

April 08, 2020

## ARTICLE

# Emergency legislative amendments to support Alberta's oil and gas sector

On April 2, 2020, the Legislative Assembly of Alberta passed three emergency bills to address the COVID-19 pandemic in the Province. Among them was Bill 12, the *Liabilities Management Statutes Amendment Act, 2020*, which grants the Alberta Energy Regulator (AER or Regulator) new powers and funding to manage what the government anticipates will be a large rise in suspended or abandoned oil and gas projects in the wake of COVID-19. Jason Nixon, House Leader and Minister of Environment and Parks, suggested that Bill 12 would boost employment and protect jobs in Alberta's oil and gas service sector during these challenging times by creating jobs related to remediation and reclamation of wells and other production facilities.

## What you need to know

- Remediation and remediation costs are now included in the provisions of the *Oil and Gas Conservation Act* and *Pipeline Act* respecting care, preventative measures, and repairs of damage in respect of oil and gas wells and other facilities.
- The AER may make rules respecting suspension, abandonment, remediation, and reclamation costs in respect of wells, facilities and pipelines.
- The use of orphan well funds has been expanded to permit the AER to allocate such funds to pay for damage, suspension, abandonment, remediation and reclamation costs in respect of neglected well sites. Orphan well funds may also be used to pay for facility monitoring operations, hiring and retaining staff for the purposes of monitoring and risk management, and the costs of receivers, receiver-managers, trustees and liquidators.
- The AER may designate the Orphan Well Association to take over management and control of a well where the owner or operator does not meet its obligation of reasonable care, and such authorities may now continue producing or injecting operations with the consent of the owner or holder of the mineral rights.
- The Regulator may order a licensee or designated authority to provide reasonable care and measures to prevent pipeline impairment on any terms or conditions the AER considers appropriate.
- The Alberta Department of Energy has confirmed it will not identify situations where an offset obligation might exist upon leasing the offered mineral rights in a Public Offering Notice.

## Bill 12: *Liabilities Management Statutes Amendment Act, 2020*

### Care and remediation obligations

Broadly, Bill 12 amends the *Oil and Gas Conservation Act*, RSA 2000, c O-6 (OGCA) and *Pipeline Act*, RSA 2000, c P-15 (*Pipeline Act*) to grant the AER certain powers and funding, with a view to assisting orphan well associations in managing and accelerating the clean-up of oil and gas facilities. The purposes of the OGCA have been revised to include remediation as an overarching part of responsible facility management, and the terms "remediation" and "remediation costs" are now central obligations respecting care, preventative measures, and repairs in respect of oil and gas wells, pipelines and other facilities.

Under amended OGCA section 10, which deals with site management and care, the AER may make rules respecting suspension, abandonment, remediation, and reclamation costs for wells or facilities. In the past, the Regulator could designate an authority – typically, the Orphan Well Association – to take over management and control of a well where the owner or operator did not meet its obligation of reasonable care. However, such a designate would only be permitted to suspend or commence abandonment operations on the well. Importantly, as amended by Bill 12, authorities designated by an order of the Regulator will now, with the consent of the holder of the mineral rights at the site, be able to continue producing or injecting operations as though it were the licensee.

Further, pursuant to new OGCA section 26.2 and *Pipeline Act* section 22.1, the Regulator now has broad discretion to issue orders to licensees, approval holders, working interest participants or any delegated authority to take any preventative measures where, in the opinion of the Regulator, impairment or damage protections are not being adequately provided. The Bill 12 amendments also entitle any authority acting under an order of the AER to have access to and enter on the pipeline lands and any structures thereon for the purposes of discharging their obligations.

### Orphan well funds

With a view to supporting the Orphan Well Association and other authorities designated to facility care under the new legislation, amendments to the OGCA have broadened the permitted use of orphan well funds, and permitted the AER to allocate such funds to pay for damage, suspension, abandonment, remediation, and reclamation costs in respect of neglected well sites. Those funds may also be used to pay for facility monitoring operations, hiring and retaining staff for the purposes of monitoring and risk management, as well as for the costs of receivers, trustees and liquidators. In addition, the Regulator may also apply to the Court of Queen's Bench of Alberta to appoint receivers, trustees or liquidators for the property of an impugned licensee.

On March 2, 2020, Alberta Premier Jason Kenney announced that the Orphan Well Association would be receiving a government loan of \$100 million to "increase the pace" of orphan well cleanup. The changes to the OGCA and *Pipeline Act* under Bill 12 have expanded the Association's permitted use of those funds, as well as its authority to bring in operators to produce from and run viable wells. Perhaps most importantly for industry professionals, these funds are available to hire staff for operations, maintenance and remediation purposes. With the Alberta government restricting gatherings to 15 people or less in response to the COVID-19 pandemic, work should still be able to proceed safely on some oil and gas cleanup projects.

### Offset obligations for Crown petroleum and natural Gas

In addition to those legislative amendments passed Thursday, the Alberta Department of Energy published Mineral Rights Information Bulletin 2020-01 (Bulletin) in response to questions received concerning offset obligations and Public Offering Notices (PONs). Offset obligations may arise where a lessee's producing well is draining an adjacent Crown mineral right. Upon being notified of an offset obligation, lessees are required to remit offset payments, elect to surrender certain rights, demonstrate that there is no drainage of the subject resources, or otherwise show that a Crown well is also producing from the offset zone.

The Bulletin serves as a reminder that, in accordance with Mineral Rights Information Letter 2000-06, Alberta Energy will not advise of potential offset obligations in PONs for Crown petroleum and natural gas (PNG) rights. Though PONs will notify potential bidders of Crown-imposed restrictions on the ability to fully access offered PNG rights, the government does not consider them an appropriate instrument to set out obligations otherwise entrenched in the legislative framework. The Bulletin confirms that the process communicated in Information Letter 2000-06 is still in place, and encourages bidders to thoroughly research the area offered under a PON for potential offset obligations before committing to a response.

## Final thoughts

While the recent changes to the OGCA and *Pipeline Act* will be welcome news to some industry professionals, they may be little comfort in the economic conditions caused by COVID-19 and the OPEC-Russia price war. The suggestion underscoring Bill 12 is that the government anticipates a rise in the number of suspended or abandoned oil and gas projects in the Province, as companies facing insolvency might need to abandon associated liabilities. However, expanding the powers and funding of the AER and Orphan Well Association may prove an effective means of ensuring that producible wells are kept on-stream and remain viable until buyers return to the market. The legislative changes certainly result in a major shift in mandate for the Orphan Well Association, particularly if the AER is signaling that it will assist with public safety liabilities where it is willing to take over the operations of wells or pipelines. The [Orphan Well Association website](#) indicates that there are 2789 orphan wells and 4113 orphan pipeline segments across Alberta, of which 3331 sites are set for reclamation. Creating and protecting jobs in order to operate, maintain, or reclaim these facilities can only be positive in this climate.

---

By: Matti Lemmens, Michael A Marion, Dafydd Samuel

Services: [Corporate Commercial](#), [Labour & Employment](#), [Energy - Oil & Gas](#)

---

## Related Contacts

Alan Ross  
Regional Managing Partner, Calgary

📍 Calgary

✉ [ARoss@blg.com](mailto:ARoss@blg.com)

☎ [403.232.9656](tel:403.232.9656)

Melissa Smith  
Partner

📍 Calgary

✉ [MeSmith@blg.com](mailto:MeSmith@blg.com)

☎ [403.232.9787](tel:403.232.9787)