), determine the actual costs and allowances for the lessee for the month, and
  - (i) if the actual costs and allowances exceed the estimated amount referred to in clause (a), consent to further costs and allowances equal to the difference, or
  - (ii) if the estimated amount referred to in clause (a) exceeds the actual costs and allowances, invoice the lessee for the difference, or deduct the difference from costs and allowances consented to for the next month or months, as the case may be.

**(4)** The costs and allowances consented to under this section in respect of a lessee for a month may not exceed the aggregate of the royalty compensation payable by the lessee for the month under section 27.

**(5)** The lessee to whom an invoice is issued under subsection (3) shall pay the Crown the amount invoiced on or before the last day of the month following the month in which the invoice is issued.

- (6) It is a condition of any consent given under subsection (1) or (3) that
- (a) the trucking of the Crown's royalty share from the place described in subsection (1)(a) to the place described in subsection (1)(b) occurred in an uninterrupted manner, and
  - (b) the Crown's royalty share, while being trucked, met the quality specifications in respect of the pipeline referred to in subsection (1)(b).

AR 223/2008 s28;26/2017

## Division 2 Projects

### Royalty share from Projects

**29(1)** The royalty reserved to the Crown, under each agreement granting oil sands rights in the development area of a Project, on each oil sands product recovered from the development area and delivered at a royalty calculation point for the product during each month of a pre-payout Period is the percentage, calculated in accordance with the following formula, of the quantity of the oil sands product so recovered and delivered:

$$R_G\% = 1\% + [F_G (A - B)]$$

where

$R_G\%$  is the Crown's royalty share of the quantity expressed as a percentage;

$F_G$  is 8% divided by \$65 per barrel;

A is the lesser of the WTI price for the given month calculated in accordance with subsection (3) and \$120 per barrel;

B is the lesser of A for the month and \$55 per barrel.

(2) The royalty reserved to the Crown, under each agreement granting oil sands rights in the development area of a Project, on each oil sands product recovered from the development area and delivered at a royalty calculation point for the product during a post-payout Period is the greater of

- (a) the percentage of the quantity of the oil sands product so recovered and delivered during the Period calculated in accordance with the following formula:

$$R_G\% = 1\% + [F_G (A - B)]$$

where

- $R_G\%$  is the Crown's royalty share of the quantity expressed as a percentage;
- $F_G$  is 8% divided by \$65 per barrel;
- A is the lesser of the WTI price for the year containing the Period calculated in accordance with subsection (3.1) and \$120 per barrel;
- B is the lesser of A for that year and \$55 per barrel;

and

- (b) the percentage of the quantity of the oil sands product so recovered and delivered during the Period calculated in accordance with the following formula:

$$R_N\% = \text{NRPF} \frac{[\text{NR}]}{\text{GR}}$$

where

- $R_N\%$  is the Crown's royalty share of the quantity expressed as a percentage;
- NRPF is the net royalty percentage factor calculated as  $25\% + (F_N(A - B))$ ;
- NR is the net revenue of the Project for the Period;
- GR is the gross revenue of the Project for the Period;
- $F_N$  is 15% divided by \$65 per barrel;
- A is the lesser of the WTI price for the year containing the Period and \$120 per barrel;
- B is the lesser of A for that year and \$55 per barrel.

- (3) For the purposes of subsection (1), the WTI price for a given month, expressed in Canadian currency, is the product of

- (a) the simple average of the WTI prices for the trading days of the preceding month expressed in American currency, and
- (b) the simple average of the daily actual USD/CAD (noon) exchange rates for that month.

**(3.1)** For the purposes of subsection (2), the WTI price for a year, expressed in Canadian currency, is the product of

- (a) the simple average of the monthly WTI prices for the months of that year, calculated in accordance with subsection (3)(a), expressed in American currency, and
- (b) the simple average of the monthly exchange rates calculated in accordance with subsection (3)(b), for the months in that year.

**(3.2)** For the purposes of subsections (1) and (2),  $R_G\%$ ,  $R_N\%$  and NRPF shall be expressed to the nearest 5th decimal place.

**(4)** For the purposes of subsection (3),

- (a) the WTI price for a trading day is the settlement price for the day of the prompt month contract of West Texas Intermediate crude futures as traded on NYMEX,
- (b) a trading day is a day during which a prompt month contract referred to in clause (a) is traded on NYMEX, and
- (c) the actual USD/CAD (noon) exchange rate for a day is that published in relation to that day by the Bank of Canada.

**(5)** If crude bitumen or cleaned crude bitumen recovered pursuant to a Project from the development area of the Project

- (a) is delivered to a royalty calculation point for the crude bitumen or cleaned crude bitumen, and
- (b) when so delivered is contained in a blend with diluent,

the royalty reserved under subsections (1) and (2) shall be calculated on the quantity determined by deducting from the quantity of blended bitumen the quantity of diluent contained in the blended bitumen.

(6) Royalty on oil sands and oil sands products under this section shall be free and clear of all deductions.

(7) If the Bank of Canada no longer publishes a USD/CAD (noon) exchange rate, the Minister may, by order, specify an exchange rate published by the Bank of Canada to be used for the purposes of subsections (3) and (4) instead of the daily actual USD/CAD (noon) exchange rate.

AR 223/2008 s29;335/2009;11/2012;  
26/2017

### **Royalty calculation point**

**30(1)** If an oil sands product recovered pursuant to a Project from the development area of the Project, other than an oil sands product as described in subsections (2) and (2.1),

- (a) is disposed of, or
- (b) is permanently removed from Project facilities,

royalty shall be calculated on the quantity of the oil sands product at the place the product is permanently removed from Project facilities.

**(2)** If

- (a) an oil sands product recovered from the development area of a Project, without first being disposed of, is processed in a processing plant that is not included in the description of the Project to obtain cleaned crude bitumen described in section 1(2)(a), and
- (b) the cleaned crude bitumen
  - (i) is disposed of, or
  - (ii) remains permanently removed from Project facilities,

royalty shall be calculated on the quantity of the cleaned crude bitumen at the place the cleaned crude bitumen is delivered from the processing plant from which it is obtained.

**(2.1)** If

- (a) an oil sands product recovered from the development area of a Project, without first being disposed of, is processed in a processing plant that is not included in the description of the Project to obtain cleaned crude bitumen described in section 1(2)(a),

- (b) the cleaned crude bitumen is then blended in a blending facility that, in the Minister's opinion, is immediately adjacent to the processing plant described in clause (a), to obtain blended bitumen, and
- (c) the blended bitumen
  - (i) is disposed of, or
  - (ii) remains permanently removed from Project facilities,

royalty shall be calculated on the quantity of the cleaned crude bitumen contained in the blended bitumen at the place the blended bitumen is delivered from the blending facility from which it is obtained.

**(3)** For the purposes of sections 23(2)(e) and 32, the royalty calculation point of a Project for blended bitumen that contains crude bitumen or an oil sands product described in section 23(2)(e)(i)(A) or (B), respectively, is the place that would be the royalty calculation point under subsection (1), (2) or (2.1) for the crude bitumen contained in the blended bitumen or the oil sands product, respectively, if the crude bitumen or oil sands product were a Project substance.

