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MINING ACT 1978

**MINING (ELLENDALE
DIAMOND ROYALTIES)
REGULATIONS 2002**

Western Australia

Mining (Ellendale Diamond Royalties) Regulations 2002

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Mining Act 1978

Mining (Ellendale Diamond Royalties) Regulations 2002

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Mining (Ellendale Diamond Royalties) Regulations 2002*.

2. Commencement

These regulations come into operation on the sale date.

3. Interpretation

- (1) In these regulations, unless the contrary intention appears —
- “**above zero profit**”, in relation to a year, means the amount (if any) by which the sales value for that year exceeds the allowable deductions for that year;
- “**allowable capital expenditure**” means expenditure of a capital nature properly incurred by the tenement holder being —
- (a) expenditure on plant and equipment owned by the tenement holder and used by the tenement holder for diamond mining and recovery within the Ellendale mining lease;

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- (b) expenditure on buildings, plant and equipment owned by the tenement holder and used by the tenement holder for sorting rough diamonds in the State;
- (c) expenditure on site preparation, mine development and buildings and other improvements within the Ellendale mining lease; and
- (d) such other expenditure as the Minister may determine to be reasonable and necessary for the diamond mining, recovery and sorting operations of the tenement holder within the Ellendale mining lease;

“allowable deductions” means —

- (a) operating costs properly incurred by the tenement holder (excluding those cost provisions not allowed under the *Income Tax Assessment Act 1997* of the Commonwealth) and directly attributable to the mining, recovery and sorting of rough diamonds from the Ellendale mining lease and such other costs as the tenement holder demonstrates, to the reasonable satisfaction of the Minister, are reasonably and necessarily incurred by the tenement holder in connection with that mining, recovery and sorting;
- (b) such apportionment as the Minister may approve of costs reasonably attributable to, or reasonably and necessarily incurred by, the tenement holder but not wholly incurred in connection with or applicable to the mining, recovery, sorting and marketing of rough diamonds from the Ellendale mining lease;
- (c) direct marketing and selling expenses properly incurred by the tenement holder in connection with and prior to the sale of sorted rough diamonds from the Ellendale mining lease and such other expenses which the tenement holder demonstrates to the reasonable satisfaction of the Minister are reasonable and necessary in connection with that sale;

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- (d) transport and insurance costs relating to rough diamonds from the Ellendale mining lease properly incurred by the tenement holder prior to the sale, transfer, disposal or processing of those diamonds;
- (e) expenditure on exploration for diamonds within the Ellendale mining lease —
 - (i) reasonably incurred by the tenement holder before the sale date and approved by the Minister for the purposes of this definition; or
 - (ii) reasonably incurred by the tenement holder after the sale date;
- (f) the value of unsold sorted rough diamonds from the Ellendale mining lease which the tenement holder had on hand at the beginning of a year less the value of unsold sorted rough diamonds from that tenement which the tenement holder has on hand at the end of that year;
- (g) depreciation of allowable capital expenditure; and
- (h) actual interest costs and borrowing expenses incurred by the tenement holder on such borrowings as the Minister approves for the purposes of this definition on the basis of information provided by the tenement holder with respect to the financing of its operations and the repayment of loans,

but does not include —

- (i) royalties, except where payable under a written law other than the Act or the *Mining Regulations 1981*;
- (j) taxes on or affecting income or profits; or
- (k) any development allowance under the *Income Tax Assessment Act 1936* of the Commonwealth;

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“allowable f.o.b. revenue costs” means the following costs directly incurred in connection with the sale, transfer or disposal of sorted rough diamonds from the Ellendale mining lease to the extent that those costs are reasonably and necessarily incurred and paid by the tenement holder —

- (a) insurance and freight ex Perth;
- (b) selling and marketing expenses;
- (c) such other costs and charges as the Minister considers reasonable in respect of any shipment or sale;

“depreciated value” means the cost to the tenement holder of the assets on which allowable capital expenditure is incurred less the total amount deducted from that cost by way of depreciation under regulation 8;

“Ellendale mining lease” means mining lease number 04/372;

