

**Submission to the
Alberta Energy Regulator’s Invitation for Feedback on Revised Liability Directives**

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Directive 088, Licensee Life-Cycle Management

Comment 1

Section or page number: Directive 088, Section 2 – Holistic Licensee Assessment

Briefly summarize the issue: With so many factors - basically anything the AER wants to consider - the “multifactor” approach lacks any certainty or parameters. It will be just whatever is in the regulator’s discretion, which is not an ideal way to set up a system designed to protect the health and safety of Albertans. Indeed, discretionary decisions consistently favor industry over the public interest. For example, the AER’s use of discretion has led to a reduction in the closure spend requirement this year, not an increase. AER Bulletin 2023-31 sets the industry-wide closure spend requirement for 2024 at \$700 million, lower than the \$764 million forecasted last year. (For a detailed analysis see Drew Yewchuk, *The 2024 Industry-Wide Closure Spend Lowered Without Explanation* (Aug 30, 2023), online ABlawg, <https://ablawg.ca/2023/08/30/the-2024-industry-wide-closure-spend-lowered-without-explanation/>).

What changes do you recommend and why?: What is needed is certainty. All operators should be required to put forth a bond or other type of financial guarantee. There are financial instruments that the banking and insurance sectors can provide that would allow security to the public and freedom of capital to industry. Why are these not being employed as they are in other jurisdictions? For example, in the U.S. the Bureau of Land Management mandates bonds for wells on federal lands (see here: <https://www.blm.gov/onshore-oil-and-gas-leasing-rule>).

In addition, some U.S. states, including Colorado, have updated their financial assurance rules to require bonds. Currently, operator bonds cover only about 2% of the estimated cost to plug and abandon wells in Colorado, meaning the state is exposed to nearly \$7 billion in cleanup risk. In 2022, Colorado Oil and Gas Conservation Commission updated their rules, with the result that many of the highest-risk wells will now require full-cost bonds (see Tom Delehanty, *EarthJustice, The Fossil Fuel Industry is Fighting Colorado’s Important New Rules for Oil and Gas* (May 18, 2022), <https://earthjustice.org/experts/tom-delehanty/colorados-new-oil-and-gas-rules-raise-the->

[standard-for-state-regulation-but-their-success-depends-on](#)). The AER should strongly consider a similar update.

Comment 2

Section or page number: Directive 088, Section 4.1 – Closure Quotas

Briefly summarize the issue: Almost every other jurisdiction in the world sets time limits for how long a well can be inactive before it must be decommissioned and reclaimed. A closure quota results in companies choosing the newest, easiest wells to close and delaying the closure of older, more difficult wells (a pattern that Alberta’s Auditor General has observed in Alberta – see Auditor General of Alberta, *Liability Management of (Non-Oil Sands) Oil and Gas Infrastructure* (March 2023), pg. 28, <https://www.oag.ab.ca/wp-content/uploads/2023/03/Liability-management-oil-gas-mar2023.pdf> [*Report of the Auditor General – March 2023*]). Not only does this leave Albertans with the wells that are most likely to leak and cause other health effects, but will likely burden taxpayers with the most costly clean-ups.

What changes do you recommend and why?: Replace closure quotas with time limits on inactive wells. The problem of leaving the worst wells for cleanup last is well-documented in both Alberta and around the world. See e.g., Barry Robinson, *The Inactive Well Compliance Program: Alberta’s latest attempt to bring the inactive well problem under control*, <https://ecojustice.ca/wp-content/uploads/2014/12/IWCP-Paper-FINAL-20-Nov-2014.pdf> and Omar Mawji, IEEFA, *Canada’s Oil and Gas Decommissioning Liability Problem*, pg. 13, https://ieefa.org/sites/default/files/2022-05/Canadas%20Oil%20and%20Gas%20Decommissioning%20Liability%20Problem_May%202022_0.pdf. Closure nomination attempts to address this problem by creating a prioritization system, however, it is insufficient to address the problem of delaying closure of old wells. First, the closure nomination process relies on the action of landowners, First Nations, Métis Settlement or the Minister to make a request. This process may not capture the oldest and most risky wells. Second, the unreasonably long timelines in the Directive allow well clean-up to again be delayed. After well nomination (which only occurs after 5 years of inactivity), an indeterminate amount of time is given for approval of a closure plan, and then 10-13 years is provided to reclaim the well – almost two decades is too much time to allow for old infrastructure to be fully addressed.

