

December 15, 2008

INFORMATION LETTER 2008-32

**Subject: Amendments to the Oil Sands Royalty Regime**

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In October 2007, the government announced its commitment to create a New Royalty Framework for Alberta, and to have the new framework in place by January 1, 2009.

The *Mines and Minerals (New Royalty Framework) Amendment Act, 2008*, the first legislative requirement necessary to fulfil that commitment, received Royal Assent on December 2, 2008. Among other things, this amendment to the *Mines and Minerals Act* will:

- strengthen accountability systems and processes to better ensure complete and timely reporting on royalties owing to Alberta.
- lay the groundwork for new royalty rates, and support a fair, predictable, and transparent royalty regime.

On December 10, 2008, further to the *Mines and Minerals (New Royalty Framework) Amendment Act, 2008*, Cabinet approved the *Oil Sands Royalty Regulation, 2009*, which will take effect January 1, 2009. The *Oil Sands Royalty Regulation, 2009* will:

- clarify aspects of the application and approval process for oil sands royalty projects.
- refine the rules related to costs and revenues, including the strengthening of rules related to the valuation of non-arm's length transactions for both revenues and costs.
- introduce new, price-sensitive royalty rates linked to the price of West Texas Intermediate crude oil in Canadian dollars. (For pre-payout projects, gross royalty rates will start at 1% when oil is priced at \$55 per barrel or less, and increase to a maximum of 9% when oil is priced at \$120 per barrel or more. For post-payout projects, net royalty rates will start at 25% when oil is priced at \$55 per barrel or less, and increase to a maximum of 40% when oil is priced at \$120 or more.)
- strengthen administration and enforcement provisions, including the introduction of more stringent reporting requirements and higher penalties.

Also on December 10, 2008, the Minister of Energy signed the Ministerial Orders approving the *Oil Sands Allowed Costs (Ministerial) Regulation* and the *Bitumen Valuation Methodology (Ministerial) Regulation*, both of which will take effect on January 1, 2009. The *Oil Sands Allowed Costs (Ministerial) Regulation* will provide greater certainty with respect to the determination of allowed and disallowed costs, while remaining open to changing circumstances and new categories of costs. The *Bitumen Valuation Methodology (Ministerial) Regulation* establishes the value of bitumen disposed of in non-arm's length transactions where there are insufficient third party sales to determine a fair market value. The BVM methodology will account for transportation costs of both bitumen and diluent used in transporting bitumen. It also introduces a floor price into bitumen valuation to ensure a fair return to Alberta.

These regulations represent the culmination of extensive analyses, development and public stakeholder consultation that started with the initiation of the royalty review process in 2007. The department acknowledges the remarks and suggestions provided by industry with respect to the amendments to the *Mines and Minerals Act* and the new royalty regulations, and we enclose a “matrix” summarizing the comments received and the department’s responses.

Note that the *Oil Sands Royalty Regulation, 1997* will continue to apply with respect to costs incurred and revenues received in Periods prior to January 1, 2009. Also note that the provisions of the *Oil Sands Royalty Regulation, 1984* have been moved to the *Oil Sands Royalty Regulation, 2009*.

Orders in Council can now be viewed on the Queen's Printer website at: [http://www.qp.gov.ab.ca/display\\_orders.cfm](http://www.qp.gov.ab.ca/display_orders.cfm) . All regulations including Ministerial Regulations will be published shortly in the Alberta Gazette.

For further information, please contact:

Colin Pate  
Director, Operational Policy  
Oil Sands Operations  
Phone: (780) 422-6513

Rose Dykes  
Operational Policy Analyst  
Oil Sands Operations  
Phone: (780) 427-5965

**Authorized by:** Anne Denman  
Executive Director  
Oil Sands Operations  
Alberta Department of Energy

Issue	Regulation Proposed	Industry's Response	DOE's Response
<b>Mines and Minerals (New Royalty Framework) Amendment Act, 2008</b>			
<p>1. Inspections and investigations</p> <p>Section 5(1) Section 52</p>	<ul style="list-style-type: none"> <li>• MMA – broadened to make it more suitable for inspections and investigations for royalty purposes.</li> <li>• To provide more clarification of aspects of inspection such as the who, what, when, where, how and what for, of inspections.</li> </ul>	<p>The provisions in the proposed Mines and Minerals Act provide for broad powers, many of which exist in the current Act but have never been used, and new broad powers on inspection and investigation. These powers are broad and depend heavily on yet to be drafted regulations. As such, industry's position on the changes to the MMA is dependent on how those provisions are translated into policy and regulations and then implemented.</p> <p>...</p> <p>Regarding the proposed amendments to Section 52, it should be made clear that the Crown has no right to investigate or inspect a processing plant outside of lessee's Project, i.e. the Crown cannot conduct any investigation or inspection of any facilities outside of the project description.</p> <p>...</p> <p>Furthermore, since the investigation is not related to emergency situations, it should be clear that any investigation or inspection must be conducted during the operator's normal business hours and in accordance with the operator's normal operating requirements; including safety requirements.</p> <p>It should also be made clear that the Crown may only request information owned or in the possession of the lessee and not otherwise subject to confidentiality requirements</p> <p>It should be made clear that information received by the Crown under Section 52 is considered information falling within Section 50(4), to the</p>	<p>In practice, the Department would normally conduct any investigation or inspection during the operator's normal business hours and in accordance with normal operating requirements, including safety requirements.</p> <p>There may situations where an inspection of, for example, an integrated mine and upgrading operation, would require an inspection on the upgrading side of the operation. With integrated operations being split up, there will be an increase in the number of NAL transactions across Project boundaries that will need to be investigated and audited. In some cases, there may be no way to verify Crown volumes or costs for the Project without an inspection of operations outside the Project. In addition, it may be necessary to inspect a part of a Project removed from a Project in subsequent audit years.</p> <p>As this pertains mostly to site inspections and investigations, these things are normally within the control of the operator. There are sections in OSRR 2009 that compel an operator to get information from a third party. Unless the confidentiality requirement is imposed by statute binding on the Crown, it will not be an excuse for failing to provide the information requested.</p> <p>Most of the information is likely to fall under s.50(3) or (4), however this may not be the case for all the information since all the kinds of information that may be requested under s.52</p>

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		extent it does not fall under Section 50(3)	cannot be known today but will be defined over time as the need for the information arises.
<p>2. Bitumen Royalty In-Kind (BRIK) and its future regulations and</p> <p>3. Taking Royalty in Kind by Way of Exchange</p> <p>4. Facilitate Obtaining of Goods and Services to Manage Royalty in Kind</p> <p>S.1 S.8 S.9 S.35 S.36 S.86</p>	<ul style="list-style-type: none"> <li>• Add a new section 1(5) that defines “product obtained from a mineral” as including products obtained in exchange.</li> <li>• Amend s. 8(1)(a) so the Minister is authorized to not only exchange minerals, but also products obtained from a mineral, including minerals obtained in a previous exchange.</li> <li>• Amend s.9(a)(i) so the contracts the Minister may be authorized to enter into can also relate to the undertaking of such activities in relation to “products obtained from minerals” as defined in new s.1(5)</li> <li>• Amend section 35(3) so it also applies where the calculation of royalty on the products obtained from a mineral is provided for in a contract or agreement entered into under s.9 of the <i>MMA</i>.</li> <li>• Add a further regulation making power to section 36(2) of the <i>MMA</i> respecting the delivery of a mineral, or product obtained from a mineral, in exchange for, or on account of, the Crown’s royalty share of a mineral or product obtained from a mineral.</li> <li>• Amend section 36 to elaborate on making power to provide more clarity regarding aspects of exchanges such as who can or is required to deliver royalty by exchange, when, and how the exchanges occur, the circumstances in which exchanges may be required, and the terms and</li> </ul>	<p>The proposed changes to the Act raise many issues related to taking Bitumen Royalty In-Kind (BRIK) and its future regulations. These issues were raised in Industry’s letter to the Department, dated April 8, 2008, and new issues such as: acting as agent for the Crown; product exchange other than bitumen; recognizing the full costs of BRIK; and defining the inspection and investigation procedures, all need to be fully understood before moving to regulation drafting. ...</p> <p>Many of the provisions set out in this Act address the Government’s ability to take its royalty share of bitumen production from a Project in kind. However neither this Act nor the receding regulations provide the mechanism and specific terms for the facilitation of this. In particular:</p> <ol style="list-style-type: none"> <li>a. How the Government will provide facilities to enable it to take its share of production in kind;</li> <li>b. How the Government will provide for the transportation of its share of production from the oil sands project to the point of sale; and</li> <li>c. The rules and mechanisms for suspending the provisions of the Oils Sands Royalty Regulation, 2009 that address the Crown receiving its royalty by a financial payment.</li> </ol> <p>We have serious concerns regarding how the government will accomplish its objectives here without imposing extra costs on the owners of an oil sands project or disrupting existing commercial</p>	<p>The specific rules for BRIK are still being developed. Further legislative and regulatory amendments are needed to enable BRIK – including, possibly, definitions for processing and reprocessing. The current proposed amendments provide only a framework for the development of further rules.</p>

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	<p>conditions governing such exchanges.</p> <ul style="list-style-type: none"> <li>• Amend s.36(2)(a) to clarify that the authority to make regulations extends to making regulations respecting the delivery of the Crown's royalty share of the mineral and the undertaking of actions leading to disposal of the royalty share or products obtained from the royalty share.</li> <li>• Amend S.36(2)(b) and (c) to clarify that the regulations can require the Alberta Petroleum Marketing Commission ["APMC"] to act as the Crown's agent for such purposes.</li> <li>• Amend section 86 so it can be made to apply to other minerals and agreements besides only crude oil.</li> <li>• New provisions are added allowing regulations to be made: <ul style="list-style-type: none"> <li>• authorizing the Minister or the APMC to require goods and services to be provided that may be required to manage the Crown's royalty share of a mineral taken in kind ["required goods and services"]</li> <li>• Respecting the determination by the Minister, APMC or the Alberta Utilities Commission of payment to be made for required goods and services.</li> <li>• Respecting the rights, powers, liabilities and obligations of the APMC and others in regards to required goods and services and payment in consideration thereof.</li> </ul> </li> </ul>	<p>arrangements which the project owners may have entered into.</p> <p>Where the Government elects to take its share of bitumen in kind unless the Government proposes to piggy back on the existing arrangements of the project owners, making separate arrangements for the transportation and upgrading of the Government's share of bitumen produced by a project will impose serious logistical, contractual and financial problems.</p> <p>Commercial transactions in industry have historically required that a party taking its share of mineral production from a joint venture in kind does so at the point of first production at its sole cost and subject to making its own arrangements for transportation, storage, processing and marketing.</p> <p>Where contractual terms impose an obligation on the project operator to allow a party taking in kind to piggy back on arrangements made by the operator, the party taking in kind is required to bear its share of the costs under such arrangements and to pay the operator a set fee (a fixed amount or a percentage based on value of the product involved).</p> <p>...</p> <p>Unlike conventional petroleum and natural gas royalties, the Crown's "royalty share" of oil sands is based on net profits and this introduces significantly more complexity into the BRIK regime that the current proposed amendments seem to provide for. We anticipate that the implementation</p>	

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	<ul style="list-style-type: none"> <li>Add a provision preventing claims from being made for compensation for required goods and services beyond the payment provided for pursuant to the regulations.</li> </ul>	<p>rules to facilitate the Crown's right to <i>BRIK</i> will be further developed over the next several months and that the current uncertainty with respect to these rules and regulations will be reduced. ...</p> <p>The definitions for processing and reprocessing are absent from the amendment to the <i>Mines and Minerals Act</i>. For the purposes of bitumen take in kind, these definitions will need to be clearly laid out in the Act.</p>	
<b>Oil Sands Royalty Regulation, 2009</b>			
<p>5. Interpretation – Processing Plant</p>	<p>1(1)(ee)“processing plant” means a facility</p> <ul style="list-style-type: none"> <li>(i) for obtaining crude bitumen from oil sands that have been recovered, or</li> <li>(ii) for obtaining oil sands products from oil sands, crude bitumen or a derivative of crude bitumen that have been recovered,</li> </ul> <p><b>Applications</b>  <b>10(1)</b> 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</p> <p>(a)includes the whole or a part of one or</p>	<p>The definition of this term in Section 1(1)(ee) is broad enough to include an upgrader. ...</p> <p>Section 10(1)(c) requires that an applicant may only make an application for approval of a proposed mining project if the applicant includes a " ... <i>.processing plant for obtaining crude bitumen from oil sands so recovered...</i>". ...</p> <p>Also Section 14(1) excludes a diluent recovery unit from the assets which are part of an oil sands project, including an integrated upgrader. By excluding the costs of the DRU from allowed processing plants, the proposed Regulations incent the development of upgrading facilities in geographic locations where construction and operating costs are cheaper or where existing third party facilities can be expanded.</p> <p>Upgrading economics are already marginal. Additional royalty costs related to the exclusion of</p>	<p>Project operators will continue to be able to choose what Project components will be included in their Project application. While the trend is towards keeping upgraders out of Projects, there may be cases where an operator might want to apply to include an upgrader. The fact that an upgrader can be included does not mean that it must be included.</p> <p>Note that in s.10(1)(c) the department will not accept a Project whose sole purpose is to mine oil sands – some processing to bring that substance to at least cleaned crude bitumen must take place. This is consistent with historical policy.</p> <p>The final draft will contain some changes to section 10(1) to ensure that where an applicant might want to include an upgrader in a Project they are not prevented from doing so by our excluding diluent recovery units from core and supporting assets. However, any DRU not included as part of an integrated upgrader that is included in the Project will be excluded in future.</p>

