

# BILL

## No. 209

### An Act respecting the Saskatchewan Chemical Fertilizer Incentive

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(Assented to )

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

#### Short title

1 This Act may be cited as *The Saskatchewan Chemical Fertilizer Incentive Act*.

#### Definitions

2 In this Act:

“**applicant**” means a corporation that applies for an SCFI eligibility certificate;

“**application**” means an application for an SCFI eligibility certificate;

“**eligible applicant**” means an applicant that has been issued an SCFI eligibility certificate by the minister pursuant to subsection 8(1);

“**eligible chemical fertilizer production**” means all processing of mineral or chemical feedstock to create single or multi-nutrient synthetic fertilizer products, but does not include the manufacturing of potash fertilizer products for which potash is the primary feedstock;

“**existing facility**” means a facility for which an application is made that is in existence at the time of the application;

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“**inspector**” means a person appointed or designated pursuant to section 14;

“**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

“**ministry**” means the ministry over which the minister presides;

“**new facility**” means a facility for which an application is made that is not an existing facility;

“**prescribed**” means prescribed in the regulations;

“**qualified person**” means a member of a class of persons that is prescribed;

“**SCFI eligibility certificate**” means a Saskatchewan Chemical Fertilizer Incentive certificate issued by the minister to an eligible applicant pursuant to section 8.

**Interpretation**

**3(1)** For the purposes of this Act and the regulations, except if they are at variance with the definitions and interpretations contained in this Act or the regulations, the definitions and interpretations contained in or made by or pursuant to the *Income Tax Act* (Canada) or *The Income Tax Act, 2000* apply.

(2) If there is any conflict between the definitions or interpretations found in the *Income Tax Act* (Canada) and those found in *The Income Tax Act, 2000*, the definitions or interpretations found in *The Income Tax Act, 2000* prevail.

**Application for SCFI eligibility certificate**

**4** Every person who intends to obtain an SCFI eligibility certificate shall:

- (a) apply to the minister in the form provided by the minister;
- (b) pay the prescribed application fee;
- (c) provide to the minister a project plan in a form acceptable to the minister with respect to the applicant's:
  - (i) chemical fertilizer production;
  - (ii) new facility or existing facility, as the case may be;
  - (iii) estimated project start and completion dates; and
  - (iv) estimated project capital expenditure amounts;
- (d) provide the minister with any other information or material that the minister requests and reasonably considers relevant to the application; and
- (e) comply with any prescribed application requirements.

**Conditional approval**

**5(1)** The minister, after reviewing the materials provided by the applicant in accordance with section 4, shall advise the applicant, in writing:

- (a) subject to subsection (2), that the minister is providing conditional approval with respect to the applicant's application; or
- (b) that the minister is not providing conditional approval with respect to the applicant's application, along with reasons for not providing that conditional approval.

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(2) Before the minister provides a conditional approval pursuant to clause (1)(a), the minister must be satisfied that:

- (a) the applicant is capable of implementing the project plan provided pursuant to clause 4(c);
- (b) the production that is the subject of the project plan is an eligible chemical fertilizer production; and
- (c) the new facility or existing facility in the project plan is likely to meet the requirements of this Act and the regulations.

(3) No new applications for the conditional approval mentioned in clause (1)(a) are to be submitted or accepted after December 31, 2026.

**Review of application**

**6(1)** To be eligible for an SCFI eligibility certificate, the applicant must satisfy the minister that the applicant:

- (a) will carry on eligible chemical fertilizer production at the new facility or existing facility that is the subject of its application;
- (b) has made, on or after November 1, 2017 and before January 1, 2027, at least the prescribed amount in new capital expenditures in Saskatchewan with respect to the new facility or existing facility; and
- (c) has started production with respect to the eligible chemical fertilizer production at the new or existing facility that is the subject of its application.

(2) The applicant must provide the minister with evidence satisfactory to the minister that the applicant has made the capital expenditures mentioned in clause (1)(b):

- (a) in the case of a new facility, for the purposes of the productive capacity of that facility with respect to eligible chemical fertilizer production; or
- (b) in the case of an existing facility, for the purposes of increasing the productive capacity of that facility with respect to eligible chemical fertilizer production.