Comment 3

Section or page number: Directive 088, Section 4.2 – Closure Nomination

Briefly summarize the issue: Allowing eligible requesters to start the closure process (which takes years) only after a well has sat idle for 5 or more years is too long. Unplugged wells can leak explosive gases into the air and leach toxic fluids into land and water. Plugging a well helps protect groundwater and air quality. It prevents greenhouse gasses from escaping and expediting climate change. Therefore, it is important that idle wells are plugged promptly. The longer wells are left idle, the higher the risk of well casing failure. The Regulator also has analysis that shows a low chance of re-activation of wells that have been inactive for more than 2 years.

What changes do you recommend and why?: We recommend changing the time eligibility requirement from 5 years to 2 years. Under AER Directive 013, a well must be initially suspended and reported as inactive after 12 consecutive months. The timeline in the closure nomination process in Directive 88 should match the timeline in Directive 013 to allow eligible requesters to start the process as soon as a well is inactive. Other jurisdictions also regulate timelines for abandonment and reclamation of wells anywhere from 90 days to 2 years – no jurisdiction in North America that we are aware of allows a well to sit inactive for more than 5 years. (See e.g. Jason Unger, Environmental Law Center, *Reclaiming Tomorrow Today*, pg. 20, https://elc.ab.ca/Content_Files/Files/Reclaiming_Tomorrow_Today.pdf).

Comment 4

Section or page number: Directive 088, Section 4.2 – Closure Nomination, Table 1

Briefly summarize the issue: Allowing a well to be closed in 10-13 years from the date of closure plan approval is too long. For the same reasons as stated above, to allow a well to sit idle for 5 years until it is eligible for nomination, wait some unknown time for closure plan approval, and then for wait another 10-13 years before reclamation is completed is unacceptably long.

What changes do you recommend and why?: The AER should mandate shorter time frames in Table 1 for baseline closure plan activity (which will be applied to a majority of wells) to protect the health and safety of Albertans. In particular, the first deadlines in the Table are most problematic. Waiting 3 years to carry out abandonment and 1 year for a site assessment is unnecessary long. Those deadlines should easily be achieved in 1 year, so that the important work of remediation, reclamation and revegetation can begin.

Comment 5

Section or page number: Directive 088, Section 4.2 – Closure Nomination

Briefly summarize the issue: Albertans deserve to know what wells are eligible for the purpose of closure nominations that are in their communities and affecting their health and safety. This information should be easily available to the public and modifications to the Closure Nomination Dashboard are required.

What changes do you recommend and why?: The Closure Nomination Dashboard should include a section that lists and shows a map of the wells that are available for closure nomination but for which no application is pending. Further, the information for each well nomination should include the following that is not currently available: (i) the date a closure plan was submitted; (ii) the type of closure plan approved for each well; (iii) a copy of the closure plan; and (iv) the date the plan was approved.

Comment 6

Section or page number: Directive 088, Section 4.2 – Closure Nomination

Briefly summarize the issue: Under Section 4.2 (10), it states that if an eligible requester requests closure of an eligible site, then the licensee must prepare a closure plan. Under Section 4.2 (13), this plan must be selected within 90 calendar days. However, there are no time limits for the AER to approve the plans and no enforcement or remedies set forth if any of the requirements are not done in a timely manner in accordance with the Directive.

What changes do you recommend and why?: The AER should also have to review and issue a decision on closure plans within 90 days of submission. Also, licensees that do not meet the timelines set forth in the Directive should be assessed mandatory fines.

Comment 7

Section or page number: Directive 088, Section 4.2 – Closure Nomination

Briefly summarize the issue: There is no notification, engagement or inclusion of the eligible requesters in the closure planning process after site nomination.

What changes do you recommend and why?: Eligible requesters should be invited and allowed to comment and submit material for the AER’s consideration on the closure plan and any modifications made to the baseline closure plan considered by the AER. Eligible requesters should be copied on all correspondence regarding the well or facility, should be allowed to engage on what type of closure plan is right for their land, and should be entitled to a regulatory appeal if they disagree with an AER decision on a closure plan.

