

Chapter 3

Oil Sands Agreements

Agreement Types

Two types of oil sands agreements are issued under the *Oil Sands Tenure Regulation*:

- permits, which can be converted to leases, and
- primary leases, which can be continued

The regulation requires that exploration or development activity begin within a specified period and according to prescribed levels of evaluation or production.

Minimum level of evaluation* (MLE) criteria are discussed in [Chapter 4](#).

Minimum level of production* (MLP) criteria are discussed in [Chapter 5](#).

At the end of the initial term, assuming that the required criteria have been met, lessees* and permittees* may apply by letter, supported by technical data, to continue their agreements or in the case of permits for the lease selection process.

- **Permit holders** apply for primary leases through the process of lease selection*. See [Applying for Lease Selection](#) for details.

Permittees must attain MLE requirement.

- **First-term lease holders** apply for primary leases. See [Applying for a Primary Lease Out of a First-Term Lease](#) for details.

No MLE requirement.

- **Primary and Deemed Primary lease holders** apply for lease continuations*. See [Applying for Lease Continuation](#) for details.

Lessees must attain MLE requirement.

Lease Types

A Primary Oil Sands Lease is one which is issued to convert an Oil Sands Permit or to extend a first-term oil sands lease. Primary Oil Sands Leases are issued for 15-year terms through public offerings, direct purchases, lease selection from permits, and extensions of first-term oil sands leases.

A First-term Oil Sands Lease is a still-active, 21-year lease which was issued before 1991, under a previous regulation. At the end of its term, the lessee may apply for a primary lease under section 11 of the current *Oil Sands Tenure Regulation*.

A Deemed Primary Lease is a second-term lease that is not subject to a development plan, a lease issued out of a permit under the now-rescinded 1991 regulation, or a lease issued under section 13 of the (now-rescinded) 1991 regulation. Deemed primary leases are granted continuation under the same criteria as primary leases.

A Continued Lease is a primary lease or deemed primary lease which has been continued past its expiry date for an indefinite term, with either a producing or a non-producing status.

Leases

Two types of leases are administered under the *Oil Sands Tenure Regulation*

- primary leases
- continued leases

Primary leases are issued for a term of 15 years. In most cases, primary leases are acquired through the public offering process. (See [Public Offering Notice](#) for details) They may also be issued as lease selections from permits and to holders of 1st term leases after continuation is granted.

Continued leases are extensions of primary leases. Two criteria are used to determine whether a primary lease will be approved for continuation:

- the extent to which the lessee has evaluated the oil sands covered by the lease
See [Chapter 4](#) for details, and
- whether or not the lease is producing
See [Chapter 5](#) for details.

When the minimum level of evaluation criteria has been attained on leases, continuations are granted for an indefinite period.

See [Meeting a Minimum Level of Evaluation \(MLE\)](#) for details.

Permits

Oil sands permits are alternatives to leases. In the 1990s, the department issued permits when relatively little evaluation had been done on an oil sands resource. Under the current tenure system, the department typically allows applicants to choose whether they wish to post a permit or a lease agreement.

Permits are issued for 5 -year term.

Permit holders who have evaluated the oils sands to the required minimum level (See [Chapter 4](#) for details) may apply in writing for lease selection at the end of their permit terms. If their applications are approved, they are assigned a primary lease (or leases).

Annual Rent

Annual rent is payable on all oil sands agreements. Rent is calculated at the rate of \$3.50 per hectare or a minimum amount of \$50 applies.

The initial annual rent payment for an oil sands agreement is due when the agreement is first acquired.

- When an agreement is acquired through the public offering process, the annual rent payment must accompany the bid. See [Public Offering Notice](#) for details.
- When an agreement is acquired by direct purchase, the annual rent payment, the bonus, and the issuance fee must be paid at the same time—prior to the issuance of the agreement. See [Direct Purchases of Crown Rights](#) for details.

Subsequent annual rent payments are due on or before the anniversary date of the agreement. The agreement is considered to be in default if the rent is not paid by the day following the monthly statement due date.

