



Province of Alberta
Order in Council

O.C. 174/2020

JUN 03 2020

ORDER IN COUNCIL

Approved and ordered:

Lieutenant Governor
or
Administrator

The Lieutenant Governor in Council makes the Orphan Fund
Delegated Administration Amendment Regulation set out in the attached
Appendix.

CHAIR

FILED UNDER
THE REGULATIONS ACT
AS ALBERTA REGULATION 88/2020
ON June 3 2020

DEPUTY REGISTRAR OF REGULATIONS

For Information only

Recommended by: Minister of Energy

Authority: Oil and Gas Conservation Act
(section 77)

APPENDIX

Oil and Gas Conservation Act

ORPHAN FUND DELEGATED ADMINISTRATION AMENDMENT REGULATION

1 The *Orphan Fund Delegated Administration Regulation* (AR 45/2001) is amended by this Regulation.

2 Section 1 is amended

(a) by renumbering it as section 1(1);

(b) in subsection (1)

(i) by adding the following after clause (e):

(e.1) “mineral” means a mineral as defined in the *Mines and Minerals Act*;

(ii) by adding the following after clause (g.1):

(g.2) “third party account” means any amount of money payable but not yet paid by a person other than the Association related to a well, facility, well site or facility site;

(c) by adding the following after subsection (1):

(2) For the purposes of sections 11(2.1) and 12(2.1) of the Act,

(a) “holder of the mineral rights” means a person to whom the owner of mineral rights has given the right to win, work and recover a mineral pursuant to an agreement;

(b) “person who has the right to win, work and recover a mineral” means a person to whom the holder of mineral rights has given the right to win, work and recover a mineral.

3 Section 3 is amended

- (a) by repealing subsection (1) and substituting the following:**

Delegation

3(1) The following powers, duties and functions of the Regulator are delegated to the Association:

- (a) all of the powers, duties and functions of the Regulator for the purpose of administering the payment of money for the purposes set out in section 70(1) of the Act;
- (b) the powers, duties and functions of the Regulator under sections 28(b), 41, 102(1), 104(1)(b) and (2)(b) and 106.1 of the Act and, for the purposes of the enforcement of an order made by the Regulator, section 105(1)(a), (c), (d) and (e) and (3) of the Act, subject to the following terms and conditions:
 - (i) the Association shall act under section 28(b) of the Act and, for the purposes of the enforcement of an order made by the Regulator, section 105(1)(a), (c), (d) and (e) and (3) of the Act, in accordance with the overriding direction and authorization of the Regulator;
 - (ii) the powers, duties and functions of the Regulator under sections 41, 102(1), 104(1)(b) and (2)(b) and 106.1 of the Act and, for the purposes of the enforcement of an order made by the Regulator, section 105(1)(a), (c), (d) and (e) and (3) of the Act may be exercised and carried out only in relation to suspension, abandonment, remediation and reclamation in respect of orphan wells, facilities, well sites and facility sites, and only in relation to providing reasonable care and measures to prevent impairment or damage in respect of wells, facilities, well sites and facility sites;
 - (iii) the powers, duties and functions of the Regulator under section 105(1)(a) and (c) and (3) of the Act for the purposes of the

enforcement of an order made by the Regulator must be exercised and carried out in accordance with section 5.3(3) to (8) of this Regulation;

- (iv) where the Association receives money on a sale or disposal carried out under section 41 or 102(1) of the Act, it shall apply the money to the payment of the suspension costs, abandonment costs, remediation costs and reclamation costs it has incurred, and shall pay any amount remaining to the Regulator to be dealt with under section 102(3) of the Act;
- (v) where the Association receives money on the disposition of an escaped substance under section 104(2)(b) of the Act, it shall, after applying the proceeds to pay its costs and expenses, pay any amount remaining to the Regulator.

(b) in subsection (2)(a) by striking out “and regulations” and substituting “, regulations, rules”.

