

June 4, 2024

Administrative Penalties at the Alberta Energy Regulator: A Rational Calculation of a Penalty Unlikely to be Paid

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Decision Commented on: AER [Administrative Penalty 202405-002](#), Tallahassee Exploration Inc. (May 2024)

This is the second post on how the Alberta Energy Regulator (AER) makes decisions on financial penalties to companies that contravene the conditions of their project approvals. The [first post](#), in April 2023, commented on an AER penalty to Ovintiv for operating a sour gas plant with a shorter than approved flare stack.

On May 3, 2024, the AER issued a \$191,885 [administrative penalty](#) to Tallahassee Exploration Inc. (Tallahassee Exploration) for failing to monitor methane emissions, failing to report methane emissions, and reporting false methane emissions. The AER also issued a [news release](#), suggesting the AER views this as a good example of AER enforcement.

This first part of this post describes the contraventions and assesses the AER's penalty decision making in setting the amount of the penalty. In short, the penalty decision is a welcome turn towards economic reasoning and rationality missing from earlier AER penalty decisions. This is a genuine improvement for AER administrative penalties. Unfortunately, however, the massive closure liabilities problem created by [decades of regulatory mistakes](#) looms over this penalty decision. There is a risk the penalty is futile and destined to go unpaid because Tallahassee Exploration was allowed to load up on assets with high closure liabilities purchased from the bankrupt estates of previous licensees. Tallahassee Exploration was already facing [AER enforcement action and their licenses are being cared for by the Orphan Well Association \(OWA\)](#).

The Preliminary Penalty Assessment

The penalty decision was made by the Director of Emissions Compliance, Support & Safety, and Regulatory Compliance for the AER (Director). The penalty decision is divided into two parts: the preliminary penalty assessment for \$150,000 and the economic benefit assessment for \$41,885.

On noncompliance count 1, Tallahassee Exploration failed to report 2021 annual methane emissions to the AER for 55 facilities as required by AER Directive 060. The base penalty was \$82,500 or \$1,500 per facility (at 2).

On noncompliance count 2, Tallahassee Exploration provided false or misleading information in contravention of section 227(b) of the *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#). Specifically, Tallahassee Exploration had re-submitted the methane emission

information it had gathered for one facility in 2020 again for 2021. The base penalty was \$2,500 (at 3-4). Oddly, Tallahassee Exploration seems to have only attempted this data-faking method for one facility. The penalty decision says nothing about why only one facility was singled out.

On noncompliance count 3, Tallahassee Exploration failed to conduct fugitive emissions surveys in contravention of *Directive 060* and the *Methane Emission Reduction Regulation*, [Alta Reg 244/2018](#) at any of their 41 facilities. The base penalty was \$61,500, or \$1,500 per facility (at 4).

The Director then applied the factors from section 3(2) of the *Administrative Penalty Regulation*, [Alta Reg 23/2003](#). The Director increased the penalty by \$1,500 based on the importance to the regulatory scheme of compliance with the provision, and another \$1,500 for the degree of wilfulness in the contravention – noting that Tallahassee Exploration had already failed “to submit the annual methane emissions reports regarding 2019 data” (at 6). Interestingly there is nothing on the AER compliance dashboard indicating Tallahassee Exploration was penalized for the 2019 noncompliance, suggesting the AER decided not to penalize that prior noncompliance. The Director did not explicitly increase the penalty based on the “history of noncompliance” (see section 3(2)(e), although that factor appears to have been considered under section 3(2)(b), the degree of wilfulness). The Director did increase the penalty by another \$500 because Tallahassee Exploration obtained an economic benefit from their noncompliance. Tallahassee Exploration was given an opportunity to present its case in relation to the penalty, their submissions focused on their financially constrained position (at 7).

The Economic Benefit Assessment

The Director explained the purpose of the economic benefit assessment, noting “[t]he economic benefit portion of an administrative penalty is intended to ensure that a regulated party does not have an economic incentive to avoid compliance, and that the regulated party is deterred from future noncompliance” (at 10). The economic benefit assessment is about restoring the financial situation that ought to have occurred if legislative requirements were followed, not about punishment, and does not address the intent of the licensee (at 11-12).

Tallahassee Exploration had obtained a \$41,885 quote for the cost of conducting fugitive emissions surveys for 2021 but then did not have the fugitive emissions survey done. The Director therefore set this part of the penalty as the cost of the work Tallahassee Exploration should have paid for but did not: \$41,885.

Commentary on the Penalty Calculation

I begin with what the Director got correct. An economic benefit assessment was notably absent from the Ovintiv penalty decision that was the subject of my [prior post](#) and the explicit economic benefit assessment in the penalty calculation for Tallahassee Exploration applies the economic reasoning about corporate behaviour needed in administrative penalties. This is the first AER administrative penalty decision I could find that explicitly applied an economic benefit assessment. That is a massive improvement for rationality in AER administrative penalties and hopefully they will become routine.

Yet there is something odd about how the Director applied a conservative estimate in the penalty for count 3. The Director wrote that “due to the varying types of facilities involved, only a generalized, conservative assessment of potential for adverse effect will be applied in this case. Consequently, the potential for adverse effect is assigned as ‘minor to none’” (at 5). Conservatism in the estimate of potential adverse effect for the benefit of the licensee is an odd approach. As a public regulator, the AER should apply conservatism in favour of the public and the environment rather than in favour of the licensee, especially where it is the licensee’s fault that the adverse effect is unknown.

