Registrar's Stamp

COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER	2101-0085AC
TRIAL COURT FILE NUMBER	25-2332583 25-2332610 25-2335351
REGISTRY OFFICE	CALGARY
APPLICANT	ALVAREZ & MARSAL CANADA INC. in its capacity as the Court-appointed receiver and manager of MANITOK ENERGY INC.
STATUS ON APPEAL	APPELLANT
RESPONDENT	PRENTICE CREEK CONTRACTING LTD., RIVERSIDE FUELS LTD. and ALBERTA ENERGY REGULATOR
STATUS ON APPEAL	RESPONDENT
INTERVENORS	ORPHAN WELL ASSOCIATION, STETTLER COUNTY and WOODLANDS COUNTY
STATUS ON APPEAL	INTERVENORS
DOCUMENT	**BOOK OF AUTHORITIES OF THE RESPONDENT,** **ALBERTA ENERGY REGULATOR**
RESPONDENT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Alberta Energy Regulator** 1000, 250 – 5 Str SW Calgary AB T2P 0R4 Attention: Maria Lavelle/Lindsey Mosher maria.lavelle@aer.ca / lindsey.mosher@aer.ca Phone: 403-297-3736 / 587-747-8981 Fax: 403-297-7031 Counsel for the Respondent, Alberta Energy Regulator

TABLE OF AUTHORITIES

TAB	STYLE OF CAUSE / DOCUMENT DESCRIPTION
1	*Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5
2	*Responsible Energy Development Act*, SA 2012, c R-17.3
3	*Oil and Gas Conservation Act*, RSA 2000, c O-6
4	*Pipeline Act*, RSA 2000, c P-15
5	*Environmental Protection and Enhancement Act*, RSA 2000, c E-12
6	*PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABCA 16
7	*Bankruptcy and Insolvency Act*, RSC 1985, c B-3
8	*Oil and Gas Conservation Rules*, Alta Reg 151/1971
9	*Pipeline Rules*, Alta Reg 91/2005
10	*PanAmericana de Bienes y Servicios SA v Northern Badger Oil & Gas Limited*, 1991 ABCA 181
11	*Alberta Energy Regulator Administration Fees Rules*, Alta Reg 70/2019
12	*Directive 006: Licensee Liability Rating (LLR) Program and Licence Transfer Process*, February 17, 2016, repealed December 1, 2021.
13	*Directive 088: Licensee Life-Cycle Management*, December 1, 2021

Orphan Well Association and Alberta Energy Regulator *Appellants*

v.

Grant Thornton Limited and ATB Financial (formerly known as Alberta Treasury Branches) *Respondents*

and

Attorney General of Ontario, Attorney General of British Columbia, Attorney General of Saskatchewan, Attorney General of Alberta, Ecojustice Canada Society, Canadian Association of Petroleum Producers, Greenpeace Canada, Action Surface Rights Association, Canadian Association of Insolvency and Restructuring Professionals and Canadian Bankers' Association *Interveners*

Orphan Well Association et Alberta Energy Regulator *Appelants*

c.

Grant Thornton Limited et ATB Financial (auparavant connue sous le nom d'Alberta Treasury Branches) *Intimées*

et

Procureure générale de l'Ontario, procureur général de la Colombie-Britannique, procureur général de la Saskatchewan, procureur général de l'Alberta, Ecojustice Canada Society, Association canadienne des producteurs pétroliers, Greenpeace Canada, Action Surface Rights Association, Association canadienne des professionnels de l'insolvabilité et de la réorganisation et Association des banquiers canadiens *Intervenants*

INDEXED AS: ORPHAN WELL ASSOCIATION *v.* GRANT THORNTON LTD.

2019 SCC 5

File No.: 37627.

2018: February 15; 2019: January 31.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté and Brown JJ.

RÉPERTORIÉ : ORPHAN WELL ASSOCIATION *c.* GRANT THORNTON LTD.

2019 CSC 5

N° du greffe : 37627.

2018 : 15 février; 2019 : 31 janvier.

Présents : Le juge en chef Wagner et les juges Abella, Moldaver, Karakatsanis, Gascon, Côté et Brown.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Constitutional law — Division of powers — Federal paramountcy — Bankruptcy and insolvency — Environmental law — Oil and gas — Oil and gas companies in Alberta required by provincial comprehensive licensing regime to assume end-of-life responsibilities with respect to oil wells, pipelines, and facilities — Provincial regulator administering licensing regime and enforcing end-of-life obligations pursuant to statutory powers — Trustee in bankruptcy of oil and gas company not taking responsibility for company's unproductive oil and gas assets and seeking to walk away from environmental liabilities

EN APPEL DE LA COUR D'APPEL DE L'ALBERTA

Droit constitutionnel — Partage des compétences — Prépondérance fédérale — Faillite et insolvabilité — Droit de l'environnement — Pétrole et gaz — Sociétés pétrolières et gazières de l'Alberta tenues par le régime provincial complet de délivrance de permis d'assumer des responsabilités de fin de vie à l'égard de puits de pétrole, de pipelines et d'installations — Organisme de réglementation provincial administrant le régime d'octroi de permis et assurant le respect des obligations de fin de vie en vertu des pouvoirs que lui confère la loi — Syndic de faillite d'une société pétrolière et gazière refusant d'assumer la

associated with them or to satisfy secured creditors' claims ahead of company's environmental liabilities — Whether regulator's use of powers under provincial legislation to enforce bankrupt company's compliance with end-of-life obligations conflicts with trustee's powers under federal bankruptcy legislation or with the order of priorities under such legislation — If so, whether provincial regulatory regime inoperative to extent of conflict by virtue of doctrine of federal paramountcy — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 14.06 — Oil and Gas Conservation Act, R.S.A. 2000, c. O-6, s. 1(1)(cc) — Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12, s. 134(b)(vi) — Pipeline Act, R.S.A. 2000, c. P-15, s. 1(1)(n).

In order to exploit oil and gas resources in Alberta, a company needs a property interest in the oil or gas (typically, a mineral lease with the Crown, which Canadian courts classify as a *profit à prendre*), surface rights and a licence issued by the Alberta Energy Regulator ("Regulator"). Under provincial legislation, the Regulator will not grant a licence to extract, process or transport oil and gas in Alberta unless the licensee assumes end-of-life responsibilities for plugging and capping oil wells to prevent leaks, dismantling surface structures and restoring the surface to its previous condition. These end-of-life obligations are known as "abandonment" and "reclamation".

The Licensee Liability Rating Program is one means by which the Regulator seeks to ensure that end-of-life obligations will be satisfied by licensees. As part of this program, the Regulator assigns each company a Liability Management Rating ("LMR"), which is the ratio between the aggregate value attributed by the Regulator to a company's licensed assets and the aggregate liability attributed by the Regulator to the eventual cost of abandoning and reclaiming those assets. For the purpose of calculating the LMR, all the licences held by a given company are treated as a package. A licensee's LMR is calculated on a monthly basis and, where it dips below the prescribed ratio, the licensee is required to bring its LMR back up to the prescribed level by paying a security deposit, performing end-of-life obligations, or transferring licences with the Regulator's approval. If either the transferor or the transferee would have a post-transfer LMR below 1.0,

responsabilité des biens pétroliers et gaziers inexploités de la société et tentant de se soustraire aux engagements environnementaux associés à ces biens ou d'acquitter les réclamations des créanciers garantis avant les engagements environnementaux de la société — L'exercice par l'organisme de réglementation des pouvoirs que lui confère la législation provinciale pour contraindre la société faillie à respecter les obligations de fin de vie entre-t-il en conflit avec les pouvoirs accordés au syndic par la loi fédérale sur la faillite ou avec l'ordre de priorités fixé par cette loi? — Dans l'affirmative, le régime de réglementation provincial est-il inopérant dans la mesure du conflit par application de la doctrine de la prépondérance fédérale? — Loi sur la faillite et l'insolvabilité, L.R.C. 1985, c. B-3, art. 14.06 — Oil and Gas Conservation Act, R.S.A. 2000, c. O-6, art. 1(1)(cc) — Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12, art. 134(b)(vi) — Pipeline Act, R.S.A. 2000, c. P-15, art. 1(1)(n).

Pour exploiter des ressources pétrolières et gazières en Alberta, une société a besoin d'un intérêt de propriété sur le pétrole ou le gaz (habituellement un bail d'exploitation minière avec la Couronne que les tribunaux canadiens qualifient de profit à prendre), des droits de surface et d'un permis délivré par l'Alberta Energy Regulator (« organisme de réglementation »). Selon la législation provinciale, l'organisme de réglementation n'accordera pas le permis voulu pour extraire, traiter ou transporter du pétrole et du gaz en Alberta à moins que le titulaire de permis n'assume les responsabilités de fin de vie consistant à obturer et à fermer les puits de pétrole afin d'éviter les fuites, à démanteler les structures de surface ainsi qu'à remettre la surface dans son état antérieur. Ces obligations de fin de vie sont appelées l'« abandon » et la « remise en état ».

Le Programme d'évaluation de la responsabilité du titulaire de permis constitue un moyen par lequel l'organisme de réglementation vise à s'assurer que les titulaires de permis rempliront les obligations de fin de vie. Dans le cadre de ce programme, l'organisme de réglementation attribue à chaque société une cote de gestion de la responsabilité (« CGR »), qui représente le rapport entre la valeur totale attribuée par l'organisme de réglementation aux biens d'une société qui sont visés par des permis et la responsabilité totale que l'organisme de réglementation attribue aux coûts éventuels de l'abandon et de la remise en état de ces biens. Pour les besoins du calcul de la CGR, tous les permis détenus par une société donnée sont traités comme un tout. La CGR d'un titulaire de permis est calculée sur une base mensuelle et, lorsqu'elle tombe sous le ratio prescrit, le titulaire de permis doit la ramener en versant un dépôt de garantie, en exécutant les obligations

unavoidable environmental costs and consequences. To address them, Alberta has established a comprehensive cradle-to-grave licensing regime that is binding on companies active in the industry. A company will not be granted the licences that it needs to extract, process or transport oil and gas in Alberta unless it assumes end-of-life responsibilities for plugging and capping oil wells to prevent leaks, dismantling surface structures and restoring the surface to its previous condition. These obligations are known as "reclamation" and "abandonment" (*Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("*EPEA*"), s. 1(ddd), and *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6 ("*OGCA*"), s. 1(1)(a)).

[2] The question in this appeal is what happens to these obligations when a company is bankrupt and a trustee in bankruptcy is charged with distributing its assets among various creditors according to the rules in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"). Redwater Energy Corporation ("Redwater") is the bankrupt company at the centre of this appeal. Its principal assets are 127 oil and gas assets — wells, pipelines and facilities — and their corresponding licences. A few of Redwater's licensed wells are still producing and profitable. The majority of the wells are spent and burdened with abandonment and reclamation liabilities that exceed their value.

[3] The Alberta Energy Regulator ("Regulator") and the Orphan Well Association ("OWA") are the appellants in this Court. (For simplicity, I will refer to the Regulator when discussing the appellants' position, unless otherwise noted.) The Regulator administers Alberta's licensing regime and enforces the abandonment and reclamation obligations of licensees. The Regulator has delegated to the OWA, an independent non-profit entity, the authority to abandon and reclaim "orphans", which are oil and gas assets and their sites left behind in an improperly abandoned or unreclaimed state by defunct companies at the close of their insolvency proceedings. The Regulator says that, one way or another, the

également certains coûts et certaines conséquences inévitables pour l'environnement. Pour y faire face, l'Alberta a mis en place un régime complet de délivrance de permis du berceau à la tombe qui lie les sociétés actives dans l'industrie. Une société n'obtiendra pas les permis dont elle a besoin pour extraire, traiter ou transporter du pétrole et du gaz en Alberta, à moins qu'elle n'assume les responsabilités de fin de vie consistant à obturer et à fermer les puits de pétrole afin d'éviter les fuites, à démanteler les structures de surface ainsi qu'à remettre la surface dans son état antérieur. Ces obligations sont appelées la [TRADUCTION] « remise en état » et l'« abandon » (*Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (« *EPEA* »), al. 1(ddd) et *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6 (« *OGCA* »), al. 1(1)(a)).

[2] La question en l'espèce est de savoir ce qu'il advient de ces obligations lorsqu'une société est en faillite et qu'un syndic de faillite est chargé de répartir ses biens entre divers créanciers conformément aux règles prévues dans la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, c. B-3 (« *LFI* »). Redwater Energy Corporation (« Redwater ») est la société en faillite au cœur du présent pourvoi. Son actif est principalement composé de 127 biens pétroliers et gaziers — puits, pipelines et installations — et des permis correspondants. Quelques-uns des puits autorisés de Redwater sont encore productifs et rentables. La majorité est tarie et grevée de responsabilités relatives à l'abandon et à la remise en état qui excèdent leur valeur.

[3] L'Alberta Energy Regulator (« organisme de réglementation ») et l'Orphan Well Association (« OWA ») sont les appelants devant notre Cour (pour simplifier, je les appellerai l'organisme de réglementation au moment d'analyser la position des appelants, sauf indication contraire). L'organisme de réglementation administre le régime de délivrance de permis de l'Alberta et assure le respect, par les titulaires de permis, des obligations relatives à l'abandon et à la remise en état. L'organisme de réglementation a délégué à l'OWA, une entité indépendante sans but lucratif, le pouvoir d'abandonner et de remettre en état les « orphelins » — les biens pétroliers et gaziers ainsi que leurs sites délaissés ou non réclamés sans

remaining value of the Redwater estate must be applied to meet the abandonment and reclamation obligations associated with its licensed assets.

[4] Redwater's trustee in bankruptcy, Grant Thornton Limited ("GTL"), and Redwater's primary secured creditor, Alberta Treasury Branches ("ATB"), oppose the appeal. (For simplicity, I will refer to GTL when discussing the respondents' position, unless otherwise noted.) GTL argues that, since it has disclaimed Redwater's unproductive oil and gas assets, s. 14.06(4) of the *BIA* empowers it to walk away from those assets and the environmental liabilities associated with them and to deal solely with Redwater's producing oil and gas assets. Alternatively, GTL argues that, under the priority scheme in the *BIA*, the claims of Redwater's secured creditors must be satisfied ahead of Redwater's environmental liabilities. Relying on the doctrine of paramountcy, GTL says that Alberta's environmental legislation regulating the oil and gas industry is constitutionally inoperative to the extent that it authorizes the Regulator to interfere with this arrangement.

[5] The chambers judge (2016 ABQB 278, 37 C.B.R. (6th) 88) and a majority of the Court of Appeal (2017 ABCA 124, 47 C.B.R. (6th) 171) agreed with GTL. The Regulator's proposed use of its statutory powers to enforce Redwater's compliance with abandonment and reclamation obligations during bankruptcy was held to conflict with the *BIA* in two ways: (1) it imposed on GTL the obligations of a licensee in relation to the Redwater assets disclaimed by GTL, contrary to s. 14.06(4) of the *BIA*; and (2) it upended the priority scheme for the distribution of a bankrupt's assets established by the *BIA* by requiring that the "provable claims" of the Regulator, an unsecured creditor, be paid ahead of the claims of Redwater's secured creditors.

que les processus en question n'aient été correctement effectués par les sociétés liquidées à la fin de leur procédure d'insolvabilité. L'organisme de réglementation affirme que, d'une façon ou d'une autre, la valeur restante de l'actif de Redwater doit être utilisée pour satisfaire aux obligations d'abandon et de remise en état qui sont associées à ses biens visés par des permis.

[4] Le syndic de faillite de Redwater, Grant Thornton Limited (« GTL »), et le principal créancier garanti de Redwater, Alberta Treasury Branches (« ATB »), s'opposent au pourvoi (pour simplifier, je les appellerai GTL au moment d'analyser la position des intimées, sauf indication contraire). GTL soutient que, comme il a renoncé aux biens pétroliers et gaziers inexploités de Redwater, le par. 14.06(4) de la *LFI* l'investit du pouvoir de les délaisser et de se soustraire aux engagements environnementaux qui s'y rattachent et de s'occuper uniquement des biens pétroliers et gaziers productifs de Redwater. GTL soutient subsidiairement que, d'après le régime de priorité établi dans la *LFI*, il faut acquitter les réclamations des créanciers garantis de Redwater avant de respecter ses engagements environnementaux. Invoquant la doctrine de la prépondérance, GTL affirme que la législation environnementale de l'Alberta réglementant l'industrie pétrolière et gazière est constitutionnellement inopérante dans la mesure où elle autorise l'organisme de réglementation à se mêler de cet arrangement.

[5] Le juge siégeant en cabinet (2016 ABQB 278, 37 C.B.R. (6th) 88) et les juges majoritaires de la Cour d'appel (2017 ABCA 124, 47 C.B.R. (6th) 171) ont donné raison à GTL. L'utilisation proposée par l'organisme de réglementation des pouvoirs que lui confère la loi pour contraindre Redwater à respecter les obligations d'abandon et de remise en état au cours de la faillite a été jugée incompatible avec la *LFI* de deux façons : (1) elle imposait à GTL les obligations d'un titulaire de permis relativement aux biens de Redwater auxquels GTL avait renoncé, ce qui est contraire au par. 14.06(4) de la *LFI*; (2) elle renversait le régime de priorité établi par la *LFI* pour le partage des biens d'un failli en exigeant que le paiement de ses « réclamations prouvables », en tant que créancier ordinaire, soit effectué avant celui des réclamations des créanciers garantis de Redwater.

approve the licence transfer based on the compliance history of one or both parties or their directors, officers or security holders, or based on the risk posed by the transfer to the orphan fund.

[28] Where a proposed transaction would cause the transferor's LMR to deteriorate below 1.0 (or simply to deteriorate, in the case of an insolvent transferor), the Regulator insists that one of the following conditions be met before it will approve the transaction: (i) that the transferor perform abandonment, reclamation, or both, thus reducing its deemed liabilities, or (ii) that the transferor post a security deposit, thus increasing its deemed assets. Alternatively, the transaction may be structured to avoid any deterioration of the transferor's LMR by "bundling" the licences for spent wells with the licences for producing wells. A transaction in which the licenses for spent wells are retained while the licences for producing wells are transferred will almost always cause a considerable deterioration in a company's LMR.

[29] During this appeal, there was significant discussion of other regulatory regimes which Alberta *could* have adopted to prevent environmental costs associated with the oil and gas industry from being offloaded onto the public. What Alberta *has* chosen is a licensing regime which makes such costs an inherent part of the value of the licensed assets. This regime has the advantage of aligning with the polluter-pays principle, a well-recognized tenet of Canadian environmental law. This principle assigns polluters the responsibility for remedying environmental damage for which they are responsible, thereby incentivizing companies to pay attention to the environment in the course of their economic activities (*Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, 2003 SCC 58, [2003] 2 S.C.R. 624, at para. 24). The Licensee Liability Rating Program essentially requires licensees to apply the value derived from oil and gas assets during the productive portions of the life cycle of

peut être versé conformément aux exigences relatives à la CGR. Plus particulièrement, l'organisme de réglementation peut décider qu'il n'est pas dans l'intérêt public d'approuver le transfert de permis compte tenu des antécédents de conformité de l'une des parties, ou des deux, ou de leurs administrateurs, dirigeants ou détenteurs de titres, ou encore du risque que présenterait le transfert à l'égard du fonds pour les puits orphelins.

[28] Lorsqu'une transaction proposée entraînerait une détérioration de la CGR du cédant en deçà de 1,0 (ou simplement une détérioration dans le cas d'un cédant insolvable), l'organisme de réglementation insiste sur le respect d'une des conditions suivantes avant d'approuver la transaction : (i) que le cédant effectue les processus d'abandon et/ou de remise en état, réduisant ainsi ses passifs réputés; (ii) que le cédant verse un dépôt de garantie, augmentant ainsi ses biens réputés. La transaction pourrait également être structurée de manière à éviter toute détérioration de la CGR du cédant par le « regroupement » des permis relatifs aux puits épuisés et de ceux liés aux puits productifs. Une transaction au cours de laquelle on conserve les permis des puits épuisés tandis que les permis des puits productifs sont transférés entraînerait presque toujours une détérioration considérable de la CGR d'une société.

[29] Au cours du présent pourvoi, il a été beaucoup question d'autres régimes de réglementation que l'Alberta aurait *pu* adopter pour éviter que les coûts environnementaux associés à l'industrie pétrolière et gazière ne soient passés au public. Ce que l'Alberta *a* choisi, c'est un régime de permis qui fait de ces coûts une partie inhérente de la valeur des biens visés par les permis. Ce régime a l'avantage de s'accorder avec le principe du pollueur-payeur, un précepte bien reconnu du droit canadien de l'environnement. Ce principe attribue aux pollueurs la charge de réparer les dommages environnementaux dont ils sont responsables, ce qui incite les sociétés à se soucier de l'environnement dans le cadre de leurs activités économiques (*Cie pétrolière Impériale ltée c. Québec (Ministre de l'Environnement)*, 2003 CSC 58, [2003] 2 R.C.S. 624, par. 24). Le Programme d'évaluation de la responsabilité des titulaires de permis exige essentiellement que les titulaires de permis

the assets to the inevitable cost of abandoning those assets and reclaiming their sites at the end of those life cycles.

[30] Ultimately, it is not the role of this Court to decide the best regulatory approach to the oil and gas industry. What is not in dispute is that, in adopting its current regulatory regime, Alberta has acted within its constitutional authority over property and civil rights in the province and over the "development, conservation and management of non-renewable natural resources . . . in the province" (*Constitution Act, 1867*, ss. 92(13) and 92A(1)(c)). Alberta has devised a complex regulatory apparatus to address important policy questions concerning when, by whom and in what manner the inevitable environmental costs associated with oil and gas extraction are to be paid. Its solution is a licensing regime that depresses the value of key industry assets to reflect environmental costs, backstopped by a levy on industry in the form of the orphan fund. Alberta intended that apparatus to continue to operate when an oil and gas company is subject to insolvency proceedings.

[31] However, the insolvency of an oil and gas company licensed to operate in Alberta also engages the *BIA*. The *BIA* is federal legislation that governs the administration of a bankrupt's estate and the orderly and equitable distribution of property among its creditors. It is validly enacted pursuant to Parliament's constitutional authority over bankruptcy and insolvency (*Constitution Act, 1867*, s. 91(21)). Just as Alberta's regulatory regime reflects its considered choice about how to address the important policy questions raised by the environmental risks of oil and gas extraction, the *BIA* reflects Parliament's considered choice about how to balance important policy objectives when a bankrupt's assets are, by definition, insufficient to meet all of its various obligations. To the extent that there is an operational conflict between the Alberta regulatory regime and the

appliquent la valeur dérivée des biens pétroliers et gaziers pendant les parties productives du cycle de vie des biens au coût inévitable de l'abandon de ces biens et de la remise en état de leurs sites à la fin de ce cycle de vie.

[30] En fin de compte, il ne revient pas à notre Cour de décider de la meilleure approche réglementaire pour l'industrie pétrolière et gazière. Ce qui n'est pas contesté, c'est qu'en adoptant son régime de réglementation actuel, l'Alberta a agi dans les limites de sa compétence constitutionnelle en matière de propriété et de droits civils dans la province ainsi que dans le domaine de l'« exploitation, [de la] conservation et [de la] gestion des ressources naturelles non renouvelables [. . .] de la province » (*Loi constitutionnelle de 1867*, par. 92(13) et al. 92A(1)c)). L'Alberta a mis au point un appareil réglementaire complexe pour régler d'importantes questions de politique concernant le moment où, par qui et de quelle manière les coûts environnementaux inévitables associés à l'extraction du pétrole et du gaz doivent être payés. Sa solution est un régime d'octroi de permis qui fait baisser la valeur des principaux éléments d'actif de l'industrie pour refléter les coûts environnementaux, lequel est soutenu par une redevance sur l'industrie sous forme de fonds pour les puits orphelins. L'Alberta voulait que cet appareil continue à fonctionner lorsqu'une société pétrolière et gazière fait l'objet d'une procédure d'insolvabilité.

[31] Par contre, l'insolvabilité d'une société pétrolière et gazière autorisée à exercer ses activités en Alberta met aussi en jeu la *LFI*, une loi fédérale qui régit l'administration de l'actif d'un failli ainsi que la répartition ordonnée et équitable des biens entre ses créanciers. Elle a été valablement promulguée dans l'exercice de la compétence constitutionnelle du Parlement en matière de banqueroute et de faillite (*Loi constitutionnelle de 1867*, par. 91(21)). Tout comme le régime de réglementation de l'Alberta témoigne de son choix réfléchi quant à la façon d'aborder les questions de politique importantes soulevées par les risques environnementaux liés à l'extraction du pétrole et du gaz, la *LFI* témoigne du choix réfléchi du Parlement concernant la manière d'équilibrer des objectifs de politique importants lorsque les biens d'un failli sont, de par leur nature, insuffisants

The word "disclaim" is used in these reasons, as it has been throughout this litigation, as a shorthand for these terms.

[45] I turn now to a brief discussion of the events of the Redwater bankruptcy.

C. *The Events of the Redwater Bankruptcy*

[46] Redwater was a publicly traded oil and gas company. It was first granted licences by the Regulator in 2009. On January 31 and August 19, 2013, ATB advanced funds to Redwater and, in return, was granted a security interest in Redwater's present and after-acquired property. ATB lent funds to Redwater with full knowledge of the end-of-life obligations associated with its assets. In mid-2014, Redwater began to experience financial difficulties. Upon application by ATB, GTL was appointed receiver for Redwater on May 12, 2015. At that time, Redwater owed ATB approximately $5.1 million.

[47] Upon being advised of the receivership, the Regulator sent GTL a letter dated May 14, 2015, setting out its position. The Regulator noted that the *OGCA* and the *Pipeline Act* included both receivers and trustees in the definition of "licensee". The Regulator stated that it was not a creditor of Redwater and that it was not asserting a "provable claim in the receivership". Accordingly, notwithstanding the receivership, Redwater remained obligated to comply with all regulatory requirements, including abandonment obligations for all licensed assets. The Regulator stated that GTL was legally obligated to fulfill these obligations prior to distributing any funds or finalizing any proposal to creditors. It warned that it would not approve the transfer of any of Redwater's licences unless it was satisfied that both the transferee and the transferor would be in a position to fulfill all regulatory obligations. It requested confirmation that GTL had taken possession of Redwater's licensed properties and that it was taking steps to comply with all of Redwater's regulatory obligations.

ou s'en dessaisit ». Dans les présents motifs, le mot « renoncer » sert à raccourcir ces termes, comme cela a été le cas tout au long du litige qui nous occupe.

[45] Je vais maintenant procéder à une brève analyse des faits entourant la faillite de Redwater.

C. *Les faits entourant la faillite de Redwater*

[46] Redwater était une société pétrolière et gazière cotée en bourse. L'organisme de réglementation lui a octroyé ses premiers permis en 2009. Le 31 janvier et le 19 août 2013, ATB a avancé des fonds à Redwater et, en contrepartie, s'est vu accorder une sûreté sur les biens actuels et futurs de Redwater. ATB a prêté des fonds à Redwater en pleine connaissance des obligations de fin de vie associées à ses biens. Au milieu de 2014, Redwater a commencé à éprouver des difficultés financières. Sur demande d'ATB, GTL a été nommé séquestre de Redwater le 12 mai 2015. À cette époque, Redwater devait environ 5,1 millions de dollars à ATB.

[47] Après avoir été informé de la mise sous séquestre, l'organisme de réglementation a envoyé à GTL une lettre datée du 14 mai 2015 exposant sa position. L'organisme de réglementation a fait remarquer que l'*OGCA* et la *Pipeline Act* incluaient à la fois les séquestres et les syndics dans la définition d'un « titulaire de permis ». L'organisme de réglementation a déclaré qu'il n'était pas un créancier de Redwater et qu'il ne faisait pas valoir une [TRADUCTION] « réclamation prouvable dans le cadre de la mise sous séquestre ». Ainsi, malgré la mise sous séquestre, Redwater demeurait tenue de se conformer à toutes les exigences réglementaires, y compris les obligations d'abandon, pour tous les biens visés par des permis. L'organisme de réglementation a déclaré que GTL était légalement tenu de remplir ces obligations avant de distribuer des fonds ou de finaliser toute proposition aux créanciers. L'organisme de réglementation a averti qu'il n'approuverait pas le transfert de l'un ou l'autre permis de Redwater à moins d'être convaincu que le cessionnaire et le cédant seraient en mesure de s'acquitter de toutes les obligations réglementaires. Il a demandé la confirmation que GTL avait pris possession des biens de Redwater visés par des permis et qu'il prenait des mesures pour se conformer à toutes les obligations réglementaires de Redwater.

[48] At the time it ran into financial difficulties, Redwater was licensed by the Regulator for 84 wells, 7 facilities and 36 pipelines, all in central Alberta. The vast majority of its assets were these oil and gas assets. At the time GTL was appointed receiver, 19 of the wells and facilities were producing and the remaining 72 were inactive or spent. There were working interest participants in several of the wells and facilities. Redwater's LMR did not drop below 1.0 until after it went into receivership, so it never paid any security deposits to the Regulator.

[48] À l'époque où elle a connu des difficultés financières, Redwater avait des permis délivrés par l'organisme de réglementation concernant 84 puits, 7 installations et 36 pipelines, tous situés dans le centre de l'Alberta. La grande majorité de ses éléments d'actif étaient ces biens pétroliers et gaziers. Au moment de la nomination de GTL comme séquestre, 19 des puits ou installations étaient productifs, tandis que les 72 autres étaient inactifs ou taris. Il y avait des participants en participation directe dans plusieurs puits et installations. La CGR de Redwater n'est tombée en dessous de 1,0 qu'après la mise sous séquestre de celle-ci et, en conséquence, Redwater n'a jamais versé de dépôt de garantie à l'organisme de réglementation.

[49] By September 2015, Redwater's LMR had dropped to 0.93. The net value of its deemed assets and its deemed liabilities was negative $553,000. The 19 producing wells and facilities for which Redwater was the licensee would have had an LMR of 2.85 and a deemed net value of $4.152 million. The remaining 72 wells and facilities for which Redwater was the licensee would have had an LMR of 0.30 and a deemed net value of negative $4.705 million. Given that Redwater was in receivership, the Regulator's position was that it would approve the transfer of Redwater's licences only if the transfer did not cause a deterioration in its LMR.

[49] En septembre 2015, la CGR de Redwater avait chuté à 0,93. La valeur nette de ses biens réputés moins ses passifs réputés était égale à un montant négatif de 553 000 $. Les 19 puits et installations productifs pour lesquels Redwater était titulaire de permis avaient une CRG de 2,85 et une valeur nette réputée de 4,152 millions de dollars. Les 72 autres puits ou installations pour lesquels Redwater était titulaire de permis auraient eu une CGR de 0,30 et une valeur nette réputée négative de 4,705 millions de dollars. Puisque Redwater était sous séquestre, l'organisme de réglementation a mentionné qu'il n'approuverait le transfert des permis de Redwater que si cela n'occasionnait pas une détérioration de sa CGR.

[50] In its Second Report to the Alberta Court of Queen's Bench dated October 3, 2015, GTL explained why it had concluded that it could not meet the Regulator's requirements. GTL had concluded that the cost of the end-of-life obligations for the spent wells would likely exceed the sale proceeds for the productive wells. It viewed a sale of the non-producing wells — even if bundled with producing wells — as unlikely. If such a sale were possible, the purchase price would be reduced by the end-of-life obligations, negating the benefit to the estate. Based on this assessment, by letter dated July 3, 2015, GTL informed the Regulator that it was taking possession and control only of Redwater's 17 most productive wells (including a leaking well that was subsequently abandoned), 3 associated facilities and 12 associated

[50] Dans son Deuxième rapport à la Cour du Banc de la Reine de l'Alberta daté du 3 octobre 2015, GTL a expliqué pourquoi il avait conclu qu'il ne pouvait pas satisfaire aux exigences de l'organisme de réglementation. D'après GTL, le coût des obligations de fin de vie des puits taris dépasserait probablement le produit de la vente des puits productifs. Il considérait comme improbable la vente des puits inexploités, même s'ils étaient regroupés avec les puits productifs. Si une telle vente était possible, le prix d'achat serait réduit au regard des obligations de fin de vie, annulant ainsi le bénéfice pour l'actif. Sur la base de cette évaluation, par lettre datée du 3 juillet 2015, GTL a informé l'organisme de réglementation qu'il prenait possession et contrôle seulement des 17 puits les plus productifs de Redwater (y compris un puits

pipelines ("Retained Assets"), and that, pursuant to para. 3(a) of the Receivership Order, it was not taking possession or control of any of Redwater's other licensed assets ("Renounced Assets"). GTL's position was that it had no obligation to fulfill any regulatory requirements associated with the Renounced Assets.

[51] In response, on July 15, 2015, the Regulator issued orders under the *OGCA* and the *Pipeline Act* requiring Redwater to suspend and abandon the Renounced Assets ("Abandonment Orders"). The orders required abandonment to be carried out immediately where there were no other working interest participants and, by September 18, 2015, where there were other working interest participants. The Regulator stated that it considered the Renounced Assets an environmental and safety hazard and that s. 3.012(d) of the *Oil and Gas Conservation Rules* required a licensee to abandon wells or facilities so considered. In issuing the Abandonment Orders, the Regulator also relied on ss. 27 to 30 of the *OGCA* and ss. 23 to 26 of the *Pipeline Act*. If the Abandonment Orders were not complied with, the Regulator threatened to abandon the assets itself and to sanction Redwater through the use of s. 106 of the *OGCA*. The Regulator further stated that, once abandonment had taken place, the surface would need to be reclaimed and reclamation certificates obtained in accordance with s. 137 of the *EPEA*.

[52] On September 22, 2015, the Regulator and the OWA filed an application for a declaration that GTL's renunciation of the Renounced Assets was void, an order requiring GTL to comply with the Abandonment Orders, and an order requiring GTL to "fulfill the statutory obligations as licensee in relation to the abandonment, reclamation and remediation" of all of Redwater's licensed properties (A.R., vol. II, at p. 41). The Regulator did not seek to hold GTL

qui fuyait et qui a été abandonné par la suite), ainsi que de 3 installations et de 12 pipelines connexes (« biens conservés »), et qu'en vertu du par. 3a) de l'ordonnance de mise sous séquestre, il ne prenait pas possession ou contrôle de tous les autres éléments d'actif de Redwater visés par des permis (« biens faisant l'objet de la renonciation »). Selon GTL, il n'était aucunement tenu de satisfaire aux exigences réglementaires en lien avec les biens faisant l'objet de la renonciation.

[51] Le 15 juillet 2015, l'organisme de réglementation a réagi en rendant des ordonnances au titre de l'*OGCA* et de la *Pipeline Act* enjoignant à Redwater de suspendre l'exploitation des biens faisant l'objet de la renonciation et de les abandonner (« ordonnances d'abandon »). Les ordonnances exigeaient que l'abandon soit effectué sur-le-champ dans les cas où il n'y avait pas d'autres participants en participation directe, et, au plus tard le 18 septembre 2015, dans ceux où il y avait d'autres participants en participation directe. L'organisme de réglementation a déclaré qu'il considérait les biens faisant l'objet de la renonciation comme un danger pour l'environnement et la sécurité, et que l'al. 3.012(d) des *Oil and Gas Conservation Rules* obligeait le titulaire de permis à abandonner ces puits ou installations. Lorsqu'il a rendu les ordonnances d'abandon, l'organisme de réglementation s'est également fondé sur les art. 27 à 30 de l'*OGCA* et sur les art. 23 à 26 de la *Pipeline Act*. Si les ordonnances d'abandon n'étaient pas respectées, l'organisme de réglementation menaçait d'effectuer lui-même le processus d'abandon des biens et de sanctionner Redwater par l'application de l'art. 106 de l'*OGCA*. L'organisme a ajouté qu'une fois qu'il y avait eu abandon, la surface devait être remise en état et il fallait obtenir des certificats de remise en état conformément à l'art. 137 de l'*EPEA*.

[52] Le 22 septembre 2015, l'organisme de réglementation et l'OWA ont déposé une demande en vue d'obtenir un jugement déclaratoire portant que l'abandon par GTL des biens faisant l'objet de la renonciation était nul, une ordonnance obligeant GTL à se conformer aux ordonnances d'abandon, de même qu'une ordonnance enjoignant à GTL de [TRADUCTION] « remplir les obligations légales en tant que titulaire de permis concernant l'abandon,

liable for these obligations beyond the assets remaining in the Redwater estate. GTL brought a cross-application on October 5, 2015, seeking approval to pursue a sales process excluding the Renounced Assets. GTL sought a court order directing that the Regulator could not prevent the transfer of the licences associated with the Retained Assets on the basis of, *inter alia*, the LMR requirements, failure to comply with the Abandonment Orders, refusal to take possession of the Renounced Assets or any outstanding debts owed by Redwater to the Regulator. GTL did not seek to foreclose the possibility that the Regulator might have some other valid reason to reject a proposed transfer.

la remise en état et la décontamination » de tous les biens de Redwater visés par des permis (A.R., vol. II, p. 41). L'organisme de réglementation n'a pas cherché à tenir GTL responsable de ces obligations au-delà des éléments qui faisaient encore partie de l'actif de Redwater. Le 5 octobre 2015, GTL a présenté une demande reconventionnelle visant à obtenir l'autorisation de poursuivre un processus de vente excluant les biens faisant l'objet de la renonciation. GTL a demandé au tribunal de rendre une ordonnance interdisant à l'organisme de réglementation d'empêcher le transfert des permis associés aux biens conservés en raison, notamment, des exigences relatives à la CGR, du non-respect des ordonnances d'abandon, du refus de prendre possession des biens faisant l'objet de la renonciation ou des dettes en souffrance de Redwater envers l'organisme de réglementation. GTL n'a pas cherché à exclure la possibilité que l'organisme de réglementation ait un autre motif valable de rejeter un transfert proposé.

[53] A bankruptcy order was issued for Redwater on October 28, 2015, and GTL was appointed as trustee. GTL sent another letter to the Regulator on November 2, 2015, this time invoking s. 14.06(4)(a)(ii) of the *BIA* in relation to the Renounced Assets. The Abandonment Orders remain outstanding.

[53] Le 28 octobre 2015, une ordonnance de faillite a été rendue à l'égard de Redwater, et GTL a été nommé syndic. GTL a envoyé une autre lettre à l'organisme de réglementation le 2 novembre 2015, dans laquelle il invoquait cette fois le sous-al. 14.06(4)a)(ii) de la *LFI* à l'égard des biens faisant l'objet de la renonciation. Les ordonnances d'abandon sont toujours pendantes.

D. *Judicial History*

D. *Historique judiciaire*

(1) Court of Queen's Bench of Alberta

(1) La Cour du Banc de la Reine de l'Alberta

[54] The chambers judge concluded that s. 14.06 of the *BIA* was designed to permit trustees to disclaim property where this was a rational economic decision in light of the environmental condition affecting the property. Personal liability of the trustee was not a condition precedent to the power to disclaim. The chambers judge accordingly found an operational conflict between s. 14.06 of the *BIA* and the definition of "licensee" in the *OGCA* and the *Pipeline Act*. Under s. 14.06 of the *BIA*, GTL could renounce assets and not be responsible for the associated environmental obligations. However, under the *OGCA* and the *Pipeline Act*, GTL could not renounce licensed assets because the definition of "licensee"

[54] Le juge siégeant en cabinet a conclu que l'art. 14.06 de la *LFI* visait à permettre aux syndics de renoncer à un bien lorsqu'il s'agissait d'une décision économique rationnelle compte tenu du fait lié à l'environnement et touchant le bien. La responsabilité personnelle du syndic n'était pas une condition préalable au pouvoir de renonciation. Le juge siégeant en cabinet a donc conclu à un conflit d'application entre l'art. 14.06 de la *LFI* et la définition de « titulaire de permis » que l'on trouve dans l'*OGCA* et la *Pipeline Act*. En vertu de l'art. 14.06 de la *LFI*, GTL pouvait renoncer aux biens et ne pas être responsable des obligations environnementales qui y étaient associées. Cependant, aux termes de l'*OGCA*

that are provable in bankruptcy. It is accepted that the limited super priority for environmental claims created by s. 14.06(7) of the *BIA* does not apply here, and accordingly, says GTL, the Regulator is an ordinary creditor as regards its environmental claims — in other words, neither a secured nor a preferred creditor. The Regulator's environmental claims are thus to be paid rateably with those of Redwater's other ordinary creditors under s. 141 of the *BIA*. GTL argues that, to comply with the Abandonment Orders or LMR requirements, the Redwater estate will have to expend funds prior to distributing its assets to the secured creditors, and that this amounts to the Regulator using its statutory powers to create for itself a priority in bankruptcy to which it is not entitled.

Parlement a attribué un rang donné aux réclamations environnementales qui sont prouvables en matière de faillite. Il est admis que la superpriorité limitée créée par le par. 14.06(7) de la *LFI* pour les réclamations de cette nature ne s'applique pas en l'espèce et, en conséquence, affirme GTL, l'organisme de réglementation est un créancier ordinaire à l'égard de ces réclamations, c'est-à-dire qu'il n'est ni un créancier garanti ni un créancier privilégié. Les réclamations environnementales de l'organisme de réglementation doivent donc être acquittées au prorata avec celles des autres créanciers ordinaires de Redwater en application de l'art. 141 de la *LFI*. GTL soutient que, pour respecter les ordonnances d'abandon ou les exigences relatives à la CGR, il devra dépenser des fonds avant de partager ses biens entre les créanciers garantis. Cela équivaut, pour l'organisme de réglementation, à utiliser les pouvoirs que lui confère la loi pour se créer une priorité en matière de faillite à laquelle il n'a pas droit.

[118] However, only claims provable in bankruptcy must be asserted within the single proceeding. Other claims are not stayed upon bankruptcy and continue to be binding on the estate. In *Abitibi*, this Court clearly stated that not all environmental obligations enforced by a regulator will be claims provable in bankruptcy. As a matter of principle, bankruptcy does not amount to a licence to disregard rules. The Regulator says that it is not asserting any claims provable in the bankruptcy, so the Redwater estate must comply with its environmental obligations, to the extent that assets are available to do so.

[118] Toutefois, on doit faire valoir uniquement les réclamations prouvables en matière de faillite dans le cadre de la procédure unique. Les réclamations non prouvables ne sont pas suspendues à la faillite et elles lient toujours l'actif. Dans l'arrêt *Abitibi*, notre Cour a clairement déclaré que les obligations environnementales appliquées par un organisme de réglementation ne sont pas toutes des réclamations prouvables en matière de faillite. En principe, la faillite n'équivaut pas à une autorisation de faire fi des règles. L'organisme de réglementation dit qu'il ne fait valoir aucune réclamation prouvable dans la faillite et que l'actif de Redwater doit respecter ses obligations environnementales dans la mesure des biens dont il dispose.

[119] The resolution of this issue turns on the proper application of the *Abitibi* test for determining whether a particular regulatory obligation amounts to a claim provable in bankruptcy. To reiterate:

> First, there must be a debt, a liability or an obligation to a *creditor*. Second, the debt, liability or obligation must be incurred *before the debtor becomes bankrupt*. Third, it must be possible to attach a *monetary value* to the debt, liability or obligation. [Emphasis in original; para. 26.]

[119] Le règlement de cette question requiert que l'on applique correctement le critère d'*Abitibi* pour déterminer si une obligation réglementaire précise équivaut à une réclamation prouvable en matière de faillite. Il y a lieu de réitérer ce critère :

> Premièrement, on doit être en présence d'une dette, d'un engagement ou d'une obligation envers un *créancier*. Deuxièmement, la dette, l'engagement ou l'obligation doit avoir pris naissance *avant que le débiteur ne devienne failli*. Troisièmement, il doit être possible d'attribuer une *valeur pécuniaire* à cette dette, cet engagement ou cette obligation. [En italique dans l'original; par. 26.]