Comment 8

Section or page number: Directive 088, Section 6 – Availability of Information

Briefly summarize the issue: While the AER proposes to disclose its set annual closure spend, it does not propose to provide its reasoning for the amount it sets.

Numerous papers and reports over the years have outlined concerns about the growing and dangerous well liabilities issue and the regulator’s failure to properly address or transparently report on the problem. See e.g. Barry Robinson, *The Inactive Well Compliance Program: Alberta’s latest attempt to bring the inactive well problem under control* (Nov 2014), pgs. 13-14, <https://ecojustice.ca/wp-content/uploads/2014/12/IWCP-Paper-FINAL-20-Nov-2014.pdf>; Drew Yewchuk, Shaun Fluker and Martin Olszynski, *A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability* (Oct 2023), pg. i, <https://www.policyschool.ca/wp-content/uploads/2023/10/EFL-49A-AB-ConvenOGLiabilityRegime.YewchukFluker.pdf> [*A Made-in-Alberta Failure*]; Julia Levin, *Past Due: Tallying the Costs of Oil and Gas Cleanup in Canada* (July 2023), pg. 9, https://environmentaldefence.ca/wp-content/uploads/2023/07/Past-Due-Report_EnvironmentalDefence_Final.pdf).

The Auditor General also found, in a 2023 audit, that the AER’s public reporting and external performance measurement were insufficient both in assessing whether it was achieving results and

effectively managing risk (see *Report of the Auditor General – March 2023*, pgs. 22-23, <https://www.oag.ab.ca/wp-content/uploads/2023/03/Liability-management-oil-gas-mar2023.pdf>).

What changes do you recommend and why?: While we support the AER disclosing its set annual closure spend; it must also publicly provide its reasoning for the amount it sets for the annual closure spend. The reasoning should explain how the annual closure spend is set relative to the industry wide closure liability estimate, so the public can understand the AER’s planned timeline for the closure of Alberta’s inventory of inactive oil and gas assets. Importantly, the AER’s previous practice was to publish a forecast of annual closure spend targets (up to five years), which initially showed a steady increase in industry spending, reaching almost \$1 billion by year 5. This forecast was recently removed from the AER’s website, without explanation, and the closure spending requirements have stagnated at \$700 million (see Drew Yewchuk, *The 2024 Industry-Wide Closure Spend Lowered Without Explanation* (Aug 30, 2023), online ABlawg, <https://ablawg.ca/2023/08/30/the-2024-industry-wide-closure-spend-lowered-without-explanation/>).

It is crucial that the AER not only ensure compliance with the polluter-pays principle, but that the AER is open and transparent about its work and the liabilities that the oil and gas industry is responsible for. This type of disclosure would increase trust in the AER, demonstrating its independence and lack of regulatory capture (for further information on regulatory capture see *A Made-in-Alberta Failure*, pg. 2, <https://www.policyschool.ca/wp-content/uploads/2023/10/EFL-49A-AB-ConvenOGLiabilityRegime.YewchukFluker.pdf>).

Comment 9

Section or page number: Directive 088, Section 6 – Availability of Information

Briefly summarize the issue: Information from the AER that is ‘publicly available’ must in all circumstances be free, understandable, easily navigable, publicly-posted online and be available without subscriptions or accounts.

Currently, much of the information that the AER makes “publicly available” is difficult to navigate, and frankly is not comprehensible to the public, which frustrates the entire purpose of such disclosure. In particular, the OneStop platform is “user-unfriendly” and does not function as needed for public disclosure. Not only have we found OneStop hard to navigate, but it does not present information in an accessible way and it is often extremely difficult understand. For example, we have encountered application numbers for licensees on OneStop that had no further details and are not found when cross-referenced through the Integrated Application Viewer.

Additionally, because OneStop is organized by licensee, it fails to provide a broad perspective or overview on the progress and industry as a whole. This means that there is a lack of comparability.

Further, some information that the AER provides fails to be truly accessible as it requires payment or emailing the AER to obtain the information. For example, the ‘active well licences report’ has both a cost and must be ordered through the AER’s Information Distribution Services (see <https://www1.aer.ca/productcatalogue/362.html>).

