



Bennett  
Jones

# An Update on Orphan Wells and the Alberta Site Rehabilitation Program

Presented to the Environmental  
Services Association of Alberta  
May 15, 2020

Brad Gilmour  
Keely Cameron  
Stephanie Ridge

# Introduction

- › Alberta's Liability Landscape
- › New Developments:
  - › *Bill 12: Liabilities Management Statutes Amendment Act, 2020*
  - › Site Rehabilitation Program
- › Practical Considerations for Industry



# › Alberta's Liability Landscape



Bennett Jones

# Alberta's Liability Landscape

- › Licensees are required to properly abandon and reclaim the land on which they operate, however in the absence of an AER order there are no timelines for carrying out such work.
- › The Alberta Energy Regulator (AER) assesses a licensee's ability to address its suspension, abandonment, remediation, and reclamation liabilities through the Liability Rating (LLR) program.
- › However, where facilities do not have a legally or financially responsible party that can be held accountable (*i.e.*, where a licensee becomes insolvent), those sites are transferred to the Orphan Well Association.

# Alberta's Liability Landscape

- › Legislative changes to the AER's powers were expected following the Supreme Court of Canada decision in *Orphan Well Association et al v. Grant Thornton Limited et al*, which found that:
  - › the AER has the power to impose cleanup conditions on a license holder (including a receiver or trustee) and
  - › these powers survive bankruptcy.
- › In response to COVID-19, part of the federal funding for Canada's energy sector was directed towards "orphan and inactive oil and gas wells."



› Bill 12: Liabilities Management Statutes Amendment Act, 2020



# Bill 12: Overview

- › Bill 12 introduced on March 31, 2020, received Royal Assent on April 2, 2020 and will come into force on Proclamation (TBD)
- › Includes amendments to the *Oil and Gas Conservation Act* (OGCA) and *Pipeline Act*
  - › → Does not apply to oil sands or coal projects.
- › Notable changes include new duties for licensees and continued operations.

# Reasonable Care & Measures to Prevent Impairment

- › New duty on licensees and approval holders to provide *reasonable care and measures* to prevent “impairment or damage” that result in or could reasonably be expected to result in harm to the integrity of a well, facility, pipeline, the environment, human health, safety or property.
- › These obligations extend to a WIP if the licensee or approval holder fails to provide reasonable care and measures.
- › The AER may issue orders to require a licensee, WIP or delegated authority if reasonable care and measures are not being taken.





# Continued Operations Permitted

- › Bill 12 amendments would allow a delegated authority to continue operations where it takes over the management and control of a well or facility.
  - › “Delegated party” can include the OWA, where ordered by the AER and consented to by the owner or holder of the mineral right.
- › Proceeds of production may be
  - › used to address any costs and expenses; and
  - › applied to any outstanding debt owing to the AER.
- › Any remaining funds are to be provided to the Minister of Energy; persons may file a claim for all or part of the funds within six months of the sale of the production.



# Other Changes of Note

- › New definitions will allow the OWA to undertake “remediation” activities at orphan sites and to recover remediation costs from the orphan fund.
- › Orphan funds may be used for a broader range of purposes including paying the costs of a receiver, receiver manager etc.
- › Broad new regulation-making authority.



# › Alberta Site Rehabilitation Program



Bennett Jones

# Overview of the Site Rehabilitation Program

- › Alberta program to distribute \$1 billion in federal funding.
- › Program grants will be used to pay for abandonment, assessment, remediation, and reclamation work on Alberta upstream oil and gas infrastructure.
- › Structured to provide direct support to oilfield service contractors.
  - › Contractors apply for and receive grant funding – not licensees.
- › Grants will be allocated in \$100 million increments, each with its own priorities and criteria.



# Eligible Sites, Activities and Contractors

- › The following activities are eligible for grant funding:
  - › closure work on inactive wells and pipelines
  - › Environmental Site Assessments (Phase 1 and Phase 2)
  - › remediation
  - › reclamation
  - › preparation of applications for remediation and reclamation certificates
  
- › Ineligible activities:
  - › suspension (wells and facilities) and discontinuation (pipelines) costs that are not part of abandonment and reclamation projects
  - › non-closure work on producing sites (for example, spill remediation)
  - › work on orphan wells closure work outside of Alberta
  - › work completed before the program comes into effect on May 1, 2020



# Eligible Sites, Activities and Contractors

- › Ineligible costs
  - › administration fees (*i.e.*, contractors using subcontractors to complete work cannot charge a markup)
  - › costs of work to prepare for contract bids, grant applications and project contracts, and similar costs not directly incurred in relation to eligible closure activities
  - › food
  - › beverages
  - › other non-work related expenses.
- › Ineligible contractors and sites
  - › sites in the care of the Orphan Well Association
  - › In-house oil field service providers are not eligible.



# Funding Increments

## **First increment - May 1 to 31 (Reduced to May 15)**

- › \$100 million in funding available. Grant applications will be accepted for:
  - › oil and gas sites needing abandonment and/or reclamation across Alberta
  - › projects that require 100% government funding
  - › contracts of up to \$30,000 (per application, per closure activity)

## **Second increment – May 15 to June 15**

- › \$100 million in funding available. Grant applications will be accepted for:
  - › oil and gas sites on land where government is paying compensation to landowners as required under Section 36 of the Surface Rights Act (otherwise referred to as Section 36 lands)
  - › projects that require 100% government funding
  - › contracts of up to \$30,000 (per application, per closure activity)

## › **Third and later increments**

- › Criteria for future increments will be posted as they are developed. Future increments may focus on larger projects with larger contract values.





# › Practical Considerations





# Practical Considerations and Uncertainties

- › Applications made to the first increment:
  - › Are being judged on the reasonableness of requested costs alone;
  - › Are not being assessed based on the licensees' ability to contribute - currently being allocated on first come, first serve basis; and
  - › Are being rejected where cost of total work to be performed exceeds \$30,000, even if the grant requested is  $\leq$ \$30,000.
- › Applications by prime contractors intending to engage subcontractors are being accepted, but require a high level of detail and precision about who is doing what work.
- › "Tens of thousands" of applications received – delays inevitable.
- › Follow the development of British Columbia's program which goes live on May 25 and may influence future iterations of the Alberta Program.



# Uncertainties Moving Forward

- › Early publications suggested that licensees considered “able to contribute” would receive less than 100% of the applied-for grant.
  - › Criteria to measure a licensee’s “ability to contribute” has not yet been published.
- › Sites nominated by landowners are to be given priority, but not yet clear how nomination process will be administered.
- › Practical implications of receiver entering into a contract for grant-funded activities where licensee is in insolvency proceedings.



# › Summary



# Summary

- › The devil is always in the details.
- › The Site Rehabilitation Program will continue to evolve with experience.
- › Bill 12 addresses some important concerns, but other issues persist.
  - › What is next in the “suite” of policy changes?
  - › Exercise of regulation-making powers may further alter landscape.



› Questions?



Bennett Jones



Bennett  
Jones

Thank you



Brad Gilmour  
Partner

(403) 298-3382  
[gilmourb@bennettjones.com](mailto:gilmourb@bennettjones.com)

Keely Cameron  
Associate

(403) 298-3324  
[cameronk@bennettjones.com](mailto:cameronk@bennettjones.com)

Stephanie Ridge  
Associate

(403) 298-3172  
[ridges@bennettjones.com](mailto:ridges@bennettjones.com)