A Tale of Two Tallahasseees and The Enforcement Problem

There are two Tallahasseees operating in Alberta: Tallahassee Resources Inc. (AER company code A63N) (Tallahassee Resources), and Tallahassee Exploration Inc. (AER company code A7HE). In addition to any tax and legal liability benefits of multiple corporations, having two corporations allowed the licensees to have the AER treat the corporations as separate entities for liability management purposes.

Tallahassee Resources held oil and gas assets in Alberta by 2012 and Tallahassee Exploration held oil and gas assets in Alberta by 2017. In [November 2019](#) (the last time the AER made the Licensee Liability Rating (LLR) scores of each oil and gas licensee public), Tallahassee Resources had an LLR of 1.21, Tallahassee Exploration Inc had an LLR score of 0.58, and the AER had no financial security posted from either of the two Tallahasseees. (The AER considered an LLR below 2.0 to indicate a risk of leaving unfunded liabilities.)

In 2020, Tallahassee Resources attempted to purchase an oil and gas project in the Northwest Territories from the bankrupt Strategic Oil and Gas, and the Northwest Territories [blocked the sale](#), out of concern Tallahassee Resources was “not in a financial position to be able to complete the necessary suspension and abandonment of wells and decommissioning of infrastructure.” Meanwhile, in Alberta, the AER allowed Tallahassee Exploration to acquire assets from the bankrupt Anterra Energy Inc., Strategic Oil and Gas Ltd., and Trident Exploration Corp. (see the AER’s [Integrated Application Registry](#), application numbers 1926970, 1929264, 1929264, and 1929389). This all suggests the AER allowed Tallahassee Exploration to acquire assets with high closure liabilities and low producing or inactive assets despite having been a serious risk by the AER’s own metric.

Both Tallahasseees failed to pay the AER administrative levy or the orphan fund in 2020 (see AER compliance dashboard no. 202012-29, 202012-30, 202011-44, and 202011-103). Neither of the Tallahasseees [met their mandatory closure spend requirements for 2022](#). In November 2023, the AER placed Tallahassee Exploration’s assets [under the management of the Orphan Well Association](#) due to compliance and operational issues.

The gigantic problem for the Tallahassee Exploration penalty is that regardless of how well calculated the penalty is, the penalty probably will not be paid. Tallahassee Exploration is, by their own admission, in a “financial constraint position” (at 7 and 11). Their assets are currently being managed and cared for by the Orphan Well Association since a [November 2023 AER order](#), because of Tallahassee Exploration’s failure to comply with regulatory expectations.

This parallels what occurred with the [July 2023 penalty the AER gave to Alhabow Energy Ltd.](#) for unauthorized pipeline construction that the AER issued [a new release about](#). Alhabow Energy already [had financial issues and was facing mounting AER regulatory action](#). The Alhabow Energy penalty is unpaid (see [here](#) at para 33) and Alhabow Energy is restructuring under a *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#) process so that the penalty is likely to go unpaid or be compromised.

Cynically, the administrative penalties to Alhabow Energy and Tallahassee Exploration might be just a show for the public. They make the AER look tough, but the licensees subject to the orders were financially finished before the orders were made. The amount of the penalty may be rationally calculated, but it is too late. Real regulatory enforcement by fines has to be against licensees still able to pay the fines.

A Suggestion for Separating Reasonable Care and Measures Orders from Noncompliance Orders

The AER's Compliance Dashboard has a tab for 'Noncompliance and Enforcement' which a user would expect to show noncompliance orders like the Tallahassee, Alhabow, and Oviniv orders. But it is cluttered with orders about how "Work is required to confirm reasonable care and measures are in place for the sites" directed towards bankrupt companies (see the recent orders for [Lexin Resources assets](#), [Direct Oil and Gas assets](#), and [Silver Blaze Energy assets](#)). I used to wonder what these orders were for – the bankrupt companies identified as the subjects of the orders on the dashboard would not be complying with them, as they lacked any assets or operational ability. The answer is that these orders are reassigning responsibility for the licenses of the bankrupt companies to still-active working interest partners and then moving the remaining licenses to the Orphan Well Association. The AER expects nothing from the bankrupt licensee marked as the subject of the order on the dashboard.

These orders are not primarily about noncompliance and enforcement. The bankrupt company who failed to comply with their license closure obligations is not being ordered to do anything. Rather, the orders are about identifying and giving notice to the solvent working interest participants who inherit responsibility for the sites of bankrupt oil and gas licensees. They are more like estate management orders than regulatory penalties. The AER should be posting these, but I suggest they should be moved into a fourth tab on the compliance dashboard or a different page altogether, since they do not fit with the other regulatory non-compliances they are currently grouped with.

This post may be cited as: Drew Yewchuk, "Administrative Penalties at the Alberta Energy Regulator: A Rational Calculation of a Penalty Unlikely to be Paid" (4 June 2024), online: ABlawg, http://ablawg.ca/wp-content/uploads/2024/06/Blog_DY_AER_Admin_Penalties.pdf

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