(3) The evidence mentioned in subsection (2) must be supported by a document or written materials prepared by a qualified person who is:

- (a) satisfactory to the minister; and
- (b) dealing at arm's length with the applicant.

(4) The minister shall, after reviewing the document or written materials provided by the qualified person pursuant to subsection (3), determine the amount of new capital expenditures that are eligible for the tax credit mentioned in subsection 8(2).

**Notice re failure to meet qualifying criteria**

**7** If the minister determines that the applicant does not meet the criteria mentioned in section 6, the minister shall inform the applicant, in writing, of that fact and provide details regarding the applicant's failure to meet the criteria.

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**Issuance of SCFI eligibility certificate**

8(1) Subject to section 10, if the minister is satisfied that the new facility or existing facility, as the case may be, that is the subject of the application has met the criteria mentioned in section 6, the minister shall issue to the applicant an SCFI eligibility certificate that sets out the amount of new capital expenditures described in subsection 6(4).

(2) An eligible applicant that has satisfied the requirements of this Act and the regulations is eligible for a tax credit, as calculated in accordance with section 64.8 of *The Income Tax Act, 2000*.

(3) An SCFI eligibility certificate is non-transferable.

**Claiming tax credit**

9(1) Subject to subsection (2), an eligible applicant is entitled to claim the SCFI tax credit for a taxation year in accordance with section 64.8 of *The Income Tax Act, 2000*.

(2) An eligible applicant that claims an SCFI tax credit for a taxation year pursuant to section 64.8 of *The Income Tax Act, 2000* must submit to the minister responsible for the administration of that Act:

- (a) a copy of its SCFI eligibility certificate;
- (b) a copy of its full T2 corporate income tax return, including all schedules;
- (c) its Canada Revenue Agency notice of assessment or notice of reassessment for that taxation year; and
- (d) any other information and records that the minister responsible for the administration of that Act may require in order to determine the amount of the tax credit.

**Change in circumstances**

10(1) Every eligible applicant that applies or intends to apply for the SCFI tax credit mentioned in section 9 shall immediately notify the minister of:

- (a) any change in circumstances that might affect the continued eligibility of the eligible applicant for the tax credit; and
- (b) any change in the eligible applicant's affairs, business, status or circumstances that causes it to not meet the criteria mentioned in section 6.

(2) On receiving a notification pursuant to subsection (1), the minister shall promptly provide the details included in that notification to the minister responsible for the administration of *The Income Tax Act, 2000*.

**Suspension or cancellation of conditional approval or SCFI eligibility certificate**

11(1) Subject to subsection (2), at any time after the minister has issued a conditional approval pursuant to section 5 or an SCFI eligibility certificate, the minister may suspend or cancel the conditional approval or certificate if:

- (a) the minister is satisfied on reasonable grounds that there has been any change in circumstances relating to the applicant or eligible applicant that affects its eligibility for the SCFI tax credit mentioned in section 9; or
- (b) the applicant or eligible applicant otherwise fails to comply with this Act or the regulations.

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(2) Before suspending or cancelling the conditional approval of an applicant or the SCFI eligibility certificate of an eligible applicant, the minister shall give the applicant or eligible applicant an opportunity to make written representations.

(3) After considering the representations mentioned in subsection (2), the minister shall issue a written decision with reasons and serve a copy of the decision on the applicant or eligible applicant as soon as is practicable after the decision is made.

(4) The minister shall promptly advise the minister responsible for the administration of *The Income Tax Act, 2000* of the suspension or cancellation of the SCFI eligibility certificate of an eligible applicant.

**Record keeping requirements**

**12(1)** An eligible applicant that intends to apply for the SCFI tax credit mentioned in section 9 shall:

- (a) maintain any records that relate or may relate to:
  - (i) the status or eligibility of the eligible applicant to receive the tax credit; or
  - (ii) the amount of any tax credit; and
- (b) forward to the minister for the purposes of inspection, examination or audit, any records required to be maintained pursuant to clause (a), or any extract from those records, at the time and in the manner that the minister considers appropriate.

(2) The records mentioned in subsection (1) are to be maintained in any prescribed form and are to contain any prescribed information.