What changes do you recommend and why?: The AER should create easily accessible, clear, regularly updated, comparable and easily navigable webpages for the public information it proposes to make available in these directives, as well as for information it currently discloses. The information should be kept up to date. For licensee disclosure information, updates should be made on the same cadence as information is submitted by licensees. All other publicly available information should be updated at a minimum annually.

Publicly communicating complete, transparent and useful information on liability management will provide a more complete picture of the risks and the actions taken by the AER to mitigate those risks (see *Report of the Auditor General – March 2023*, pg. 5, <https://www.oag.ab.ca/wp-content/uploads/2023/03/Liability-management-oil-gas-mar2023.pdf>). We acknowledge that the AER has already made some strides in making licensee life-cycle management information publicly available, such as the Licensee Closure Quota Compliance (see [Table 1](#)) and the Orphan Fund Levy Compliance (see [Table 3](#)) on webpages as part of its Liability Management Performance Report. Improvements are still needed to increase functionality.

We recommend that to increase transparency and comparability that the AER create and/or maintain a webpage that has an aggregate, navigable table of all licensees that contains a summary of the licensee life-cycle management of each licensee. The summary information should then be hyperlinked to more detailed information on each licensee. The more detailed information should include an assessment in the form of an annual corporate compliance report card for each licensee. It should include reporting on the number of active, inactive, suspended and abandoned but not yet reclaimed wells, and facilities the number of properties abandoned, remediated and reclaimed in the previous year, and the level of compliance with requirements, including the abandonment, remediation and reclamation requirements.

Directive 068, Security Deposits

Comment 10

Section or page number: Directive 068, Section 9 – Availability of Information

Briefly summarize the issue: Publicly available information disclosed transparently and clearly on the security held for oil and gas closure liabilities, both industry-wide and at a licensee level is necessary because of the environmental, health and economic risks that the public faces from inactive oil and gas infrastructure.

Well liabilities represent a massive environmental and health problem when inactive wells are not properly closed and reclaimed. These well liabilities also pose a significant economic risk to Alberta’s taxpayers, particularly when the AER does not hold sufficient security. It is estimated that conventional oil and gas closure liabilities are now approximately \$60 billion, and that the AER holds less than 0.5 percent security (or \$295 million) to cover those liabilities (*A Made-in-Alberta Failure*, pg 7, <https://www.policyschool.ca/wp-content/uploads/2023/10/EFL-49A-AB-ConvenOGLiabilityRegime.YewchukFluker.pdf>). It is estimated that this would cost each Alberta household over \$36,000 to cover these unfunded wellsite and pipeline liabilities (Mitch Anderson,

“Why Alberta Should Scrap Its Misleading \$7 Million Ad Blitz” in *DeSmog*, (Oct 18, 2024), <https://www.desmog.com/2024/10/18/why-alberta-should-scrap-its-misleading-7-million-ad-blitz/>).

What changes do you recommend and why?: The AER should disclose both industry and licensee-specific information on security deposits that are summarized by purpose or program. Licensee-specific information should be provided in a table that contains an overview of all licensees and that is hyperlinked to more detailed information.

The AER should also make public their reasoning if they do not require security from a licensee and also their reasoning for the amount of security required for a particular licensee.

Directive 011, Estimated Liability

Comment 11

Section or page number: Directive 011, Section 10 – Availability of Information

Briefly summarize the issue: Directive 011 proposes to make certain information on estimated liabilities publicly available; however, it does not propose to disclose its assessment and modelling of the effectiveness of the Orphan Wells Association (OWA).

The problem of closure liability in Alberta’s oil and gas industry is longstanding and it is time for Albertans to see how progress will be made to address these environmental and health liabilities. In 1986, a fund was created to address closure liability of orphan wells following the onset of declines in oil and gas commodity prices and an increase in bankruptcies in the sector. As of July 1, 2023, the OWA inventory held a total of 3,134 orphan sites for abandonment, 7,796 orphan pipelines for abandonment and 6,800 orphan sites for reclamation (*A Made-in-Alberta Failure*, pgs 2, 6, <https://www.policyschool.ca/wp-content/uploads/2023/10/EFL-49A-AB-ConvenOGLiabilityRegime.YewchukFluker.pdf>).

