

Frequently Asked Questions

FAQs about Manual 008: Oil Sands and Coal Exploration Application Guide

August 2014

Q1. Have the rules, regulations, or guidelines changed for oils sands exploration (OSE) programs or coal exploration programs (CEPs)?

A1. No, the general rules and guidelines have not changed. With the formation of the AER some of the processes have altered. This guideline is an attempt to explain the processes and to streamline them so that decisions on applications can be made in the most efficient and effective manner possible.

Q2. What changes have been made to make the process more efficient?

A2. To provide some certainty to the process the AER has announced that decisions on complete CEP or OSE program applications under the *Public Lands Act*, without any statements of concern (SOCs), can be expected in 60 business days. However, due to the unique issues around winter drilling periods, the AER has committed to deciding no later than October 31 on all complete OSE applications submitted before September 15.

OSE and CEP programs can now also be approved for terms of five years: two years for the operations and three years for reclamation.

To allow the AER to make timely and efficient decisions on OSE and CEP applications, applications must be submitted as a complete package. Incomplete applications will not be reviewed.

To allow the AER to review program options and ensure project flexibility with fewer amendments, it is important that applicants consult with First Nations and other stakeholders on all possible operational options. They may then apply for this operational flexibility.

Caribou protection plans (CPPs) are now reviewed and approved by the AER. CPPs may be submitted or amended at any time. An accepted CPP and reference number are required before an OSE program or CEP can be approved.

Q3. When will these new processes and opportunities be available? What happens to applications that have already been submitted for the upcoming winter drilling season (e.g., before industry is informed that it can apply for a five-year program)?

A3. These new processes are available to industry starting immediately.

For applications that have already been submitted, companies are to contact the AER land use officers (LUOs) to discuss their applications. Any changes to the land area identified in an application already submitted to the AER will require an amendment and will need to be reposted for public notification under section 31 of the *Responsible Energy Development Act (REDA)*.

Q4. What does the AER consider a complete exploration application?

A4. A complete application includes all *Code of Practice for Exploration Operations* notification requirements. This includes any required consents from previous holders of rights on public lands, including forestry management agreement holders, coniferous timber licence holders, deciduous timber licence holders, and grazing-lease holders.

Q5. What notifications and applications are required for an OSE program or CEP?

A5. Notification as directed under the *Code of Practice for Exploration Operations* is always necessary.

If the program is on public land and is not within a mineral surface lease (MSL), the information needed to fulfill the notification requirements must be included with the application, made under section 20 of the *Public Lands Act*.

If the program is an OSE and is outside of a “mine site” as defined by the *Oil Sands Conservation Rules*, an evaluation well licence application must also be submitted under *Directive 056: Energy Development Applications and Schedules* after the notice of decision under the *Public Lands Act* is granted for the OSE program. If the upfront consultation with stakeholders was done in accordance with *Directive 056* requirements, the well licence application will be considered “routine.”

If the program is a CEP and includes drill holes deeper than 150 metres or an excavation to explore for coal, a permit under section 10 of the *Coal Conservation Act* is also required.

Q6. What is the public notification process that takes place?

A6. Industry is expected to consult as completely and specifically as possible before applying for an OSE or CEP through the *Public Lands Act*. Proper consultation will, hopefully, allow it to address stakeholder concerns before applying. Once the application is received, public notice will be posted on the AER website for 30 days. When a notice of decision to allow an OSE is provided to a company, the company may submit its evaluation well application under *Directive 056*. Although public notice of this application will also be placed on the AER website, OSE program approval will be considered to have satisfied the landowner nonobjection requirement under *Directive 056*, and the application will be reviewed as “routine.”

Q7. Does First Nations consultation adequacy, as approved by the Aboriginal Consultation Office (ACO), need to be complete before submitting an OSE or CEP application under the *Public Lands Act*?

A7. First Nations consultation adequacy does not need to be complete before submitting the application. However, no regulatory decision will be made before the First Nations Consultation is deemed adequate. It is strongly suggested that industry consult the Aboriginal Consultation Office (ACO) and begin consultation as early as possible to allow this process to be completed on time.

Q8. What is the purpose of an oil sands exploration program or coal exploration program?

A8. An OSE program or a CEP determines the presence of oil sands or coal resources and evaluates the quality of the resource. Geotechnical core holes, monitoring wells, and disposal wells are not included in OSE programs or CEPs.

Q9. What regulations are associated with OSE programs and CEPs?

A9. Oil sands and coal exploration activity is authorized by the Code of Practice for Exploration Operations under the Environmental Protection and Enhancement Act, the Public Lands Act, the Oil and Gas Conservation Act, the Oil Sands Conservation Act, and the Coal Conservation Act.

If an OSE program or CEP is on private land, notification to the AER is required under the *Code of Practice for Exploration Operations*.