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	<p>more schemes or operations for such recovery, approved by the Board under the <i>Oil Sands Conservation Act</i>,</p> <p>(b)contemplates such recovery only from oil sands rights owned by the Crown in right of Alberta, and</p> <p>(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.</p> <p><b>project description</b></p> <p><b>14(1)</b> In this section,</p> <p>(a)"core asset" means, in relation to a Project, a capital asset 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, but does not include a supporting asset, overhead asset or diluent recovery unit;</p> <p>(b)"overhead asset" means, in relation to a Project, a capital asset that is not used directly and solely for the purposes of Project operations, and includes, without limitation, capital assets used in connection with the functions and other items described in the subclauses of section 1(1)(a) of the <i>Oil Sands Allowed Costs (Ministerial) Regulation</i>;</p> <p>(c)"Project use threshold" means</p> <p>(i)66%, in the case of a core asset, and</p>	<p>the DRU will be a relevant factor in the decision of locating and constructing an upgrader in Fort McMurray and Alberta.</p> <p>...</p> <p>In addition Section 20(8)(b)(ii) allows the Minister to set the value for the bitumen produced from a mining project based on "<i>a price derived from the prices of products that could be obtained from the oil sands product..</i>".</p>	<p>Regarding valuation of bitumen, section 20(8)(b)(ii) only applies to oil sands products for which some other provision of the OSRR09 calls for valuation based on fair market value. This doesn't include crude bitumen other than raw crude bitumen under s.32(5). Cleaned crude bitumen is valued under s. 32(2) or (3) and (4) based on arm's length dispositions and/or the BVM.</p>

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	<p>(ii)85%, in the case of a supporting asset;</p> <p>(d)"supporting asset" means, in relation to a Project, a capital asset necessary for the operation and maintenance of a core asset of the Project, but does not include a core asset, overhead asset or diluent recovery unit.</p> <p><b>Fair market value</b></p> <p><b>20(8)</b> In determining the fair market value of an oil sands product, the Minister may, without limiting any other method for determining fair market value,</p> <p>(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:</p> <p>(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,</p> <p>(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,</p>		
6. Interpretation - Product	Mines and Minerals Act "oil sands" means	Throughout the Regulation, the term "product" is used without definition.	The OSBU has not proposed any changes to the definition of oil sands product, which should continue to be broad enough to capture any

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	<p>(i) sands and other rock materials containing crude bitumen,                      (ii) the crude bitumen contained in those sands and other rock materials,                      and                      (iii) <b>any other mineral substances, other than natural gas, in association with that crude bitumen or the sands and other rock materials referred to in subclauses &lt;i&gt; and (ii),</b></p> <p>and includes a hydrocarbon substance declared to be oil sands under</p> <p>section 7(2) of the Oil Sands Conservation Act;</p> <p>OSRR'09</p> <p>1(1)(t)"oil sands product" means</p> <p>(i)any product recovered from oil sands,</p> <p>(ii)any product obtained by processing oil sands, and</p> <p>(iii) any other product obtained directly or indirectly from a product referred to in subclause (i) or (ii),</p> <p>but does not include solution gas;</p>	<p>The bold highlighted portion of the definition makes the broad and virtually all encompassing nature of the definition clear. As a result, with the exception of solution gas or natural gas, everything else that is intermixed or carried with the oil sands at the point of native extraction from the ground is part of the oil sands. This would include:</p> <ul style="list-style-type: none"> <li>• Various hydrocarbons;</li> <li>• Silica sands;</li> <li>• Metals;</li> <li>• Salts; and</li> <li>• Sulfur and sulfur compounds.</li> </ul> <p>In the recovery and processing of oil sands only certain elements obtained from such activity are marketable commodities which can be sold or used in a manner which results in a net profit. The remaining elements are essentially waste products which impose a net cost for the handling and disposal of the same (which cost is taken into account in terms of determining the overall economic viability of the oil sands project).</p> <p>The broad nature of the term "product" and the definitions of "oil sands" and " oil sands product" would impose obligations on a project operator to perform a unit price calculation and reporting on the disposal of waste such as produced sand or coke or other materials/substances which cannot be sold but must be disposed of or cannot be sold at a profit (at times coke and sulphur may have a market value, but cannot be sold for a profit from an oil sands project due to the transportation cost from the project site to the market). Therefore it is recommended that the following two defined term</p>	<p>royalties where there is a disposition of the Crown's share of any oil sands products recovered from the Project.</p> <p>Where there is no disposition, no royalty is payable. Therefore, trying to distinguish between waste and a product is unnecessary. Where an oil sands product is disposed of at a loss, the Crown will recognize that loss in the Project payout determination and net loss carryforward calculation.</p>

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		<p>be added to the definitions in Section 1 of the Regulation:</p> <ul style="list-style-type: none"> <li>• "product" means at any point in time and from time to time, any material or substance which taking into account the point of production and the point of sale or use, may be sold or used to produce something which may be sold for a profit, but does not include waste.</li> <li>• "waste" means at any point in time and from time to time, any material or substance obtained as a by-product from the production of a product, and which cannot be sold for a profit or used to produce something which can be sold for a profit, taking into account the point of production and the point of sale or use of such material or substance.</li> </ul> <p>Adding these two definitions would eliminate the need to report the handling and disposal of waste products with the same rigueur as products with a real commodity value. It would also eliminate the need to list waste products in applications for new projects or to amend existing project approvals when listing the oil sands products that the project that is the subject of the application is expected to produce.</p>	
7. Interpretation - Project Lands	<p>1(1)(hh) "Project lands" means, in relation to a Project,</p> <p>(i)the development area of the Project, and</p> <p>(ii)the surface areas occupied by the Project,</p>	<p>With respect to the definition of "Project lands" in Section 1(hh), does the Crown intend to include the surface area occupied by roads, pipeline rights of way, transmission line easements, etc. to be included as "Project lands", if these areas lie outside of the main project area (e.g. an access road leading from a point outside of the main project area to such main area)?</p>	<p>The department will include the surface area occupied by roads, pipeline rights of way, transmission line easements, etc., if those things are specifically mentioned in the Project Description. That has always been the practice.</p>

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	<p>specified from time to time in the description of the Project;</p>	<p>The broad nature of the current definition would include any area of land that could be said to fall within the description of the Project (i.e. if the Project description refers to a road being an asset of the Project then the area occupied by the road is part of the Project lands).</p>	
<p>8. Interpretation - Solution Gas</p>	<p>s. 1(oo)                      "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;</p> <p>s. 1(t)                      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/                      s. 23(1)(e) (Note: there is no 23(1)(e))                      The "other net proceeds" of a Project for a Period are</p>	<p>Clarity on the definition of solution gas (s. 1(oo)) relative to other gases produced from altered bitumen is necessary to provide certainty for developers. If these types of gases leave project facilities on a permanent basis, the regulations suggest that they would be considered by default as an "oil sands product" (s. 1 (t)) and be subject to other net proceeds (s. 23(1)(e)). Industry requests further consultation with the Department to further define segregation between solution gas and oil sands products.                      ...</p> <p>The following change is recommended to the definition of "solution gas" in Section 1(oo) in order to clarify the definition of "solution gas":</p> <p>"solution gas" means gas dissolved in crude bitumen under initial reservoir conditions and includes any gas that evolved <i>in the reservoir, in a well bore or a surface pipeline, processing plant or other facility</i> as a result of changes in pressure due to human disturbance but does not include gas produced <i>from a gas cap existing in reservoir prior to human disturbance of the reservoir,</i> or through chemical alteration of crude bitumen <i>in a processing plant</i> through chemical alteration of crude bitumen <i>at the molecular level</i> using high</p>	<p>Yes, "cracked gas" is considered an oil sands royalty product. It could also be ONP if purchased rather than recovered from the development area of the Project.</p> <p>The department feels that the current definition of solution gas is clear enough and already covers the suggested clarifications.</p>

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9. Interpretation - Cleaned Crude Bitumen	<p><b>1(2)</b> In this Regulation, "cleaned crude bitumen" means</p> <p>(a) crude bitumen from which impurities have been removed sufficiently to allow it, when blended with diluent, to be transported by pipeline,</p> <p>(b) crude bitumen delivered from a Project to a processing plant that is not part of the Project and that is designated by the Minister as an integrated upgrader, and</p> <p>(c) crude bitumen 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.</p> <p><b>1(3)</b> In using the definition of cleaned crude bitumen for the purposes of this Regulation, crude bitumen described in subsection (2)(b) and (c) is deemed to have had commingled impurities removed from it.</p>	<p>temperature, high pressure, a catalyst or <i>other chemical or mechanical process</i>.</p> <p>Section 1(3) refers to "commingled impurities" without defining this term. In common parlance, the term means "contaminants or pollutants blended in with a desired substance or material".</p> <p>The technical meaning of the term "commingled impurities" suggests substances of a different chemical or physical make up from an otherwise homogeneous substance which are undesirable and blended in with such otherwise homogeneous substance.</p> <p>Using this term in respect to crude bitumen suggests that there is some consistent homogeneous nature to crude bitumen which makes it possible to identify undesirable "impurities" which are otherwise "commingled" with the crude bitumen.</p> <p>As the purpose of the provision in Section 1(3) is to somehow deem bitumen which contains impurities (i.e. dirty bitumen) as equivalent for valuation purposes to bitumen which has been rendered to a quality sufficient to enable it to be blended with diluent and transported to market, the problem is that each type of bitumen is made up or a different mix of chemical substances. Within a volume of "dirty" bitumen", what constitutes the "clean bitumen" and what constitutes "commingled impurities" is a matter of circumstance and conjecture unless a standard is set defining either the requirements of clean bitumen or the identification of impurities.</p>	<p>The word "commingled" has been removed from the final draft. The term "impurities" goes back to the OSRR 1997, which defined crude bitumen in terms of having impurities removed sufficient for it to be transported by pipeline.</p>

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		<p>Industry recommends that the problem be addressed by a definition of "commingled impurities" which is substance and purpose specific such as the following:                      "Commingled impurities" means sand, sediment, water and such other substances that if mixed or blended with crude bitumen, would render such crude bitumen unacceptable for blending with diluent and transportation by pipeline to a refiner."</p>	
<p>10. Transition from OSR 97 to OSR 2009</p>	<p>New – needs clarification</p>	<p>Industry recommends the inclusion of transitional provisions for the review and approval by the Department of new OSRR project applications and amendments to currently approved OSRR projects.</p> <p>Those applications filed with the Department for projects with a proposed effective date of earlier than January 1, 2009, should be considered and reviewed by the Department under the terms of OSRR 97.</p> <p>...</p> <p>What are the requirements and the considerations that will be applied to the review of new project or project amendment applications for which the effective date applied for in the applications is before January 1, 2009? What are the requirements for the project application if the project approval date falls on or after January 1, 2009?</p> <p>How will the Department administer projects approved before January 1, 2009 with respect to the project periods falling before this date? Will the</p>	<p>All Project and Project amendment applications will be reviewed based on the law in effect at the time of review, not the proposed effective date or the date of receipt by the department. All Projects and Project applications will need to comply with the regulation as of January 1, 2009. Costs and revenues will be audited for dates before January 1, 2009 based on the regulations and business rules in effect at that time.</p> <p>A dispute resolution process will continue to exist. The dispute resolution tribunal will be expected to apply the law in effect at the time of the dispute.</p> <p>The OSAC will be updated in 2009 to include the business rules developed with industry, and any new business rules.</p>

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		<p>existing cost rules continue to apply for the duration of the four year Crown royalty audit time frame for these pre-January 1, 2009 royalty periods and projects?</p> <p>Will the Department continue with the current dispute resolution process? The new regulations do not provide for such a process?</p> <p>What portion of the existing Business Rules will be adopted under the new regulations?</p>	
<p>11. Affiliate Rules</p>	<p><b>2(3)</b> For the purposes of this Regulation, other than For the purposes of this Regulation, other than subsection (1)(a)(i), a transaction is a non-arm's length transaction if</p> <p>(a) a party to the transaction is affiliated with any other party to the transaction,</p> <p>(b) any party to the transaction is in a position to compel any other party to the transaction to enter into the transaction, or</p> <p>(c) the consideration for any party under the transaction is in whole or in part based on or tied to</p> <p style="padding-left: 40px;">(i) any other contractual or other obligation with another party to the transaction, or</p> <p style="padding-left: 40px;">(ii) any consideration under a contractual or other obligation described in subclause (i),</p> <p>but does not include any transaction to which the</p>	<p>Section 2(3) (b) implies possible commercial impropriety by a party (who could be an unrelated third party) to a commercial transaction. Protections against commercial impropriety are (and should be) legally addressed outside of the royalty system.</p> <p>Section 2(3) (c) addresses transactions that are tied to other commercial arrangements. The crude oil business involves many such transactions and swaps (e.g. the sale of bitumen blend and the return of the diluent that is in the blend).</p> <p>For the above reasons and because of the lack of clarity as to how it would be applied and interpreted, we recommend that Section 2 (3) be excluded. In the event that the Crown decides not to exclude Section 2(3), we recommend further consultation with industry to clarify its intent and more clearly define terminology such as "compel", as well as to ensure that legitimate arm's length transactions are not incorrectly categorized as non-arm's length.</p> <p>...</p>	<p>The affiliate rules in s. 2(3) do not deal with impropriety but with influence to enter into a transaction. The Crown is at a disadvantage in not knowing what transactions may or may not have been influenced.</p> <p>The word "compel" does not extend to ordinary commercial transactions freely negotiated between parties. That would include the example given, where an oil sands operators negotiates with an electric utility company for the purchase of electricity, given that each party can chose not to participate in the transaction.</p> <p>The final draft will add subsections 2(4), 2(5) and 2(6), which allow the owner of a Project to apply for, or the Minister on his own initiative to determine whether a transaction is an arm's length transaction.</p>