AR 223/2008 s30;11/2012;26/2017

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

**31(1)** The Crown's title to the Crown's royalty share of any oil sands product recovered from the development area of a Project is automatically transferred at the point immediately downstream from the royalty calculation point for the product to the person who is, in relation to that royalty share, the owner of the lessee's share of the oil sands product.

**(2)** When the Crown's title to the Crown's royalty share of an oil sands product is transferred pursuant to subsection (1), compensation is payable to the Crown in accordance with this Regulation in respect of that royalty share.

#### **Unit price**

**32(1)** In this section,

- (a) "handling charges" means the handling charges, export charges, pipeline tariff charges and charges of a similar nature that are paid to transport third party disposition quantities of a kind of oil sands product obtained pursuant to a Project that are disposed of in third party dispositions during a month or Period, as the case may be, from the

royalty calculation point for the product to the place where those dispositions occur, but does not include

- (i) any charges that are allowed costs of the Project,
  - (ii) any charges that are taken into consideration in determining a prior net cumulative balance in respect of the Project,
  - (iii) any marketing costs or charges, brokerage fees or other like charges,
  - (iv) any cost of diluent referred to in section 22(2) or 33(3)(a)(ii) or that is an allowed cost of the Project, and
  - (v) any costs or charges arising in relation to a diluent recovery unit;
- (b) “NQ” means, in relation to a Project for a month or Period,
- (i) in the case of blended bitumen described in subsection (6)(a)(i), the volume of cleaned crude bitumen contained in the volume of blended bitumen determined by deducting from the production quantity of the Project for the month or Period, respectively, of blended bitumen, the third party disposition quantity of the Project for the month or Period, respectively, of blended bitumen, or
  - (ii) in the case of any other kind of oil sands product, the volume of the oil sands product determined by deducting from the production quantity of the Project for the month or Period, respectively, of that kind of oil sands product, the third party disposition quantity of the Project for the month or Period, respectively, of that kind of oil sands product;
- (c) “oil sands product” includes blended bitumen that contains cleaned crude bitumen obtained pursuant to a Project;
- (d) “production quantity”, for a month or Period, means, in relation to each kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product during the month or Period, respectively, the quantity of that kind of oil sands product so obtained and delivered during the month or Period, respectively;

- (e) repealed AR 26/2017 s19;
- (f) “TPD percentage for a month” means, in relation to each kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product during a month, the percentage that the third party disposition quantity of the Project for the month of that kind of product is of the production quantity of the Project for the month of that kind of product;
- (g) “TPD percentage for a Period” means, in relation to each kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product during a Period, the percentage that the third party disposition quantity of the Project for the Period of that kind of product is of the production quantity of the Project for the Period of that kind of product;
- (h) “third party disposition quantity”, for a month or Period, means the quantity of each kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product that is disposed of in third party dispositions during the month or Period, respectively, whether the quantity disposed of was so obtained and delivered during that month or a preceding month, or during that Period or a preceding Period, respectively;
- (i) “Third Party Disposition Threshold” means,
  - (i) in relation to a month, the percentage prescribed under section 8(d) as the Third Party Disposition Threshold for the month, and
  - (ii) in relation to a Period, the simple average of the Third Party Disposition Thresholds so prescribed under section 8(d) for the months of the Period.

**(1.1)** In determining unit price pursuant to this section, the Minister may direct how the third party disposition quantity, and the TC, HC and TD for that third party disposition quantity, is to be determined if

- (a) an oil sands product is obtained pursuant to a Project and delivered or deemed to be delivered at a royalty calculation point,
- (b) the oil sands product referred to in clause (a) is blended with other hydrocarbon substances prior to disposition to create a commingled stream, and

- (c) the commingled stream, or a portion of it, referred to clause (b) is disposed of in an arm's length transaction.

**(2)** If the TPD percentage for a month for a kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product during the month is greater than or equal to the Third Party Disposition Threshold for the month, the unit price applicable to the production quantity of the Project for the month of that kind of oil sands product is the price calculated in accordance with the following formula:

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

where

TC is the total consideration, calculated in accordance with the Minister's directions, received or receivable by the seller under all third party dispositions of the third party disposition quantity of the Project for the month of that kind of oil sands product;

HC is the handling charges in relation to that third party disposition quantity;

TD is that third party disposition quantity.

**(3)** If the TPD percentage for a Period for a kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product during the Period is greater than or equal to the Third Party Disposition Threshold for the Period, the unit price applicable to the production quantity of the Project for the Period of that kind of oil sands product is the price calculated in accordance with the formula set out in subsection (2) except that, for the purposes of this section,

- (a) "TC" is the total consideration, calculated in accordance with the Minister's directions, received or receivable by the seller under all third party dispositions of the third party disposition quantity of the Project for the Period of that kind of oil sands product,
- (b) "HC" is the handling charges in relation to the third party disposition quantity referred to in clause (a), and
- (c) "TD" is the third party disposition quantity referred to in clause (a).

**(4)** If the TPD percentage for a month for a kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product during the month is less than the

Third Party Disposition Threshold for the month, the unit price applicable to the production quantity of the Project for the month of that kind of oil sands product is the price calculated in accordance with the following formula:

$$\text{Unit price} = \frac{(\text{TC} - \text{HC}) + [(\text{NQ} \times \text{P}) + \text{CD}]}{\text{PQ}}$$

where

- TC is the total consideration, calculated in accordance with the Minister's directions, received or receivable by the seller under all third party dispositions of the third party disposition quantity of the Project for the month of that kind of oil sands product;
- HC is the handling charges in relation to that third party disposition quantity;
- NQ is the NQ of the Project for the month for that kind of oil sands product;
- P is the price determined for the month pursuant to subsection (6) for that kind of oil sands product obtained pursuant to the Project;
- CD is the cost of diluent contained in the volume of blended bitumen determined for the month under subclause (i) of the definition of "NQ", if the kind of oil sands product is blended bitumen described in subsection (6)(a)(i), or zero in the case of any other kind of oil sands product;
- PQ is the production quantity of the Project for the month of that kind of oil sands product.

