

# *The Subsurface Mineral Royalty Regulations, 2017*

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[Chapter C-50.2 Reg 32](#) (effective January 1, 2017, except s.10 and 11 effective November 30, 2017) as amended by Saskatchewan Regulations [134/2020](#) and [68/2022](#).

## **NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER C-50.2 REG 32

### *The Crown Minerals Act*

#### PART 1

#### Preliminary Matters

##### Title

- 1 These regulations may be cited as *The Subsurface Mineral Royalty Regulations, 2017*.

##### Definitions

- 2 In these regulations:

“**Act**” means *The Crown Minerals Act*;

“**affiliate**” means an affiliated body corporate within the meaning of subsection 2(2) of *The Business Corporations Act*, but for the purposes of Part 2 of these regulations does not include an industry sales organization as defined in *The Potash Production Tax Regulations* that would otherwise be an affiliate within the meaning of this definition;

“**allocated**” means allocated to disposition lands in accordance with a unitization agreement;

“**disposed of**” means, if a disposition holder has produced subsurface minerals from a disposition, the disposition holder has realized value from those subsurface minerals in a manner that is not a sale of those subsurface minerals, including:

- (a) in the case of potash, if the potash has been:

- (i) transmitted to a person, other than an industry sales organization as defined in *The Potash Production Tax Regulations*, in consideration, in whole or in part, of financing costs, property or a service; or

- (ii) retained by the disposition holder or its affiliates for its own use; and

- (b) in the case of subsurface minerals other than potash, if that subsurface mineral has been:

- (i) transmitted to a person in consideration, in whole or in part, of financing costs, property or a service; or

- (ii) retained by the disposition holder or its affiliates for its own use;

“**disposition**” means a Crown lease for subsurface minerals that is issued, renewed or continued in accordance with *The Subsurface Mineral Tenure Regulations*;

“**disposition holder**” means the holder of a disposition;

“**disposition lands**” means lands that are the subject of a disposition and on which subsurface minerals may be extracted, recovered or produced by the disposition holder in accordance with the terms of the applicable instrument, the Act and *The Subsurface Mineral Tenure Regulations*;

“**K<sub>2</sub>O tonne**” means the quantity of potash that contains the equivalent of 1 tonne of potassium oxide;

“**potash**” means a non-viable substance that:

- (a) is formed by the processes of nature; and
- (b) contains the element potassium;

“**salt**” means sodium chloride;

“**subsurface mineral**” means a subsurface mineral as defined in *The Subsurface Mineral Tenure Regulations*;

“**unitization agreement**” means an agreement entered into by the minister pursuant to section 18 of the Act with respect to the allocation of potash and other subsurface minerals produced within a described area according to the terms of that agreement.

8 Dec 2017 cC-50.2 Reg 32 s2.

## PART 2 Potash

### Application of Part

**3** This Part applies to potash.

8 Dec 2017 cC-50.2 Reg 32 s3.

### Potash royalty payable

**4(1)** Every disposition holder shall pay to the Crown a royalty with respect to potash that is produced from or allocated to the disposition holder’s disposition lands, in the amount R calculated in accordance with the following formula:

$$R = (Q \times P \times 3\%) - D$$

where:

Q is the quantity of potash produced from or allocated to those disposition lands in the year, expressed in K<sub>2</sub>O tonnes;

P is the average price of potash received by the disposition holder in the year, expressed in K<sub>2</sub>O tonnes, as determined in accordance with subsection (2); and

D is the royalty reduction in the year, as determined in accordance with subsection (3).

**(2)** For the purposes of subsection (1), the average price of potash is the amount P calculated in accordance with the following formula:

$$P = \frac{GR}{S}$$

where:

GR is the amount of gross revenue received or receivable by the disposition holder in the year for the potash produced from all of the mines in Saskatchewan of the disposition holder that is sold or otherwise disposed of, as reported to the minister for the purposes of clause 5(1)(a) of *The Potash Production Tax Regulations*; and

S is the quantity of potash, expressed in K<sub>2</sub>O tonnes, that is produced from all the mines in Saskatchewan of the disposition holder and that is sold or otherwise disposed of in the year, as reported to the minister for the purposes of subsection 21(1) of *The Potash Production Tax Regulations*.