[120] There is no dispute that in this appeal, the second part of the test is met. Accordingly, I will discuss only the first and the third parts of the test.

[121] In this Court, the Regulator, supported by various interveners, raised two concerns about how the *Abitibi* test has been applied, both by the courts below and in general. The first concern is that the "creditor" step of the *Abitibi* test has been interpreted too broadly in cases such as the instant appeal and *Nortel Networks Corp., Re*, 2013 ONCA 599, 368 D.L.R. (4th) 122 ("*Nortel* CA"), and that, in effect, this step of the test has become so pro forma as to be practically meaningless. The second concern has to do with the application of the "monetary value" step of the *Abitibi* test by the chambers judge and Slatter J.A. This step is generally called the "sufficient certainty" step, based on the guidance provided in *Abitibi*. The argument here is that the courts below went beyond the test established in *Abitibi* by focusing on whether Redwater's regulatory obligations were "intrinsically financial". Under *Abitibi*, the sufficient certainty analysis should have focused on whether the Regulator would ultimately perform the environmental work and assert a monetary claim for reimbursement.

[122] In my view, both concerns raised by the Regulator have merit. As I will demonstrate, *Abitibi* should not be taken as standing for the proposition that a regulator is always a creditor when it exercises its statutory enforcement powers against a debtor. On a proper understanding of the "creditor" step, it is clear that the Regulator acted in the public interest and for the public good in issuing the Abandonment Orders and enforcing the LMR requirements and that it is, therefore, not a creditor of Redwater. It is the public, not the Regulator or the General Revenue Fund, that is the beneficiary of those environmental obligations; the province does not stand to gain

[120] Il est incontestable que, dans le présent pourvoi, la deuxième partie du critère est respectée. En conséquence, je ne traiterai que des première et troisième parties.

[121] Devant notre Cour, l'organisme de réglementation, avec l'appui de divers intervenants, a soulevé deux préoccupations quant à la façon dont le critère d'*Abitibi* avait été appliqué, tant par les tribunaux d'instance inférieure que par les cours en général. La première préoccupation concerne le fait que l'étape « créancier » du critère a reçu une interprétation trop large dans des affaires analogues à celle en l'espèce et *Nortel Networks Corp., Re*, 2013 ONCA 599, 368 D.L.R. (4th) 122 (« *Nortel* CA ») et qu'en réalité, cette étape du critère est si aisément franchie qu'elle n'est appliquée que pour la forme et qu'elle n'a pratiquement plus de sens. La seconde préoccupation a trait à l'application de l'étape « valeur pécuniaire » du critère d'*Abitibi* par le juge siégeant en cabinet et le juge Slatter. Cette étape reçoit généralement le nom de « certitude suffisante », compte tenu des directives données dans *Abitibi*. On soutient par là que les tribunaux d'instance inférieure sont allés au-delà du critère établi dans l'arrêt *Abitibi* en se concentrant sur la question de savoir si les obligations réglementaires de Redwater étaient « intrinsèquement financières ». Suivant l'arrêt *Abitibi*, l'analyse de la certitude suffisante aurait dû être axée sur la question de savoir si l'organisme de réglementation effectuerait lui-même, au bout du compte, les travaux environnementaux et ferait valoir une réclamation pécuniaire pour le remboursement.

[122] Les deux préoccupations exprimées par l'organisme de réglementation me paraissent fondées. Comme je vais le démontrer, l'arrêt *Abitibi* ne doit pas être considéré comme soutenant la thèse qu'un organisme de réglementation est toujours un créancier lorsqu'il exerce les pouvoirs d'application qui lui sont dévolus par la loi à l'encontre d'un débiteur. D'après le sens qu'il convient de donner à l'étape « créancier », il est clair que l'organisme de réglementation a agi dans l'intérêt public et pour le bien public en rendant les ordonnances d'abandon et en assurant le respect des exigences relatives à la CGR, et qu'il n'est donc pas un créancier de Redwater.

financially from them. Although this conclusion is sufficient to resolve this aspect of the appeal, for the sake of completeness, I will also demonstrate that the chambers judge erred in finding that, on these facts, there is sufficient certainty that the Regulator will ultimately perform the environmental work and assert a claim for reimbursement. To conclude, I will briefly comment on why the *effects* of the end-of-life obligations do not conflict with the priority scheme in the *BIA*.

C'est le public, et non l'organisme de réglementation ou le fonds d'administration du gouvernement, qui bénéficie de ces obligations environnementales; la province n'est pas en mesure d'en bénéficier financièrement. Bien que cette conclusion suffise pour trancher cet aspect du pourvoi, par souci d'exhaustivité, je vais aussi démontrer que le juge siégeant en cabinet a eu tort de conclure qu'au vu des faits de l'espèce, il est suffisamment certain que l'organisme de réglementation exécutera au bout du compte les travaux environnementaux et présentera une demande de remboursement. Pour conclure, je me prononcerai brièvement sur les raisons pour lesquelles les *effets* des obligations de fin de vie n'entrent pas en conflit avec le régime de priorité établi dans la *LFI*.

(1) The Regulator Is Not a Creditor of Redwater

(1) L'organisme de réglementation n'est pas un créancier de Redwater

[123] The Regulator and the supporting interveners are not the first to raise issues with the "creditor" step of the *Abitibi* test. In the six years since *Abitibi* was decided, concerns about the "creditor" step and the fact that, as it is commonly understood, it will seemingly be satisfied in all — or nearly all — cases have also been expressed by academic commentators, such as A. J. Lund, "Lousy Dentists, Bad Drivers, and Abandoned Oil Wells: A New Approach to Reconciling Provincial Regulatory Regimes with Federal Insolvency Law" (2017), 80 *Sask. L. Rev.* 157, at p. 178, and Stewart. This Court has not had an opportunity to comment on *Abitibi* since it was decided. However, the interpretation of the "creditor" step adopted by lower courts, including the majority of the Court of Appeal in this case, has focused on certain comments found at para. 27 of *Abitibi*, and the "creditor" step has accordingly been found to be satisfied whenever a regulator exercises its enforcement powers against a debtor (see, for example, C.A. reasons, at para. 60; *Nortel* CA, at para. 16).

[123] L'organisme de réglementation et les intervenants qui l'appuient ne sont pas les premiers à cerner des problèmes relativement à l'étape « créancier » du critère d'*Abitibi*. Pendant les six années qui ont suivi l'arrêt *Abitibi*, des problèmes au sujet de cette étape et le fait que, dans son acception courante, cette étape sera toujours — ou presque toujours — franchie ont aussi été énoncés par des commentateurs universitaires tels que A. J. Lund, « Lousy Dentists, Bad Drivers, and Abandoned Oil Wells : A New Approach to Reconciling Provincial Regulatory Regimes with Federal Insolvency Law » (2017), 80 *Sask L. Rev.* 157, p. 178, et M. Stewart. Notre Cour n'a pas eu l'occasion de commenter l'arrêt *Abitibi* depuis qu'il a été rendu. Par contre, l'interprétation de l'étape « créancier » retenue par des juridictions inférieures, notamment la majorité de la Cour d'appel en l'espèce, a mis l'accent sur certaines remarques faites au par. 27 de l'arrêt *Abitibi*. Sur cette base, ces tribunaux ont conclu que l'étape « créancier » est franchie chaque fois qu'un organisme de réglementation exerce à l'encontre d'un débiteur son pouvoir d'appliquer la loi (voir, par exemple, les motifs de la Cour d'appel, par. 60; *Nortel* CA, par. 16).

[124] GTL submits that these lower courts have correctly interpreted and applied the "creditor" step.

[124] Selon GTL, les juridictions inférieures susmentionnées ont bien interprété et appliqué l'étape

It further submits that, because of *Abitibi*, the 1991 Alberta Court of Appeal decision in *Northern Badger* is of no assistance in analyzing the creditor issue. Conversely, the Regulator forcefully argues that *Abitibi* must be understood in the context of its own unique facts and that it did not overrule *Northern Badger*. Relying on *Northern Badger*, the Regulator argues that a regulator exercising a power to enforce a public duty is not a creditor of the individual or corporation subject to that duty. Like Martin J.A., I agree with the Regulator on this point. If, as GTL urges and the majority of the Court of Appeal concluded, the "creditor" step is satisfied whenever a regulator exercises its enforcement powers against a debtor, then it is hard to imagine a situation in which the "creditor" step would not be satisfied by the actions of an environmental regulator. Stewart was correct to suppose that "[s]urely, the Court did not intend this result" (p. 189). For the "creditor" step to have meaning, "there must be situations where the other two steps could be met . . . but the order [or obligation] is still not a provable claim because the regulator is not a creditor of the bankrupt" (Attorney General of Ontario's factum, at para. 39).

« créancier ». Il ajoute qu'à la suite de l'arrêt *Abitibi*, l'arrêt *Northern Badger* rendu en 1991 par la Cour d'appel de l'Alberta n'est d'aucun secours pour analyser la question du créancier. À l'inverse, l'organisme de réglementation soutient avec vigueur qu'il faut situer l'arrêt *Abitibi* dans le contexte des faits qui lui sont propres, et qu'il n'a pas infirmé *Northern Badger*. Se fondant sur cet arrêt, l'organisme de réglementation plaide qu'un organisme de réglementation exerçant un pouvoir pour faire respecter un devoir public n'est pas un créancier de la personne ou de la société assujettie à ce devoir. À l'instar de la juge Martin, je partage l'avis de l'organisme de réglementation sur ce point. Si, comme l'exhorte GTL et le concluent les juges majoritaires de la Cour d'appel, l'étape « créancier » est franchie chaque fois qu'un organisme de réglementation exerce ses pouvoirs d'application à l'encontre d'un débiteur, il est difficile d'imaginer une situation où les actes d'un organisme de réglementation ne franchiraient pas l'étape « créancier ». Monsieur Stewart avait raison de supposer que [TRADUCTION] « la Cour ne souhaitait sûrement pas ce résultat » (p. 189). Pour que l'étape « créancier » ait un quelconque sens [TRADUCTION] « il doit y avoir des situations dans lesquelles les deux autres étapes du critère d'*Abitibi* sont franchies […], mais l'ordonnance [ou l'obligation] environnementale n'est toujours pas une réclamation prouvable car l'organisme de réglementation n'est pas un créancier du failli » (mémoire de la procureure générale de l'Ontario, par. 39).

[125] Before further explaining my conclusion on this point, I must address a preliminary issue: the fact that the Regulator conceded in the courts below that it was a creditor. It is well established that concessions of law are not binding on this Court: see *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781, at para. 44; *M. v. H.*, [1999] 2 S.C.R. 3, at para. 45; *R. v. Sappier*, 2006 SCC 54, [2006] 2 S.C.R. 686, at para. 62. As noted by L'Heureux-Dubé J., in dissent, but not on this point, in *R. v. Elshaw*, [1991] 3 S.C.R. 24, at p. 48, "the fact that an issue is conceded below means nothing in and of itself". Although concessions by the parties are often relied upon, it is ultimately for

[125] Avant d'expliquer davantage ma conclusion sur ce point, je dois traiter d'une question préliminaire : l'organisme de réglementation a concédé devant les juridictions inférieures qu'il était un créancier. Il est bien établi que les concessions de droit ne lient pas notre Cour : voir *Ocean Port Hotel Ltd. c. Colombie-Britannique (General Manager, Liquor Control & Licensing Branch)*, 2001 CSC 52, [2001] 2 R.C.S. 781, par. 44; *M. c. H.*, [1999] 2 R.C.S. 3, par. 45; *R. c. Sappier*, 2006 CSC 54, [2006] 2 R.C.S. 686, par. 62). Comme l'a fait remarquer la juge L'Heureux-Dubé (dissidente, mais non sur ce point) dans *R. c. Elshaw*, [1991] 3 R.C.S. 24, p. 48, « un aveu fait devant une instance inférieure ne signifie rien en soi ». Bien que l'on se fonde souvent

this Court to determine points of law. For several reasons, no fairness concerns are raised by disregarding the Regulator's concession in this case.

sur les concessions des parties, il revient en fin de compte à notre Cour de statuer sur des points de droit. Pour plusieurs raisons, on ne suscite aucune préoccupation en matière d'équité en ne tenant pas compte de la concession faite par l'organisme de réglementation en l'espèce.

[126] First, in a letter to GTL dated May 14, 2015, the Regulator advanced the position that it was "not a creditor of [Redwater]", but, rather, had a "statutory mandate to regulate the oil and gas industry in Alberta" (GTL's Record, vol. 1, at p. 78). I note that this was the initial communication between the Regulator and GTL, only two days after the latter's appointment as receiver of Redwater's property. Second, the issue of whether the Regulator is a creditor was discussed in the parties' factums. Third, during oral arguments before this Court, the Regulator was questioned about its concession. Counsel made the undisputed point that higher courts are not bound by such concessions and took the position that, on the correct interpretation of *Abitibi*, the Regulator was not a creditor. Fourth, when the Regulator's status as a creditor was raised as an issue before this Court, opposing counsel did not argue that they would have adduced further evidence on the issue had it been raised in the courts below. Finally, a proper understanding of the "creditor" step of the *Abitibi* test is of fundamental importance to the proper functioning of the national bankruptcy scheme and of provincial environmental schemes throughout Canada. I conclude that this case is one in which it is appropriate to disregard the Regulator's concession in the courts below.

[126] Premièrement, dans une lettre adressée à GTL en date du 14 mai 2015, l'organisme de réglementation soutient qu'il était [TRADUCTION] « non pas un créancier de [Redwater] », mais avait plutôt « pour mandat légal de réglementer l'industrie pétrolière et gazière de l'Alberta » (dossier de GTL, vol. 1, p. 78). Je constate qu'il s'agissait de la première communication entre l'organisme de réglementation et GTL et qu'elle est survenue seulement deux jours après la nomination de ce dernier comme séquestre des biens de Redwater. Deuxièmement, les parties ont traité dans leurs mémoires de la question de savoir si l'organisme de réglementation est un créancier. Troisièmement, au cours de sa plaidoirie devant notre Cour, l'organisme de réglementation a été interrogé à propos de sa concession. L'avocate a signalé le point non contesté que les tribunaux supérieurs ne sont pas liés par de telles concessions, et a soutenu que, si l'on interprète correctement l'arrêt *Abitibi*, l'organisme de réglementation n'était pas un créancier. Quatrièmement, quand le statut de l'organisme de réglementation en tant que créancier a été évoqué devant notre Cour, les avocats des parties adverses n'ont pas prétendu qu'ils auraient présenté des éléments de preuve supplémentaires sur ce point s'il avait été soulevé devant les juridictions inférieures. Enfin, le sens qu'il convient de donner à l'étape « créancier » du critère d'*Abitibi* est d'une importance fondamentale pour le bon fonctionnement du régime national de faillite et des régimes environnementaux provinciaux partout au Canada. Je conclus qu'il est indiqué en l'espèce de ne pas tenir compte de la concession faite par l'organisme de réglementation devant les juridictions inférieures.

[127] Returning to the analysis, I note that the unique factual matrix of *Abitibi* must be kept in mind. In that case, Newfoundland and Labrador expropriated most of AbitibiBowater's property in the province without compensation. Subsequently,

[127] Pour revenir à l'analyse, je signale qu'il ne faut pas oublier la matrice factuelle unique de l'arrêt *Abitibi*. Dans cette affaire, Terre-Neuve-et-Labrador a exproprié la plupart des biens d'AbitibiBowater dans la province, sans indemnisation. Par la suite,

AbitibiBowater was granted a stay under the *CCAA*. It then filed a notice of intent to submit a claim to arbitration under the *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, Can. T.S. 1994 No. 2 ("NAFTA"), for losses resulting from the expropriation. In response, Newfoundland's Minister of Environment and Conservation ordered AbitibiBowater to remediate five sites pursuant to the *Environmental Protection Act*, S.N.L. 2002, c. E-14.2 ("*EPA*"). Three of the five sites had been expropriated by Newfoundland and Labrador. The evidence led to the conclusion that "the Province never truly intended that Abitibi was to perform the remediation work", but instead sought a claim that could be used as an offset in connection with AbitibiBowater's NAFTA claim (*Abitibi*, at para. 54). In other words, the Province sought a financial benefit from the remediation orders.

AbitibiBowater s'est vu accorder une suspension en vertu de la LACC. Elle a ensuite déposé un avis d'intention de soumettre une réclamation à l'arbitrage au titre de l'*Accord de libre-échange nord-américain entre le gouvernement du Canada, le gouvernement des États-Unis mexicains et le gouvernement des États-Unis d'Amérique*, R.T. Can. 1994 nº 2 (« ALENA »), pour les pertes résultant de l'expropriation. En réponse, le ministre de l'Environnement et de la Conservation de Terre-Neuve a ordonné à AbitibiBowater de décontaminer cinq sites conformément à l'*Environmental Protection Act*, S.N.L. 2002, c. E-14.2 (« *EPA* »). Trois des cinq sites avaient été expropriés par la province. La preuve a mené à la conclusion que « la province n'avait jamais vraiment eu l'intention qu'Abitibi exécute les travaux [de décontamination] » (*Abitibi*, par. 54) et qu'elle cherchait plutôt à faire valoir une réclamation qui pourrait être utilisée à titre compensatoire au regard de la demande d'indemnisation d'AbitibiBowater fondée sur l'ALENA. Autrement dit, la province voulait tirer un avantage financier des ordonnances de décontamination.

[128] In this appeal, it is not disputed that, in seeking to enforce Redwater's end-of-life obligations, the Regulator is acting in a *bona fide* regulatory capacity and does not stand to benefit financially. The Regulator's ultimate goal is to have the environmental work actually performed, for the benefit of third-party landowners and the public at large. There is no colourable attempt by the Regulator to recover a debt, nor is there an ulterior motive on its part, as there was in *Abitibi*. The distinction between the facts of this appeal and those of *Abitibi* becomes even clearer when one examines the comprehensive reasons of the chambers judge in *Abitibi*. The crux of the findings of Gascon J. (as he then was) is found at paras. 173-76:

[128] En l'espèce, personne ne conteste qu'en cherchant à assurer le respect des obligations de fin de vie incombant à Redwater, l'organisme de réglementation agit de bonne foi à titre d'autorité de réglementation et il n'est pas en mesure d'obtenir un avantage financier. L'objectif ultime de l'organisme de réglementation est de faire exécuter les travaux environnementaux au profit des tiers propriétaires terriens et de la population en général. L'organisme de réglementation n'a pas fait de tentative déguisée de recouvrer une créance et il n'y avait pas de motif oblique de sa part, comme c'était le cas dans *Abitibi*. La distinction entre les faits du présent pourvoi et ceux de l'affaire *Abitibi* ressort encore plus clairement lorsqu'on examine les motifs exhaustifs du juge siégeant en cabinet dans *Abitibi*. Le cœur des conclusions du juge Gascon (maintenant juge de notre Cour) se trouve aux par. 173-176 :

. . . the Province stands as the direct beneficiary, from a monetary standpoint, of Abitibi's compliance with the EPA Orders. In other words, the execution in nature of the EPA Orders would result in a definite credit to the Province's

[TRADUCTION] . . . la province bénéficie directement, d'un point de vue financier, du respect par Abitibi des ordonnances fondées sur l'EPA. En d'autres termes, l'exécution en nature des ordonnances fondées sur l'EPA se traduirait

own "balance sheet". Abitibi's liability in that regard is an asset for the Province itself.

With all due respect, this is not regulatory in nature; it is rather purely financial in reality. This is, in fact, closer to a debtor-creditor relationship than anything else.

This is quite far from the situation of the detached regulator or public enforcer issuing order for the public good. Here, the Province itself derives the direct pecuniary benefit from the required compliance of Abitibi to the EPA Orders. The Province stands to directly gain in the outcome. None of the cases submitted by the Province bear any similarity to the fact pattern in the present proceedings.

From this perspective, it is the hat of a creditor that best fits the Province, not that of a disinterested regulator.

(*AbitibiBowater Inc., Re*, 2010 QCCS 1261, 68 C.B.R. (5th) 1)

[129] This Court recognized in *Abitibi* that the Province "easily satisfied" the creditor requirement (para 49). It was therefore not necessary to consider at any length how the "creditor" step should be understood or how it would apply in other factual situations. However, even at para. 27 of *Abitibi*, the paragraph relied on by the majority of the Court of Appeal, Deschamps J. made a point of noting that "[m]ost environmental regulatory bodies *can be* creditors in respect of monetary or non-monetary obligations imposed by the relevant statutes" (emphasis added). The interpretation of the "creditor" step adopted by the majority of the Court of Appeal and urged upon this Court by GTL leaves no room for a regulator that enforces obligations not to be a creditor, though this possibility was clearly contemplated by para. 27 of *Abitibi*. As noted above, GTL's interpretation leaves the "creditor" step with no independent work to perform.

par un crédit certain au propre « bilan » de la province. Le passif d'Abitibi à cet égard constitue un actif de la province elle-même.

Soit dit en tout respect, il ne s'agit pas d'une affaire de nature réglementaire; il s'agit plutôt en fait d'une affaire purement financière. Cela s'apparente effectivement davantage à une relation créancier-débiteur qu'à autre chose.

Nous sommes assez loin du cas de l'organisme de réglementation ou d'application de la loi qui a rendu de manière objective une ordonnance dans l'intérêt public. En l'espèce, la province elle-même tire directement l'avantage pécunaire du respect obligatoire, par Abitibi, des ordonnances EPA. La province peut tirer profit du résultat. Aucune des affaires soumises par la province ne ressemble un tant soit peu aux faits à l'origine de la présente instance.

Sous cet angle, la province a agi plus comme un créancier que comme un organisme de réglementation désintéressé.

(*AbitibiBowater Inc., Re*, 2010 QCCS 1261, 68 C.B.R. (5th) 1)

[129] Notre Cour a reconnu dans *Abitibi* qu'il était « facile [pour la province] de répondre » à l'exigence relative au créancier (par. 49). Il n'était donc pas nécessaire d'analyser en profondeur le sens de l'étape « créancier » ou la manière dont elle s'appliquerait dans d'autres situations factuelles. Or, même au par. 27 de l'arrêt *Abitibi*, le paragraphe sur lequel se fondent les juges majoritaires de la Cour d'appel, la juge Deschamps a pris soin de souligner que « [l]a plupart des organismes administratifs *peuvent agir* à titre de créanciers en relation avec les obligations pécuniaires ou non pécuniaires imposées par ces lois » (italiques ajoutés). L'interprétation de l'étape « créancier » qu'ont retenue les juges majoritaires de la Cour d'appel et que GTL nous a exhortés à faire nôtre exclut la possibilité qu'un organisme de réglementation faisant respecter des obligations ne soit pas un créancier, alors que cette possibilité a été clairement envisagée au par. 27 de l'arrêt *Abitibi*. Comme je l'ai mentionné ci-dessus, l'interprétation de GTL prive l'étape « créancier » de toute fonction indépendante.

[130] *Northern Badger* established that a regulator enforcing a public duty by way of non-monetary order is not a creditor. I reject the claim in the dissenting reasons that *Northern Badger* should be interpreted differently. First, I note that whether the Regulator has a contingent claim is relevant to the sufficient certainty test, which presupposes that the Regulator is a creditor. I cannot accept the proposition in the dissenting reasons that *Northern Badger* was concerned with what would become the third prong of the *Abitibi* test. In *Northern Badger*, Laycraft C.J.A. accepted that abandonment was a liability and identified the issue as "whether that liability is to the board so that it is the board which is the creditor" (para. 32). Second, the underlying scenario here with regards to Redwater's end-of-life obligations is exactly the same as in *Northern Badger* — a regulator is ordering an entity to comply with its legal obligations in furtherance of the public good. This reasoning from *Northern Badger* was subsequently adopted in cases such as *Strathcona (County) v. Fantasy Construction Ltd. (Trustee of)*, 2005 ABQB 794, 261 D.L.R. (4th) 221, at paras. 23-25, and *Lamford Forest Products Ltd. (Re)* (1991), 86 D.L.R. (4th) 534.

[130] L'arrêt *Northern Badger* a établi qu'un organisme de réglementation faisant respecter un devoir public au moyen d'une ordonnance non pécuniaire n'est pas un créancier. Je rejette la prétention faite dans les motifs dissidents selon laquelle *Northern Badger* devrait recevoir une interprétation différente. Premièrement, je souligne que le point de savoir si l'organisme de réglementation a une réclamation éventuelle relève du critère de la certitude suffisante, lequel suppose au préalable que l'organisme de réglementation est un créancier. Je ne peux accepter la proposition énoncée dans les motifs dissidents selon laquelle *Northern Badger* porte sur ce qui allait devenir le troisième volet du critère d'*Abitibi*. Dans *Northern Badger*, après avoir reconnu que l'abandon constituait une responsabilité, le juge d'appel Laycraft a dit qu'il s'agissait de savoir [TRADUCTION] « si cette responsabilité appartient à l'Office, ce qui fait de lui le créancier » (par. 32). Deuxièmement, le scénario sous-jacent en l'espèce quant aux obligations de fin de vie qui incombent à Redwater est exactement le même que dans *Northern Badger* : un organisme de réglementation ordonne à une entité de se conformer à ses obligations légales pour le bien public. Ce raisonnement exact tiré de *Northern Badger* a été adopté par la suite dans des décisions telles *Strathcona (County) c. Fantasy Construction Ltd. (Trustee of)*, 2005 ABQB 794, 261 D.L.R. (4th) 221, par. 23-25, et *Lamford Forest Products Ltd. (Re)* (1991), 86 D.L.R. (4th) 534.

[131] I cannot agree with the suggestion by the majority of the Court of Appeal in this case that *Northern Badger* "is of limited assistance" in the application of the *Abitibi* test (para. 63). Rather, I agree with Martin J.A. that *Abitibi* did not overturn the reasoning in *Northern Badger*, but instead "emphasized the need to consider the substance of provincial regulation in assessing whether it creates a claim provable in bankruptcy" (para. 164). As Martin J.A. noted, even following *Abitibi*, the law continues to be that "public obligations are not provable claims that can be counted or compromised in the bankruptcy" (para. 174). *Abitibi* clarified the scope of *Northern Badger* by confirming that a regulator's environmental claims will be provable claims under certain circumstances. It does not stand for the

[131] Je ne puis souscrire à l'opinion des juges majoritaires de la Cour d'appel en l'espèce selon laquelle *Northern Badger* [TRADUCTION] « n'est guère utile » dans l'application du critère d'*Abitibi* (par. 63). Je partage plutôt l'avis de la juge Martin voulant que l'arrêt *Abitibi* n'ait pas infirmé le raisonnement de *Northern Badger*, et qu'il ait au contraire « mis en relief le besoin de prendre en considération la teneur du règlement provincial pour déterminer s'il crée une réclamation prouvable en matière de faillite » (par. 164). Comme l'a signalé la juge Martin, même depuis l'arrêt *Abitibi*, l'état du droit reste inchangé : « les obligations publiques ne sont pas des réclamations prouvables qui peuvent être comptabilisées ou compromises dans la faillite » (par. 174). L'arrêt *Abitibi* a éclairci la

proposition that a regulator exercising its enforcement powers is always a creditor. The reasoning in *Northern Badger* was simply not applicable on the facts of *Abitibi*, given the actions of the Province as outlined above.

[132] In *Abitibi*, Deschamps J. noted that insolvency legislation had evolved in the years since *Northern Badger*. That legislative evolution did not, however, change the meaning to be ascribed to the term "creditor". In this regard, I agree with the conclusion in *Strathcona County v. Fantasy Construction Ltd. (Trustee of)*, 2005 ABQB 559, 256 D.L.R. (4th) 536, that the amendments to the *BIA* dealing with environmental matters in the years following *Northern Badger* cannot be interpreted as having overturned the reasoning in that case. As should be clear from the earlier discussion of s. 14.06, the amendments to the *BIA* do not speak to when a regulator enforcing an environmental claim is a creditor.

[133] The conclusion that the reasoning in *Northern Badger* continues to be relevant since *Abitibi* and the amendments to insolvency legislation also finds support in the writings of academic commentators. Stewart's position is that, while *Abitibi* discussed *Northern Badger*, it did not overturn it. He urges this Court to clarify that there remains "a distinction between a regulatory body that is a creditor because it is enforcing a debt, and a regulatory body that is not a creditor because it is enforcing the law" (p. 221). Similarly, Lund argues that a court should "consider the importance of the public interests protected by the regulatory obligation when deciding whether the debtor owes a debt, liability or obligation to a creditor" (p. 178).

portée de *Northern Badger* en confirmant que les réclamations environnementales d'un organisme de réglementation seront des réclamations prouvables dans certains cas. Il ne permet pas d'affirmer qu'un organisme de réglementation exerçant ses pouvoirs d'application est toujours un créancier. Le raisonnement de l'arrêt *Northern Badger* ne s'appliquait tout simplement pas aux faits de l'affaire *Abitibi*, étant donné les agissements de la province décrits précédemment.

[132] Dans *Abitibi*, la juge Deschamps a signalé que la législation en matière d'insolvabilité avait évolué au cours des années qui ont suivi *Northern Badger*. Cette évolution législative n'a en revanche pas modifié le sens à attribuer au terme « créancier ». À cet égard, je souscris à la conclusion du juge Burrows dans *Strathcona County c. Fantasy Construction Ltd. (Trustee of)*, 2005 ABQB 559, 256 D.L.R. (4th) 536, suivant laquelle les modifications en matière d'environnement qui ont été apportées à la *LFI* au cours des années suivant *Northern Badger* ne peuvent être interprétées comme ayant infirmé le raisonnement de cet arrêt. Tel qu'il devrait ressortir clairement de mon analyse précédente de l'art. 14.06, les modifications à la *LFI* ne traitent pas des cas où un organisme de réglementation faisant valoir une réclamation environnementale est un créancier.

[133] Les écrits de commentateurs universitaires appuient également la conclusion voulant que le raisonnement de l'arrêt *Northern Badger* conserve sa pertinence depuis *Abitibi* et les modifications à la loi sur l'insolvabilité. Monsieur Stewart estime que, même si l'arrêt *Abitibi* traite de *Northern Badger*, il ne l'a pas infirmé. Il exhorte notre Cour à préciser qu'il subsiste une distinction entre [TRADUCTION] « l'organisme de réglementation qui agit comme créancier car il recouvre une dette et celui qui n'est pas un créancier car il applique la loi » (p. 221). De même, M^me^ Lund fait valoir qu'un tribunal devrait [TRADUCTION] « prendre en considération l'importance que revêtent les intérêts publics protégés par l'obligation réglementaire au moment de décider si le débiteur a une dette, un engagement ou une obligation envers un créancier » (p. 178).

[134] For the foregoing reasons, *Abitibi* cannot be understood as having changed the law as summarized by Laycraft C.J.A. I adopt his comments at para. 33 of *Northern Badger*:

> The statutory provisions requiring the abandonment of oil and gas wells are part of the general law of Alberta, binding every citizen of the province. All who become licensees of oil and gas wells are bound by them. Similar statutory obligations bind citizens in many other areas of modern life . . . But the obligation of the citizen is not to the peace officer, or public authority which enforces the law. The duty is owed as a public duty by all the citizens of the community to their fellow citizens. When the citizen subject to the order complies, the result is not the recovery of money by the peace officer or public authority, or of a judgment for money, nor is that the object of the whole process. Rather, it is simply the enforcement of the general law. The enforcing authority does not become a "creditor" of the citizen on whom the duty is imposed.

[135] Based on the analysis in *Northern Badger*, it is clear that the Regulator is not a creditor of the Redwater estate. The end-of-life obligations the Regulator seeks to enforce against Redwater are public duties. Neither the Regulator nor the Government of Alberta stands to benefit financially from the enforcement of these obligations. These public duties are owed, not to a creditor, but, rather, to fellow citizens, and are therefore outside the scope of "provable claims". I do not intend to suggest, however, that a regulator will be a creditor only where it acts exactly as the province did in *Abitibi*. There may very well be situations in which a regulator's actions fall somewhere between those in *Abitibi* and those in the instant case. Notably, unlike some previous cases, the Regulator has performed no environmental work itself. I leave such situations to be addressed in future cases in which there are full factual records. Here, it is clear that the Regulator is seeking to enforce Redwater's public duties, whether by issuing the Abandonment Orders or by maintaining the LMR

[134] Pour les motifs qui précèdent, on ne peut juger que l'arrêt *Abitibi* a modifié le droit, comme l'a résumé le juge en chef Laycraft. Je fais miennes les remarques qu'il fait au par. 33 de *Northern Badger* :

> [TRADUCTION] Les dispositions légales qui exigent l'abandon de puits de pétrole et de gaz font partie du droit commun de l'Alberta et lient chaque citoyen de la province. Toutes les personnes qui acquièrent un permis d'exploitation de puits de pétrole ou de gaz doivent les respecter. Des obligations légales semblables lient les citoyens dans bien d'autres secteurs de la vie moderne [. . .] Mais l'obligation incombant au citoyen n'est pas envers l'agent de la paix ou l'autorité publique qui applique la loi. L'obligation est établie comme une obligation à caractère public qui doit être respectée par l'ensemble des citoyens de la collectivité à l'égard de leurs concitoyens. Lorsque le citoyen visé par l'ordonnance s'y conforme, le résultat n'est pas perçu comme le recouvrement d'une somme d'argent par un agent de la paix ou l'autorité publique, ni comme l'exécution d'un jugement ordonnant le paiement d'une somme d'argent; d'ailleurs, cela ne constitue pas non plus l'objectif de l'ensemble du processus. Il faut plutôt y voir l'application du droit commun. L'organisme d'application de la loi ne devient pas un « créancier » du citoyen à qui incombe l'obligation.

[135] Étant donné l'analyse effectuée dans *Northern Badger*, il est clair que l'organisme de réglementation n'est pas un créancier de l'actif de Redwater. Les obligations de fin de vie que l'organisme de réglementation veut imposer à Redwater sont de nature publique. Ni l'organisme de réglementation ni le gouvernement de l'Alberta ne peuvent bénéficier financièrement de l'exécution de ces obligations. Ces obligations à caractère public sont non pas envers un créancier, mais envers les concitoyens et échappent donc à la portée des « réclamations prouvables ». Je ne veux toutefois pas laisser entendre par là qu'un organisme de réglementation n'est un créancier que s'il se comporte d'une manière identique à la province dans *Abitibi*. Il peut fort bien exister des situations où les agissements d'un organisme de réglementation se situent quelque part entre ceux dans *Abitibi* et ceux en l'espèce. Signalons que, contrairement à certains cas antérieurs, l'organisme de réglementation n'a exécuté aucuns travaux environnementaux lui-même. Je laisse aux tribunaux disposant de dossiers factuels

requirements. The Regulator is not a creditor within the meaning of the *Abitibi* test.

complets le soin de résoudre pareilles situations à l'avenir. Dans la présente affaire, il est clair que l'organisme de réglementation cherche à faire respecter les devoirs à caractère public de Redwater, que ce soit en rendant les ordonnances d'abandon ou en maintenant les exigences relatives à la CGR. L'organisme de réglementation n'est pas un créancier au sens du critère d'*Abitibi*.

[136] I reject the suggestion that the foregoing analysis somehow overrules the first prong of the *Abitibi* test. The facts in *Abitibi* were not comparable to the facts of this appeal. Although this Court discussed *Northern Badger* in *Abitibi*, it merely referenced the subsequent amendments to the *BIA*, and did not overturn the earlier decision. The Court was clear that the ultimate outcome "must be grounded in the facts of each case" (para. 48). The dissenting reasons claim that, given the foregoing analysis, it will be nearly impossible to find that regulators are ever creditors. *Abitibi* itself shows this not to be the case. Furthermore, as I have said, there may well be cases that fall between *Abitibi* and the present case. However, if *Abitibi* is read as requiring only a determination of whether the regulator has exercised an enforcement power, it will in fact be impossible for a regulator *not* to be a creditor. The dissenting reasons do not seriously deny this, merely suggesting that regulators can publish guidelines or issue licences. The Regulator does both, yet, under the approach taken in the dissenting reasons, it is powerless to take any practical steps in the public interest regarding its guidelines or licences without qualifying as a creditor. As I have explained, *Abitibi* clearly contemplates a place for regulators who are not creditors.

[136] Je rejette la thèse voulant que l'analyse qui précède écarte d'une façon ou d'une autre le premier volet du critère d'*Abitibi*. Les faits de l'affaire *Abitibi* n'étaient pas comparables à ceux de l'espèce. Bien que notre Cour ait examiné l'arrêt *Northern Badger* dans *Abitibi*, elle s'est contentée de mentionner les modifications subséquentes à la *LFI* et n'a pas infirmé l'arrêt antérieur. La Cour a été claire : l'issue finale « doit être fondée sur les faits de chaque affaire » (par. 48). Selon les motifs dissidents, vu l'analyse exposée précédemment, il sera presque impossible de juger que des organismes de réglementation sont des créanciers. L'arrêt *Abitibi* démontre lui-même que ce n'est pas le cas. De plus, comme je l'ai dit, il peut fort bien exister des cas qui se situent entre l'affaire *Abitibi* et celle qui nous occupe. Par contre, si l'on considère qu'*Abitibi* exige uniquement que le tribunal décide si l'organisme de réglementation a exercé un pouvoir d'application, il sera en fait impossible pour un organisme de réglementation de *ne pas* être un créancier. Les motifs dissidents ne nient pas sérieusement cette opinion et donnent seulement à penser que les organismes de réglementation peuvent publier des lignes directrices ou délivrer des permis. L'organisme de réglementation fait les deux mais, selon l'approche adoptée dans les motifs dissidents, il est dépourvu de moyens pour prendre quelque mesure concrète que ce soit dans l'intérêt public à propos de ses lignes directrices ou de permis sans avoir le statut de créancier. Comme je l'ai expliqué, l'arrêt *Abitibi* accorde clairement une place aux organismes de réglementation qui ne sont pas des créanciers.

[137] Strictly speaking, this is sufficient to dispose of this aspect of the appeal. However, additional guidance on the sufficient certainty analysis may prove helpful in future cases. Accordingly, I turn now to a discussion of the "sufficient certainty" step and

[137] Cela suffit, à proprement parler, pour trancher cet aspect du pourvoi. Cependant, d'autres indications sur l'analyse de la certitude suffisante pourraient se révéler utiles à l'avenir. En conséquence, je passe maintenant à l'analyse de l'étape

of the reasons why the Abandonment Orders and the LMR conditions both fail on this step of the *Abitibi* test. *Abitibi* test.

de la « certitude suffisante » et des raisons pour lesquelles les ordonnances d'abandon et les conditions liées à la CGR ne franchissent pas cette étape du critère d'*Abitibi*.

(2) There Is No Sufficient Certainty That the Regulator Will Perform the Environmental Work and Advance a Claim for Reimbursement

(2) Il n'est pas suffisamment certain que l'organisme de réglementation exécutera les travaux environnementaux et présentera une demande de remboursement

[138] The "sufficient certainty" test articulated in paras. 30 and 36 in *Abitibi* essentially does no more than reorganize and restate the requirements of the relevant provisions of the *BIA*. Section 121(2) provides that contingent claims may be provable claims. In other words, contingent debts or liabilities owed by a bankrupt to a creditor may be, but are not necessarily, provable claims. Section 135(1.1) provides for the valuation of such a claim. A contingent claim must be capable of valuation under s. 135(1.1) — it cannot be too remote or speculative — in order to be a provable claim under s. 121(2).

[138] Le critère de la « certitude suffisante » énoncé aux par. 30 et 36 de l'arrêt *Abitibi* ne fait essentiellement que restructurer et reformuler les exigences des dispositions applicables de la *LFI*. Selon le par. 121(2), des réclamations éventuelles peuvent constituer des réclamations prouvables. Autrement dit, les dettes que devra peut-être le failli à un créancier peuvent constituer des réclamations prouvables, mais pas nécessairement l'être. Le paragraphe 135(1.1) prévoit l'évaluation d'une réclamation éventuelle, qui doit être évaluable suivant cette disposition; elle ne doit pas être trop éloignée ou conjecturale pour constituer une réclamation prouvable au sens du par. 121(2).

[139] Before the third step of the *Abitibi* test can even be reached, a regulator must already have been shown to be a creditor. I have concluded that, on the facts of this case, the Regulator is not a creditor of Redwater. However, for the purpose of explaining how I differ from the chambers judge on the "sufficient certainty" analysis, I will proceed as if the Regulator were, in fact, a creditor of Redwater in respect of the Abandonment Orders and LMR requirements. These end-of-life obligations do not directly require Redwater to make a payment to the Regulator. Rather, they are obligations requiring Redwater to *do something*. As discussed in *Abitibi*, if the Regulator were in fact a creditor, end-of-life obligations would be its contingent claims.

[139] Avant de pouvoir atteindre la troisième étape du critère d'*Abitibi*, il faut déjà avoir fait la démonstration que l'organisme de réglementation est un créancier. Au vu des faits de l'espèce, j'ai conclu que l'organisme de réglementation n'est pas un créancier de Redwater. Toutefois, afin d'expliquer pourquoi je me dissocie du juge siégeant au cabinet à l'égard de l'analyse de la « certitude suffisante », je vais procéder comme si l'organisme de réglementation était effectivement un créancier de Redwater en ce qui concerne les ordonnances d'abandon et les exigences de la CGR. Ces obligations de fin de vie n'exigent pas directement de Redwater qu'elle fasse un paiement à l'organisme de réglementation. Elles l'obligent plutôt à *faire quelque chose*. Comme l'indique l'arrêt *Abitibi*, si l'organisme de réglementation était en fait un créancier, les obligations de fin de vie constitueraient ses réclamations éventuelles.

[140] What a court must determine is whether there are sufficient facts indicating the existence of an environmental duty that will ripen into a financial liability owed to a regulator. In determining whether

[140] Ce que le tribunal doit décider, c'est s'il y a suffisamment de faits indiquant qu'il existe une obligation environnementale de laquelle résultera une dette envers un organisme de réglementation.

a non-monetary regulatory obligation of a bankrupt is too remote or too speculative to be included in the bankruptcy proceeding, the court must apply the general rules that apply to future or contingent claims. It must be sufficiently certain that the contingency will come to pass — in other words, that the regulator will enforce the obligation by performing the environmental work and seeking reimbursement.

Pour établir si une obligation réglementaire non pécuniaire du failli est trop éloignée ou trop conjecturale pour être incluse dans la procédure de faillite, le tribunal doit appliquer les règles générales qui visent les réclamations futures ou éventuelles. Il doit être suffisamment certain que l'éventualité se concrétisera ou, en d'autres termes, que l'organisme de réglementation fera respecter l'obligation en exécutant les travaux environnementaux et en sollicitant le remboursement de ses frais.

[141] I will now discuss the Abandonment Orders and the LMR requirements in turn and demonstrate how they fail to satisfy the "sufficient certainty" step of the *Abitibi* test.

[141] Je vais maintenant analyser les ordonnances d'abandon de même que les exigences relatives à la CGR à tour de rôle et démontrer en quoi elles ne franchissent pas l'étape de la « certitude suffisante » du critère d'*Abitibi*.