What changes do you recommend and why?: We recommend that the AER publicly disclose its assessment and modelling of OWA effectiveness and timelines that it has already completed, and then annually that the AER undertakes and publicly discloses an updated assessment.

Comment 12

Section or page number: Directive 011, Section 10 – Availability of Information

Briefly summarize the issue: It is positive that the AER is proposing to make publicly available licensee-specific total estimated liability (including site-specific liability or components of total estimated liability based on active, inactive, and marginal liability); however, the directive does not detail the manner in which this information will be disclosed.

Previously, the AER has been found not to sufficiently share information on estimated liability with the public. In 2023, the Auditor General found that while the AER has an industry wide

closure liability estimate, it does not regularly update it or communicate it to Albertans (see *Report of the Auditor General – March 2023*, pg. 22, <https://www.oag.ab.ca/wp-content/uploads/2023/03/Liability-management-oil-gas-mar2023.pdf>). That same year, the AER’s Liability Management Performance Report reported on deemed liability estimates over time, from 2019-2023 (see AER, *Liability Estimates*, Figure 5, <https://www.aer.ca/protecting-what-matters/holding-industry-accountable/industry-performance/liability-management-industry-performance/liability-estimates>). Further progress is needed in reporting on licensee-specific estimated liability.

What changes do you recommend and why?: The AER must continue reporting on industry wide liability estimates over time and must now transparently report on licensee-specific estimated liability. Information on licensee-specific total estimated liability should be disclosed in an easily navigable, accessible and free manner on an AER webpage (not just on OneStop). We recommend that the AER create and maintain a table that lists the total estimated liability of each licensee along with the licensee’s estimated liabilities by category of active, marginal, inactive, inactive for greater than five years, and inactive for greater than ten years. The table should contain hyperlinks to more detailed information on each licensee. Future public reporting should show changes in licensee-specific estimated liability over time in a user-friendly and easily understandable manner.

Comment 13

Section or page number: Directive 011, Section 10 – Appendix 1

Briefly summarize the issue: The Orphan Well program is wholly inadequate to address the financial risks of closure liabilities prevalent in Alberta.

The industry levy under the Orphan Well program is far too low and with too long of a timeline. Following the Auditor General’s recommendation that the AER start assessing the orphan fund levy to ensure long-term sustainability of the fund, the AER and OWA set a target closure date of 2036. However, experts have raised doubts that licensees will be able to pay the orphan fund levy to 2036. This is due to the likelihood of stability and profitability concerns with the oil and gas industry given the increasing competitiveness of low carbon energy sources and the green transition, as well as the chance of increasing major surges in new orphan infrastructure during this time. (see *Report of the Auditor General – March 2023*, pgs. 24-27, <https://www.oag.ab.ca/wp-content/uploads/2023/03/Liability-management-oil-gas-mar2023.pdf>; Drew Yewchuk, *The Alberta Energy Regulator’s Planned Timelines for Orphan, Inactive, and Decommissioned Oil and Gas Infrastructure* (Aug 16, 2024), ABlawg, <https://ablawg.ca/2024/08/16/the-alberta-energy-regulators-planned-timelines-for-orphan-inactive-and-decommissioned-oil-and-gas-infrastructure/>).

What changes do you recommend and why?: We recommend that the AER works to address the significant deficiency in the orphan program by setting the orphan fund levy higher while oil prices are strong and shifting the target closure date closer to 2030.

Comment 14

Section or page number: Directive 011, Section 5 – Regional Costs

Briefly summarize the issue: The Regional costs, or the average costs, that the AER suggests throughout Directive 011 are unreasonably low and need to be updated.

The estimated regional closure liability costs for well reclamation have not been updated, only moved from Directive 006 to Directive 011 (Draft Directive 011, page 7). These low closure estimates plagued the LRR and still have not been addressed. The AER has acknowledged these estimates are out of date and significantly too low, but has not addressed them. Draft Directive 011 also does not establish any closure liability estimate for pipelines (Draft Directive 011, page 9).

What changes do you recommend and why?: We recommend that the AER update these unreasonably low cost estimates and bring them in line with historical data and industry standards.