



Operators Take Note: Stricter Liability Management Regime is Proposed in British Columbia

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A stricter oil and gas liability management regime may soon be in effect in British Columbia. The BC government recently introduced Bill 15 (the “**Bill**”) in response to the growing number of oil and gas sites in BC with insolvent operators (“**Orphan Sites**”). The abandonment and restoration costs of these Orphan Sites are estimated to be between \$40 and \$60 million while the Orphan Site Reclamation Fund (the “**Fund**”) holds only \$5.3 million according to a recent report published by the BC Oil & Gas Commission (the “**Commission**”).

The Bill would increase contributions to the Fund and enhance the powers of the Commission to enforce permit holder abandonment and restoration obligations. The result will be a stricter and more expensive liability management regime for current and prospective permit holders in BC.

A shift to a liability-based regime

The Bill would enable the Commission to secure adequate funding for the Fund through a liability-based levy to be imposed on the permit holders with oil and gas wells in BC. The industry financed Fund is administered by the Commission to pay the costs associated with the abandonment and restoration of Orphan Sites. The proposed changes will shift the financing of the Fund from a restoration tax to a liability-based levy.

Under the new regime, permit holders in BC will be responsible to pay levies into the Fund based on their current abandonment and reclamation liabilities rather than their future production. The amount to be raised by the levies is based on the estimated abandonment and restoration costs of Orphan Sites as forecast by the Commission (the “**Benchmark Amount**”) and reflected through regulation. Although the frequency of the levies has not yet been confirmed, indications are that they will occur on an annual basis. In this regard, the BC government has released an information bulletin that says it intends to have the Benchmark Amount set annually to cover the projected abandonment and reclamation costs for Orphan Sites in the applicable year. The formula for the levies will be:

$$\frac{\text{liability of the permit holder}}{\text{total liability of all permit holders}} \times \text{Benchmark Amount}$$

A permit holder's funding obligations under the proposed regime will therefore be a proportionate share of the total levy (the Benchmark Amount) determined by the Commission. Given the recent estimate of the cost to abandon and restore the Orphan Sites in BC, this new liability-based regime will likely result in significant front-end funding obligations on industry participants.

Increased powers of the Commission

The other prominent changes proposed by the Bill include:

- **Strengthened enforcement powers over the Fund.** The Commission will be provided with additional powers to facilitate the administration of the Fund, including access to an expedited court process to recover unpaid levies and other charges from permit holders.
- **Increased discretion in issuing permits.** The Commission will have more discretion over who can conduct oil and gas operations in BC. The Commission will be able to examine, not only the conduct of the permit holder, but can take the conduct of the permit holder's "associates" into account when deciding to issue, suspend, cancel or amend a permit. "Associates" include agents, directors, officers or shareholders of the permit holder or any person who may have influence over the permit holder or affect the activities permitted by the permit, in the opinion of the Commission. This will provide the Commission with the ability to examine all facets of the permit holder's organization when determining who may hold a permit.
- **Enhanced authority over Dormant Sites.** The Commission will have increased flexibility to make regulations to classify long-term inactive sites of oil and gas operations as "Dormant Sites". This will require permit holders to proactively restore inactive sites rather than waiting for them to become Orphan Sites before restoration requirements are triggered (as is the case in the current regime). This change is aimed at preventing permit holders from delaying restoration of inactive sites only to later become insolvent.
- **Proactively preventing the "Orphan" designation.** The Commission will have discretion to approve a liability reduction plan filed by a permit holder in relation to a Dormant Site. If approved, the permit holder will be permitted to maintain the permit for that Dormant Site under the liability reduction plan rather than having the permit automatically expire (as is the case in the current regime). This change aims to help rehabilitate Dormant Sites before they become more difficult for the Commission to manage.
- **Loosened requirements for permit transfers.** The rules governing permit transfers will be loosened to allow willing permit holders to assume permits that may otherwise be terminated under the current regime. The current regime requires the signature of the permit holder to affect a transfer of a permit in all cases – even if the permit holder is insolvent or ceases to

exist. The proposed changes will provide the Commission with increased discretion to approve the transfer of a permit to a willing permit holder without the existing permit holder's signature if the existing permit holder is insolvent, no longer exists or otherwise cannot be located. This change will help allow work to continue on sites that would otherwise be declared to be Orphan Sites under the current regime.

- **Wider scope for emergency protocols.** The Commission will have the authority to enter property, mitigate damages and directly penalize permit holders for any "public safety" purpose, not solely for spills (as is the case in the current regime).
- **Further environmental provisions.** The Commission will be able to directly mandate a heritage inspection or investigation for proposed or active operations and will have broader powers to rescind "special project" designations, reserved for innovative projects.

Conclusions

This Bill will have sweeping implications on current and prospective permit holders operating in BC. Given the high estimated abandonment and restoration costs of the Orphan Sites in BC, the new liability-based levies will likely result in significant front-end funding obligations on permit holders in order to conduct operations in BC. The ability of the Commission to take into account the "associates" of a permit holder in deciding to issue, suspend, cancel or amend a permit could impact oil and gas transactions and corporate governance decisions. The proposed changes also loosen restrictions on permit transfers and will allow select Dormant Sites to maintain their permits under an approved liability-management plan. These changes, in turn, should make it easier for willing permit holders to assume troubled sites.

The Bill confirms that BC is serious about addressing the spike in Orphan Sites in the Province and plans to provide the Commission with powerful tools to enable it to do so.

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