(a) *The Abandonment Orders*

a) *Les ordonnances d'abandon*

[142] The Regulator has issued orders under the *OGCA* and the *Pipeline Act* requiring Redwater to abandon the Renounced Assets. Even if the Regulator were a creditor of Redwater, the Abandonment Orders would still have to be capable of valuation in order to be included in the bankruptcy process. In my view, it is not established either by the chambers judge's factual findings or by the evidence that it is sufficiently certain that the Regulator will perform the abandonments and advance a claim for reimbursement. The claim is too remote and speculative to be included in the bankruptcy process.

[142] L'organisme de réglementation a rendu, au titre de l'*OGCA* et de la *Pipeline Act*, des ordonnances enjoignant à Redwater d'abandonner les biens faisant l'objet de la renonciation. Même si l'organisme de réglementation était un créancier de Redwater, les ordonnances d'abandon doivent tout de même pouvoir faire l'objet d'une évaluation pour être incluses dans le processus de faillite. À mon avis, ni les conclusions de fait du juge siégeant en cabinet ni la preuve n'établissent qu'il est suffisamment certain que l'organisme de réglementation procédera à l'abandon et présentera une demande de remboursement. La réclamation est trop éloignée et conjecturale pour être incluse dans la procédure de faillite.

[143] The chambers judge acknowledged that it was "unclear" whether the Regulator would perform the abandonments itself or would deem the wells subject to the Abandonment Orders to be orphans (para. 173). He stated that, in the latter case, the OWA would probably carry out the abandonments, although it was not clear when they would be completed. Indeed, the chambers judge acknowledged that, given the OWA's resources, it could take as long as 10 years for it to get around to performing the required environmental work on the Redwater property. He nonetheless concluded that — even though the "sufficient certainty" step was not satisfied in a

[143] Le juge siégeant en cabinet a reconnu qu'il n'était [TRADUCTION] « pas clair » si l'organisme de réglementation effectuerait lui-même le processus d'abandon ou s'il considérerait les puits assujettis aux ordonnances d'abandon comme orphelins (par. 173). Il a dit que, dans ce dernier cas, l'OWA se chargerait probablement de l'abandon, mais on ne savait pas quand cette tâche serait menée à terme. En effet, le juge siégeant en cabinet a admis qu'étant donné les ressources de l'OWA, cela pourrait lui prendre jusqu'à 10 ans avant qu'elle amorce les travaux environnementaux nécessaires sur la propriété de Redwater. Il a conclu néanmoins que, même

"technical sense" — the situation met what had been intended in *Abitibi*. That conclusion was at least partly based on his finding that the Abandonment Orders were "intrinsically financial" (para. 173).

si l'étape de la « certitude suffisante » n'a pas été franchie au « sens technique », la situation répondait à la norme voulue dans *Abitibi*. Cette conclusion reposait, du moins en partie, sur la sienne voulant que les ordonnances d'abandon soient « intrinsèquement financières » (par. 173).

[144] In my view, the chambers judge did not make a finding of fact that the Regulator would carry out the abandonments *itself*. As noted, he acknowledged that it was "unclear" whether the Regulator would perform the abandonments. This can hardly be deemed a finding of fact deserving of deference. In my view, considered as a whole, the evidence in this case leads to the conclusion that the Regulator will not abandon the Renounced Assets itself.

[144] À mon avis, le juge siégeant en cabinet n'a pas tiré la conclusion de fait que l'organisme de réglementation se chargerait *lui-même* des travaux d'abandon. Je le rappelle, il a reconnu qu'il n'était « pas clair » si l'organisme de réglementation s'en occuperait. On peut difficilement dire qu'il s'agit qu'une conclusion de fait qui commande la déférence. Prise dans son ensemble, la preuve en l'espèce me semble mener à la conclusion selon laquelle l'organisme de réglementation ne procèdera pas lui-même à l'abandon des biens auxquels il a été renoncé.

[145] The Regulator is not in the business of performing abandonments. It has no statutory duty to do so. Abandonment is instead an obligation of the licensee. The evidence of the Regulator's affiant was that the Regulator very rarely abandons properties on behalf of licensees and virtually never does so where the licensee is in receivership or bankruptcy. The affiant stated that the Regulator had no intention of abandoning Redwater's licensed assets. As noted by the chambers judge, it is true that, in its letter to GTL dated July 15, 2015, the Regulator threatened to perform the abandonments itself, but the Regulator subsequently took no steps to follow up on that threat. Even if this letter should be accorded any weight, the contradiction between it and the Regulator's subsequent affidavits at the very least makes it difficult to say with anything approaching sufficient certainty that the Regulator intends to carry out the abandonments. These facts distinguish this case from *Abitibi*, in which the restructuring judge's findings were based on the premise that the province would most likely perform the remediation work itself.

[145] Dans le cadre de ses activités, l'organisme de réglementation n'effectue pas lui-même les travaux d'abandon. Il n'est pas tenu par la loi de le faire. Il s'agit plutôt d'une obligation incombant au titulaire de permis. Dans son affidavit, le déposant de l'organisme de réglementation a déclaré que celui-ci procédait très rarement à l'abandon de biens au nom des titulaires de permis et qu'il ne le faisait pratiquement jamais dans le cas d'un titulaire de permis sous séquestre ou en faillite. Le déposant a déclaré que l'organisme de réglementation n'avait pas l'intention d'abandonner les biens de Redwater visés par des permis. Comme l'a signalé le juge siégeant en cabinet, il est vrai que, dans sa lettre adressée à GTL en date du 15 juillet 2015, l'organisme de réglementation a menacé d'effectuer lui-même ces processus, mais il n'a rien fait par la suite pour mettre cette menace à exécution. Même si l'on devrait accorder de l'importance à cette lettre, la contradiction entre elle et les affidavits subséquents de l'organisme de réglementation font en sorte à tout le moins qu'il est difficile de dire avec quoi que ce soit de comparable à une certitude suffisante que l'organisme de réglementation compte effectuer le processus d'abandon. Ces faits distinguent la présente affaire d'*Abitibi*, où les conclusions du juge chargé de la restructuration reposaient sur la prémisse que la province exécuterait fort probablement elle-même les travaux de décontamination.

[146] Below, I will explain why the OWA's involvement is insufficient to satisfy the "sufficient certainty" test. First, I note that any reliance the chambers judge placed on the intrinsically financial nature of the Abandonment Orders was an error. In this regard, I am in complete agreement with Martin J.A. Considering whether an order is intrinsically financial is an erroneous interpretation of the third step of the *Abitibi* test. It is too broad and would result in a provable claim being found even where the existence of a monetary claim in bankruptcy is merely speculative. Thus, in *Nortel* CA, Juriansz J.A. rightly rejected the argument that the *Abitibi* test did not require a determination that the regulator would perform the environmental work and claim reimbursement, and that it was sufficient for there to be an environmental order requiring an expenditure of funds by the bankrupt estate. He held the following, at paras. 31-32:

[146] J'expliquerai ci-après pourquoi l'intervention de l'OWA est insuffisante pour satisfaire au critère de la « certitude suffisante ». Premièrement, je constate que le juge siégeant en cabinet a eu tort de tabler sur le caractère « intrinsèquement financier » des ordonnances d'abandon. Je suis entièrement d'accord avec la juge Martin sur ce point. Se demander si une ordonnance est « intrinsèquement financière » constitue une interprétation erronée de la troisième étape du critère d'*Abitibi*. Elle est trop large et conduirait à la conclusion qu'il y a une « réclamation prouvable » même lorsque l'existence d'une réclamation pécuniaire en matière de faillite ne relève que de la conjecture. Ainsi, dans l'arrêt *Nortel* CA, le juge Juriansz a rejeté à juste titre l'argument selon lequel le critère d'*Abitibi* n'exigeait pas qu'il soit décidé que l'organisme de réglementation exécuterait les travaux environnementaux et demanderait un remboursement, et qu'il suffisait qu'il y ait une ordonnance environnementale exigeant une dépense de fonds par l'actif du failli. Il a déclaré ce qui suit, aux par. 31-32 :

. . . As I read it, the Supreme Court's decision is clear: ongoing environmental remediation obligations may be reduced to monetary claims that can be compromised in CCAA proceedings only where the province has performed the remediation work and advances a claim for reimbursement, or where the obligation may be considered a contingent or future claim because it is "sufficiently certain" that the province will do the work and then seek reimbursement.

[TRADUCTION] . . . Selon moi, la décision de la Cour suprême est claire : les obligations continues de décontamination environnementale peuvent être réduites à des réclamations pécuniaires pouvant être compromises dans des procédures fondées sur la LACC seulement lorsque la Province a exécuté les travaux de décontamination et qu'elle présente une demande de remboursement, ou lorsque l'obligation peut être considérée comme une réclamation éventuelle ou future, parce qu'il est « suffisamment certain » que la Province fera le travail et cherchera ensuite à obtenir un remboursement.

The respondents' approach is not only inconsistent with *AbitibiBowater Inc., Re*, it is too broad. It would result in virtually all regulatory environmental orders being found to be provable claims. As Deschamps J. observed, a company may engage in activities that carry risks. When those risks materialize, the costs are borne by those who hold a stake in the company. A risk that results in an environmental obligation becomes subject to the insolvency process only when it is in substance monetary and is in substance a provable claim.

L'approche des intimées n'est pas seulement incompatible avec celle de l'arrêt *Abitibi*, elle est trop large. Il en résulterait que pratiquement toutes les ordonnances réglementaires en matière d'environnement soient considérées comme des réclamations prouvables. Comme l'a fait remarquer la juge Deschamps, une société peut exercer des activités qui comportent des risques. Lorsque ces risques se matérialisent, les coûts sont supportés par ceux qui détiennent une participation dans la société. Un risque qui entraîne une obligation environnementale n'est soumis au processus d'insolvabilité que lorsqu'il est en substance pécuniaire et qu'il constitue en substance une réclamation prouvable.

[147] As the chambers judge correctly acknowledged, the fact that the Regulator would not conduct the abandonments itself does not mean that it would wash its hands of the Renounced Assets. Rather, if necessary, it would designate them as orphans pursuant to the *OGCA* and leave them for the OWA. I am not suggesting that a regulator can strategically avoid the "sufficient certainty" test simply by delegating environmental work to an arm's length organization. I would not decide, as the Regulator urges, that the *Abitibi* test *always* requires that the environmental work be performed by the regulator itself. However, the OWA's true nature must be emphasized. There are strong grounds to conclude that, given the particular features of this regulatory context, the OWA is not the regulator.

[147] Comme l'a reconnu à bon droit le juge siégeant en cabinet, ce n'est pas parce que l'organisme de réglementation n'effectuerait pas lui-même les travaux d'abandon qu'il se laverait les mains des biens faisant l'objet de la renonciation. Il les qualifierait plutôt, au besoin, d'orphelins conformément à l'*OGCA* et les confiera à l'OWA. Je ne prétends pas qu'un organisme de réglementation puisse stratégiquement éviter le critère de la « certitude suffisante » en déléguant simplement des travaux environnementaux à une organisation indépendante. Je ne déciderai pas, comme l'organisme de réglementation nous a exhortés à le faire, que le critère d'*Abitibi* exige *toujours* que les travaux environnementaux soient exécutés par l'organisme lui-même. Cependant, la véritable nature de l'OWA doit être soulignée. Il y a des motifs sérieux de conclure que, vu les caractéristiques propres à ce contexte réglementaire, l'OWA n'est pas l'organisme de réglementation.

[148] The creation of the OWA was not an attempt by the Regulator to avoid the *BIA* order of priorities in bankruptcy. It is a non-profit organization with its own mandate and independent board of directors, and it operates as a financially independent entity pursuant to legally delegated authority. Although the OWA's board includes a representative of the Regulator and a representative of Alberta Environment and Parks, its independence is not in question. The OWA's 2014-2015 annual report indicates that five out of six voting directors represent industry. The OWA uses a risk assessment tool to prioritize when and how it will perform environmental work on the many hundreds of orphans in Alberta. There is no suggestion that the Regulator has any say in the order in which the OWA chooses to perform environmental work. The 2014-2015 annual report also states that, since 1992, 87 percent of the money collected and invested to fund OWA activities has been provided by industry via the orphan levy. The Regulator, at para. 99 of its factum, hints obliquely that additional provincial or federal funding may be forthcoming in the future, but even if it materializes, it will be almost entirely in the form of loans. I cannot accept the suggestion in the dissenting reasons

[148] La création de l'OWA ne représentait pas une tentative de l'organisme de réglementation pour éviter l'ordre de priorité fixé en matière de faillite par la *LFI*. C'est un organisme sans but lucratif doté de son propre mandat et de son propre conseil d'administration indépendant, et il fonctionne comme une entité financièrement indépendante en vertu du pouvoir qui lui est délégué par la loi. Bien qu'un représentant de l'organisme de réglementation et un représentant d'Alberta Environment and Parks siègent au conseil d'administration de l'OWA, son indépendance n'est pas mise en question. Le rapport annuel 2014-2015 de l'OWA indique que cinq des six directeurs votants représentent l'industrie. L'OWA se sert d'un outil d'évaluation des risques pour décider, en ordre de priorité, quand et de quelle manière elle exécutera des travaux environnementaux sur les centaines de puits orphelins de l'Alberta. Personne ne prétend que l'organisme de réglementation a son mot à dire sur l'ordre dans lequel l'OWA décide d'exécuter des travaux environnementaux. Le rapport annuel 2014-2015 ajoute que, depuis 1992, 87 p. 100 de l'argent recueilli et investi pour financer les activités de l'OWA est fourni par l'industrie via la redevance pour les puits orphelins. Au paragraphe 99 de son mémoire, l'organisme de réglementation laisse

that the Regulator and the OWA are "inextricably intertwined" (para. 273).

entendre indirectement que la province ou le gouvernement fédéral pourrait accorder à l'avenir des fonds supplémentaires à l'OWA mais, même si cette possibilité se concrétise, les fonds seront presque entièrement consentis sous forme de prêts. Je ne peux accepter la proposition des juges dissidents selon laquelle l'organisme de réglementation et l'OWA sont « inextricablement liés » (par. 273).

[149] Even assuming that the OWA's abandonment of Redwater's licensed assets could satisfy the "sufficient certainty" test, I agree with Martin J.A. that it is difficult to conclude that there is sufficient certainty that the OWA will in fact perform the abandonments. I also agree with her view that there is no certainty that a claim for reimbursement will be advanced should the OWA ultimately abandon the assets.

[149] À supposer même que l'abandon par l'OWA des biens de Redwater visés par des permis puisse satisfaire au critère de la « certitude suffisante », je conviens avec la juge Martin qu'il est difficile de conclure à la certitude suffisante que l'OWA se chargera effectivement des travaux d'abandon et qu'il n'y a aucune certitude qu'une demande de remboursement sera présentée si l'OWA finit par abandonner les biens.

[150] The dissenting reasons suggest that the facts of this appeal are more akin to those of *Northstar Aerospace Inc., Re*, 2013 ONCA 600, 8 C.B.R. (6th) 154, than to those of *Nortel* CA, arguing that the "sufficient certainty" test is satisfied because, as in *Northstar*, there is no purchaser to take on Redwater's assets and the debtor itself is insolvent, so only the OWA can perform the work. In my view, *Northstar* is easily distinguishable. In that case, the bankrupt had been voluntarily carrying out remediation prior to its bankruptcy. After it made its assignment into bankruptcy, the Ministry of the Environment ("MOE") took over the remediation activities itself, purporting to do so on a without prejudice basis. Jurianz J.A. found that the fact that the MOE had already undertaken remediation activities made it sufficiently certain that it would do so. As I will now demonstrate, the facts here are very different.

[150] Les motifs dissidents laissent croire que les faits de l'espèce s'apparentent davantage à ceux de l'affaire *Northstar Aerospace Inc., Re*, 2013 ONCA 600, 8 C.B.R. (6th) 154, qu'à ceux de *Nortel* CA, faisant valoir qu'il est satisfait au critère de la « certitude suffisante » car, tout comme dans *Northstar*, personne ne veut acheter les biens de Redwater et la débitrice elle-même est insolvable; en conséquence, seule l'OWA peut exécuter les travaux. Il me semble facile de distinguer l'affaire *Northstar* de celle qui nous occupe. Dans cette affaire, le failli effectuait de son plein gré des travaux de décontamination avant sa faillite. Après que le failli eu fait cession de ses biens, le ministre de l'Environnement (« ME ») a pris lui-même la relève des activités de décontamination et il entendait le faire sans préjudice. Selon le juge Jurianz, comme le ME avait déjà entrepris des activités de décontamination, il était suffisamment certain qu'il s'en occuperait. Comme je le démontrerai maintenant, les faits de l'espèce sont fort différents.

[151] At the beginning of this litigation, the OWA estimated that it would take 10 to 12 years to get through the backlog of orphans. By 2015, that backlog was increasing rapidly, and it may well have continued to increase at the same or an even greater speed in the intervening years, as submitted by the Regulator. If anything, this suggests the possibility of an even larger backlog. There is no indication that

[151] Au début du présent litige, l'OWA a estimé qu'il lui faudrait de 10 à 12 ans pour résorber l'arriéré d'orphelins. Cet arriéré augmentait rapidement en 2015 et il peut fort bien avoir continué de croître tout aussi ou encore plus rapidement au cours des années suivantes, comme le soutient l'organisme de réglementation. Cela tend plutôt à établir que l'arriéré pourrait encore augmenter. Rien n'indique

the Renounced Assets would have a particularly high priority in the backlog. Even if the potential additional funding materializes, the Regulator submits that it will be a generation or more before the OWA can address its existing inventory of orphans.

qu'une priorité particulièrement grande serait accordée dans l'arriéré aux biens faisant l'objet de la renonciation. Même si la possibilité d'attribuer des fonds supplémentaires se concrétise, l'organisme de réglementation fait valoir que cela prendra une génération ou plus avant que l'OWA ne puisse s'occuper de son inventaire actuel d'orphelins.

[152] The dissenting reasons rely on the chambers judge's conclusion that the OWA would "probably" perform the abandonments eventually, while downplaying the fact that he also concluded that this would not "necessarily [occur] within a definite timeframe" (paras. 261 and 278, citing the chambers judge's reasons, at para. 173). Given the most conservative timeline — the 10 years discussed by the chambers judge — it is difficult to predict anything occurring with sufficient certainty. Much could change within the next decade, both in terms of government policy and in terms of the willingness of those in the Alberta oil and gas industry to discharge environmental liabilities. This is not at all the same situation as in *Northstar*, in which the MOE had already commenced environmental work.

[152] Les motifs dissidents se fondent sur la conclusion du juge siégeant en cabinet selon laquelle l'OWA effectuerait « probablement » le processus d'abandon, tout en minimisant le fait qu'il a également conclu que l'OWA ne le ferait pas « nécessairement dans un délai précis » (par. 261 et 278, citant les motifs du juge siégeant en cabinet, par. 173). Vu l'échéancier le plus conservateur — celui de 10 ans dont a parlé le juge siégeant en cabinet —, il est difficile de prédire quoi que ce soit avec une certitude suffisante. La donne pourrait changer considérablement au cours de la prochaine décennie, tant au chapitre de la politique gouvernementale qu'à celui de la volonté de l'industrie pétrolière et gazière de l'Alberta de s'acquitter de ses responsabilités environnementales. Il ne s'agit pas du tout de la même situation que dans *Northstar*, où le ME avait déjà amorcé les travaux environnementaux.

[153] Perhaps more to the point, this lengthy timeline means that, should it ultimately perform the work, the OWA will not advance a claim for reimbursement. Advancement of a claim is an element of the test that is just as essential as performance of the work. The OWA itself has no ability to seek reimbursement of its costs from licensees and, although the costs of abandonment carried out by a person authorized by the Regulator constitute a debt payable to the Regulator under s. 30(5) of the *OGCA*, no evidence has been adduced that the Regulator has exercised its power to recover such costs in comparable cases. There is a good reason for this: the reality is that, by the time the OWA got around to abandoning any of Redwater's wells, the estate would be finalized and GTL long since discharged. In sum, the chambers judge erred in failing to consider whether the OWA can be treated as the regulator and in failing to appreciate that, even if it can, it is not sufficiently certain that the OWA will

[153] Plus particulièrement, ce long échéancier garantit que, s'il finit par exécuter les travaux, l'OWA ne présentera pas de demande de remboursement. La présentation de la demande est un élément tout aussi essentiel du critère que l'exécution des travaux. L'OWA lui-même ne peut faire rembourser ses frais par les titulaires de permis et, même si les coûts des processus d'abandon effectués par la personne autorisée par l'organisme de réglementation constituent une dette payable à cet organisme suivant le par. 30(5) de l'*OGCA*, on n'a produit aucune preuve montrant que l'organisme de réglementation a exercé son pouvoir de recouvrer ces frais dans des cas analogues, et pour cause : le fait est qu'au moment où l'OWA en arriverait à abandonner l'un ou l'autre des puits de Redwater, la liquidation de l'actif serait terminée et GTL serait libéré depuis longtemps. En somme, le juge siégeant en cabinet a eu tort de ne pas se demander si l'OWA peut être assimilé à l'organisme de réglementation et en ne

in fact perform the abandonments and advance a claim for reimbursement.

[154] Accordingly, even if the Regulator had acted as a creditor in issuing the Abandonment Orders, it cannot be said with sufficient certainty that it would perform the abandonments and advance a claim for reimbursement.

(b) *The Conditions for the Transfer of Licenses*

[155] I will deal briefly with the LMR conditions for the transfer of licences. Much of the foregoing analysis with regard to the Abandonment Orders also applies to these conditions. As noted by Martin J.A., the requirement of regulatory approval for licence transfers is difficult to compare directly with the remediation orders at issue in *Abitibi*. However, this Court confirmed that the *Abitibi* test applies to a class of regulatory obligations that is broader than "orders" in *Moloney*, at paras. 54-55. The LMR conditions are a "non-monetary obligation" for the Redwater estate, since they must be satisfied before the Regulator will approve the transfer of any of Redwater's licences. However, it is notable that, even apart from the LMR conditions, licences are far from freely transferrable. The Regulator will not approve the transfer of licences where the transferee is not a licensee under the *OGCA*, the *Pipeline Act*, or both. The Regulator also reserves the right to reject a proposed transfer where it determines that the transfer is not in the public interest, such as where the transferee has outstanding compliance issues.

[156] In a sense, the factors suggesting an absence of sufficient certainty are even stronger for the LMR requirements than for the Abandonment Orders. There is a debt enforcement scheme under the *OGCA* and the *Pipeline Act* in respect of abandonment, but

considérant pas que, même s'il peut l'être, il n'est pas suffisamment certain qu'il effectuera dans les faits le processus d'abandon et présentera une demande de remboursement.

[154] En conséquence, même si l'organisme de réglementation avait agi comme un créancier en rendant les ordonnances, on ne saurait dire avec une certitude suffisante qu'il effectuerait les processus d'abandon et présenterait une demande de remboursement.

b) *Les conditions liées au transfert de permis*

[155] Je traiterai brièvement des conditions relatives à la CGR dont est assorti le transfert de permis. Une grande partie de l'analyse qui précède concernant les ordonnances d'abandon vaut tout autant pour ces conditions. Comme l'a souligné la juge Martin, il est difficile de comparer directement la nécessité d'obtenir une approbation réglementaire pour les transferts de permis et les ordonnances de décontamination en litige dans *Abitibi*. Or, notre Cour a confirmé aux par. 54-55 de *Moloney* que le critère d'*Abitibi* s'applique à une catégorie d'obligations réglementaires plus large que les « ordonnances ». Les conditions relatives à la CGR forment une « obligation non pécuniaire » de l'actif de Redwater, car elles doivent être remplies avant que l'organisme de réglementation n'approuve le transfert de tout permis de Redwater. Cependant, il convient de noter que, même mises à part les conditions relatives à la CGR, les permis sont loin d'être librement transférables. L'organisme n'approuvera pas le transfert des permis si le cessionnaire n'est pas un titulaire de permis au sens de l'*OGCA* ou de la *Pipeline Act* ou des deux. L'organisme de réglementation se réserve également le droit de rejeter un transfert proposé lorsqu'il juge que le transfert n'est pas dans l'intérêt public, comme dans un cas où le cessionnaire a des problèmes non résolus touchant à la conformité.

[156] En un sens, les facteurs laissant croire qu'il n'y a pas de certitude suffisante militent encore plus fortement en faveur des exigences relatives à la CGR que des ordonnances d'abandon. L'*OGCA* et la *Pipeline Act* prévoient un régime de recouvrement

there is no such scheme for the LMR requirements. The Regulator's refusal to approve licence transfers unless and until the LMR requirements have been satisfied does not give it a monetary claim against Redwater. It is true that compliance with the LMR requirements results in a reduction in the value of the bankrupt estate. However, as discussed earlier, not every obligation that diminishes the value of the bankrupt estate, and therefore the amount available to secured creditors, satisfies the "sufficient certainty" step. The question is not whether an obligation is intrinsically financial.

[157] Compliance with the LMR conditions prior to the transfer of licences reflects the inherent value of the assets held by the bankrupt estate. Without licences, Redwater's *profits à prendre* are of limited value at best. All licences held by Redwater were received by it subject to the end-of-life obligations that would one day arise. These end-of-life obligations form a fundamental part of the value of the licensed assets, the same as if the associated costs had been paid up front. Having received the benefit of the Renounced Assets during the productive period of their life cycles, Redwater cannot now avoid the associated liabilities. This understanding is consistent with *Daishowa-Marubeni International Ltd. v. Canada*, 2013 SCC 29, [2013] 2 S.C.R. 336, which dealt with the statutory reforestation obligations of holders of forest tenures in Alberta. This Court unanimously held that the reforestation obligations were "a future cost embedded in the forest tenure that serves to depress the tenure's value at the time of sale" (para. 29).

[158] The fact that regulatory requirements may cost money does not transform them into debt collection schemes. As noted by Martin J.A., licensing requirements predate bankruptcy and apply to all licensees regardless of solvency. GTL does not dispute the fact that Redwater's licences can be transferred only to other licensees nor that the Regulator retains the authority in appropriate situations to

de créances en matière d'abandon, mais il n'existe aucun régime de ce genre pour les exigences liées à la CGR. Le refus de l'organisme de réglementation d'approuver les transferts de permis jusqu'à ce que ces exigences aient été satisfaites ne lui donne pas une réclamation pécuniaire contre Redwater. Certes, le respect des exigences relatives à la CGR entraîne une diminution de la valeur de l'actif du failli. Toutefois, comme nous l'avons vu plus tôt, toute obligation qui diminue la valeur de l'actif du failli, et donc la somme que peuvent recouvrer les créanciers garantis, ne franchit pas nécessairement l'étape de la « certitude suffisante ». Il ne s'agit pas de savoir si une obligation est intrinsèquement financière.

[157] Le respect des conditions liées à la CGR avant le transfert des permis reflète la valeur inhérente des biens détenus par l'actif du failli. Sans les permis, les profits à prendre appartenant à Redwater ont, au mieux, peu de valeur. Tous les permis détenus par Redwater ont été reçus par elle, sous réserve d'obligations de fin de vie qui prendraient naissance un jour. Ces obligations constituent une part fondamentale de la valeur des biens visés par des permis, comme si les frais connexes avaient été payés d'emblée. Ayant reçu le bénéfice des biens faisant l'objet de la renonciation pendant la période productive de leur cycle de vie, Redwater ne peut plus éviter les engagements connexes. Cette interprétation concorde avec l'arrêt *Daishowa-Marubeni International Ltd. c. Canada*, 2013 CSC 29, [2013] 2 R.C.S. 336, qui portait sur les obligations légales de reboisement des détenteurs de tenures forestières en Alberta. Notre Cour a conclu à l'unanimité que les obligations relatives au reboisement constituaient « un coût futur inhérent à la tenure forestière qui a pour effet d'en diminuer la valeur au moment de la vente » (par. 29).

[158] La possibilité que des exigences réglementaires coûtent de l'argent ne les transforme pas en régimes de recouvrement de créances. Comme l'a fait remarquer la juge Martin, les exigences en matière de permis précèdent la faillite et s'appliquent à tous les titulaires de permis, peu importe leur solvabilité. GTL ne conteste pas le fait que les permis de Redwater ne peuvent être transférés qu'à

reject proposed transfers due to safety or compliance concerns. There is no difference between such conditions and the condition that the Regulator will not approve transfers where they would leave the requirement to satisfy end-of-life obligations unaddressed. All these regulatory conditions depress the value of the licensed assets. None of them creates a monetary claim in the Regulator's favour. Licensing requirements continue to exist during bankruptcy, and there is no reason why GTL cannot comply with them.

(3) Conclusion on the *Abitibi* test

[159] Accordingly, the end-of-life obligations binding on GTL are not claims provable in the Redwater bankruptcy, so they do not conflict with the general priority scheme in the *BIA*. This is not a mere matter of form, but of substance. Requiring Redwater to pay for abandonment before distributing value to creditors does not disrupt the priority scheme of the *BIA*. In crafting the priority scheme set out in the *BIA*, Parliament intended to permit regulators to place a first charge on real property of a bankrupt affected by an environmental condition or damage in order to fund remediation (see s. 14.06(7)). Thus, the *BIA* explicitly contemplates that environmental regulators will extract value from the bankrupt's real property if that property is affected by an environmental condition or damage. Although the nature of property ownership in the Alberta oil and gas industry meant that s. 14.06(7) was unavailable to the Regulator, the Abandonment Orders and the LMR replicate s. 14.06(7)'s effect in this case. Furthermore, it is important to note that Redwater's only substantial assets were affected by an environmental condition or damage. Accordingly, the Abandonment Orders and LMR requirements did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage. In other words, recognizing that the Abandonment Orders and LMR requirements are not provable claims

d'autres titulaires de permis, ni le fait que l'organisme de réglementation conserve le pouvoir, dans les situations qui s'y prêtent, de rejeter les transferts proposés en raison de préoccupations relatives à la sécurité ou à la conformité. Il n'y a aucune différence entre ces conditions et celle voulant que l'organisme de réglementation n'approuve pas les transferts qui laisseraient en suspens l'exigence de satisfaire aux obligations de fin de vie. Toutes ces conditions réglementaires font baisser la valeur des biens visés par des permis. Aucune ne donne naissance à une réclamation pécuniaire en faveur de l'organisme de réglementation. Les exigences en matière de permis subsistent pendant la faillite, et il n'y a aucune raison pour laquelle GTL ne peut s'y conformer.

(3) Conclusion sur le critère d'*Abitibi*

[159] En conséquence, les obligations de fin de vie incombant à GTL ne sont pas des réclamations prouvables dans la faillite de Redwater et n'entrent donc pas en conflit avec le régime de priorité général instauré dans la *LFI*. Ce n'est pas une simple question de forme, mais de fond. Obliger Redwater à payer l'abandon avant de répartir la valeur entre les créanciers ne perturbe pas le régime de priorité établi dans la *LFI*. Au moment d'élaborer ce régime, le Parlement voulait permettre aux organismes de réglementation d'imposer une charge prioritaire sur le bien réel du failli touché par un fait ou dommage lié à l'environnement en vue de financer la décontamination (voir le par. 14.06(7)). Ainsi, la *LFI* envisage explicitement la possibilité que des organismes de réglementation tire une valeur des biens réels du failli touchés par un fait ou dommage lié à l'environnement. Bien que l'organisme de réglementation n'ait pu se prévaloir du par. 14.06(7), compte tenu de la nature de la propriété des biens dans l'industrie pétrolière et gazière de l'Alberta, les ordonnances d'abandon et la CGR reproduisent l'effet du par. 14.06(7) en l'espèce. De plus, il importe de souligner que les seuls biens de valeur de Redwater étaient touchés par un fait ou dommage lié à l'environnement. Les ordonnances d'abandon et exigences relatives à la CGR n'avaient donc pas pour objet de forcer Redwater à s'acquitter des obligations de fin de vie avec des biens étrangers au fait

in this case does not interfere with the aims of the *BIA* — rather, it facilitates them.

[160] Bankruptcy is not a licence to ignore rules, and insolvency professionals are bound by and must comply with valid provincial laws during bankruptcy. They must, for example, comply with non-monetary obligations that are binding on the bankrupt estate, that cannot be reduced to provable claims, and the effects of which do not conflict with the *BIA*, notwithstanding the consequences this may have for the bankrupt's secured creditors. The Abandonment Orders and the LMR requirements are based on valid provincial laws of general application — exactly the kind of valid provincial laws upon which the *BIA* is built. As noted in *Moloney*, the *BIA* is clear that "[t]he ownership of certain assets and the existence of particular liabilities depend upon provincial law" (para. 40). End-of-life obligations are imposed by valid provincial laws which define the contours of the bankrupt estate available for distribution.

[161] Finally, as noted earlier, the *BIA*'s general purpose of facilitating financial rehabilitation is not relevant for a corporation such as Redwater. Corporations with insufficient assets to satisfy their creditors will never be discharged from bankruptcy because they cannot satisfy all their creditors' claims in full (*BIA*, s. 169(4)). Thus, no conflict with this purpose is caused by the conclusion that the end-of-life obligations binding Redwater are not provable claims.

IV. Conclusion

[162] There is no conflict between Alberta's regulatory regime and the *BIA* requiring portions of the former to be rendered inoperative in the context of bankruptcy. Although GTL remains fully protected from personal liability by federal law, it cannot walk away from the environmental liabilities of the bankrupt estate by invoking s. 14.06(4). On a

ou dommage lié à l'environnement. Autrement dit, la reconnaissance que les ordonnances d'abandon et exigences relatives à la CGR ne sont pas des réclamations prouvables en l'espèce facilite l'atteinte des objets de la *LFI* au lieu de la contrecarrer.

[160] La faillite n'est pas un permis de faire abstraction des règles, et les professionnels de l'insolvabilité sont liés par les lois provinciales valides au cours de la faillite. À titre d'exemple, ils doivent respecter les obligations non pécuniaires liant l'actif du failli qui ne peuvent être réduites à des réclamations prouvables et dont les effets n'entrent pas en conflit avec la *LFI*, sans égard aux répercussions que cela peut avoir sur les créanciers garantis du failli. Les ordonnances d'abandon et exigences relatives à la CGR reposent sur des lois provinciales valides d'application générale et elles représentent exactement le genre de loi provinciale valide sur lequel se fonde la *LFI*. Tel qu'il est signalé dans *Moloney*, la *LFI* indique clairement que « [l]a propriété de certains biens et l'existence de dettes particulières relèvent du droit provincial » (par. 40). Les obligations de fin de vie sont imposées par des lois provinciales valides qui définissent les contours de l'actif du failli susceptible d'être partagé.

[161] Enfin, rappelons que l'objet général de la *LFI* de favoriser la réhabilitation financière ne concerne pas une société comme Redwater. Les sociétés n'ayant pas assez de biens pour satisfaire leurs créanciers ne seront jamais libérées de leur faillite puisqu'elles ne peuvent acquitter entièrement toutes les réclamations de leurs créanciers (*LFI*, par. 169(4)). Ainsi, la conclusion selon laquelle les obligations de fin de vie incombant à Redwater ne sont pas des réclamations prouvables n'est à l'origine d'aucun conflit avec cet objet.

IV. Conclusion

[162] Il n'y a aucun conflit entre le régime de réglementation de l'Alberta et la *LFI* en raison duquel des parties du premier doivent être inopérantes dans le contexte de la faillite. Bien que GTL demeure entièrement dégagé de toute responsabilité personnelle par le droit fédéral, il ne peut se soustraire aux engagements environnementaux qui lient l'actif du

proper application of the *Abitibi* test, the Redwater estate must comply with ongoing environmental obligations that are not claims provable in bankruptcy.

[163] Accordingly, the appeal is allowed. In *Alberta Energy Regulator v. Grant Thornton Limited*, 2017 ABCA 278, 57 Alta. L.R. (6th) 37, Wakeling J.A. declined to stay the precedential effect of the Court of Appeal's decision. As he noted, the interests of the Regulator itself were already protected. Pursuant to earlier orders of the Alberta courts, GTL had already sold or renounced all of Redwater's assets, and the sale proceeds were being held in trust. Accordingly, the Regulator's request for an order that the proceeds from the sale of Redwater's assets be used to address Redwater's end-of-life obligations is granted. Additionally, the chambers judge's declarations in paras. 3 and 5-16 of his order are set aside.

[164] As the successful party in the appeal, the Regulator would normally be entitled to its costs. However, the Regulator specifically did not seek costs. Accordingly, there will be no order made as to costs.

The reasons of Moldaver and Côté JJ. were delivered by

CÔTÉ J. (dissenting) —

I. Introduction

[165] Redwater Energy Corporation ("Redwater") is a bankrupt oil and gas company. Its estate principally consists of two types of properties or assets: valuable, producing oil wells and facilities that are still capable of generating revenue; and value-negative, non-producing assets, including depleted wells that are subject to onerous environmental liabilities. Redwater's receiver and trustee in bankruptcy, Grant Thornton Limited ("GTL"), purports to have disclaimed ownership of the non-producing

failli en invoquant le par. 14.06(4). D'après une juste application du critère d'*Abitibi*, l'actif de Redwater doit respecter les obligations environnementales continues qui ne sont pas des réclamations prouvables en matière de faillite.

[163] En conséquence, le pourvoi est accueilli. Dans *Alberta Energy Regulator c. Grant Thornton Limited*, 2017 ABCA 278, 57 Alta. L.R. (6th) 37, le juge Wakeling a refusé de suspendre l'effet de précédent de l'arrêt rendu par la Cour d'appel. Comme il l'a fait remarquer, les intérêts de l'organisme de réglementation lui-même étaient déjà protégés. Conformément aux ordonnances rendues auparavant par les tribunaux albertains, GTL avait déjà vendu l'ensemble des biens de Redwater ou y avait renoncé et le produit de la vente a été détenu en fiducie. Ainsi, la Cour rend l'ordonnance demandée par l'organisme de réglementation selon laquelle le produit de la vente des biens de Redwater doit être utilisé pour satisfaire aux obligations de fin de vie de Redwater. En outre, les déclarations du juge siégeant en cabinet qui figurent aux par. 3 et 5-16 de son ordonnance sont annulées.

[164] Puisqu'il a gain de cause dans le cadre de ce pourvoi, l'organisme de réglementation aurait normalement droit aux dépens. Toutefois, il a expressément mentionné ne pas les demander. C'est pourquoi aucune ordonnance ne sera rendue à cet égard.

Version française des motifs des juges Moldaver et Côté rendus par

LA JUGE CÔTÉ (dissidente) —

I. Introduction

[165] Redwater Energy Corporation (« Redwater ») est une société pétrolière et gazière en faillite. Son actif se compose principalement de deux types de biens : des puits de pétrole et des installations pétrolières de valeur productifs qui sont encore susceptibles de générer un revenu; et des biens inexploités ayant une valeur négative, notamment des puits taris auxquels se rattachent de lourds engagements environnementaux. Le séquestre et syndic de faillite de Redwater, Grant Thornton Limited (« GTL »),

Province of Alberta

RESPONSIBLE ENERGY DEVELOPMENT ACT

Statutes of Alberta, 2012
Chapter R-17.3

Current as of June 26, 2020

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Responsible Energy Development Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	*Amendments*
Responsible Energy Development Act		
Alberta Energy Regulator Administration Fees Rules	70/2019	*163/2019, 164/2020, 72/2021*
Alberta Energy Regulator Rules of Practice	99/2013	*203/2013, 45/2014, 71/2018*
Curtailment	214/2018	*255/2018, 268/2018, 16/2019, 35/2019, 100/2019, 144/2019, 177/2019, 198/2020*
Enforcement of Private Surface Agreement Rules	204/2013	
Responsible Energy Development Act General	90/2013	*159/2013, 202/2013, 195/2016, 61/2018, 214/2018, 248/2018, 61/2020*

Security Management for Critical Upstream Petroleum and Coal Infrastructure ..... 91/2013 ..... *249/2018*
Specified Enactments (Jurisdiction) ..... 201/2013 ..... *148/2014, 18/2015, 194/2016, 60/2020, 84/2020*

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

Interpretation

1(1) In this Act,

(a) "application" means an application to the Regulator for the issuance of an approval;

(b) "approval" means, except where the context otherwise requires, a permit, licence, registration, authorization, disposition, certificate, allocation, declaration or other instrument or form of approval, consent or relief under an energy resource enactment or a specified enactment;

(c) "board" means the board of directors of the Regulator;

(d) "Chief Executive Officer" means the Chief Executive Officer appointed under section 7;

(e) "Crown" means the Crown in right of Alberta;

(f) "decision" of the Regulator includes an approval, order, direction, declaration or notice of administrative penalty made or issued by the Regulator;

(g) "director" means, except where the context otherwise requires, a member of the board;

(h) "energy resource" means any natural resource within Alberta that can be used as a source of any form of energy, but does not include hydro energy as defined in the *Hydro and Electric Energy Act*;

(i) "energy resource activity" means

(i) an activity that may only be carried out under an approval issued under an energy resource enactment, or

(ii) an activity described in the regulations that is directly linked or incidental to the carrying out of an activity referred to in subclause (i);

(j) "energy resource enactment" means

(i) the *Coal Conservation Act*,

(ii) the *Gas Resources Preservation Act*,

(iii) the *Oil and Gas Conservation Act*,

(iv) the *Oil Sands Conservation Act*,

(v) the *Pipeline Act*,

(vi) the *Turner Valley Unit Operations Act*,

(vii) a regulation or rule under an enactment referred to in subclauses (i) to (vi), or

(viii) any enactment prescribed by the regulations;

(k) "environment" means the components of the earth and includes

(i) air, land and water,

(ii) all layers of the atmosphere,

(iii) all organic and inorganic matter and living organisms, and

(iv) the interacting natural systems that include components referred to in subclauses (i) to (iii);

(l) "hearing commissioner" means an individual appointed under section 11 to serve as a hearing commissioner;

(m) "issuance", in respect of an approval, includes, where the context so requires, an amendment, transfer, renewal or cancellation of an approval;

(n) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

(o) "reconsideration" means a reconsideration of a decision under Division 4 of Part 2;

(p) "Regulator" means the Alberta Energy Regulator established by section 3;

(q) "regulatory appeal" means an appeal of an appealable decision under Division 3 of Part 2;

(r) "rule" means, except in section 47, a rule made

(i) by or on behalf of the Regulator under this Act or by the Regulator under an energy resource enactment, or

(ii) by the Lieutenant Governor in Council pursuant to section 68;

(s) "specified enactment" means

(i) the *Environmental Protection and Enhancement Act*,

(ii) the *Public Lands Act*,

(iii) the *Water Act*,

(iv) Part 8 of the *Mines and Minerals Act*,

(v) a regulation under an enactment referred to in subclauses (i) to (iv), or

(vi) any enactment prescribed by the regulations.

(2) A reference in this Act to "any other enactment" means a reference to an energy resource enactment or a specified enactment where the context so requires.

Mandate of Regulator

2(1) The mandate of the Regulator is

(a) to provide for the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta through the Regulator's regulatory activities, and

(b) in respect of energy resource activities, to regulate

(i) the disposition and management of public lands,

(ii) the protection of the environment, and

(iii) the conservation and management of water, including the wise allocation and use of water,

in accordance with energy resource enactments and, pursuant to this Act and the regulations, in accordance with specified enactments.