(5) If the TPD percentage for a Period for a kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product during the Period is less than the Third Party Disposition Threshold for the Period, the unit price applicable to the production quantity of the Project for the Period of that kind of oil sands product is the price calculated in accordance with the formula set out in subsection (4) except that, for the purposes of this section,

- (a) "TC" is the total consideration, calculated in accordance with the Minister's directions, received or receivable by the seller under all third party dispositions of the third party disposition quantity of the Project for the Period of that kind of oil sands product,

- (b) “HC” is the handling charges in relation to that third party disposition quantity,
  - (c) “NQ” is the NQ of the Project for the Period for that kind of oil sands product,
  - (d) “P” is the price determined for the Period pursuant to subsection (7) for that kind of oil sands product obtained pursuant to the Project,
  - (e) “CD” is the cost of diluent contained in the volume of blended bitumen determined for the Period under subclause (i) of the definition of “NQ”, if the kind of oil sands product is blended bitumen described in subsection (6)(a)(i), or zero in the case of any other kind of oil sands product, and
  - (f) “PQ” is the production quantity of the Project for the Period of that kind of oil sands product.
- (6) The price for a month in relation to a kind of oil sands product obtained pursuant to a Project and referred to as “P” in subsection (4) is
- (a) if the oil sands product is
    - (i) cleaned crude bitumen described in section 1(2)(a) where the cleaned crude bitumen is of a density equal to or greater than the BVM Dilbit density for the month determined under section 3(4) of the *Bitumen Valuation Methodology (Ministerial) Regulation* (AR 232/2008), or
    - (ii) cleaned crude bitumen described in section 1(2)(b) or (c) of a density that is equal to or greater than the BVM Dilbit density for the month determined under section 3(4) of the *Bitumen Valuation Methodology (Ministerial) Regulation* (AR 232/2008),  
  
the Hardisty Bitumen Price determined pursuant to the *Bitumen Valuation Methodology (Ministerial) Regulation* (AR 232/2008) for the Project for the month minus the transportation allowance specified in subsection (8) for the Project for the month for that kind of oil sands product, or
  - (b) the price determined by the Minister as the fair market value of the oil sands product, in the case of any other oil sands product.

(7) The price for a Period in relation to a kind of oil sands product obtained pursuant to a Project and referred to as “P” in subsection (5) is the average of the prices determined under subsection (6) for the Project for the months of the Period for that kind of oil sands product, weighted according to the respective volumes for those months of that kind of oil sands product obtained pursuant to the Project that comprise NQ for those months.

(8) The transportation allowance for a Project

- (a) for a month for a kind of oil sands product obtained pursuant to the Project is
  - (i) the prescribed transportation allowance, if a transportation allowance for the Project for the month for that kind of oil sands product is prescribed pursuant to section 8(e),
  - (ii) the transportation allowance determined in accordance with the methodology for determining the transportation allowance for the Project for the month for that kind of oil sands product prescribed pursuant to section 8(e), if a methodology for determining the transportation allowance for the Project for the month for that kind of oil sands product is prescribed pursuant to section 8(e), or
  - (iii) the transportation allowance determined for the Project for the month for that kind of oil sands product pursuant to the *Bitumen Valuation Methodology (Ministerial) Regulation* (AR 232/2008), if neither a transportation allowance nor a methodology for determining a transportation allowance is prescribed for the Project for the month for that kind of oil sands product pursuant to section 8(e),

and

- (b) for a Period for a kind of oil sands product obtained pursuant to the Project is the average of the transportation allowances for the Project for the months of the Period for that kind of oil sands product, weighted according to the respective quantities of the oil sands product referred to in subsection (6)(a), as the case may be, comprising “NQ” referred to in the formula in subsection (4) for those months.

(9) Despite subsections (2) to (8), if the kind of oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product during a month or Period is crude bitumen

that is not cleaned crude bitumen (in this subsection called “raw crude bitumen”), the unit price applicable in respect of that month or Period, respectively, to the raw crude bitumen is the price calculated in accordance with the formula in subsection (2), except that

- (a) the fair market value of the cleaned crude bitumen that is or could be obtained from the raw crude bitumen shall be used as TC,
- (b) the aggregate of
  - (i) the charges of the kind described in the definition of “handling charges” in subsection (1) that the Minister is of the opinion would have been incurred to transport the raw crude bitumen from the royalty calculation point to the place at which it is or could be processed to produce cleaned crude bitumen, and
  - (ii) the charges that the Minister is of the opinion would have been incurred to process the raw crude bitumen to produce cleaned crude bitumenshall be used as HC, and
- (c) the quantity of that kind of oil sands product so obtained and delivered during the month or Period, respectively, shall be used as TD.

**(10)** A unit price may be determined under this section as a positive amount, zero or a negative amount.

AR 223/2008 s32;11/2012;26/2017

### **Royalty compensation**

**33(1)** When the title to the Crown’s royalty share of an oil sands product delivered in a month of a pre-payout Period at the royalty calculation point for the product is transferred pursuant to section 31(1), the operator of the Project pursuant to which the oil sands product is obtained shall, not later than the last day of the following month, pay to the Crown, in respect of that royalty share, the royalty compensation calculated under subsection (3).

**(2)** Subject to subsections (4) to (14), when the Crown’s royalty share of an oil sands product delivered in a post-payout Period at the royalty calculation point for the product is transferred pursuant to section 31(1), the operator of the Project pursuant to which the oil sands product is obtained shall, not later than the last day of the 4th month following the Period, pay to the Crown, in respect of that royalty share, the royalty compensation calculated under subsection (3).

**(3)** For the purposes of subsections (1) and (2), the royalty compensation for the Crown's royalty share of an oil sands product obtained by a Project and delivered at a royalty calculation point for the product in a month or Period, as the case may be, shall, subject to subsections (4) and (5), respectively, be calculated as follows:

- (a) in the case of cleaned crude bitumen contained in blended bitumen,
  - (i) the quantity of the blended bitumen that contains the Crown's royalty share of the cleaned crude bitumen so obtained and delivered shall be multiplied by the greater of zero and the unit price for the month or Period, as the case may be, applicable to the blended bitumen, and
  - (ii) the lesser of the cost of diluent included in that quantity of blended bitumen and the amount determined under subclause (i) shall be deducted from the amount determined under subclause (i);
- (b) in the case of any other oil sands product, the quantity of the Crown's royalty share of the oil sands product so obtained and delivered shall be multiplied by the greater of zero and the unit price for the month or Period, as the case may be, applicable to the product.

**(4)** Repealed AR 52/2019 s5.

**(5)** Repealed AR 52/2019 s5.

**(6)** The operator of a Project shall pay to the Crown in respect of each month of a post-payout Period, as an instalment with respect to the aggregate of the royalty compensation required to be paid by the operator under subsection (2) for the Period as reduced under subsection (5), the amount calculated by subtracting from the greater of the percentage for the month, described in subsection (8)(a), of the gross revenue of the Project for the month and the preceding months of the Period ending with the month and the amount calculated in respect of the Project for the month in accordance with subsection (7),

- (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 (11), and
- (b) the amount, if any, remaining after subtracting the aggregate amount referred to in clause (a).

(7) The amount referred to in subsection (6) 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:

$$P = \frac{(ER \times ENR)}{EGR} \times GR$$

where

P is the amount referred to in subsection (6) to be calculated in accordance with this subsection in respect of the month;

ER is the percentage for the month, described in subsection (8)(b);

ENR is the amount estimated by the Minister under section 38(7) for the month as the net revenue of the Project for the Period or, if the Minister has not for that month estimated the net revenue of the Project for the Period, the operator's estimate of that amount contained in the report furnished under section 38(1) by the operator for that month;

EGR is the amount estimated by the Minister under section 38(7) for the month as the gross revenue of the Project for the Period or, if the Minister has not estimated for that month the gross revenue of the Project for the Period, the operator's estimate of that amount contained in the report furnished under section 38(1) by the operator for that month;

GR is the aggregate of the gross revenue of the Project for the month and for the preceding months of the Period.

