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Updates to the Oil and Gas Liability Management Framework: The New Closure Nomination and The Renamed Closure Quotas

Regulatory Documents Commented on: [Directive 088: Licensee Life-Cycle Management \(February 2023\)](#) and [Manual 23: Licensee Life-Cycle Management \(February 2023\)](#)

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The Alberta Energy Regulator (AER) continues to work towards implementing the Government of Alberta's new [Liability Management Framework](#). This post goes into the details of this implementation, on the assumption the reader is familiar with the ongoing reforms. For some background, see ABlawg's post from February 2021 [here](#), and my [8 November 2022 post](#). This post covers the February 2023 updates from the AER: a new [Directive 088: Licensee Life-Cycle Management](#), a new [Manual 23: Licensee Life-Cycle Management](#), [responses to an engagement survey on Directive 088](#), and the [Fall 2022 Engagement Session Q&A on Closure Nomination](#). The AER also released a new [explanatory video](#).

The new Directive 088 and Manual 23 create the closure nomination process and modify the Licensee Capability Assessment and the Closure Spend Quotas (formerly called the Mandatory Spend Targets). This post describes these changes, and notes that AER secrecy prevents the public from assessing whether the new framework will be effective.

Closure Nomination Set to Begin in April 2023

Closure nomination was first promised in [July 2020](#). The Closure Nomination Program was initially set to start in [late 2022](#), but the AER delayed the start of the program until April 2023 to design the program and ensure continuity with the site nomination process under the federally funded Site Rehabilitation Program.

Closure nomination implements the AER's power under section 3.016 of the *Oil and Gas Conservation Rules*, [Alta Reg 151/1971 \(OGCR\)](#). It allows surface rights holders to formally request that licensees of wells or facilities that have been inactive for more than five years (including where abandonment was completed but remediation and reclamation have not been done) start or continue the cleanup process. A formal request will usually require the licensee to submit a 'baseline closure plan' and start the process of closure expected to take 10-13 years.

Licensees may also submit "a non-baseline closure plan or proposal to defer the closure plan" (Directive 088 at 8). Deferral will only be allowed for wells and facilities attached to active sites or that are being put to another use. When the AER will accept non-baseline closure plans that allow more time to start and complete closure work is much less clear. Manual 23 includes a list of factors the AER will consider:

- 1) the nature and complexity of issues associated with the well or facility
- 2) the proposed closure activity and associated timeframes
- 3) the results of the holistic licensee assessment
- 4) existing closure activity related orders for licensee, well, or facility
- 5) number of wells and facilities nominated for closure
- 6) any other factor identified by the AER (e.g., site-specific liability assessment)

(Manual 23 at 20, numbering added)

Factors 1, 2, and 6 are clear enough— technical complexity or major contamination problems are going to need longer closure times. Factor 4 also makes sense – where closure orders are already in place those timelines may override the Closure Nomination.

Factors 3 and 5 lack clarity. For factor 3, will the AER allow longer for closure where a licensee has a strong ‘holistic licensee assessment’ and is therefore more likely to be able to pay for closure now and in the future, or where a licensee has a poor ‘holistic licensee assessment’ and therefore may not be able to pay? If financial difficulty allows a licensee to avoid closure nomination, that would create a large problem for the effectiveness of the program.

For factor 5, how will the AER be determining when the number of sites nominated is ‘high’ enough to justify longer closure times? A large number of companies have hundreds of inactive wells, and some guidance on when a number of nominated sites is ‘large’ is necessary. The engagement survey comments only note that the approach “will be scenario specific and consider the capability of the licensee”. (Engagement Survey at 7) This point will be the subject of a wave of regulatory appeals by June if the AER does not develop a clear and consistent approach.

