B.C. Introduces Legislation in Response to Redwater

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On April 25, 2018, the government of B.C. approved new legislation that aims to strengthen B.C.'s orphaned well restoration and prevention regime. Once it receives royal assent, Bill 15, the *Energy, Mines and Petroleum Resources Statutes Amendment Act, 2018*, will result in additional requirements for those seeking to develop oil and gas in B.C. through amendments to the *Oil and Gas Activities Act* ("OGAA") and the *Petroleum and Natural Gas Act*.

Overview

The main feature of the Bill is the replacement of the current orphaned site restoration tax under the OGAA with a levy to be paid by permit holders to B.C.'s Orphan Site Reclamation Fund (the "OSRF"), which the province uses to pay the cost of restoring sites that have been abandoned by unviable operators. Currently, producers must make monthly payments of $0.03 per 1,000 cubic metres of marketable gas produced and $0.06 per cubic metre of petroleum produced. In place of this fixed tax, the B.C. Oil and Gas Commission (the "Commission") will determine the total amount that is to be raised by the levy and is permitted to impose the levy more than once in a calendar year, giving the Commission flexibility to ensure the OSRF is adequately funded at all times.

The Commission will determine which classes of permit holders must pay the levy. Calculation of the amount of each permit holder's levy will be determined by dividing the permit holder's liability by the total amount of liabilities of all permit holders who are required to pay the levy. The Bill defines "liabilities" as the Commission's estimate of the total cost of each permit holder's "shutdown obligations," i.e., the amount the Commission estimates it would cost to fully restore and reclaim a site.

The Bill will also result in greater scrutiny of permit applicants. Applications may now be rejected based on past non-compliance or questionable conduct by an applicant's "associate", which includes its officers, directors, agents, shareholders, or any person who the Commission believes has an influence over the applicant or permit holder.

The Commission has gained additional powers to order restoration of inactive sites as a result of the Bill. Whereas the OGAA currently allows orders to be made against a person carrying out oil and gas or related activities, the Commission may now also

make orders against former permit holders and former authorization holders. The Bill also provides that permits will be automatically cancelled if a site remains dormant for longer than the prescribed period of time as set out in the regulations.

The Bill also expands the Commission's authority to take action in response to emergencies and in order to protect public safety, as well as adds various cost-recovery provisions. Notably, in the event that anyone fails to pay an amount owing under the OGAA, the Commission will be able to file a certificate with the court, particularizing the amount owed, which has the same force and effect as a judgment, including allowing enforcement proceedings to be commenced to recover the outstanding amount.

Commentary

The Bill can be seen as a response by the B.C. government to the *Redwater* decision from Alberta, which we have discussed in previous posts, including the lower court's decision, the decision from the Court of Appeal, and the effect of the decision in B.C. *Redwater* confirmed that receivers and trustees may disclaim uneconomic assets, including those subject to environmental restoration obligations. As a result, taxpayers will ultimately bear the cost of these environmental obligations.

While the Bill does not change the effect of that decision (which is currently on appeal before the Supreme Court of Canada), it does give the Commission additional tools to refuse to issue permits to risky applicants, encourage the timely restoration of sites, and pursue the recovery of costs associated with enforcement and restoration efforts before insolvency, all of which ought to curb the number of orphan wells left to the province to restore.

The Bill will likely affect producers by increasing their costs as a result of the levy. The orphaned site restoration tax was calculated according to a set percentage of total marketable product, which is predictable and constant. In contrast, the Bill allows to the Commission to vary the levy amount as necessary to ensure the cost of restoring orphaned wells is borne by industry.

The Bill may also impact operators' access to financing since lenders will include the levy and reclamation obligations in their assessment of an operator's ability to meet their loan obligations. This impact may be reflected in a producer's ability to obtain financing or the terms on which it is offered.

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