(3) For the purposes of subsection (1), the royalty reduction for eligible new mines is, subject to subsections (4) and (5), the amount D calculated in accordance with the following formula:

$$D = V \times P \times 3\%$$

where:

V is:

(a) for the 36-month period following the grant of the prior written approval by the minister for the purposes of this subsection, the quantity of potash produced from or allocated to those disposition lands in those months, expressed in K<sub>2</sub>O tonnes; and

(b) after the period mentioned in clause (a), zero; and

P is the average price of potash received by the disposition holder in the year, expressed in K<sub>2</sub>O tonnes, as determined in accordance with subsection (2).

(4) In order for production from a disposition to be eligible for a royalty reduction, the production must come from a new mine:

(a) whose initial annual productive capacity, as determined in a manner consistent with section 3 of *The Potash Production Tax Regulations*, exceeds 2 million K<sub>2</sub>O tonnes; and

(b) whose beginning of commercial production, as defined in clause 2(1)(k) of *The Potash Production Tax Regulations*, is on or after January 1, 2023.

(5) The sum of the amounts of royalty reduction over the 36-month period of the royalty reduction is not to exceed \$100 million.

8 Dec 2017 cC-50.2 Reg 32 s4; 23 Sep 2022 SR 68/2022 s3.

#### Payment of royalties

5(1) Every disposition holder shall, on or before the last day of the second month after the end of each period of 3 months of the year, pay an instalment of the royalty that will be payable for the potash produced from or allocated to the disposition holder's disposition lands during the year.

(2) The instalment payable pursuant to subsection (1) is to be calculated for each month for which the instalment is to be paid.

(3) The instalment payable respecting each month for which the instalment is to be paid is the amount IP calculated in accordance with the following formula:

$$IP = Q \times P \times 3\% - DM$$

where:

Q is the quantity of potash produced from or allocated to those disposition lands in the month, expressed in K<sub>2</sub>O tonnes;

P is the average price of potash received by the disposition holder in the month, expressed in K<sub>2</sub>O tonnes, as determined in accordance with subsection (4); and

DM is the adjustment for royalty reduction in the month, as determined in accordance with subsection (4.1).

- (4) For the purposes of subsection (3), the average price of potash is the amount P calculated using the following formula:

$$P = \frac{GR}{S}$$

where:

GR is the amount of gross revenue received or receivable by the disposition holder in the month for potash produced from all of the mines in Saskatchewan of the disposition holder that is sold or otherwise disposed of, as reported to the minister for the purposes of clause 5(1)(a) of *The Potash Production Tax Regulations*; and

S is the quantity of potash, expressed in K<sub>2</sub>O tonnes, that is produced from all of the mines in Saskatchewan of the disposition holder and that is sold or otherwise disposed of in the month, as reported to the minister for the purposes of subsection 21(1) of *The Potash Production Tax Regulations*.

- (4.1) For the purposes of subsection (3), the royalty reduction for the month is, subject to subsection 4(4), the amount DM calculated in accordance with the following formula:

$$DM = VM \times P \times 3\%$$

where:

VM is, for the 36-month period of a royalty reduction approved by the minister pursuant to subsection 4(3), the estimated volume of production in the month produced from or allocated to those disposition lands, expressed in K<sub>2</sub>O tonnes, that qualifies for that royalty reduction; and

P is the average price of potash received by the disposition holder in the month, expressed in K<sub>2</sub>O tonnes, as determined in accordance with subsection (4).

- (5) If, in the opinion of the minister, the low volume of potash sold or disposed of in a month by the disposition holder does not allow the disposition holder to calculate an average price that is representative of the current potash market, the disposition holder shall calculate the potash royalty for that month using the average price calculated in a preceding month when the volume of potash sold or disposed was, in the opinion of the minister, sufficient for the purpose of making a calculation.

- (6) If the royalty payable for the year exceeds the total of the amounts paid in instalments pursuant to this section, the disposition holder shall pay the amount of the difference on or before March 31 following the end of the year in which the potash was produced from or allocated to the disposition lands.

- (7) If the royalty payable for the year is less than the total of the amounts paid in instalments pursuant to this section, the minister shall refund the amount of the difference to the disposition holder by the end of the last day of the second month following the date on which the royalty payer's royalty return for the year was submitted.