(8) The percentage

(a) for the month for the purposes of subsection (6) is the estimated annual  $R_G\%$  prescribed for the month under section 8(c), and

(b) for the month for the purposes of ER in subsection (7) is the estimated annual NRPF prescribed for the month under section 8(b).

(9) An amount required to be paid by the operator of a Project to the Crown under subsection (6) in respect of a month of a Period shall be paid by the last day of the following month.

(10) If the amount required to be paid by the operator under subsection (6) in respect of a month of a Period is a negative

amount, the amount shall, subject to subsection (11), be deducted by the operator from the amounts required to be paid by the operator under subsection (6) in respect of the next ensuing month or months of the Period until the amount is fully deducted.

**(11)** If the amount required to be deducted under subsection (10) is, in the Minister's opinion, likely to exceed the sum of the amounts payable by the operator under subsection (6) in the remaining months of the Period, the difference in these 2 amounts shall be paid by the Minister to the operator by the last day of the month following the month in which the report is provided under section 38(1) that first identifies the amount.

**(12)** If the aggregate of the royalty compensation payable to the Crown under subsection (2) in respect of the royalty share for a Period as indicated in a report furnished under section 39(1) exceeds the royalty compensation paid to the Crown under subsection (6) that has not been repaid under subsection (11) in respect of the months of the Period, the operator shall pay the excess amount to the Crown by the last day of the 4th month following the end of the Period.

**(13)** If the aggregate of the royalty compensation payable to the Crown under subsection (2) in respect of the royalty share for a Period as indicated in a report furnished under section 39(1) is less than the royalty compensation paid to the Crown under subsection (6) that has not been repaid under subsection (11) in respect of the months of the Period, the Minister must pay the difference to the operator by the last day of the 4th month following the end of the Period.

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

AR 223/2008 s33;335/2009;11/2012;26/2017;52/2019

#### **Previously paid royalty**

**34** Any royalty compensation in respect of oil sands and oil sands products recovered from the development area of a Project on or after January 1, 2009 paid to the Crown, other than pursuant to section 33, for each month during the period, if any, commencing with the later of the effective date of the Project or January 1, 2009 and ending with the last day of the month in which the Project is approved under section 11, shall for the purposes of this Regulation be considered

- (a) an amount paid in respect of that month pursuant to section 33(1), if the month is part of a pre-payout Period, or

- (b) an amount paid in respect of that month pursuant to section 33(6), if the month is part of a post-payout Period.

## **Part 5 Administration and Enforcement**

### **Definition**

**35** In this Part, “reporting entity” means a non-Project well event, non-Project mining operation or Project.

### **Application**

**35.1** For greater certainty, if a person is required to furnish to the Minister a report, statement or auditor’s opinion pursuant to this Part, the person must furnish the report, statement or auditor’s opinion whether or not oil sands or oil sands products

- (a) have been or are being recovered from the Project, non-Project well event or non-Project mining operation to which the report, statement or auditor’s opinion pertains, or
- (b) have been or are being recovered during the period of time to which the report, statement or auditor’s opinion pertains.

AR 26/2017 s21

## **Division 1 Reporting**

### **Operator changes**

**36(1)** When a person is replaced as the operator of a reporting entity, the person shall furnish a report to the Minister by the end of the month in which the change is made, notifying the Minister of the change.

**(2)** Only one person may be the operator of a reporting entity at any time.

### **Operator’s forecast**

**37(1)** Subject to subsections (1.1) and (2), the operator of a Project shall furnish to the Minister by January 15, 2009 and by November 30 of each calendar year a report that contains the operator’s forecast of the information regarding the Project called for by the form of the report and relating to

- (a) the Periods that occur during the calendar year and that may occur during the following 14 calendar years, and

- (b) when the Project payout date of the Project is expected to occur.

**(1.1)** The Minister may, in a particular case, specify a different date by which a report referred to in subsection (1) must be furnished to the Minister.

**(2)** The Minister may, in a particular case, specify a period of fewer than 14 calendar years but not fewer than 4 calendar years in place of the period referred to in subsection (1)(a).

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

AR 223/2008 s37;11/2012;26/2017

#### **Monthly report**

**38(1)** Unless the Minister otherwise directs in a particular case, the operator of a Project shall furnish a report to the Minister for each month of a Period.

**(1.1)** Unless the Minister otherwise directs in a particular case, the operator of a non-Project well event or non-Project mining operation shall furnish a report to the Minister for each month until

- (a) the end of the month preceding the month in which the non-Project well event or non-Project mining operation becomes a Project or part of a Project, or
- (b) the end of the month determined by the Regulator as the month in which the non-Project well event or non-Project mining operation was abandoned.

**(2)** A report under subsection (1) or (1.1) must be furnished

- (a) by the last day of the month following the month for which the report is required, or
- (b) by the date specified by the Minister if the Minister has specified a different date for the furnishing of the report in a particular case.

**(3)** Despite subsection (2), a report required to be furnished under subsection (1) must, if the report is in respect of a month that precedes the month during which the Project is first approved under section 11, be furnished

- (a) by the last day of the month following the month during which the Project is first approved under section 11, or

- (b) by the date specified by the Minister if the Minister has specified a different date for the furnishing of the report in a particular case.
- (4) A report required to be furnished under subsection (1) or (1.1) may call for the furnishing of actual information, estimated or forecasted information or any combination of actual and estimated or forecasted information.
- (5) A report under subsection (1) must be accompanied by a statement indicating approval of the report by the chief financial officer of the operator or by another individual approved in advance by the Minister, either by reference to the individual's name or title, as an individual who may approve the report.
- (6) Subject to section 44, an individual who in good faith approves a report furnished under subsection (1) is not liable to the Crown in any civil proceeding arising from the approval of the report.
- (7) If a report furnished under subsection (1) or (1.1) contains an estimate of any amount for a period of time and the Minister is not satisfied with the accuracy of the estimate, the Minister may substitute the Minister's estimate of the amount for the period and any other period.
- (8) If the Minister substitutes an estimated amount pursuant to subsection (7), the Minister shall notify the operator of the Project of the substitution, the Minister's estimate of the amount and the period for which the Minister's estimate applies.
- (9) The Minister may from time to time amend or replace a notice given under subsection (8) by giving a further notice to the operator.

AR 223/2008 s38;88/2013;26/2017

#### **Enhancement reporting**

**38.1(1)** The operator of a Project shall furnish any reports specified by the Minister.

**(1.1)** If the Minister is of the opinion that an operator cannot comply with subsection (1) because the operator is not in possession of the required information, the Minister may require that the person in possession of such information furnish any reports specified by the Minister.

**(2)** A report required to be furnished under subsection (1) or (1.1) must be in the form determined by the Minister, and may call for the furnishing of actual information, estimated or forecasted information or any combination of actual and estimated or forecasted information.