“f.o.b. revenue”, in relation to a year, means the sales value for that year less the allowable f.o.b. revenue costs for that year;

“offset amount” means the amount or amounts which the tenement holder may be entitled to offset against future royalty payments under regulation 7;

“processing” means all or any of the following activities carried out in relation to sorted rough diamonds —

- (a) the physical and chemical treatment of diamonds;
- (b) the cutting and polishing of diamonds;
- (c) all other processes relating to, and treatment of, diamonds which increase their market value,

but does not include the sorting of rough diamonds;

“sale date” means the sale date as defined in clause 4 of the second supplementary agreement within the meaning of the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981*;

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“sales value” means —

- (a) the greater of —
 - (i) the gross sales revenue from the sale, transfer or disposal by the tenement holder on an arms-length basis of sorted rough diamonds from the Ellendale mining lease; and
 - (ii) the fair and reasonable market value on an arms-length basis of sorted rough diamonds from the Ellendale mining lease sold, transferred or disposed of by the tenement holder as determined by the Minister after consultation with the tenement holder;
- and
- (b) in respect of sorted rough diamonds processed by the tenement holder, the fair and reasonable market value prior to processing as determined by the Minister after consultation with the tenement holder, having regard to any current sales on an arms-length basis by the tenement holder of comparable categories of sorted rough diamonds and, where sorted rough diamonds are processed in the State by the tenement holder, having regard to the allowable f.o.b. revenue costs;

“tenement holder” means the holder of the Ellendale mining lease;

“year” means a calendar year and, if the sale date is a day other than 1 January, includes the period beginning on the sale date and ending on the next 31 December.

- (2) For the purposes of paragraph (f) of the definition of “allowable deductions” in subregulation (1) —

“value”, in relation to unsold sorted rough diamonds, means an amount equal to the direct cost of production of the diamonds (excluding depreciation, overheads, interest and financing costs).

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4. Notice of sale date

As soon as practicable after the sale date the Minister is to cause notice of that date to be published in the *Gazette*.

5. Effect of GST etc. on royalties

- (1) In this regulation, “**decreasing adjustment**”, “**GST**”, “**increasing adjustment**”, “**input tax credit**” 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.
- (2) For the purposes of these regulations, a reference to the value of diamonds at a particular point in their production (other than their 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 diamonds were supplied at that point, or in that form.
- (3) If, when determining a value of diamonds for the purposes of these regulations, an amount (an “**expense**”) that relates to obtaining those diamonds 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 that 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.

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- (1) Where diamond is obtained from the Ellendale mining lease, royalties are to be paid by the tenement holder.
- (2) Subject to subregulation (3), the rate of royalty payable each year for diamond obtained from the Ellendale mining lease is 22.5% of the above zero profit for that year.
- (3) Where, in respect of a year, the royalty payable under subregulation (2) is less than 7.5% of the f.o.b. revenue for that year or there is no above zero profit for that year, the rate of royalty payable is 7.5% of the f.o.b. revenue for that year.

7. Offset amounts

- (1) Where a royalty has been paid at the rate specified in regulation 6(2), the tenement holder may offset against future royalties payable, in the manner set out in subregulation (2) —
 - (a) an amount equal to the amount by which that royalty exceeds 22.5% of the above zero profit for the year in respect of which that royalty was paid; or
 - (b) if there is no above zero profit for that year, the amount of that royalty.
- (2) For the purposes of subregulation (1) —
 - (a) in any year in which three quarters of 22.5% of the above zero profit for that year is equal to or greater than 7.5% of the f.o.b. revenue for that year, one quarter of 22.5% of the above zero profit for that year or such lesser amount as is equal to the offset amount is to be retained by the tenement holder and applied in reduction or retirement as the case may be of the offset amount;
 - (b) in any year in which —
 - (i) 22.5% of the above zero profit for that year exceeds 7.5% of the f.o.b. revenue for that year; and

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- (ii) three quarters of 22.5% of the above zero profit is less than 7.5% of the f.o.b. revenue,

the amount by which 22.5% of the above zero profit for that year exceeds 7.5% of the f.o.b. revenue or such lesser amount as is equal to the offset amount is to be retained by the tenement holder and applied in reduction or retirement as the case may be of the offset amount.

