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## **The 2020/2021 Orphan Fund Levy and the Missing Consultation on Environmental Liability Management Reform**

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The Orphan Fund Levy is a levy imposed by the Alberta Energy Regulator (AER) on all holders of licenses or approvals issued by the AER. The levy is authorized by sections 72 to 75 of the *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#). The levy funds the work of the Orphan Well Association cleaning up oil and gas assets that have no solvent owners and no financial security set aside for their clean-up. The AER released a bulletin setting the [2020/2021 Orphan Fund Levy](#) on September 10, 2020. The prescribed levy is \$65 million for 2020/2021, up from \$60 million in [2019/2020](#), \$45 million in [2018/2019](#), and \$30 million in [2017/2018](#) (when it was still collected in [two parts](#)).

The good news is that the Orphan Fund Levy is going up, which should help cover the substantial costs of cleaning up Alberta's growing orphaned well inventory. The bad news is that in \$3.4 million of the levy was not received in 2019 due to the insolvency of some operators ([Orphan Well Association Annual Report, 2019](#)). The ugly news is that, despite Alberta's commitment to implement new regulations to significantly reduce the prospect of a growing inventory of orphan wells (see the announcement of [April 17, 2020](#)), and the provincial government's press release of [July 30, 2020](#) about of the new framework to manage oil and gas liabilities, there have yet to be any public details or public consultation on the design of the new liability management system. Alberta is drifting along with the old system despite acknowledging its massive problems.

The reform of the environmental liability system is of clear public importance and public concern, and is not restricted to just orphaned oil and gas wells. For a fulsome discussion of Alberta's oil and gas environmental liability problem and a call for transparency from five months ago, see [here](#). Alberta's decision to open large portions of the eastern slopes of the Rockies to coal mining with the [rescission of the 1976 coal policy](#), announced after that post, adds another aspect to the problem.

Alberta's liability management system addresses the environmental liabilities of coalmines through the [Mine Financial Security Program](#) (MFSP), which has been due for reform since an [Auditor General's report in 2015](#) found that the MFSP overstated asset values in a manner

that could result in security amounts inconsistent with the “polluter pays” objective of the program. The MFSP currently has [\\$1.47 billion in security compared to an estimated \\$31.39 billion in liabilities](#). Coalmine liabilities have not received much attention for the last few decades because they have been relatively small beside the gigantic liabilities of the oil sands mines that are also part of the MFSP, but coalmine liabilities have the potential to become significant again with the new wave of coalmines now seeking licenses.

Albertans should be concerned about what is delaying the reform of the liability management system. The problems with the current system have been widely-known since at least the [Court of Appeals’ Redwater decision](#) in 2017. The dissent noted that the “number of new orphaned wells designated in 2013/2014 was 80; in 2014/2015 that number had increased to 591” (*Orphan Well Association v Grant Thornton Limited*, [2017 ABCA 124 \(CanLII\)](#) at para 144). The AER has hopefully been trying to design the new system for the last five years, if not longer, and Albertans should be concerned about this new liability system being designed behind closed doors. If the new liability system is developed in meetings between the AER and the energy industry to the exclusion of the public, the new system is unlikely to protect the interests of Alberta’s citizens in general and rural landowners in particular.

So what’s the hold up? My best guess is that the major players in Alberta’s energy industry are making contradictory requests of the government. Some companies are bitter-enders planning to pump Albertan oil for as long as possible, and looking for a reliable liability management system that protects them from paying for the risky behaviour of bankrupt companies. Other companies see the oilsands as an over-the-hill energy source and are looking to sell their assets, wave farewell to the province, and leave the smallest security deposits possible for their environmental liabilities. Whatever is going on, it should be going on where Albertans can see it.

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