Mines and Minerals Administration Regulation, section 19

The Monthly Statement Process consolidates all charges (for rent on oil sands agreements and for land searches) onto one invoice every month. Clients have the option of paying by cheque or using the Electronic Funds Transfer (EFT) System to debit their account automatically. All rentals have a deemed due date of the 15th day of the month, or the first business day thereafter. Financial Services administers the collection.

Mines and Minerals Act, section 45

The department issues a rental default notice two or three working days after an annual payment is due through a Monthly Statement Process. If the rent is not paid within 30 days of the monthly statement due date, the agreement is subject to cancellation.

Mines and Minerals Administration Regulation, section 21

Interest is charged on late payments.

Designated Representatives

Mines and Minerals Act, section 29(1)

A designated representative* must be appointed for every oil sands agreement. The designated representative serves as the Crown's contact for the agreement.

Note

A designated representative must be appointed whether an agreement is held by more than one party or is held by only one lessee. A sole lessee may serve as his own designated representative. Alternatively, the lessee may appoint an agent to act on his behalf.

The designated representative for an oil sands agreement is responsible for

- picking up the agreement document electronically from the ETS system,
- ensuring the payment of the annual rent and escalating rent*, when applicable,
- addressing any administrative defaults in connection with the agreement,
- identifying expenditures to be used to offset escalating rent,
- maintaining records suitable for audit, and

Escalating rentals and audits apply to non-producing continued leases. These topics are discussed in [Chapter 6](#).

On request, the designated representative must arrange for the department to have access to all the supporting documentation it needs for an audit. (Access to this documentation will not necessarily take place at the designated representative's own office.) If access is not provided, or if the department determines that the documentation is insufficient, the designated representative is responsible for settling any resulting adjustment to the required escalating rent payment.

- pursuing payment from a party whose cost credit (regarding escalating rent) is denied by the department.

This provision extends to situations where lease interests have changed. If a former lessee received a cost credit which was subsequently denied—after the individual no longer had an interest in the lease—the designated representative and current lessees assume the obligation of settling any audit adjustments.

The designated representative plays an important role in lessees' applications to use eligible expenditures as offsets against escalating rents.

See [Who can submit expenditure information](#) for details.

Administration of Oil Sands Agreements

Applying for Lease Continuation

Leases are continued if the required minimum level of evaluation has been attained. See [Chapter 4](#) for details.

When a lease is continued, it is classified as producing or non-producing. Producing leases must meet the required minimum level of production.

See [Chapter 5](#) for details.

An agreement holder* may apply in writing to continue a primary lease or a deemed primary lease. The designated representative must make the application. If the applicant is not the designated representative, a letter of authorization must accompany the application signed by the designated representative.

Applications for continuation must be received at the Edmonton or Calgary office of the department on or before the expiry date of the original agreement.

The letter of application must

1. identify the lease number and the land or lands for which continuation is requested.

Lessees may apply for continuation of all or a portion of their lease holdings. Land identification is required only when the application deals with a portion, not all, of the lease holding.

2. indicate whether the data in support of continuation was obtained pursuant to section 3(2) or to section 3(3) of the *Oil Sands Tenure Regulation*. These sections deal with required minimum levels of evaluation.

See [Chapter 4](#) for details.

3. identify the evaluation criteria used.
See [Chapter 4](#) for a discussion of the minimum level of evaluation that is acceptable.

4. state whether the required minimum level of production has been met.
See [Chapter 5](#) for details.

5. provide technical data to support the required minimum level of evaluation and (if applicable) the required minimum level of production. The technical data report must identify the specific lands on which evaluations were conducted. It must also include:
 - a brief discussion of the data.
 - a description of the work done to achieve the MLE (and MLP, if applicable).
 - details about drilling, coring, and electromagnetic testing, as applicable.
 - The technical data report should include well information such as the drilling completion date, the well ID, and whether or not a core sample was obtained. Confidential well data, including core analyses, must be supplied.
 - production data, including monthly well production statistics.
 - details about seismic testing, as applicable.
 - Seismic data should include shot point maps which verify that the required fold, group, and coverage parameters were used.
 - Synthetic seismograms should accompany all seismic data lines.
6. include maps showing:
 - the land area covered by the agreement,
 - locations of evaluation wells,
 - locations of evaluation wells with core data,
 - locations of drill holes, and
 - locations of seismic lines.
7. be accompanied by the annual rent payment, at \$3.50 per hectare.

