

MINING BLOG

DIAMOND ROYALTIES IN ONTARIO

The Province of Ontario introduced a diamond mining royalty in 2007 pursuant to amendments to the *Mining Act* (Ontario) (the "Act"). The royalty is contained in Part VIII of the Act "Royalty on Diamonds" (section 154) and is accompanied by Regulation 323/07.

The diamond royalty was established in direct response to the establishment of the De Beers open pit Victor Mine, located in the James Bay Lowlands of Northern Ontario, approximately 90 km west of the coastal community of Attawapiskat First Nation. The Victor Mine was Ontario's first diamond producer, which commenced production in 2008.

The diamond royalty was contentious when it was implemented. It replaced a 5% mining royalty rate applicable under Ontario's remote location provision and was enacted after the bulk of Victor's capital expenditures of approximately \$1 billion had been incurred.

The Ontario diamond royalty is calculated on net profit less allowable deductions, paralleling the regulations enacted under the *Mining Act* (Canada). The rate in Ontario is an effective 13%, graduated between 5% to 14% up to \$45 million production value. The Regulation provides for a valuation formula, diamond royalty valuer process, deductions and allowances, return and payment, a dispute mechanism and penalties.

The royalty is payable on or before the last day of the 4th month following the fiscal year end of the diamond mine. The operator is required to deliver to the Minister a diamond royalty return containing an estimate of the royalty for which the operator is liable and setting out, inter alia, the names and addresses of facilities to which diamonds were sent during the fiscal year from the diamond mine for valuation or processing, the weight and value of the diamonds produced as part of the output of the diamond mine during the fiscal year and any costs, deductions and allowances claimed under section 7.

Section 7 of the Regulation contains a detailed list of costs that may be deducted in respect of costs incurred by the operator of the diamond mine including, inter alia, sorting, cleaning, valuing, marketing costs; insurance, storage, handling and transportation costs; mining and processing costs; repair and maintenance costs at the diamond mine; certain exploration costs; and subject to certain adjustments, a depreciation allowance in respect of the depreciable assets of the diamond mine and the depreciable assets of any facilities in Ontario that are used for processing diamonds produced as part of the output from the diamond mine, in an amount not exceeding the undeducted balance of the cost of those depreciable assets at the end of the fiscal year.



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