If an OSE program or CEP is on public land, notification to the AER is required under the *Code of Practice for Exploration Operations*, and an approval notice of decision is required under section 20 of the *Public Lands Act*. For an OSE program, an evaluation well licence is required under section 11 of the *Oil and Gas Conservation Act*. This requirement does not apply if the evaluation well is drilled within a mine site approved in accordance to the *Oil Sands Conservation Act*.

For a CEP where drill holes will be deeper than 150 metres (m) or where land will be excavated to explore for coal, a permit is required under section 10 of the *Coal Conservation Act*.

Q10. Are subsurface mineral rights required for an OSE program or CEP?

A10. For an OSE program, an applicant must hold the subsurface bitumen rights or prove the right to evaluate the bitumen before submitting a notification to the AER under the *Code of Practice for Exploration Operations* or before submitting an application to the AER under section 20 of the *Public Lands Act*. If a company doesn't hold the subsurface rights, written documentation of the right to explore must be included in the notification under the code.

For a CEP, an applicant may apply without holding the subsurface coal rights or proof of the right to evaluate the coal resource.

Q11. When is a notification required for an OSE program or CEP versus an application?

A11. If the OSE program or CEP is on private land or within a mineral surface lease, notification under the *Code of Practice for Exploration Operation* is required.

If the OSE program or CEP is on public land that does not have an MSL, the notification required under the *Code of Practice for Exploration Operation* must be included in an application under section 20 of the *Public Lands Act*.

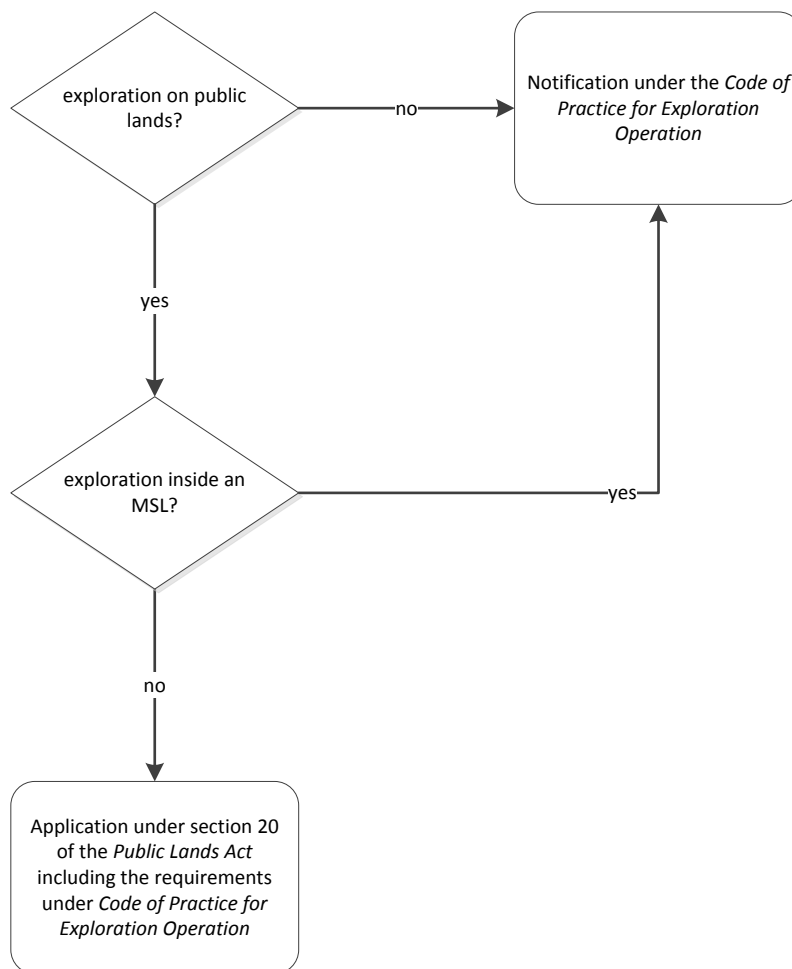


Figure 1. OSE program or CEP notification versus application: decision tree

Q12. What is required for an OSE program or CEP on private land?

A12. Section 3.2.1 of the *Code of Practice for Exploration Operations* prohibits anyone from beginning or continuing exploration on private land without the written consent of all registered owners of that land.

Once written consent is obtained, a notification in accordance with the *Code of Practice for Exploration Operations* must be submitted to the AER at epea.wa.applications@aer.ca.

Q13. What is required for an OSE program or CEP on public land?

A13. If the OSE program or CEP is within an MSL, a notification to the AER in accordance with the *Code of Practice for Exploration Operations* must be submitted to epea.wa.applications@aer.ca.