See [Annual Rent](#) for details.

No issuance fee is required for lease continuations.

Note

A separate application must be made for each individual lease for which continuation is requested.

The Review Process for Lease Continuations

The department reviews applications and supplemental information to assess whether the required minimum levels of evaluation and production have been met. Once a lease has been approved for continuation, the department sends a confirmation letter to the applicant. The letter identifies

- the conditions of approval for the lease, and
- the lease status—that is, whether it has been classified as a producing or a non-producing lease. Non-producing leases are subject to escalating rent. See [Minimum Levels of Production](#) for details.

Once continuation has been granted, the lease remains in effect indefinitely—as long as the conditions of approval and the requirements of the *Oil Sands Tenure Regulation* have been met.

See [Continued Leases](#) for details.

See [Non-Producing to Producing](#) for information about changing the designation of a lease from producing to non-producing, or vice versa.

Advance Rulings

Lessees may request an advance ruling at any time during the term or a primary lease. Typically, requests for advance rulings are made when a lessee wishes

- to ensure that proposed work programs will result in a minimum level of evaluation (MLE) that the department will accept,
- to confirm that evaluation work completed to date will satisfy MLE requirements, or
- to confirm that any outstanding MLE requirements can be met before the primary lease expires.

Advance rulings minimize the risk that desired leases would not be continued.

Applying for a Primary Lease Out of a First-Term Lease

A lessee who holds a first-term oil sands lease may apply in writing by letter for a primary lease on or before the expiry date of the original agreement. The application letter must:

- specify the lease number that the applicant wishes to continue to a primary lease, and
- ensure that the next year's annual rent is paid.

We encourage all payments to be by direct deposit.

Neither evaluation data nor issuance fee are required.

Note

If an application for a primary lease is not made, the original lease may be cancelled. See [Cancellation](#) for details.

Applying for Lease Selection

A permit holder may apply in writing for lease selection on or before the expiry date of the permit. The applicant may apply to select a primary oil sands lease or leases for all or part of the lands covered by the permit. A minimum level of evaluation must be attained with regard to the requested lands.

See [Chapter 4](#) for Minimum Level of Evaluation details.

See [Permit & Lease Process chart](#) .

The letter of application for lease selection must

1. identify the land or lands for which lease selection is requested.

Permittee may apply for lease selection for all or a portion of their permit holdings. Land identification is required only when the application deals with a portion, not all, of the permit holding.

2. indicate whether the data in support of lease selection was obtained pursuant to section 3(2) or to section 3(3) of the *Oil Sands Tenure Regulation*. These sections deal with required minimum levels of evaluation.

See [Chapter 4](#) for details.

3. identify the evaluation criteria used.

See [Chapter 4](#) for a discussion of the minimum level of evaluation that is acceptable.

4. provide technical data to support the required minimum level of evaluation. The technical data report must identify the specific lands on which evaluations were conducted. It must also include:

- a brief discussion of the data,
- a description of the work done to achieve the MLE, and
 - The technical data report should include well information such as the drilling completion date, the well ID, and whether or not a core sample was obtained. Confidential well data, including core analyses, must be supplied.

- details about seismic testing, as applicable.
 - Seismic data should include shot point maps which verify that the required fold, group, and coverage parameters were used.
 - Synthetic seismograms should accompany all seismic data lines.

At the applicant's request, submitted seismic data will be returned once the application has been finalized.

5. include maps showing:

- the land area covered by the agreement,
- locations of evaluation wells,
- locations of evaluation wells with core data,
- locations of drill holes, and
- locations of seismic lines.

6. be accompanied by an issuance fee of \$625 per lease.

7. be accompanied by the annual rent payment, at \$3.50 per hectare.

See [Annual Rent](#) for details.