- (3)** A report under subsection (1) or (1.1)
- (a) must be furnished
    - (i) by the date specified by the Minister as the due date for that report, or
    - (ii) by the date specified by the Minister if the Minister has specified a different date for the furnishing of the report in a particular case,
- and
- (b) must be accompanied by a statement indicating approval of the report by the individual specified under subsection (4).
- (4)** The Minister shall, in specifying a report to be furnished under subsection (1) or (1.1), specify the individual, by name or title, who is required to approve the report.
- (5)** Subject to section 44, an individual who in good faith approves a report furnished under subsection (1) or (1.1) is not liable to the Crown in any civil proceeding arising from the approval of the report.

AR 335/2009 s10;11/2012;88/2013;26/2017

### Report

- 39(1)** The operator of a Project shall furnish to the Minister within 3 months after the end of each Period, or within a longer time period specified by the Minister in a particular case, a report in respect of the Period.
- (2)** A report under subsection (1) must be signed by the operator of the Project or by the operator's representative.
- (2.1)** If the aggregate quantity of crude bitumen and cleaned crude bitumen recovered or obtained pursuant to the Project and delivered at a royalty calculation point during the Period, whether as part of blended bitumen or otherwise, is greater than the product of the number of days in the Period multiplied by 1590 cubic metres per day, the report under subsection (1) must
- (a) unless the Minister otherwise directs, be accompanied by an opinion by the auditors retained by the operator, and
  - (b) if directed by the Minister, be accompanied by an opinion by the auditors retained by each lessee of the Project to report to the shareholders of the lessee,

as to whether the operator, in the case of the opinion referred to in clause (a), and the lessee, in the case of the opinion referred to in clause (b), have complied with the requirements of this Regulation, the *Bitumen Valuation Methodology (Ministerial) Regulation* (AR 232/2008) and the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008).

**(3)** A report under subsection (1) must be accompanied by a statement indicating approval of the report by the chief financial officer of the operator or by another individual approved in advance by the Minister, either by reference to the individual's name or title, as an individual who may approve the report.

**(4)** Subject to section 44, an individual who in good faith approves a report furnished under subsection (1) is not liable to the Crown in any civil proceeding arising from the approval of the report.

AR 223/2008 s39;26/2017

#### **Ad hoc reports**

**40(1)** If the Minister is of the opinion

- (a) that a person is in possession of information that may be relevant in calculating, determining, specifying, prescribing or verifying any amount, factor or other component for the purposes of this Regulation, or a regulation made by the Minister and referred to in this Regulation, that is used in the calculation of royalty or royalty compensation in relation to a reporting entity, and
- (b) that the information cannot be gathered at all, or adequately, in reports otherwise required to be furnished under this Regulation,

the Minister may, by written notice given to the person, require the person to furnish one or more reports to the Minister respecting the information.

**(2)** A notice given under subsection (1) must specify the frequency with which reports called for by the notice are to be furnished and deadlines for the submission of the reports.

**(3)** A person given a notice under subsection (1) shall furnish the Minister with the reports called for by the notice with the frequency and by the deadlines specified in the notice, and in accordance with the requirements of section 5.

**(4)** If a notice given under subsection (1) does not specify a time after which reports called for by the notice are no longer required to be furnished to the Minister, the person given the notice may

cease to furnish the reports 24 months after the date of the notice unless

- (a) the Minister gives the person another notice under subsection (1) requiring the person to continue furnishing the reports, or
- (b) the Minister gives the person notice that the person may sooner cease to furnish the reports called for by the notice given under subsection (1).

(5) The Minister may from time to time amend or replace a notice given under subsection (1) by giving a further notice to the person provided with the notice given under subsection (1).

### Reporting changes

**41(1)** An operator or other person who has furnished a report under this Part shall, when the operator or other person learns of a material change or error in, or a material omission from, the information contained in the report, furnish to the Minister a replacement report containing the updated, corrected or missing information.

(2) An operator or other person who has furnished a report under this Part shall, on receipt of a notice from the Minister to do so, furnish the Minister with a replacement report

- (a) for the report furnished under this Part, and
- (b) in which any deficiency in the report referred to in clause (a) and identified by the Minister in the notice is rectified.

(3) When the operator of a Project is required to furnish the Minister with a replacement report for a report furnished under subsection (1) or (2) or section 39(1) for a pre-payout Period, the operator shall also furnish a replacement report for each report furnished under section 38(1) for a month of the Period where the change, error, omission or deficiency required to be addressed in the replacement report for the Period relates in whole or in part to the month.

(3.1) Where a replacement report is required to be furnished under subsection (1), (2) or (3) for a report that is required to be accompanied by a statement under section 38(5), 38.1(3) or 39(3), the replacement report must be accompanied by a statement indicating approval of the replacement report by the chief financial officer of the operator or by another individual approved in advance by the Minister under section 38(5), 38.1(4) or 39(3) respectively.

- (4) Subject to subsection (5), a replacement report shall be furnished to the Minister
- (a) in the case of a replacement report required to be furnished under subsection (1), by the last day of the month following the month in which the operator or other person who furnished the report required to be replaced learns of the material change, error or omission in the information contained in that report,
  - (b) in the case of a replacement report required to be furnished under subsection (2), by the last day of the month following the month in which the Minister issues the notice pursuant to subsection (2) calling for the furnishing of the replacement report, or
  - (c) in the case of a replacement report required to be furnished under subsection (3), by the last day of the month following the month in which
    - (i) the operator or other person who furnished the report required to be replaced learns of the material change, error or omission in the information contained in that report, or
    - (ii) the Minister issues the notice pursuant to subsection (2) calling for the furnishing of the replacement report,

whichever is applicable.

- (5) The Minister may, in a particular case, specify a different time period within which a report referred to in subsection (4) is required to be furnished to the Minister.

AR 223/2008 s41;88/2013;26/2017

#### **Notice of suspension**

**41.1** Before suspending all or any part of Project operations, the operator of a Project shall notify the Minister of the suspension and the notice must include the following information:

- (a) a description of the Project operations to be suspended;
- (b) a description of the Project operations that are not being suspended, if any;
- (c) the reason for the suspension;
- (d) the start date of the suspension and the expected duration of the suspension;

- (e) a description of activities that will be conducted in respect of the suspended Project operations;
- (f) a list of capital assets and engineering systems included in the suspended Project operations;
- (g) any other information the operator considers relevant.

AR 26/2017 s27

### Records

**42(1)** The lessees and operator of a reporting entity, and any person furnishing a report under section 40(1), shall keep and maintain, and cause those persons affiliated with them to keep and maintain, records satisfactory to the Minister relating to the reporting entity or to oil sands or oil sands products recovered or obtained pursuant to, by or from the reporting entity, or used, or that would be required, to prepare any application, report, statement, opinion or other document permitted or required to be submitted or furnished under this Regulation.

