B.C. Mandates Timelines for Oil and Gas Site Cleanups

June 13, 2019

On May 31, 2019, the British Columbia Oil and Gas Commission (the "**BC Commission**") introduced mandatory timelines for oil and gas site cleanups. The new *Dormancy and Shutdown Regulation* (the "**Dormancy Regulation**") and *Comprehensive Liability Management Plan* ("**CLMP**") takes effect immediately and has introduced mandatory timelines for decommission, assessing and restoring inactive oil and gas liabilities. The legislation aims to require closure on all current inactive sites by 2036 and to ensure that 100% of the costs for site cleanups and closures are incurred by the oil and gas industry, rather than the general public. As a result, the new Dormancy Regulations and CLMP have significant impacts for oil and gas companies operating in British Columbia.

Dormant Sites

On a go-forward basis, the Dormancy Regulation requires that all sites that become "dormant" from 2019 onwards are cleaned-up and restored within a maximum of 13 years from dormancy. Sites are classified as dormant by the BC Commission if none of the following events have occurred in a five year period:

1. production from or injection or disposal of the well for a total of 720 or more hours in a calendar year;
2. a zone is completed;
3. a drilling event occurs;
4. (for observation wells) the well is active on at least one day; or
5. the permit holder designates it as such and notifies the BC Commission.

Importantly, an operating site is not a dormant site if, notwithstanding the above: (i) a multi-well pad site is located thereon and activities the other wells continue; or (ii) a facility, road or pipeline associate with other active wells is located on a portion of the operating site. In certain instances, the BC Commission may also declare a site a "Priority", in which case the permit holder will have two years from the date the site is declared a priority before the site is classified as dormant. In deciding whether a site is a priority site, the BC Commission can consider the following factors: (i) the age of the site; (ii) public safety and human health; (iii) the environment; (iv) social and agricultural

values; (v) impacts on local communities; (vi) cultural and environmental values of local Indigenous nations; and (vii) the capacity and portfolio of the permit holder.

Obligations based on Dormancy Classification

Once classified as dormant, the sites are distinguished into three classes of dormant sites (referred to as Types A, B and C), which are identified based on the activity levels associated with the well(s) located on that site. Depending on whether a site is classified as Type A, B, or C, the permit holder will have varying reporting, decommissioning, remediation and reclamation obligations and timelines:

CLASSFICATION TYPE	DECOMMISSION	ASSESS	RESTORE
Type "A":*dormant as of December 31, 2018*	• 30% by December 31, 2021 • 70% by December 32, 2026 • 100% by December 31, 2031	• If decommissioned on or before December 31, 2019, by December 31, 2030 • In any other case, 2 calendar years following the site being decommissioned	• 40% by December 31, 2024 • 70% by December 31, 2030 • 100% by December 31, 2036
Type "B": *Becomes dormant between 2019-2023*	• 100% within 8 years of dormancy	• Within 2 years of decommissioning	• 100% within 13 years of becoming dormant
Type "C": *Becomes dormant 2024 and onward*	• 100% within 5 years of dormancy	• Within 2 years of decommissioning	• 100% within 10 years of becoming dormant

It is important to note, however, that permit holders who have a portfolio that includes more than 100 Type "A" sites are eligible to submit a "liability reduction plan". A liability reduction plan allows the operator to deviate for the requirements outlined above for a maximum of six years, in a manner agreed to by the BC Commission.

Annual Planning and Reporting Obligations

In addition, the Dormancy Regulation and CLMP now mandates significant annual planning and reporting requirement for all permit holders. First, permit holders are required to submit an annual work plan for the following year which outlines to the Commission:

1. the number of sites to be decommissioned, assessed and restored for that calendar year;
2. anticipated timelines for completing the work; and
3. factors that may cause deviations from the proposed work plan.

Permit holders must submit their annual work plans by August 31, 2019 for this year, and thereafter by the earlier of: a) January 30 of each year, or; b) 60 days prior to commencing work on a dormant site in a calendar year. Importantly, written notice must be given to any interested persons for a dormant site prior to completing any specified work, including landowners, local indigenous nations and municipalities.

Furthermore, permit holders are required to submit an annual report to the BC Commission by March 1 for each previous calendar year that:

1. identifies the number of sites decommissioned, assessed and restored for that calendar year; and
2. includes a copy of the annual work plan and explanation of any deviations.

Conclusion

The Dormancy Regulation (and accompanying CLMP) is the first instance of legislation that imposes mandatory timelines for site closure in Western Canada. In Alberta, the Area-Based Closure Program (which has a similar mandate to the Dormancy Regulation) is currently voluntary and Saskatchewan and Manitoba do not currently have legislation dictating timelines for oil and gas. However, this new legislation is arguably reflective of the shift occurring in Western Canada to place a greater emphasis and onus on oil and gas companies for the timely and adequate management of oil and gas clean-up and retirement obligations and may be a sign of things to come for the remaining Western Canadian provinces.

Full details on the Dormancy Regulation and CLMP can be found online.

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