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The theory and the practice of well abandonment and surface reclamation in Alberta: the latest episode in the dismal saga of Sarg Oils Limited

By Nigel Bankes

Decision commented on:

Sarg Oils Limited, Review of Abandonment Orders AD 2006-17, AD 2006-17A, AD 2006-18, AD 2006-19 and AD 2006-20, November 15, 2011, 2011 AERCB 032.

Well over ten years ago Sarg Oils sold oil and gas assets to another party. The Energy Resources Conservation Board (ERCB) refused to consent to the transfer of the well licences associated with those assets and as a result Sarg was left with the responsibility of abandoning those facilities. And when Sarg refused, the ERCB did the job itself and sent the bill to Sarg; and when Sarg didn't pay (and the Court of Appeal ruled that this was a lawful debt owing to the Board: *ERCB v Sarg Oils Ltd*, 2002 ABCA 174) the ERCB garnisheed other assets of Sarg (the Southern Alberta assets). Sarg didn't like that and shut the facilities in - owing by this time in excess of $1 million. The Board informed the province of this dastardly deed and the province triggered the procedures under the *Petroleum and Natural Gas Tenure Regulation* (Alta Reg 267/1997, s18) to terminate the leases on those Southern Alberta assets. Since Sarg no longer had the right to exploit the resources on those terminated leases, the ERCB ordered Sarg (2006) to abandon the related wells and facilities. Sarg did nothing about this except to seek a section 40 review (this application) under the *Energy Resources Conservation Act*, RSA 2000, c E-10) of the Board orders. And now, five years later, the Board has concluded that the orders "are valid and will be upheld" (at para 148). And now, Sarg must really get on with it! Whew! Unless of course Sarg seeks leave to appeal.

And what if Sarg and all the working interest owners in these assets have dissipated all their other assets fighting these abandonment orders and dreaming up all sorts of far-fetched division of powers (paramountcy, and interjurisdictional immunity at paras 92 - 119) and Charter arguments (s 7 and s 15 at paras 120 – 143))? Well, then I suppose that the Orphan Well Fund (see here and the *Oil and Gas Conservation Act*, RSA 2000, c O-5, ss 27 – 32 and Part 11) will do the job for it. And while most of the time the costs of the Orphan Well Fund are covered by industry (by means of a $12 million levy per year), recall, dear reader, that in 2009 the province decided to inject a little extra cash ($30 million), your cash, into the Orphan Fund as part of a package of incentives for the "beleaguered" energy industry (see here). How's that for an application of the provincially endorsed polluter pays principle (see *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, s 2(I))?

There must be a better way of ensuring that those who hold non-producing wells and other assets properly abandon them and carry out surface reclamation in a timely manner and at their own expense.