4 Section 4 is repealed and the following is substituted:

Agreements

4(1) The Association may enter into agreements with the Regulator, the Crown in right of Alberta, the Crown in right of Canada or any person for any reason related to

- (a) exercising and carrying out its delegated powers, duties and functions,
- (b) taking over management and control of a well, facility, well site or facility site, or
- (c) carrying out any order or direction of the Regulator.

(2) For greater certainty, each of the following agreements constitutes an agreement under subsection (1) if it relates to a purpose set out in subsection (1)(a) to (c):

- (a) a loan or other borrowing agreement entered into for the purposes of carrying out the Association’s delegated powers, duties and functions;

- (b) an agreement with working interest participants for the purpose of suspension, abandonment, remediation or reclamation of a well, facility, well site or facility site;
- (c) an agreement to pay the costs of a receiver, receiver-manager, trustee or liquidator;
- (d) an agreement to purchase, lease or obtain access to lands for the purposes of suspension, abandonment, remediation or reclamation of a well, facility, well site or facility site;
- (e) an agreement providing a reasonable likelihood of reducing the number of, or preventing the occurrence of, orphan wells, facilities, well sites or facility sites.

5 Section 5 is amended

(a) in subsection (1) by adding the following after clause (a):

- (a.1) collect revenue generated through the lawful operation by the Association of wells, facilities, well sites or facility sites;

(b) by repealing subsection (3) and substituting the following:

(3) The Association may use the funds collected by or paid to the Association under this Regulation only

- (a) to exercise and carry out its delegated powers, duties and functions,
- (b) fund its obligations under agreements referred to in section 4, or
- (c) to conduct work for any purpose for which the orphan fund may be used under section 70 of the Act, where the work is ordered or directed by the Regulator.

6 The following is added after section 5:

Purposes for which orphan fund may be used

5.1 The following are prescribed as purposes for which the orphan fund may be used:

- (a) to pay the payments set out in section 5.3(2);
- (b) to pay for obligations of the Association under agreements referred to in section 4;
- (c) to pay for a third party account, where approved by the Regulator after the Regulator has determined that payment of the third party account is in the public interest;
- (d) to pay for suspension, abandonment, remediation or reclamation work done by or on behalf of the Regulator.

Payment, application of orphan fund money

5.2 Payments set out in section 5.3(2) made by the Association from the orphan fund must be made from the date that the Association begins to undertake production at a well or facility under section 11(2) or 12(1) of the Act.

Management and operation of wells or facilities

5.3(1) In this section, “management and operation” in the context of a well or facility includes any related activities on the well site or facility site and any related activities in respect of associated equipment and non-licensed facilities that occur while the well or facility is operating.

(2) The following payments associated with the management and operation of a well or facility are costs and expenses arising out of the management and operation of a well or facility under section 105(5) of the Act:

- (a) payment of royalty compensation, deposits or other consideration payable to the owner in respect of the royalty share on the minerals recovered from a well by the Association;
- (b) payment of royalty compensation or other consideration payable to the owner in respect of the royalty share on any product obtained from
 - (i) the mineral recovered from a well by the Association, or

- (ii) a royalty share of the mineral recovered from a well by the Association;
- (c) payment of municipal taxes, other than third party accounts, imposed under Part 10 of the *Municipal Government Act* in respect of a well, facility, well site or facility site;
- (d) payments, other than third party accounts, pursuant to a private surface agreement that applies to the well site or facility site;
- (e) payment of entry fees, other than third party accounts, under section 19 of the *Surface Rights Act*, in the circumstances set out in section 12(1), 13(1) or 13.2 of that Act;
- (f) payment of compensation, other than third party accounts, pursuant to a compensation order under the *Surface Rights Act* naming the Association;
- (g) payments in respect of
 - (i) a mineral surface lease on which a producing well is located or a disposition on which a facility connected with production activity is located, or
 - (ii) any licence of occupation, pipeline agreement, pipeline installation lease or other type of disposition associated with a well or facility in respect of which the Association has been ordered or directed to provide reasonable care and measures to prevent impairment or damage;
- (h) payment of compensation, remuneration and other amounts for any steps taken or for employing any person the Association considers necessary under section 105(1)(a) of the Act for the purposes of the enforcement of an order made by the Regulator under section 26.2 of the Act or section 22.1 of the *Pipeline Act*;
- (i) payment of interest, other than third party accounts, under the *Mines and Minerals Act* or pursuant to an agreement with an owner in respect of payments referred to in clauses (a) and (b);