**Returns**

- 6(1)** Subject to subsection (4), every disposition holder shall submit, with respect to each disposition, a royalty return for potash produced from or allocated to the disposition lands that contains a calculation of the royalty payable for a month on or before the 28th day of the month following the month for which the royalty is being calculated.
- (2) Subject to subsection (4), every disposition holder shall submit, with respect to each disposition, a royalty return for potash produced from or allocated to the disposition lands that contains a calculation of the royalty payable for a year on or before March 31 following the year for which the royalty is being calculated.
- (3) Royalty returns submitted pursuant to subsections (1) and (2) must:
- (a) be in a form approved by the minister;
  - (b) be submitted in a manner acceptable to the minister;
  - (c) be signed by the disposition holder or, if the disposition holder is a corporation, by an authorized officer of the corporation; and
  - (d) include the royalty payer's or authorized officer's oath or affirmation that the financial statements are true and complete to the best of the royalty payer's or authorized officer's knowledge and belief.
- (4) Subsections (1) and (2) do not apply if the holder has not yet produced potash from the disposition.

8 Dec 2017 cC-50.2 Reg 32 s6.

### PART 3

#### Salt

**Application of Part**

- 7** This Part applies to salt.

8 Dec 2017 cC-50.2 Reg 32 s7.

**Salt royalty payable**

- 8(1)** The royalty payable by a disposition holder to the Crown with respect to salt that is produced from or allocated to disposition lands is the greater of:
- (a) 33¢ per tonne of dry salt that is:
    - (i) produced or allocated; and
    - (ii) sold or otherwise disposed of; and
  - (b) 3% of the selling price of a quantity of salt in slurry form that is equivalent to 1 tonne of dry salt.
- (2) For the purposes of clause (1)(b), the minister may determine the fair market value of the salt if:
- (a) in the opinion of the minister, the selling price of the salt does not accurately reflect its fair market value; or
  - (b) the salt is not sold or otherwise disposed of in the slurry form.

- (3) The fair market value determined pursuant to subsection (2) is deemed to be the selling price of the salt.
- (4) The minister may:
  - (a) determine any questions that arise in determining the amount of royalty payable pursuant to subsection (1); and
  - (b) without limiting the generality of clause (a), determine the quantity of salt that has been produced, allocated, sold or otherwise disposed of.
- (5) Within 30 days after the end of each period of 3 months of each year, a disposition holder shall:
  - (a) pay the amount of the royalty required pursuant to subsection (1) with respect to that period; and
  - (b) submit to the minister a royalty return in a form approved by or acceptable to the minister.
- (6) Within 60 days after entering into a contract by which salt produced from or to be produced from, or allocated to or to be allocated to, the disposition holder's disposition lands is to be sold or otherwise disposed of, a disposition holder shall inform the minister in writing of:
  - (a) the prices at which salt is to be sold or otherwise disposed of pursuant to the contract; and
  - (b) the other terms of the contract.
- (7) A disposition holder shall, on the request of the minister, provide the minister with a copy of any contract mentioned in subsection (6) that is in writing.
- (8) A disposition holder shall:
  - (a) immediately inform the minister of any change in any of the terms of any contract mentioned in subsection (6); and
  - (b) if the change is in writing, provide the minister with a copy of the change on the request of the minister.

8 Dec 2017 cC-50.2 Reg 32 s8.

## PART 4 General

### Records

- 9(1) Every disposition holder shall keep full, correct and complete books of account, with supporting documents, showing in full:
  - (a) the quantities of subsurface minerals that are:
    - (i) produced from mines associated with the disposition holder's disposition; and
    - (ii) sold, disposed of, transferred or consumed;
  - (b) the price or other consideration for the subsurface minerals mentioned in clause (a);



- (c) the day on which a quantity of subsurface minerals was sold, disposed of, transferred or consumed; and
  - (d) the name of each person to whom subsurface minerals were sold, disposed of or transferred or by whom it was consumed.
- (2) The books of account and supporting documents must be kept at an office of the disposition holder or at any other place acceptable to the minister.
- (3) A disposition holder shall retain all books of account and supporting documents for a period of 5 years following the end of the year to which the records pertain, unless written consent to their disposal is obtained from the minister.
- (4) On the minister's request, a disposition holder shall provide to the minister copies of any of the disposition holder's books of account and supporting documents within the period requested by the minister.
- (5) The disposition holder shall keep and maintain relevant and appropriate documentation in support of the information required to be provided to the minister pursuant to any provision of these regulations and provide that documentation on request to any official of the ministry during any investigation pursuant to section 17.2 of the Act.
- (6) If a disposition holder who is required to maintain books of account and supporting documents pursuant to this section maintains them in an electronic format, the disposition holder shall:
- (a) ensure that they are easily retrievable, and easily convertible into a readable format, in the manner the minister may specify;
  - (b) ensure that they provide a clear and complete audit trail from the source documents that provide details of the originating transactions that relate to a royalty;
  - (c) retain separate copies of source documents providing details of all transactions that relate to a royalty; and
  - (d) make them available to the minister in the format in which they are kept when requested by the minister to do so.
- (7) For the purposes of clause (6)(d), the disposition holder shall allow the minister to access any database or computer system, or to obtain downloads or make copies from any database or computer system, that contains or may contain any records required to be maintained pursuant to this section.

