

The AER Announces Some Details of the Mandatory Closure Spend Targets

By: Drew Yewchuk

Legislation Commented On: [AER Bulletin 2021-22 ‘Invitation for Feedback on Proposed New Licensee Life-Cycle Management Directive’](#); [AER Bulletin 2021-23 ‘Mandatory Closure Spend Targets’](#)

This is another post on the changes the Alberta Energy Regulator (AER) is making to the Liability Management Framework for conventional oil and gas assets. The earlier post I co-authored with Shaun Fluker on the problems with the liability management framework and the changes being made to it (and specifically the changes to the Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals) is [here](#). The AER is now seeking comments on Draft [Directive XXX: Licensee Life-Cycle Management](#) (the Draft Directive) until July 25, 2021. The Draft Directive will replace the current [Directive 006](#) once finalized. This post discusses the Draft Directive and the details of the inventory reduction program first announced [a year ago](#).

Draft Directive XXX: Licensee Life-Cycle Management

The Draft Directive describes the licensee capability assessment (LCA) discussed in the first post [here](#). Nothing in the Draft Directive adds much clarity or detail to how the LCA will work, and so it does not change that initial assessment: the proposed financial disclosure requirements for the new system are too soft, the AER is unlikely to have the people capacity to monitor companies sufficiently, and several of the major problems from the previous iteration of the liability management system are left in place.

What is new is the details of the inventory reduction program. It appears to be a mandatory version of the area-based closure program already implemented by the AER. The inventory reduction program takes the form of mandatory closure spending targets set by the AER annually for each licensee. The targets are mandatory, as the licensee must spend the target amount or pay an equivalent security deposit to the AER in the amount of the mandatory target. The Draft Directive is not clear whether a licensee can take a blended approach, for instance spending 50% of the target on clean-up work and paying 50% as a security deposit. The AER has enforcement powers to ensure licensees comply with the mandatory targets, but only time will tell how vigorously the mandatory targets are enforced. Lax enforcement was a concern with the previous iteration of the liability management system.

[Bulletin 2021-23](#) sets the industry-wide mandatory spending target for 2022 at \$422 million and the 2023 target at \$443 million (it appears 2021 will not have a mandatory target) and forecasts the mandatory targets for 2024 to 2026.

The Missing Information

Some very important details are missing from the Draft Directive and the Bulletins (at least I cannot find this information). The first is an explanation of how the industry-wide mandatory targets were calculated. The second is how the industry-wide mandatory target will be distributed between licensees and approval-holders.

The question of how the industry-wide mandatory spending target was set is important. The President and CEO of the AER was previously reported to have [said that the amount would likely be around 4 to 5 per cent of the total value of industry's environmental liabilities](#). But that does not even come close to lining up. [Back in 2018 the AER](#) said the official estimate of clean-up liabilities was \$58 billion ([with \\$28 billion said to be from mining](#), and the remaining \$30 billion from conventional oil and gas), and the internally-calculated AER estimate was \$260 billion. Based on the conservative \$30 billion estimate and 4%, the industry-wide mandatory targets should be in the \$1 billion range. Another possibility is that some version of the calculation used for the Area-Based Closure program has been applied. The Area Based Closure program required a spend target of 4.33% of a licensee's deemed inactive liability under the Licensee Liability Rating. That would be a troubling approach because the Licensee Liability Rating system was deficient (that is why the AER is replacing it) and no aspect of it should have been carried forward. Rather than a significant change, this would mean the industry-wide mandatory target is merely a slightly expanded version of the flawed Area-Based Closure program.

The AER should provide an explanation of how the industry-wide mandatory target was set. Last Tuesday, I reached out to the AER and requested an answer but did not hear back by the time this blog was submitted for publication. It is odd that despite taking comments on the Draft Directive until July 25, 2021, the industry-wide mandatory targets have already been set for the next two years. One would expect that the AER would take comments and integrate them before making the final decision.

One of my major concerns is the lack of transparency with the public on the design of the liability management system, and on the scope of oil and gas liabilities. Most of the figures about the scale of the orphan well problem still come from investigative reporting, rather than official AER reports. A great example of the level of secrecy is from an Auditor General Report released this month that notes "Regulatory staff at the AER maintain a list of legacy and orphan sites it manages that includes cost estimates based on judgment and experience with other similar sites. But that rather horrifyingly, "Finance staff at the AER were initially unaware of the list...They became aware of this list through our audit work." (Processes to provide Information About Government's Environmental Liabilities, Report of the Auditor General, page 23).

I am even more concerned that the answer to these questions has not actually been kept secret within the AER, but that the amount of the mandatory targets has been negotiated with industry behind closed doors. Year after year, the AER has sought the input and approval of the Canadian Association of Petroleum Producers and the Explorers and Producers Association of Canada prior to setting the amount of the Orphan Fund Levy. My concern is that Albertans have been shut out of the important process of deciding how to handle Alberta's environmental liabilities again, in

spite of the fact that significant public funds are at stake. The AER is supposed to be industry-funded, not industry-run.

While I encourage interested Albertans to submit comments, the AER needs to first provide some more information. Before they can comment on the inventory reduction program, Albertans deserve a proper explanation of how it works and how these dollar amounts are being set. What is the timeframe the AER is giving industry to clean up their liabilities? From what I can see, it appears to be more than 50 years.

Feedback or questions on the Draft Directive can be sent to the AER at [DirectiveFeedback@aer.ca](mailto:DirectiveFeedback@ aer.ca). Do not expect rapid answers to your questions.

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