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	only parties are the Crown and another party.	<p>Section 2(3) (b) uses the term "compel" without qualification or definition. This term is subject to various meanings which could include being able to require or force a party to engage in a transaction by virtue of the operation of regulatory requirements (e.g. the purchase of automotive liability insurance is compelled by legislation). It is recommended that the use of this term in Section 2(3)(b) be qualified by the addition of the phrase: "by virtue of legal control exercise over such other party, by the party exercising such control" to the end of the Section.</p> <p>This proviso could have unintended consequences. For example the operator of an oil sands project convinces an electric utility company to put up a portion of the capital for a cogeneration plant that will serve the oil sands project, and in exchange agrees to purchase electricity from this generator for the project at a negotiated long term contract price.</p>	
12. Month	<b>3</b> Where any reference is made in this Regulation to a month, whether by its name or not, the reference shall, except to the extent otherwise specified by the Minister in respect of any particular Project, non-Project mining operation or non-Project well event, be construed as being the period commencing at 8:00 a.m. on the first day of that month and ending immediately before 8:00 a.m. on the first day of the next month.	<p>In Section 3 it is recommended that the proviso be revised as follows:</p> <p>Where any reference is made in this Regulation be construed as being the period commencing at 08:00 a.m. on the first day of <i>the calendar</i> month and ending immediately before 08:00 a.m. on the first day of the next <i>calendar</i> month.</p>	The ordinary meaning of the word "month" already implies a calendar month. This has been confirmed with our drafters and Legislative Counsel.
13. Submissions	<b>5(4)</b> 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.	Section 5(4) grants the Minister the right to reject an application that does not meet the requirements laid out in Section 5. We recognize the need for the Minister to reject an application in certain circumstances. However, the Minister should be required to notify the operator <i>at</i> a submission	<p>The Minister may, not must, reject a deficient application. It would be impossible to define "minor deficiency" or "major deficiency".</p> <p>The final draft will make s. 5(4) subject to s. 10(6), i.e., notify the lessees of the deficiencies or non</p>

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		<p>deficiency and offer a reasonable curative period.</p> <p>Notification of deficiency and a curative period would allow the Operator and the Minister the flexibility to resolve minor deficiencies while reserving the right of the Minister to reject an application with major deficiencies.</p>	<p>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.</p>
<p>14. Applications</p>	<p>10(2)(f) a listing and description of non-arm's length transactions expected to occur for the supply of any capital assets, goods or services for the Project, or for the supply of any capital assets, goods or services produced or generated pursuant to the Project other than for the purposes of the Project;</p> <p>10 (4)(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;</p> <p>10 (5)(d) cause any other person in possession of information or records that are or may be relevant to any information required to be provided in or with the application or required pursuant to clause (a)</p> <p>(i) to provide the Minister with the information in the possession of that person,</p> <p>(ii) to consent to an examination of those records, and</p> <p>(iii) to co-operate with and give all</p>	<p>With respect to the requirement to list non-arm's length transactions pursuant to Sections 10(2)(f) and 10(4) (f), the requirement should be limited to those transactions of a material nature.</p> <p>Otherwise the applicant/project operator will be required to anticipate and list minor material transfers from its materials inventories from locations other than or outside of the Project (e.g. transferring of a PCP or pump jack from one project to another).</p> <p>...</p> <p>Regarding the provision of information, the phrase "Use all reasonable means to" should be added to the beginning of Section 10(5)(d). An applicant/project operator cannot compel cooperation of a third party outside the applicant's/operator's legal authority and therefore should not be in default if after exhausting all reasonable legal means is not able to provide the information that is held by the third party.</p>	<p>Section 10(2)(f) refers to NAL transactions expected to occur pertaining to capital assets, goods or services. Since the operator has the advantage of having this information, all expected transactions should be reported. At the time of application, these are likely to be "high-level" transactions. Section 10(2)(f) requires operators requesting an amendment to a Project to inform the department of any additions or changes to the NAL transactions disclosed in a previous application for the Project approval.</p> <p>If the transferring of an asset (i.e., change of use) is material to the operator because it will result in cost savings from avoiding having to buy another asset, then it is material to the Crown.</p> <p>In the final draft, s. 10(5)(d) has been removed because the required information to assess an application must be submitted under other clauses in order for the application to be approved.</p>

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	reasonable assistance to the person conducting the examination referred to in subclause (ii),		
15. Application	<p><b>10(5)</b> Each lessee who has made an application under this section, and the operator of the Project or proposed Project to which the application relates shall, whenever requested to do so by the Minister,</p> <p>(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),</p>	Information requested by the minister should be limited, by the Regulation, to information relevant to the Project in question.	<p>The department sees no value in putting in a reference to relevance to the Project since this may then have to be accompanied by wording indicating the Minister determines relevance.</p> <p>The Crown will determine what is relevant, because the information required may go well beyond the boundaries of the Project, e.g., third party dispositions could occur well downstream, bitumen cleaning can occur outside the Project, services may be obtained from and provided to downstream upgraders.</p>
16. Project Approvals	<p><b>11(1)</b> The Minister may by order approve a Project for which an application for approval is made under section 10(1) or section 16(1) of the Prior Regulation, or reject the application, and in doing so shall, without limitation, take into consideration the following:</p> <p>(a) whether the Project will be substantially operationally integrated and operated under common management;</p> <p>(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;</p> <p>(c) whether all the parts of the Project, other than a processing plant referred to in clause (b), are substantially geographically contiguous;</p>	<p>When considering maximum production capacity and maximum time periods for expansion the Minister should also consider the full life cycle and planned future expansion(s) of the project. Oct 15<sup>th</sup> - The Minister may consider at any time. All projects and their subsequent expansion(s) will have different ultimate productive capacities and development time lines, depending on the resource base, bitumen extraction method, unique operating circumstances, and investment profiles.</p> <p>These timelines are developed to provide the most economically effective recovery of the resource over the life of the project.</p> <p>Included in the criteria that the Minister must consider is the royalty payable impact on a project amendment (s. 11 (2)(a-b)).</p> <p>We request that this provision explicitly specify that the discount rate for the royalty payable</p>	<p>The Minister can take the full life cycle and planned future expansions into consideration when setting the maximum production cap and maximum expansion period even though full life cycle and planned expansions are not referred to specifically in the approval criteria. (We will not be listing them as explicit consideration because that would result in them being given undue weight in setting these conditions.)</p> <p>The final draft of s. 11(2) will specify that LTBR will be used in the royalty impact test.</p> <p>Regarding the recommendation that sections 11(1)(f) and 11(2) be modified to provide some "leeway" in maximum production capacity, Ministerial action for a breach of the terms and conditions is discretionary. Also, the need for any "leeway" can be taken into account when setting the maximum production capacity.</p>

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	<p>(d)whether any parts of the Project will be located outside Alberta;</p> <p>(e)whether the Project, if it is not a demonstration project,</p> <p>(f) whether the Project is likely to exceed the maximum production capacity and the maximum period of time for expansion of the Project's production capacity that the Minister considers appropriate for the Project.</p> <p><b>11(2)</b> 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) or section 16(1) of the Prior Regulation, or reject the application, and in doing so shall, without limitation, take into consideration</p> <p>(a)the items referred to in subsection (1)(a) to (f), and</p> <p>(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.</p> <p>Section 11(1)(f) and 11(2) – see above</p> <p><b>11(4)</b> An order under subsection (1) approving a Project must specify at least the following:</p> <p>(a)a name for the Project;</p>	<p>calculation is the long-term bond rate (LTBR).</p> <p>This is necessary to maintain internal integrity of the royalty system's basis, which allows the LTBR as the project's return allowance. If the LTBR is deemed to be a satisfactory return allowance to use for developers' royalty calculations, it is also an appropriate return to use for evaluating developers' amendments and expansions.</p> <p>...</p> <p>Subsection 11(1) and 11(2) set forth the considerations, without limitation, that the Minister must take into account when approving or rejecting an application under subsection 10(1) of this Regulation or the Prior Regulation.</p> <p>Included in those considerations is whether the Project, if it is not a demonstration project, "will predominately generate net revenue" and "the overall impact the Minister anticipates the amendment will have on royalty payable to the Crown, in relation to both the Project and otherwise."</p> <p>These subsections should specifically reference that a financial analysis performed by the Crown relating to these two considerations, if performed on a net present value basis, should be performed using a discount rate equal to the Return allowance rate (as described in reference to the LTBR under Section 2 of the <i>Oil Sands Allowed Costs (Ministerial) Regulation</i>).</p> <p>If the LTBR is deemed by the Crown to be a satisfactory return allowance rate to use for a project operator's royalty calculations, it would also</p>	<p>Regarding the suggestion that economic circumstances may change such that a Project may be delayed in reaching its production capacity, the idea of having a maximum period of time in which to expand gives the operator some confidence that Project expansions will be allowed, within certain limits. Without this, the focus would fall back largely to royalty impact tests applied with each amendment application, with a stronger likelihood that adverse economic circumstances would result in a Project expansion not being approved. In addition, there is always the option of the operator applying to amend the Project description in regard to the maximum period of time.</p>

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	<p>(b)a description of the Project;</p> <p>(c)the prior net cumulative balance of the Project;</p> <p>(d)the effective date of the Project;</p> <p>(e)any terms and conditions to which the approval is subject, including, without limitation, the maximum production capacity of the Project and the maximum period of time for expansion of the production capacity of the Project.</p> <p><b>Ministerial amendments</b></p> <p><b>12(5)</b> When the Minister first approves an amendment to a Prior Project under section 11, the Minister may in the order approving the amendment, add a term or condition to the Prior Approval for the Prior Project that specifies a maximum daily production capacity, and the maximum period of time for expansion, of the Prior Project.</p>	<p>be an appropriate rate to use for evaluating new project and project amendment applications under these subsections.</p> <p>...</p> <p>Section 11 (1 )(f) states that in approving or rejecting a project application the Minister must take into consideration "<i>whether the project is likely to exceed the maximum production capacity. . . . that the Minister considers as appropriate for the Project... </i>".</p> <p>Section 11(2) references this same requirement for the review of project amendment applications.</p> <p>Section 11(4) references that the Minister may specify in a project approval " <i>....the maximum production capacity o/the Project .....</i>".</p> <p>Section 12(5) provides the ability to impose this condition on new Project approval amendments ordered by the Minister.</p> <p>It is clear that the Department intends to hold project operators to these production performance conditions. However, none of these provisions provide for any room for deviation from a prescribed "maximum production capacity".</p> <p>It is recommended that these regulations provide a mechanism for leeway such as restating the requirement in 11(1)(f) to read "<i>whether the project is likely to exceed the maximum production capacity by more than 10% of the amount that the Minister considers as appropriate for the Project... </i>".</p>	

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		<p>Provisions should also be added to Section 17(2)(d) to reflect that a breach of a condition relating to a production capacity limitation must be breached by more than a set amount before unilateral revocation is a possibility.</p> <p>...</p> <p>Subsections 11 (l), 11(2) and 11(4) also refer to " . . . the maximum period o/time/or expansion o/the Project's production capacity.... ". In a given economic circumstance where an operator may have difficulty in obtaining capital for funding a project or a prolonged reduction in bitumen pricing, an operator could delay a project's production expansion. As state, leeway needs to be provided for in the regulations in order to ensure that a small variation in performance of a condition does not result in a default or denial of an approval.</p>	
<p>17. Ministerial amendments</p>	<p><b>12 (2)</b> The Minister may not, pursuant to subsection (1), amend the description of the Project specified in an order issued under section 11 or in a Prior Approval unless</p> <p>(b)the amendment removes from the description of the Project a capital asset</p> <p>(i)that has been disposed of to a person who is not a lessee in respect of the Project,</p> <p>(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 solution gas is</p>	<p>Section 12(2)(b)(ii) uses the term "isolated basis", which in common parlance means "unusual or not close together in time, location or circumstance". However this is highly subjective, based on individual perception, and not easily rendered to precision even in a specific fact situation.</p> <p>As an alternative it is recommended that the phrase "the solution gas is being disposed of on more than an isolated basis" be replaced by the phrase "the solution gas is being sold or otherwise disposed of for consideration on an ongoing basis in material amounts for a profit".</p> <p>...</p> <p>The proviso in Section 12(2)(iii)(B) could be used to penalize an operator who despite acting in good faith, has suffered technical problems with a</p>	<p>It will remain somewhat subjective whether a Project is now selling gas such that the gas assets should be removed. "Ongoing" is as subjective as "isolated", and the addition of a materiality requirement may lead to disputes. Profitability of this particular activity in the context of the wider Project or perhaps even the lessee's wider Project and non-Project activities will also be difficult to determine.</p> <p>The decision to remove solution gas assets from the Project description is discretionary, so there is a built in leeway or flexibility in applying the provision.</p> <p>Regarding Ministerial amendments, section 12(2)(B)(iii) refers to the sustained use of the asset. Therefore, the Minister may consider</p>

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	<p>being disposed of on more than an isolated basis, or</p> <p>(iii)in respect of which the Minister is of the opinion that</p> <p>(A)the use of the asset for the purposes of the Project during the previous Period as a percentage of the total use of the asset for all purposes during that Period was less than the Project use threshold specified in section 14(1) for that type of asset, and</p> <p>(B)the sustained use of the asset over the remaining useful life of the asset for the purposes of the Project as a percentage of the total use of the asset for all purposes is unlikely to equal or exceed the Project use threshold specified in section 14(1) for that type of asset,</p> <p>23(2)(j)</p> <p>(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;</p>	<p>project which resulted under utilization of a project asset. In many cases, the issue of underutilization of a project asset will not become apparent until later in the project life. Is it the intention of the Crown to place all of the risk of a project asset failure on the project operator?</p> <p>The use of this power should be subject to a "force majeure" such that the Crown cannot exercise this power if the operator has acted in good faith but through no fault of its own the project has proven to be less economic or technically capable than originally planned.</p> <p>...</p> <p>If the Crown elects to require the amendment of a Project Approval to remove assets from a project, what will be the basis for the calculation for the allowed cost account adjustment?</p>	<p>circumstances where the use of the asset was not sustained over a period of time due to things beyond the operator's control. The point of the amendment is to avoid situations where an asset of the Project is, over time, used more for non-Project than Project purposes. The test is also two pronged, where an aberration for one Period will not trigger the removal but instead requires the Minister to form the opinion that the shift to significant non-Project use will be permanent. Additionally, the shift to non-Project use may indicate that the lessees have mitigated their risk to some extent.</p> <p>When an asset is removed from a Project section 23(2)(i) will apply, and the Project will have an other net proceed equal to the fair market value of the asset. Section 20(2) will then apply. The final draft has been modified to allow the use of net book value as well.</p>
<p>18. Project Description</p> <p>Section 14(1)(c)</p>	<p><b>14(1)(c)</b></p> <p>"Project use threshold" means</p>	<p>The requirements under Section 14(c) relating to "Project use threshold" do not take into account the future development and expansion plans of a</p>	<p>The department has reconsidered the idea of two thresholds, because it could cause problems in deciding what assets are core and what are</p>

