

MN302*

Mining Act 1978

Mining Amendment Regulations (No. 4) 2000

Made by the Administrator in Executive Council.

1. Citation

These regulations may be cited as the *Mining Amendment Regulations (No. 4) 2000*.

2. Commencement

These regulations come into operation on 1 July 2000.

3. The regulations amended

The amendments in these regulations are to the *Mining Regulations 1981**.

[* *Reprinted as at 18 March 1996.*

For amendments to 1 June 2000 see 1999 Index to Legislation of Western Australia, Table 4, pp. 190-1, and Gazette 21 January, 8 February and 14 April 2000.]

4. Regulation 85 replaced by regulations 85 and 85AA

Regulation 85 is repealed and the following regulations are inserted instead —

“

85. Interpretation of Division

- (1) In this Division, unless the contrary intention appears —

“**concentrate**” means the product of a process of extraction of metal or a metallic mineral from mineral ore that results in substantial enrichment of the metal or metallic mineral concerned;

“**nickel by-product**” means a by-product or co-product of nickel mining or processing;

“**quarter**” means any one of the 3 monthly periods of any year ending on 31 March, 30 June, 30 September or 31 December;

“**realised value**”, in relation to a mineral other than gold, means —

- (a) if exported, the realised value of the mineral f.o.b.; or
- (b) if not exported, the realised value of the mineral less any cost incurred by the person liable to pay the royalty in transporting the mineral, in the form in which it was sold, to the purchaser;

“**related corporation**” means a corporation that is, under section 50 of the Corporations Law, said to be related for the purposes of that Law.

- (2) In this Division a reference to a mineral includes a reference to a material containing that mineral.

85AA. Effect of GST etc. on royalties

- (1) For the purposes of this Division, a reference to a realised value, or a price, of a mineral is to be treated as a reference to that value or price, reduced by an amount

equal to the net GST (if any) payable on the supply to which the value or price relates.

- (2) For the purposes of this Division, a reference to the value of a mineral at a particular point in its production (other than its supply), or in a particular form, is to be treated as a reference to that value, reduced by an amount equal to the amount of GST that would be payable if the mineral were supplied at that point, or in that form.
- (3) If, when determining a value or price of a mineral (for the purposes of this Division), an amount (an **“expense”**) that relates to obtaining that mineral may be deducted from another amount, the amount that may be deducted is reduced by an amount equal to the net input tax credit (if any) that arises in relation to the expense.
- (4) The **“net input tax credit”** that arises in relation to an expense is —
 - (a) the input tax credit that arises in relation to that expense; plus
 - (b) the sum of any decreasing adjustments in relation to that expense; minus
 - (c) the sum of any increasing adjustments in relation to that expense.
- (5) In this regulation, **“decreasing adjustment”**, **“GST”**, **“increasing adjustment”**, **“input tax credit”**, **“net GST”** and **“supply”** have the respective meanings given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

”.

5. Regulation 86 amended

The Table to regulation 86 is amended as follows:

- (a) in the item relating to coal, in column 3 —
 - (i) by deleting “1981;” and inserting instead —
“ 1981. ”;
 - (ii) by deleting the passage beginning “except that the rate for coal” and ending “under this formula.”;
- (b) in the item relating to cobalt —
 - (i) in column 2, by deleting “2½%”;
 - (ii) in column 3, by inserting —

“

The rate is —

- (a) if sold as a concentrate, 5% of the realised value;

- (b) if sold in metallic form, 2½% of the realised value; or
- (c) if sold as a nickel by-product —
 - (i) in the period beginning on 1 July 2000 and ending on 30 June 2005 —
 - (I) 2½% of the realised value; or
 - (II) if an election is made under regulation 86AB(2), the rate calculated in accordance with the formula set out in subparagraph (ii);
 - (ii) after 30 June 2005, the rate calculated in accordance with the following formula —

$$P \times \frac{U}{100} \times \frac{2.5}{100} = \$R \text{ per tonne}$$

Where —

- P = the gross cobalt metal price per tonne f.o.b. or its computed equivalent used for the purpose of calculating the actual sale price of cobalt metal in the nickel by-product (under usual conditions of sale, without special discounts);
- U = the number of units per hundred of cobalt metal in the nickel by-product sold;
- R = the royalty.

”;

- (c) in the item relating to copper —
 - (i) in column 2, by deleting “5%”;
 - (ii) in column 3, by inserting —

“

The rate is —

- (a) if sold as a concentrate, 5% of the realised value;
- (b) if sold in metallic form, 2½% of the realised value; or
- (c) if sold as a nickel by-product after 30 June 2005, the rate calculated in accordance with the following formula —

$$P \times \frac{U}{100} \times \frac{2.5}{100} = \$R \text{ per tonne}$$

Where —

- P = the gross copper metal price per tonne f.o.b. or its computed equivalent used for the purpose of calculating the actual sale price of copper metal in the nickel by-product (under usual conditions of sale, without special discounts);
- U = the number of units per hundred of copper metal in the nickel by-product sold;
- R = the royalty.

”;

- (d) in the item relating to lead —
 - (i) in column 2, by deleting “5%”;
 - (ii) in column 3, by inserting —

“

The rate is —

- (a) if sold as a concentrate, 5% of the realised value;
or
- (b) if sold in metallic form, 2½% of the realised value.

”;

- (e) in the item relating to zinc —
 - (i) in column 2, by deleting “5%”;
 - (ii) in column 3, by inserting —

“

The rate is —

- (a) if sold as a concentrate, 5% of the realised value;
or
- (b) if sold in metallic form, 2½% of the realised value.

”.

6. Regulation 86AB inserted

After Regulation 86AA the following regulation is inserted —

“

86AB. Optional royalty rate for cobalt sold as a nickel by-product

- (1) In this regulation —
 - “**optional royalty period**” means the period beginning on 1 July 2000 and ending on 30 June 2005;
 - “**optional royalty rate**” means the rate of royalty calculated in accordance with the formula set out in paragraph (c)(ii) of the item relating to cobalt in column 3 of the Table to regulation 86.
- (2) A person liable to pay royalties for cobalt during the optional royalty period may elect, in writing, to pay the optional royalty rate in respect of all cobalt sold as a nickel by-product by that person.
- (3) An election under subregulation (2) is to be made —
 - (a) in the manner and form approved by the Director General of Mines; and
 - (b) before the end of the first quarter in respect of which the optional royalty rate is to apply.
- (4) An election under subregulation (2) cannot be revoked.
- (5) Despite anything in regulation 86, if a person makes an election under subregulation (2), no royalty is payable

in respect of the first 300 tonnes of cobalt sold as a nickel by-product by that person during —

- (a) the period beginning on the first day of the first quarter in respect of which the optional royalty rate applies and ending on the next 30 June; or
 - (b) any subsequent financial year in the optional royalty period.
- (6) If an election is made under subregulation (2) by 2 or more persons who are —
- (a) the holders of, or applicants for, the same mining tenement; or
 - (b) related corporations,

then those persons are taken to be the same person for the purposes of subregulation (5).

”.

7. Regulation 86A amended

Regulation 86A is amended as follows:

- (a) after paragraph (a) by deleting “or”;
- (b) by deleting the full stop at the end of paragraph (b) and inserting instead a semicolon;
- (c) after paragraph (b) by inserting —
“
or
(c) the quarter during which, in the case of nickel or a nickel by-product the royalty for which is not based on realised value, the mineral was sold.

”.

By Command of the Administrator,

M. C. WAUCHOPE, Clerk of the Executive Council.