If the OSE program or CEP is not within an MSL, the application to the AER must be in accordance with the *Code of Practice for Exploration Operations* and must include

- a description of the exploration activity to show that the requirements of the *Code of Practice for Exploration Operations* are met;
- consent from other surface rights holders;
- maps and GIS shape files (at the appropriate scale for assessment);
- the status of the ACO's decision on the adequacy of First Nation consultation, and
- a caribou protection plan acceptance number.

Q14. What is the process for getting a caribou protection plan acceptance number?

A14. A CPP may be submitted by e-mail at any time to the appropriate *Public Lands Act* field centre. Field centre contact information is available at www.aer.ca/about-aer/contact-us/land-use-contacts.

A CPP can be amended at any time. The process for amending an approved CPP is to e-mail the amendment to the appropriate *Public Lands Act* field centre.

Q15. Are there any file size limitations for the submission of GIS maps?

A15. Maps submitted to the AER should be less than 10 MB.

Q16. Is an evaluation well licence required for a CEP?

A16. No. If the CEP includes drill holes deeper than 150 m or an excavation to explore for coal, the *Coal Conservation Act* requires a permit under section 10. Permit application made under section 10 of the *Coal Conservation Act* must be submitted to coalmining.applications@aer.ca.

Q17. Is an evaluation well licence required for exploration within an oil sands mining area?

A17. No. Under part 2, section 4(5) of the *Oil Sands Conservation Rules*, an evaluation well licence is not required for evaluation wells drilled within a mine site approved under the *Oil Sands Conservation Act*.

Q18. What is the definition of a mine site?

A18. Under the *Oil Sands Conservation Rule*, “mine site” means an area within which mining is being done or an area that is approved for mining under the *Oil Sands Conservation Act*, and includes a stockpile area, a discard site, and any area containing facilities or equipment used for the mining operation.

Q19. When can an evaluation well licence application be submitted?

A19. Evaluation well licence applications can be submitted under *Directive 056* after a notice of decision under the *Public Lands Act* is granted for the OSE program. In addition to fulfilling the requirements under *Directive 056*, an evaluation well licence application under the *Oil and Gas Conservation Act* must identify the OSE program number and expiry date.

Well licence applications are expected to be submitted after the OSE program is approved. A decision will not be made on a well licence until a notice of decision is made on an OSE program.

Q20. How long can evaluation well licences be issued for?

A20. An oil sands evaluation well licence can be issued for up to two years. An applicant must request this term at the time of the *Directive 056* application by attaching a cover letter that identifies the OSE program approval number and expiry date.

Q21. What is the role of the land use officers?

A21. LUOs are the primary contact for OSE program and CEP operators. LUOs can help operators

- with day-to-day operations and communications,
- with technical issues related to the exploration program,
- understand the process for making minor amendments to existing approvals,
- manage OSE program or CEP condition, and
- with questions about caribou protection plans.

Q22. How can I contact the AER’s regional land use officers?

A22. The AER regional land use e-mail addresses are on the AER website:
<http://www.aer.ca/about-aer/contact-us/land-use-contacts>.

Q23. How do I amend an approved OSE program or CEP?

A23. Use a disposition operational approval (DOA) for any changes to approved OSE programs or CEPs. A DOA can be used for minor access or site relocations beyond those previously assessed and approved where the disturbance is minimal, low impact, and temporary in nature. For example, where the surface area disturbed is less than 0.5 ha and the activity under the DOA will be completed in less than one year.

The DOA cannot include new access or new sites. A DOA should be issued for the minimum time required to complete the activity.

The mechanism to apply for a DOA is to use the temporary field authorization form.

Q24. How can timing restrictions associated with an approved OSE program or CEP be changed?

A24. A timing restriction change must be approved in writing by the LUO. It is at the discretion of the LUO to allow work within restricted timing windows and buffers. This will likely require the submission of a mitigation plan.

Q25. Can evaluation well locations be moved?

A25. For undrilled evaluation wells with an existing well licence, the location will need to be amended through the submission of a *Directive 056* well licence amendment application.

A change in an evaluation well's location on public land can be made without an exploration program application under the *Public Lands Act* if the change matches what was previously assessed and approved by the range or flexibility granted through the original program application. Changes beyond what was previously assessed and approved require an exploration program application, including further stakeholder notification and a First Nation consultation decision from the ACO.

Q26. How are OSE programs or CEPs cancelled?

A26. To cancel an OSE program or CEP on public lands where no disturbance has taken place, send a cancellation application under the *Public Lands Act* electronically to aersurfacesctivityapplication@aer.ca clearly identifying the request to cancel the OSE program or CEP and declaring that no disturbance has taken place. Before making a decision on the cancellation request, an LUO will confirm that no disturbance has taken place.