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	<p>(i) 66%, in the case of a core asset, and</p> <p>(ii) 85%, in the case of a supporting asset;</p> <p><b>11(1)</b> The Minister may by order approve a Project for which an application for approval is made under section 10(1) or section 16(1) of the Prior Regulation, or reject the application, and in doing so shall, without limitation, take into consideration the following:</p> <p>(a) whether the Project will be substantially operationally integrated and operated under common management;</p>	<p>project. These criteria could limit the ability of the applicant to include assets that are substantially operationally integrated (s. 11(1)(a)) and that are operated under common management. The classification of assets creates uncertainty depending on the definitions and assessments of what constitutes these assets.</p> <p>The Cabinet level regulation should be congruent with its accompanying Ministerial level regulation in terms of allowed costs. Exclusion of a core or supporting asset from a project description because, in the Minister's opinion, it does not specifically meet the specified usage thresholds appears to conflict with the Allowed Cost Ministerial Regulations where the asset is clearly an allowed cost to the project, or an allocated portion to the project.</p>	<p>supporting. It's simpler to deal with one threshold, and combine the two categories of assets. The 75% figure represents our reasonable expectation of the use of such assets in a Project.</p> <p>The exclusion of a core asset does not contradict the allowed costs regulation. The OSAC says that the capital cost of a core or supporting asset isn't an allowed cost unless the asset is included in the Project description. The OSRR 2009 determines when a core or supporting asset can be included in a Project description.</p> <p>While the capital cost of a non-core asset is not allowed immediately into the Project, the OSAC still allows a cost of service to be charged for the use of that asset by the Project (with a return at the long term bond rate).</p>
<p>19. Project Description</p> <p>Section 14(1)(b)</p>	<p><b>14(1)</b> In this section</p> <p>(a) "core asset" means, in relation to a Project, a capital asset 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, but does not include a supporting asset, overhead asset or diluent recovery unit;</p>	<p>The explicit provision excluding diluent recovery units (DRU) as a core or supporting assets (s. 14(1)(a)) is unnecessary and creates uncertainty to the project description in an application process. Industry therefore requests to remove specific mention of a DRU within the proposed Cabinet level regulations in order to maintain the principles of core and supporting assets.</p>	<p>The final draft will remove the reference to DRU's. It will allow for the inclusion of parts of a processing plant based on use, similar to what is allowed for co-generation plants.</p>
<p>20. Project Description</p>	<p><b>14(1)</b> In this section,</p> <p>(a) "core asset" means, in relation to a Project, a capital asset 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, but does not include a supporting asset, overhead</p>	<p>Where appropriate, a short form amendment application process for project updates and revisions should be provided to allow both the operator and Department to assess, in a timely and efficient manner, inconsequential changes to a project approval.</p> <p>Clear direction should be provided by the Department on what constitutes a "core asset" or</p>	<p>The request for a "short form" amendment application has been addressed in part by not requiring another royalty impact test in certain cases for Project expansions. Otherwise, an application still must address everything necessary for the department to evaluate a proposed Project or Project amendment.</p> <p>The department will consider listing core or</p>

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	<p>asset or diluent recovery unit;</p> <p>(b)“overhead asset” means, in relation to a Project, a capital asset that is not used directly and solely for the purposes of Project operations, and includes, without limitation, capital assets used in connection with the functions and other items described in the subclauses of section 1(1)(a) of the <i>Oil Sands Allowed Costs (Ministerial) Regulation</i>;</p> <p>(c)“Project use threshold” means</p> <p>(i)66%, in the case of a core asset, and</p> <p>(ii)85%, in the case of a supporting asset;</p> <p>(d)“supporting asset” means, in relation to a Project, a capital asset necessary for the operation and maintenance of a core asset of the Project, but does not include a core asset, overhead asset or diluent recovery unit.</p> <p>14(2) – requesting a description of the core assets and supporting assets included in the Project.</p> <p>(l) “diluent recovery unit” means a processing plant or part of a processing plant at which diluent is separated from blended bitumen;</p>	<p>“supporting asset”, to allow an operator to avoid inadvertently being at risk of not clearly having a “core asset” or “supporting asset” included in its Project description.</p> <p>...</p> <p>The terms and definitions for "core asset", "overhead asset" and "supporting asset" could prove to be problematic. For example, a cogen plant could or portions thereof be considered for all three categories.</p> <p>...</p> <p>The thresholds imposed on core assets and supporting assets discourage the upfront development of facilities and infrastructure that support development of Project expansions. If the Crown does not provide a means to recognize such assets and waive the thresholds, this will encourage the construction of more expensive standalone facilities/infrastructure instead of cost effective shared facilities/infrastructure.</p> <p>...</p> <p>The exclusion of a diluent recovery unit ("DRU"), in Section 14, from the assets that can be claimed as core assets or support assets goes against the fundamentals of producing oil sands products from oil sands.</p> <p>It is recommended that ADOE remove the exclusion of a DRU from Section 14.</p>	<p>supporting assets in an illustrative table in the Ministerial Regulation. This might be achieved by using a similar approach to the listing of specifically included and excluded allowed costs.</p> <p>Regarding the point that the thresholds on core assets and supporting assets discourage the development of Project expansions and encourage development of more expensive stand-alone facilities over cost-effective shared facilities. Core and supporting assets are facilities and equipment that should be dedicated to the Project. If a significant amount of use is dedicated to non-Projects, then the asset should not receive immediate cost recognition. A Project should not be a collection of assets used for multiple purposes. That does not mean that costs will not be recognized, using the NAL cost rules.</p> <p>The decision to trigger an asset removal is discretionary so has a built in means to forgo such action even though the thresholds may have been triggered. The provisions allowing partial inclusion of processing and cogeneration plants also mitigates the risk of failure to satisfy the threshold since the thresholds are applied in those cases to the portion of the plant included in the Project rather than to the whole plant.</p> <p>The DRU issue has already been addressed.</p>

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<p>21. Project Description</p>	<p>Section 14(1)(a) through (d)</p> <ul style="list-style-type: none"> <li>• See above</li> </ul>	<p>We note that pursuant to Section 14(1)(a) and (d), diluent recovery units (DRUs) will be excluded as "core assets" and as "supporting assets" of an oil sands project or expansion that is approved under Proposed OSRR 2009.</p> <p>We are unclear about the basis for excluding DRUs as core assets or supporting assets given that: (a) a DRU is a facility necessary to produce clean crude bitumen; and (b) the royalty calculation point of a number of producers is typically at the outlet of the DRU.</p> <p>The treatment of a DRU facility should receive the same treatment as any other facility necessary to produce clean crude bitumen. In our view, the capital costs associated with the construction of DRUs should continue to form part of the "ring fence" in the Project.</p> <p>...</p> <p>We are concerned that the new concept of "Project use threshold" may, unless the detailed allowed cost regulations are fair and equitable, disallow a reasonable apportionment of costs for Project use of non-Project assets. Without such a reasonable apportionment, we are concerned that this concept could result in a loss of operational efficiencies that integrated producers can achieve from the use of shared supporting facilities.</p> <p>...</p> <p>There are certain facilities that each oil sands project is required to have in order to produce bitumen. These facilities include not only direct bitumen producing/recovery assets, but other</p>	<p>The DRU issue has been addressed.</p> <p>Regarding Project use threshold, the Project concept is central for the assessment of royalties. Assets are included in a Project because they are used to achieve Project operating goals. Where, however, there is significant non-Project use of Project assets, the point of aggregating assets to achieve the output of a Project is defeated; the Project risks becoming a holding entity for a variety of assets and equipment.</p>

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		<p>facilities necessary to run and maintain the bitumen producing assets. From an operational perspective, it makes sense to utilize these types of facilities and assets optimally - which may include sharing these assets between approved Projects or between approved Projects and other non-Project activities. If the regulations incent us to build single use facilities, there may be efficiency losses, increased costs, increased environmental impacts and other adverse consequences, none of which would benefit industry or the Crown.</p>	
<p>22. Project Description, applications and approvals</p>		<p>Given the significant capital costs of development, many projects will need to undertake a phased approach before ultimately attaining full production capacity on an individual project.</p> <p>Due to the longer term development horizon and capital-intensive nature of oil sands development, we encourage Government to broaden, not narrow, the definition of a Project and its core assets.</p> <p>There should be the ability for an applicant to include those assets that are substantially integrated and that are operated under common management.</p> <p>...</p> <p>All projects and their subsequent expansions will have different ultimate productive capacities and development time lines, depending on the resource base, bitumen extraction method, unique operating circumstances, and investment profile.</p> <p>Government's assessment of maximum production</p>	<p>All assets that are dedicated for use in an oil sands Project will be cost-eligible. But it defeats the purpose of having oil sands Projects at all if the use of certain assets in the Project diminishes significantly, and the Project merely becomes a holding entity for a variety of Project and non-Project assets.</p> <p>Section 11(1) sets out a number of considerations for the Minister, with maximum production capacity and maximum period of time for expansion being only two of those. The department needs mechanisms to ensure that Projects do not expand indefinitely with no chance of payout. These are more appropriate considerations than a strict reliance on a royalty impact test. They will be based on the best available information at the time of approval. The Ministerial amendment provision can be used if unexpected changes arise that justify a change to the maximum production cap and period for expansion.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
		<p>capacity and maximum time period for expansion, must consider these variables to ensure that these timelines are developed to provide for the economic recovery of the resource over the life of the project.</p> <p>At a minimum, a mechanism to address unexpected changes that arise during the operation of the reservoir should be included in the regulations.</p>	
<p>23. Prior Net Cumulative Balance (PNCB)</p>	<p>15(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:</p> <p>(a) the costs of the Project or of the expansion, respectively, incurred during the period of 3 years preceding the effective date of the Project or expansion,</p> <p>(b) the costs of the Project or of the expansion, respectively, incurred during the period comprising the whole or the portion of the 4th and 5th years preceding the effective date of the Project or expansion, as the case may be, during which the obtaining of the approval of the Board under the <i>Oil Sands Conservation Act</i> for a scheme or operation included in whole or in part in the Project or expansion subsequent to the 4th year preceding the effective date of the Project or expansion, as the case may be, was</p>	<p>The historical costs limitations used in the calculation of the PNCB are too narrow and do not reflect the significant and ongoing increase in regulatory approval timelines driven, in part, by the increase in detailed technical analysis requested by the regulator in the application process.</p> <p>...</p> <p>The historical cost limitations (3rd year, 4th and 5th year, and prior to 5th year) used in the calculation of a PNCB are not consistent with, and do not consider, the lead times that projects currently need to properly evaluate and comply with regulatory requirements prior to their construction and operation.</p> <p>The ERCB currently requires significantly more technical information in support of ERCB development scheme approvals and typically grants smaller development area size approvals than in the past.</p> <p>Further, the regulatory process is currently taking upwards of 24 to 36 months impacting the inclusion of historical costs that were necessary even to reach the regulatory project application</p>	<p>The department has reviewed the historical cost periods, spoken with the ERCB, and sees no reason to change any of the periods for inclusion of PNCB.</p> <p>The department has modified considerations for demonstration projects (in section 11(e)), and streamlined the approval process for Project expansions in section 11(3). Note that the existing PNCB rules will still apply in these cases.</p> <p>Regarding the comment about negative PNCB, this isn't a result of s. 15(2) but of s. 23(2)(l), (m) and (n) of the OSRR09. This is technically not a double royalty because it doesn't result in the levying of royalty on the same production twice.</p>

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	<p>diligently pursued,</p>	<p>stage. As a result, most large-scale projects accumulate costs over longer time horizons than what is set out in the current PNCR time limitations.</p> <p>...</p> <p>A PNCR calculated under the terms of OSRR 09 which results in a negative amount, should be deemed under subsection 15(2) as having a zero balance. Inclusion of a negative PNCR in the royalty calculation for a Project after the effective date of its approval or amendment approval would implicitly mean that those lands relating to the negative PNCR calculation would be assessed royalties under the OSRR royalty regime.</p> <p>As a result, these lands would be subject to a "double-royalty".</p>	
<p>24. Amendment of prior net cumulative balance</p>	<p>16(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</p> <p>(a) the date the Minister notifies the operator that the examination of records pursuant to section 10(6) in respect of that prior net cumulative balance has concluded, and</p> <p>(b) the later of</p> <p>(i) December 31, 2009, and</p> <p>(ii) the last day of the 4th year following the year in which the</p>	<p>The time limits set out in Section 16(2) relating to the ability of a project operator to amend the project's PNCR penalizes an operator for legitimate additional costs which would normally be included in a PNCR calculation and which would otherwise be eligible, had they been incurred one day after the effective date.</p>	<p>Four years provides ample time for an operator to finalize PNCR costs and revenues. The PNCR should be as accurate as possible at the time of application for the Project or Project expansion.</p> <p>Note that the department is subject to the same four year limitations, except in cases of fraud.</p>

