The Alberta Energy Regulator Prescribes $45 million 2018/19 Orphan Fund Levy without Tranche Payments

May 16, 2018

On April 9, 2018, the Alberta Energy Regulator (“AER”) prescribed an orphan fund levy in the amount of $45 million for fiscal year 2018/19. Unlike last year’s $30 million orphan fund levy paid in two tranches six months apart, the AER will collect this year’s $45 million within one month by May 18, 2018. Non-payment by the deadline attracts a 20 percent penalty and potentially additional compliance measures. The implications for stakeholders in light of the challenges and uncertainties facing the oil and gas industry in Alberta is yet to unfold.

Pursuant to Bulletin 2018-07: *2018/19 Orphan Fund Levy* issued on April 9, 2018, the AER has prescribed a $45 million orphan fund levy to fund the Orphan Well Association's ("OWA") budget for fiscal year 2018/19. The budget was approved by the OWA, the Canadian Association of Petroleum Producers ("CAPP"), and the Explorers and Producers Association of Canada ("EPAC"). The OWA's budget for fiscal year 2017/18 was $30 million collected in two tranches, the first $15 million collected in March 2017 and the second $15 million in September 2017. Unlike the 2017 orphan fund levy, the 2018 $45 million orphan fund levy is to be collected through one levy of $45 million payable by May 2018. As usual, the AER will allocate the year's orphan fund levy among licensees and approval holders included within the Licensee Liability Rating ("LLR") and Oilfield Waste Liability ("OWL") programs based on the April 2018 monthly assessment.

Each licensee or approval holder included in the Programs will be invoiced for its proportionate share of the orphan fund levy in accordance with the prescribed formula, which is the licensee's or approval holder's deemed liabilities divided by the sum of the industry's deemed liabilities on April 7, 2018 and multiplied by $45 million. The calculation is based on the licensee's or approval holder's licensed and approved properties, according to AER records, as of April 7, 2018. Facilities under the Large Facility Liability Management Program are excluded this calculation.

Orphan fund levy invoices will be emailed by April 20, 2018. It is the licensee's or approval holder's responsibility to ensure that the invoice is directed to the appropriate person. If the licensee or approval holder does not receive their orphan fund levy invoice by April 23, 2018, they must contact the AER to request a copy. All orphan fund

levy invoices must be paid by the licensee or approval holder, and payment must be received by the AER by May 18, 2018. Failure to pay the full invoiced amount by May 18, 2018 will result in a penalty of 20 per cent of the original invoiced amount being assessed to the licensee or approval holder and additional compliance measures may apply in accordance with the AER's compliance assurance program.

While an appeal of the invoiced amount must be made in writing by May 18, 2018, payment in full of the original invoiced amount is required by this deadline to avoid the 20 per cent penalty. The AER will refund any overpayment resulting from a successful appeal within 30 days of the result of the appeal.

Implications

The orphan fund levy has added $15 million this fiscal year. While last year's $30 million levy was spread out over six months to help make it affordable, this year's $45 million will be collected within one month. Failure to pay the full invoiced amount by May 18, 2018 will result, not just in a penalty of 20 per cent of the invoiced amount, but potential additional compliance measures. While the levy will help reduce the population of legacy wells in Alberta, the full impact on the ailing oil and gas industry and other stakeholders is yet to be determined. Licensees and approval holders continue to face challenges in meeting their monetary obligations. Inability to meet financial obligations lead to more wells and facilities ending up as orphans requiring further increases in the orphan fund levy. The one month deadline would likely increase the circularity challenges of the current liability regime. Financial issues lead to more wells and facilities ending up as orphans requiring further increases in the orphan fund levy.

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