(2) The mandate of the Regulator is to be carried out through the exercise of its powers, duties and functions under energy resource enactments and, pursuant to this Act and the regulations, under specified enactments, including, without limitation, the following powers, duties and functions:

(a) to consider and decide applications and other matters under energy resource enactments in respect of pipelines, wells, processing plants, mines and other facilities and operations for the recovery and processing of energy resources;

(b) to consider and decide applications and other matters under the *Public Lands Act* for the use of land in respect of energy resource activities, including approving energy resource activities on public land;

(c) to consider and decide applications and other matters under the *Environmental Protection and Enhancement Act* in respect of energy resource activities;

(d) to consider and decide applications and other matters under the *Water Act* in respect of energy resource activities;

(e) to consider and decide applications and other matters under Part 8 of the *Mines and Minerals Act* in respect of the exploration for energy resources;

(f) to monitor and enforce safe and efficient practices in the exploration for and the recovery, storing, processing and transporting of energy resources;

(g) to oversee the abandonment and closure of pipelines, wells, processing plants, mines and other facilities and operations in respect of energy resource activities at the end of their life cycle in accordance with energy resource enactments;

(h) to regulate the remediation and reclamation of pipelines, wells, processing plants, mines and other facilities and operations in respect of energy resource activities in accordance with the *Environmental Protection and Enhancement Act*;

(i) to monitor energy resource activity site conditions and the effects of energy resource activities on the environment;

(j) to monitor and enforce compliance with energy resource enactments and specified enactments in respect of energy resource activities.

(2) Without limiting the generality of subsection (1), the hearing commissioners

(a) may participate in the development of the Regulator's practices, procedures and rules, and

(b) are entitled to receive professional, technical, administrative and operational support from the Regulator to assist the hearing commissioners in the conduct of hearings and inquiries.

Division 3
General Powers, Duties and Functions of Regulator

Powers of Regulator

14(1) The Regulator, in the carrying out of duties and functions imposed on it by this Act or any other enactment, may do all things that are necessary for or incidental to the carrying out of any of those duties or functions.

(2) The Regulator, with the approval of the Lieutenant Governor in Council, may take any action and may make any orders and directions that the Regulator considers necessary to carry out the mandate of the Regulator and the purposes of this Act or any other enactment that are not otherwise specifically authorized by this Act or any other enactment.

Factors to consider on applications, etc.

15 Where the Regulator is to consider an application or to conduct a regulatory appeal, reconsideration or inquiry, it shall, in addition to any other factor it may or must consider in considering the application or conducting the regulatory appeal, reconsideration or inquiry, consider any factor prescribed by the regulations, including the interests of landowners.

Disclosure of information to Minister

16(1) The Regulator shall, on the written request of the Minister, provide to the Minister within the time specified in the request any report, record or other information, including personal information, that is specified in the request.

(2) Where any report, record or other information disclosed by the Regulator to the Minister under subsection (1)

(a) is subject to any kind of confidence, or

Division 5
Administration

Protection from action

27 No action or proceeding may be brought against the Regulator, a director, a hearing commissioner, an officer or an employee of the Regulator, or a person engaged by the Regulator, in respect of any act or thing done or omitted to be done in good faith under this Act or any other enactment.

Regulator's funds and expenditures

28(1) All expenditures incurred by the Regulator must be charged against money provided in accordance with this section.

(2) In each fiscal year, funds equivalent to the estimated net expenditures to be incurred in the year by the Regulator, if not provided from money voted by the Legislature for that purpose, shall be provided under section 29.

Funding

29(1) In this section,

(a) "administration fee" means an amount imposed as an administration fee under this section;

(b) "coal project" means a mine or operation that is the subject of a licence under the *Coal Conservation Act*;

(c) "oil sands project" means a scheme or operation that is the subject of an approval under the *Oil Sands Conservation Act*;

(d) "operator" means, in relation to any facility, oil sands project, coal project or well,

(i) the person who is the actual operator of the facility, oil sands project, coal project or well, or

(ii) the person who holds an approval issued by the Regulator or to whom or in respect of whom an order is granted by the Regulator in respect of the facility, oil sands project, coal project or well;

(e) "prescribed date" means, in relation to any year, the date or dates prescribed by the rules under subsection (3) as the prescribed date or dates for that year for the purposes of this section;

(f) "well" has the meaning given to it in the *Oil and Gas Conservation Act*.

(2) The Regulator may, in respect of any fiscal year, impose and collect an administration fee with respect to any facility, oil sands project, coal project or well on a basis that will produce a sum sufficient to defray a portion or all of the estimated net expenditures of the Regulator in that fiscal year.

(3) The Regulator may make rules

(a) prescribing the rates of the administration fees applicable to facilities, oil sands projects, coal projects or wells or any classes of facilities, oil sands projects, coal projects or wells;

(b) prescribing a date or dates in the fiscal year during which a rule is made under clause (a) as the prescribed date or dates for that year for the purposes of this section;

(c) respecting the imposition and payment of administration fees;

(d) prescribing, in any manner the Regulator considers appropriate, classes of facilities, oil sands projects, coal projects or wells;

(e) respecting the exemption of any facility, oil sands project, coal project or well or any class of facility, oil sands project, coal project or well from the imposition of an administration fee;

(f) respecting the imposition and payment of penalties for the late payment of administration fees;

(g) respecting appeals with respect to the determination or imposition of administration fees and penalties.

(4) An administration fee imposed in a fiscal year with respect to a facility, oil sands project, coal project or well is payable to the Regulator by the operator of the facility, oil sands project, coal project or well on the prescribed date or dates.

(5) The Regulator may impose a penalty or shut in a facility, oil sands project, coal project or well of an operator if the operator fails to pay an administration fee by the prescribed date.

Province of Alberta

OIL AND GAS CONSERVATION ACT

Revised Statutes of Alberta 2000
Chapter O-6

Current as of June 2, 2021

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the current as of date shown on the cover. It does not include the following amendments:

2020 cG-5.5 s32 amends ss1(1), 3, 106(3) and 110.1.

Regulations

The following is a list of the regulations made under the *Oil and Gas Conservation Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	*Amendments*
Oil and Gas Conservation Act		
(The following list does not include certain special or particular orders made under the Oil and Gas Conservation Act which are exempted from filing under the Regulations Act: see AR 288/99.)		
Curtailment	214/2018	*255/2018, 268/2018, 16/2019, 35/2019, 100/2019, 144/2019, 177/2019;198/2020*
Oil and Gas Conservation	151/71	*241/71, 69/72, 140/72, 233/72, 93/73, 103/73, 51/74, 71/74,*

80/74, 144/74,
264/74, 341/74,
41/75, 2/76,
179/76, 202/76,
15/77, 104/77,
250/77, 178/78,
295/78, 428/78,
469/78, 229/79,
326/79, 2/80,
79/80, 51/81,
205/81, 89/82,
206/82, 267/82,
286/82, 337/82,
433/82, 460/82,
221/83, 336/83,
364/83, 399/83,
416/83, 15/84,
112/84, 264/84,
189/85, 265/85,
27/86, 234/86,
302/86, 283/87,
350/87, 485/87,
70/88, 188/88,
217/88, 360/88,
70/89, 153/89,
19/90, 146/90,
169/90, 321/90,
40/91, 79/91,
267/91, 374/91,
199/92, 332/92,
371/92, 9/93,
168/93, 186/93,
225/93, 226/93,
117/94, 237/94,
156/95, 105/96,
144/96, 222/97,
10/98, 11/98,
12/98, 13/98,
14/98, 25/98,
67/98, 78/98,
128/98, 143/98,
179/98, 224/98,
229/98, 47/99,
131/99, 151/99,
82/2000, 99/2000,
102/2001, 182/2001,
206/2001, 36/2002,
83/2002, 136/2002,
194/2002, 226/2002,
32/2003, 190/2003,
215/2003, 222/2003,
256/2003, 390/2003,
119/2004, 202/2004,
17/2005, 122/2005,

184/2005, 185/2005, 189/2005, 40/2006, 142/2006, 153/2006, 269/2006, 12/2007, 109/2007, 152/2007, 254/2007, 26/2008, 114/2008, 115/2008, 159/2008, 180/2008, 9/2009, 85/2009, 234/2009, 7/2010, 39/2010, 130/2010, 156/2010, 216/2010, 2/2011, 65/2011, 203/2011, 208/2011, 209/2011, 18/2012, 31/2012, 50/2012, 121/2012, 157/2012, 170/2012, 220/2012, 222/2012, 1/2013, 2/2013, 41/2013, 44/2013, 55/2013, 62/2013, 70/2013, 75/2013, 89/2013, 115/2013, 1/2014, 45/2014, 88/2014, 140/2014, 6/2015, 33/2015, 114/2015, 1/2016, 128/2016, 197/2016, 10/2017, 30/2017, 158/2017, 243/2017, 23/2018, 219/2018, 10/2019, 17/2019, 40/2020, 109/2020, 165/2020, 259/2020, 277/2020, 52/2021, 70/2021, 71/2021

Orphan Fund Delegated Administration .....45/2001 ..... *238/2001, 251/2001, 67/2006, 35/2007, 254/2007, 89/2013, 23/2016, 105/2017, 88/2020*

OIL AND GAS CONSERVATION ACT

Chapter O-6

Table of Contents

1 Interpretation
2 Description of land
3 Application of Act

Part 1
Object and Application of Act

4 Purposes of Act

Part 3
General Powers

7 General powers
8 Conditions of approval

Part 4
Overriding Provisions

9 Overriding provisions

Part 5
Rules

10 Rules

Part 6
Licences and Approvals

11 Requirement for licence
12 Licence or approval for facility
13 Transitional
14 Appeal
15 Application for licence
16 Entitlement for well licence
17 Entitlement for facility licence
18 Granting of licence

19 Location of road in licence
20 Additional requirements of licensee
21 Identification codes
22 Terms and conditions
23 Reworking wells and facilities
23.1 Captured carbon dioxide wells, facilities and schemes
24 Transfer of licence
25 Cancellation and suspension
26 Amendment of licence or approval
26.1 Security deposit
26.2 Reasonable care, measures to prevent impairment or damage
27 Suspension and abandonment
28 Suspension, abandonment by Regulator
29 Continuing liability
30 Suspension, abandonment and reclamation costs
31 Deemed working interest participant
31.1 Deemed licensee
32 Extended obligation

Part 7
Production

Designation of Fields, etc.

33 Regulation of production

Prorationing of Oil

34 Prorationing of oil

Rateable Take of Gas

36 Rateable take

Conservation Projects

37 Disposal of water
38 Prevention of waste
39 Approval of scheme
40 Prohibition against injunction
41 Escape of oil, gas, water or substance

Production and Use of Gas

42 Gas wells

Part 8
Shut-down and Closure

44 Shut-down and closure
45 Request for inquiry
46 Powers of Regulator
47 Prohibition

Part 9
Common Carriers, Purchasers and Processors

Common Carrier

48 Common carrier
49 Relief to common carrier

Common Purchaser

50 Common purchaser of oil
51 Common purchaser of gas
52 Relief to common purchaser

Common Processor

53 Common processor
54 Relief to common processor

Alberta Utilities Commission

55 Powers of Alberta Utilities Commission

Operation

56 Effective date of order

Part 10
Borrowing, Guarantees and Advances

65 Power to borrow
66 Guarantee and advances

Part 11
Orphan Fund

68 Definitions
69 Fund continued
70 Purpose of fund
71 Effect of payment from fund
72 Ordinary remedies available
73 Orphan fund levy

74 Payment of levy
75 Notice of levy
76 Appeal of levy
76.1 Special orphan fund levy
76.2 Borrowing and advances
77 Regulations

Part 12
Unit Operation

78 Definitions

Agreement to Establish Unit

79 Agreement to establish unit

Pooling

80 Pooling
81 Well on tract in drilling spacing unit
82 Application to vary pooling order
83 Drilling costs
84 Inclusion of drilling spacing unit in unit area

General

85 Missing or untraceable tract owner
86 Dispute re production
87 Operation of unit area
88 Operating expenses
89 Alteration of orders
90 Effect of agreement

Part 13
Registers, Records and Reports

Registered Address of Licensee

91 Appointment of agent

Battery Records and Reports

92 Battery of wells
93 Production of records

Part 14
Proceedings Before the Regulator

Powers of Regulator

94 Jurisdiction of Regulator

95 Service of notices

Part 15
Provisions of General Application

96 Inspection
97 Closing area to travel
98 Offset wells
99 Compensation schemes
100 Control, completion and operation costs
101 Entry on land
102 Sale of equipment, etc.
103 Enforcement of lien
104 Escaped substance
105 Enforcement of orders
106 Actions re principals
106.1 Appointment of receiver, receiver manager, trustee, liquidator

Offences and Penalties

107 Waste prohibited
108 Offences
109 Limitation period for prosecution
110 Penalties

Regulations

110.1 Regulations

Cancellation of Industrial Development Permits and Applications

111 Cancellation of permits and applications

Subsisting Board Regulations

112 Board regulations deemed to be rules

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

Interpretation

1(1) In this Act,

(a) "abandonment", subject to section 68(a), means the permanent dismantlement of a well or facility in the manner prescribed by the regulations or rules and includes any

measures required to ensure that the well or facility is left in a permanently safe and secure condition;

(b) "abandonment costs", subject to section 68(b), means the reasonable costs actually incurred in the abandonment of a well or facility;

(c) "agent" means an agent appointed under section 91;

(d) "allowable", when that term is used in connection with a well, means the amount of oil or gas a well is permitted to produce, in accordance with an order of the Regulator for this purpose, after application of any applicable penalty factor;

(e) "approval holder" means the holder of an approval granted pursuant to this Act, any predecessor of this Act or a regulation or rules under any of them;

(f) "base allowable" means the amount of production that according to a Regulator order could be taken if no penalty factor, whether its purpose be for proration, for avoidance of waste or for protection of the rights of others, were to be applied;

(g) "battery" means a system or arrangement of tanks or other surface equipment receiving the effluents of one or more wells prior to delivery to market or other disposition, and may include equipment or devices for separating the effluents into oil, gas or water and for measurement;

(h) "block" means an area or part of a pool consisting of drilling spacing units grouped for the purpose of administering a common, aggregate production allowable;

(i) repealed 2012 cR-17.3 s97(2);

(j) "butanes" means, in addition to its normal scientific meaning, a mixture mainly of butanes that ordinarily may contain some propane or pentanes plus;

(j.1) "captured carbon dioxide" means captured carbon dioxide as defined in the *Mines and Minerals Act*;

(j.2) "coal deposit" means a natural accumulation of coal in one or more coal seams as defined in the Coal Conservation Act;

(k) "condensate" means a mixture mainly of pentanes and heavier hydrocarbons that may be contaminated with sulphur compounds, that

(i) is recovered or is recoverable at a well from an underground reservoir and may be gaseous in its virgin reservoir state but is liquid at the conditions under which its volume is measured or estimated, or

(ii) is recovered from an in situ coal scheme and is liquid at the conditions under which its volume is measured or estimated;

(l) "contractor" means a person who undertakes to perform any drilling, service or other operation at the site of a well or facility by agreement

(i) directly with the licensee, approval holder, operator or other person having a right with respect to or an interest in the well or facility, or

(ii) with another person who has in turn entered directly into an agreement with a person referred to in subclause (i);

(m) "Court" means the Court of Queen's Bench;

(n) "crude bitumen" means a naturally occurring viscous mixture, mainly of hydrocarbons heavier than pentane, that may contain sulphur compounds and that, in its naturally occurring viscous state, will not flow to a well;

(o) "crude oil" means a mixture mainly of pentanes and heavier hydrocarbons that may be contaminated with sulphur compounds, that is recovered or is recoverable at a well from an underground reservoir and that is liquid at the conditions under which its volume is measured or estimated, and includes all other hydrocarbon mixtures so recovered or recoverable except raw gas, condensate or crude bitumen;

(p) "dehydrator" means an apparatus designed and used to remove water from raw gas;

(q) "drilling spacing unit" means a drilling spacing unit prescribed by or pursuant to the regulations or rules;

(r) "enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance or injection to the pool of a substance or form of energy, but does not include the injection in a well of a substance or form of energy for the sole purpose of

(i) aiding in the lifting of fluids in the well, or

(ii) stimulation of the reservoir at or near the well by mechanical, chemical, thermal or explosive means;

(s) "ethane" means, in addition to its normal scientific meaning, a mixture mainly of ethane that ordinarily may contain some methane or propane;

(t) "evaluation well" means a well that, when being drilled, is expected by the Regulator to penetrate a pool or oil sands deposit and that is drilled for the sole purpose of evaluation;

(u) "experiment" or "experimental scheme" means a scheme or operation for the recovery or processing of oil or gas, including the drilling and completion of wells for production or injection, that uses methods that are untried and unproven in that particular application;

(v) "experimental well" means a well drilled, being drilled or operated pursuant to an experimental scheme approved by the Regulator;

(w) "facility", except for the purposes of Part 11, means any building, structure, installation, equipment or appurtenance over which the Regulator has jurisdiction and that is connected to or associated with the recovery, development, production, handling, processing, treatment or disposal of hydrocarbon-based resources, including synthetic coal gas and synthetic coal liquid, or any associated substances or wastes or the disposal of captured carbon dioxide, and includes, without limitation, a battery, a processing plant, a gas plant, an oilfield waste management facility, a central processing facility as defined in the rules made under the *Oil Sands Conservation Act*, a compressor, a dehydrator, a separator, a treater, a custom treating plant, a produced water-injection plant, a produced water disposal plant, a miscible flood injection plant, a satellite or any combination of any of them, but does not include a well, a pipeline as defined in the *Pipeline Act*, a mine site or processing plant as defined in the rules made under the *Oil Sands Conservation Act* or a mine site or coal processing plant as defined in the *Coal Conservation Act*;

(x) "field" means

(i) the general surface area or areas underlain or appearing to be underlain by one or more pools, or

(ii) the subsurface regions vertically beneath a surface area or areas referred to in subclause (i);

(y) "gas" means raw gas, synthetic coal gas or marketable gas or any constituent of raw gas, synthetic coal gas, condensate, crude bitumen or crude oil that is recovered in processing and that is gaseous at the conditions under which its volume is measured or estimated;

(z) "helium" means, in addition to its normal scientific meaning, a mixture mainly of helium that ordinarily may contain some nitrogen and methane;

(aa) "holding" means an area established as a holding pursuant to the regulations or rules;

(aa.001) "impairment or damage" means impairment or damage that results in or could reasonably be expected to result in harm to the integrity of a well or facility or harm to the environment, human health or safety or property;

(aa.01) "in situ coal scheme" means an in situ coal scheme as defined in the *Coal Conservation Act*;

(aa.1) "large facility" means a facility that is

(i) a central processing facility as defined in the rules made under the *Oil Sands Conservation Act* with a Regulator approved design capacity of 5000 cubic metres or more per day,

(ii) an oil sands upgrader integrated into a central processing facility as defined in the rules made under the *Oil Sands Conservation Act* with a Regulator approved design capacity of 5000 cubic metres or more per day,

(iii) a processing plant designated by the Regulator as a stand alone straddle plant, or

(iv) a gas processing plant that has or has had sulphur recovery, with a sulphur inlet of one tonne or more per day;

(bb) "licence" means a licence granted pursuant to this Act or any predecessor of this Act or a regulation under any of them or rules under this Act;

(cc) "licensee" means the holder of a licence according to the records of the Regulator and includes a receiver, receiver-manager, trustee or liquidator of property of a licensee;

(c) refuse the application.

RSA 2000 cO-6 s26;2012 cR-17.3 s97(31)

Security deposit

26.1 Where, on the written request of a licensee of a large facility or one or more working interest participants who have a 50% or greater share in a large facility, the Regulator requires the licensee to provide a security deposit in respect of the large facility, each working interest participant in the large facility is responsible for paying its share of the security deposit to the licensee in proportion to its share in the facility.

2009 c20 s7;2012 cR-17.3 s97(31)

Reasonable care, measures to prevent impairment or damage

26.2(1) A licensee or approval holder shall provide reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site.

(2) If, in the opinion of the Regulator, a licensee or approval holder has failed or is unable to provide reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site, the working interest participants in the well, facility, well site or facility site shall provide reasonable care and measures to prevent impairment or damage in respect of the well, facility, well site or facility site.

(3) If reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site are not being provided in a manner satisfactory to the Regulator, the Regulator may order the licensee, a working interest participant or a delegated authority under Part 11 to provide reasonable care and measures to prevent impairment or damage in respect of the well, facility, well site or facility site and may impose any terms or conditions that the Regulator determines are necessary in the order.

(4) The provision of reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site must be carried out in accordance with the rules and any terms or conditions imposed by the Regulator.

2020 c4 s1(8)

Suspension and abandonment

27(1) Subject to subsection (2), a licensee or approval holder shall suspend or abandon a well or facility when directed by the Regulator or required by the regulations or rules.

(2) Notwithstanding subsection (1),

(a) if the Regulator so directs, a well or facility must be suspended or abandoned by a working interest participant other than the licensee or approval holder, and

(b) with the consent of the Regulator, a well or facility may be suspended by a working interest participant other than the licensee or approval holder.

(3) The Regulator may order that a well or facility be suspended or abandoned where the Regulator considers that it is necessary to do so in order to protect the public or the environment.

(4) A suspension or abandonment must be carried out in accordance with the regulations or rules.

RSA 2000 cO-6 s27;2012 cR-17.3 s97(31),(33)

Suspension, abandonment by Regulator

28 If, in the opinion of the Regulator, a well or facility is not suspended or abandoned in accordance with a direction of the Regulator or the regulations or rules, the Regulator may

(a) authorize any person to suspend or abandon the well or facility, or

(b) suspend or abandon the well or facility on the Regulator's own motion.

RSA 2000 cO-6 s28;2012 cR-17.3 s97(31),(32),(33)

Continuing liability

29 Abandonment of a well or facility does not relieve the licensee, approval holder or working interest participant from responsibility for the control or further abandonment of the well or facility or from the responsibility for the costs of doing that work.

2000 c12 s1(15)

Costs

30(1) Subject to subsection (2), the suspension costs, abandonment costs, remediation costs and reclamation costs for a well and well site or facility and facility site must be paid by each working interest participant in accordance with their proportionate share in the well or facility.

(1.1) Subject to subsection (2), the costs paid by a person who is subject to an order under section 26.2(3) in providing reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site must be paid by each working interest participant in accordance with their proportionate share in the well or facility.

(2) The Regulator may determine the costs referred to in subsection (1) or (1.1)

(a) on the application of the person who provided the reasonable care and measures to prevent impairment or damage in respect of a well, facility, well site or facility site, or conducted the suspension, abandonment, remediation or reclamation, in the case of a well or facility that was operated, suspended, abandoned, remediated or reclaimed by a licensee, approval holder, working interest participant or agent, or

(b) on the Regulator's own motion, in the case of a well or facility suspended, abandoned, remediated or reclaimed by a person authorized by the Regulator,

and the Regulator shall allocate those costs to each working interest participant in accordance with their proportionate share in the well or facility and shall prescribe a time for payment.

(3) A working interest participant that fails to pay its share of costs as determined under subsection (2) within the period of time prescribed by the Regulator must pay, unless the Regulator directs otherwise, a penalty equal to 25% of its share of the costs.

(4) Where a well, facility, well site or facility site is suspended, abandoned, remediated or reclaimed by a licensee, approval holder, working interest participant or agent, the costs as determined under subsection (2), together with any penalty prescribed by the Regulator under subsection (3), constitute a debt payable to the licensee, approval holder, working interest participant or agent who carried out the suspension, abandonment, remediation or reclamation.

(5) Where a well, facility, well site or facility site is suspended, abandoned, remediated or reclaimed by the Regulator or by a person authorized by the Regulator, the costs as determined under subsection (2), together with any penalty prescribed by the Regulator under subsection (3), constitute a debt payable to the Regulator.

(6) A certified copy of the order of the Regulator determining the costs and penalty under this section and the allocation of those costs to each working interest participant in the well or facility may be filed in the office of the clerk of the Court of Queen's Bench and, on being filed and on payment of any fees prescribed by law, the order may be entered as a judgment of the Court and may be enforced according to the ordinary procedure for enforcement of judgments of the Court.

RSA 2000 cO-6 s30;2012 cR-17.3 s97(31),(32);2020 c4 s1(9)

Deemed working interest participant

31(1) Where

(a) a transaction occurs that results in a person no longer being a working interest participant in a well or facility,

(b) the successor working interest participant is a person other than the licensee of the well or facility, and

(c) the successor working interest participant fails to pay its proportionate share of the suspension costs, abandonment costs, remediation costs and reclamation costs,

the Regulator may deem the person referred to in clause (a) to continue to be a working interest participant for the purposes of sections 27 to 30 and Part 11 if subsection (2) applies.

(2) The Regulator may deem as provided in subsection (1) if

(a) in the case of a well, the transaction occurred after the well ceased to meet the economic limit test set out in the regulations or rules, or

(b) in the case of a facility, the transaction occurred after the facility ceased operation or after the facility has throughput that is less than the rate prescribed in the regulations as sufficient to warrant deeming the facility to be active.

RSA 2000 cO-6 s31;2012 cR-17.3 s97(31),(33);2020 c4 s1(10)

Deemed licensee

31.1 Where

(a) the licensee of a large facility (referred to in this section as the "transferor") transfers the licence to another person (referred to in this section as the "transferee") in accordance with section 24,

(b) within 24 months of the transfer

(i) the transferee has become bankrupt or insolvent, or

(ii) in the case of a transferee that is a corporation,

(A) the transferee's status is inactive, or the transferee is dissolved, under the Business Corporations Act, or

(B) the corporate registry status of the transferee is struck or rendered liable to be struck under the legislation governing the transferee,

and

(c) the Regulator determines that the transfer has resulted in suspension costs, abandonment costs, remediation costs and reclamation costs being transferred without a corresponding value in assets being transferred,

the Regulator may deem the transferor to be the licensee of the large facility.

2009 c20 s7;2012 cR-17.3 s97(31);2020 c4 s1(11)

Extended obligation

32 Where a provision of this Act or the regulations or rules or an order of the Regulator imposes a responsibility, obligation or liability on a licensee, approval holder or working interest participant in respect of the reasonable care and measures to prevent impairment or damage or the operation, suspension, abandonment, remediation or reclamation in respect of a well, facility, well site or facility site or in respect of any matter arising out of the reasonable care and measures to prevent impairment or damage or the operation, suspension, abandonment, remediation or reclamation in respect of a well, facility, well site or facility site, the responsibility, obligation or liability extends also to associated equipment and non-licensed facilities that are located on the site or used in connection with the reasonable care and measures to prevent impairment or damage or the operation, suspension, abandonment, remediation or reclamation in respect of the well, facility, well site or facility site, unless such equipment or facilities are exempted from the application of the provision by the regulations or rules.

RSA 2000 cO-6 s32;2012 cR-17.3 s97(33);2020 c4 s1(12)

Part 7
Production

Designation of Fields, etc.

Regulation of production

33(1) The Regulator may, by order,

Province of Alberta

PIPELINE ACT

Revised Statutes of Alberta 2000
Chapter P-15

Current as of June 2, 2021

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2020 cG-5.5 s34 amends s1(1)(j), repeals and substitutes s29(1)(f).

Regulations

The following is a list of the regulations made under the *Pipeline Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	*Amendments*
Pipeline Act		
Pipeline	91/2005	*186/2005, 212/2005, 160/2008, 84/2009, 91/2010, 228/2011, 48/2012, 78/2012, 221/2012, 77/2013, 89/2013, 159/2013, 195/2014, 4/2015, 244/2017, 258/2020, 280/2020*

PIPELINE ACT

Chapter P-15

Table of Contents

1 Interpretation

Part 1
Application of Act

2 Application of Act

Part 2
Rules

3 Rules

Part 3
Powers and Duties of the Regulator

3.1 Jurisdiction of Regulator
4 Investigation by Regulator
5 Inspections

Part 4
Licences

6 Licence
7 Rural gas utilities
8 Changes by Regulator
9 Granting of licence
10 Amendment of licence
11 Application to amend licence
12 Regulator's powers re licences
13 Date of construction
14 Location of pipeline and rights of way
15 Finality of Regulator decision
16 Licence to operate
17 Transmission of unauthorized substance

18 Transfer of licence
19 Appointment of agent
20 Notice of change of name
21 Capacity to hold licences
22 Identification codes
22.1 Reasonable care, measures to prevent impairment or damage
23 Discontinuation and abandonment
24 Discontinuation, abandonment by Regulator
25 Continuing liability
26 Discontinuation and abandonment costs
27 Sale of material, etc.
28 Entry on land

Part 5
Suspension and Shutting Down

29 Suspension of construction or operation
30 Inquiry into suspension
31 Powers of Regulator

Part 6
General

32 Ground disturbance
33 Alteration or relocation
34 Samples and tests
35 Leaks and breaks
36 Clean up of spills

Part 7
Use and Acquisition of Land

37 Pipeline under highway
38 Approval of pipeline
39 Pipeline crossing road
40 Regulator approval
41 Irrigation canal or drainage ditch
42 Approval to undertake ground disturbance
43 River or stream
44 Mines and quarries
45 Repair of damage
46 Public buildings, etc.
47 Definition
48 Acquisition of interest in lands
49 Effect of orders

50 Land that may be acquired

Part 8
Miscellaneous

51 Actions re principals
52 Offences
53 Limitation period for prosecution
54 Penalties
55 Board regulations deemed to be rules

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

Interpretation

1(1) In this Act,

(a) "abandonment" means the permanent deactivation of a pipeline or part of a pipeline in the manner prescribed by the rules, whether or not the pipeline or part of the pipeline is removed;

(b) "abandonment costs" means the reasonable costs actually incurred in the abandonment of a pipeline;

(c) "agent" means an agent appointed under section 19;

(d) repealed 2012 cR-17.3 s101;

(e) "controlled area" means a strip of land on each side of a pipeline within the distance or distances from the pipeline prescribed in the rules and, without limitation, includes land that comprises the right of way held for the construction of a pipeline or for or incidental to the operation of a pipeline under

(i) a lease, easement, consent or other agreement,

(ii) a right of entry order as defined in the *Surface Rights Act* or a right of entry order under Part 4 of the *Metis Settlements Act*, or

(iii) a certificate of approval obtained for the purposes of a pipeline under the *Expropriation Act* before January 1, 1977;

(f) "crude bitumen" means a naturally occurring viscous mixture, mainly of hydrocarbons heavier than pentane, that

may contain sulphur compounds and that, in its naturally occurring viscous state, will not flow to a well;

(g) "discontinuation" means the temporary deactivation of a pipeline or part of a pipeline;

(h) "discontinuation costs" means the reasonable costs actually incurred in the discontinuation of a pipeline;

(i) "gas" means

(i) natural gas both before and after it has been subjected to any processing,

(i.1) synthetic coal gas as defined in the *Coal Conservation Act*,

(ii) any substance recovered from natural gas, crude oil, oil sands or coal for transmission in a gaseous state, and

(iii) any gaseous substance for injection to an underground formation through a well;

(i.1) "gas utility pipeline" means a gas utility pipeline as defined in the *Gas Utilities Act*;

(j) "ground disturbance" means any work, operation or activity that results in a disturbance of the earth including, without limitation, excavating, digging, trenching, plowing, drilling, tunnelling, augering, backfilling, blasting, topsoil stripping, land levelling, peat removing, quarrying, clearing and grading, but does not include,

(i) except as otherwise provided in subclause (ii), a disturbance of the earth to a depth of less than 30 centimetres that does not result in a reduction of the earth cover over the pipeline to a depth that is less than the cover provided when the pipeline was installed,

(ii) cultivation to a depth of less than 45 centimetres below the surface of the ground, or

(iii) any work, operation or activity that is specified in the rules not to be a ground disturbance;

(k) "highway" means a provincial highway under the *Highways Development and Protection Act*;

(k.1) "impairment or damage" means impairment or damage that results in or could reasonably be expected to result in harm

to the integrity of a pipeline, well or facility or harm to the environment, human health or safety or property;

(l) "installation" means

(i) any equipment, apparatus, mechanism, machinery or instrument incidental to the operation of a pipeline, and

(ii) any building or structure that houses or protects anything referred to in subclause (i),

but does not include a refinery, processing plant, marketing plant or manufacturing plant;

(m) "licence" means a licence to construct and operate a pipeline under this Act or a gas utility pipeline;

(n) "licensee" means the holder of a licence for a pipeline according to the records of the Regulator or the holder of a licence for purposes of a gas utility pipeline according to the records of the Alberta Utilities Commission and includes a trustee or receiver-manager of the property of a licensee;

(o) "local authority" means a member of the Executive Council or a municipal corporation or a Metis settlement having the administration or the direction, management and control of a road by or under any Act of the Legislature;

(p) "manufacturing plant" means a plant that utilizes a mineral or a substance recovered from a mineral as a component of a product manufactured by the plant;

(q) "marketing plant" means a plant used for the marketing or distribution of a product obtained from the refining, processing or purifying of oil and gas;

(r) "oil" means

(i) crude oil both before and after it has been subjected to any refining or processing,

(ii) any hydrocarbon recovered from crude oil, oil sands, natural gas or coal for transmission in a liquid state,

(iii) liquefied natural gas, and

(iv) synthetic coal liquid as defined in the *Coal Conservation Act*,

(2) No syndicate or association of persons other than those listed in subsection (1) shall acquire or hold a licence in the name of the syndicate or association unless it has been incorporated by or under an Act of Alberta and approved by the Regulator to acquire or hold a licence.

RSA 2000 cP-15 s21;2001 cC-28.1 s463;
2012 cR-17.3 s101

Identification codes

22 No person shall apply for a licence unless the person holds a subsisting identification code issued under the *Oil and Gas Conservation Act*.

2000 c12 s2(15)

Reasonable care, measures to prevent impairment or damage

22.1(1) A licensee shall provide reasonable care and measures to prevent impairment or damage in respect of a pipeline in accordance with the rules.

(2) If reasonable care and measures to prevent impairment or damage in respect of a pipeline are not being provided in a manner satisfactory to the Regulator, the Regulator may order a licensee or a delegated authority under Part 11 of the *Oil and Gas Conservation Act* to provide reasonable care and measures to prevent impairment or damage in respect of the pipeline on any terms or conditions that the Regulator considers appropriate.

(3) Reasonable care and measures to prevent impairment or damage in respect of a pipeline shall be provided in accordance with the rules.

2020 c4 s2

Discontinuation and abandonment

23(1) A licensee shall discontinue or abandon a pipeline when directed by the Regulator or required by the rules.

(2) The Regulator may order that a pipeline be discontinued or abandoned where the Regulator considers that it is necessary to do so in order to protect the public or the environment.

(3) A discontinuation or abandonment must be carried out in accordance with the rules.

RSA 2000 cP-15 s23;2012 cR-17.3 s101

Discontinuation, abandonment by Regulator

24 If, in the opinion of the Regulator, a pipeline is not discontinued or abandoned in accordance with the direction of the Regulator or the rules, the Regulator may

Province of Alberta

ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT

Revised Statutes of Alberta 2000
Chapter E-12

Current as of June 2, 2021

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2020 cG-5.5 s30 amends ss1(aaaa) and 2.

Regulations

The following is a list of the regulations made under the *Environmental Protection and Enhancement Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	*Amendments*
Environmental Protection and Enhancement Act		
Activities Designation	276/2003	*142/2004, 157/2005, 113/2006, 158/2008, 1/2009, 97/2011, 118/2013, 61/2015, 125/2017*
Administrative Penalty	23/2003	*163/2005, 33/2006, 34/2006, 105/2011, 130/2013, 46/2015, 122/2017, 244/2018*
Approvals and Registrations Procedure	113/93	*244/93, 216/96, 251/2001, 89/2013*

Beverage Container Recycling	101/97	*166/97, 68/99, 90/2001, 169/2001, 251/2001, 164/2006, 199/2007, 19/2008, 177/2008, 106/2013, 97/2015, 104/2016, 13/2018, 99/2018, 117/2021*
Conservation and Reclamation	115/93	*245/93, 167/96, 242/99, 251/2001, 27/2002, 247/2003, 315/2003, 131/2004, 160/2005, 63/2008, 68/2008, 34/2011, 105/2011, 31/2012, 62/2013, 130/2013, 169/2014, 103/2016, 62/2018, 198/2019, 274/2020*
Designated Material Recycling and Management	93/2004	*193/2009, 31/2012, 170/2012, 64/2014, 97/2015, 104/2016, 98/2018, 99/2018, 212/2019, 117/2021*
Disclosure of Information	273/2004	*119/2013, 62/2015, 124/2017*
Electronics Designation	94/2004	*151/2007, 64/2014, 97/2015, 104/2016, 98/2018, 99/2018, 213/2019, 117/2021*
Emissions Trading	33/2006	*170/2012, 170/2015, 180/2015, 175/2017*
Environmental Appeal Board	114/93	*212/96, 106/99, 251/2001*
Environmental Assessment	112/93	*243/93, 251/2001, 254/2007, 89/2013*
Environmental Assessment (Mandatory and Exempted Activities)	111/93	*88/2000, 62/2008, 54/2017*
Environmental Protection and Enhancement (Miscellaneous)	118/93	*248/93, 191/96, 192/98, 251/2001, 27/2002, 225/2003, 269/2003, 13/2005, 161/2005, 68/2008, 187/2011, 31/2012, 62/2013, 198/2019*

Exploration	284/2006	*35/2007, 68/2008, 187/2011, 170/2012, 56/2018, 286/2020*
Forest Resources Improvement	152/97	*27/99, 68/99, 101/2000, 206/2001, 251/2001, 170/2002, 233/2004, 8/2005, 167/2005, 79/2007, 206/2009, 37/2010, 6/2011, 31/2012, 170/2012, 38/2013, 5/2018, 197/2019, 268/2020, 76/2021*
Lubricating Oil Material Designation	100/2018	*214/2019, 117/2021*
Mercury Emissions from Coal-fired Power Plants	34/2006	*200/2015, 200/2016*
Methane Emission Reduction	244/2018	
Oil Sands Environmental Monitoring Program	226/2013	*11/2015, 15/2019*
Ozone-depleting Substances and Halocarbons	181/2000	*132/2004*
Paint and Paint Container Designation	200/2007	*194/2009, 105/2011, 106/2013, 97/2015, 104/2016, 98/2018, 99/2018, 215/2019, 117/2021*
Pesticide (Ministerial)	43/97	*27/2000, 251/2001, 279/2003, 315/2003, 120/2013, 64/2015, 101/2015, 108/2016, 110/2018*
Pesticide Sales, Handling, Use and Application	24/97	*251/2001, 271/2003, 222/2009, 130/2013, 96/2015, 105/2016, 109/2018*
Potable Water	277/2003	*96/2011, 170/2012, 121/2013, 63/2015, 126/2017, 21/2021*
Release Reporting	117/93	*247/93, 217/96, 251/2001, 386/2003, 122/2013, 64/2015, 127/2017, 136/2018, 153/2021*
Remediation	154/2009	*170/2012, 89/2013, 102/2016, 97/2018, 56/2019*
Substance Release	124/93	*191/96, 177/99, 270/2003, 159/2005, 114/2006*

Tire Designation	95/2004	*230/2010, 64/2014, 140/2014, 97/2015, 104/2016, 98/2018, 99/2018, 216/2019, 117/2021*
Waste Control	192/96	*251/2001, 27/2002, 272/2003, 162/2005, 230/2005, 35/2007, 87/2007, 68/2008, 31/2012, 62/2013, 198/2019*
Wastewater and Storm Drainage	119/93	*249/93, 137/96, 273/2003, 315/2003, 170/2012*
Wastewater and Storm Drainage (Ministerial)	120/93	*250/93, 213/96, 278/2003*

(a) give notice of the issuance of the order to the local authority of the municipality in which the contaminated site is located, and

(b) provide notice of the issuance of the order in accordance with the regulations.

1992 cE-13.3 s115

Compensation

131 The Minister may

(a) in accordance with any applicable regulations, or

(b) in the absence of any applicable regulations, in the manner and amount the Minister considers appropriate

pay compensation to any person who suffers loss or damage as a direct result of the application of this Division.

1992 cE-13.3 s116

Ministerial regulations

132 The Minister may make regulations regulating and prohibiting the use of a contaminated site or the use of any product that comes from a contaminated site.

1992 cE-13.3 s117

Lieutenant Governor in Council regulations

133 The Lieutenant Governor in Council may make regulations

(a) authorizing the payment of compensation by the Government for the purposes of section 131, including regulations respecting

(i) the circumstances under which compensation will be paid, and

(ii) the manner in which a claim for compensation is assessed and made and the determination of the amount payable;

(b) respecting the manner in which notice is to be provided under sections 126(b) and 130(b).

1992 cE-13.3 s118

Part 6
Conservation and Reclamation

Definitions

134 In this Part,

(a) "expropriation board" means the board, person or other body having the power to order termination of a right of entry order as to the whole or part of the land affected by the order;

(b) "operator" means

(i) an approval or registration holder who carries on or has carried on an activity on or in respect of specified land pursuant to an approval or registration,

(ii) any person who carries on or has carried on an activity on or in respect of specified land other than pursuant to an approval or registration,

(iii) the holder of a licence, approval or permit issued by the Alberta Energy Regulator or the Alberta Utilities Commission for purposes related to the carrying on of an activity on or in respect of specified land,

(iv) a working interest participant in

(A) a well,

(B) a mine,

(C) a coal processing plant,

(D) an oil sands processing plant, or

(E) a plant or facility that is subject to the Large Facility Liability Management Program administered by the Alberta Energy Regulator

on, in or under specified land,

(v) the holder of a surface lease for purposes related to the carrying on of an activity on or in respect of specified land,

(vi) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in any of subclauses (i) to (v), and

(vii) a person who acts as principal or agent of a person referred to in any of subclauses (i) to (vi);

(c) "reclamation certificate" means a reclamation certificate issued under this Part;

(d) "reclamation inquiry" means a reclamation inquiry conducted under this Part;

(e) "right of entry order" means

(i) an order granting right of entry that is made

(A) by the Land and Property Rights Tribunal under the *Surface Rights Act*,

(B) under a former Act within the meaning of that term in the *Surface Rights Act*, or

(C) by a body that is empowered to grant a right of entry under the *Metis Settlements Act* in respect of land that is located in a settlement area;

(ii) an order for the expropriation of land or an interest in land required for the purposes of a pipeline or transmission line that is made by the Land and Property Rights Tribunal or the Alberta Utilities Commission or a predecessor of either of them or by a body that is empowered to make such an order under the *Metis Settlements Act* in respect of land that is located in a settlement area;

(f) "specified land" means specified land within the meaning of the regulations on or in respect of which an activity is or has been carried on, but does not include

(i) land used solely for the purposes of an agricultural operation,

(ii) subdivided land that is used or intended to be used solely for residential purposes,

(iii) any part of any unsubdivided land that is the site of a residence and the land used in connection with that residence solely for residential purposes, or

(iv) land owned by the Crown in right of Canada;

(g) "surface lease" means a lease, easement, licence, agreement or other instrument granted or made before or after the coming into force of this Part under which the surface of land has been or is being held;

(h) "surrender" means a surrender, relinquishment, quit claim, release, notice, agreement or other instrument by which a

surface lease is discharged or otherwise terminated as to the whole or part of the land affected by the surface lease;

(i) "termination" means the termination of a right of entry order by an expropriation board as to the whole or part of the land affected by the order;

(j) "working interest participant" means a person who owns or controls all or part of a beneficial or legal undivided interest in an activity described in clause (b)(iv) under an agreement that pertains to the ownership of that activity.

RSA 2000 cE-12 s134;2006 c15 s16;2007 cA-37.2 s82(6);
2012 cR-17.3 s88;2020 cL-2.3 s30

Security by operator

135(1) If required by the regulations, an operator shall provide financial or other security and carry insurance in respect of the activity carried on by the operator on specified land.

(2) Subsection (1) does not apply to the Government or a Government agency.

1992 cE-13.3 s120

Reclamation inquiry

136 An inspector shall, when required to do so by the regulations, conduct a reclamation inquiry in accordance with the regulations.