8. Depreciation of allowable capital expenditure

- (1) Depreciation of allowable capital expenditure is to be calculated as follows —

- (a) where at the end of a year the estimated remaining life of the mine at which the tenement holder is carrying on diamond mining operations within the Ellendale mining lease (or, where there is more than one such mine the estimated remaining life of the mine with the largest production) exceeds 5 years, by applying a rate of 20% to the depreciated value of allowable capital expenditure; and
- (b) where at the end of a year the mine with the largest production has an estimated life of 5 years or less, by dividing, each year thereafter, the depreciated value of allowable capital expenditure by the remaining estimated life of that mine.

- (2) For the purposes of subregulation (1) —

- (a) the total amount of depreciation claimed in respect of any asset shall not exceed the cost of that asset; and
- (b) the depreciated value of allowable capital expenditure shall be reduced in respect of any asset sold or otherwise disposed of by the proceeds of sale or disposal (if any).

9. Losses

- (1) Where, in relation to a year, the allowable deductions exceed the sales value a loss is deemed to have been incurred by the

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tenement holder in respect of that year and the amount of the loss is deemed to be the amount by which the allowable deductions for that year exceed the sales value for that year.

- (2) So much of the losses incurred in any one of the 7 years preceding a particular year as has not been allowed as a deduction from sales value in any one of those years is to be allowed as a deduction from sales value in calculating above zero profit for that year and, for that purpose, the ageing of the balance on losses carried forward is to be determined on a first in first out basis.

10. Quarterly royalty return and payment

- (1) In this regulation —

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

“royalty estimate” means the estimate referred to in subregulation (2)(d) and any revised estimate under subregulation (3).

- (2) The tenement holder must, within 14 days after the end of each quarter, forward to the Department at Perth a royalty return, in a form approved by the Minister, showing in respect of that quarter —
- (a) the quantity of, value of, and allowable f.o.b. revenue costs in respect of, diamonds on which royalty is payable;
 - (b) such other details (including estimated costs of production and itemised deductions) as the Minister may require;
 - (c) the opening and closing balance of stocks on hand; and
 - (d) an estimate of the amount of royalty payable at the rate specified in regulation 6(2).

Penalty: \$5 000.

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- (3) The Minister may, after consultation with the tenement holder, require the tenement holder to revise the royalty estimate on the basis of actual sales during the quarter concerned, and the tenement holder must revise the estimate accordingly.
- (4) The tenement holder must pay a royalty in the amount of the royalty estimate to the Department at Perth within 45 days after the end of the quarter to which the royalty estimate relates.

11. Annual royalty return and adjustment of royalty payment

- (1) The tenement holder must, within 4 months after the end of each year, forward to the Department at Perth a royalty return, in a form approved by the Minister —
 - (a) showing in full the details required to calculate the royalty payable for that year, including —
 - (i) income during that year;
 - (ii) expenditure during that year; and
 - (iii) the quantity and value of all diamonds sold, transferred or otherwise disposed of during that year;
 - and
 - (b) itemising the basis of apportionment of any indirect costs that may be approved by the Minister as allowable deductions.

Penalty: \$5 000.

- (2) Where a return under subregulation (1) shows that the total amount paid under regulation 10(4) for the year to which the return relates is —
 - (a) less than the royalty payable for that year, the difference is to be paid when the return is forwarded under subregulation (1); or

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- (b) greater than the royalty payable for that year, the amount overpaid may be deducted by the tenement holder from the next payment under regulation 10(4).

12. Minister to consult tenement holder on certain matters

Where the Minister is required to be satisfied as to, or to approve, any costs or expenses, or the calculation or apportionment of any costs or expenses, in connection with allowable deductions or sales value, the Minister is to consult with the tenement holder and have regard to any relevant provisions of the *Income Tax Assessment Act 1997* of the Commonwealth.

By Command of the Governor,

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