(3) The minister may specify that an eligible applicant required to maintain records pursuant to this section must maintain those records in Saskatchewan unless other suitable arrangements are made with the minister, and, if the minister so specifies, the eligible applicant shall maintain those records in Saskatchewan.

(4) The records mentioned in subsection (1) are to be retained until the later of:

- (a) 6 years after the end of the taxation year for which the eligible applicant is allowed an SCFI tax credit pursuant to section 9; and
- (b) the final disposition of any objection, appeal or other proceedings to which the records may be relevant.

**Power to require information or material**

**13(1)** At any time, the minister may direct an applicant or eligible applicant to provide the minister with any information or material the minister reasonably requires for the purposes of this Act and the regulations.

(2) Every applicant or eligible applicant shall comply with the direction of the minister within the period and in the manner that the minister may require as set out in the direction.

**Inspectors**

**14(1)** Inspectors required for the administration of this Act may be appointed in accordance with *The Public Service Act, 1998*.

(2) The minister may designate any person or category of persons to be an inspector or inspectors pursuant to this Act.

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**Routine inspection**

**15** Subject to subsection 16(4), for the purpose of ensuring that any person governed by this Act and the regulations is complying with this Act and the regulations, an inspector may do all or any of the following:

- (a) enter at any reasonable time and inspect any premises used by the person;
- (b) audit or examine any records that relate or may relate to the application for or issuance of an SCFI eligibility certificate;
- (c) require any person, including any agent, representative, director, officer or employee of an eligible applicant, to provide reasonable assistance;
- (d) make any inquiries of a person mentioned in clause (c);
- (e) after giving a receipt, remove any records mentioned in clause (b) and retain them for any time the inspector considers appropriate in order to examine them and make copies in accordance with section 17.

**Investigation**

**16(1)** If a justice of the peace or a provincial court judge is satisfied by information on the oath or affirmation of an inspector that there are reasonable grounds to believe that an offence against this Act or the regulations has occurred and that evidence of that offence is likely to be found, the justice of the peace or the provincial court judge may issue a warrant to do all or any of the following:

- (a) enter and search any place or premises named in the warrant;
  - (b) stop and search any vehicle described in the warrant;
  - (c) seize and remove anything that may be evidence of an offence against this Act or the regulations.
- (2) With a warrant issued pursuant to subsection (1), an inspector may:
- (a) enter at any time and search any place or premises named in the warrant;
  - (b) stop and search any vehicle described in the warrant;
  - (c) open and examine any trunk, box, bag, parcel, closet, cupboard or other receptacle that the inspector finds in the place, premises or vehicle;
  - (d) require the production of and examine any record that the inspector believes, on reasonable grounds, may contain information related to an offence against this Act or the regulations;
  - (e) remove, for the purposes of making copies, any records examined pursuant to this section; and
  - (f) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act or the regulations.
- (3) Subject to subsection (4), an inspector may exercise all or any of the powers mentioned in subsection (2) without a warrant if:
- (a) the conditions for obtaining a warrant exist; and
  - (b) the inspector has reasonable grounds to believe that the delay necessary to obtain a warrant would result in the loss, removal or destruction of evidence.

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- (4) An inspector shall not enter a private dwelling without a warrant issued pursuant to this section unless the occupant of the private dwelling consents.

**Copies of records**

- 17(1)** If any records are removed pursuant to section 15 or 16, the inspector may make copies of those records.
- (2) The inspector shall:
- (a) make copies of the records with reasonable dispatch; and
  - (b) promptly return the originals of the records to:
    - (i) the place from where they were removed; or
    - (ii) any other place that may be agreed to by the inspector and the person who provided the records or from whom they were seized.
- (3) A record certified by the inspector to be a copy made pursuant to this section:
- (a) is admissible in evidence without proof of the office or signature of the person making the certificate; and
  - (b) has the same probative force as the original record.

**Cooperation with inspector**

- 18** No person shall resist, obstruct, hinder or interfere with an inspector who is acting in the course of the inspector's duties.