1992 cE-13.3 s121

Duty to reclaim

137(1) An operator must

(a) conserve specified land,

(b) reclaim specified land, and

(c) unless exempted by the regulations, obtain a reclamation certificate in respect of the conservation and reclamation.

(2) Where this Act requires that specified land must be conserved and reclaimed, the conservation and reclamation must be carried out in accordance with

(a) the terms and conditions in any applicable approval or code of practice,

(b) the terms and conditions of any environmental protection order regarding conservation and reclamation that is issued under this Part,

(c) the directions of an inspector or the Director, and

(d) this Act.

RSA 2000 cE-12 s137;2003 c37 s21

Issuance of reclamation certificate

138(1) An application for a reclamation certificate must be made by the operator to the Director or an inspector in the form and manner and within the time provided for in the regulations.

(1.1) The Director or an inspector may refuse to accept an application for a reclamation certificate if, in the Director's or inspector's opinion, the application is not complete and accurate.

(2) An inspector may refuse to issue a reclamation certificate where the applicant is indebted to the Government.

(3) An inspector may issue a reclamation certificate to the operator if the inspector is satisfied that the conservation and reclamation have been completed in accordance with section 137(2).

(4) An inspector may issue a reclamation certificate with respect to all or only a part of the specified land, and in the latter case section 137 continues to apply with respect to the remaining specified land.

(5) An inspector may issue a reclamation certificate subject to any terms and conditions the inspector considers appropriate.

(6) An approval in respect of an activity on specified land expires on the date that the final reclamation certificate is issued under this Part unless the approval specifies a different expiry date.

RSA 2000 cE-12 s138;2003 c37 s22

Amendment and cancellation of certificate

139(1) The Director or an inspector may

(a) amend a term or condition of, add a term or condition to or delete a term or condition from a reclamation certificate if the Director or the inspector considers it appropriate to do so,

(b) cancel a reclamation certificate issued in error,

(c) cancel a reclamation certificate where no reclamation inquiry was conducted prior to the issuance of the certificate and the Director or the inspector is of the opinion that further work may be necessary to conserve and reclaim the specified land to which the certificate relates, or

(d) correct a clerical error in a reclamation certificate.

In the Court of Appeal of Alberta

Citation: PricewaterhouseCoopers Inc v Perpetual Energy Inc, 2021 ABCA 16

Date: 20210125
Docket:1901-0255-AC;
1901-0262-AC;
2001-0174-AC
Registry: Calgary

1901-0255-AC

Between:

PricewaterhouseCoopers Inc., LIT, in its capacity as the Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity

Appellant
(Plaintiff)

- and -

Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp. and Susan Riddell Rose

Respondents
(Defendants)

- and -

Orphan Well Association

Intervenor

- and -

Canadian Natural Resources Limited

Intervenor

- and -

Cenovus Energy Inc.

Intervenor

- and -

Torxen Energy Ltd.

Intervenor

1901-0262-AC

And Between:

PricewaterhouseCoopers Inc., LIT, in its capacity as the Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity

Respondent
(Plaintiff)

- and -

Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp. and Susan Riddell Rose

Appellants
(Defendants)

2001-0174-AC

And Between:

PricewaterhouseCoopers Inc., in its personal capacity

Appellant
(Not Party to Application)

- and -

PricewaterhouseCoopers Inc., LIT, in its capacity as the Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity

Respondent
(Plaintiff)

- and -

Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp. and Susan Riddell Rose

Respondents
(Defendants)

The Court:

The Honourable Madam Justice Marina Paperny
The Honourable Mr. Justice Jack Watson
The Honourable Mr. Justice Frans Slatter

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Mr. Justice D.B. Nixon
Dated the 15th day of August, 2019
(2020 ABQB 6, Docket: 1801 10960)

Appeal from the Decision by
The Honourable Mr. Justice D.B. Nixon
Dated the 26th day of August, 2020
Filed the 9th day of September, 2020
(2020 ABQB 513, Docket: 1801 10960)

characterized as a liability"; they are merely "a future burden that has not crystallized into a liability"; they are "an obligation that will arise at a future date, thereby implicitly acknowledging that the ARO is not a current debt or liability": reasons at paras. 170, 171, 172, 224, 239, 357, 366.

[83] The case management judge concluded that the effect of ***Redwater*** was that Abandonment and Reclamation Obligations were "not a liability for purposes of the Oppression Claim"; and since the Alberta Energy Regulator was not a creditor with respect to them, Perpetual/Sequoia "could not have assumed liability in respect of the ARO in conjunction with the Asset Transaction"; and accordingly, ***Redwater*** "nullified the Oppression Claim"; it also "nullifies the Trustee's assertions concerning the Release"; it "extinguished any suggestion" that Ms. Rose breached her duties as a director; it "nullifies the Trustee's arguments concerning fiduciary duty and duty of care"; and justified summary dismissal of the director's liability claim: reasons at paras. 224, 225, 239, 285, 366-69. Because of ***Redwater***, Abandonment and Reclamation Obligations were "more properly characterized as an allegation that is based on assumptions and speculations", and therefore they were not a "true fact for the purposes of R. 3.68(2)(b)"; on an application to strike, they need not be assumed to be true: reasons at para. 232. The overall effect of ***Redwater*** was to "extinguish" any assertion that the Asset Transaction resulted in a net deficit to Perpetual/Sequoia, because the Abandonment and Reclamation Obligations should be valued at "nil": reasons at paras. 365-66.

[84] This part of the reasoning reflects, at best, a significant overreading of the effect of the ***Redwater*** decision. It is therefore necessary to analyze in detail that decision, and the nature of Abandonment and Reclamation Obligations.

Abandonment and Reclamation Obligations

[85] When oil and gas wells are producing, they are valuable assets. However, after they cease to be productive they can quickly turn into significant liabilities. The Alberta Energy Regulator has specific "end-of-life" rules on how a spent well must be rendered environmentally safe by being shut-in and "abandoned". In general terms, the end-of-life obligations of the owner of the well are to cement-in various formations deep underground, to "cap" the well, and to restore the surface to its original condition: Alberta Energy Regulator Directive 020: *Well Abandonment*; ***Redwater*** at para. 16. Compliance with those Abandonment and Reclamation Obligations can be expensive.

[86] Abandonment and Reclamation Obligations (or "end-of-life", or "asset retirement" obligations) are inherent in any oil well, from the moment it is drilled and comes into production. At that point in time the Abandonment and Reclamation Obligations can be said to be "contingent", but only in the sense that the moment when the well will cease production is unknown. However, they are not "contingent" in the sense that they will only come into existence if, and only if, a condition precedent comes to pass: ***Redwater*** at para. 36; ***Canada v McLarty***, 2008 SCC 26 at paras. 14-18, [2008] 2 SCR 79. The only issue is when they will come into existence. A well may

produce for decades. However, while the Abandonment and Reclamation Obligations may not crystallize for some time, they are inevitable; no well produces forever.

[87] The time at which the Abandonment and Reclamation Obligations with respect to any particular well must be performed is variable:

(a) With respect to a newly drilled well the Abandonment and Reclamation Obligations may only manifest themselves decades in the future.

(b) Once the production of a well has peaked, and its most productive years are behind it, it may be possible to predict with some degree of certainty when the Abandonment and Reclamation Obligations will have to be performed. The closer one gets to the end of production, the more precise the date of reclamation will become.

(c) But once a well has been exhausted, production has stopped, and the well has been shut-in, the Abandonment and Reclamation Obligations have crystallized. The Abandonment and Reclamation Obligations may be unperformed, but they are no longer "contingent" in either sense. The owner of the well is under a public duty to shut in the well and reclaim the surface.

The further reclamation is in the future, the more difficult it will be to quantify the Abandonment and Reclamation Obligations. Even if Abandonment and Reclamation Obligations can be said to be "contingent" liabilities, that is sufficient in law for some purposes: ***Tannis Trading Inc v Coldmatic Refrigeration of Canada Ltd***, 2010 ONSC 5747 at paras. 24-25, 85 BLR (4th) 77; ***Manufacturers Life Insurance Co v AFG Industries Ltd***, 2008 CanLII 873 at para. 30, 44 BLR (4th) 277 (ONSC). Further, the present value of the Abandonment and Reclamation Obligations will directly depend on how far into the future they will arise. Abandonment and Reclamation Obligations are unliquidated, some of them may be more immediate than others, and their quantum is uncertain, but they are still inevitable. They exist whether or not abandonment notices have been issued by the Alberta Energy Regulator. Abandonment and Reclamation Obligations may not be entirely a current liability or obligation, but they are a real liability or obligation. They are routinely reported on the balance sheets of oil and gas companies, including those of Perpetual Energy Parent.

[88] The evidence on this record is that prior to the Aggregate Transaction, the Perpetual Operating Trust held oil and gas properties in all these categories. The KeepCo Assets and the Retained Interests were still producing; they did not carry immediate Abandonment and Reclamation Obligations. The Goodyear Assets, on the other hand, were all "mature", and their Abandonment and Reclamation Obligations were more immediate. Further, by the time of the Asset Transaction, the record suggests the Goodyear Assets included 910 shut in wells and 727 abandoned wells, meaning that some portion of the obligation to reclaim was due to be performed

or was imminent. The exact cost of reclamation may have been unknown and unquantified, but the obligation was no longer "contingent"; the obligation was merely unperformed.

[89] The extent of the Abandonment and Reclamation Obligations associated with the Goodyear Assets is not clear at this stage of the proceedings. When Perpetual Energy Parent publicly announced the pending Aggregate Transaction, it advised the market that it expected to relieve itself of $87 million of Abandonment and Reclamation Obligations. Perpetual/Sequoia reported them on its balance sheet at $131 million, and after the transaction closed, Perpetual Energy Parent announced it had shed $131 million of Abandonment and Reclamation Obligations. The Trustee in Bankruptcy estimates that the Abandonment and Reclamation Obligations were actually $218.9 million, comprising $98.8 million of abandonment costs, $93.2 million in reclamation costs, and $26.8 million related to other facilities: reasons at para. 368. For the purposes of these appeals the exact quantum is not material; it is sufficient to note that the amount involved is potentially substantial.

*The Effect of the **Redwater** Decision*

[90] Redwater Energy Corporation was a bankrupt oil and gas company. It had about 20 producing wells that were of value, but it had over 100 other wells that were either depleted or shut in, and had no value. In fact, there was a significant liability associated with the depleted wells, because they had to be reclaimed. In effect, these wells had "negative value": ***Redwater*** at para. 2.

[91] Redwater Energy's trustee in bankruptcy proposed to sell off the valuable wells, and use the proceeds to pay the secured creditor. That would leave the bankrupt shell of Redwater Energy with the depleted wells, and no funds to pay for reclamation. The trustee in bankruptcy needed permission from the Alberta Energy Regulator to transfer the licences for the valuable wells to the third party purchaser. The Alberta Energy Regulator refused to approve the transfers, unless the proceeds were used to reclaim the abandoned wells; those proceeds could not be paid to the secured creditor. The trustee in bankruptcy responded that it did not intend to comply with the environmental remediation orders that had been issued, and that the obligation to reclaim the wells was a "claim provable in bankruptcy": ***Redwater*** at paras. 50-52. As such, the reclamation obligations had to be dealt with within the bankruptcy process, and they would be treated like the claims of all other unsecured creditors. The reclamation obligations would effectively be extinguished by operation of the bankruptcy: ***Redwater*** at paras. 114, 117.

[92] ***Redwater*** held that there was no constitutional conflict between the applicable federal and provincial legislation. The non-constitutional issue in ***Redwater*** was focused: were the reclamation obligations a "claim provable in bankruptcy" under s. 121 of the *Bankruptcy and Insolvency Act*? If they were, those obligations would be extinguished in the bankruptcy. If not, what was the trustee in bankruptcy's obligation with respect to them?

[93] ***Redwater*** at para.119 confirmed the test for determining whether an environmental liability is a "claim provable in bankruptcy", previously set in ***Newfoundland and Labrador v AbitibiBowater Inc***., 2012 SCC 67, [2012] 3 SCR 443. First, there must be an obligation owed to a "creditor". Second, the obligation must be incurred before the bankruptcy. Third, it must be possible to attach a monetary value to the obligation. The end-of-life obligations did not fit the test, because there was no "creditor". Neither the Alberta Energy Regulator nor the Orphan Well Association was owed any debt; the environmental obligation was owed to the public: ***Redwater*** at paras. 122, 134-35. Further, there was insufficient certainty in the quantum of the Abandonment and Reclamation Obligations to make them a "claim provable in bankruptcy", because there was no certainty that the Alberta Energy Regulator would perform the remediation work: ***Redwater*** at paras. 145, 149, 154.

[94] ***Redwater*** does not stand for the proposition that Abandonment and Reclamation Obligations are not a liability or obligation of the bankrupt corporation. The *Bankruptcy and Insolvency Act* provides that in some circumstances the trustee in bankruptcy is "not personally liable" for environmental obligations. The Supreme Court ruled that these provisions protect the trustee, "while the ongoing liability of the bankrupt estate is unaffected": ***Redwater*** at paras. 74-75. A trustee who "disclaims" assets is protected from personal liability, but "the liability of the bankrupt estate is unaffected": ***Redwater*** at paras. 93, 98. Claims that are "not provable in bankruptcy" remained an obligation that the bankrupt had to discharge to the extent it has assets: ***Redwater*** at para. 118. Having received the benefit of the oil wells, the bankrupt corporation "cannot now avoid the associated liabilities": ***Redwater*** at para. 157. Trustees in bankruptcy must comply with non-monetary obligations that cannot be reduced to "provable claims": ***Redwater*** at para. 160. Accordingly, an order was given that the proceeds of the sale of Redwater's assets could not be paid to its secured creditor, but had to be used to address its "end-of-life" obligations: ***Redwater*** at para. 163.

[95] The case management judge focused on the fact that ***Redwater*** confirmed that the Alberta Energy Regulator is not a "creditor" with respect to the Abandonment and Reclamation Obligations, and accordingly the Abandonment and Reclamation Obligations cannot be a "claim provable in bankruptcy". That much is an accurate reading of ***Redwater***, but it does not mean that Abandonment and Reclamation Obligations are "assumptions and speculations" that do not exist, that they are not an obligation or liability of Perpetual/Sequoia, or that they should be valued at "nil". The Abandonment and Reclamation Obligations are an obligation of Perpetual/Sequoia, owed "to the public" and the surface landowners, but which are nevertheless obligations which the trustee of a bankrupt corporation cannot ignore. Not only did ***Redwater*** confirm that Abandonment and Reclamation Obligations are a continuing obligation of a bankrupt corporation, that decision confirms that those obligations had to be discharged even in priority to paying secured creditors.

[96] The case management judge held that Perpetual/Sequoia "could not have assumed liability" for the Abandonment and Reclamation Obligations, even though the Asset Transaction specifically

CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

Current to May 19, 2021

Last amended on November 1, 2019

À jour au 19 mai 2021

Dernière modification le 1 novembre 2019

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to May 19, 2021. The last amendments came into force on November 1, 2019. Any amendments that were not in force as of May 19, 2021 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 19 mai 2021. Les dernières modifications sont entrées en vigueur le 1 novembre 2019. Toutes modifications qui n'étaient pas en vigueur au 19 mai 2021 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

Liability ceases on compliance

(4) A person who complies with a direction given pursuant to subsection (1) is not liable for any act done by the person only to comply with the direction.

1992, c. 27, s. 9; 1997, c. 12, s. 14; 1999, c. 31, s. 18(E); 2005, c. 47, s. 16; 2007, c. 36, s. 8(F).

Removal and appointment

14.04 The court, on the application of any interested person, may for cause remove a trustee and appoint another licensed trustee in the trustee's place.

1992, c. 27, s. 9.

Where there is no licensed trustee, etc.

14.05 Where a debtor resides or carries on business in a locality in which there is no licensed trustee, and no licensed trustee can be found who is willing to act as trustee, the court or the official receiver may appoint a responsible person residing in the locality of the debtor to administer the estate of the debtor, and that person, for that purpose, has all the powers of a licensed trustee under this Act, and the provisions of this Act apply to that person as if a licence had been issued to that person under paragraph 5(3)(a).

1992, c. 27, s. 9.

No trustee is bound to act

14.06 (1) No trustee is bound to assume the duties of trustee in matters relating to assignments, bankruptcy orders or proposals, but having accepted an appointment in relation to those matters the trustee shall, until discharged or another trustee is appointed in the trustee's stead, perform the duties required of a trustee under this Act.

Application

(1.1) In subsections (1.2) to (6), a reference to a trustee means a trustee in a bankruptcy or proposal and includes

(a) an interim receiver;

(b) a receiver within the meaning of subsection 243(2); and

(c) any other person who has been lawfully appointed to take, or has lawfully taken, possession or control of any property of an insolvent person or a bankrupt that was acquired for, or is used in relation to, a business carried on by the insolvent person or bankrupt.

Suppression de la responsabilité

(4) Quiconque obtempère aux instructions données en application du paragraphe (1) échappe à toute responsabilité pour les actes posés dans le seul but de s'y conformer.

1992, ch. 27, art. 9; 1997, ch. 12, art. 14; 1999, ch. 31, art. 18(A); 2005, ch. 47, art. 16; 2007, ch. 36, art. 8(F).

Révocation et nomination

14.04 Le tribunal, à la demande de tout intéressé, peut révoquer pour un motif suffisant un syndic et nommer à sa place un autre syndic autorisé.

1992, ch. 27, art. 9.

Localité sans syndic autorisé

14.05 Lorsque le débiteur réside ou exerce un commerce dans une localité où il n'y a pas de syndic autorisé, et qu'il est impossible d'en trouver un qui consente à agir comme syndic, le tribunal ou le séquestre officiel peut nommer une personne digne de confiance résidant dans la localité du débiteur pour administrer l'actif de celui-ci, et, à cette fin, cette personne possède tous les pouvoirs que la présente loi accorde à un syndic autorisé, et les dispositions de la présente loi s'appliquent à cette personne tout comme si elle avait été régulièrement autorisée en vertu de l'alinéa 5(3)a).

1992, ch. 27, art. 9.

Non-obligation du syndic

14.06 (1) Le syndic n'est pas tenu d'assumer les fonctions de syndic relativement à des cessions, à des ordonnances de faillite ou à des propositions concordataires; toutefois, dès qu'il accepte sa nomination à ce titre, il doit accomplir les fonctions que la présente loi lui impose, jusqu'à ce qu'il ait été libéré ou qu'un autre syndic ait été nommé à sa place.

Application

(1.1) Les paragraphes (1.2) à (6) s'appliquent également aux syndics agissant dans le cadre d'une faillite ou d'une proposition ainsi qu'aux personnes suivantes :

a) les séquestres intérimaires;

b) les séquestres au sens du paragraphe 243(2);

c) les autres personnes qui sont nommément habilitées à prendre — ou ont pris légalement — la possession ou la responsabilité d'un bien acquis ou utilisé par une personne insolvable ou un failli dans le cadre de ses affaires.

No personal liability in respect of matters before appointment

(1.2) Despite anything in federal or provincial law, if a trustee, in that position, carries on the business of a debtor or continues the employment of a debtor's employees, the trustee is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees; and

(b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

Immunité

(1.2) Par dérogation au droit fédéral et provincial, le syndic qui, en cette qualité, continue l'exploitation de l'entreprise du débiteur ou lui succède comme employeur est dégagé de toute responsabilité personnelle découlant de quelque obligation du débiteur, notamment à titre d'employeur successeur, si celle-ci, à la fois :

a) l'oblige envers des employés ou anciens employés du débiteur, ou de l'un de ses prédécesseurs, ou découle d'un régime de pension pour le bénéfice de ces employés;

b) existait avant sa nomination ou est calculée sur la base d'une période la précédant.

Status of liability

(1.3) A liability referred to in subsection (1.2) is not to rank as costs of administration.

Obligation exclue des frais

(1.3) L'obligation visée au paragraphe (1.2) ne peut être imputée à l'actif au titre des frais d'administration.

Liability of other successor employers

(1.4) Subsection (1.2) does not affect the liability of a successor employer other than the trustee.

Responsabilité de l'employeur successeur

(1.4) Le paragraphe (1.2) ne dégage aucun employeur successeur, autre que le syndic, de sa responsabilité.

Liability in respect of environmental matters

(2) Notwithstanding anything in any federal or provincial law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

(a) before the trustee's appointment; or

(b) after the trustee's appointment unless it is established that the condition arose or the damage occurred as a result of the trustee's gross negligence or wilful misconduct or, in the Province of Quebec, the trustee's gross or intentional fault.

Responsabilité en matière d'environnement

(2) Par dérogation au droit fédéral et provincial, le syndic est, ès qualités, dégagé de toute responsabilité personnelle découlant de tout fait ou dommage lié à l'environnement survenu avant ou après sa nomination, sauf celui causé par sa négligence grave ou son inconduite délibérée ou, dans la province de Québec, par sa faute lourde ou intentionnelle.

Reports, etc., still required

(3) Nothing in subsection (2) exempts a trustee from any duty to report or make disclosure imposed by a law referred to in that subsection.

Rapports

(3) Le paragraphe (2) n'a pas pour effet de soustraire le syndic à une obligation de faire rapport ou de communiquer des renseignements prévue par le droit applicable en l'espèce.

Non-liability re certain orders

(4) Notwithstanding anything in any federal or provincial law but subject to subsection (2), where an order is made which has the effect of requiring a trustee to remedy any environmental condition or environmental damage affecting property involved in a bankruptcy, proposal or receivership, the trustee is not personally liable for failure to comply with the order, and is not personally

Immunité — ordonnances

(4) Par dérogation au droit fédéral et provincial, mais sous réserve du paragraphe (2), le syndic est, ès qualités, dégagé de toute responsabilité personnelle découlant du non-respect de toute ordonnance de réparation de tout fait ou dommage lié à l'environnement et touchant un bien visé par une faillite, une proposition ou une mise sous séquestre administrée par un séquestre, et de toute

liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(a) if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, or during the period of the stay referred to in paragraph (b), the trustee

(i) complies with the order, or

(ii) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property, or any right in any immovable, affected by the condition or damage;

(b) during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (a), within ten days after the order is made or within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, by

(i) the court or body having jurisdiction under the law pursuant to which the order was made to enable the trustee to contest the order, or

(ii) the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(c) if the trustee had, before the order was made, abandoned or renounced or been divested of any interest in any real property, or any right in any immovable, affected by the condition or damage.

responsabilité personnelle relativement aux frais engagés par toute personne exécutant l'ordonnance :

a) si, dans les dix jours suivant l'ordonnance ou dans le délai fixé par celle-ci, dans les dix jours suivant sa nomination si l'ordonnance est alors en vigueur ou pendant la durée de la suspension visée à l'alinéa b) :

(i) il s'y conforme,

(ii) il abandonne, après avis à la personne ayant rendu l'ordonnance, tout droit sur l'immeuble en cause ou tout intérêt sur le bien réel en cause, en dispose ou s'en dessaisit;

b) pendant la durée de la suspension de l'ordonnance qui est accordée, sur demande présentée dans les dix jours suivant l'ordonnance visée à l'alinéa a) ou dans le délai fixé par celle-ci, ou dans les dix jours suivant sa nomination si l'ordonnance est alors en vigueur :

(i) soit par le tribunal ou l'autorité qui a compétence relativement à l'ordonnance, en vue de permettre au syndic de la contester,

(ii) soit par le tribunal qui a compétence en matière de faillite, en vue d'évaluer les conséquences économiques du respect de l'ordonnance;

c) si, avant que l'ordonnance ne soit rendue, il avait abandonné tout droit sur l'immeuble en cause ou tout intérêt sur le bien réel en cause ou y avait renoncé, ou s'en était dessaisi.

Stay may be granted

(5) The court may grant a stay of the order referred to in subsection (4) on such notice and for such period as the court deems necessary for the purpose of enabling the trustee to assess the economic viability of complying with the order.

Suspension

(5) En vue de permettre au syndic d'évaluer les conséquences économiques du respect de l'ordonnance, le tribunal peut en ordonner la suspension après avis et pour la période qu'il estime indiqués.

Costs for remedying not costs of administration

(6) If the trustee has abandoned or renounced any interest in any real property, or any right in any immovable, affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

Frais

(6) Si le syndic a abandonné tout droit sur l'immeuble en cause ou tout intérêt sur le bien réel en cause ou y a renoncé, les réclamations pour les frais de réparation du fait ou dommage lié à l'environnement et touchant le bien ne font pas partie des frais d'administration.

Priority of claims

(7) Any claim by Her Majesty in right of Canada or a province against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real

Priorité des réclamations

(7) En cas de faillite, de proposition ou de mise sous séquestre administrée par un séquestre, toute réclamation de Sa Majesté du chef du Canada ou d'une province contre le débiteur pour les frais de réparation du fait ou

property or an immovable of the debtor is secured by security on the real property or immovable affected by the environmental condition or environmental damage and on any other real property or immovable of the debtor that is contiguous with that real property or immovable and that is related to the activity that caused the environmental condition or environmental damage, and the security

(a) is enforceable in accordance with the law of the jurisdiction in which the real property or immovable is located, in the same way as a mortgage, hypothec or other security on real property or immovables; and

(b) ranks above any other claim, right, charge or security against the property, despite any other provision of this Act or anything in any other federal or provincial law.

Claim for clean-up costs

(8) Despite subsection 121(1), a claim against a debtor in a bankruptcy or proposal for the costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor shall be a provable claim, whether the condition arose or the damage occurred before or after the date of the filing of the proposal or the date of the bankruptcy.

1992, c. 27, s. 9; 1997, c. 12, s. 15; 2004, c. 25, s. 16; 2005, c. 47, s. 17; 2007, c. 36, s. 9.

Effect of defect or irregularity in appointment

14.07 No defect or irregularity in the appointment of a trustee vitiates any act done by the trustee in good faith.

1992, c. 27, s. 9.

Corporations as Trustees

Majority of officers and directors must hold licences

14.08 A body corporate may hold a licence as a trustee only if a majority of its directors and a majority of its officers hold licences as trustees.

1992, c. 27, s. 9.

Acts of body corporate

14.09 A body corporate that holds a licence as a trustee may perform the duties and exercise the powers of a trustee only through a director or officer of the body corporate who holds a licence as a trustee.

1992, c. 27, s. 9.

Not carrying on business of trust company

14.1 Every body corporate that is incorporated by or under an Act of Parliament and that holds a licence as a

dommage lié à l'environnement et touchant un de ses immeubles ou biens réels est garantie par une sûreté sur le bien en cause et sur ceux qui sont contigus à celui où le dommage est survenu et qui sont liés à l'activité ayant causé le fait ou le dommage; la sûreté peut être exécutée selon le droit du lieu où est situé le bien comme s'il s'agissait d'une hypothèque ou autre garantie sur celui-ci et, par dérogation aux autres dispositions de la présente loi et à toute règle de droit fédéral et provincial, a priorité sur tout autre droit, charge, sûreté ou réclamation visant le bien.

Précision

(8) Malgré le paragraphe 121(1), la réclamation pour les frais de réparation du fait ou dommage lié à l'environnement et touchant l'immeuble ou le bien réel du débiteur constitue une réclamation prouvable, que la date du fait ou dommage soit antérieure ou postérieure à celle de la faillite ou du dépôt de la proposition.

1992, ch. 27, art. 9; 1997, ch. 12, art. 15; 2004, ch. 25, art. 16; 2005, ch. 47, art. 17; 2007, ch. 36, art. 9.

Vice ou irrégularité dans la nomination

14.07 Aucune erreur ou irrégularité dans la nomination d'un syndic ne vicie un acte accompli de bonne foi par lui.

1992, ch. 27, art. 9.

Sociétés

Administrateurs titulaires de licences

14.08 Une personne morale ne peut être titulaire d'une licence de syndic que si la majorité de ses administrateurs et la majorité de ses dirigeants sont titulaires d'une telle licence.

1992, ch. 27, art. 9.

Actes des personnes morales

14.09 La personne morale titulaire d'une licence de syndic ne peut exercer ses fonctions à ce titre que par l'intermédiaire d'un de ses administrateurs ou dirigeants qui est lui-même titulaire d'une telle licence.

1992, ch. 27, art. 9.

Distinction entre les sociétés de fiducie

14.1 Toute personne morale de droit fédéral, titulaire d'une licence de syndic, peut exercer les fonctions de

Province of Alberta

OIL AND GAS CONSERVATION ACT

OIL AND GAS CONSERVATION RULES

Alberta Regulation 151/1971

With amendments up to and including Alberta Regulation 161/2021

Current as of July 29, 2021

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

3.011 No person shall produce gas from a well completed in the oil sands strata prior to obtaining an approval from the Regulator in accordance with section 3 of the *Oil Sands Conservation Rules* (AR 76/88), unless the Regulator has exempted the well from the application of this section.

AR 47/99 s3;89/2013

Abandoned Wells

3.012 A licensee shall abandon a well or facility

(a) on the termination of the mineral lease, surface lease or right of entry,

(b) where the licensee fails to obtain the necessary approval for the intended purpose of the well, if the licensee does not hold the right to drill for and produce oil or gas from the well,

(c) if the licensee has contravened an Act, a rule, a regulation or an order or direction of the Regulator and the Regulator has suspended or cancelled the licence,

(d) if the Regulator notifies the licensee that in the opinion of the Regulator the well or facility may constitute an environmental or a safety hazard,

(e) if the licensee is not or ceases to be a working interest participant in the well or facility,

(e.1) if the licensee

(i) is not or ceases to be resident in Alberta,

(ii) has not appointed an agent in accordance with section 91 of the Act, and

(iii) does not hold a subsisting exemption under section 1.030 from the requirement to appoint an agent,

(f) if the licensee is

(i) a corporation registered, incorporated or continued under the *Business Corporations Act* whose status is not active or has been dissolved or if the corporate registry status of the corporation is struck or rendered liable to be struck under any legislation governing corporations, or

(ii) an individual who is deceased,

(g) if the licensee has suspended the well in contravention of the requirements established by the Regulator under section 3.020,

(g.1) when required by the Regulator pursuant to timelines set out in Directives related to closure published by the Regulator, or

(h) where otherwise ordered to do so by the Regulator.

AR 185/2005 s4;159/2008;222/2012;89/2013;259/2020

Abandonment Operations

3.013(1) Abandonment operations, including well abandonment, casing removal, zone abandonments and plug backs, shall be conducted in accordance with the current edition of Directive 020.

(2) A licensee must comply with all of the requirements of Directive 079, including requirements for locating and testing wells which are considered abandonment operations for the purposes of sections 27, 28, 29, 30, 101 and Part 11 of the Act.

AR 185/2005 s4;208/2011;157/2013

3.014(1) The Regulator may establish closure quotas that are applicable to some or all licensees with respect to the required amount of work or the amount to be spent, or both, as directed by the Regulator and for the period determined by the Regulator, with respect to the closure of the licensee's wells and facilities.

(2) A licensee shall comply with any closure quota applicable to it, unless otherwise directed by the Regulator.

AR 259/2020 s4

3.015(1) When requested by the Regulator, a licensee must submit a closure plan regarding some or all of its wells and facilities, in accordance with any direction of the Regulator given under subsection (3).

(2) A closure plan must contain the information required by the Regulator and the plan must be approved by the Regulator subject to any terms and conditions imposed by the Regulator.

(3) The Regulator may direct the timing and priority for performing work with respect to the closure of the licensee's wells and facilities.

(4) A licensee shall comply with any terms and conditions of the licensee's approved closure plan.

AR 259/2020 s4

3.016(1) Where

(b) to publish any data or make them available otherwise than upon request, or

(c) to make any data available otherwise than upon view at the facilities provided for the purpose by the Regulator in the ordinary routine observed in the Regulator offices and upon payment of its usual fees for such services.

(12) Notwithstanding anything in this section, the Regulator may make any data, record, report or information submitted to the Regulator under Part 11 or 12 available to the Minister of Energy for the sole purpose of calculating or otherwise determining royalties on oil, gas or other substances receivable by or payable to the Crown in right of Alberta.

AR 151/71 s12.150;241/71;51/81;433/82;302/86;350/87;70/88;
332/92;226/93;36/2002;180/2008;156/2010;209/2011;
220/2012;89/2013

12.151(1) In this section, "Large Facility Liability Management Program" means the program established by the Regulator under Directive 024: Large Facility Liability Management Program.

(2) The Regulator must keep confidential the information submitted to or acquired by the Regulator for the purpose of conducting a liability management rating assessment under the Large Facility Liability Management Program.

(3) With respect to information referred to in subsection (2), after 5 years following the end of the year in which the information was submitted or acquired, the *Freedom of Information and Protection of Privacy Act* applies to the information.

AR 184/2005 s2;208/2011;89/2013

12.152(1) A licensee shall provide financial and reserves information to the Regulator as and when directed by the Regulator for the purpose of

(a) assessing licensee eligibility,

(b) administering the liability management programs set out in Directives published by the Regulator, or

(c) otherwise to ensure the safe, orderly and environmentally responsible development of energy resources in Alberta including closure.

(2) The information provided under this section must be kept confidential by the Regulator as follows:

(a) in the case of financial information, for a period of 5 years;

(b) in the case of reserves information, for a period of 15 years.

AR 259/2020 s5

General

12.160(1) No person shall alter, remove, deface or destroy any entry or marking of any kind made by the Regulator or a representative of the Regulator in or upon any record or recording of measurements required to be kept by the Act or the rules.

(2) No person shall enter in any record or report required to be kept or made, as an amount determined by measurement or as an amount the measurement of which is required by the Act or the rules, an amount not so determined.

(3) No person shall wilfully alter, remove, deface or destroy any record or recording of measurements required to be kept until the expiration of the period during which such report or recording is required to be kept by the Act or the rules.

(4) No person shall knowingly make a false statement in any record or return.

AR 151/71 s12.160;89/2013

12.170 Unless otherwise specified in the Act, these Rules or another rule under the Act, each record required to be kept by these Rules or by the Act must be retained at the place and by the person specified in these Rules or in Directive 007 for a period of one year from the time the record is created.

AR 151/71 s12.170;350/87;32/2003;
269/2006;208/2011;89/2013

12.180 Where the Regulator grants an approval of an experimental scheme, it may relieve the operator of the scheme from any of the requirements of this Part.

AR 151/71 s12.180;89/2013

Part 13
Well and Battery Names

Well Names

13.010(1) A well shall be identified by the unique identifier assigned to the well or by the well licence number.

(2) The Regulator shall maintain at its office a copy of each well licence issued by it and a record in which it shall enter

Province of Alberta

PIPELINE ACT

PIPELINE RULES

Alberta Regulation 91/2005

With amendments up to and including Alberta Regulation 280/2020

Current as of December 10, 2020

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(i) the purpose of the pipeline alteration, relocation or addition and the reason the applicant considers it to be in the public interest,

(ii) any documented evidence relating to prior knowledge by either party of the surface work or improvement affecting the pipeline, and

(iii) the opinion of the applicant about allocation of costs necessary to complete the pipeline alteration, relocation or addition and the reasons for it;

(d) an estimate of total costs for the alteration, relocation or addition;

(e) a list of owners and occupants of property affected by the pipeline alteration, relocation or addition and the status of acquisition of right of way, working space and consents of owners and occupants.

(2) On receipt of the application referred to in subsection (1), the Regulator may require written comments from the persons affected by the pipeline alteration, relocation or addition.

(3) The Regulator may require the licensee to perform any testing that it considers necessary prior to making an order under section 33 of the Act.

AR 91/2005 s80;89/2013

Notice to Regulator

81(1) A licensee shall notify the Regulator when the work pursuant to a direction under this Part has been completed.

(2) After receiving a notice referred to in subsection (1), the Regulator may amend the licence.

AR 91/2005 s81;89/2013

Part 10
Discontinuance, Abandonment, Removal or Resumption

Discontinuance or abandonment of pipeline

82(1) Unless otherwise authorized by the Regulator, a licensee shall discontinue, abandon or return to active flowing service a pipeline that has not seen active flowing service within the last 12 months.

(2) Unless otherwise authorized by the Regulator, a licensee required under subsection (1) to discontinue or abandon a pipeline

or part of a pipeline shall do so in accordance with the requirements of Directive 056 and notify the Regulator in accordance with the requirements of Directive 056 within 90 days of the completion of the discontinuance or abandonment operations.

(3) When a pipeline or part of a pipeline is discontinued, the licensee shall ensure that the pipeline or the part of the pipeline that is discontinued is

(a) physically isolated or disconnected from any operating facility or other pipeline,

(b) cleaned, if necessary,

(c) purged with fresh water, air or inert gas, any of which may include the addition of internal corrosion inhibitors if the licensee is prepared to mitigate the environmental effects that could occur as a result of accidental release or spillage,

(d) protected by suitable internal and external corrosion control measures,

(e) not isolated or disconnected in a manner that results in an adjoining operating pipeline having fittings or connection points remaining that would create stagnant fluid traps or dead legs, unless

(i) those locations are permanently accessible and subject to a scheduled inspection program, or

(ii) the contained fluids are confirmed and documented as being non-corrosive,

and

(f) left in a safe condition.

(4) If a pipeline or part of a pipeline cannot be physically isolated or disconnected from an operating facility or pipeline, it must not be discontinued or abandoned but must be maintained as an operating pipeline and its integrity must be taken into account in the licensee's overall pipeline integrity management program.

(5) When a pipeline or part of a pipeline is abandoned, the licensee, in addition to meeting the requirements of subsection (3), shall

(a) remove any surface equipment, including pig traps, risers, block valves and line heaters, unless they are located within the boundaries of a facility that will continue to

have other licensed equipment operating after the pipeline abandonment,

(b) cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level, except when it is located within the boundaries of a facility that will continue to have other licensed equipment operating after the pipeline abandonment,

(c) purge the pipeline with fresh water, air or inert gas, none of which may contain added chemicals or corrosion inhibitors,

(d) remove cathodic protection from the pipeline,

(e) permanently plug or cap all open ends by mechanical means or welded means, and

(f) identify all ends with a permanent tag that indicates the licensee, licence and line number, other end points, date of abandonment and abandonment media left inside the pipeline.

(6) When an existing pipeline is exposed for any purpose and reveals a stagnant fluid trap or dead leg in an operating segment of the pipeline that resulted from a previous discontinuance or abandonment, the licensee shall remedy the stagnant fluid trap or dead leg by

(a) removing and replacing the affected parts of the pipeline,

(b) establishing permanent access to the affected parts of the pipeline and subjecting them to a scheduled inspection program,

(c) confirming and documenting that the contained fluids are non-corrosive, or

(d) some other method acceptable to the Regulator.

(7) If the pipeline or the part of the pipeline to be discontinued or abandoned is either polymeric in composition or contains a polymeric liner, the licensee shall monitor the internal atmosphere for a period of time sufficient to determine that the polymeric materials are not evolving any hazardous gaseous constituents that would prevent the pipeline from complying with subsection (3)(c) and (f).

(8) Subsection (6) applies to all pipelines including those that were discontinued or abandoned prior to the coming into force of these Rules.

(9) A licensee shall abandon a pipeline in accordance with this section

(a) if the Regulator has suspended or cancelled the licensee's licence because the licensee has contravened the Act, these Rules or an order or direction of the Regulator,

(b) if the Regulator has notified the licensee that in the opinion of the Regulator the pipeline may constitute an environmental or safety hazard,

(c) if the licensee

(i) is not or ceases to be resident in Alberta,

(ii) has not appointed an agent in accordance with section 19 of the Act, and

(iii) does not hold a subsisting exemption under section 1.1 from the requirement to appoint an agent,

(d) if the licensee is deceased,

(e) if the licensee is a corporation registered, incorporated or continued under the *Business Corporations Act* that is not active or has been dissolved or if the corporate registry status of the licensee is struck or rendered liable to be struck under any legislation governing corporations,

(f) if the licensee has not discontinued the pipeline in accordance with the Act, these Rules or an order or direction of the Regulator,

(g) if the pipeline is associated with a well or facility that has been abandoned or has been ordered to be abandoned by the Regulator and the pipeline is not used for any other well or facility,

(h) if the licensee has sold or disposed of the licensee's interest in the pipeline and has not transferred it to a person who is eligible to hold a licence for the pipeline,

(h.1) when required by the Regulator pursuant to timelines set out in Directives relating to closure published by the Regulator, or

(i) where otherwise ordered to do so by the Regulator.

AR 91/2005 s82;186/2005;212/2005;48/2012;221/2012; 89/2013;258/2020

Closure quotas

82.1(1) The Regulator may establish closure quotas that are applicable to some or all licensees with respect to the required amount of work or the amount to be spent, or both, as directed by the Regulator and for the period determined by the Regulator, with respect to the closure of the licensee's pipelines.

(2) A licensee shall comply with any closure quota applicable to it, unless otherwise directed by the Regulator.

AR 258/2020 s4

Closure plans

82.2(1) When requested by the Regulator, a licensee must submit a closure plan regarding some or all of its pipelines, in accordance with any direction of the Regulator given under subsection (3).

(2) A closure plan must contain the information required by the Regulator and the plan must be approved by the Regulator subject to any terms and conditions imposed by the Regulator.

(3) The Regulator may direct the timing and priority for performing work with respect to the closure of the licensee's pipelines.

(4) A licensee shall comply with any terms and conditions of its approved closure plan.

AR 258/2020 s4

Responsibility for discontinued or abandoned pipeline

83 Notification to the Regulator of discontinuance or abandonment operations does not relieve the licensee from the responsibility for further discontinuance or abandonment or other operations with respect to the same pipeline or part of a pipeline that may become necessary.

AR 91/2005 s83;89/2013

Removal of pipeline

84 Unless otherwise authorized by the Regulator, a licensee intending to remove an entire pipeline or any part of a pipeline shall submit an application to the Regulator for approval in accordance with the requirements of Directive 056.

AR 91/2005 s84;48/2012;89/2013

Resumption of pipeline operation

85(1) Unless otherwise authorized by the Regulator, a licensee intending to resume the operation of a pipeline or part of a pipeline that has been discontinued, abandoned or that has not been in

In the Court of Appeal of Alberta

Citation: PanAmericana de Bienes y Servicios v. Northern Badger Oil & Gas Limited, 1991 ABCA 181

Date: 19910612
Docket: 11698 & 11713
Registry: Calgary

Between:

PanAmericana de Bienes y Servicios, S.A.

Respondent
(Plaintiff)

- and -

Northern Badger Oil & Gas Limited

Respondent
(Defendant)

And Between:

The Energy Resources Conservation Board

Appellant
(Applicant)

- and -

Vennard Johannesen Insolvency Inc., Receiver and Manager of Northern Badger Oil & Gas Limited

Respondent

- and -

Attorney General of Alberta

Appellant
(Intervenor)

The Court:

The Honourable Chief Justice Laycraft
The Honourable Mr. Justice Foisy
The Honourable Mr. Justice Irving

Reasons for Judgment of The Honourable Chief Justice Laycraft
Concurred in by The Honourable Mr. Justice Foisy
And Concurred in by The Honourable Mr. Justice Irving

APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE MACPHERSON OF THE COURT OF QUEEN'S BENCH OF ALBERTA DATED THE 20TH DAY OF DECEMBER, 1989

COUNSEL:

Stanley H. Rutwind, Esq., for the Appellant (Intervenor) The Attorney General of Alberta

W. J. Major, Q.C. and M. J. Major, Esq., Messrs. Major Caron & Company for the Appellant The Energy Resources Conservation Board

R. C. Wigham, Esq., Messrs. Fenerty Robertson Fraser & Hatch for the Respondent, Panamerlcana de Bienes Y Servlclos, S.A.

