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Auditor General Updates Recommendations Unaddressed by the AER on the Effectiveness of Regulating Closure Liabilities in Conventional (Non-Oil Sands) Oil and Gas

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Report commented on: Report of the Auditor General – December 2023

Earlier this month, the Auditor General of Alberta filed a report under section 19 of the *Auditor General Act*, RSA 2000, c A-46, with the Legislative Assembly. The Report includes a summary of 113 recommendations the Auditor General has made to the government since November 2022, including those made by the Auditor General in March 2023, directing the Alberta Energy Regulator (AER) to improve performance of the management and regulation of end-of-life oil and gas liabilities in the conventional (non-oil sands) sector. The December 2023 report indicates that none of the 9 recommendations made to the AER in March are ready for reassessment. In other words, the AER has not yet taken sufficient action.

The Auditor General's December 2023 Findings

In "Polluter Pays Principle at Risk: Auditor General Finds Alberta's Oil and Gas Liability Regime Still Badly Deficient," we summarized the findings of the Auditor General's March 2023 report concerning deficiencies in how the AER is regulating end-of-life closure liabilities in the conventional oil and gas sector. In that post, we commented on several of these deficiencies.

The December 2023 Auditor General report indicates that none of its recommendations have been acted on sufficiently to allow for re-assessment (Report at 65 – 71). In the following paragraphs, we restate deficiencies highlighted in our March post, and match them with the Auditor General's December 2023 statement of consequences if the AER continues to be unresponsive:

Performance Measurement and Public Accountability

AG finding in March 2023: Public reporting and external performance measurement on liability management are insufficient to assess whether results are being achieved and risks are being effectively managed. The AER has an industry-wide closure liability estimate but does not regularly update it or communicate it to Albertans.

In the December 2023 report, the Auditor General frames the *consequences of not taking action* on this finding as follows:

> Without specific goals, targets, and performance measurement, it is very difficult for Albertans to hold industry, AER and government, accountable for liability

> management. Whether or not liability management activities are successful is dependent on transparent disclosure of what AER expects industry to achieve and what has been achieved relative to those expectations. Without this information, AER will be unable to demonstrate whether industry's activities are making a positive impact at the desired pace. And without a reliable and adequately explained total liability estimate, Albertans lack information about the overall scope, risk, and potential financial exposure. (Report at 66)

Sufficient Financial Security and Minimized Risk of Inappropriate Licence Transfer

AG finding in March 2023: The Licensee Liability Rating Program, which has historically failed to properly identify financial risks and to ensure sufficient security is collected, remains in place despite its known failures. AER's licence transfer process is also too discretionary and lacks sufficient monitoring of licensee conditions.

In the December 2023 report, the Auditor General frames the *consequences of not taking action* on this finding as follows:

> The Licensee Liability Rating Program has been central to AER's liability management efforts. Timely correction of its shortcomings is critical for AER to ensure that future approaches to security collection actually meet the objectives of reducing the number of orphan sites transferred to OWA and minimizing the risk that the public will eventually have to pay to clean up sites.
>
> If the liability management strategies do not focus on the development of improved measures to evaluate the effectiveness of the licence transfer system, lessons learned from previous decisions of licence transfers will not benefit future decisions. (Report at 68)

Inactive Site Closure

AG finding in March 2023: There are still no legislated timelines for the abandonment or reclamation of sites. Inactive well sites continue to grow in numbers, abandonment work has remained flat, and licensees have focused more of their clean-up activities on low-risk and lower-cost sites.

In the December 2023 report, the Auditor General frames the *consequences of not taking action* on this finding as follows:

> Without sufficient processes to monitor, measure, and ensure compliance with the Inventory Reduction Program, the intended outcomes of reducing the number of inactive sites and increasing the timeliness of closure of inactive sites may not be achieved. The success of this program is dependent on strong systems to monitor and measure its performance, take necessary enforcement actions to ensure spending is sustained, and report on whether it is achieving stated objectives. (Report at 67)

Monitoring and Compliance on Site Closure Work

AG finding in March 2023: The AER has not completed well-suspension compliance assurance activities for the past three years. The AER completes proactive inspections on abandoned wells; however, there is no assurance process to ensure routine abandonments are complying with directives. The AER has increasingly automated its approval process for reclamation certificates, but improvements are needed to ensure approvals are consistently valid. Manual reviews for reclamation certification are occurring; however, improvements are needed to ensure judgments and reviews are properly evidenced. The AER lacks processes to ensure that third-party professional declarations meet requirements. The AER audits reclamation post-certification; however, the process has been inconsistent and there is a 16 per cent rate of non-compliance. The AER did not consistently complete reviews of remedial action plans.