**(2)** The Minister may make available any record, return or other information obtained under the Act or a regulation made under the Act, or under an agreement, to the Regulator for the purposes of obtaining information from the Regulator that the Minister is of the opinion is necessary for the purposes of administering this Regulation, the Prior Regulation, the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008) or the *Bitumen Valuation Methodology (Ministerial) Regulation* (AR 232/2008).

AR 223/2008 s42;11/2012;88/2013;89/2013

## Division 2 Compliance

### Provisional royalty compensation

**43(1)** In this section, “provisional royalty compensation” means royalty compensation calculated in accordance with subsection (2).

**(2)** Despite the provisions of Parts 3 and 4, but subject to this section, in any case where information respecting the total consideration received or receivable

- (a) by the seller under third party dispositions during a period of time in relation to any oil sands product obtained pursuant to a Project, or
- (b) by the lessee in dispositions of any oil sands product recovered from a non-Project well event during a period of time

is not provided to, or cannot be verified by audit or examination of records by, the Minister, royalty and royalty compensation payable in relation to the oil sands product shall, for that period of time, be calculated by the Minister in accordance with Parts 3 and 4 but using the highest unit price or highest unit value, respectively, for that kind of oil sands product achieved in respect of all Projects or all non-Project well events, respectively, during that period of time.

**(3)** If provisional royalty compensation calculated in relation to an oil sands product obtained pursuant to a Project or from a non-Project well event for any period of time exceeds the royalty compensation paid in relation to that oil sands product for that period,

- (a) the Minister shall issue an invoice for the excess amount to the operator of the Project or of the well containing the non-Project well event, and
- (b) the operator shall pay the excess amount to the Minister by the end of the month following the month in which the invoice is issued under clause (a).

**(4)** Where provisional royalty compensation has been paid in respect of an oil sands product and the operator concerned provides the Minister with the information described in subsection (2) and access to records that in the Minister's opinion are sufficient to verify the information, the Minister shall, by the end of the second month following the month in which the Minister receives the information and access to records,

- (a) recalculate the royalty compensation in respect of the oil sands product without reference to subsection (2), and
- (b) notify the operator of the results of the recalculation.

**(4.1)** Where provisional royalty compensation is recalculated under subsection (4)(a), any difference between the amount paid and the recalculated amount shall be

- (a) paid by the operator to the Minister, or
- (b) refunded to the operator by the Minister,

as the case may be, by the end of the month following the month in which the operator is notified under subsection (4)(b) of the results of the recalculation.

**(5)** Despite section 45(6), the Crown is not liable to pay interest on an amount required to be refunded under subsection (4.1)(b), but must refund any interest paid to the Crown under section 45(1)(a) in respect of that amount.

(6) If, after a recalculation of provisional royalty compensation under subsection (4)(a), interest is required to be refunded under subsection (5), the refund must be paid by the end of the month following the month in which the operator is notified under subsection (4)(b) of the results of the recalculation.

AR 223/2008 s43;88/2013;26/2017

### Penalties

**44(1)** If a person is required to furnish to the Minister any report, statement or auditor's opinion required to be furnished pursuant to this Part, other than a report or statement referred to in section 38.1(1), (1.1) or (3)(b) or 40(1), and fails to do so by the respective dates required by this Regulation, the Minister may impose on the person a penalty of \$5000 for each month or part of a month during which the failure continues.

(2) Despite subsection (1), a penalty shall not be imposed in respect of a month or part of a month for a failure to furnish

- (a) a statement described in section 38(5), if a penalty is imposed in respect of that month or part of a month for a failure to furnish a report under section 38(1) that was to be accompanied by the statement,
- (b) repealed AR 26/2017 s29,
- (c) a statement described in section 39(3), if a penalty is imposed in respect of that month or part of a month for a failure to furnish a report under section 39(1) that was to be accompanied by the statement,
- (d) an auditor's opinion described in section 39(2.1), if a penalty is imposed in respect of that month or part of a month for a failure to furnish a report under section 39(1) that was to be accompanied by the opinion, or
- (e) a statement described in section 41(3.1), if a penalty is imposed in respect of that month or part of a month for a failure to furnish a replacement report under section 41(1), (2) or (3) that was to be accompanied by the statement.

(2.1) If a person is required to furnish information to the Minister under section 27(6) and fails to do so by the time specified under the *Petroleum Royalty Regulation, 2017* (AR 212/2016), the *Enhanced Hydrocarbon Recovery Royalty Regulation* (AR 210/2016), or the *Emerging Resources Royalty Regulation* (AR 209/2016), the Minister may by notice impose on the person a penalty of not less than \$1000 and not more than \$5000 for each month or part of a month during which the failure continues.

**(2.2)** If a person is required to furnish to the Minister a report pursuant to section 38.1(1) or (1.1) or a statement pursuant to section 38.1(3)(b) and fails to do so by the date specified under section 38.1(3), the Minister may impose on the person a penalty of not more than \$5000 for each month or part of a month during which the failure continues.

**(2.3)** Despite subsection (2.2), a penalty shall not be imposed in respect of a month or part of a month for a failure to furnish a statement pursuant to section 38.1(3)(b), if a penalty is imposed in respect of that month or part of a month for a failure to furnish the report under section 38.1(1) or (1.1) that was to be accompanied by the statement.

**(3)** If a person is required to furnish the Minister with a report under section 40(1) and fails to do so by the deadline specified in the notice given by the Minister calling for the report to be furnished, the Minister may by notice impose on the person a penalty of not more than \$5000 for each day during which the failure continues.

**(4)** The Minister may waive a penalty imposed under subsection (1) or (3) on being satisfied that the failure to furnish the report, statement or opinion by the deadline was due to circumstances beyond the control of the person required to furnish it.

**(5)** Where, as a result of an audit or examination conducted by or on behalf of the Minister under the Act, the Minister determines that the royalty compensation actually payable to the Crown in respect of a period of time on oil sands or oil sands products recovered or obtained by a reporting entity is greater than the aggregate royalty compensation paid to the Crown in respect of the oil sands or oil sands products, the Minister may give a notice to the operator of the reporting entity describing the deficiency and what, in the Minister's opinion, was the cause giving rise to the deficiency.

**(6)** If the Minister gives a notice under subsection (5) to an operator in respect of a period of time, and

- (a) has previously given another notice to the operator under subsection (5) in respect of a deficiency for not more than one earlier separate period of the same duration where the cause giving rise to the whole or a part of the deficiency for the earlier period is, in the Minister's opinion, the same as or similar to the cause giving rise to the whole or a part of the deficiency for the period of time first referred to in this subsection, or
- (b) has previously given notices to the operator under subsection (5) for more than one earlier separate period of

the same duration in respect of the deficiencies for those earlier periods where the cause giving rise to the whole or a part of the deficiencies for those earlier periods is, in the Minister's opinion, the same as or similar to the cause giving rise to the whole or a part of the deficiency for the period of time first referred to in this subsection,

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

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

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

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

**(8)** If a person fails to undertake a measurement or calculation in accordance with section 6, the Minister may by notice impose on the person a penalty of not more than \$5000 for each day during which the failure continues.