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	<p>effective date of the Project, Project expansion or Prior Project expansion, as the case may be, falls.</p>		
<p>25. Amendment of prior net cumulative balance</p>		<p>In section 16(2)(a) the reference to section 10(6) should be 10(5).</p> <p>The same error can be found in Section 16(4)(a).</p>	<p>The department will change the reference to section 10(6) to 10(5) in section 16(2)(a).]</p>
<p>26. Amendment of prior net cumulative balance</p>	<p><b>16(1)</b> Subject to this section, the Minister may amend a prior net cumulative balance in relation to a Project, Project expansion or Prior Project expansion, on the request of the operator of the Project or on the Minister's own initiative.</p> <p><b>(2)</b> 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</p> <p>(a)the date the Minister notifies the operator that the examination of records pursuant to section 10(6) in respect of that prior net cumulative balance has concluded, and</p> <p>(b)the later of</p> <p>(i)December 31, 2009, and</p> <p>(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.</p> <p><b>16 (4)</b> Subsection (3) does not apply,</p>	<p>The time limits set out in Section 16(2) relating to the ability of a project operator to amend the project's PNCB penalizes an operator for legitimate additional costs which would normally be included in a PNCB calculation and which would otherwise be eligible, had they been incurred one day after the effective date.</p> <p>...</p> <p>Section 16(4)(a) and Section 17(2)(b) use the term "carelessness". The common meaning of this term when applied to work refers to "not exact, accurate or thorough",</p> <p>However the legal use of this term is more commonly found in the field of Tort Law, particularly negligence. It is recommended that the Crown use the term "lack of due diligence" as this has a legal meaning more closely associated with business practices.</p> <p>...</p> <p>We believe the terms neglect or carelessness are overly broad in scope in their definition, such that if such terms remain, the time limits set forth in Section 16 will be effectively meaningless. We request that the Minister remove the provision for careless or negligent misrepresentation in Section</p>	<p>See comments, above. Note that s. 16(2) doesn't change the 3/4/5 year periods or the connection of those periods to the effective date, it only changes the time within which the lessees (and the Crown) can make changes to the PNCB. Section 16(2)(a) is not triggered when the approval is granted.</p> <p>The department is of the opinion that, if anything, lack of due diligence is a lower standard than carelessness. This provision mirrors the language used in s. 38(4)(b) of the MMA for many years in relation to extension of the usual recalculation periods, and that wording has caused not problems.</p>

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	<p>(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</p> <p>(i) fraud, or</p> <p>(ii)misrepresentation attributable to neglect, carelessness or wilful default</p> <p>carelessness or wilful default</p>	<p>16, as the Crown is adequately protected by the use of the terms fraud, and willful default in Section 16(4)(a).</p>	
	<p><b>Revocation</b></p> <p><b>17(2)(b)</b>the Minister is satisfied that</p> <p>(i) fraud, or</p> <p>(ii) misrepresentation attributable to neglect,</p>	<p>Section 17(2)(b) also uses the term "carelessness".</p> <p>This term should be replaced by the term "lack of due diligence". Due to the severity of an approval revocation or cancellation, the test in 17(2)(b)(ii) should be a "material misrepresentation....".</p>	<p>See comments above re. s. 16(4).</p>
<p>27. Revocation</p>	<p><b>17(2)</b> The Minister may by order, in respect of a Project, revoke an approval made under section 11, a Prior Approval or an order made under section 12 if</p> <p>(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),</p>	<p>The revocation of a Project Approval has serious consequences to a project owner/operator and should only be undertaken in extreme circumstances.</p> <p>Due to the broad nature of the statements in Section 17(2)(e) it is recommended that these statements be qualified by amending the proviso as follows:</p> <p>"the operator or lessee of the Project has, without reasonable justification or excuse, materially and irrevocably, or repeatedly breached any provision of the Act, or any material provision of any regulations under the Act or any enactment</p>	<p>The proposed regulation is an improvement over section 20, which gave no guidance as to when an approval could be revoked. The words "materially" and "repeatedly" are adequate in qualifying the nature of the breach. Note that clause (e) refers to breaches of laws, which in some cases may also constitute offences, not breaches of contract provisions.</p>

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28. Revocation		<p>referred to in section 6(1)(b)"</p> <p>Due to the serious ramifications of the revocation or cancellation of a project approval, it is recommended that some form of appeal process be provided for under the Regulations. It is therefore recommended that the following proviso be added to Section 17:</p> <p style="padding-left: 40px;">"An operator or lessee of a Project may appeal an order made hereunder by application to the Alberta Court of Appeal"</p>	<p>The department has built in checks and balances to section 17, including notice provisions. A specific appeal provision as suggested would contradict section 49.</p>
29. Timing of Costs	<p><b>18(1)</b> For the purposes of this Regulation, an allowed cost</p> <p style="padding-left: 40px;">(a) is, in the case of a cost that becomes payable on or after January 1, 2009, deemed to be incurred</p> <p style="padding-left: 80px;">(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</p> <p style="padding-left: 80px;">(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,</p> <p><b>18(2)</b> 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</p>	<p>Section 18 outlines that a cost is deemed to be incurred in the month in which the cost is payable to the extent of the amount of the cost which is paid within 90 days after the cost becomes payable. This places a large burden on operators to track eligible expenditures to ensure that the expenditures are paid within 90 days. A more reasonable time-period would be 180 days.</p> <p>...</p> <p>Section 18(2) is inconsistent with the requirement that a cost may only be recognized if the cost has actually been incurred and the Project operator can document the expenditure. It is recommended that the phrase "provided that the lessee or operator provides documentation that payment was made to the party providing such services or materials" be added to the end of this proviso.</p>	<p>The department feels that 90 days is fair, and consistent with commercial business practices.</p> <p>Section 18(2) is a specific exception to the general rule in section 18(1). It assumes that the transaction was incurred and documented, but that the Project operator or lessee would not invoice itself for the transaction. Additionally, s. 18(2) is only concerned with the timing of recognition, not the requirements for qualification for recognition which must also be satisfied.</p>

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	<p>supplied or the materials were received at any part of the surface areas occupied by the Project.</p> <p><b>18(3)</b> For the purposes of this Regulation, a cost considered in determining prior net cumulative balance under Part 2 is deemed to be incurred</p> <p>(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</p> <p>(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.</p>		
<p>30. General rules for costs and revenues</p>	<p><b>19 (6)</b> 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:</p> <p>(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</p> <p>(i)contracts of insurance, surety, guarantee or indemnity,</p> <p><b>Other Net Proceeds</b></p> <p><b>23(2)</b> The following are the amounts for the purposes of subsection (1)(a):</p> <p>(b)any proceeds received or receivable during the</p>	<p>Section 19(6)(b)(i) excludes contracts of insurance from consideration in determining cost, revenues, etc. under the Regulations.</p> <p>However Section 23(2)(b)(i) requires that the proceeds from recoveries pursuant to insurance in relation to " .. <i>profits, earnings, pecuniary interests and indirect losses of the lessees or operator of the Project</i>" be recognized as Other Net Proceeds.</p> <p>Denying the ability of an operator to claim premiums paid to provide such insurance while claiming the benefit of recoveries under the same insurance is inconsistent with the principle of only recognizing a benefit when the corresponding cost is recognized.</p>	<p>Costs of insurance premiums continue to be a type of allowed cost. All that section 19 does is to exclude contracts of insurance from the definitions of hedging costs, which are not allowed in certain circumstances. The provision confirms that insurance costs can be an allowed cost by excepting insurance costs from the hedging exclusion from allowed costs. (Industry's interpretational error may have occurred because, subclause (i) of s.19(6)(b) is on a separate page from the opening part of s.19(6)(b).)</p>

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	<p style="text-align: center;">Period</p> <p>(i) under a contract of insurance, as defined in the <i>Insurance Act</i>, providing for property insurance in relation to profits, earnings, pecuniary interests and indirect losses of the lessees or operator of the Project;</p>		
<p>31. General rules for costs and revenues</p>	<p><b>19(4)</b> When a lessee of a Project disposes of an asset of the Project to an affiliate who is the lessee of another Project and that asset becomes an asset of the other Project, 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 of the other Project for the asset.</p>	<p>Where the Crown exercises the provisions of Section 19(4) on what basis will "the amount of the allowed costs of the other Project for the asset" be determined?</p> <p>The Regulations do not prescribe an allowed cost depreciation formula. The foregoing excerpt from Section 19(4) would be interpreted as the "<i>original</i>" amount of the allowed costs for the asset in question. If this is the intention of the Crown, then the word "original" should be added to this phrase as used in this Section.</p>	<p>This is something that industry requested: parity between the value of an asset removed from one Project with the costs allowed in the Project receiving the asset. The provision should only apply if the asset is a capital asset and is included in the Project description of the acquiring Project. Otherwise, the normal NAL cost rules (for COS for a service provided using the asset or for the cost of acquiring a good) should apply.</p>
<p>32. Fair Market Value</p>	<p><b>20 (2)</b> 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,</p> <p>(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:</p> <p>(i) the price of comparable things, if that price is published and generally adopted by buyers and sellers of such things,</p> <p>(ii) a price for comparable things prescribed or determined pursuant to a regulation or</p>	<p>Section 20(2) should also apply to the determination of the value of services. It is recommended that wherever the words</p> <ul style="list-style-type: none"> <li>• "anything" appears, that the words "or any service" be added thereafter;</li> <li>• "thing" appears, that the words "or service" be added thereafter;</li> <li>• "things" appears, that the words "or services" be added thereafter.</li> </ul>	<p>The words "anything under this regulation" are broad enough to encompass services.</p>

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	<p>statute other than this Regulation, or</p> <p>(iii)an average of the prices paid for comparable things in arm's length transactions;</p> <p>or</p> <p>(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:</p> <p>(i)the amount charged by the lessees of the Project for the thing;</p> <p>(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;</p> <p>(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.</p>		
33. Fair Market Value	<p>20(8)(b)</p> <p>(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</p> <p>(iii) a price derived from prices for the feedstock from which the oil sands product could be obtained, or from prices for similar feedstock.</p>	<p>Section 20(8)(b)(ii) and (iii) is extremely open ended as the definition of "oil sands product" covers "any product obtained from the processing of oil sands", and the definition of "processing" in context means "to prepare, treat, or convert by subjecting to a special process" .</p> <p>As a result the definition would extend to any product produced from oil sands from refining, including motor fuels, chemical feedstock, lube oils, etc... Also an underlying principle of the oil sands royalty regime is that the Crown indirectly</p>	<p>The term "oil sands product" is broad enough to include synthetic crude oil, and has to be, in order to accommodate Projects where an operator may propose including an upgrader. It is not the intention by this wording to force the inclusion of an upgrader or any facility that the operator did not originally request for inclusion in the Project approval.</p> <p>Regarding the feedstock question, the determination of fair market value is discretionary and these provisions set out some options for</p>

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		<p>shares in the cost of producing the oil sands products that it is assessing royalty against. This is accomplished through the allowed cost regime which according to the Schedule attached to the draft Oil Sands Allowed Cost (Ministerial) Regulation includes the costs of processing the oil sands to obtain the products which attract royalty. ...</p> <p>Section 20(8)(b)(ii) iii) is also problematic in that it the reference to "feedstock" without limitation, opens the term to consideration of all available sources of feedstock on a global basis. It is recommended that this proviso be qualified by the addition of the phrase "available in the Province of Alberta" to the end of this proviso.</p>	<p>approaches that might be used but do not foreclose the use of other options.</p>
<p>34. Other Net Proceeds</p>	<p><b>23(2)</b> The following are the amounts for the purposes of subsection (1)(a):</p> <p>(a) any consideration received or receivable during the Period from the sale, lease, licence or other disposition of any</p> <p>(i) substances or assets of the Project, other than oil sands products, or</p> <p>(ii) technology of the Project;</p>	<p>Section 23(2)(a)(ii) requires that proceeds received from the sale, licence, lease or disposition of "<i>technology of the Project</i>" is to be included in Other net proceeds.</p> <p>This should only apply to technology where the cost to develop or acquire the same has been included as an allowed cost of the Project. This is consistent with the principle of only recognizing a benefit to the project if the corresponding cost is also recognized.</p> <p>Also large project operators often engage in or support corporate based research which is not project specific but may be applied in respect of multiple projects, and which may be licensed or sold by the corporation if the technology is successful.</p> <p>The proceeds from such a sale should not be</p>	<p>The final draft has been changed from "technology of the Project" to "technology development pursuant to, or for the purposes of, the Project", introducing the idea that the technology of the Project must solve problems of immediate applicability for the recovery, production, or processing activities within Project operations, in similar fashion to the corresponding allowed cost.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
		<p>considered as Other Net Proceeds unless the costs were included as an allowed cost under one or more oil sands projects.</p>	
<p>35. Other Net Proceeds</p>	<p><b>23(2)(e)</b>the aggregate of the products obtained by multiplying</p> <p>(i) each quantity of</p> <p>(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</p> <p>(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</p> <p>during the Period at a royalty calculation point for the crude bitumen or other oil sands product, as the case may be,</p> <p>by</p> <p>(iii) the unit price applicable to the quantity;</p> <p><b>23(2)(m)</b>the additive inverse of the prior net cumulative balance of a Project expansion of the</p>	<p>Section 23(2)(e) has the effect of imposing royalty on substances produced from non-Project sources under the Regulation as if they were produced from the Project through their inclusion as Other Net Proceeds to the Project and thereby reducing the allowed cost account for the Project. As royalty will already be imposed on these substances at the point where they are produced from the non-Project source, this also has the effect of assessing royalty twice on the same substances.</p> <p>Therefore this proviso should be deleted from the Regulations in its entirety.</p> <p>...</p> <p>Section 23(2)(n) has a similar effect as the amount of any excess of cumulative revenue over cumulative costs will already have been subject of the assessment of royalty under the Regulation or Prior Regulation. Therefore this proviso should be deleted in its entirety.</p> <p>NOTE: that if the references to cumulative revenue and cumulative cost in the first two lines of this proviso, are reversed (so that the amount being recognized is the excess of cumulative costs over cumulative revenues) the proviso is redundant when read against Section 23(2)(m).</p>	<p>This section is not being amended. Where a Project purchases non-Project oil sands products, those purchases are allowed costs of the Project. Where a Project then further processes those oil sands products using Project facilities and equipment, the Crown should realize some return for the use of those facilities and equipment. The return to the Crown is by way of other net proceeds on the incremental value added to the oil sands products. There is a practical difficulty in attempting to segregate costs and revenues related to Project substance and purchased substance activity within a Project.</p> <p>The second point may have arisen because of some confusion in 23(2)(n). The word "expansion" is missing after "effective date of the Project" in clause (n)(iii). So clause (m) deals with the situation where a Project that is already in payout is expanded and the PNCB of the expansion is negative, and clause (n) deals with the situation where the Project is not in payout but achieves payout on approval of an expansion because the PNCB is negative by more than the pre-expansion payout balance.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
	<p>Project determined under section 15, if</p> <ul style="list-style-type: none"> <li>(i) the Project payout date of the Project precedes the effective date of the Project expansion, and</li> <li>(ii) that prior net cumulative balance is a negative amount;</li> </ul> <p><b>23(2)(n)</b> the amount by which the cumulative revenue of a Project exceeds the cumulative cost of the Project if</p> <ul style="list-style-type: none"> <li>(i) the excess amount arises as a result of the approval of a Project expansion of the Project,</li> <li>(ii) the prior net cumulative balance of the Project expansion is a negative amount, and</li> <li>(iii) the Project payout date is the same day as the effective date of the Project by virtue of the approval of the Project expansion;</li> </ul>		

