

Borrow Pits on Public Lands

Operational Guidance Fact Sheet

Effective January 1, 2021

Document intent

The purpose of this Fact Sheet is to provide information on the recent changes to the surface material regulatory framework – also referred to as Borrow Pit regulatory framework.

Oil and gas operators applying for borrow material required for and incidental to their energy resource activities should refer to this document to answer questions related to the updated regulatory system. This document outlines interim processes and will be reviewed, updated and/or archived as information changes. This version of the document is effective as of January 1, 2021.

Background

In April 2020 Cabinet approved regulatory amendments to enable the Alberta Energy Regulator (AER) to issue surface material dispositions (under certain conditions) for oil and gas operators requiring borrow materials to build roads, pads etc. in support of energy resource activities.

Prior to April's regulatory amendments, oil and gas operators could apply to the AER to obtain Temporary Field Authorizations (TFAs) or apply to Alberta Environment and Parks (AEP) for larger excavations for borrow material needs. This system inadvertently favoured multiple smaller TFAs, where one larger pit might be more appropriate. The cumulative impact of multiple small pits rather than one larger pit can result in overall greater fragmentation of the land base, loss or conversion of end land use (e.g., forest cover to water-filled pit), delays in reaching final reclamation or an end land use state, and potentially larger cumulative industrial footprint.

The regulatory framework changes were intended to address these gaps and to ensure surface material extraction is fair and consistent regardless of the regulator.

The oil and gas industry identified this work as an opportunity to reduce red tape. The jurisdiction changes

will result in administrative efficiency for oil and gas operators.

What the AER can regulate

As of January 1, 2021 the AER will be able to review and make decisions on surface material dispositions that support borrow needs associated with energy resource activities, subject to these conditions:

- Only sand, silt or non-manufacturing clay materials are removed; and,
- Material is not for sale and used only in respect of an operator's energy resource activity.

If a borrow pit does not meet these criteria, AEP is the regulatory authority. The Public Lands Administration Regulations Tables A1 and A2 can be referenced for additional details on the activities authorized by AEP and the AER.

On and after January 1, 2021, surface material disposition applications for borrow required for and incidental to energy resource activities, and that meet the conditions above, will be directed to the AER for review – including applications for new borrow pits, amendments to existing dispositions and applications for reclamation certificates.

Application Requirements

The application, operating and reporting requirements, and reclamation obligations for surface material disposition applications will be consistent across AEP and the AER. Operators should use the existing requirements available in the [Guidelines for Acquiring Surface Material Dispositions on Public Land](#).

Submitting Applications

Applicants will continue to submit applications using the existing AEP process and systems until the AER OneStop solution is released:

1. Applicant submits the application through the Electronic Dispositions System (EDS).

2. The AER posts the application on the Public Notice of Application system.
3. The AER reviews the application and, if necessary, works with the applicant to address any information gaps.
4. The AER makes a decision to either approve or deny the application and informs AEP.
5. Charges associated with the application are assessed.
 - i. For surface material licences, AEP assesses invoices and collects royalties.
 - ii. AER assesses and collects reclamation security.
6. Upon receipt of charges and security from the applicant – the AER issues the surface material disposition.

Royalties

All surface material disposition holders, regardless of the regulator (AEP or the AER), are required to pay royalties to the Government of Alberta on an annual basis for surface materials removed from public land.

[Ministerial Order 01/2020: Public Lands Fees, Rents and Other Amounts Payable](#) outlines the fees that apply to all surface material disposition holders.

Surface material lease holders are required to submit an annual return report to assist in calculating the appropriate amount of royalty. AEP uses the EDS to electronically accept these reports – forms are available on the AEP website: <https://www.alberta.ca/alberta-environment-and-parks-land-forms.aspx>.

The process for submitting royalty payments is the same for both surface material licences and surface material leases although the timing for submission is different.

- Surface material licence royalties are collected up front – during the application phase.
- Surface material lease royalties are collected on an annual basis (prior to January 31) – operators are required to provide:
 - the volume of surface material removed the previous year based on volumes removed from:
 - January 1 to March 31 and,
 - April 1 to December 31
 - an estimate of the volume of surface materials to be removed from January 1 to March 31 of the next year.

NOTE: All surface material Annual Returns are subject to audit. Under Section 118 of the Public Lands

Administration Regulation (PLAR), operators must maintain books and records substantiating its Annual Returns.

Crown Charges

The province collects crown charges (timber damage assessment, trapper compensation, and rental charges etc.) that will be invoiced by AEP following issuance of the disposition.

Reclamation Security

All surface material disposition holders, regardless of the regulator (AEP or the AER), are required to post reclamation security. Security will be held until a reclamation certificate is issued for the activity.

The AER will assess, collect and return reclamation security for files it manages. Instructions on how to submit reclamation security are included in a letter provided by the AER prior to issuance of a decision.

Non-Compliance

The AER will be responsible for compliance on new and existing energy associated borrow pit activities as of January 1, 2021. AEP will be maintaining jurisdiction on active compliance files.

Non-Borrow Material

The AER's authority for surface material does not extend to non-borrow material, therefore, applications for borrow material should be placed where there is a low likelihood of non-borrow material presence. If applications are planned for areas that have characteristics that may be associated with non-borrow material presence, the prospective applicant may be asked to conduct exploration prior to submitting an application. Please contact the appropriate regulator to discuss.

It is understood that occasionally incidental non-borrow material can be intercepted during the excavation activity. When this occurs the holder would need to contact the AER to determine the appropriate next steps.

Resources

Additional resources can be found on the [AER's website](#) or by contacting the AER's Customer Contact Centre: Phone: 403-297-8311 | Toll-free: 1-855-297-8311
Inquiries@aer.ca