**(9)** The Minister may waive the whole or a part of a penalty imposed under subsection (6) or (8) if the Minister is of the opinion that the circumstances warrant such a waiver.

**(10)** A penalty imposed by the Minister under this section must be paid within 30 days after the Minister

- (a) informs the person on whom the penalty is imposed of the imposition of the penalty, in the case of a penalty imposed under subsection (1), or
- (b) gives notice of imposition of the penalty to the person on whom the penalty is imposed, in the case of any other penalty.

AR 223/2008 s44:88/2013;26/2017

### **Interest**

**45(1)** If any of the following amounts is not paid by the day on which it is required to be paid under this Regulation, interest on the amount is payable to the Crown by the person required to pay the amount:

- (a) an amount required to be paid under section 26(4), 27(1.3), 27(4), 33(1) or (6) or 43(3) or (4.1)(a);

- (b) a penalty required to be paid under section 44;
- (c) any interest required to be paid under this subsection or subsection (2);
- (d) an amount referred to in subsection (2) unless interest is payable on that amount under subsection (2).

**(1.1)** Interest payable under subsection (1) is to be computed for the period commencing on the day following the day on which the amount is required to be paid under this Regulation and continuing until and including the day on which the amount, including interest, is fully paid to the Crown.

**(2)** Subject to subsection (3), interest is payable by the operator of a Project to the Crown on any of the following amounts required to be paid in respect of the Project:

- (a) an excess amount required to be paid by the operator under section 33(12) in respect of the Project;
- (b) the amount of any underpayment of royalty compensation payable in respect of a post-payout Period to the Crown in respect of oil sands products recovered from the development area of the Project, other than an amount described in clause (a), where the underpayment is identified in a calculation or recalculation by the Minister under the Act.

**(2.1)** Interest payable under subsection (2) is to be computed for the period commencing on

- (a) July 1 of the Period in respect of which the amount is required to be paid, if that Period comprises a full calendar year, or
- (b) the day following the half-way point of the Period in respect of which the amount is required to be paid, if that Period comprises a period that is less than a full calendar year,

and continuing until and including the day on which the amount, including interest, is fully paid to the Crown.

**(3)** No interest is payable under subsection (2) if the amount referred to in subsection (2)(a) or (b) is not more than 10% of the aggregate of the royalty compensation payable to the Crown under section 33(2) for the Period in relation to which the amount arises.

**(3.1)** If the Minister is of the opinion that a calculation made under section 6(3) or an estimate made under section 38(7) is incorrect as

a result of an error made by the Minister, and the Minister corrects the calculation or estimate through a subsequent calculation under section 6(3), a subsequent estimate under section 38(7) or a calculation or recalculation under the Act, the Minister may refund any portion of the interest so determined and paid under this Regulation in respect of the incorrect calculation made under section 6(3) or the incorrect estimate made under section 38(7) as the Minister considers appropriate to remedy the error taking into consideration

- (a) the amount payable pursuant to the subsequent calculation or recalculation, and
- (b) the interest payable in connection with the subsequent calculation or recalculation.

**(4)** Repealed AR 88/2013 s18.

**(5)** Interest payable under this section by a person in relation to any amount shall be paid by the last day of the month following the month in which the due date specified in this Regulation for payment of the amount occurs.

**(6)** Interest is payable by the Crown to the operator of a reporting entity on

- (a) an amount required to be paid by the Crown to the operator under section 33(11) in respect of a Project, computed for the period commencing on the day following the last day of the Period in respect of which the amount is required to be paid,
- (b) the amount of
  - (i) any difference payable under section 33(13), or
  - (ii) any overpayment of royalty compensation
    - (A) payable in respect of a post-payout Period of a Project by the operator of the Project to the Crown in respect of oil sands products recovered from the development area of the Project, other than an amount described in subclause (i) or clause (a) or (b.1), and
    - (B) identified in a calculation or recalculation by the Minister under the Act,

computed for the period commencing on the day following the last day of the 4th month following the Period in respect of which the difference is payable under

section 33(13) or the overpayment has been paid, as the case may be,

- (b.1) the amount of any overpayment of a disputed amount, within the meaning of subsection (6.01), computed for the period commencing on the day following the last day of the month in which the operator paid the amount,
- (c) an amount required to be refunded by the Crown to the operator under section 43(4.1)(b) or 43(6), computed for the period commencing on the first day of the 2nd month following the month in which the operator is notified by the Minister of the results of the recalculation pursuant to which the refund was determined, and
- (d) an overpayment of royalty compensation payable in respect of a month by the lessee of a non-Project mining operation or non-Project well event, computed for the period commencing on the first day of the 2nd month following the month in which the overpayment arose,

and continuing until and including the day on which the Minister requisitions a cheque for the amount or notifies the operator to deduct the amount from an amount that is payable or that will become payable by the operator to the Crown under the Act or the regulations under the Act.

**(6.01)** For the purposes of subsection (6)(b.1), the overpayment of a disputed amount is the amount, excluding penalties and interest on penalties, that was paid

- (a) as required by section 2(3) of the *Oil Sands Dispute Regulation* (AR 247/2007) in respect of an objection related to a Royalty Regulation, or
- (b) as required by section 2(3) of the *Mines and Minerals Dispute Resolution Regulation* (AR 170/2015) in respect of an objection related to a prescribed matter referenced in an Oil Sands Regulation

that, in the resolution of or decision made respecting the objection, it is determined was not otherwise payable under the Act or the regulations under the Act.

**(6.1)** For the purposes of subsection (6)(d), an overpayment arises when

- (a) the operator is notified by the Minister of the results of a recalculation that identified the overpayment, or
- (b) the operator notifies the Minister of the overpayment,

whichever occurs first.

**(6.2)** If, in the Minister's opinion the Department made a mathematical, clerical or systems error in a calculation or recalculation under the Act and where the Minister corrects such error through a subsequent calculation or recalculation under the Act, the Minister may reverse any portion of the interest paid under this section as a result of the erroneous calculation or recalculation.

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

- (a) interest payable to or by the Crown on any amount is payable, subject to subsection (1)(c), on a simple interest basis on the balance of that amount remaining unpaid from time to time until the date on which the entire balance of the unpaid amount is received by the Minister or dealt with by the Minister in accordance with subsection (6), respectively, and
- (b) if interest is payable under this section by or to the Crown in respect of any day, the rate of interest in respect of that day is the yearly rate that is 1% greater than the rate of interest established by the Province of Alberta Treasury Branches as its prime lending rate on loans payable in Canadian dollars and in effect on the first day of the month in which that day occurs.

AR 223/2008 s45;11/2012;31/2012;88/2013;26/2017

**46** Repealed AR 169/2015 s22.

#### **Objections**

**47** The operator of a reporting entity is authorized to make an objection under section 39 of the Act, with respect to the reporting entity.

AR 223/2008 s47;170/2015

**48** Repealed AR 170/2015 s13.

#### **Minister's decision final**

**49** Where any question arises pertaining to the interpretation or application of this Regulation, the Minister is the sole judge of the question and there shall be no appeal from the Minister's decision.