In the December 2023 report, the Auditor General frames the *consequences of not taking action* on this finding as follows:

> If weaknesses in regulatory compliance activities are not resolved, there is an increased likelihood that inactive oil and gas infrastructure is not properly closed within a reasonable amount of time, which potentially increases the risk to the environment or to public health and safety. (Report at 69)

Orphan Well Levy and the Orphan Well Association (OWA)

AG finding in March 2023: The AER did not scrutinize the orphan levy proposed by the OWA prior to 2022 and has never analyzed the longer-term sustainability of the Orphan Fund.

In the December 2023 report, the Auditor General frames the *consequences of not taking action* on this finding as follows:

> If AER does not improve its processes to assess information from OWA, there is the risk that AER will not be able to sufficiently assess whether OWA is meeting its objectives. It also may limit AER's ability to sufficiently assess whether further actions are needed to mitigate the risks of untimely closure and financial burden being shifted to OWA and the public. AER holds responsibility for the Orphan Fund and has a critical role in ensuring that the Orphan Fund is sustainable to meet future needs and without sufficient and proactive analysis, the necessary closure work of orphan sites may not happen as intended. (Report at 67)

Discussion

In July 2020, Alberta announced it would be implementing a new Liability Management Framework to address ballooning closure liabilities in conventional oil and gas that are estimated at anywhere from $60 to $130 billion (See "A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability" below, at page 6). The AER has been incredibly slow to design and implement the new framework. AER Bulletin 2023-41, "Ongoing Implementation of the *Liability Management Framework*," released November 16, 2023, says the AER will begin replacing the failed Licensee Liability Rating system and its inaccurate and out-of-date estimates for the costs of abandonment and reclamation in late 2024 – more than 4 years after industry observers announced what was then heralded as the most significant overhaul of the liability management regime in decades.

One part of Bulletin 2023-41 should comfort industry and frighten Albertans. The AER promised engagement with stakeholders "will occur before the draft documents are provided for public comment" – in other words, the AER will continue with its tradition of working with industry behind closed doors in order to design the regulations before announcing anything to the public.

As noted above, closure liabilities in conventional oil and gas are estimated at anywhere from $60 to $130 billion. This is a massive environmental and financial problem, and it is surely one of the most significant policy failures in the history of this province. If Alberta taxpayers are left with this bill, it will at least double the current provincial debt (and this does not include the oil sands). And yet, there is no sign of urgency from the AER or the UCP government. Indeed, the Minister of Environment and Protected Areas has just announced a pilot project that seems likely to exacerbate problems with reclamation work that have been identified by the Auditor General.

The sad truth of the matter is that little here will change until there is an Alberta government that is fully committed to fixing three systemic problems with the regulatory regime: a lack of transparency, too much discretion in the AER, and a regulator captured by industry interests. We discuss these problems in much greater detail in "A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability," a recent paper published by the School of Public Policy (a summary of which can also be found here). For a similarly dire assessment with respect to oil sands liabilities, see this recent paper by Martin Olszynski, Drew Yewchuk and Andrew Leach. The Auditor General's recommendations are closely associated with these deficiencies, and the Auditor General is performing a valuable public service by keeping the AER's feet to the fire with updates.

This post may be cited as: Shaun Fluker, Drew Yewchuk, and Martin Olszynski, "Auditor General Updates Recommendations Unaddressed by the AER on the Effectiveness of Regulating Closure Liabilities in Conventional (Non-Oil Sands) Oil and Gas" (22 December 2023), online: ABlawg, http://ablawg.ca/wp-content/uploads/2023/12/Blog_SF_DY_MO_Auditor_General_December.pdf