T. L. Czechowskyj, Esq. Messrs. McManus Anderson Miles for the Respondent, Vennard Johannesen Insolvency Inc.

J. D. McDonald, Esq., Messrs. Bennett Jones Verchere for Collins Barrow Limited, Trustee in Bankruptcy

REASONS FOR JUDGMENT OF
THE HONOURABLE CHIEF JUSTICE LAYCRAFT

[1] The issue on this appeal is whether the **Bankruptcy Act** (R.S.C. 1980, c. B-3) prevents the court appointed Receiver/Manager of an insolvent and bankrupt oil company from complying with an order of the Energy Resources Conservation Board of the Province of Alberta. The order required the Receiver/Manager, in the interests of environmental safety, to carry out proper abandonment procedures on seven suspended oil wells. In Court of Queen's Bench, Mr. Justice MacPherson held that the order requiring "the abandonment and securing of potentially dangerous well sites is at the expense of the secured creditor's entitlement"

under the Bankruptcy Act and is "beyond the province's constitutional powers". He directed the Receiver/Manager not to comply with the order. For the reasons which follow, I respectfully disagree with that conclusion and would allow the appeal by the Board.

[2] "Abandonment" and "abandon" are terms with different meanings in the oil industry than when used in their usual legal sense. In the oil industry they refer to the process of sealing a hole which has been drilled for oil or gas, at the end of its useful life, to render it environmentally safe. In general terms, the process requires that the well bore be sealed at various points along its length to prevent cross-flows of liquids or gases between formations, or into aquifers or from the surface. The cost may vary from a few hundred dollars to tens of thousands of dollars depending on the circumstances.

I FACTS

[3] Prior to May, 1987 Northern Badger Oil and Gas Limited carried on business in the exploration for, and the production of, oil and gas in Alberta and Saskatchewan. It was licensed to operate 31 oil and gas wells in Alberta of which 11 were producing wells. The remainder were suspended or standing in a non-producing condition. Northern Badger owned varying interests approximating 10 per cent in each well and was the operator of them on behalf of itself and other working interest owners.

[4] On November 1, 1985, Northern Badger granted floating charge debenture security over certain oil and gas assets, including its interest in the 31 Alberta wells, to the respondent Panamericana. It defaulted under the debenture and in May, 1987, Panamericana applied for and obtained a court order appointing Vennard Johannesen Insolvency Inc. ("the Receiver")

> "…Receiver and Manager of all of the undertaking, property, and assets of the Defendant, Northern Badger Oil and Gas Limited with authority to manage, operate, and carry on the business and undertaking of the Defendant…"

[5] On August 7, 1987, a Receiving Order, effective retroactively to July 7, 1987, placed Northern Badger in Bankruptcy. Collins Barrow Limited was appointed Trustee in Bankruptcy.

[6] On July 20, 1987, the Energy Resources Conservation Board wrote to Northern Badger referring to the insolvency and

> "requiring an undertaking that the wells will continue to be operated in adherence with the regulations and conditions of the well licenses. Also it is essential that the licensee

> be capable of responding to any problems which may occur and properly abandoning the well once production is complete."

[7] The Board further suggested that "the solution to the problem" would be to transfer the wells to a party "who is prepared to take on the responsibilities of the licensee". The Receiver responded to this letter on August 14, 1987. It reported that 21 of the wells had been transferred to other parties, but that 12 wells had not. It then said:

> "The Receivership Manager is presently involved in negotiations to sell all of the assets and liabilities to a number of interested parties. Vennard Johannesen is therefore striving to pass on the obligations to the prospective purchaser." (emphasis added)

[8] The Board wrote again to the Receiver on December 11, 1987, pointing out that their records still showed Northern Badger to be the licensee of the wells. The letter asked the Receiver to confirm that no permits, licenses or approvals would be remaining before they applied for discharge "or alternatively that you give the Board notice of any application to be discharged".

[9] During the interval between these two letters, the Receiver had attempted to sell the Northern Badger properties to various prospective purchasers including Senex Corporation. On November 13, Senex made an offer to purchase the remaining Northern Badger assets held by the Receiver for $1,850,000.00 plus a carried interest of 17.5% on certain undeveloped properties held by Northern Badger. Under this offer Senex would become the licensee of the remaining wells. However, the agreement had a clause which provided:

> "The purchaser may elect to exclude any interest of the Vendor in any lands which has a value less than the costs of abandonment as agreed by the parties, or, failing agreement by Sproule Associates Limited, on or before the closing date."

[10] The Receiver applied to the Court for approval of the sale; the affidavit material filed in support of the application made no express reference to the "back out" clause. The Receiver did not give notice to the Board of the application. The Court approved the transaction on December 18, 1987 and the closing date of the sale was set for January 15, 1988.

[11] Prior to the closing, by an agreement dated on the same day, Senex exercised its rights under the "back out" clause and passed seven wells back to the Receiver. This amending agreement did not vary the purchase price of the remaining assets. All the wells

passed back must now be abandoned; two of them require minor expenditures, but the other five will require expenditures in the range of $40,000.00 each.

[12] The court order of December 18, 1987, set aside five different funds to meet the claims of named claimants against Northern Badger for sums held in trust for them, or where claimants had rights of set-off, or to meet lien claims against the properties themselves. None of these funds made allowance for the abandonment of the wells. The remainder of the moneys were held by the Receiver awaiting the outcome of litigation to determine whether Panamericana was entitled to priority over other creditors.

[13] On January 27, 1988, the Receiver advised the Board that

> "effective January 15, 1988 Vennard Johannesen Insolvency Inc. in its capacity as Receiver and Manager of Northern Badger Oil and Gas Limited has sold all of the assets of the company to Senex corporation.
>
> "Please cancel our account with you effective January 15, 1988. We will not be responsible for any charges or fees incurred after January 15, 1988…." (emphasis added)

[14] After a six day trial in May, 1988, Panamericana obtained judgment against Northern Badger for $1,304,112.00, and also obtained a declaration that it had priority over all other creditors of Northern Badger for the payment of sums due under the debenture. Thereupon, on May 29, 1988, the Receiver applied to Court of Queen's Bench for an order approving its administration of the Receiving order and for a discharge from its responsibilities. The affidavit filed in support detailed the payment or settlement of all claims for which provision had been made by the five funds established in December 1987. It disclosed that, after all assets were distributed to Panamericana, there would still be a substantial deficiency in the payment of the debenture debt.

[15] At the time of this application, the Receiver had approximately $226,000. on hand which it sought to pay to Panamericana after deducting its fees and disbursements. It wished to deliver to Collins Barrow, as Trustee in Bankruptcy, what were termed "minor, unrealized receivables" including the interest of Northern Badger in the seven wells and the well licenses relating to them. The affidavit did not refer specifically to the liability arising from the obligation to abandon the seven wells. An apparent indirect reference to these seven wells is contained in paragraph 18 of the supporting affidavit:

> "The Receiver has determined that certain assets of Northern Badger were not marketable and were excluded by Senex Corporation in its purchase of the assets of

Northern Badger, which assets shall remain with the estate of Northern Badger, subject to any further direction of this Honourable Court."

[16] The record before this court makes only brief reference to events during the next year. However, the application by the Receiver to be discharged remained in abeyance. In December 1988, the Board wrote to the Receiver pointing out that a number of wells were still licensed to Northern Badger. The Receiver did not respond until May 3, 1989. It advised the Board that five of the seven wells which now require to be abandoned, had been deleted from the Senex sale.

[17] The Board's reaction to this information was, apparently, immediate. On June 1, 1989, an Order in Council of the Lieutenant Governor in Council purporting to be issued under Section 7 of the Oil and Gas Conservation Act approved the issuance by the Board of an order respecting the abandonment of those five wells and the two others.

[18] The Board order authorized by the Order in Council was issued on June 6, 1989. It required the Receiver to submit abandonment programs for the seven wells by June 15, 1989 and to abandon them in accordance with an approved program on or before February 28, 1990. On June 13, 1989 the Board moved in Court of Queen's Bench for an order requiring the Receiver to comply with the Board's order and this litigation resulted.

[19] While the Board's motion was pending, an effort was made to obtain contribution toward the cost of abandonment from other working interest owners. Upon the application of the Board, on November 23, 1989, Mr. Justice MacPherson directed the Receiver to take steps to collect from other working interest owners of the seven wells their proportionate share of abandonment costs totalling $202,500.00. The proportion of these costs attributable to the percentage interest of Northern Badger in the wells was estimated at $17,330.00. Nothing in the record before the Court discloses whether, or the extent to which, this effort succeeded.

[20] On this appeal, the respondents objected that a portion of the evidence presented on behalf of the Board was inadmissible. They strongly urged that there was, in the result, no evidence that failure to abandon the wells presented any danger. The evidence in question was the affidavit of Mr. G.J. DeSorcy, Chairman of the Energy Resources Conservation Board. In that affidavit Mr. DeSorcy stated that he is a Professional Engineer and Chairman of the Board. He testified, on information and belief, as to a considerable amount of technical information about the five wells, the formations encountered, and the present condition of

them. He expressed opinions as to the danger of cross flows of liquids and gases, and as to hazards to the environment and to "public health and safety". The information was, apparently, derived from the records of the wells filed with the Board; the expressions of opinion were his own.

[21] In my opinion, it is not necessary to determine whether this information was admissible in this form or to consider the need for a new trial if it was not. Even if the information and expressions of opinion in this affidavit are ignored, there is ample evidence on the record in other affidavits, including those filed on behalf of the Receiver, to establish the probable cost of abandonment of the wells and the need for that process. As will be discussed later in these reasons, the process of abandonment of oil and gas wells is part of the general law of Alberta enacted to protect the environment and for the health and safety of all citizens.

II THE REASONS FOR JUDGMENT

[22] The learned Chambers Judge delivered extensive reasons for Judgment. He held that the Board order sanctioned by the Order in Council was within the Board's jurisdiction under its the general powers contained in sections 4(b), 4(f) and 7 of the Oil and Gas Conservation Act. He held, however, that the Board "is a creditor seeking to have its claim to have the seven wells abandoned, preferred to the claim of the secured creditor and to the scheme of distribution set forth in section 107 of the Bankruptcy Act." He cited Re Rainville [1980] 1 S.C.R. 45 (S.C.C.) and R. v. Henfrey, Samson and Belair Limited [1989] 2 S.C.R. 24 (S.C.C.) and said:

> "The E.R.C.B. Orders-in-council in form relate to a constitutionally valid objective, that is, abandonment of gas wells. The genuine purpose is to do something beyond the province's constitutional powers. It is to take money directed, by the Bankruptcy Act, to be paid to a secured creditor, and apply it to another purpose.
>
> ……..
>
> "Subject to the rights of secured creditors, everything in the nature of property of the bankrupt vests in the Trustee in bankruptcy. The E.R.C.B. has the powers under the Oil and Gas Conservation Act to abandon the wells and collect the costs from the appropriate parties.
>
> This claim, whether done directly or ordered to be done, is a claim provable in bankruptcy.
>
> Section 121 of the Bankruptcy Act:

'All debts and liabilities, present or future, to which the bankrupt is subject'

is surely wide enough to cover this liability.

The proper approach to solving problems such as are raised in the case at bar is prescribed by the Supreme Court of Canada in the Federal Business Development Bank v. Commission de la Sante et de la Securlte du Travail et al. 68 C.B.R. 209 at page 217 and following. A similar case of contest between preserving the secured creditors' rights as opposed to saving the public purse.

The Bankruptcy Act has not been amended to deal with modern social problems of abandonment of contaminated property. Here the abandonment and the securing of potentially dangerous well sites is at the expense of the secured creditors' entitlement if the E.R.C.B. were to succeed.

While I am aware that the Supreme Court of the United States of American split five to four in deciding a similar issue in the matter of Quanta Resources, 474 U.S. 494 (1986), I am of the view that the law of Canada accords with the dissenting view of the Chief Justice of the United States when he said that it was for the legislature to change the law, not the courts, when it came to impairing otherwise valid security for societal purposes. One should see also Lloyd's Bank of Canada v. International Warranty Company Limited et al., an unreported decision of the Alberta Court of Appeal (1989) as to the need for clear legislative statements before destroying property rights.

Accordingly, I must instruct the Receiver/manager that he must not proceed to abandon the several wells directed to be abandoned by the order of the E.R.C.B. out of the monies held for the secured creditors."

III THE REGULATORY REGIME FOR ALBERTA OIL AND GAS WELLS

[23] The regulatory scheme for oil and gas operations in Alberta is contained in the Oil and Gas Conservation Act (R.S.A. 1980 c. 0-5, in the Energy Resources Act (R.S.A. 1980 c. E-11) and in the regulations under those acts. Each statute contains a statement of its purposes. Section 4 of the Oil and Gas Conservation Act provides:

"4. The purposes of this Act are:

(b) to secure the observance of safe and efficient practices in the locating, spacing, drilling, equipping, completing, reworking, operating and abandonment of wells and in operations for oil and gas.

.....

(f) to control pollution above, at or below the surface in the drilling of wells and in operations for the production of oil and gas and in other operations over which the Board has jurisdiction.

[24] The Board is given wide specific powers under the act in the regulation of operations in the exploration for, and production of, oil and gas. Where a specific power is not given to the Board to be exercised on its own volition, it has a wide general power to be exercised with the authorization of the Lieutenant Governor in Council. Section 7 provides:

> 7. The Board, with the approval of the Lieutenant Governor in Council, may make any just and reasonable orders and directions the Board considers necessary to effect the purposes of this Act and that are not otherwise specifically authorized by this Act.

[25] Section 9 provides that a Board order shall override the terms of any contract. Sections 11 to 20 provide for the licensing of oil and gas drilling and producing operations. Section 11 provides that no person shall continue any producing operations unless

> "(b) he is the licensee or is acting under the instructions of the licensee."

[26] Section 13 provides that if it is established that a licensee does not have the right to produce oil or gas from land, the license becomes "void for all purposes except as to the liability of the holder of the license to complete or abandon the well…". Section 3.030 (3) of the regulations also provides, in some circumstances, for the Board to direct a licensee to abandon a well. Section 18 provides that a well license shall not be transferred without the consent of the Board. Section 19 outlines circumstances in which the Board may cancel a license.

[27] By sections 92(1) and (2) the Board is empowered to enter a well site and to perform, itself, work needed for "control, completion, suspension or abandonment of the well". The cost of this work then becomes a "debt payable by the licensee of a well to the Board". Section 95 empowers the Board to enforce any order by taking over the production, management and control of the well.

[28] The Energy Resources Conservation Act (R.S.A. 1980 c. fill), which establishes the Board, has a similar statement of its purposes in Section 2. Among these purposes are:

> "2 (c) to effect the conservation of, and to prevent the waste of, the energy resources of Alberta;
>
> (d) to control pollution and ensure environment conservation in the exploration for, processing, development and transportation of energy resources and energy;
>
> (e) to secure the observance of safe and efficient practices in the exploration for, processing, development and transportation of the energy resources of Alberta;"

[29] It is evident that the regulatory regime contained in these statutes and regulations contemplates that all wells drilled for oil or gas will one day be abandoned. That is so whether the well is unsuccessful or whether it produces large quantities of oil or gas. At some point, when further production is not possible or the cost of production of remaining quantities exceeds the revenue which could be obtained from it, the process of abandonment is required of the well licensee. In those situations where there is no solvent entity able to carry out the abandonment duties the wells become, in the descriptive vernacular of the oil industry, "orphan wells". Thus the direct issue in this litigation, in my opinion, is whether the Bankruptcy Act requires that the assets in the estate of a insolvent well licensee should be distributed to creditors leaving behind the duties respecting environmental safety, which are liabilities, as a charge to the public.

IV DID THE BOARD HAVE A PROVABLE CLAIM IN THE BANKRUPTCY?

[30] A basic premise of the respondents' position in Court of Queen's Bench, and in this court, is that the Board has a provable claim as a creditor in the bankruptcy of Northern Badger. From this it is contended that, in enforcing the requirement for the proper abandonment of oil and gas wells, the Board simply ranks as a creditor. Then, it is said, the scheme of distribution of the Bankruptcy Act gives priority to the secured creditors so that the trustee is unable to obey the law requiring abandonment of oil and gas wells. That is so, it is urged, because the requirement of the provincial legislation cannot subvert the scheme of distribution specified by the Bankruptcy Act. The respondents point to the definition of "creditor" in Section 2 of the Bankruptcy Act and to the elements of a "provable claim" set forth in section 121.

[31] Mr. Justice MacPherson agreed with these contentions saying that the words in sections 2 and 121 of the Bankruptcy Act were "surely wide enough to cover" Northern Badger's liability to abandon the wells. These sections provide:

> "2. In this Act,
>
> "Creditor" means a person having a claim preferred, secured or unsecured, provable as a claim under this Act;"
>
> "121(1) All debts and liabilities, present or future, to which the bankrupt is subject at the date of the bankruptcy or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy shall be deemed to be claims provable in proceedings under this Act."

[32] There are two aspects to the question whether the Board had a "provable claim" in the bankruptcy. The first is whether Northern Badger had a liability; the second is whether that liability is to the Board so that it is the Board which is the creditor. I respectfully agree that Northern Badger had a liability, inchoate from the day the wells were drilled, for their ultimate abandonment. It was one of the expenses, inherent in the nature of the properties themselves, taken over for management by the Receiver. With respect, I do not agree, however, that the public officer or public authority given the duty of enforcing a public law thereby becomes a "creditor" of the person bound to obey it.

[33] The statutory provisions requiring the abandonment of oil and gas wells are part of the general law of Alberta, binding every citizen of the Province. All who become licensees of oil and gas wells are bound by them. Similar statutory obligations bind citizens in many other areas of modern life. Rules relating to health, or the prevention of fires, or the clearing of ice and snow, or the demolition of unsafe structures are examples which come to mind. But the obligation of the citizen is not to the peace officer, or public authority which enforces the law. The duty is owed as a public duty by all the citizens of the community to their fellow citizens. When the citizen subject to the order complies, the result is not the recovery of money by the peace officer or public authority, or of a judgment for money, nor is that the object of the whole process. Rather, it is simply the enforcement of the general law. The enforcing authority does not become a "creditor" of the citizen on whom the duty is imposed.

[34] It is true that this Board has the power by statute to create in its own favour a statutory debt if it chooses to do so. It may, under Sections 91(1) and (2) of the Oil and Gas Conservation Act (discussed above) do the work of abandonment itself and become a creditor for the sums expended. But the Board has not done so in this case. Rather it is simply in the course of enforcing observance of a part of the general law of Alberta.

[35] Counsel for Panamericana cited three authorities in support of its argument that the Board is a creditor of Northern Badger: Re Rainville [1980] 1 S.C.R. 45; Deloitte, Haskins & Sells **Ltd.** v. WCB (1985), 19 D.L.R. (4th) 577 (S.C.C.); and R. in Right of British Columbia v. Henfrey Samson Belair Ltd. [1989] 5 W.W.R. 577 (S.C.C.). But in all these cases some actual impost had been levied against the citizen and a sum of money was due and owing to the specific public authority involved. In Rainville, Quebec had registered a "privilege" for $5,474.08 for sales tax which the company had failed to remit; in Deloitte, Haskins & Sells, the sum in dispute was a levy of $3,646.68 made under the Workers' Compensation Act; in

Henry, Samson, Belair Ltd. the company had collected, and failed to remit sales tax of $58,763.23. Thus in each case a specific sum was due to the Crown, or a Crown agency, as a debt. None of the cases is authority for the proposition that a public officer ordering a citizen to obey the general law thereby becomes a creditor for any amount the citizen may ultimately be required to spend in complying.

[36] In my view, the Board is not, at this point, a "creditor" of Northern Badger with a claim provable in its bankruptcy. The problem presented by this case is not to be solved, therefore, by determining whether the Board ranks as a creditor of Northern Badger before or after the secured creditors. Rather it must be determined whether the Receiver, which was the operator of the oil wells in question, had a duty to abandon them in accordance with the law.

V THE DUTIES OF THE RECEIVER

[37] Vennard Johannesen Insolvency Inc. assumed its duties as Receiver in this case as an officer of the court. The nature of its duties has been determined by a long line of cases, now reinforced by the provisions of the Business Corporations Act (R.S.A. 1980 c. B-15). Sections 92 and 93 require the Receiver to act in accordance with the directions of the Court and of the instrument under which the appointment was made. Sections 94 and 95 provide:

> "94 A receiver or receiver-manager of a corporation appointed under an instrument shall
>
> (a) act honestly and in good faith and,
>
> (b) deal with any property of the corporation in his possession or control in a commercially reasonable manner.
>
> 95 On an application by a receiver or receiver-manager, whether appointed by the Court or under an instrument, or on an application by any interested person, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:
>
> (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
>
> (b) an order determining the notice to be given to any person or dispensing with notice to any person;
>
> (c) an order fixing the remuneration of the receiver or receiver-manager;
>
> (d) an order

(i) requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation;

(ii) relieving any of those persons from any default on any terms the Court thinks fit;

(iii) confirming any act of the receiver or receiver-manager;

(d.1) an order that the receiver or receiver-manager make available to the applicant any information from the accounts of his administration that the Court specifies;

(e) an order giving directions on any mater relating to the duties of the receiver or receiver-manager."

[38] A receiver appointed by the court must act fairly and honestly as a fiduciary on behalf of all parties with an interest in the debtor's property and undertaking. The receiver is not the agent of the debtor or the creditor or of any other party, but has the duty of care, supervision and control which a reasonable person would exercise in the circumstances. The receiver may be liable for failure to exercise an appropriate standard of care. These points have been made in many cases starting in 1905 with **Plisson v. Duncan** (1905) 36 S.C.R. 647. The decision of Viscount Haldane in **Parsons et al v. Sovereign Bank of Canada** [1913] A.C.160, which has been frequently quoted, emphasizes the independence of the receiver from those who procured the appointment.

[39] It is also clear that the receiver takes full responsibility for the management, operation and care of the debtor's assets, but does not take legal title to them. That point has been made in a number of decisions including that of Lamer J. (as he then was) speaking for the court in F.B.D.B. v. Commission de Sante et al. (1988) 84 N.R. 308. At page 315 he said:

> "… the immoveable in the case at bar is property of the bankrupt within the meaning of the Bankrupt Act. Even if the trustee takes possession of the immoveable before the bankruptcy, the bankrupt remains owner of his property. The trustee who has seized an encumbered right of ownership over that property: he has only the rights of a creditor under a pledge or hypothec. This Court has ruled this way twice in Laliberte v. Larue, [1931] S.C.R. 7 and Trust general du Canada v. Roland Chalifoux Ltee, [1962] S.C.R. 456."

[40] A further factor affecting the obligation of a court appointed receiver is the receiver's status as an officer of the court; the standard required because of that status is one of meticulous correctness. In Alta Treasury Branches v. Invictus Financial Corporation Ltd. (1986) 42 Alta L.R. (2d) 181, Stratton J. (as he then was) said that the receiver's obligations

"reach further than merely acting honestly". He quoted with approval the statement of Wilson J. in Fotti v. 777 Mgmt. Inc. [1981]5 W.W.R. 48 at 54:

> "… the receiver is an officer of the court and in his discharge of that office he may not, in the name of the court, lend his power to defeat the proper claims of those on whose behalf those powers are exercised. Clothed as he is with the mantle of this court, his duties are to be approached not as the mere agent of the debenture holder, but as trustee for all parties interested in the fund of which he stands possessed."

[41] The same concern for proper conduct by the court's appointed officer may be seen in the judgment of the Saskatchewan Court of Appeal in Canadian Commercial Bank v. Simmons Drilling Ltd. (1989) 76 C.B.R. 241. In that case the Receiver undertook a lengthy review of the debtor's records, and discovered that some subcontractors, who had not registered liens in time, were unpaid. In some cases, the time for filing liens had expired after the Receiver had been appointed. The Court affirmed the duty of a Receiver to ascertain his obligations within a reasonable time and noted that the Receiver's actions in the discharge of those obligations are the actions of the court which appointed him. It held that, whether by intention or by default, an officer of the court, cannot be permitted to change the relative rights of those for whom he is acting. Sherstobitoff J.A. said at page 249:

> "The receiver, and through it the bank, must bear responsibility for the consequences of the failure to act with sufficient diligence to discover the claims within a reasonable time, thereby permitting lapse of the limitation period.
>
> What is clear is that, when the receiver was appointed, the subcontractors were entitled to payment from the trust fund. The failure to make payment to the subcontractors within a reasonable time thereafter, an obligation imposed by s. 89 of the Business Corporations Act and s. 7 of the Builders' Lien Act taken together, was in default of those statutory obligations. If the receiver had applied to the court for directions for payment out of the moneys on that date or within a reasonable time thereafter, the money would have been ordered paid to the subcontractors. The result is that the default of the receiver in failing to act with sufficient promptness and diligence to discover and pay the claims against the trust before expiration of the limitation period has deprived the subcontractors of the right to realize their claims from the trust fund.
>
> The bank now seeks to benefit from that default and the receiver supports its position. That position is untenable. While it may not be improper for a private debtor to withhold payment of a debt due and owing, whether deliberately or by neglect or oversight, and thereby benefit from an intervening limitation period, the same is not true of a receiver, for he is an officer of the court. The receiver's action is the action of the court and the court will not permit or approve any action on the part of its officer which has the effect of changing the rights of competing creditors, whether deliberately or by default."
>
> (emphasis added)

[42] In the present case it is clear that almost from the commencement of the receivership, the Receiver was aware of the obligation, in law, of Northern Badger to see the oil and gas wells properly abandoned. The correspondence from the Board detailed the obligation for the proper operation of the wells and the ultimate abandonment of them.

[43] As one reviews the sequence of events leading to the sale of the assets to Senex, it is difficult to escape the conclusion that the "back out" clause was deliberately negotiated to achieve the very result for which the respondents now contend. The "back out" clause contemplates the situation that the costs of abandonment of some wells may exceed the revenue to be gained from them. Of course, no matter what wealth a well has produced in the past, there comes a time, in the last days of its life, when little oil remains and the well must be abandoned. At that point it is a liability with the cost of abandonment exceeding the revenue that could be obtained. In this case, the parties even provided for an arbitrator to determine, if need be, whether that moment had arrived. All wells with some value were to be sold; the remainder were to be left in the bankrupt estate when the Receiver obtained a discharge from its duties.

[44] Moreover, whether by accident or design, the Board was not made aware of the developing situation. Despite the correspondence, the Board was not aware that Senex was able to exercise a "back out" clause in the sale agreement. The Board was first told of the effort "to sell all the assets and liabilities". It was then told that "all the assets have been sold". Only the most alert reader would detect the subtle difference in the two quoted portions of the Receiver's letters. On the material filed, it is also difficult to escape the conclusion that the court approved the sale to Senex without being aware of the prospect that some wells were to be left as "orphans".

VI CONCLUSION

[45] In my opinion the Board had the power, when authorized by the Lieutenant Governor in Council, to order the abandonment of the wells by some person. The order was clearly within the general regulatory scheme, and within the expressed purposes, of both of the statutes regulating the oil and gas industry. Indeed, the contrary was not argued. What was contended is that the Board should have directed its order to Northern Badger or to the trustee in bankruptcy rather than to the Receiver. What was further contended is that the receiver or trustee in bankruptcy is unable to obey the general law enacted by the provincial

legislature to govern oil wells because to do so would subvert the scheme Parliament has devised for distribution of assets in a bankruptcy.

[46] The parties referred the court to some cases in the United States and to one in Canada where a debtor's legal duties on environmental matters conflicted with the potential distribution of the estate on insolvency. In each case, however, the response of the court was to some degree determined by statutory provisions. The cases are not easy to reconcile.

[47] In Kovacs v. B & W Enterprises (1984) 469 U.S. 649 a state obtained an injunction ordering an individual to clean up a hazardous site, and later a receiver was appointed to seize property of the debtor and perform the duty. The individual filed for bankruptcy and the issue was whether his subsequent discharge from bankruptcy cleared the obligation. It was held in the Sixth Circuit Court of Appeals that the claim was essentially a monetary "liability on a claim" under the bankruptcy statute, and that the debtor was discharged. The United States Supreme Court affirmed.

[48] In Penn Terra Ltd. V. Dept. of Environmental Resources (1984) 733 F. 2d 267 the Third Circuit Court of Appeals was required to decide whether an exemption clause in the bankruptcy legislation should be construed to exempt from discharge an order requiring the debtor to complete restoration of the sites after coal operations. The court observed that the judgment obtained was not in the form of a traditional money judgment as for a tort or other claim. It then held that the debtor was not discharged and was required to perform the restoration.

[49] In Midlantic National Bank v. New Jersey Department of Environmental Protection (1985) 474 U.S. 494, a corporation filed for bankruptcy after it was discovered to have stored oil contaminated with a carcinogen at a site in New Jersey and another in New York. The trustee proposed to abandon the sites on the ground that they were of "inconsequential value" to the estate. In New Jersey, State environmental officials ordered the site cleaned up. A majority of the United States Supreme Court held that a bankruptcy trustee may not abandon property in contravention of state law. The minority would have held that the abandonment might be barred in emergency conditions, which did not yet exist in the case.

[50] A similar problem arose again after both the above cases had been decided in United States v. Whizco Inc. (1988) 841 F. (2d) 147. The United States sought an injunction to force obedience to a statutory obligation to abandon a worked out coal mine. The Sixth

Circuit Court of Appeals held, following the Kovacs case, that the operator's discharge under the Bankruptcy Act discharged the operator's liability to the extent that it would require the expenditure of money.

[51] One similar case has arisen in Canada. In Canada Trust Company v. Bulora Corporation (1980) 34 C.B.R. 145, the Receiver, as in the present case, had been appointed to receive and manage the company. The Fire Marshall ordered the Receiver to demolish certain housing units which were in a "serious and hazardous" condition. It was urged that, despite the appointment of the Receiver, the company continued to exist and to hold title to its assets. Thus, it was said, the proper recipient of the demolition order was the company, itself, and not the Receiver. Cory J., then a judge of the High Court of Ontario, summarized the argument in these terms at page 151:

> "It was contended that the nature of the position of the receiver, although it might paralyze the power of the company for which it was appointed, did not extinguish the legal existence of that company. Thus Bulora continued to exist and continued as the entity responsible for the required demolition. It was said that, as the Fire Marshal had every right to recover the municipality, the receiver should not and could not be required to undertake the demolition, which would have the effect of reducing the amount recovered by Canada Trust, the secured creditor."

[52] Cory J. then summarized the powers of the Receiver under the order appointing it, which gave it very wide powers of management and control similar to those given the Receiver in this case. He then said at page 152:

> "There remains the major problem of determining who should bear the costs of the demolition. The order of the Fire Marshal is of vital concern for the safety of residents of the units adjacent to and close by the abandoned units. The safety of those persons occupying such units should be of paramount importance. If the receiver is given wide and sweeping powers in the management of the company, surely in the course of such management it has a duty to comply with a demolition order where the safety of individuals is so vitally concerned. It is indeed unfortunate that a creditor must suffer the loss resulting from the demolition. Nevertheless, the asset to be managed by the receiver must, in my opinion, be managed with a view to the safety of those residing in and beside that asset. Receivership cannot and should not be guided solely by the recovery of assets. In my view, there is a social duty to comply with an order such as this which deals with the safety of individuals affected by an asset the receiver is managing.
>
> The direction then will be that the receiver is to comply with the order of the Fire Marshal and proceed with the demolition of the specified units."

[53] The Court of Appeal affirmed the judgment of Cory J. [(1981) 39 C.B.R. 153]. The endorsement on the record was as follows:

> "There was an order made by the fire marshall the legality and appropriateness of which is not challenged by the appellant. We are of the view that under the circumstances it was not only within the jurisdiction of the learned judge to direct that the court-appointed receiver-manager carry out that order but those circumstances necessitated that the receiver-manager be so directed. Although Cory J. referred to a 'social duty' to comply with the order that language, with deference, was inappropriate. The duty involved was a statutory one and it was unnecessary for him to consider the social implications of the order. The appeal is dismissed with costs."

[54] As in Bulora Corporation, it is urged in this case that Northern Badger is the licensee of the wells; the Receiver has never had legal title to them and is not the licensee. Therefore, it is said, the abandonment order should be directed to Northern Badger and not to the Receiver. In my opinion, that contention is not valid.

[55] The Receiver has had complete control of the wells and has operated them since May, 1987, when it was appointed Receiver and Manager of them. It has carried out for more than three years activities with respect to the wells which only a licensee is authorized to do under the provisions of the Oil and Gas Conservation Act. In that position, it cannot pick and choose as to whether an operation is profitable or not in deciding whether to carry it out. If one of the wells of which a receiver has chosen to take control should blow out of control or catch fire, for example, it would be a remarkable rule of law which would permit him to walk away from the disaster saying simply that remedial action would diminish distribution to secured creditors.

[56] While the Receiver was in control of the wells, there was no other entity with whom the Board could deal. An order addressed to Northern Badger would have been fruitless. That is so because, by order of the court, upon the application of the debenture holder, neither Northern Badger nor its trustee in bankruptcy had any right even to enter the well sites or to undertake any operation with respect to them. Moreover, under the regulatory scheme for Alberta oil wells, only a licensee is entitled to produce oil and gas. The Receiver cannot be heard to say that, while functioning as a licensee to produce the wells and to profit from them, it assumed none of a licensee's obligations.

[57] I must also consider the contention, which found favour in the Court of Queen's Bench, that the receiver or bankruptcy trustee managing and operating oil and gas wells need not, and, indeed, is forbidden, to obey the general provincial law governing property of that description. Put another way, this argument states that the general provincial law regulating

the operation of oil and gas wells in Alberta is invalid to the extent that it purports to govern a receiver or bankruptcy trustee in possession of such wells.

[58] Conflict between federal and provincial legislation is, of course, a classic Canadian problem. A number of cases have considered the situation where either a federal or provincial law, validly enacted within the constitutional power reserved to the enacting body, also touches upon or affects a heading of power reserved to the other level of government. These cases have been extensively reviewed and commented upon in the recent decision of the Supreme Court of Canada in **Bank of Montreal v. Hall** [1990] 1 S.C.R. 121.

[59] Provincial legislation has often been upheld despite incidental effects on a subject under the federal power. Where there is direct confrontation (as where one statute says "yes" and the other says "no" -- as Dickson J. (as he then was) expressed it in Multiple Access Ltd. v McCutcheon [1982] 2 S.C.R. 16) the doctrine of paramountcy may force a conclusion of invalidity of the provincial legislation.

[60] That the two statutes affect the same subject matter does not necessarily mean that one or the other of them is invalid. An early case of this type was Canadian Pacific Railway Company v. Notre Dame de Bonsecours [1899] A.C. 367. In that case the Privy Council held that since Parliament has the exclusive right to prescribe regulations for the construction/ repair and alteration of a railway, a provincial legislature could not regulate the structure of a ditch forming part of the works. But it held intra vires a municipal code which prescribed the cleaning of the ditch and the removal of obstructions to prevent flooding.

[61] Similarly in **Royal Bank of Canada v. Workmen's Compensation Board of Nova Scotia** [1936] S.C.R. 560, the Supreme Court of Canada held valid a levy for worker's compensation which adversely affected security granted under the Bank Act. La Forest J., giving the judgment of the court in **Bank of Montreal v. Hall** (supra), quoted the judgment of Davis J. in the Nova Scotia case (at 568-569) as follows (at 148):

> "…I have reached the conclusion that the goods in question, though owned by the bank subject to all the statutory rights and duties attached to the security were property in the province of Nova Scotia
>
> > 'used in or in connection with or produced by the industry with respect to which the employer (was) assessed though not owned by an employer'
>
> and became subject to the lien of the provincial statute the same as the goods of other owners…It is a provincial measure of general application for the benefit of workmen

> employed in industry in the province and is not aimed at the impairment of bank securities though its operations may incidentally in certain cases have that effect."
>
> (emphasis added by La Forest J.)

[62] In **Bank of Montreal v. Hall** (supra) the provincial legislation in conflict with valid federal legislation was forced to give way. The bank sought to enforce security granted to it under the **Bank Act** and the issue was whether it was required to follow the procedures and experience delays prescribed by the Saskatchewan **Limitation of Civil Rights Act.** After a review of the case law and of the two enactments La Forest J. was "led inescapably to the conclusion" that there was an "actual conflict in operation" between them. The provincial legislation was held inoperative in respect of security taken by the bank.

[63] In my view, there is no such direct conflict in this case. The Alberta legislation regulating oil and gas wells in this province is a statute of general application within a valid provincial power. It is general law regulating the operation of oil and gas wells, and safe practices relating to them, for the protection of the public. It is not aimed at subversion of the scheme of distribution under the Bankruptcy Act though it may incidentally affect that distribution in some cases. It does so, not by a direct conflict in operation, but because compliance by the Receiver with the general law means that less money will be available for distribution.

[64] I respectfully agree with the decision in **Bulora Corporation** (supra). In my opinion, the Receiver, the manager of the wells with operating control of them, was bound to obey the provincial law which governed them.

[65] I would not attempt to define the limits of provincial regulatory authority in relation to the federal powers respecting insolvency and bankruptcy. The various levels of government regulate business in a myriad of ways. The extent to which these levels of government may, in the exercise of their powers, affect in an incidental way, the distribution of insolvent estates must depend, to a considerable extent, on the facts of the particular case.

[66] I would allow the appeal and direct the Receiver to comply with the Board Order. The parties may speak to costs.

DATED AT CALGARY, ALBERTA
THIS 12th DAY OF JUNE
A.D. 1991.

Province of Alberta

RESPONSIBLE ENERGY DEVELOPMENT ACT

ALBERTA ENERGY REGULATOR ADMINISTRATION FEES RULES

Alberta Regulation 70/2019

With amendments up to and including Alberta Regulation 164/2021

Current as of September 20, 2021

Office Consolidation

Alberta Queen's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Copyright and Permission Statement

Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 164/2021)

ALBERTA REGULATION 70/2019

Responsible Energy Development Act

ALBERTA ENERGY REGULATOR ADMINISTRATION FEES RULES

Table of Contents

1 Definitions
2 Rate payable by operator
3 Wells
4 Coal mines
5 Oil sands projects
6 Notice
7 Penalty
8 Appeal
9 Recovery of fees
10 Liability for payment
11 Expiry

Definitions

1 In these Rules,

(a) "administration fee production" means,

(i) in the case of an oil well, the annual base year production from the well in cubic metres, and

(ii) in the case of a gas well, the annual base year production from the well in thousand cubic metres adjusted by the conversion factor set out in section 3(5) to make it comparable to oil;

(b) "base year" means the calendar year immediately preceding the fiscal year during which the administration fee is imposed;

(c) "fiscal year" means the fiscal year of the Regulator;

(d) "gas well" means a well licensed and designated by the Regulator as a gas well;

(d.1) "inactive well" means a well licensed by the Regulator that has no reported production, injection or disposal during the base year;

(e) "oil well" means a well licensed and designated by the Regulator as an oil well;

(f) "service well" means a well licensed and classified by the Regulator as one of injection, disposal or storage well.

AR 70/2019 s1;164/2021

Rate payable by operator

2(1) In each fiscal year, every person who, on the prescribed date, was the operator of a well, coal mine or oil sands project shall pay an administration fee in accordance with these Rules.

(2) For the purposes of these Rules, the prescribed date for the 2021-2022 fiscal year is December 31, 2020.

AR 70/2019 s2;164/2020;72/2021

Wells

3(1) An operator of a well shall pay an administration fee calculated as follows with respect to each individual well within each class of well, multiplied by the annual adjustment factor set out in subsection (2):

(a) Class 0 - $42 per well;

(b) Class 1 - $50 per well;

(c) Class 2 - $42 per well;

(d) Class 3 - $102 per well;

(e) Class 4 - $240 per well;

(f) Class 5 - $460 per well;

(g) Class 6 - $1040 per well;

(h) Class 7 - $1740 per well;

(i) Class 8 - $2560 per well;

(j) Class 9 - $3500 per well;

(k) Class 10 - $3800 per well.

(2) For the 2021-2022 fiscal year, the annual adjustment factor is 3.934119.

(3) For the purposes of this section, wells subject to an administration fee are classed as follows:

(a) Class 0 - inactive wells;

(a.1) Class 1 - service wells;

(b) Class 2 - wells having administration fee production volumes during the base year that are greater than 0.00 cubic metres and less than or equal to 300.00 cubic metres;

(c) Class 3 - wells having administration fee production volumes during the base year that are greater than 300.00 cubic metres and less than or equal to 600.00 cubic metres;

(d) Class 4 - wells having administration fee production volumes during the base year that are greater than 600.00 cubic metres and less than or equal to 1200.00 cubic metres;

(e) Class 5 - wells having administration fee production volumes during the base year that are greater than 1200.00 cubic metres and less than or equal to 2000.00 cubic metres;

(f) Class 6 - wells having administration fee production volumes during the base year that are greater than 2000.00 cubic metres and less than or equal to 4000.00 cubic metres;

(g) Class 7 - wells having administration fee production volumes during the base year that are greater than 4000.00 cubic metres and less than or equal to 6000.00 cubic metres;

(h) Class 8 - wells having administration fee production volumes during the base year that are greater than 6000.00 cubic metres and less than or equal to 8000.00 cubic metres.

(i) Class 9 - wells having administration fee production volumes during the base year that are greater than 8000.00 cubic metres and less than or equal to 10 000.00 cubic metres;

(j) Class 10 - wells having administration fee production volumes during the base year that are greater than 10 000.00 cubic metres.

(4) The following wells are exempt from payment of an administration fee:

(a) all wells, except inactive wells, categorized by the Regulator as abandoned as of December 31 of the base year;

(b) all wells, except inactive wells, categorized by the Regulator as farm gas or farm water wells as of December 31 of the base year;

(c) all inactive wells categorized by the Regulator as farm gas or farm water wells as of January 31 of the year following the base year;

(d) all inactive wells categorized by the Regulator as abandoned, re-entered, reclamation certified, reclamation exempt, observation, training or cavern scheme wells as of January 31 of the year following the base year;

(e) all inactive wells that use the natural heat from the earth that is above or below the base of groundwater protection for the purpose of the exploration for or development of geothermal resources;

(f) all inactive wells that are categorized by the Regulator as an in situ scheme type as of July 15 of the year following the base year;

(g) all inactive wells designated by the Regulator as orphan wells as of January 31 of the year following the base year;

(h) all wells, except inactive wells, categorized by the Regulator as commingled as of December 31 of the base year.

(5) The conversion factor for the purpose of section 1(a)(ii) is 1.00.

AR 70/2019 s3;163/2019;164/2020;72/2021;164/2021

Coal mines

4(1) In this section, "coal production" means the total tonnes of coal produced by an operator of an Alberta coal mine in the 2020 calendar year, including

(a) coal produced from a sub-bituminous mine, and

(b) coal produced from a bituminous mine, including

(i) clean coal from a coal processing plant, and

(ii) raw coal for sale.

(2) An operator of a coal mine shall pay an administration fee with respect to a coal mine calculated as follows:

administration fee = coal production x $0.446721 for each tonne of coal

AR 70/2019 s4;163/2019;164/2020;72/2021;164/2021

Oil sands projects

5(1) For the purposes of this section, oil sands projects subject to an administration fee are classed as follows:

(a) Class 1 - primary oil sands projects, consisting of projects producing bitumen volumes by cold flow method in the base year;

(b) Class 2 - thermal on-going oil sands projects, consisting of projects producing bitumen volumes by enhanced recovery method (including projects that are experimental schemes within the meaning of the *Oil Sands Conservation Act*) in the base year;

(c) Class 3 - thermal growth oil sands projects, consisting of projects where

(i) the maximum amount of bitumen volumes that may be produced by enhanced recovery method is set out in the approval, and

(ii) the approval was issued or was last amended to change the maximum amount within the 5-year period ending on December 31 of the base year;

(d) Class 4 - mining on-going oil sands projects, consisting of projects producing bitumen volumes by mining in the base year;

(e) Class 5 - mining growth oil sands projects, consisting of projects where

(i) the maximum amount of bitumen volumes that may be produced by mining is set out in the approval or in the application for the approval or for an amendment to the approval, and

(ii) the approval was issued or last amended to change the maximum amount or the most recent application for an amendment to change the maximum amount

was made, as the case may be, within the 7-year period ending on December 31 of the base year.