**Offences and penalties**

- 19(1)** Every person is guilty of an offence who:
- (a) makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that:
    - (i) at the time and in the light of the circumstances pursuant to which the statement was made, is false or misleading with respect to a material fact; or
    - (ii) omits to state any material fact, the omission of which makes the statement false or misleading;
  - (b) is required to keep records pursuant to this Act and fails or refuses to:
    - (i) keep those records; or
    - (ii) forward those records or extracts from those records to the minister when required by the minister to do so;
  - (c) resists, obstructs, hinders or interferes with an inspector who is acting in the course of the inspector's duties; or
  - (d) contravenes any provision of this Act or the regulations.
- (2) Every person who is guilty of an offence is liable on summary conviction to:
- (a) in the case of an individual, a fine not exceeding \$10,000 and, in default of payment, to imprisonment for a term not exceeding 90 days; and
  - (b) in the case of a corporation, a fine not exceeding \$100,000.

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(3) If a corporation commits an offence pursuant to this Act, any officer or director of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable on summary conviction to the penalties mentioned in this section whether or not the corporation has been prosecuted or convicted.

**Recovery**

**20(1)** If an applicant obtains an SCFI tax credit to which it was not entitled pursuant to this Act, the amount of the tax credit is a debt due to the Crown in right of Saskatchewan and may be recovered:

- (a) by deducting that amount from any payments or tax credits pursuant to *The Income Tax Act, 2000* for which the applicant is eligible;
- (b) in any other manner authorized by *The Financial Administration Act, 1993*; or
- (c) by filing with the Court of Queen's Bench, at any judicial centre, a certificate of the minister certifying the amount of the tax credit, together with interest at the prescribed rate to the date of the certificate.

(2) A certificate filed pursuant to clause (1)(c) has the same force and effect as if it were a judgment obtained in the Court of Queen's Bench for the recovery of a debt in the amount specified in the certificate, together with any reasonable costs and charges with respect to its filing.

**Limitation on prosecution**

**21** No proceeding to enforce any provision of this Act or the regulations may be commenced more than 6 years after the facts on which the proceeding is based first came to the knowledge of the minister.

**Immunity**

**22** No action or proceeding lies or shall be commenced against the Crown in right of Saskatchewan, the minister, the ministry, an employee of the ministry, an inspector or any other person acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or any responsibility imposed by this Act or the regulations.

**Service of notice or documents**

**23(1)** Any notice, decision or other document required by this Act or the regulations to be given or served is to be served:

- (a) personally;
- (b) by ordinary or registered mail to the last known address of the person being served; or
- (c) by any other prescribed means.

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(2) A document served by ordinary mail or registered mail is deemed to have been received on the tenth business day following the day of its mailing, unless the person to whom it was mailed establishes that, through no fault of the person, the person did not receive the document or that the person received it at a later date.

(3) Irregularity in the service of a notice, decision or other document does not affect the validity of an otherwise valid notice, decision or other document.

**Regulations**

**24** The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing the amount and requiring the payment of application fees and other fees payable by applicants or for other services provided by the minister or any other person acting pursuant to the authority of this Act or the regulations;
- (c) prescribing individuals or classes of individuals who are qualified persons and imposing duties on qualified persons with respect to the providing of documents, materials and opinions;
- (d) for the purposes of clause 4(e), prescribing application requirements;
- (e) for the purposes of clause 6(1)(b), prescribing the amount of new capital expenditures in Saskatchewan and prescribing what may be considered or not considered as new capital expenditures;
- (f) for the purposes of subsection 12(2), respecting the information and records that must be maintained and the form in which they must be maintained by an eligible applicant;
- (g) prescribing any rate of interest that is to be prescribed and the method by which it is to be calculated;
- (h) for the purposes of section 23, prescribing other means of serving notices, decisions or other documents;
- (i) with respect to any matter governed by this Act:
  - (i) adopting, as amended from time to time or otherwise, all or any part of any code, standard or guideline;
  - (ii) amending for the purposes of this Act or the regulations any code, standard or guideline adopted pursuant to subclause (i);
  - (iii) requiring compliance with a code, standard or guideline adopted pursuant to subclause (i);
- (j) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (k) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

**Coming into force**

**25** This Act comes into force by order of the Lieutenant Governor in Council.