- (j) payment of penalties imposed by a bylaw of a council under sections 344 and 345 of the *Municipal Government Act* in respect of payments referred to in clause (c);
- (k) payment of interest, other than third party accounts, under the *Surface Rights Act* in respect of payments referred to in clauses (e) and (f).

(3) On taking over management and control of a well or facility under section 105(1)(c) of the Act for the purposes of the enforcement of an order made by the Regulator under section 26.2 of the Act, the Association shall not undertake production at the well or facility unless the Association makes all applicable payments set out in subsection (2) as they become payable in respect of the well or facility.

(4) On taking over management and control of a well or facility under section 105(1)(c) of the Act for the purposes of the enforcement of an order made by the Regulator under section 26.2 of the Act, the Association may manage and operate the well or facility for a period ending not later than March 31 of the second full fiscal year of the Association after the order is issued.

(5) Despite subsection (4), the Regulator may authorize the Association to manage and operate a well or facility in the circumstances referred to in subsection (3) for a period of up to 12 months after the expiry of the time period referred to in subsection (4).

(6) Where the Association takes over management and control of a well or facility under section 105(1)(c) of the Act for the purposes of the enforcement of an order made by the Regulator under section 26.2 of the Act or section 22.1 of the *Pipeline Act*, any management and operations undertaken on the direction or with the consent of the Regulator under section 11 or 12 of the Act or section 16 of the *Pipeline Act* must be conducted in good faith and in a commercially reasonable manner.

(7) For greater certainty, where the Association takes over the management and control of a well or facility under section 105(1)(c) of the Act for the purposes of the enforcement of an order made by the Regulator under section 26.2 of the Act, proceeds from the sale of oil, gas, crude bitumen, water or any other substance produced at the well or handled at the facility shall

be applied in accordance with section 105(5)(a) of the Act, and any amount remaining shall be paid to the Regulator to be applied under section 105(5)(b) and (c) of the Act.

(8) For greater certainty, the proceeds referred to in subsection (7) are part of the orphan fund until they are paid to the Regulator.

7 The following is added after section 7:

**Audit, inspection, Schedule 10 of
Government Organization Act**

7.1 In regard to the delegation of authority to the Association under the Act, section 9 of Schedule 10 to the *Government Organization Act* applies with the following modifications:

- (a) a reference to “this Schedule and the regulations and rules under it” is to be read as a reference to “the *Oil and Gas Conservation Act* and the regulations and rules under that Act”;
- (b) a reference to “Minister or a person designated by the Minister” is to be read as a reference to “Alberta Energy Regulator”;
- (c) a reference to “Minister or designated person” is to be read as a reference to “Alberta Energy Regulator”;
- (d) a reference to “Minister” is to be read as a reference to “Alberta Energy Regulator”;
- (e) a reference to “Crown” is to be read as a reference to “Alberta Energy Regulator”.

8 Section 9 is amended

- (a) **in subsection (1) by striking out** “in respect of any act or thing done or purported to be done when they are carrying out the delegated powers, duties and functions of the Association” **and substituting** “in respect of anything done, not done or purported to be done in good faith when they are carrying out any order or direction of the Regulator, exercising and carrying out delegated powers, duties and functions or taking over management and control of a well, facility, well site or facility site”;

(b) in subsection (2) by adding “in good faith” after “made”.

9 Section 11 is repealed.

10 This Regulation has effect on the coming into force of sections 1(8), (16) and (21) and 2(5) of the *Liabilities Management Statutes Amendment Act, 2020*.