(2) An operator of one or more approved oil sands projects shall pay an administration fee calculated in accordance with subsections (4) to (8).

(3) An operator of a portion of an oil sands project shall pay an administration fee calculated in accordance with subsections (4) to (8) that is proportionate to that operator's portion of the oil sands project.

(4) The administration fee payable by an operator of one or more Class 1 approved oil sands projects is the amount calculated in accordance with the following formula:

Fee for Class 1 = [(A x $5000) + B + (C x total bitumen volumes produced in the base year by the operator's Class 1 oil sands projects)] x 5.162912

where

A is the number of Class 1 oil sands projects approvals held by the operator;

B is the fixed amount selected from Table A which corresponds to the applicable production range from Table A that contains the total bitumen volumes produced in the base year by the operator's Class 1 oil sands projects;

C is the variable rate selected from Table A which corresponds to the applicable production range from Table A that contains the total bitumen volumes produced in the base year by the operator's Class 1 oil sands projects.

(4.1) Repealed AR 164/2020 s5.

(5) The administration fee payable by an operator of one or more Class 2 approved oil sands projects is the amount calculated in accordance with the following formula:

Fee for Class 2 = [(A x $5000) + B + (C x total bitumen volumes produced in the base year by the operator's Class 2 oil sands projects)] x 2.991896

where

A is the number of Class 2 oil sands projects approvals held by the operator;

B is the fixed amount selected from Table A which corresponds to the applicable production range from Table A that contains the total bitumen volumes produced in the base year by the operator's Class 2 oil sands projects;

C is the variable rate selected from Table A which corresponds to the applicable production range from Table A that contains the total bitumen volumes produced in the base year by the operator's Class 2 oil sands projects.

(5.1) Repealed AR 164/2020 s5.

(6) The administration fee payable by an operator of one or more Class 3 approved oil sands projects is the amount, in respect of each project, calculated in accordance with the following formula:

Fee for Class 3 project = [$5000 + A + (B x C)] x 8.047694

where

A is the fixed amount selected from Table A which corresponds to the applicable production range from Table A that contains the amount that is determined by dividing the difference between the maximum amount of bitumen volumes that may be produced by the project in the base year under the approval and the volumes that were actually produced by the age of the approval or the most recent amended approval, calculated from the date of issuance to December 31 of the base year and rounded up to a full year (but if the bitumen volumes produced exceed the maximum amount that may be produced, A is $5000);

B is the variable rate selected from Table A which corresponds to the applicable production range from Table A that contains the amount that is determined by dividing the difference between the maximum amount of bitumen volumes that may be produced by the project in the base year under the approval and the volumes that were actually produced by the age of the approval or the most recent amended approval, calculated from the date of issuance to December 31 of the base year and rounded up to a full year (but if the project did not produce any bitumen in the base year or if the bitumen volumes produced exceed the maximum amount that may be produced, B is 0);

C is the amount determined by dividing the difference between the maximum amount of bitumen volumes that may be produced by the project in the base year under the approval and the volumes that were actually produced by the age of the approval or the most recent amended

approval, calculated from the date of issuance to December 31 of the base year and rounded up to a full year.

(6.1) Repealed AR 164/2020 s5.

(7) The administration fee payable by an operator of one or more Class 4 approved oil sands projects is the amount calculated in accordance with the following formula:

Fee for Class 4 = [(A x $10 000) + B + (C x total bitumen volumes produced in the base year by the operator's Class 4 oil sands projects)] x 2.320594

where

A is the number of Class 4 oil sands project approvals held by the operator;

B is the fixed amount selected from Table B which corresponds to the applicable production range from Table B that contains the total bitumen volumes produced in the base year by the operator's Class 4 oil sands projects;

C is the variable rate selected from Table B which corresponds to the applicable production range from Table B that contains the total bitumen volumes produced in the base year by the operator's Class 4 oil sands projects.

(7.1) Repealed AR 164/2020 s5.

(8) The administration fee payable by an operator of one or more Class 5 approved oil sands projects is the amount, in respect of each project, calculated in accordance with the following formula:

Fee for Class 5 project = [$10 000 + A + (B x C)] x 16.653068

where

A is the fixed amount selected from Table B which corresponds to the applicable production range from Table B that contains the amount that is determined by dividing the difference between the maximum amount of bitumen volumes that may be produced by the project in the base year under the application or approval and the volumes that were actually produced by the age of the approval, the most recent amended approval or the most recent application for an amendment to the approval, calculated from the date of issuance to December 31 of the base year and rounded up to a full year (but if the bitumen volumes

produced exceed the maximum amount that may be produced, A is $2500);

B is the variable rate selected from Table B which corresponds to the applicable production range from Table B that contains the amount that is determined by dividing the difference between the maximum amount of bitumen volumes that may be produced in the base year under the application or approval and the volumes that were actually produced by the age of the approval, the most recent amended approval or the most recent application for an amendment to the approval, calculated from the date of issuance to December 31 of the base year and rounded up to a full year (but if the project did not produce any bitumen in the base year or if the bitumen volumes produced exceed the maximum amount that may be produced, B is 0);

C is the amount determined by dividing the difference between the maximum amount of bitumen volumes that may be produced by the project in the base year under the application or approval and the volumes that were actually produced by the age of the approval, the most recent amended approval or the most recent application for an amendment to the approval, calculated from the date of issuance to December 31 of the base year and rounded up to a full year.

(8.1) Repealed AR 164/2020 s5.

AR 70/2019 s5;163/2019 ;164/2020;72/2021;164/2021

Notice

6(1) A notice of an administration fee determined under these Rules must be given to each person who was, according to the records of the Regulator, an operator on the prescribed date of one or more wells, one or more coal mines or one or more oil sands projects.

(2) A notice under this section must

(a) contain or be accompanied with a copy of these Rules,

(b) set out, in respect of each class of wells, coal mines and oil sands projects, a brief description of the wells, coal mines and oil sands projects of which the person to whom the notice is given was the operator on the prescribed date according to the records of the Regulator,

(c) set out the amount of the administration fee in respect of each well, coal mine and oil sands project described in the notice, and

(d) contain a demand for the payment of the total amount of the administration fees.

(3) A notice under this section is sufficiently given to a person referred to in subsection (1) if it is

(a) sent by mail to the person at that person's address in Alberta according to the records of the Regulator at the time of mailing,

(b) sent by email to the person at that person's email address according to the records of the Regulator at the time of sending, or

(c) provided to the person through an electronic medium selected by the Regulator that is accessible by that person.

(4) If a notice is given in accordance with subsections (1) to (3) but it is later determined in an appeal under section 8 or in an action under section 9 that the person to whom the notice was given was not the operator on the prescribed date of a well, coal mine or oil sands project described in the notice, the Regulator may give a notice that complies with subsection (2) to the person, if any, who was determined in the appeal or in the action to have been the operator of the well, coal mine or oil sands project on the prescribed date.

(5) If the Regulator determines, otherwise than as a result of an appeal under section 8, that a notice has been given under subsection (1) or (4) to any person in error or that the amount of the administration fee set out in the notice is incorrect, the Regulator may withdraw the notice and issue a corrected notice in its place.

AR 70/2019 s6;164/2021

Penalty

7(1) The administration fee set out in the notice must be paid by the operator within 30 days of the mailing date shown on the notice unless the Regulator otherwise directs.

(2) Any administration fee or part of the fee not paid within 30 days of the mailing date shown on the notice is subject to the addition of a penalty of 20% of the unpaid administration fee unless the Regulator otherwise orders.

(3) Where an operator appeals, in accordance with section 8, the penalty set out in subsection (2) must be calculated on the basis of

the amount for which the operator is found liable on appeal and the administration fee and penalty is payable immediately on the disposition of the appeal.

AR 70/2019 s7;163/2019

Appeal

8(1) A person to whom a notice is given under section 6 may appeal to the Regulator by serving on the Regulator a Notice of Appeal within 30 days of the mailing date shown on the notice on any one or more of the following grounds:

(a) that the person was not the operator on the prescribed date of any of the wells, coal mines or oil sands projects described in the notice or of any particular wells or oil sands projects described in the notice;

(b) that the administration fee set out in the notice for one or more of the wells, coal mines or oil sands projects is incorrect;

(c) on any other grounds that the Regulator considers proper.

(2) The Regulator shall hear an appeal on grounds set out in subsection (1)(a) or (b) and may hear an appeal on any other grounds the Regulator considers proper.

(3) The Notice of Appeal must be signed by the appellant and must set out the name of the appellant, the name of the agent, if any, of the appellant, the grounds and particulars of the appeal and the address to which all further correspondence concerning the appeal must be mailed.

(4) The Notice of Appeal must be served on the Regulator at the Regulator's Calgary office no later than 4:00 p.m. on the last day for receipt of appeals, and appeals received after that time may be heard by the Regulator in its discretion.

(5) Within 60 days from the day for receipt of appeals, the Regulator shall send to the appellant a Notice of Hearing.

(6) On the date set out in the Notice of Hearing, the Regulator shall hear the appeal and may decide the appeal at that time or defer its decision.

(7) The Regulator may conduct the hearing orally, including by telephone, or in writing.

Recovery of fees

9(1) Any administration fees and penalties owing to the Regulator under these Rules may be recovered by the Regulator in an action in debt against the person liable to pay it.

(2) If a notice is given in accordance with section 6 and, in respect of any well, coal mine or oil sands project described in the notice,

(a) no appeal is taken to the Regulator under these Rules by the person to whom the notice is given within the time prescribed, or

(b) the appeal is not prosecuted with reasonable speed or is later discontinued or abandoned or is dismissed by the Regulator,

that person is, subject to subsection (3), estopped from denying that the person was the operator of the well, coal mine or oil sands project on the prescribed date in an action by the Regulator under this section for the recovery of the administration fee imposed in respect of that well, coal mine or oil sands project.

(3) If the defendant in an action under this section had previously appealed to the Regulator under these Rules or any predecessor of these Rules on the ground that the defendant was not, on the prescribed date, the operator of the well, coal mine or oil sands project concerned and the Regulator after hearing evidence relating to that ground made a finding that the defendant was the operator on the prescribed date, subsection (2) does not apply, but the burden is on the defendant to prove that the defendant was not the operator of the well, coal mine or oil sands project concerned on the prescribed date.

(4) The defendant in an action under subsection (1) may join as a co-defendant any person the defendant claims was the operator on the prescribed date of the well, coal mine or oil sands project concerned and, in that event, the court may, if it upholds the claim, give judgment against that co-defendant for the amount of the administration fees and penalties owing by that co-defendant.

Liability for payment

10 If the operator who is liable for an administration fee

(a) was not the operator on the prescribed date of any of the wells, coal mines or oil sands projects described in the notice or of any particular wells, coal mines or oil sands projects, or

(b) is no longer in Alberta, has become bankrupt or insolvent, is no longer carrying on business in Alberta, refuses to pay or does not pay,

the liability for the payment of the administration fee is on the person who was the licensee of the well or coal mine or holder of the approval under the *Oil Sands Conservation Act* for the project, as the case may be, on the prescribed date.

Expiry

11 For the purpose of ensuring that these Rules are reviewed for ongoing relevancy and necessity, with the option that they may be repassed in their present or an amended form following a review, these Rules expire on December 31, 2022.

AR 70/2019 s11;163/2019;72/2021

Table A

Production Range (m3)

Minimum	Maximum	Fixed Amount ($)	Variable rate
0	4999	5000	0
5000	19 999	5000	0.5000
20 000	49 999	9000	0.3000
50 000	349 999	15 000	0.1800
350 000	2 499 999	50 000	0.0800
2 500 000	4 999 999	100 000	0.0600
5 000 000	9 999 999	200 000	0.0400
10 000 000	19 999 999	380 000	0.0220
20 000 000	29 999 999	570 000	0.0125
30 000 000		700 000	0.0100

Table B

Production Range (m3)

Minimum	Maximum	Fixed Amount ($)	Variable rate
0	4999	2500	0
5000	19 999	2500	0.4000
20 000	49 999	6250	0.2125
50 000	349 999	10 000	0.1375
350 000	2 499 999	25 000	0.0946
2 500 000	4 999 999	65 000	0.0786
5 000 000	9 999 999	125 000	0.0666
10 000 000	19 999 999	200 000	0.0591

20 000 000	29 999 999	325 000	0.0529
30 000 000		500 000	0.0471

Printed on Recycled Paper

Alberta Energy Regulator

Directive 006

Release date: February 17, 2016

Effective date: February 17, 2016

Replaces previous edition issued March 12, 2013

Licensee Liability Rating (LLR) Program and Licence Transfer Process

The Alberta Energy Regulator has approved this directive on February 17, 2016.

<original signed by>

Jim Ellis
President and Chief Executive Officer

Contents

1 Purpose of the LLR Program 2

2 What's New in This Edition 2

3 Scope of the LLR Program 2

4 Definitions 3

5 Liability Management Rating Assessment 4

6 LMR Security Deposit Requirements 4

7 Orphan Program and Fund 5

- 7.1 Orphan Site 5
- 7.2 LLR and OWL Orphan Levy Base and Formula 5
- 7.3 OWL NPL Levy 6

8 LLR Program Administration 6

- 8.1 Program Operation 6
- 8.2 Confidentiality 6
- 8.3 Program Review 6

Appendices

1 Licence Types Included in the LLR Program and Protected by the Orphan Fund 7
2 Licence Transfer Process and LMR Assessments 10
3 Licence Status Change Notification Process 14
4 LMR and LLR Assessment Formulas 16
5 Deemed Assets 17
6 Deemed Liabilities 20
7 Variation of LLR Formula Parameters 28
8 Regional Abandonment Cost Map 31
9 Regional Reclamation Cost Map 32
10 Licensee Netback Calculation Form 33
11 Facility Liability Declaration Form 35
12 Facility Netback Calculation Form 39

1 Purpose of the LLR Program

The purpose of the Alberta Energy Regulator (AER) LLR Program and licence transfer process as set out in this directive is to

- prevent the costs to suspend, abandon, remediate, and reclaim a well, facility, or pipeline in the LLR Program from being borne by the public of Alberta should a licensee become defunct, and
- minimize the risk to the Orphan Fund posed by the unfunded liability of licences in the program.

Inquiries regarding this directive should be directed by e-mail to inquiries@aer.ca or by phone to the AER's Customer Contact Centre at 403-297-8311 or toll-free at 1-855-297-8311.

2 What's New in This Edition

In this edition of *Directive 006* all references to *Directive 019: Compliance Assurance*, which has been rescinded, and related information have been removed.

3 Scope of the LLR Program

The LLR Program applies to all upstream oil and gas wells, facilities, and pipelines included within the scope of the expanded Orphan Fund. A description of the AER-approved well, facility, and pipeline types included in the LLR Program is in appendix 1.

4 Definitions

For the purpose of this program:

- **Eligible producer licensee** is a licensee whose deemed assets from production volumes reported to Petrinex have fallen below its deemed liabilities in the LLR Program and is therefore eligible to have any deemed assets from midstream activities in the LLR, LFP, and OWL programs included in its liability management rating deemed asset calculation.
- **Large Facility Liability Management Program (LFP)** is the liability management program governing the large upstream oil and gas facilities specified in appendix 1 of *Directive 024*.
- **Liability assessment** is an assessment conducted by a licensee to estimate the cost to suspend, abandon, remediate, and reclaim a site.
- **Liability Management Rating (LMR)** is the ratio of a licensee's eligible deemed assets in the LLR, LFP, and Oilfield Waste Liability (OWL) programs to its deemed liabilities in these programs.
- **Licensee Liability Rating (LLR) Program** is the liability management program governing most conventional upstream oil and gas wells, facilities, and pipelines, as specified in appendix 1 of *Directive 006.*
- **Midstream activity** is the handling of third-party volumes for a fee or other consideration by a well or facility included in the LLR Program. For the purpose of this program, midstream activities include the operation of a nonsulphur recovery gas plant, gas storage scheme, custom processing facility, water or gas injection or disposal well, gas gathering, transportation or compression scheme, gas storage scheme, marketing, and/or any other activity determined by the AER to be a midstream activity.
- **Netback** is earnings before interest, taxes, and depreciation and is equal to gross margin (midstream revenue less cost of goods sold) less direct operating costs and applicable general and administrative expenses.
- **Nonproducer licensee (NPL)** is a licensee whose deemed assets from midstream activities in the LLR, LFP, and OWL programs exceed its deemed assets from production volumes reported to Petrinex or a licensee having only facilities included in the LFP or OWL programs.
- **Oilfield Waste Liability (OWL) Program** is the liability management program governing oilfield waste management facilities specified in appendix 1 of *Directive 075.*
- **Producer licensee** is a licensee whose deemed assets from production volumes reported to Petrinex exceed its deemed liabilities in the LLR, LFP, and OWL programs.
- **Site-specific liability** is the estimated cost to suspend, abandon, remediate, and reclaim a facility in the LLR Program.

5 Liability Management Rating Assessment

The AER's LMR assessment is a comparison of a licensee's deemed assets in the LLR, LFP, and OWL programs to its deemed liabilities in these programs. Any security deposit provided to the AER as a result of the operation of these programs is considered in determining a licensee's "security-adjusted" LMR. The LMR assessment is designed to assess a licensee's ability to address its suspension, abandonment, remediation, and reclamation liabilities. This assessment is conducted monthly and on receipt of a licence transfer application in which the licensee is the transferor or transferee. The determination of deemed assets and deemed liabilities in each of these programs is documented in

- this directive and *Directive 011: Licensee Liability Rating (LLR) Program—Updated Industry Parameters and Liability Costs*, for licences included in the LLR Program;
- *Directive 024*, for licences included in the LFP;
- *Directive 075*, for licences and approvals included in the OWL Program; and
- *Directive 001: Requirements for Site-Specific Liability Assessments in Support of the ERCB's Liability Management Programs*, for licensees required to provide a site-specific liability cost estimate.

If a licensee's deemed liabilities in these three programs exceed its deemed assets in these programs plus any previously provided security deposits (including facility-specific security deposits), it has a security-adjusted LMR below 1.0 and is required to provide the AER with a security deposit for the difference.

A security deposit determined as a result of an LMR assessment is required to minimize the possibility of the licensee's suspension, abandonment, remediation, and reclamation costs being borne by the Orphan Fund.

For LMR calculation purposes, 100 per cent of the deemed assets and 100 per cent of the deemed liabilities of a well or facility for which it is the licensee are attributed to the licensee.

6 LMR Security Deposit Requirements

The AER conducts its LMR assessment on the first Saturday of each month, following receipt of updated production information from Petrinex.

A licensee required to provide the AER with a security deposit as a result of a monthly or transfer LMR assessment will be advised in writing of the amount of the security deposit required and the date by which the security deposit must be received. The date specified for payment of a monthly LMR assessment is ordinarily the Friday before the first Saturday of the following month.

If a licensee in the LLR, LFP, or OWL programs becomes defunct:

- any non-facility-specific LMR security deposit held by the AER will be allocated to address its unfunded suspension, abandonment, remediation, or reclamation liability in each program in which it had liability in proportion to its deemed liability in each program; and
- any facility-specific security deposit held by the AER will be applied first to the facility for which it was collected, with any surplus being available for any unfunded liability held by the licensee.

The AER's requirements with respect to the form, use, and refund of security deposits provided under a liability management program are in *Directive 068: ERCB Security Deposits*.

A licensee can view information on the type and amount of any security deposit it has with the AER through Systems & Tools > Digital Data Submission > Reports > Liability Rating on the AER website, www.aer.ca, using its DDS Logon ID and password.

7 Orphan Program and Fund

The Orphan Fund will pay the costs to suspend, abandon, remediate, and reclaim a well, facility, or pipeline included in the LLR Program if a licensee or working interest participant (WIP) becomes defunct.

The Orphan Fund is fully funded by licensees in the LLR Program and licensees holding Waste Management (WM) approvals and licences included in the OWL Program through a levy administered by the AER.

The Orphan Fund is administered by the Alberta Oil and Gas Orphan Abandonment and Reclamation Association (OWA), a nonprofit society incorporated under the *Societies Act* on March 20, 2001.

7.1 Orphan Site

A well, facility, or pipeline in the LLR program is eligible to be declared an orphan when the licensee of that licence becomes insolvent or defunct. Once it determines a well, facility, or pipeline meets the criteria outlined in section 70(2) of the *Oil and Gas Conservation Act*, the AER will designate it as an orphan. The well, facility, or pipeline will then be considered to be an orphan for all aspects of this program: suspension, abandonment, remediation, and reclamation.

7.2 LLR and OWL Orphan Levy Base and Formula

A licensee in the LLR or OWL Program is responsible for its percentage of any orphan levy calculated as the sum of the deemed liability of its licences in the LLR and OWL programs to the

total liability of all licences in the LLR and OWL programs as of the date the levy is calculated, in accordance with the following formula:

$$\text{Licensee's share of levy} = \frac{A}{B} \times \text{Required levy amount}$$

where

- A is the licensee's deemed liability in the LLR and OWL programs on the date the levy is calculated, determined in accordance with this directive and *Directive 075*, and
- B is the deemed liability of all licences in the LLR and OWL programs on the date the levy is calculated, determined in accordance with this directive and *Directive 075*.

The deemed liability of licences in the LFP is tracked and, as required, assessed separately, as the LFP has a separate and distinct orphan levy base.

7.3 OWL NPL Levy

NPLs in the OWL Program are subject to an additional transitional levy, which is detailed in *Directive 075*.

8 LLR Program Administration

8.1 Program Operation

Detailed information on the operation of the LLR Program and its licence transfer requirements is in appendices 2 through 7.

8.2 Confidentiality

The AER will hold as confidential the information submitted to or acquired by the AER for the purpose of conducting an LMR assessment. The AER will post only the licensee's security-adjusted LMR on its website.

8.3 Program Review

The AER will continually monitor the LLR Program to ensure that it is achieving its desired outcome and is protecting both the public interest and the Orphan Fund.

Appendix 1 Licence Types Included in the LLR Program and Protected by the Orphan Fund

1 LLR Program and Orphan Fund Inclusions

The following upstream oil and gas wells, facilities, and pipelines are protected by the Orphan Fund and included in the LLR Program:

Wells (code from *Directive 056: Energy Development Applications and Schedules* provided in brackets)

- oil, gas, and bitumen wells (140, 150, 280, 290, 360, 370, 570, 610, 620, 621, 622)
- injection wells
- disposal wells Class I(b), II, III, and IV
- gas storage wells
- oilfield source water wells (141)
- observation wells
- brine wells
- liquefied petroleum gas (LPG) wells

The following upstream oil and gas wells, while protected by the Orphan Fund, are not administered in the LLR Program:

- oil and gas wells drilled by industry and transferred as a farm gas well
- unlicensed sites associated with oilfield activities (e.g., remote sumps)

Facilities (*Directive 056* code provided in brackets)

- gas, oil, and bitumen batteries, single or multiwell (020, 030, 031, 310, 311, 320, 321, 330, 331, 410, 411, 420, 421, 430, 431)
- gas processing and fractionating plants (010, 011, 300, 301, 400, 401)
- sulphur recovery gas plants licensed under *Directive 056* as a Facility Category Type 300 (producing less than 1 ton of sulphur per day)
- oil sands central processing facilities having a design capacity of less than 5000 cubic metres (m^3) per day
- compressor stations, except those that are part of an oil or gas transmission pipeline (040, 340, 440)
- custom treating facilities (080)

- injection/disposal facilities—water (090)
- injection/disposal facilities—enhanced oil recovery (EOR) (091)
- oil and bitumen satellites, single or multiwell (070, 071, 350, 351, 450, 451)
- line heaters (352, 470)
- oilfield waste management components that do not require a waste management approval (see *Interim Directive 2000-03: Harmonization of Waste Management*)

Pipelines

- oil and gas pipelines other than transmission lines

2 LLR Program and Orphan Fund Exclusions

The following wells, facilities, and pipelines are excluded from the LLR Program and Orphan Fund:

Wells (*Directive 056* code provided in brackets)

- wells designated as contaminated under section 110 of the *Environmental Protection and Enhancement Act*
- water wells less than 150 m (licensed in error)
- municipal water wells
- domestic and farm water wells
- test holes
- industrial waste disposal wells, Class 1(a)
- oil sands evaluation (OV Lahee Class 11)
- farm and domestic gas wells **not** drilled by industry as an oil or gas well
- training wells (if there is no penetration of a hydrocarbon formation and they are used solely for the testing of downhole tools and/or training of personnel to use such tools)

Facilities (*Directive 056* code provided in brackets)

- facilities designated as contaminated under section 110 of the *Environmental Protection and Enhancement Act*
- mine site or coal processing plant as defined in the *Coal Conservation Act*
- mine site or processing plant as defined in the *Oil Sands Conservation Rules*
- oil sands central processing facilities having a design capacity of 5000 m^3/day or greater

- sulphur recovery facilities (600), except those licensed under *Directive 056* as a Facility Category Type 300 (producing less than 1 ton of sulphur per day)
- oilfield waste management facilities that require a Waste Management Approval (see *ID 2000-03)*
- standalone straddle plants (200, 302)
- refineries as defined in the *Pipeline Act*
- sites on which a sulphur recovery straddle plant or oil sands central processing facility having a design capacity of 5000 m^3/day or greater previously existed
- facilities listed in the *Oil and Gas Conservation Rules* as exempt from this program

Pipelines

- gas transmission pipelines and associated compression and measurement facilities licensed to the licensee of the pipeline
- oil transmission pipelines and associated storage, pumping, and measurement facilities licensed to the licensee of the pipeline

Appendix 2 Licence Transfer Process and LMR Assessments

1 Electronic Submission of Applications

Agreements for the purchase and sale of AER-licensed wells, facilities, and pipelines do not effect a transfer of the associated licences unless and until the AER approves the related licence transfer application.

A licence transfer application must be submitted electronically through the AER's Licence Transfer System (LTS), accessed through the Digital Data Submission (DDS) system.

A licensee can access the DDS system through the AER website, www.aer.ca, using the identification code and password established for the licensee. AER Information Dissemination Services is responsible for assigning DDS access codes and passwords. A licensee that is not able to access the DDS system for any reason should e-mail DDSAdministrator@aer.ca for assistance. Licensees are requested to contact their system administrator to determine their current DDS access status before contacting the AER.

Regardless of their liability management program classification, well, facility, and pipeline licences may all be included within a single application.

The AER will process licence transfer applications as they are received. It will not hold an application pending receipt of a subsequent application(s) in order to facilitate an LMR assessment of the combined applications.

2 Application Requirements

The transferor, the transferee, or an authorized agent or consultant acting on their behalf may submit a licence transfer application in accordance with this directive. Information on agent appointments is in *Directive 067: Applying for Approval to Hold EUB Licences.*

The applicant is responsible for filing a complete and accurate application and for advising the other party that the application has been submitted to the AER.

Before a licence transfer application will be accepted by the LTS system, both parties (i.e., the transferor and the transferee) must confirm that the information in the application is correct and accept a declaration stating that they have complied with a list of specified AER requirements.

A licence transfer application that is submitted by one party but not accepted by the other party within 90 days will be closed and the submitting licensee advised of its closure. This procedure is designed to ensure a timely process for determining the party responsible for licences contained within an application.

3 AER Identification Code

The LTS system will not accept a licence transfer application unless both the transferor and transferee have an AER identification code that permits the holding of all licence types within the licence transfer application. Additional information on AER identification code requirements is in *Directive 067.*

4 Corporate Compliance Record

The AER will review the compliance record of both the transferor and transferee as part of its licence transfer application process. If either the transferor or transferee has a Refer status or there is evidence of other significant noncompliances on the part of either party, the application is considered nonroutine. The AER will assess the circumstances surrounding the proposed transfer, including the nature and complexity of the issues that caused any compliance issues identified by the AER, to determine whether regulatory requirements have been satisfied and whether a security deposit will be required. A nonroutine licence transfer application requires additional time to process. The AER may determine that it is not in the public interest to approve the licence transfer application based on the compliance history of one or both parties or their directors, officers, or security holders.

5 Working Interest Participants

Sections 16 and 17 of the *Oil and Gas Conservation Act* require a licensee to hold a working interest participation in each well or facility for which it is the licensee. Applicants must therefore provide current information about each working interest participant (including percentage of working interest) for every well and facility included in a licence transfer application.

6 Transfer of Abandoned Wells and Facilities and of Discontinued Pipelines

If all other requirements have been met, the AER permits licences for abandoned wells and facilities and discontinued pipelines to be transferred only in the following cases:

a) a licence for a well that has been abandoned in compliance with AER requirements and is shown in AER records as surface abandoned (cut, capped, and properly reported) and that requires but is not in receipt of a reclamation certificate or its equivalent from the appropriate regulatory authority, or

b) a licence for a facility that has been abandoned in compliance with AER requirements and is shown in AER records as abandoned that requires but is not in receipt of a reclamation certificate or its equivalent from the appropriate regulatory authority.

The AER does **NOT** permit licences for abandoned wells and facilities and for discontinued pipelines to be transferred in the following cases:

a) a licence for a well or facility that is abandoned and is in receipt of a reclamation certificate or its equivalent from the appropriate regulatory authority;

b) a licence for a well or facility that is abandoned and is classified as "reclamation exempt"; and

c) a licence for a well or facility that is abandoned and is in receipt of an overlapping reclamation certificate exemption for its surface location.

Note that AER approval of a transfer of an abandoned well licence does **NOT** permit the new licensee to re-enter that well. A licensee that intends to re-enter an abandoned well or reactivate an abandoned pipeline must submit an application in accordance with *Directive 056.*

7 Transfer of Gas Plants

A licence for a 40-well equivalent non-sulphur recovery gas plant cannot be transferred unless the facility has a liability cost estimate based on a site-specific liability assessment meeting the requirements of *Directive 001* accepted by the AER.

A licence for a 20-well equivalent non-sulphur recovery gas plant cannot be transferred unless the facility has a liability cost estimate based on a site-specific Phase I environmental site assessment accepted by the AER.

A licence for a 10-well equivalent non-sulphur recovery gas plant cannot be transferred unless the facility has a liability cost estimate based on a site-specific corporate estimate meeting Canadian Institute of Chartered Accountants (CICA) standards.

8 Licence Transfer LMR Assessments—Security Deposit Requirements

On receipt of a licence transfer application, the AER will conduct an LMR assessment of both the transferor and the transferee. The licence transfer LMR assessment is conducted as if the transfer were approved (post-transfer LMR).

If both the transferor and transferee have a post-transfer LMR equal to or exceeding 1.0, a security deposit will not be required from either party.

If either the transferor or transferee has a post-transfer LMR below 1.0, the AER will require a security deposit in an amount representing the difference between its deemed liabilities and deemed assets plus any existing liability management security deposits. This security deposit must be received by the AER before the licence transfer application is approved.

An application that contains pipeline licences that are not "designated problem sites" will not result in the generation of an LMR assessment of either the transferor or transferee.

9 Licence Transfer LMR Assessments—Security Deposit Due Dates

A transferor or transferee required to submit a security deposit as a result of a licence transfer application will have 30 days from the licence transfer LMR assessment date to provide the required security deposit to the AER. The AER will advise a transferor or transferee in writing of the amount of any security deposit required and of the date by which the security deposit must be received.

If a transferor or transferee has an outstanding monthly LMR assessment and is required to submit a further security deposit as a result of a licence transfer application, it will have until the expiry of the due date for payment of the monthly LMR assessment to submit that security deposit and 30 days from the transfer LMR assessment date to submit the incremental security deposit required.

If a required security deposit is not received by the due date, the licence transfer application will be closed and the transferor will be required to establish that it retains the rights to hold any licence included within the cancelled licence transfer application.

10 Licence Transfer Decision

The AER may approve, approve with conditions, or deny a licence transfer application. The AER may determine that it is not in the public interest to approve the licence transfer application based on the compliance history of one or both parties or their directors, officers, or security holders. In cases where numerous recent noncompliance events have occurred, or a “named individual” (*OGCA*, section 106) is involved in the licence transfer, or the licence transfer poses a risk to the Orphan Fund, the AER may deny the application or impose conditions on the approval (e.g., require a security deposit).

The AER will convey its decision regarding a licence transfer application to both the transferor and the transferee. If a transferor or transferee is represented by an agent or uses the services of a consultant, the AER will also provide notice of its decision to the agent or consultant.

The licensee of record (transferor) remains responsible to comply with all applicable regulatory requirements for any well, facility, or pipeline in a licence transfer application until the AER approves the transfer. On approval of a licence transfer application, the new licensee of record (transferee) becomes responsible for any well, facility, or pipeline licence in the application as of the effective date of the transfer.

Appendix 3 Licence Status Change Notification Process

The AER requires accurate information on the operational status of wells, facilities, and pipelines to correctly determine their abandonment and reclamation liability in monthly and licence transfer LMR assessments and for use in the orphan levy calculation. Accordingly, licensees must notify AER Liability Management within 30 days when a gas plant licence is amended to an operating function other than a gas plant (i.e., compressor station, battery). The liability cost of a gas plant is based upon the current submitted site-specific liability assessment (SSLA). A gas plant's liability cost does not change when the licence is amended, the liability only changes when a new SSLA is accepted by the AER.

1 Electronic Submission of Notification

A licence status change notification must be submitted electronically through the AER's Digital Data Submission (DDS) system and the appropriate subsystem. Facility abandonment notifications, linked facility notifications, and well licence name change notifications are submitted using the Licence Notification System (LNS) subsystem, while multiwell pad notifications are submitted on the Multi Licence Pad (MLP) subsystem.

2 Well and Facility Abandonment Notification

A licensee must notify the AER within 30 days of the completion of the abandonment of a licensed well or facility. A licensee is required to identify all WIPs in the well or facility at the time of abandonment, with WIP participation totalling 100 per cent.

3 Linked Facility Notification

Directive 056 permits a licensee to "link" a nonproduction reporting facility to the first downstream production reporting facility to which it delivers product. A nonproduction reporting facility can only be linked to one production reporting facility at a time, while a reporting facility may have more than one nonproduction reporting facility linked to it.

4 Well Name Change Notification

The AER does not use well names and encourages licensees not to submit a well name change notification. At this time, however, a licensee remains able to submit a well name change notification to the AER through the LNS subsystem or, for wells included in a licence transfer application, as part of that application. A proposed well name change must be consistent with the *Oil and Gas Conservation Rules*. The AER does not accept notification of facility name or facility name changes.

5 Multiwell Pad Notification

A licensee may establish a multiwell pad for those sites on which it has more than one well on a single surface lease. Both the well licences and the surface lease must be held by the same licensee. The establishment of a multiwell pad provides for a reduction in the reclamation liability of the wells located on the pad. (Refer to appendix 6,”Deemed Liabilities,” for details of this calculation.)

Appendix 4 LMR and LLR Assessment Formulas

1) Calculation of LMR Rating

The following LMR formula is applicable to producer licensees in the LLR Program:

$$\text{LMR} = \frac{\text{DA in LLR}}{\text{DL in LLR} + \text{DL in LFP (if any)} + \text{DL in OWL (if any)}}$$

where

DA = deemed assets

DL = deemed liabilities

The following LMR formula is applicable to NPL and eligible producer licensees in the LLR:

$$\text{LMR} = \frac{\text{DA in LLR} + \text{DA in LFP (if any)} + \text{DA in OWL (if any)}}{\text{DL in LLR} + \text{DL in LFP (if any)} + \text{DL in OWL (if any)}}$$

The calculation of a licensee's deemed assets and deemed liabilities in the LLR are detailed in appendix 5, "Deemed Assets," and appendix 6, "Deemed Liabilities."

2) Calculation of LLR

The following LLR formula is applicable to producer licensees in the LLR Program:

$$\text{LLR} = \frac{\text{m}^3\text{OE} \times \text{Industry netback} \times 3 \text{ years}}{\text{Sum of the deemed liabilities}}$$

The following LLR formula is applicable to NPLs and eligible producer licensees in the LLR Program:

$$\text{LLR} = \frac{(\text{NPL vol.} \times \text{Licensee netback} \times 3 \text{ years}) + (\text{m}^3\text{OE (if any)} \times \text{Industry netback} \times 3 \text{ years})}{\text{Sum of the deemed liabilities}}$$

Appendix 5 Deemed Assets

The deemed assets of a producer licensee, eligible producer licensee, and nonproducer licensee (NPL), while based on the same principles and methodology, are determined using different parameters and volumes.

1 Producer Licensee

The deemed assets of a producer licensee is the cash flow derived from oil and gas production reported to Petrinex from wells for which it is the licensee. Deemed assets are calculated by multiplying a licensee's reported production of oil and gas from the preceding 12 calendar months in cubic metres oil equivalent (m^3 OE) by the 3-year average industry netback by 3 years, where

- *m^3 OE* is defined as the 12-month production of oil plus gas volumes reduced by a *shrinkage factor* (sales gas) and a gas/oil *(m^3 OE) conversion factor*. Crude oil, bitumen, and field condensate are treated as oil. Natural gas liquid revenue is included in the gas revenue. Sulphur is excluded.
- The *shrinkage factor* is a rolling 3-year provincial industry average.
- The *m^3 OE conversion factor* is a rolling 3-year provincial industry average.
- *Industry netback* is a rolling 3-year provincial industry average netback.

The current *shrinkage factor*, *m^3 OE conversion factor*, and *industry netback* factors are in *Directive 011*. These parameters will be updated as appropriate and in conjunction with updated deemed liability parameters.

The AER's use of production information reported to Petrinex results in a 2-month delay between the last day of a production month and the date that month's production is available for use in the LLR calculation. This delay accommodates the late submission of production information and subsequent data corrections.

2 Eligible Producer Licensees

The deemed asset of an eligible producer licensee is the sum of its cash flow derived from oil and gas production reported to Petrinex from wells for which it is the licensee calculated in accordance with section 1, and the cash flow derived from midstream activity from wells or facilities for which it is the licensee calculated in accordance with section 3.

3 Nonproducer Licensees

Due to the limited number of licensees in this industry subsector and the mix of public and private companies, the determination of an industry average netback is not possible. As a result, each NPL must calculate its own netback and have it reviewed and approved by the AER annually.

An NPL must submit its request for an approval of a netback to the AER on the designated form (appendix 12), together with all required supporting documentation. The AER treats financial information submitted in support of an NPL netback as confidential. An approved netback is valid for a 12-month period, commencing the month it was approved by the AER. An NPL must submit a request for approval of its netback for the following year 30 days before the expiry of its approved 12-month period.

Failure to submit or to obtain AER approval of its netback will result in the NPL's netback being set at $0.00 and the requirement for the NPL to place a security deposit with the AER to offset all of the NPL's calculated deemed liability.

An NPL not prepared to provide the financial information required by the AER to verify a netback calculation must submit a security deposit for 100 per cent of its deemed liability.

The deemed asset of an NPL is the sum of the cash flow derived from facility throughput of water injection/disposal, oil processing, and gas processing reported to Petrinex from facilities for which it is the licensee, and the cash flow derived from oil and gas production reported to Petrinex from any well for which it is the licensee.

The deemed asset of an NPL is calculated by multiplying the NPL volume from the preceding 12 calendar months by the NPL's netback by 3 years, where

- *NPL volume* is defined as the 12-month volume of oil, gas, and water processed or injected through the licensee's facilities (an NPL processing oil or gas from wells for which it is the licensee must subtract these volumes in its NPL deemed asset calculation), and
- *NPL netback* is defined as the NPL's net profit per unit of volume processed or injected.

If an NPL has oil or gas production, the cash flow derived from those volumes will be determined in accordance with section 1 using the **industry average netback** and will be included in the deemed asset calculation.

4 Calculating Deemed Assets—Gas Storage Operators

Because gas storage wells may report either production or injection on a monthly basis, a means of including an appropriate asset value in the calculation of deemed assets is needed. A licensee operating a gas storage facility is required to identify storage wells that form part of a particular storage facility and to report the minimum operating pressure and the storage facility production rate at that pressure as part of its annual storage filing with the AER.

A licensee operating a gas storage facility is to add its m^3 OE for AER-approved storage facilities, instead of its actual production from these wells, to its m^3 OE.

m^3 OE for AER-approved storage facilities is defined as the production rate that a licensee's storage facilities would be capable of at the minimum reservoir pressure experienced in the previous storage facility reporting period.

5 Gas Plants Having a *Directive 001* Liability Assessment

An NPL having a gas plant on which the AER has accepted a liability assessment meeting the requirements of *Directive 001* may calculate the deemed asset value of that gas plant using a facility-specific netback. An NPL exercising this option must provide the AER with a completed Facility Netback Calculation Form (appendix 12) and required supporting documentation. Should an NPL exercising this option already have an approved licensee netback, it must provide the AER with an updated Nonproducer Licensee Netback Calculation Form (appendix 10) that excludes any volumes associated with that facility, as well as any required documentation.

Appendix 6 Deemed Liabilities

The deemed liability of a producer licensee, eligible producer licensee, and nonproducer licensee (NPL) is determined in the same manner. The deemed liability of a licensee is the sum of the costs to suspend, abandon, remediate, and reclaim all wells and facilities for which it is the licensee, adjusted for status (active, inactive, abandoned, and problem site designation).

1 Definitions

For the purpose of the LLR Program, terms are defined as follows:

- *Active well* is a well that has reported an operation (production or injection) to Petrinex in the last 12 calendar months or is classified as an observation well by the AER.
- *Active facility* is a facility that has reported an operation (throughput) to Petrinex in the last 12 calendar months or is a nonproduction reporting facility linked to an active facility.
- *Inactive well* is a well that has not reported an operation (production or injection) to Petrinex in the last 12 calendar months.
- *Inactive facility* is a facility that has not reported throughput to Petrinex in the last 12 calendar months or is a nonproduction reporting facility that has not been linked or that has been linked to an inactive facility.
- *Abandoned unreclaimed well* is a well that according to the records of the AER has been "surface abandoned" but is not in receipt of a reclamation certificate or its equivalent from the appropriate regulatory authority.
- *Abandoned unreclaimed facility* is a facility that according to the records of the AER has been abandoned but is not in receipt of a reclamation certificate or its equivalent from the appropriate regulatory authority.
- *Gas plant* is a facility licensed by the AER through *Directive 056* as a gas processing or gas fractionating plant (codes 010, 011, 300, 301, 400, 401) that is not included in the Large Facility Liability Management Program.
- *Potential problem site* is a site identified by the AER as having
  - a potential abandonment liability equal to or greater than 4 times the amount normally calculated for that type of site in that regional abandonment cost area, or
  - a potential reclamation liability equal to or greater than 4 times the amount normally calculated for that type of site in that regional reclamation cost area.
- *Designated problem site* is a site designated by the AER on the basis of a cost estimate determined from an assessment conducted according to *Directive 001* that shows that the site's

  - abandonment liability equals or exceeds 4 times the amount normally calculated for that type of site in that regional abandonment cost area, or
  - reclamation liability equals or exceeds 4 times the amount normally calculated for that type of site in that regional reclamation cost area.

