

8. Dispute Resolution and Appeals

Oil Sands Royalty Regulation, 1997 (AR 185/97), section 35

Mines and Minerals Act, sections 38 and 39

In this chapter, the term “project owner” should be read to include the project operator and the authorized representatives of both.

A formal dispute resolution process is available, should project owners and the Department disagree about royalty assessments. Such disagreements typically arise from differences of opinion with regard to the interpretation of the royalty calculation requirements specified in the Regulation.

The dispute resolution process employs a staged approach. A royalty-related dispute is first addressed at the operational level. If it is not resolved there, the project owner may appeal by filing an objection to a calculation or recalculation of royalty with the Department. If the appeal process does not resolve the situation, the matter may be referred to a dispute resolution committee whose members will include representatives of industry and government.

8.1 Issues That May Be Appealed

Mines and Minerals Act, sections 38 and 39

Oil sands project owners generally have the right to object to calculations or recalculations of

- the Crown’s royalty share, and
- amounts owing with regard to royalty

as set out in Section 38 and 39 of the Mines and Minerals Act. Matters that are not listed in sections 38 and 39 of the Mines and Minerals Act are not subject to dispute.

Decisions related to project approvals and amendments, prior net cumulative balances, and other matters subject to the discretion of the Minister cannot be appealed.

8.2 Time Limits

Section 38 of the *Mines and Minerals Act* provides the authority for the Minister to make the recalculations or additional calculations referred in Section 8.1. (*Section 47* of the Act provides for access to the records for audit purposes.) *Section 38* stipulates that—unless there is evidence of fraud or wilful misrepresentation, in which case a recalculation can be made at any time—Department-initiated recalculations must be made within four years of the end of the calendar year in which the mineral that is the subject of the recalculation was recovered or the amount owing applied. If an audit is initiated in the fourth year, the four-year period is extended by one year.

By the same token, project owners must exercise their right to request a recalculation within four years of the end of the calendar year in which the original assessment was issued. If a written request by a project owner is initiated in the fourth year, the four-year period is extended by one year.

Project owners have 90 days from the time they receive a royalty assessment or audit report in which to initiate an appeal.

Interest and Penalties

When royalty is recalculated under *Section 38* of the Act, by *section 38(5)* the Minister may also make recalculations or additional calculations of interest payable and related penalties.

8.3 The Dispute Resolution Process

The first stage in dispute resolution related to calculations or recalculations under Section 38 is informal discussions between the project owner and the Department. If the dispute cannot be resolved informally, the project owner may appeal by filing an objection to the royalty calculation or recalculation. The appeal process for oil sands project owners is similar to that available to holders of conventional oil and gas leases.

Project owners must pay all disputed royalty amounts assessed by the Department before they file an appeal. If their appeal is successful, the appropriate amount will be refunded.

8.3.1 Requesting an Appeal

To request an appeal, the project owner must submit a written objection to Director of Dispute Resolution, Legal Services. (See Appendix J, "Contact Information")

The objection must be clearly identified as such. It must be signed by an authorized representative of the project owner and include the following information:

- the decision under dispute
- how, when and by whom the decision was communicated to the project owner
 - Appeals typically result from decisions arising from a royalty assessment decision or a Departmental audit.
- a description of the project owner's attempts to resolve the dispute with the Department's operational staff
- the reasons for the objection
- evidence that the amount under dispute has been paid to the Crown

The request for appeal must be submitted within 90 days of the Department's issuance of the disputed royalty assessment decision or audit report.

8.3.2 Review by the Director of Dispute Resolution

When an objection is received, the Director of Dispute Resolution ("the Director") will determine whether or not it is in accordance with the requirements listed above and may accept or reject the objection. He must provide written notice to the applicant whether he has accepted or rejected the objection.

If the Director believes additional information is required for the objection to meet the requirements, the applicant must provide the requested information to the Director within the 90 day period to initiate an appeal.

If the objection is accepted, the Director will proceed to consider the appeal, by investigating the disputed situation and consulting with the Department and the applicant. He may require additional information from either or both of the parties, which the parties shall provide in a timely fashion. This information may include, without limitation, relevant evidence, legislation, regulations, guidelines, and the parties' analyses and positions with respect to the objection.

The Director carries out his review of the appeal by investigating the situation and consulting with both the project owner and the Department's operational staff. Based on this review, he mediates the dispute and proposes a resolution. The Director will propose this resolution within 180 days of the date he received the objection. This timeline may be extended by a further 90 days if both the applicant and the Department agree.

If both the Department and the project owner accept the proposed resolution, the Director issues a written "**statement of resolution**" to both parties to confirm the agreement.

If the resolution is not accepted by both parties, the Director issues a “**statement of no resolution**” to both parties to document the impasse.