Q27. What happens if the OSE program or CEP is not fully completed?

A27. Under section 7.1.4 of the *Code of Practice for Exploration Operations*, the OSE program or CEP operator must provide an annual report beginning one year after the date of notification or application to the AER.

For OSE programs or CEPs on public lands, the notice of decision holder must provide a report with the disposition numbers for all disturbed areas that have been converted to permanent dispositions and indicating the areas that have not been disturbed.

Abandonment and reclamation activity and reporting must also comply with the Oil and Gas Conservation Act, Coal Conservation Act, and Code of Practice for Exploration Operations.

Q28. Can OSE programs or CEPs be transferred?

A28. For OSE programs and CEPs on public lands, section 149 of the *Public Lands Administration Regulation* prohibits the transfer of an OSE program or notice of decision. Well licences issued under *Directive 056* can be transferred in accordance with *Directive 006: Licensee Liability Rating (LLR) Program and Licence Transfer Process*.

Q29. Can temporary field authorizations be used to amend OSE programs or CEPs?

A29. Temporary field authorizations cannot be used to amend an approved OSE program or CEP. However, disposition operational approvals (DOAs) can be used for the following purposes:

- To conduct activities connected with, or incidental to, a notice of decision (whether these activities are within or outside of the existing disposition area)
- To provide a regulatory body's approval of a required submission, plan or document as conditioned within the notice of decision
- To administer a decision to waive or alter certain requirements, conditions or specifics from a notice of decision
- To conduct reclamation even if the authorization is cancelled, expired, or held by another disposition holder

The following DOA conditions also apply:

- A DOA may only be issued when associated with an approved OSE program or CEP.
- A DOA cannot include new access or new sites that require public notification.
- A DOA cannot be used for early entry or for disposal on forested land, although they can be used for entry for reclamation purposes.
- When deciding to use a DOA authorization process, adhere to the following principle: disturbance is minimal, low impact, and temporary in nature.

Q30. When must reclamation requirements be met?

A30. Section 5.2.1 of the *Code of Practice for Exploration Operations* requires that an operator reclaim an exploration operation within two full growing seasons after exploration is completed, and section 5.2.5 requires that the operator apply for a reclamation certificate

within three full growing seasons after exploration is completed. Section 5.2.6 states that exploration operations that have occurred within a mine's *EPEA* approval are exempt from section 5.2.5.

- A31. Reclamation is to be completed considering the 2010 reclamation criteria (updated June 2011) for reclamation of specified land. (<http://environment.alberta.ca/documents/2010-reclamation-criteria-fact-sheet.pdf>)

Failure to complete reclamation within two years or failure to submit an application for a reclamation certificate with three years is a contravention of the *Code of Practice for Exploration Operations*. Contraventions must be reported in accordance with part 7 of the *Code of Practice for Exploration Operations*.

- Q31. What are the regulatory options if not all oil sands evaluation well sites have been reclaimed after three full growing seasons?**

- A32. Where reclamation has not been successful after three years and where appropriate efforts have been made to obtain a reclamation certificate, a miscellaneous lease (MLL) application for reclamation research may be made to the AER to remove those unsuccessful areas from the OSE program or CEP. The operator may then apply for a reclamation certificate for the reclaimed area.

Before making the MLL application to the AER, the company must contact the appropriate AER land use officers to discuss the reclamation status and what attempts have been made to reclaim the sites. Only a few of the oil sands evaluation well sites can be considered through the reclamation research disposition. Companies will need to provide written justification and demonstrate that reasonable efforts were made to reclaim the area and describe why it has not been successful.

The MLL application requires the completion of an MLL application form, and reclamation research must be identified in the form under "purpose." A sketch plan is to be provided with the application. An environmental field report is not required; however, the written documentation and justification for the oil sands evaluation well sites that would be removed from the exploration program must be included.

The term for the MLL for reclamation will be limited to ensure that companies continue to try to get a reclamation certificate.

- Q32. Does this manual supersede Information Letter 2010-01: Application Processing for Oil Sands Exploration and Coal Exploration Programs Standard Operating Procedure?**

- A33. *Manual 008: Oil Sands Exploration and Coal Exploration Application Guide* reflects the current jurisdiction of the AER. Applicants should use the requirements and process described in this manual to ensure a timely decision on any OSE program or CEP application.

Q33. What range of exploration operations may be requested?

A34. Applicants should assess and apply for the possible range of exploration operations, such as roads and well sites, and assess and consult on the impacts within the determined range. The applied-for range must be fully supported by an assessment of the environmental impacts within the entire applied-for range. There is no restriction to the extent of the range that can be applied for as long as the application criteria are met.

Q34. What degree of change would trigger a requirement for an amendment or new application?

A35. An amendment or new application would be required for any changes that were not within the original notice of decision.