- *Facility Well Equivalent Table* is the table below that provides the well equivalent for each facility based on its category or fluid type and licensed design capacity:

Facility Well Equivalent Table

Category/Fluid Type	Licensed Design Capacity	Well Equivalent
Oil/bitumen processing or injection/disposal facility	0-50 m^3 fluid/day	5
	> 50 m^3 ≤500 m^3/day	10
	> 500 m^3 ≤3000 m^3/day	20
	> 3000 m^3 /day	40
Oil/bitumen satellite	Any throughput level	2
Line heaters	Any throughput levels	2
Gas processing facility	0-900 10^3 m^3 gas inlet/day	10
	>900 10^3 m^3 /day ≤ 2500 10^3 m^3/day	20
	>2500 10^3 m^3 /day	40
Gas (compressor, dehydration, etc.) facility	Any throughput level	5

- *New well* is a well that has not been abandoned within 12 calendar months of its finished drilling date.
- *New facility* is a facility that has not reported throughput or been abandoned within 12 calendar months of its licence approval date.
- *Non-gas plant* is any facility licensed by the AER through *Directive 056* not having a facility type description of gas processing plant or gas fractionating plant.
- *Abandonment cost estimate acceptable to the AER* is an abandonment cost estimate based on a site-specific liability assessment conducted according to *Directive 001* and submitted to the AER in the specified level of detail.
- *Reclamation cost estimate acceptable to the AER* is a reclamation cost based on a site-specific liability assessment conducted according to *Directive 001* and submitted to the AER in the specified level of detail.

- *Regional Abandonment Cost Map* is the map provided as appendix 8. This map illustrates the boundaries of the geographic regions for which average well abandonment costs are determined.
- *Regional Reclamation Cost Map* is the map provided as appendix 9. This map illustrates the boundaries of the geographic regions for which average well and facility well equivalent costs are determined.

2 Calculation of Deemed Liability

While the deemed liability of a well or facility includes the costs to suspend, abandon, remediate, and reclaim the site, this liability is captured under the terms abandonment and reclamation.

2.1 Deemed Liability of a Well

The deemed liability of a well is the sum of its abandonment and reclamation liability. The liability for an abandoned but uncertified or unreclaimed well is solely its reclamation cost.

The abandonment liability of a well is determined on a site-specific basis using the AER's licence cost processing program. It estimates the cost to abandon a well based on the depth of the well, the number of events requiring abandonment, the requirement for groundwater protection, and whether there is gas migration or surface casing vent flows. The wellbore configuration is based on the current operational status of the well (e.g., "crude oil pumping" considers the well to have tubing and rods) or, in the case of a suspended well, the last reported operational status issued. The requirement for groundwater protection is included in the calculation if the surface casing depth is less than the deepest aquifer requiring protection.

The reclamation liability of a well is the cost specified by the Regional Reclamation Cost Map for the area in which the well is located.

2.1.1 Deemed Liability of a New Well

A new well, as defined in this directive, will not have its deemed liability included in its LLR calculation until the earlier of its abandonment date or 12 calendar months from its finished drilling date.

2.1.2 Deemed Liability of a Multiwell Pad

The abandonment liability for wells located on a multiwell pad is the sum of the abandonment liability calculated for each well located on the pad. The reclamation liability for wells located on a multiwell pad is 100 per cent of the reclamation cost specified for a well in the Regional Reclamation Cost Map area in which the pad is located for the first well plus 10 per cent of that value for each additional well on the same pad.

2.2 Deemed Liability of a Non-Gas Plant Facility

The deemed liability of a non-gas plant facility is the sum of its abandonment liability plus its reclamation liability. The liability for an abandoned but uncertified or unreclaimed facility is solely its reclamation cost.

The abandonment liability of a non-gas plant facility is determined by multiplying its well equivalent, determined from the Facility Well Equivalent Table, by the well equivalent cost.

The reclamation liability of a non-gas plant facility is determined by multiplying its well equivalent, determined from the Facility Well Equivalent Table, by the cost specified by the Regional Reclamation Cost Map for the area in which the facility is located.

2.3 Deemed Liability of a Gas Plant

The cost estimates must be the total undiscounted current-day estimates for suspension, abandonment, remediation, and reclamation.

The deemed liability of a 40-well-equivalent gas plant is the cost estimate based on a site-specific liability assessment meeting the requirements of *Directive 001* provided by the licensee and accepted by the AER.

The deemed liability of a 20-well-equivalent gas plant is the cost estimate based on a site-specific Phase I environmental site assessment, with additional work to a Phase II environmental site assessment standard where required by the results of the Phase I assessment, that is provided by the licensee and accepted by the AER.

The deemed liability of a 10-well-equivalent gas plant is the cost estimate based on a site-specific liability assessment meeting Canadian Institute of Chartered Accountants (CICA) standards that is provided by the licensee and accepted by the AER.

Gas Plant Cost Estimates

All site-specific liability assessments provided for gas plants must be completed using the Facility Liability Declaration Form (appendix 11) and submitted electronically to the AER through its DDS system.

Gas plant cost estimates must reflect the total undiscounted current-day cost to suspend, abandon, remediate, and reclaim the site, and identify any seller-retained liability.

The AER will review submitted Facility Liability Declaration Forms; if the AER considers that a facility cost estimate deviates significantly from that of similar facilities, it may require the licensee to provide all supporting documentation on which the cost estimate was based and conduct a detailed review of the cost estimate and documentation.

2.4 Deemed Liability of a Facility

2.4.1 Deemed Liability of a Linked Facility

In accordance with *Directive 056*, a nonproduction reporting facility (satellite, compressor) **may** be "linked" to the first downstream production reporting facility to which it delivers product. The linked nonproduction reporting entity receives the active or inactive status of the production reporting entity to which it is linked. A nonreporting facility that is not linked to a production reporting entity will be identified as inactive.

2.4.2 Deemed Liability of a New Facility

A new facility, as defined in this directive, will not have its deemed abandonment and reclamation liability included in its LLR calculation until the earliest of its first reported throughput, abandonment date, or 12 calendar months from its licence approval date.

2.5 Pipelines

A pipeline licence is not considered in the calculation of deemed liabilities unless it is a designated problem site.

2.6 Problem Sites

2.6.1 Potential Problem Site

A "potential problem site" is identified by the AER through an on-site inspection. This inspection may be conducted in the course of normal AER field activities or in response to a request from a landowner. If an inspection indicates that a site's abandonment or reclamation liability equals or exceeds 4 times the amount normally calculated for that type of site in that abandonment or reclamation region, the site will be classified as a potential problem site. See *Directive 001* for conditions that may result in this classification.

The AER will advise a licensee of any site identified as a potential problem site and provide the licensee with an opportunity to respond to the identification. If a licensee cannot establish that the potential problem site identification was in error, the licensee must have a site-specific liability assessment conducted on the site in accordance with AER *Directive 001* at its expense and within the time period specified by the AER.

If a site-specific liability assessment acceptable to the AER is conducted on a potential problem site and the assessment confirms that site has an abandonment liability less than 4 times the cost determined by the Regional Abandonment Cost Map or a reclamation liability less than 4 times the cost determined by the Regional Reclamation Cost Map, the potential problem site classification will be removed.

If a site-specific liability assessment acceptable to the AER is conducted on a potential problem site and the assessment confirms that the site has an abandonment liability equal to or greater than 4 times the cost determined by the Regional Abandonment Cost Map or a reclamation liability equal to or greater than 4 times the cost determined by the Regional Reclamation Cost Map, the site will be classified as a "designated problem site." That designation will remain in effect until abandonment or reclamation work has been conducted on the site and a subsequent site-specific liability assessment acceptable to the AER estimates the associated costs at less than 4 times the amounts normally calculated for that site. The deemed liability of a former designated problem site will subsequently be the new estimated amount.

The costs determined from a site-specific liability assessment accepted by the AER will be used in calculating the deemed liability of the assessed site regardless of whether those costs are higher or lower than those that would ordinarily be determined by the LLR formula.

While the liability assessment is being prepared, for monthly LMR assessment purposes the liability of a potential problem site is calculated as if it were not a potential problem site.

For licence transfer LMR assessment purposes, the liability calculated for a potential problem site included in an application is

- the sum of its calculated abandonment cost and 20 times the reclamation cost for that type of site in that reclamation cost area where a site-specific reclamation assessment is required, or
- the sum of its calculated reclamation cost and 20 times the abandonment cost for that type of site in that abandonment cost area where a site-specific abandonment assessment is required, or
- the sum of 20 times the abandonment cost for that type of site in that abandonment cost area and 20 times the reclamation cost for that type of site in that reclamation cost where a site-specific abandonment and reclamation assessment is required.

A licensee acquiring a potential problem site will have the site's liability calculated at this higher rate for monthly and transfer LMR assessments until the potential problem site identification is removed or converted to a designated problem site.

If a licensee of a potential problem site proposes to transfer a well and/or facility licence to another party while remaining the licensee of the potential problem site, the AER will assess whether approval of the transfer will result in the transferor having sufficient deemed assets to address the liability of the potential problem site and whether approval of the proposed licence transfer application is in the public interest.

2.6.2 Voluntary Disclosure of a Potential Problem Site

A licensee may voluntarily advise the AER of a potential problem site and, in so doing, propose its own schedule for completing a liability assessment conducted according to *Directive 001*. Self-disclosure of a potential problem site by a licensee enables the AER to develop a more comprehensive inventory of higher liability sites. A licensee advising the AER of potential problem sites is ordinarily permitted to conduct the site-specific liability assessment on the identified site in accordance with its own schedule and is not required to conduct a site-specific assessment within a specified period of time. The voluntary identification of a potential problem site by a licensee does not preclude the AER from requiring a site-specific liability assessment to be conducted within a specified period if it is in the public interest.

While the liability assessment is being prepared, for monthly LMR assessment purposes the liability of a self-disclosed potential problem site is calculated as if it were not a potential problem site. For transfer LMR assessment purposes, the liability of a self-disclosed potential problem site is calculated in the same manner as a potential problem site identified by the AER. Once reviewed and accepted by the AER, the costs estimated from the site-specific assessment are used in calculating the deemed liability of the assessed site.

2.6.3 Designated Problem Site

If a site-specific liability assessment conducted on a potential problem site confirms that the site has an abandonment liability equal to or greater than 4 times the cost determined by the Regional Abandonment Cost Map or a reclamation liability equal to or greater than 4 times the cost determined by the Regional Reclamation Cost Map, the site will be classified as a designated problem site.

For both monthly and licence transfer LMR assessment purposes, the deemed liability of a designated problem site is the sum of its abandonment liabilities determined by the LMR formula (unless a site-specific abandonment assessment was conducted) and its reclamation liability determined by the LLR formula (unless a site-specific reclamation assessment was conducted). Costs determined from a liability assessment accepted by the AER are used in place of the costs that would ordinarily be determined by the LMR formula.

3 Deemed Liability Parameter Updates

The AER will update and publish

- the costs to be used for each region of the Regional Abandonment Cost Map,
- the costs to be used for each region of the Regional Reclamation Cost Map,
- the costs to be used for the Licence Cost Processor, and
- the facility well equivalent cost

in conjunction with the updating of deemed asset parameters in *Directive 011*.

Appendix 7 Variation of LLR Formula Parameters

1 Licensee-Initiated Request for Variation of an LLR Parameter

The LLR Program is based on the use of provincial and regional averages, and their use may not accurately reflect the deemed assets or deemed liabilities of a particular licensee. As a result, the AER will consider a request by a licensee that does not meet the LMR threshold of 1.0 for a variation of the following LLR parameters.

Any parameter variation request made under this section must be based upon licensee specific data for *all* parameters. This includes both deemed asset and deemed liability parameters for *all* wells and facilities and prevents licensees from only applying for variation of parameters believed to be high.

All site-specific liability assessments must be current and conducted in accordance with *Directive 001*.

The submission of a request for a variation does not eliminate or reduce a security deposit requirement determined by a monthly or transfer LMR assessment.

1.1 Licensee Netback

A licensee may request use of its own netback (including its own shrinkage and m^3 OE conversion factors) rather than the industry average netback in the LLR formula if it believes its average three-year netback is higher than the industry average netback.

A licensee requesting a variation of its netback must submit a letter requesting the variation, a completed Licensee Netback Calculation Form (appendix 10), and financial information acceptable to the AER supporting its three-year historical netback, shrinkage, or conversion values. If a licensee does not have three years of history, its netback must include the industry average for those years required to make up the three-year period.

If a licensee-specific netback is approved as a result of a variation request, the approved netback will be used for the month the variation was approved and for each subsequent month until the industry average netback is updated by the AER. A licensee may request another variation of its netback after the industry netback has been updated, provided that its LMR remains below 1.0.

1.2 Well Abandonment Liability

A licensee may request the use of site-specific well abandonment costs rather than those determined by the AER's licence cost processing program in the LLR formula if it believes these more accurately reflect actual abandonment costs.

Well abandonment costs determined from a site-specific assessment acceptable to the AER will replace those determined by the LLR formula for the wells for the following three calendar years.

1.3 Well Reclamation Liability

A licensee may request the use of site-specific well reclamation costs rather than those determined by the Regional Reclamation Cost Map in the LLR formula if it believes these more accurately reflect actual reclamation costs.

Well reclamation costs determined from a site-specific assessment acceptable to the AER will replace those determined by the LLR formula for the wells for the following three calendar years.

1.4 Facility Abandonment Liability

A licensee may request that the AER accept the use of site-specific facility abandonment costs rather than those determined by the facility well equivalent and well equivalent cost factor in the LLR formula if it believes, and can establish to the AER's satisfaction, that these more accurately reflect actual abandonment costs.

If accepted and permitted by the AER, facility abandonment costs determined from a site-specific assessment acceptable to the AER will replace those determined by the LLR formula for the facilities for the following three calendar years.

1.5 Facility Reclamation Liability

A licensee may request the use of site-specific facility reclamation costs rather than those determined by the Regional Reclamation Cost Map in the LLR formula if it believes these more accurately reflect actual reclamation costs.

Facility reclamation costs determined from a site-specific assessment acceptable to the AER will replace those determined by the LLR formula for the facilities for the following three calendar years.

1.6 Outstanding Reclamation Certificate

A licensee may request a 50 per cent reduction in the reclamation liability determined for an abandoned well or facility by the LLR formula if all of the work required to obtain a reclamation certificate or its equivalent from the appropriate regulatory authority has been completed and the delay in obtaining a reclamation certificate is solely to re-establish vegetative cover.

A licensee requesting a variation of this assessment will be required to provide detailed reclamation cost estimates based on a site-specific assessment.

A reduction in a well's or facility's reclamation costs based on an assessment acceptable to the AER will replace those determined by the LLR formula for the well or facility for the next 12

calendar months. Should a reclamation certificate not be received within this period, a licensee may request another variation on such sites if it again does not meet the LMR threshold.

2 AER Review of LLR Parameters

The AER may initiate a detailed review of a licensee's LMR if it believes the LLR formula does not accurately reflect the licensee's deemed assets and/or deemed liabilities.

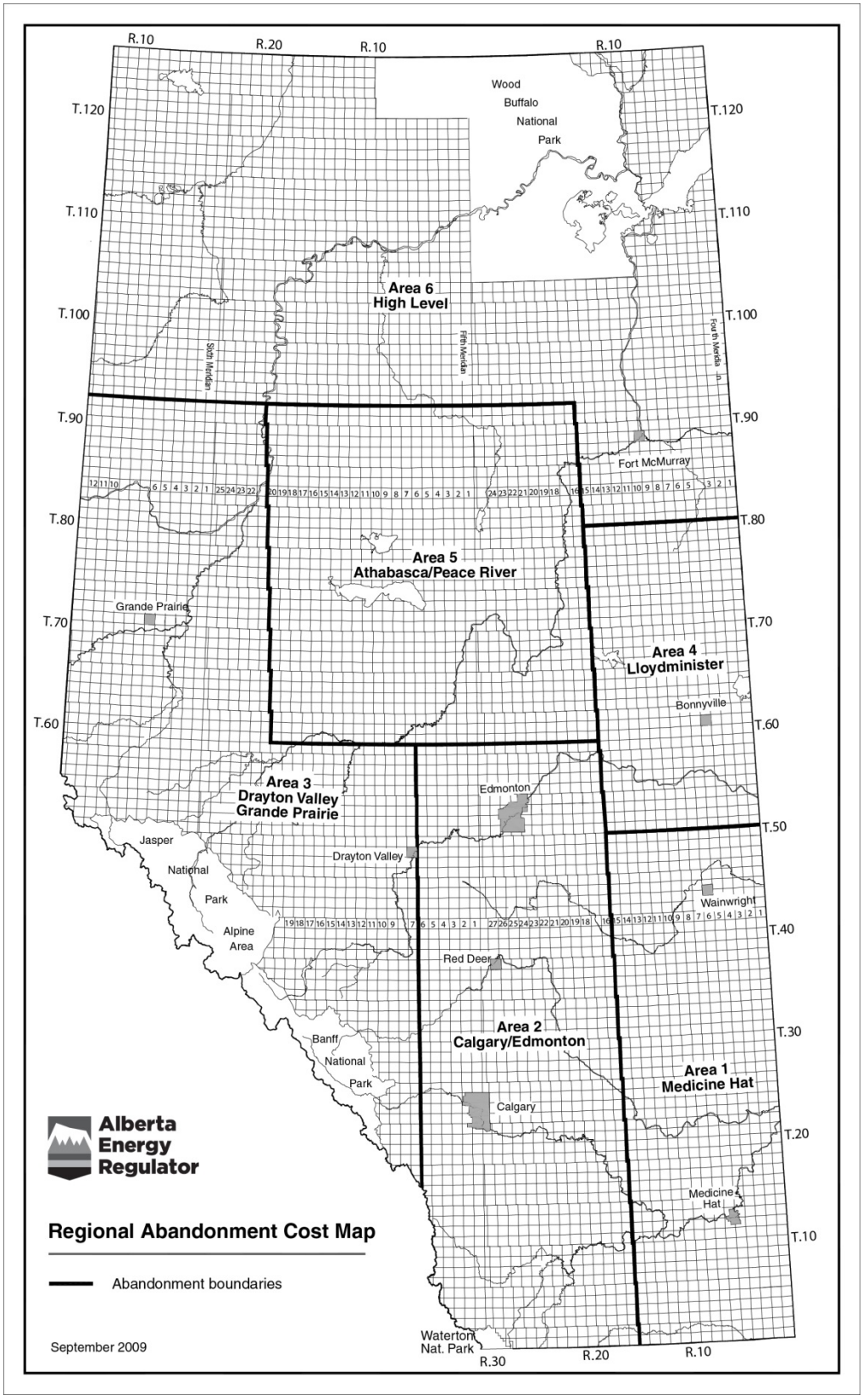
As part of its detailed review process, the AER may require information on all factors used by a licensee in determining its netback. If as a result of a detailed review the AER determines that a licensee's use of the industry average netback is not warranted, the licensee's netback will be used to calculate its LMR until the industry average netback is updated.

3 LLR Parameter Formula Variation Requests

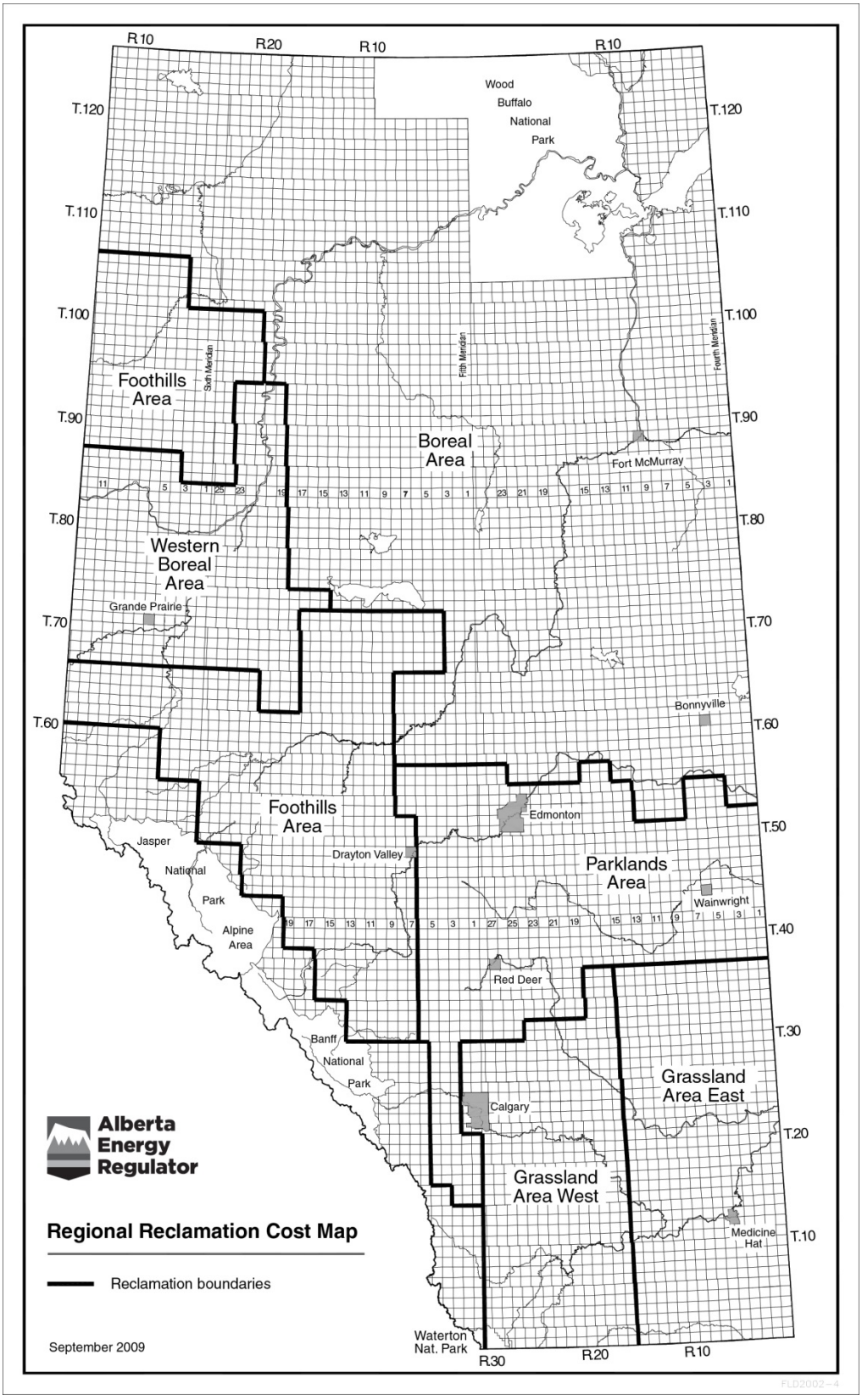
A licensee requesting a variation of LLR formula parameters must direct a written request and supporting documentation to the section leader of Liability Management.

Licensees requesting an LLR variation are not eligible for a waiver under section 4.2 of *Directive 001* when a Phase II ESA is required as part of a site-specific liability assessment.

Appendix 8 Regional Abandonment Cost Map



Appendix 9 Regional Reclamation Cost Map



Appendix 10 Licensee Netback Calculation Form

Licensee Netback Calculation Form

Alberta Energy Regulator

Date of completion:
Licensee name:
AER four-digit company code:
Licensee year-end:
Accounting data time period:

	Water injection/disposal	Oil processing	Gas processing	Other revenue	Total
Revenue ($)					
Operating costs ($)					
Specific general & administrative costs ($)					
Net revenue ($)					
Production volumes (m^3 or 10^3 m^3)					
Netback ($/$m^3$ or $/$10^3$ m^3)					

Note: A nonproducer licensee that is involved in more than one type of operation (injection/disposal, gas processing, oil processing) is required to complete the netback calculation separately for each type of operation.

The signature below certifies that the information contained within is complete and accurate.

Name (printed):
Position:
Signature of corporate signing officer:

Appendix 11 Facility Liability Declaration Form

Facility Liability Declaration Form

Licensee name:

Facility location:

Facility name:

Facility AER licence number: F

Facility type:

☐ Sulphur recovery plant ☐ Straddle plant

☐ In situ oil sands central processing facility ☐ Historical sulphur recovery plant (currently operating as:)

Date of assessment:

Retained liability:

☐ Liability retained by previous licensee through contract (describe on attached sheet).

Cost Estimate

Each cost estimate reported must be the total undiscounted current-day estimate for complete asset retirement obligations (suspension, abandonment, remediation, and reclamation).

Suspension and abandonment (purging, dismantlement, and demolition costs)

Cost estimate:

Basis for estimate:

☐ fully meets *Directive 001*,

☐ based on a site-specific suspension and abandonment cost estimating model,

☐ based on a preliminary suspension and abandonment cost estimates, or

☐ CICA (“accounting estimate”/Best Engineering).

Remediation (soil and groundwater)

Cost estimate:

Basis for estimate:

☐ fully meets *Directive 001*,

☐ based on Phase I environmental site assessment,

☐ based on a Phase II environmental site assessment, or

☐ CICA (“accounting estimate”/Best Engineering).

Surface reclamation

Cost estimate:

Basis for estimate:

☐ fully meets *Directive 001*,

☐ based on a Phase I environmental site assessment,

☐ based on Phase II environmental site assessment, or

☐ CICA (“accounting estimate”/Best Engineering).

Total facility liability estimate:

Note: If your company is only able to provide the total facility liability estimate and has not done a detailed assessment of suspension, abandonment, remediation, or reclamation costs, please provide the basis for your estimate:

The signature below certifies that the information contained within is complete and accurate based on the best available information.

Signature of senior corporate officer or director:

Position and professional designation:

Date:

Appendix 12 Facility Netback Calculation Form

Facility Netback Calculation Form

Alberta Energy Regulator

See *Directive 006*, appendix 12, for instructions on how to complete this form.

Part A: Corporate Reconciliation					
Date of completion: Licensee name: AER four-digit company code: Licensee year-end:					
	LLR Program	**LFP**	**OWL Program**	**Other revenue or expense**	**Total for company**
Revenue					
Operating costs					
Specific general and administrative costs					
Net revenue					

Part B: Facility Netback Calculation for the _____ **Program**					
	Facility 1	**Facility 2**	**Facility 3**	**Facility 4**	**Total**
Facility AER licence or waste management approval number					
Facility type					
Licensee's percentage ownership of facility					
Revenue					
Operating costs					
Specific general and administrative costs					
Net revenue					
NPL volumes (m^3 or 10^3 m^3)					
Netback ($/$m^3$ or $/$10^3$ m^3)					

The signature below certifies that the information contained within is complete and accurate.

Name (printed):

Position:

Signature of corporate signing officer:

Completing the Netback Calculation Form

- The AER must be able to clearly track the financial information provided on the Facility Netback Calculation Form back to the financial statements provided. An in-house profit-and-loss statement and/or an explanation of the methodology used to come up with the entries on the Facility Netback Calculation Form may be required.
- All entries reported on the Facility Netback Calculation Form must correspond to the same accounting time period as the company's corporate year-end financial statements.
- Excluded revenues are to be recorded in the "Other revenue or expense" column to reconcile totals with the company's corporate year-end financial statements.
- If the licensee's net revenue is negative for all the facilities that would normally be recorded on the Facility Netback Calculation Form, no netback submission is required, as an asset value will not be generated for a negative net revenue value.
- For the purpose of the netback submission, net revenue refers to earnings before interest, taxes, and depreciation and is equal to gross margin (midstream revenue less cost of goods sold) less direct operating costs and applicable general and administrative costs.
- The netback under liability management programs is intended to represent the net revenue value that a similar midstream licensee could achieve if it operated the same midstream facility. Therefore, revenue and expense items that would not be typical of facility operations should be excluded from the netback calculations.
- "Corporate Officer" is a position listed in the corporation's bylaws and ordinarily includes president, vice president, treasurer, and secretary.

NPL Volumes

- *Directive 006* (LLR) and *Directive 024* (LFP) – "NPL volumes" refers to the total received inlet volumes reported to Petrinex against the reporting facility ID codes attached to your facility licences. Report only third-party volumes from which you generate revenue. Volumes from a licensee's own production are not to be included.
- *Directive 075* (OWL) – "NPL volumes" refers to the volume of material that has been removed from a facility and/or disposed of permanently at a facility via deep well disposal that was initially received as industrial or oilfield waste.

Large Facility Program (LFP)

- *Directive 024* LFP submissions for straddle plants require a five-year average netback. List each of the five years separately using the format in Part B. Submit the corresponding financial

documentation for the most recent year-end. If five years' worth of financial information is not available for a facility, the AER will use the average for the number of years that a licensee has owned the facility until such time as a five-year average is available.

Oilfield Waste Liability (OWL) Program

- The first waste management (WM) facility that receives the waste volumes is the facility that is to record the revenue for netback calculation purposes. The volumes reported must correspond to the same accounting period as the licensee's most recent year-end.
- Under Petrinex, produced water going to a waste plant (WP) gets reported to the WP. Therefore, for those instances where the produced water is reported to a WP, the first WM facility that receives the produced water is the facility that is to record the volume and corresponding facility-specific netback for those volumes. The netback would not be reflected in the LLR Program in these instances.

Direct any questions by e-mail to LiabilityManagement@aer.ca or by phone to the Liability Management help line at 403-297-3113.

Alberta Energy Regulator

Directive 088

Release date: December 1, 2021

Effective date: December 1, 2021

Licensee Life-Cycle Management

Contents

1 Introduction 1

2 Holistic Licensee Assessment 2

2.1 Licensee Capability Assessment 3

2.2 LCA Factors 3

3 Licensee Management Program 4

4 Inventory Reduction Program 4

5 Licence Transfers 5

6 Security Deposits 7

Appendix 1 Transfer Application Declaration 9

1 Introduction

This directive applies to energy infrastructure and sites regulated under the *Oil and Gas Conservation Act* and *Pipeline Act*. When licensees are referenced in this directive it also includes approval holders.

This directive

- introduces a holistic assessment of a licensee's capabilities and performance across the energy development life cycle, which will be supported by the licensee capability assessment (LCA);
- introduces the Licensee Management Program, which determines how licensees will be managed throughout the energy development life cycle;
- introduces the Inventory Reduction Program, which sets mandatory closure spend targets;

- updates application requirements related to the licence transfer process; and
- outlines security collection under this directive.

In this directive, closure means the phase of the energy resource development life cycle that involves the permanent end of operations, and includes the abandonment and reclamation of wells, well sites, facilities, facility sites, and pipelines.

This directive is being developed in phases and will replace *Directive 006: Licensee Liability Rating (LLR) Program*. Elements in *Directive 006* will remain in effect until that time.

This is one of several directives published by the AER that sets out liability management programs. The directive outlines how information, particularly financial, reserves, closure, and compliance information, will be used to enable the AER to

- assess the capabilities of licensees to meet their regulatory and liability obligations throughout the energy development life cycle;
- administer our liability management programs; and
- ensure the safe, orderly, and environmentally responsible development of energy resources in Alberta throughout their life cycle.

Requirements are mandatory. The term "must" indicates a requirement. For ease of reference, requirements are numbered. Information on compliance and enforcement can be found on the AER website.

2 Holistic Licensee Assessment

The AER will comprehensively assess the licensee to inform regulatory decisions regarding the licensee. This assessment uses a multifactor approach to assess the capabilities of licensees to meet their regulatory and liability obligations throughout the energy development life cycle: initiate, construct, operate, and close. This includes the following:

- the factors listed in section 4.5 of *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals* for determining whether a licensee poses an unreasonable risk
- licensee capability assessment factors (outlined in section 2.2)
- any other factors as appropriate in the circumstances

The AER may also consider additional information provided by the licensee throughout the life cycle, including applications, amendments, reports, and other submissions to the AER.

This assessment is to ensure the responsible management by the licensee of their liability from their collective wells, facilities, pipelines, and sites. The holistic licensee assessment will reoccur at various times as the licensee moves through the energy development life cycle.

2.1 Licensee Capability Assessment

The licensee capability assessment (LCA) assesses the capabilities of licensees to meet their regulatory and liability obligations across the energy development life cycle. The results from the LCA will feed into the broader assessment of the licensee, which will inform regulatory decisions regarding the licensee, including licence eligibility under *Directive 067* and decisions under the programs outlined in this directive.

2.2 LCA Factors

The LCA uses various factors to identify risks posed by a licensee:

- financial health
- estimated total magnitude of liability (active & inactive), including abandonment, remediation, and reclamation
- remaining lifespan of mineral resources and infrastructure and the extent to which existing operations fund current and future liabilities
- management and maintenance of regulated infrastructure and sites, including compliance with operational requirements
- rate of closure activities and spending and pace of inactive liability growth
- compliance with administrative regulatory requirements, including the management of debts, fees, and levies

Each factor consists of various parameters (see *Manual 023*).

The data that feeds into the LCA are drawn from numerous sources available to the AER, including the financial information submitted under *Directive 067*.

The LCA will continue to evolve over time as the AER is able to enhance business intelligence and access more structured data. It is intended to be adaptive and remain relevant.

Each licensee will have access to their own LCA information. Financial and reserves information provided to the AER will be kept confidential for the period outlined in section 12.152(2) of the *Oil and Gas Conservation Rules*.

1) Licensees must provide complete and accurate information as required by the AER for the LCA.

3 Licensee Management Program

The Licensee Management Program is how the AER will proactively monitor licensees to support the responsible management of energy development. Under this program, the results from the holistic licensee assessment will be used to identify those licensees that are or are likely to be at risk of not meeting their regulatory and liability obligations throughout the energy development life cycle.

The AER may specifically engage and use appropriate regulatory tools or conduct compliance assurance activities with the licensee. This may involve providing education or recommendations to follow industry best practices and, where appropriate, initiating specific regulatory actions.

The AER encourages licensees to use available collaborative closure planning tools, such as area-based closure, to help reduce their overall closure costs and work more efficiently to reduce liability on the landscape. Where special action is warranted, the AER may use appropriate regulatory tools or conduct other compliance assurance activities. Examples include changing licence eligibility under *Directive 067*, placing restrictions on licences/approvals, requiring security deposits as per section 6, or issuing orders.

2) Licensees must provide information to the AER as requested under the Licensee Management Program to ensure the responsible management of energy development throughout the energy development life cycle.

3) When directed by the AER, the licensee must conduct and submit a site-specific liability assessment in accordance with *Directive 001: Requirements for Site-Specific Liability Assessments in Support of the ERCB's Liability Management Programs* or as otherwise directed.

4 Inventory Reduction Program

In the *Oil and Gas Conservation Rules* (*OGCR*) and the *Pipeline Rules*, the AER has the authority to establish "closure quotas," meaning set minimum amounts of closure work, money to be spent on closure activities, or both. The Inventory Reduction Program will enable the AER to monitor licensees and adjust the program to ensure progress towards reducing their liability by setting these closure quotas. The AER will set mandatory closure spend targets (mandatory targets) and voluntary closure spend targets (voluntary targets) for each licensee annually. They will not be adjusted during the calendar year.

The AER will annually publish industry-wide closure spending targets. Licensee-specific mandatory targets and voluntary targets will be calculated and released through OneStop in July of each year.

4) Each licensee must meet their annual mandatory target as directed by the AER.

5) Each licensee must report to the AER all its closure activities and closure spends for the previous calendar year by March 31 of every year, or as otherwise directed by the AER.

6) Each licensee must keep complete and accurate records of its closure activities and spending.

7) Licensees must provide information to the AER as requested under the Inventory Reduction Program.

The AER will determine a threshold for when licensees may elect to provide a security deposit in the full amount of their mandatory target instead of meeting the mandatory target through closure work. This threshold will be assessed annually and identified in OneStop.

8) If for a calendar year a licensee elects to provide a security deposit in lieu of meeting their mandatory target through closure work, they must provide the deposit in the amount of the mandatory target to the AER by January 31 of that year.

Failure to meet requirement 4 or 8 will trigger a holistic licensee assessment as per section 6 to determine whether a security deposit is required and the amount of security. Security collected under the Inventory Reduction Program may be refunded as outlined in section 6. The AER may also take other regulatory actions to ensure compliance and achievement of outcomes.

5 Licence Transfers

Agreements for the purchase and sale of AER-licensed wells, facilities, and pipelines do not result in a transfer of the associated licences until a licence transfer application is submitted to and approved by the AER.

AER licences with a licence status of Issued, Amended, Discontinued, Suspension, Abandoned, RecCertified, or RecExempt are eligible to be transferred. Licences with a licence status of Cancelled or Re-Entered are not eligible to be transferred.

A licence transfer application will trigger a holistic licensee assessment of both the transferor and transferee. This assessment will include reviewing abandoned, reclaimed, and reclamation-exempt sites to ensure they are held by a responsible party that can address, manage, and monitor current conditions or future issues related to public safety or the environment should they arise.

The AER will consider the entire application package of licences to be transferred and may reject a licence transfer application that does not include licences that have received reclamation certification or that are abandoned and classified as “reclamation exempt.” The AER will consider the results of this assessment and any other factors determined appropriate in making the decision to approve, approve with conditions, or deny a licence transfer application. The AER will process licence transfer applications as they are received.

For licences that have a public lands disposition that needs to be assigned or transferred, if either party has arrears in respect of any debt to the Crown or of any taxes owing to a municipality, the AER will reject the public lands application for assignment or transfer of the disposition as outlined in the *Public Lands Administration Regulation*, section 153.

A licence transfer application can be submitted by the transferor, the transferee, or an authorized agent or consultant acting on behalf of either party. The party initiating the submission is responsible for notifying the other party that the application has been submitted; the application must be accepted by both parties before it can be processed.

The AER will not accept a licence transfer application unless both the transferor and transferee have AER identification codes that permit the holding of all licence types contained within the licence transfer application. For further information regarding agent appointments, identification code requirements, and other eligibility requirements, refer to *Directive 067*.

It is the transferor's responsibility to ensure that all information relevant to the licences contained in a transfer application is updated in AER systems before the application is submitted.

9) An applicant must apply for a licence transfer and submit the numbers of all the licences proposed for transfer through the designated information submission system.

10) The application must include the BA code and contact information (including both an email address and phone number) for both the transferor and transferee.

11) If a licence transfer application includes inactive licences, the transferor must update their reported closure activities and spends in the designated information submission system before submitting the application. The AER will not retroactively adjust the closure spend reporting after the transfer is approved.

12) Before a licence transfer application will be accepted by the AER, both parties must make the declarations outlined in appendix 2.

13) As part of a licence transfer application, parties must provide current information regarding each working interest participant, including the following:

    a) full legal name of each working interest participant (which cannot be a partnership)

    b) contact information for each working interest participant, including an email address

    c) the percentages of working interest, totalling 100 per cent, for every well and facility included in the application

14) For licence transfer applications that include problem sites (see appendix 6 of *Directive 006*) or 10-well, 20-well, and 40-well equivalent non-sulphur recovery gas plants (see section 2.3 of *Directive 006*), any site-specific liability assessments submitted must have been completed

within the previous three years, unless otherwise directed by the AER, and must be accompanied by an evaluation of cost changes that have occurred since the assessments were completed.

15) If one or both parties wish to withdraw a transfer application, they must submit a written request to the AER. Upon receipt of the request, the AER will process the application as withdrawn and will notify the licensees.

16) Licensees must provide information to the AER as requested for the transfer application.

The holistic assessment of a licensee is used to determine whether security deposits are required from the transferor or transferee and the amount of security as per section 6. To offset any potential increase in risk that may arise from a licence transfer, a transferor or transferee may be required, as a condition of approval, to provide a security deposit to the AER.

The AER does not provide a preliminary determination of expected security requirements. They cannot be determined until the licence transfer application has been received and reviewed.

If a required security deposit is not received by the due date identified by the AER, the licence transfer application will be closed, and the transferor will remain the licensee.

The AER will convey its decision regarding a licence transfer application to both the transferor and the transferee. If a transferor or transferee is represented by an agent or uses the services of a consultant, the AER will also provide notice of its decision to the agent or consultant.

The licensee of record (transferor) remains responsible to comply with all applicable regulatory requirements for any well, facility, or pipeline in a licence transfer application until the AER approves the transfer. On approval of a licence transfer application, the new licensee of record (transferee) becomes responsible for any well, facility, or pipeline in the application as of the effective date of the transfer.

6 Security Deposits

Section 1.100 of the *OGCR* gives the AER broad authority to require security deposits across the energy development life cycle. Where security deposits are required under this directive, the AER will direct a licensee to provide security, specifying the amount and date due.

17) Security deposits must be provided as directed by the AER.

When considering whether to require security deposits and when determining the amount of security, the AER will consider the holistic licensee assessment. As a result of the assessment, the

AER will apply further scrutiny on the potential need for security to mitigate the potential risks with a focus on the following LCA factors:

- financial health
- estimated total magnitude of liability
- remaining lifespan of mineral resources and infrastructure
- rate of closure activities and spending and pace of inactive liability growth

When security is determined to be required, the follow factors may be used for calculating the amount of security that the AER could require:

- value of liability under *Directive 011*
  - marginal wells (wells producing 1.59 cubic metres of oil equivalent per day [ten barrels of oil equivalent per day] or less)
  - inactive wells (defined in *Directive 013*)
  - inactive facilities (defined as facilities with no activity for 12 months)
- value of *Directive 001* site-specific liability
- present value of future cash flows based on the reserves and economic analysis
- any other amount that AER considers appropriate in the circumstance

The maximum amount of security that may be required is the licensee's total liabilities, including the cost of providing care and custody and the cost to permanently end operations, which includes the abandonment and reclamation of the site.

A request for a refund of security collected under this directive will trigger a holistic assessment of the licensee. If the holistic assessment of the licensee indicates there is a risk and security is still required to offset the risk, security will not be refunded. If the holistic assessment indicates that the risk has been sufficiently reduced, a refund or partial refund of security may be warranted.

For further information on the processes that apply when a security deposit is required or can be refunded, refer to *Directive 068: ERCB Security Deposits*.

Appendix 1 Transfer Application Declaration

In submitting this application as **transferor** or **transferee**, you hereby declare the following:

- Your use of the confidential identification code and password[1] for submission of this application has been duly authorized by your company (transferor/transferee), and the confidential identification code and password used are equivalent to and have the same binding effect as a signature executed by a duly authorized representative of the transferor/transferee company.
- You have the authority to make these (and the following, if transferee) statements and thereby bind your company.
- The information in the application is complete and accurate.

In submitting this application as **transferee**, you declare that the transferee

- holds valid surface access rights for all wells, pipelines and, facilities included in this application;
- holds valid mineral rights for all licensed producing and inactive wells included in this application;
- has the right to produce, inject, or dispose of fluids for all licensed active and inactive wells included in this application;
- is a working interest participant in all wells and facilities included in this application; and
- will ensure that all applicable AER signage requirements are met as required, including erecting or changing signs to accurately reflect the new licensee name and contact, and accepts and assumes the responsibilities and obligations of a licensee as provided for in law, including but not limited to, the *Oil and Gas Conservation Act*, *Oil and Gas Conservation Rules*, *Pipeline Act*, *Pipeline Rules*, and AER directives and requirements.

For pipeline licence transfers only:

- The **transferor** hereby confirms that it has collected and retained all records required under the *Pipeline Rules* and *Canadian Standard Association Z662: Oil and Gas Pipeline Systems*. The transferor confirms that it has provided these records to the transferee by the effective date of the licence transfer.

The **transferee** hereby confirms that it has received all records required to be collected and retained under the *Pipeline Rules* and *Canadian Standard Association Z662: Oil and Gas Pipeline Systems* from the transferor. The transferee is responsible for producing these records on request by the AER. Failure to do so constitutes a noncompliance of AER requirements.

[1] Used by authorized business associates to access the AER's designated information submission system.