

ALBERTA'S NEW LIABILITY MANAGEMENT FRAMEWORK: A TEASER OF WHAT'S COMING

Posted on August 4, 2020

Categories: Insights, Publications

On July 30, 2020, the <u>Government of Alberta announced</u> a pending overhaul to the province's current regime for managing oil and gas liabilities, which is being referred to as the Liability Management Framework ("**LMF**"). The LMF is described as a new approach to more actively manage the reclamation of oil and gas sites throughout their entire life cycle, from exploration and licensing, through operations, reclamation and post-closure.

Currently, the Alberta Energy Regulator ("AER") administers the Licensee Liability Rating program, which requires companies with oil and gas assets that are licensees to maintain a minimum liability management ratio ("LMR") as a tool for assessing a company's ability to address abandonment, remediation and reclamation obligations. A licensee's LMR is a ratio of the licensee's deemed assets value to its deemed liabilities.

Companies with a low LMR (below 2.0) are required to provide the AER with a security deposit to cover potential abandonment costs. The AER's premise being the higher the LMR number, the better the company's financial wherewithal. However, stakeholders have long criticized the use of the LMR as an inadequate measure for assessing such capability, and the required security deposits have had detrimental impacts on the working capital of companies who are experiencing issues in accessing sufficient capital to sustain operations.

Accordingly, the LMF is highly anticipated. However, the announcement has provided limited insight into the pending regime change, and much of the details are still to be released. A discussion of the expected regulatory changes that are disclosed in the province's announcement follows.

Different Roles

Under the LMF, the Government of Alberta will set the policy direction and provide oversight, while the AER will be responsible for administration, including monitoring progress, working with industry and enforcement. In addition, through authority delegated by the AER, the Orphan Well Association will manage oil and gas sites that do not have a legally responsible and/or financially capable owner.

Replacing the LMR and Proactive Oversight



Under the LMF, the LMR is to be replaced by a Licensee Capability Assessment System. This system will assess an oil and gas operator's ability to meet its regulatory liability obligations as a condition of issuing regulatory approvals. It is unclear at this time what metrics will replace the LMR, but the province promises that the new program will take into account "a wider variety of assessment parameters".

The LMF also introduces the concept of the Licensee Special Action, which the announcement advises will provide "guidance and proactive support for individual or distressed operators". The <u>fact sheet</u> is unclear on how this oversight will be administered, or what the province's mandate will be in providing proactive support to oil and gas operators.

Inventory Reduction Measures and Site Clean Up Nominations

A new inventory reduction program ("**IRP**") is also to be introduced, with an aim of reducing inactive well inventories. This initiative is to establish annual industry site closure spending targets over a five-year rolling period to help reduce inactive well inventories. It is also to include collaborative, area-based closure programs, which will involve different companies with liabilities in similar areas sharing clean-up costs. The area-based programs are intended to improve efficiency and reduce costs associated with site closure.

The IRP will introduce a mechanism through which landowners may nominate a site for clean-up. The province will also receive requests from the general public for concerns respecting public lands, which are in-turn, to be submitted to the AER by the province. Following a nomination, the burden will then shift to the operator to demonstrate why a well site should not be brought to closure.

Other Mechanisms for Addressing Oil and Gas Liabilities

The announcement states that a panel will be established to consider issues associated with legacy and post-closure sites, as well as sites that were remediated or reclaimed prior to existing standards being implemented. It also states that the Orphan Well Association's expanded mandate, set out in *The Liabilities Management Statutes Amendment Act*, 2020 (SA 2020 c4) that came into effect on June 15, 2020, and which we wrote about in a <u>separate article</u>, will have a role in implementing the LMF.

Details to Come

As noted above, the announcement sets out certain key points to be addressed in the LMF, but does not provide a lot details respecting how the LMF will be implemented. McMillan is closely monitoring the new program and will be providing further analysis regarding its expected impact as further information becomes available.

by Alex Grigg and Jody Wivcharuk



A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2020