## Part 6 Consequential Amendments and Coming into Force

### Crown Agreements

**50(1)** This Regulation, the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008), the *Bitumen Valuation Methodology (Ministerial) Regulation* (AR 232/2008) and the Prior Regulation are the regulations referred to in the definitions of “Generic Royalty Regulation” contained in

- (a) the Alberta Crown Agreement, as amended from time to time, referred to in Order in Council numbered O.C. 469/76, and
- (b) the “Alberta Suncor (O.S.G.) Crown Agreement: Second Amendment and Transition Agreement”, referred to in Order in Council numbered O.C. 245/96.

**(2)** The oil sands projects deemed by the Agreements referred to in subsection (1) to have been approved by the Minister for the purposes of the Regulations referred to in that subsection are Prior Projects for the purposes of this Regulation.

AR 223/2008 s50;11/2012

### Amend AR 250/2004

**51** The *Innovative Energy Technologies Regulation* (AR 250/2004) is amended in section 1(1)(c) and (i) by striking out “*Oil Sands Royalty Regulation, 1997* (AR 185/97)” and substituting “*Oil Sands Royalty Regulation, 2009*”.

### Amends AR 166/84

**52** The *Oil Sands Royalty Regulation, 1984* (AR 166/84) is amended in section 5 by adding “ending with December, 2008” after “and subsequent months”.

### Amends AR 185/97

**53(1)** The *Oil Sands Royalty Regulation, 1997* (AR 185/97) is amended by this section.

**(2)** Section 1(ee) is amended by adding “on or before December 31, 2008” after “consumed or used”.

**(3)** Section 3 is amended by adding “, except that the month of December of 2008 shall be construed as ending at midnight on December 31, 2008” after “next month”.

**(4) Section 7(2) is amended by adding** “that becomes payable on or before December 31, 2008” **after** “subsection (1)”.

**(5) The following is added after section 12:**

**Application of this Regulation**

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

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

**(6) Section 15 is amended**

- (a) **in subsection (1) by adding** “, on or before December 31, 2008,” **after** “Project may”;
- (b) **in subsection (3) by adding** “, on or before December 31, 2008,” **after** “owners may”.

**(7) Section 16 is amended**

- (a) **in subsection (1) by adding** “, on or before December 31, 2008,” **after** “Minister may”;
- (b) **by repealing subsection (3)(c) and substituting the following:**
  - (c) the first day of the month that precedes by 9 months the month in which the Project or amendment is approved by the Minister.
- (c) **by repealing subsection (4).**

**(8) Section 20 is amended by adding** “, on or before December 31, 2008,” **after** “Minister may”.

**(9) Section 27 is amended by adding** “prior to 2008” **after** “each calendar year”.

**(10) Section 28(1) is amended by adding** “ending on or before December 31, 2008,” **after** “month of a Period”.

**(11) Section 29(1) is amended by adding** “ending on or before December 31, 2008” **after** “each Period”.

**(12) Section 31 is amended**

(a) **in subsection (1)(b) by adding** “ending on or before December 31, 2008” **after** “pre-payout Period”;

(b) **in subsections (2)(b) and (4) by adding** “ending on or before December 31, 2008” **after** “post-payout Period”.

**(13) Section 32(3) is amended by adding** “ending on or before December 31, 2008” **after** “of a Period”.

**(14) Section 33 is amended**

(a) **in subsection (1)(a) by adding** “, 38.1(3) or 38.2(2) or (7)” **after** “or (4)”;

(b) **in subsections (2)(c) and (4)(b)(ii) by adding** “ending on or before December 31, 2008” **after** “of a Period”.

**(15) Section 34 is amended by adding** “on or before December 31, 2008” **after** “of a Project”.

**(16) Section 36 is amended by repealing subsection (4).**

**(17) Section 38 is amended by**

(a) **renumbering it as section 38(1);**

(b) **in subsection (1) by striking out** “Any” **and substituting** “If a Project is approved under section 16, any” **and by striking out** “of a Project” **and substituting** “of the Project”;

(c) **adding the following after subsection (1):**

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

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

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

**(18) The following is added after section 38:**

**Pre-2009 inventory**

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

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

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

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

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

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

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

**Pre-2009 transitional inventory**

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

- (a) described in section 1(2)(b) or (c) of the *Oil Sands Royalty Regulation, 2009*,
- (b) a Project substance, and

- (c) obtained before January 1, 2009 pursuant to a Project referred to in section 36(2)(b) or (c),

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

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

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

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

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

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

where

- C is the total consideration, calculated in accordance with the Minister's directions, received or receivable by the seller under all third party dispositions, as defined in section 21(1)(b), during 2009, of that kind of oil sands product obtained pursuant to the Project;
- T is all handling charges, export charges, pipeline tariff charges and charges of a similar nature that are paid to transport the oil sands product disposed of in the dispositions referred to in the definition of C from the royalty calculation point for the oil sands product to the place where those dispositions occur;
- Q is the total quantity of the oil sands product disposed of in the dispositions referred to in the definition of C.

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

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

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

(6) The royalty reserved to the Crown on transitional crude bitumen is the same percentage of the quantity of the transitional crude bitumen as the percentage of the royalty reserved under section 90(3) of the Act, as that section stood on October 1, 2008, on other oil sands products obtained pursuant to the Project during the 2008 Period.

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

- (a) would be determined under section 32 of the *Oil Sands Royalty Regulation, 2009* for the months of 2009, and

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

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

(8) The proceeds referred to in subsection (6) shall be paid to the Crown by April 30, 2010.

**(19) Section 40 is repealed and the following is substituted:**

**Expiry**

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

**(19) Schedule 1 is amended**

- (a) in section 2(d) by adding “and on or before December 31, 2008” after “the Project”;
- (b) in section 3(j)(iv) by adding “under this Regulation or in the determination of unit price under section 32 of the *Oil Sands Royalty Regulation, 2009*” after “unit price”;
- (c) in section 4 by adding “and section 16 of the *Oil Sands Allowed Costs (Ministerial) Regulation*” after “subject to section 5 of this Schedule”.

**(20) Schedule 2 is amended**

- (a) in section 2(d) by adding “and on or before December 31, 2008” after “the Project”;
- (b) in section 3(j)(iv) by adding “under this Regulation or in the determination of unit price under section 32 of the *Oil Sands Royalty Regulation, 2009*” after “unit price”;
- (c) in section 4 by adding “and section 16 of the *Oil Sands Allowed Costs (Ministerial) Regulation*” after “subject to section 5 of this Schedule”.

**Amends AR 288/99**

**54(1)** The *Regulations Act Regulation (AR 288/99)* is amended by this section.

**(2)** Section 17(1) is amended by adding the following after clause (s):

(s.1) all orders of the Minister under section 8 of the *Oil Sands Royalty Regulation, 2009*;

**55** Repealed AR 26/2017 s32.

**Coming into force**

**56** This Regulation comes into force on January 1, 2009.



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