The Review Process for Lease Selection

The department reviews applications for lease selection to determine if the required minimum level of evaluation (MLE) has been achieved.

- **If the department rules that a satisfactory MLE was obtained for all lands** for which lease selection was requested, the applicant is notified and a lease agreement is issued.
- **If not all of the requested lands have satisfied the MLE requirement**, the department notifies the applicant in writing. The notification letter specifies the lands for which the required MLE has been met—that is, the lands for which oil sands rights can be retained. The applicant has 30 days from the notification letter to appeal this decision if he does not agree with the department's assessment.

If no application is received, the permit will expire and the lands will be returned to the Crown. Producing wells will be considered for trespass.

Appeals

Applicants who are not satisfied with the department's decision regarding minimum levels of evaluation may submit an appeal within the 30-day period specified in the notification letter. Only the original applicant may submit an appeal: third-party appeals are not accepted.

An applicant can request a formal meeting to present additional data. If this additional information is deemed unsatisfactory, the department's decision is final.

Note:

Only one appeal is granted per decision, after which the department's decision is final.

Consolidation

Mines and Minerals Administration Regulation, section 12

The lessees may, with the consent of the Minister, consolidate their oil sands leases. Consolidation refers to the process of combining existing lease agreements into one agreement.

Consolidation can only be considered if the participants in the leases are the same.

The consolidation process involves amending the agreement which has the earliest applicable term commencement date. The new agreement includes the same terms and conditions as this “parent” agreement.

Taking Lease A/Lease B and merging them into a single agreement is an example of consolidation. This can only occur if the same lessees hold both of the original agreements (Lease A and Lease B).

For example

Lease A and Lease B are consolidated. Lease A has a term commencement date of October 14, 2005; Lease B has a term commencement date of January 30, 2007. Since Lease A has the earlier term commencement date, Lease B will be consolidated into Lease A and is subject to the terms and conditions of Lease A.

The department reviews all requests to consolidate leases. It ensures that the proposed consolidation will not affect the escalating rent (See [Chapter 6](#) for details) which would be payable to the Crown if the leases remained separate. Approval is granted only when consolidation would lead to further oil sands production.

Lessees who wish to consolidate their leases must provide evidence that consolidation will result in more oil sands production than if the leases remained separate.

The department does not allow consolidation for the purpose of

- avoiding escalating rent payments,
- meeting required minimum levels of evaluation, or
- meeting required minimum levels of production.

Pooling

Pooling refers to the treatment of individual leases as a single entity. An example of pooling is when Lease A and Lease B remain separate legal entities, but are treated as if they were a single lease.

Pooling oil sands leases is not allowed. However, in certain pre-approved circumstances—such as the allocation of research and development costs to offset escalating rents—costs may be allocated to a number of leases. (See [Chapter 6](#) for details.) Such cost allocations are allowable under specific conditions: this is not the same as pooling.

Surrender

Mines and Minerals Administration Regulation, section 11

The designated representatives may surrender their permit or lease rights by notifying the department. The notification must be made on the department's Surrender form.

All Oil Sands tenure forms are available from the Oil Sands home page, left menu Forms & Reporting

An oil sands agreement may be surrendered at any time.

If an agreement is surrendered prior to its anniversary date, rental payments are not refunded.

Cancellation

Mines and Minerals Act, section 45

The Minister may cancel oil sands agreements. Cancellation may occur

- if agreement conditions have been breached,

or

- if the agreement holder has not responded to notices or complied with the *Act* or related regulations.

A notice of cancellation is provided to the lessee.

Note

If an agreement is cancelled, the department advises the ERCB that the holder has no right to produce from any active wells located on lands covered by the agreement. (This also applies to surrenders of agreements.)

The department's Crown Equity group monitors wells on lands included in cancelled agreements to ensure that unauthorized production does not occur.

