

Polluter *Pay* Federation

Provincial Site Rehabilitation Program (Federal Funds)

- [Link to Press Release Announcement April 24, 2020](#)
- Up to \$1 Billion in Covid-19 funding from Federal Government (Inactive Wells)

Highlights of Polluter Pay Federation / ALDP Positions

- More than physical mess on the landscape requires cleanup, ***Alberta's legal mess must be cleaned up as well***. Supreme Court of Canada guidance must prevail in making prioritization of spending decisions
- **“Redwater Approach”** to the Federal Inactive Well Funding Grant Program
 - Rather than focus on inactive wells, **focus on wells and facilities that must be abandoned by law**, as confirmed by the Supreme Court of Canada (the “SCC”) *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 (CanLII) (“Redwater”) at [para. 17](#)

Prioritizing Wells/Sites in Massive Inactive Well Inventory

Excerpts from Provincial Press Release

- May 1-31: Open to service companies significantly impacted by the unprecedented economic downturn for contracts of up to \$30,000 per application across Alberta. This \$100-million increment will focus on projects that are eligible for 100 per cent government funding.
- May 15 to June 15: Open to service companies for contracts of up to \$30,000 and eligible for 100 per cent funding. This \$100-million increment will focus on sites where some operators have failed landowners and where government is paying compensation to landowners as required under the *Surface Rights Act*. [Underline emphasis added]

- **“Inactive” well spending should be initially focused on well “abandonment”**
 - Once the well is abandoned the landowner can carry out site cleanup on their own and invoice the cost back to the operator if need be

Smith v. Alliance Pipeline
- **Prioritization should not be based on wells for which the government is making landowner payments (Section 28, *Surface Rights Act*) as per Alberta Site Rehabilitation Program**
 - Section 28 is primarily a collection tool (not a government payment mechanism)
 - ➡ **Prioritization must be based on the same criterion that the Alberta Energy Regulator uses to name wells and facilities as “orphans” – the basis of the SCC “Redwater” decision.**

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Wells and Facilities Must be Abandoned by Law When:

- The right to the mineral (petroleum or oil and natural gas) terminates
Subsection [3.012\(a\)](#), *Oil and Gas Conservation Rules*
- The right to use the surface terminates
Subsection [3.012\(a\)](#), *Oil and Gas Conservation Rules*
- The licensee ceases to be a corporation in good standing or is struck or liable to be struck from the corporate registry
Subsection [3.012\(f\)](#), *Oil and Gas Conservation Rules*
- A well has not been “suspended” on time as required by law:
 - Six month deadline for high risk wells
 - One year deadline for low risk wells
 - ⇒ From last date of activity (reported production)Subsection [3.012\(g\)](#), *Oil and Gas Conservation Rules*

NOTE: *The foregoing are the reasons (confirmed by the SCC in Redwater) why:*

- *The Regulator (AER) names wells and facilities as “orphans”*
 - *The well or facility must be “abandoned” by law*
- *The Regulator designates the Orphan Well Association (OWA) to do the work in two stages:*
 1. abandoning the well or facility; followed by:
 2. site remediation and/or reclamation
 - *Leading to certification of “specified land” as reclaimed*
 - *The surface owner/occupant is entitled to be compensated until a reclamation certificate is issued*

Abandoned Wells Must be Re-Abandoned by Law:

- When required by the provisions of AER Directive 079 (including when no records are on file)
- When the well bore/land is in proximity to residential development
 - ⊕ *Abandonment includes location of buried well bore by D-079 procedure*

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Shortcomings of Program Details Announced to Date

- Band aid job creation money thrown at inactive wells and insolvent producers
 - ↻ *Additional benefits to society such as public safety and return to the rule of law can also be achieved if by taking the **Redwater Approach***
- Insufficient / unclear terms and conditions as to how funding shall be granted and its uses, including which wells in inventory have priority
- Inactive wells appear to be bunched in with suspended wells, without recognizing the following critical legal distinctions:
 - **INACTIVE, PROPERLY SUSPENDED:** The licensee of an inactive, properly suspended well has the legal right to produce the well at a later date – the well may not be abandoned absent the licensee’s consent
 - **INACTIVE, IMPROPERLY SUSPENDED OR NOT SUSPENDED ON TIME:** The licensee of an improperly suspended well HAS FORFEITED HIS RIGHTS, the well must be abandoned THE CONSENT OF THE LICENSEE IS NOT REQUIRED
- Clean up of facilities being illegally and unsafely operated, which should be inactive by law, including those with unnecessary hydrocarbon gas (such as but not limited to methane) emissions is not included in this funding.
- Procedures for landowner input (nominating inactive wells for abandonment and site cleanup) do not appear to consider Alberta’s comprehensive statutory scheme including the “*polluter pays*” principle

Benefits to Society as a Whole

1. The Regulator would be required to:
 - a) Create an application portal, which should always have been in place but has not been created contrary to law, to accept applications from landowners for forced well abandonment (including re-abandonment activities under Directive 079).
 - b) Properly decide applications for approval of the relief of forced well and facility abandonment when required by law pursuant to the rule of law including regulatory appeal and reconsideration of potentially flawed decisions
2. Reduction of wells and facilities illegally on the landscape that have no benefit to society, which are public safety risks and taxpayer liabilities.