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36. Other Net Proceeds		<p>Subsection 23(2)(1) outlines the requirement to include in the "other net proceeds" calculation for a Project for a Period "the additive inverse of the prior net cumulative balance of a Project determined under section 15, excluding any expansions of the Project, if that prior net cumulative balance is a negative amount".</p> <p>Subsection 23(2) (m) requires, for a post payout project, that the additive inverse to a negative prior net cumulative balance relating to a Project expansion under Section 15 also be included in the other net proceeds calculation.</p> <p>As the oil sands product production during the prior net cumulative balance calculation time-period for the lands relating to the PNCB calculation would have been subject to royalty already under <i>the Oil Sands Royalty Regulations, 1984</i>, the net effect of these two subsections is that the bitumen production for the time-period and for the lands relating to the prior net cumulative balance calculation time-period would be subject to royalty both under the Regulation, 1984 and the Regulations, 2009 (in essence, subject to double royalty).</p>	<p>This is technically not a double royalty because it doesn't result in the levying of royalty on the same production twice. Also not that any royalty paid under the Oil Sands Royalty Regulation, 1984 is included as a cost in the PNCB of a Project or Project expansion. OSR Projects were designed to encourage Projects with long time frames and large capital costs. If Projects are paying out so quickly, perhaps there is no advantage for the operator under the OSR regime.</p>
37. Payout		<p>Where the Crown takes its share of oil sands products produced by a Project, how is this royalty share taken in kind during a pre-payout period accounted for in determining payout?</p>	<p>These and other BRIK details have yet to be determined.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
<p>38. Non-Project mining operations</p> <p>And</p> <p>Non-Project well events</p>	<p><b>26 (2)</b> Royalty on oil sands under subsection (1) shall be free and clear of all deductions.</p> <p><b>27(2)</b> Royalty on an oil sands product under subsection (1) shall be free and clear of all deductions</p> <p><b>Section 28 - Trucking costs and allowances</b></p>	<p>Sections 26(2) and 27(2) should be prefaced with the phrase "Subject to section 28".</p>	<p>Industry suggests that the words "free and clear of all deductions" in 26(2) and 27(2) should be taken into account trucking costs in section 28. The words free and clear apply to the royalty reserved to the Crown on oil sands products recovered from the non-Project well event or non-Project mine. That Crown share should be unencumbered in any way. Trucking costs only apply from the cleaning facility to the pipeline terminal. Sections 26(2) and 27(2) do not apply in relation to royalty compensation under ss.26(4) and 27(4).]</p>
<p>39. Trucking costs and allowances</p>	<p><b>28(1)</b> 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</p> <p><b>28(2)</b> The Minister may determine the amount of the costs and allowances referred to in subsection (1).</p> <p><b>28 (3)</b> Subject to subsections (4) and (6), the Minister may for the purposes of this section</p> <p>(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</p> <p>(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</p> <p>(i) if the actual costs and allowances</p>	<p>Section 28(1)(a) the term "pipeline" should be replaced with the phrase "sales oil pipeline or other pipeline carrying marketable crude bitumen".</p> <p>...</p> <p>Given the administration required to implement Sections 28(2) and (3), it is recommended that the Crown allow the lessee to deduct the actual trucking cost incurred by the lessee, provided that such cost is reasonable, documented and consistent with trucking costs for the same service in the same area.</p>	<p>The department does not see a reason to change the wording on s. 28(1)(a).</p> <p>We are still reviewing the sections on trucking costs.</p>

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	<p>exceed the estimated amount referred to in clause (a), consent to further costs and allowances equal to the difference, or</p> <p>(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.</p>		
<p>40. Royalty Calculation Point / Projection Description</p>	<p><b>30(1)</b> If an oil sands product recovered pursuant to a Project from the development area of the Project, other than crude bitumen processed, and cleaned crude bitumen obtained, as described in subsection (2),</p> <p>(a) is disposed of, or</p> <p>(b) is permanently removed from Project facilities,</p> <p>royalty shall be calculated on the quantity of the oil sands product at the place the product is permanently removed from Project facilities.</p>	<p>Oil sands products which are not included in the Project description and approval that are permanently removed from the Project facilities are considered to be excluded from the royalty calculations as these products are manufactured after the royalty calculation point (s. 30 (1)(a-b)), at which their inherent value is already reflected in the price of the bitumen. In this context, it should be clarified that products such as coke or sulphur that are derived in operations or facilities that are excluded from the project description, such as upgrading, are not subject to additional royalty.</p>	<p>It's already clear that liability for royalty will follow the production and disposition of a product from the Project as described and not otherwise. Section 30 defines what substances royalty will be triggered on. There is no need to clarify that royalty isn't triggered on substances obtained after the RCP as that is implied. The types of oil sands Projects that could be subject to royalty isn't closed other than through the actual application of s.30 in relation to particular Projects since the OSRR09 gives lessees the latitude to propose where the RCP will be, which could fall after rather than before an upgrader.</p>
<p>41. Transfer of Crown's royalty share</p>	<p><b>31(1)</b> 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.</p> <p><b>(2)</b> When the Crown's title to the Crown's royalty share of an oil sands product is transferred</p>	<p>Under section 31, payment of royalty relating to the Crown's royalty share for volumes delivered to a royalty calculation point is now due immediately downstream of the royalty calculation point upon the automatic transfer of the Crown's title to the Crown's royalty share. Implementing and transitioning this change from the current royalty regime will require further consultation.</p>	<p>We will be reviewing this transition.</p>

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	pursuant to subsection (1), compensation is payable to the Crown in accordance with this Regulation in respect of that royalty share.		
42. Royalty Compensation	<p><b>ENR</b> 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;</p> <p><b>EGR</b> 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;</p> <p><b>38(7)</b> If a report furnished under subsection (1) in respect of a Project 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.</p>	<p>Subsection 33(7) outlines the calculation for the monthly installment payment for a Project for a post-payout Period as required under subsection 33(6).</p> <p>The ENR and EGR portions of the calculation should be amounts based-upon the operator's estimates and should only be substituted (Similar to subsection 38(7) with the Minister's amount after the Minister has consulted with the operator and provided the operator with the opportunity to substantiate their estimate.</p>	In practice, the department will be in contact with the operator concerning the estimate.
43. Monthly Report	<p><b>Monthly report</b></p> <p><b>38 (5)</b> A report under subsection (1) in respect of a Project must be accompanied by a statement indicating approval of the report by the board of</p>	The requirement for a project operator's Board of Directors (BOD) to provide a statement indicating approval for monthly and annual reports under subsections 38(5) and subsection 39(3) is inconsistent with respect to the BOD's responsibilities regarding operator's financial	The final draft removes all references to the Board of director's approval and substitutes the approval of chief financial officer of the operator or another senior officer of the operator approved in advance by the Minister.

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	<p>directors of the operator.</p> <p><b>Annual report</b></p> <p><b>39 (3)</b> A report under subsection (1) must be accompanied by a statement indicating approval of the report by the board of directors of the operator.</p>	<p>statements.</p> <p>A requirement for the approval from the BOD of the project operator would not improve the overall quality of the report as the BOD of a project operator would still look to and consider the project operator's signing officer (i.e. CFO or CEO) as being the person responsible for the preparation and approval of the reports. Further, it is not the role of a project operator's BOD to involve themselves in this level of reporting.</p> <p>This requirement would also result in a significant logistical issue of having the BOD meet on a monthly basis in order to review the reports and provide the statement of approval to be furnished by the project operator.</p>	
44. Monthly Report	<p><b>(7)</b> If a report furnished under subsection (1) in respect of a Project 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.</p> <p>(Also see comments Issue 36)</p>	<p>Subsection 38(7) provides the ability for the Minister to substitute the Minister's estimate for an operator's estimate if the Minister is not satisfied with the accuracy of the estimate. While industry understands that circumstances may warrant the Minister to exercise such the ability. Industry maintains that such ability should only be exercised after consultation with the operator and after providing the operator with the opportunity to substantiate their estimate. This ability to substitute the Minister's estimate must not be used in an arbitrary manner.</p>	<p>In practice, the department always tries to contact operators to get the best data available. In situations where an operator is uncooperative in providing timely and accurate data, the Minister needs some recourse to act.</p>
45. Annual Report	<p><b>39(1)</b> The operator of a Project shall, unless the Minister otherwise directs in a particular case, furnish to the Minister within 3 months after the end of each Period, a report in respect of the Period.</p>	<p>Annual report due 3 months after the end of each Period -</p> <p>Subsection 39(1) outlines the requirement of a project operator to provide an Annual Report within 3 months after the end of each period in respect to that period.</p>	<p>The department has considered these requests, but will retain the existing time period and thresholds. Time period extensions will remain flexible, if requested by the operator, but the department also needs to get its financial records in order in due time. The department feels that an external audit is necessary to give some assurance</p>

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		<p>In order to provide more time to increase the quality of the preparation of the Annual Report, Industry requests that the Annual Report be due 4 months after the end of each period. Previously, Industry has made this request and expressed its concerns due to the numerous other corporate reporting deadlines that occur within this timeframe; especially relating to an operator whose company is a publicly traded entity.</p> <p>Due to the increasing complexity of both the overall oil sands industry and the new draft OSRR 2009, Industry believes it is reasonable to extend the deadline for the filing of Annual Report from 3 months to 4 months.</p>	<p>that larger Projects are reporting in compliance with the regulation.</p>
<p>46. Annual Report</p>	<p><b>39 (2)</b> A report under subsection (1)</p> <p>(a) must be signed by the operator of the Project or by the operator's representative, and</p> <p>(b) unless the Minister otherwise directs, must, 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 and 1590 cubic metres per day, be accompanied by</p> <p>(i) an opinion by the auditors retained by the operator, and</p>	<p>Annual Report Project Auditor's Opinion –</p> <p>Subsection 39(2)(b) outlines the requirement for a project operator to provide an opinion by the auditor's retained by the operator to accompany the Annual Report for projects with annual production that exceeds 1,590 cubic meters per day.(10,000 barrels per day).</p> <p>Industry has previously expressed concerns as to the degree of reliance which the Department may place on and the usefulness of such an auditor's opinion provided by an external public accounting firm whose nature of practice is not focused on compliance under the oil sands royalty regime. It has been noted that while the staff of the public accounting firms engaged by an operator have been typically fully trained in financial accounting matters relating to expressing an opinion on external financial statements, they have typically</p>	<p>See comments above.</p> <p>We can continue to review the need for these reports. However, included in the New Royalty Framework and the Valentine Report were recommendations to ensure cost and operating reporting requirements were reviewed and improved. So we don't anticipate lowering the requirements for reporting and audit.</p>

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	<p>(ii)an opinion by the auditors retained by each lessee of the Project to report to the shareholders of the lessee,</p>	<p>not been fully trained in oil sands Crown royalty matters.</p> <p>If the Crown does feel that the Annual Reports filed for large projects should be subject to an external audit, Industry suggests that the annual production limit be increased from the current 10,000 bpd to at least 35,000 bpd. Increasing the threshold to this level would still ensure that almost all commercial thermal projects and all mining projects would be subject to this provision. It would continue to provide a significant level of review by an independent auditor of the overall activity of the oil sands industry.</p>	
<p>47. Ad Hoc Reports</p>	<p><b>40(1)</b> If the Minister is of the opinion</p> <p>(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</p> <p>(b)that the information cannot be gathered at all, or adequately, in reports otherwise required to be furnished under this Regulation,</p> <p>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.</p>	<p>Section 40 allows the Minister to request ad hoc reports relating to the project where and when required by the Minister. Industry recognizes the need for the Minister to gather information required that may not be available from standard industry reporting. In order to furnish these ad hoc requests, the operator will require a reasonable lead time to gather the information for the Minister.</p> <p>A notification period should be established in which the operator has a period in which to comply with the request of the Minister.</p> <p>Furthermore the operator should be able to appeal the notification period if it can be clearly demonstrated that the notification period is inadequate.</p>	<p>Section 40 already has detailed notice provisions, and it allows the Minister to establish a deadline specified in the report. Giving a right of appeal would defeat the purpose of getting the information in a timely manner. Again, the department is a position of disadvantage with respect to information. We need the ability to enforce a request for that information.</p>