Reinstatement

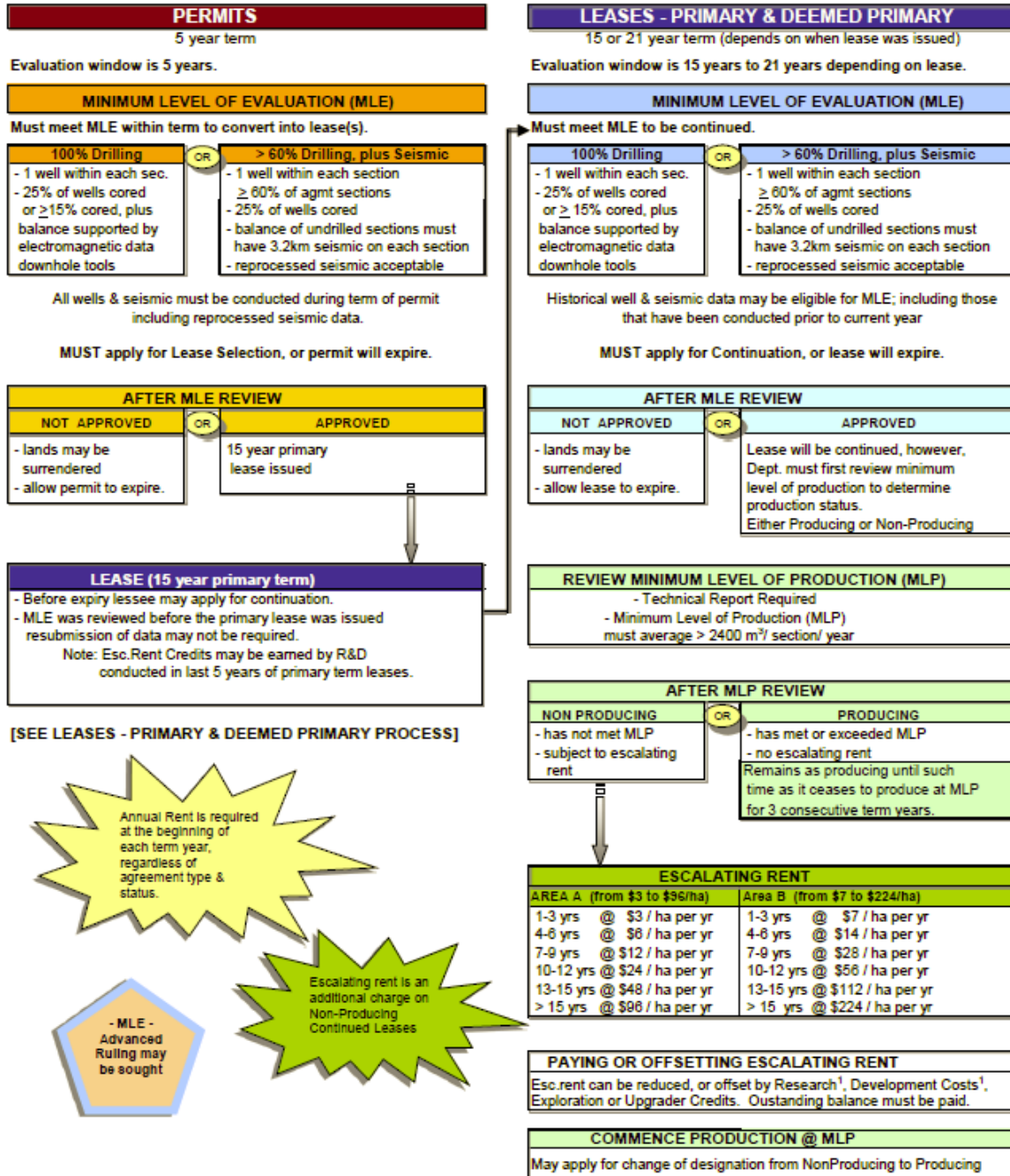
Mines and Minerals Act, section 8(1)(e)

The *Act* allows for the reinstatement of an agreement which has been surrendered or cancelled. The former agreement holder must apply to the department and satisfy the criteria set out in the act. Application must be made within 60 days of the date of the notice of cancellation.

Mines and Minerals Administration Regulation, Schedule item 8

The fee to reinstate an oil sands agreement is \$5,000.

Permit and Lease Evaluation & Continuation Process



¹ Research & Development has to be assigned.