Orphan wells assigned to the Orphan Well Association are not subject to the closure nomination process. (Engagement Survey at 15)

Simplifying Changes to the Licensee Capability Assessment

The February 2023 version of Directive 088 makes some small modifications to the Licensee Capability Assessment (LCA). The Licensee Capability Assessment is the AER’s replacement for the failed Licensee Liability Rating (LLR) program (strangely, the AER seems to still be using the LLR to calculate the spend quotas, despite it being unreliable).

Manual 23 shows the AER has simplified the “licensee profile” part of the LCA. The previous version had a complex table of licensee attributes. The new version has a simplified classification approach for three types of licensees:

- Financially capable – Licensees with low to medium levels of financial distress and Tier 1 and Tier 2 in remaining lifespan of resources
- Financially distressed – Licensees with a high level of financial distress

- Potential sustainability concerns – Licensees with low to medium levels of financial distress and Tier 3 in remaining lifespan of resources (Manual 23 at 9)

This simplification shows an increased focus on the “remaining lifespan of resources” in applying the LCA, and a decreased focus on licensee regulatory compliance. This is a sane approach, given that one of the many major failures of the LLR was its failure to consider the depletion of reserves. A good record of regulatory compliance is also meaningless when a licensee runs out of reserves. The explanatory video released by the AER also explains that the licensee classification will be used to prioritize AER attention for full licensee reviews, and that the Liability Management Program has not yet been implemented for non-producer licensees (licensees holding primarily pipelines, midstream facilities, or waste facility approvals). There is also more detail on the ‘Licensee Management Program’, clarifying the AER may collect security from licensees that are approaching the end of their reserves. However, Directive 088 and Manual 34 set no standards for how the AER will be exercising this power, leaving that decision to the secretive discretion of the AER.

Name Changes for the Closure Spend Quotas (formerly ‘Targets’)

The names “mandatory closure spend targets” and “voluntary closure spend target” have been scrapped in favour of the clearer “mandatory closure spend” and “supplemental closure spend”. The word “target” no longer appears anywhere in Directive 088 (it still appears twice in Manual 23, on pages 10 and 11, but this seems to be an error). This change is a good choice, as a “target” is an aspiration that efforts are aimed towards, making the phrase “mandatory target” confusing and slightly contradictory. These are quotas, not targets, and it is best to call them what they are.

Other than the name change, the new Directive 088 introduces a typo on page 5, where it says “If a licensee fails to meet requirements 4, 5, or 8, the licensee will be required to provide a security deposit” – it appears the AER meant to write requirements “3, 4, or 6”.

The new Directive 088 provides no clarity on what the ‘threshold’ is for a licensee to elect to provide a security deposit in lieu of performing mandatory closure spend work. The new Directive 088 also allows licensees to pay security by the end of the year, December 31st, instead of requiring it at the start of the year, by January 31st. (Directive 088 at 5)

Manual 23 adds new language on how the industry wide closure spend quota is set: “[t]he industry-wide closure spend target is based on inactive liability and historical closure performance and considers factors such as commodity prices and service sector availability.” (at 11). This is the same unhelpful information the AER has provided before. It leaves wide discretion for the AER in setting the industry-wide spend quota, and does not allow the public to assess the adequacy of the closure spend quota.

Conclusion

The changes and announcements appear to be small improvements to the developing liability management framework and show that the AER is continuing their very slow and gradual

approach. The effectiveness of the liability management framework depends on the annual amounts of the closure quotas, orphan levy, and how much LCA security collected to account for the decline in remaining lifespan of resources. Albertan law does not set out formulas for setting the quotas, levies, and security payments. These decisions are still left to the discretion of the AER, which has a record of making these decisions behind closed doors and providing minimal explanation to the public. Without information showing how the quotas, levies, and security payments are being calculated and set, the Albertan public is unable to assess the actual effectiveness of the new liability management framework.

This post was initially drafted by February 23, 2023 – I waited for the [March Onestop update notes before](#) posting on the mistaken expectation that those notes would provide more detail on the LCA changes.

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