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48. Penalties	<b>44(3)</b> If a person is required to furnish the Minister with a report under section 40 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.	Industry believes that the penalties set forth under subsection 44(3) relating to ad hoc reports of \$5,000 per day for the late filing of such a report are unduly onerous and unfair. A more reasonable penalty of \$5,000 per month (consistent with subsection 44(1)) would be a fair and reasonable penalty assessment for these ad hoc reports.	Ad hoc reports will typically be requested whenever unique circumstances arise, or when some critical data that is out of the ordinary may be needed. By their nature it is important that we receive prompt and accurate information, so the Minister needs to have the ability to act when a response is not forthcoming. The \$5000 per day is a maximum. The actual amount of the penalty can be tailored to suit the nature and potential consequences of the reporting default.
49. Compliance		The comma after the word "by" in line 8 of Section 43(2) should be deleted.	The comma actually belongs there and should be retained, unless we want to repeat "by the Minister" after "provided to" in the preceding line.
50. Referral of Disputes	<b>48(1)(a)</b> the Minister specifies terms and conditions under which the Minister will, pursuant to section 7 of the <i>Government Organization Act</i> , establish a committee or board to hear a dispute between the Minister and the lessees or operator of a Project with respect to a matter under this Regulation or the <i>Oil Sands Allowed Costs (Ministerial) Regulation</i> , and	Given the complexity of the new Regulations and the significant changes from the Prior Regulations, there is increased potential for legitimate disagreement between Project operators and the Department over the implementation and interpretation of the new Regulations and decisions made there under by the Department. Therefore it is recommended that Section 48(1)(a) be changed to make the establishment of a dispute resolution committee mandatory.	The department feels that a mandatory dispute resolution committee would be unnecessary, given that we have made significant efforts to tightening and clarifying the rules around Projects and allowed costs.
51. Disputes	<b>49</b> 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.	Section 49 is not within the authority of the Government as the ultimate authority to determine the interpretation of any regulation or statute lies with the judiciary and not the Government. ... While there are a number of very prescriptive elements in the Proposed OSRR 2009, elements that are set out on a more principled basis are subject to the application of a considerable amount of Ministerial discretion (in our view, significantly more than exists now).	Privative clauses or "final and binding clauses" are within the authority of the legislature to enact. They send a signal that the courts should approach the legislation with some amount of deference.  The department has greatly improved the certainty and transparency of allowed costs by listing the types of allowed and disallowed costs explicitly. Discretion, where it exists, can be to the benefit of industry and government, for example where new types of costs that were not contemplated before can be applied to be recognized as allowed costs.

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		<p>When all of this is coupled with Section 49 of the Proposed OSRR 2009 (which provides that the Minister is sole judge of questions pertaining to the interpretation or application of the regulation and there is no appeal), even greater uncertainty is generated.</p>	
52. Consequential	<p>51(2) The <i>Oil Sands Royalty Regulation, 1997</i> (AR 185/97) is amended by adding the following after section 12:</p> <p style="padding-left: 40px;">Regulation does not apply 12.1 This Regulation does not apply to Project substances recovered or obtained pursuant to a Project on or after January 1, 2009.</p>	<p>A comment in the draft OSRR 09 indicates that consequential amendments to OSRR 97 continue to be made (s. 51(2)). Industry requests consultation with the Department on all consequential amendments to the OSRR 97, which the Department is considering.</p>	<p>Consequential amendments to the OSRR'97 continue to be drafted. One such amendment that the department intends to make will be to align the two royalty regulations so that royalty payable under the 1997 regulation is triggered at the RCP, the same as in the 2009 regulation. As such, this would affect the royalty payable date for all un-disposed production prior to 2009. The mechanics of implementation have yet to be finalized.</p>
53. Bitumen Valuation		<p>At various points in these regulations there is reference to the Bitumen Valuation Regulations. We have not been provided with a draft copy of these regulations and would appreciate receiving a copy of these draft regulations as soon as possible.</p> <p>...</p> <p>Section 49 of the Regulation indicates that the Minister is to be the sole judge in the interpretation and application of the Regulation. Numerous changes to the Regulation provide the Minister with sufficient discretion in matters of interpretation and application without the addition of a privative clause as contained in Section 49. Furthermore, the <i>Oil Sands Dispute Resolution Regulation</i> provides a clear process for handling of disputes.</p> <p>Industry requests that Section 49 be removed from the regulation so as not to preclude an effective appeals process.</p>	<p>A draft copy of the Bitumen Valuation Regulation has been circulated at the time of writing.</p> <p>Regarding the privative clause, see the comments under item 51, above.</p>

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<b>Oil Sands Allowed Costs (Ministerial) Regulation</b>			
<p>54. Interpretations</p>	<p><b>10(2)</b> Subject to this section, in determining for the purposes of this Division, the fair market value of a good, service or capital asset, other than the service of transporting a substance by pipeline, the Minister may, without limiting any other method of determining fair market value, adopt</p> <p style="padding-left: 40px;">(a) the price of comparable goods, services or assets, if that price is published and generally adopted by buyers and sellers of such goods, services or assets,</p> <p style="padding-left: 40px;">(b) a price for comparable goods, services or assets prescribed or determined pursuant to a regulation or statute other than this Regulation, or</p> <p style="padding-left: 40px;">(c) an average of the prices paid for comparable goods, services or assets in arm's length transactions.</p> <p><b>20(2)</b> 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,</p> <p style="padding-left: 40px;">(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:</p>	<p>Section 1(1)(e) refers to fair market value as determined in accordance with Section 10 of these Regulations.</p> <p>Section 10 is different and not consistent with Section 20 of the draft Oils Sands Royalty Regulation, 2009.</p> <p>The determination of fair market value should be consistent under both regulations. If this inconsistency is not corrected, the differences between these two sections and regulations on this point will provide fertile ground for dispute.</p> <p>It is recommended that Section 10 be deleted and the term "fair market value" be cross referenced to the Oils Sands Royalty Regulation, 2009. It is also recommended that Section 20 be added to the list of sections in Section 1(2) of the Oil Sands Allowed Cost Regulation.</p>	<p>Section 10 of the Ministerial Regulation only applies to that Regulation in relation to costs. Section 20 of the OSRR09 only applies to that Regulation in relation to revenue items.</p>

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	<p>(i)the price of comparable things, if that price is published and generally adopted by buyers and sellers of such things,</p> <p>(ii)a price for comparable things prescribed or determined pursuant to a regulation or statute other than this Regulation, or</p> <p>(iii)an average of the prices paid for comparable things in arm's length transactions;</p>		
55. Interpretations	<p>S.1(1) "corporate overhead", in respect of a Project, means costs that are not directly and solely incurred for the purposes of Project operations, including, without limitation, expenses in relation to</p> <p>Allocations:</p> <p>S.8(1) Where a cost incurred by on behalf of a lessee of a Project may only be an allowed cost in part, the operator of the Project must, in accordance with guidelines established by the Minister, allocate the portion of the cost that is an approved cost and the portion of the cost that is not an approved cost.</p>	<p>Industry is concerned by the use of wording like "directly and solely" or "solely dedicated" unless the terms are used in conjunction with the allocation rules of Section 8(1). Such language creates the possibility that any deviation, however small, from being "directly and solely" will result in legitimate costs being denied.</p>	<p>These words are used in relation to overhead costs which are not automatically excluded from allowed costs but are subject to Ministerial approval for inclusion.</p>

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56. Interpretations	<p>S.1(1) "corporate overhead", in respect of a Project, means costs that are not directly and solely incurred for the purposes of Project operations, including, without limitation, expenses in relation to</p> <ul style="list-style-type: none"> <li>(i) information technology,</li> <li>(ii) performance of human resource functions,</li> <li>(iii) office space and office operations,</li> <li>(iv) accounting services,</li> <li>(v) research, and</li> <li>(vi) any other corporate operation or purpose;</li> </ul> <p>Schedule 1 (Specifically Included Costs) - Item 56</p> <ul style="list-style-type: none"> <li>• Any research facility, laboratory, or area solely and exclusively dedicated toward the development of technology to solve problems of immediate applicability for the recovery, production, or processing activities within Project operations.</li> </ul> <p>Schedule 1 (Specifically Excluded Costs) - Item 56</p> <ul style="list-style-type: none"> <li>• Any research facility, laboratory or area not solely and exclusively dedicated toward the development of technology to solve problems of immediate applicability for the recovery, production, or processing activities within Project operations.</li> </ul>	<p>Research has always been the cornerstone of oil sands development, as exploration is to the conventional oil and gas business. New recovery processes and follow-up processes to current recovery methodologies ensure that the value of the resource is maximized.</p> <p>In addition, the need to conduct research is becoming more important with respect to the increasing demands to reduce industry's footprint, minimize water impacts, and improve recoveries to offset rising costs while at the same time improving the sustainability of developments.</p> <p>The definition of allowed research needs to be broad enough to cover the full range of study and investigation to deal with the challenges facing oil sands development. Costs such as research into CO2 capture and sequestration, water management, just to name a few, are necessary and justifiable costs given the current evolution of Government policies as well as societal demands. The research being conducted will provide future benefits to both industry and the Crown.</p> <p>The proposed language of "immediate applicability" and "within Project operations" is unduly restrictive.</p> <p>Assuming that allowed research will be limited to a narrow timeframe and that the research can only be used specifically for a single project, it can be concluded that the wording will result in a reduction of the eligibility of research costs from today's levels where industry believes greater flexibility is warranted. New technologies need to be developed and tested both in the lab and in the</p>	<p>The allowed cost schedules do allow costs for research that is immediately applicable to the Project.</p> <p>Research costs and greenhouse gas reduction costs that fit under this category (in the allowed costs schedule) will be allowed.</p>

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		<p>field and this research takes time. The existing oil sands royalty regime supported this culture with a great benefit to the industries overall development.</p> <p>'''</p> <p>Government should avoid the unduly restrictive language concerning applied research and allow for greater flexibility in the assessment of allowed applied research costs. Ultimately, the promotion of research and development will be beneficial to supporting and improving this evolving industry.</p>	
<p>57. Fundamental Costs</p>	<p><b>4(1)</b> Fundamental costs of a Project are costs incurred directly</p> <p>(a)to recover, obtain, process or transport oil sands or oil sands products, or to market oil sands products, pursuant to the Project,</p> <p>(b)to reclaim or abandon Project lands, or</p> <p>(c)to comply with environmental laws applicable to the Project or applicable to a lessee or operator of the Project in respect of the Project.</p> <p><b>(2)</b> Fundamental costs of a Project do not include costs incurred in respect of</p> <p>(a)corporate overhead,</p> <p>(b)lands other than Project lands, or</p> <p>(c)an expansion of the Project before the effective date of the Project expansion.</p>	<p>Section 4(1) should be expanded to include costs to salvage and remove wells, facilities, roads, power lines, pipelines, facilities and equipment used in respect of or as part of the Project. Also this provision does not address the handling and deductibility of abandonment costs after production from the Project has ceased. It has been our understanding that the Department would address this and provide a mechanism to recognize post project production reclamation and abandonment costs in a project's royalty calculation.</p> <p>...</p> <p>Section 4(2)(c) excludes costs incurred in relation to an expansion of a Project before the effective date of the Project expansion. To be consistent with the provisions of the Oil Sands Royalty Regulation, 2009 regarding the determination of a PNCB for an expansion, it is recommended that the phrase "except as allowed pursuant to the Oil Sands Royalty Regulation, 2009 in the determination of a prior net cumulative balance for the Project expansion".</p> <p>...</p>	<p>Section 4(1)(b), and the allowed cost section of the schedule, are broad enough to encompass these costs. The department has not yet developed "end-of-life" rules for Projects. The OSAC will be amended when these business rules are approved.</p> <p>Regarding the point that the costs of an expansion are not Project costs before the effective date, section 4(2)(c) was written this way deliberately – by definition of PNCB these costs will come in as of the effective date of the approval.</p> <p>The Project approval process is designed to review and determine the configuration of the Project, starting from what was requested to be included. If the things requested are core to the Project, they will be considered. Significant "overbuilding" may not be considered: future expansion costs cannot be deducted before the expansion is approved – that has always been the case under the regime.</p>