8 Dec 2017 cC-50.2 Reg 32 s9.

#### **Interest**

**10(1)** Subject to subsection (4), if the result of the assessment or reassessment by the minister of a disposition holder's calculations of royalty payable is a balance owing to the Crown, the disposition holder shall pay interest at the rate set out in subsections (2) and (3) on any amount that was not paid or remitted when required by these regulations, calculated from the day on which that amount should have been paid or remitted to the date on which it is received by the minister as shown in the records of the minister.

- (2) For the purposes of subsection (1), the rate of interest per year with respect to unpaid royalty is the rate equal to the sum of:
- (a) the prime lending rate of the bank holding the general revenue fund as determined and adjusted in accordance with this section; and
  - (b) 3%.
- (3) The interest rate set out in subsection (2) is to be determined on June 15 and December 15 in each year and:
- (a) the interest rate as determined on June 15 applies to unpaid royalties that are owing on or after July 1; and
  - (b) the interest rate as determined on December 15 applies to unpaid royalties that are owing on or after January 1 of the following year.
- (4) If the disposition holder has not made a payment of a royalty when due, as required pursuant to any of subsections 5(1) and (6) and clause 8(5)(a), interest payable on the unpaid amount is to be calculated in accordance with *The Late Payment Interest Charges Regulations*.
- (5) Subject to subsections (6) to (8), if a disposition holder has made an overpayment of royalty, the minister:
- (a) shall refund the amount of the overpayment to the disposition holder; and
  - (b) may pay interest on the amount mentioned in clause (a) at the rate and in the manner set out in subsection (10).
- (6) Notwithstanding subsection 5(7), if a disposition holder owes any royalty to the Crown pursuant to the Act or these regulations at the time the minister determines that an overpayment has been made:
- (a) the minister shall retain the amount of the overpayment, or as much of the overpayment as is required and apply it to the royalty owing; and
  - (b) the minister shall notify the disposition holder of the set-off mentioned in clause (a).
- (7) No refund is payable if the fact of the overpayment did not come to the attention of the minister within 4 years after the date on which the overpayment occurred.
- (8) Notwithstanding *The Limitations Act*, no action may be brought to recover an overpayment after the expiration of 4 years after the date on which the overpayment occurred.
- (9) The refund of an overpayment of a royalty is to be made in a manner approved by the minister.

(10) The rate of interest per annum to be paid on a refund of an overpayment of a royalty pursuant to subsection (5) is equal to the prime lending rate of the bank holding the general revenue fund, as determined and adjusted in accordance with subsection (3).

8 Dec 2017 cC-50.2 Reg 32 s10; 24 Dec 2020 SR 134/2020 s2.

**Penalty on audit assessments**

**11(1)** For the purposes of section 24.1 of the Act, every disposition holder shall pay to the minister a penalty at the rate set out in subsection (2) on any royalty that is not paid or remitted as and when required by the Act or these regulations.

(2) For the purposes of subsection (1), the rate is 10% of the royalty not paid or remitted as and when required by the Act or these regulations.

8 Dec 2017 cC-50.2 Reg 32 s11.

**PART 5**

**Repeal and Coming into Force**

**Sask Reg 541/67 repealed**

**12** The Subsurface Mineral Regulations, 1960, being Saskatchewan Regulations 541/67, are repealed.

8 Dec 2017 cC-50.2 Reg 32 s12.

**Coming into force**

**13(1)** Subject to subsection (2), these regulations come into force on the day on which they are filed with the Registrar of Regulations, but are retroactive and are deemed to have been in force on and from January 1, 2017.

(2) Sections 10 and 11 come into force on the day on which these regulations are filed with the Registrar of Regulations.

8 Dec 2017 cC-50.2 Reg 32 s13.