A Note on Timing

In most cases, the Department and the project owner must accept or reject a resolution proposed by the Director within 180 days of the appeal date. If both parties agree, this time frame may be extended by 90 days.

8.3.3 Requests to Establish a Dispute Resolution Committee

Oil Sands Royalty Regulation, 1997 (AR 185/97), section 35

In the event that a resolution proposed by the Director is not accepted by both parties, the project owner may request that the dispute be reviewed by a dispute resolution committee (“a Committee”). Only matters which have been subject to appeal (as described in 8.1 above), and for which a statement of no resolution has been issued by the Director (as described in 8.3.2 above), may be referred to a Committee.

A matter cannot be referred to a Committee unless a statement of no resolution has been issued.

Pursuant to *section 35* of the Regulation, a Committee may be established by a Ministerial Order, issued at the request of the Director. The Director will facilitate the establishment of the committee and assist in coordinating its operations.

A request to establish a Committee must be made to the Director (at the address listed in 8.3.1, above) in writing, by an authorized representative of the project owner, and be received within 90 days of the issuance of a statement of no resolution. The request must include the statement of no resolution, a statement of the dispute the applicant wishes the Committee to review, and the reasons for requesting a review by Committee.

The Director will determine whether the request for review by Committee meets the requirements listed above, and may accept or reject the request. He will provide written notice of his acceptance or rejection to the applicant. If the Director finds the request for review to be incomplete, he may request and accept from the applicant any additional information required. This information must be provided within the 90 day period allowed to request the establishment of a Committee after the issuance of the statement of no resolution.

Where a project owner has requested that a matter go to a Committee, the Minister will not make a decision on the issue in dispute until he has received and considered the recommendations of the Committee.

8.3.3.1 Selecting a Committee

If the request is accepted, the Director will require the Department and the applicant to each identify three individuals who have consented to participate as members of

the Committee. The individuals identified cannot be employees of the Department or the applicant, or an affiliate of the applicant. The Department and applicant must also inform the Director of their preferred number of Committee members. This information must be provided within 30 days of the acceptance of the request.

The Director will provide this information to the Minister, and may make recommendations to the Minister on the size and composition of the Committee.

The Minister will determine the size and composition of the Committee. He may choose the members from those names submitted by the Department and applicant, or request that the parties identify additional candidates for consideration. The Minister will establish the Committee within 90 days of the receipt of the information from the Director, unless he determines additional time is required. The Committee will be appointed in accordance with *section 7* of the *Government Organization Act*. Committee members may receive honoraria as determined by the Minister and may be required to take an oath of confidentiality.

8.3.3.2 The Role of the Committee

The function of the Committee is to hear the merits of the request, and to provide the Minister with written recommendations, and the reasons for those recommendations, for his consideration.

The Committee may carry out research and conduct such hearings as necessary to carry out its function. The Ministerial Order establishing a Committee may set out the processes to be followed by the Committee – i.e., whether hearings will be oral or written, and whether the Committee may retain outside experts, etc.

Once the Committee concludes its work, it will prepare a written recommendation for the Minister's review. The recommendation must be supported by the committee's reasons for its proposal and any supporting documentation the Minister may request. The recommendations must be provided to the Minister within 120 days of the Committee's appointment, unless the Minister agrees to an extension.

8.3.3.3 The Minister's Decision

On receiving the Committee's report, the Minister will review and consider its recommendations and make a decision with regard to the matter in dispute.

8.3.3.4 Notification and Publication

Once the Minister has considered the Committee's recommendations and has made his decision on the matter in dispute, the Director will notify the Department and the project owner of the Minister's decision. Both parties will then cooperate to implement the Minister's decision.

If a Ministerial decision based on the recommendation of a Committee affects the interpretation of an oil sands regulation or guideline, which may affect other oil sands project owners, the Department will inform all interested stakeholders via an Information Letter or some other appropriate method.

8.3.3.5 Costs

Costs associated with or incurred by a Committee will be shared equally by the project owner and the Department.

Committee costs may include honoraria for members.

Committee costs associated with dispute resolution are not an allowed cost of an oil sands royalty project.

8.4 Informal Mediation

The Director may also perform an informal review and mediation of a Project's Prior Net Cumulative Balance (PNCB) and pre-payout costs upon the request of the project owner.

Requests for this service should be addressed, in writing, to the Director within 90 days of the receipt of the decision or audit report of which review is sought. The process outlined in section 8.3.1 for requesting an appeal should be followed, and the project owner must pay all disputed royalty amounts assessed by the Department before they file a request for an informal review.

This process is an informal attempt to resolve an issue between a project operator and the Department and will not involve a Committee or result in recommendations to the Minister. If the matter relates to an issue of the Crown's royalty share or a calculation or recalculation of royalty, it can still be disputed through the process outlined in 8.3, "The Dispute Resolution Process".