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		<p>In respect to the expansion of major oil sands projects it is necessary to expend considerable sums of money on upfront engineering and long lead capital items (such as mine trucks). It is also advantageous to construct facilities and infrastructure that would serve both the existing Project and future expansions of the same. Without the ability to have such costs recognized in respect of the existing Project, the developer is motivated to delay making such expenditures and build standalone more costly facilities/infrastructure for the expansion.</p>	
<p>58. OSACR (MR)</p>	<p><b>Project description</b></p> <p><b>14 (7)</b> Subject to subsection (8), the Minister may include in the description of a Project the whole or any part of a cogeneration plant or a proportion of the plant or part of the plant.</p> <p><b>Fair market value</b></p> <p>20(3) In determining for the purposes of this Regulation, the fair market value of pipeline transportation service provided using a pipeline that is an asset of a Project, the Minister may, without limiting any other method of determining fair market value but subject to subsections (5) to (7), adopt</p>	<p>Industry is concerned that there are a number of cost items in the Allowed Cost Regulation Schedule, which are necessary costs such as office space, off project lands, that is not contracted under a 3rd Party Lease, or infrastructure that may not be specifically located on Project Lands, or is shared with other Projects, that are being denied in the draft regulations.</p> <p>In addition, it is Industry's view that it is essential that the regulations encourage that the most efficient business model be used for Project development and operations. Forcing companies to align their operations with the regulations will create unnecessary inefficiencies which costs all stakeholders.</p> <p>The draft regulations generally allow for the allocation of costs (Section 8 of the Oil Sands Allowed Cost Regulations). For example, allocations are allowed in the case of Pipeline Services and Cogeneration Plants (Sections 20(3) and 14(7) of the Oil Sands Royalty Regulations respectively). There are a number of ways to fairly</p>	<p>A key aspect of costs is that they must be verifiable. It's impossible for the department to verify many "allocations of allocations". But where an operator takes care to establish and prove that claimed costs can be directly traced back to a Project, those costs will normally be allowed.</p> <p>Regarding costs related to infrastructure and facilities not located on Project lands or that are shared with other Projects, legitimate, verifiable business costs of a Project will continue to be allowed under OSRR 2009. However, immediate deduction of costs will be allowed only for those costs that are directly and solely attributable to the Project (in Column 1 of the schedule, or fundamental costs). This does not mean that the costs for non-core assets will not be recognized in the Project. They will be, on a NAL cost of service basis.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
		<p>identify these legitimate costs and assign them to the oil sands Project, similar to methods used for financial reporting and domestic and international taxation purposes.</p> <p>...</p> <p>Government should ensure that costs related to infrastructure and facilities, not located on Project lands or that are shared with other Projects, should be allowed costs under the regulation.</p>	
59. Schedule 1		<p>Although all attempts have been made to address all conceivable costs in the Schedule of Included and Excluded Costs it is certain that changes will be required to this Schedule in the future to address situations and costs that were not contemplated at the time.</p> <p>It is recommended that provisions be included in this Regulation that would allow the Minister at his discretion to make changes to this Schedule without the need for a formal regulatory amendment.</p>	<p>The OSAC is designed to be amended in future (including the schedule) by the Minister without having to go to cabinet for approval, while still being recognized as a regulation. But a ministerial order schedule that is not part of a regulation would not have the same authority.</p>
60. Schedule 1	<p>Included Costs – Item 22:</p> <ul style="list-style-type: none"> <li>• Abandonment, reclamation and decommissioning of Project lands as follows: <ul style="list-style-type: none"> <li>▪ deposits paid to the Crown to ensure the proper reclamation of Project lands</li> <li>▪ payments required by the Crown to secure reclamation of Project lands</li> <li>▪ performing reclamation work on the Project lands abandoning surface and subsurface facilities.</li> </ul> </li> </ul>	<p>INDUSTRY believes certain issues including: Abandonment &amp; Reclamation; Greenhouse Gas Cost Recognition; Indexing; and Insurance all require further consideration as per previous Industry submissions.</p>	<p>Specific business rules for these and other matters will continue to be developed.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
	<ul style="list-style-type: none"> <li>• Acquiring, modifying or installing, operating and maintaining equipment on Project lands to reduce, or capture and dispose of, greenhouse gas emissions.</li> <li>• Insurance premiums under a contract of insurance, as defined in the <i>Insurance Act</i>, providing for property insurance in relation to profits, earnings, pecuniary interests and indirect losses of the lessees or operator of the Project.</li> </ul>		
61. Schedule 1	<p>Included Costs – Item 38:</p> <ul style="list-style-type: none"> <li>• Bonuses given to Project employees based on those employees or the Project achieving or exceeding specific, pre-defined performance criteria for the individual or the Project, as the case may be.</li> <li>• Signing bonus or retention bonus payments.</li> </ul> <p>Item 57 -</p> <ul style="list-style-type: none"> <li>• Salaries, wages, benefits, training, travel and accommodations for employees solely dedicated to carrying out Project operations.</li> </ul> <p>Excluded Costs:</p> <p>Item 38 -</p> <ul style="list-style-type: none"> <li>• Bonuses given based on achieving or exceeding non-Project based performance criteria.</li> </ul> <p>Item 57 -</p> <ul style="list-style-type: none"> <li>• Salaries, wages, benefits, bonuses, stock</li> </ul>	<p>Each operator has a total compensation package that includes benefits, base salary and various types of performance bonuses that is fair and competitive in the industry. Each operator strives to maintain a balanced package that will attract and retain quality employees, which are required for the development of the project.</p> <p>Denying or limiting specific cash elements of a compensation package such as performance bonuses penalizes operators with a specific type of compensation package.</p> <p>Such restrictions are not consistent with the current employment practices that exist and govern the ability of the industry to attract qualified staff to the oil sands industry.</p>	<p>The majority of compensation packages are currently recognized as allowed costs. The royalty system is Project-based, therefore any performance bonuses have to be shown to have a direct connection to the Project rather than the overall corporation.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
	<p>options, training, travel and accommodations, relocation and severance (including associated relocation and training expenses in respect of that severance) for executive or management employees not solely dedicated to Project operations.</p> <ul style="list-style-type: none"> <li>• Salaries, wages, benefits, training, travel and accommodations for employees or personnel performing information technology, administration, or office support work and not solely dedicated to Project operations.</li> <li>• Relocation and severance (including associated relocation and training expenses in respect of that severance) for employees not solely dedicated to Project operations.</li> </ul>		
62.	<p>Item 47</p> <p>Included Costs</p> <ul style="list-style-type: none"> <li>• Consultation in respect of the proposed or current Project operations, limited to: <ul style="list-style-type: none"> <li>▪ notifying stakeholders</li> <li>▪ meeting facilities</li> <li>▪ conducting meetings of stakeholders, including hosting.</li> </ul> </li> </ul> <p>Excluded Costs:</p> <ul style="list-style-type: none"> <li>• Consultation initiatives or studies concerning regional matters.</li> <li>• Any amount paid or the costs of items given to stakeholders not arising from:</li> </ul>	<p>Consultation with stakeholders, communities, government, ENGOS and other industry participants is no longer a task to be undertaken solely for the purpose of regulatory applications.</p> <p>It is a necessary, ongoing corporate engagement needed to ensure that a company maintains its ability to operate and produce resources. Consultation needs to be efficient and meaningful for stakeholders and therefore is often regional, not project specific, in nature. Similarly, consultation is often undertaken through industry associations or groups.</p> <p>These broad consultation costs are legitimate business costs that should not be restricted and excluded from allowed costs.</p> <p>In a time of heightened consultation and dialogue regarding all aspects of energy development, there</p>	<p>The royalty system is based on the idea of costs and revenues generated by a Project. Costs that are undertaken to further corporate goals, talk about other aspects of energy development, or to deal with regional issues do not relate directly to Project operations.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
	<ul style="list-style-type: none"> <li>▪ terms of a commercial arrangement</li> <li>▪ participation in regulatory proceedings or consultation in respect of the proposed or current Project operations as limited to Column 1</li> <li>▪ trapper compensation under Column 1.</li> </ul> <ul style="list-style-type: none"> <li>• Costs of consultation or of membership or participation in associations</li> </ul>	<p>is a very cogent rationale for a broader definition of allowed consultation costs.</p>	
<p>63. Schedule 1</p>	<p>Item 57</p> <p>Excluded Costs</p> <ul style="list-style-type: none"> <li>• Salaries, wages, benefits, bonuses, stock options, training, travel and accommodations, relocation and severance (including associated relocation and training expenses in respect of that severance) for executive or management employees not solely dedicated to Project operations.</li> </ul> <p>Included Costs</p> <ul style="list-style-type: none"> <li>• Salaries, wages, benefits, training, travel and accommodations for employees solely dedicated to carrying out Project operations.</li> </ul>	<p>Item 57 refers to "bonuses, stock options" in the first line of the first bullet under Column 2.</p> <p>However the same item in Column 1 does not make the same reference. This appears to be a drafting error and reference to "bonuses, stock options" should be added to first line of the first bullet for this item under Column 1.</p>	<p>The absence of any reference to bonuses and stock options in column 1 of schedule 2 under item 57 was deliberate. The specific circumstances need to be examined in each case, but there may be instances in which bonuses and stock options might be open to a discretionary decision.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
64. Schedule 1		<p>Heat transfer costs and process fuel valuation are not addressed in the Schedule to this Regulation. It is our understanding that the Department remains uncertain as to the final solution for addressing this and that the matter may be addressed by regulatory amendment or by new regulation specifically addressing the matter.</p> <p>We would appreciate the Department's confirmation on this and the opportunity to continue to provide input on the resolution of this issue.</p>	<p>The OSAC will need to be amended to give effect to the Heat Transfer business rules and other business rules. Work on this is ongoing. For now, this would be addressed under the fundamental and discretionary categories, in conjunction with the allocation and NAL cost rules.</p>
<b>Bitumen Valuation Methodology (Ministerial) Regulation</b>			
65. Interpretation and Hardisty Bitumen Price	<p>1(1)(e) "Floor Price", in respect of a month, means the simple average of the weekly Mexico Maya Spot Prices FOB for the month, expressed in Canadian dollars per m3, minus \$___;</p> <p>2 The Hardisty Bitumen Price for a Project for a month for the purposes of section 32(6)(a)(v) of the <i>Oil Sands Royalty Regulation, 2009</i> is the greater of</p> <p>(a) the Floor Price, and</p> <p>(b) the price determined for the month in accordance with the following formula:</p> $HBP = [QBVM \text{ Blend} \times BVM \text{ Dilbit Value}] - [QBVM \text{ Diluent} \times CRWP]$	<p>Industry believes that the bitumen market in western Canada is well-functioning and therefore do not support the concept of a floor price. Industry understands:</p> <ul style="list-style-type: none"> <li>the Crown's desire to ensure its royalty interest is not negatively impacted, in the event the regional market for heavy oil may be suppressed relative to North American heavy oil market prices, as a result of a temporary disconnect between Canadian and broader North American markets.</li> <li>They recognize disconnects do occur, due to physical interruptions, such as refinery or pipeline outages, as opposed to buyers' or sellers' commercial activities in the regional heavy oil markets.</li> <li>Industry believes it is more important to determine the conditions that will be used to evaluate the effective functioning of the market that could trigger the application of a floor price.</li> </ul>	<p>Floor price as defined in the BVM regulation (greater of Maya - \$250Cdn/m3 and \$10/m3) is likely to be rarely invoked – and so is not likely to provide any significant disincentive to upgrader development in Alberta.</p> <p>To attain some certainty on minimum bitumen value, the Crown needs to address both heavy (WCS / Maya) disconnect and condensate price spikes – as either or both can significantly impact bitumen value.</p> <p>We do not feel an <i>ex post</i> exercise of discretion offers the desired certainty in bitumen valuation.</p> <p>We will monitor the operation of the proposed floor price mechanism, and amend it if and when necessary, as we move forward.</p>

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		<ul style="list-style-type: none"> <li>• Industry recommends that the floor price be imposed at the Minister's discretion and that the economic conditions that the Minister would consider be clearly defined in the Regulation (e.g. that bitumen blends are trading in a market which the Minister deems - as indicated in the document releasing the New Royalty Framework.</li> <li>• Because market and economic conditions are continually changing, Industry suggests there be no predetermined quantitative assumption on a specific differential that might trigger a floor price.</li> <li>• The price should be determined to address those specific market circumstances.</li> <li>• Industry seeks to provide advice to the Minister regarding the conditions that are giving rise to any specific market circumstance.</li> </ul> <p>Industry lists a number of impacts and concerns on the proposed fixed differential approach:</p> <ul style="list-style-type: none"> <li>• All bitumen are treated the same regardless of quality,</li> <li>• Calculations are impacted by foreign exchange considerations that are independent of the heavy oil market,</li> <li>• Seasonal variations in diluent requirements are not recognized,</li> <li>• Fails to recognize that the value of diluent is independent of the value of Maya crude.</li> </ul> <p>Industry believes that under the proposed mechanism, the integrated upgraders within the province who are currently delivering the value-</p>	

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		<p>add benefits the government is seeking is the group who could end up paying a higher effective royalty than the un-integrated operations.</p> <p>Industry believes this defeats the department's stated objective of supporting upgrading activity in Alberta.</p> <p>Industry is recommending that the Crown exercise its Ministerial discretion after determining that "markets that are not well functioning" and "unusual market fluctuations" have indeed occurred, prior to applying an appropriate market correction.</p> <p>Industry would like to work with the Crown to develop a mechanism that will effectively and fairly offer protection from low pricing environments to Albertans as resource owners when appropriate to do so.</p>	
66. Interpretation	<p><b>Section 1(1)(f)</b> "four-month rolling average synbit premium" means the simple average of the synbit <i>premiums</i> for the month of the 3 ...</p> <p><b>Section 1(1)(h)(i)</b> in the case of blended bitumen described in section ... of the OSRR'09 the volume of cleaned crude bitumen contained in the volume of blended bitumen determined by deducting...</p> <p>Section 1(1)(k) "synbit premium", in respect of a month, means the equalization premium paid for</p>	<p>Section 1(1) (f) Remove the "s" from synbit premiums in line</p> <p>Section 1(1) (h) (i) Clarify the wording by inserting non-arm's length prior to blended bitumen in line 4</p> <p>"...the volume of cleaned crude bitumen contained in the volume of <b>non-arm's length blended bitumen</b>, <b>where the non-arm's length blended bitumen volume</b> is determined by determined by deducting from the production quantity ...."</p> <p>Section 1(1) (k) Add "Oilsands" in front of synbit line 2 and</p>	<p>Corrections accepted. "WCS Founders" concept introduced, correction regarding Equalization Steering Committee and Enbridge incorporated.</p>

Issue	Regulation Proposed	Industry's Response	DOE's Response
	<p>the month for synbit over dilbit received during the month at the Hardisty WCS blending facility;</p> <p>Section 1(1)(l) "WCS" means the blended crude oil called "Western Canada Select" comprised mostly of cleaned crude bitumen and diluent.</p> <p>Section 3(b) the following amounts referred to in this Regulation shall be as reported to the Minister by Canadian Natural Resources Limited for each month:</p> <p>Section 3(d) the following shall be as determined for each month by the Equalization Steering and as published on the website of the Canadian Association of Petroleum Producers...</p>	<p>dilbit line 3                      "... Equalization premium paid for the month for <b>Oilsands</b> synbit over <b>Oilsands</b> dilbit ..."</p> <p>Section 1(1) (l)                      Replace "Canada" in line two with "Canadian"                      "Western <b>Canadian</b> Select"</p> <p>Section 3 (b)                      Add "WCS Founders representative" to line 2                      "...as reported to the Minister by <b>the WCS Founders Representative</b>, Canadian Natural Resources Limited for ..."</p> <p>Section 3 (d)                      Add "by Enbridge" after determined in line 1</p> <p>Move "as published" line 2 to in front of the Equalization Steering Committee                      "...shall be as determined <b>by Enbridge</b> for each month and <b>as published</b> by the Equalization Steering Committee on the website of the Canadian Association of Petroleum Producers:"</p>	