

ENHANCING ASSURANCE

Developing an integrated energy resource regulator

A DISCUSSION DOCUMENT
May 2011

Government
of Alberta

Alberta

Freedom To Create. Spirit To Achieve.

This material is intended for discussion purposes only. It is only a model of what the proposed legislation might look like. It is not in any way intended as a representation of Government of Alberta policy, and the Government of Alberta has not made any decision with respect to the subject matter of this material.

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MESSAGE FROM PREMIER ED STELMACH

As Albertans, we are fortunate to live and work in a province blessed with plentiful resources and many advantages. But we know these resources do not in themselves create prosperity.

The position of economic leadership that Alberta has long occupied does not come with a guarantee of continued success. We must be both wise and nimble to maintain the many advantages we enjoy as Albertans.

This requires vision to set a bold course of action and to stay on track.

That is why I created the Premier's Council for Economic Strategy to give an external perspective on how Alberta can ensure continued prosperity over the next several decades.

The world is changing – and Alberta needs to change too, because a new period of growth is already starting – and it's starting in the resource sector, naturally.

Alberta broke a record in mineral rights sales last year – over two billion dollars. Industry is again competing for skilled labour to run once idle drilling rigs. That's how quickly it's turning.

Where some people see challenges, Albertans see opportunity. When new technologies made former customers our competitors for investment, Alberta responded with a fiscal regime to encourage deployment of those expensive new drilling technologies to unlock new resource pools that will benefit Albertans and Canadians for generations to come.

It's important that our fiscal and regulatory frameworks work together to help realize the full potential of our natural resources, while meeting social and environmental goals and respecting the rights of landowners. That is why we have also conducted a thorough and inclusive review of Alberta's regulatory framework as it relates to energy resource development. We also understand that Aboriginal Peoples of Alberta have a historic connection to Alberta's land and environment. The Alberta government is committed to fulfilling its legal obligations to consult with aboriginal communities.

Our province has longstanding strengths in this area. We need to build on those strengths, and leverage them to encourage innovation among our partners, especially our partners in industry.

Alberta has a long history of technological innovations that have opened the door to prosperity and growth. Just as it has played a key role in our past, innovation will play a key role in our future too.

The following pages set out a proposed path to create a new single regulator for Alberta's vital energy resource development industries. This work has allowed us to build on the best practices from among existing regulatory and licensing bodies, and when appropriate consider new practices. I encourage you to read it with a thoughtful and open mind – to envision a regulator that will meet the needs of a new century.



INTRODUCTION

Energy development is expected to remain a cornerstone of Alberta's future economic growth. Realizing the full benefits of our energy resources – oil, gas, oil sands and coal – depends on Alberta's ability to continue attracting significant levels of investment. Alberta must remain one of the most competitive places to invest and do business. Having efficient and effective regulatory systems is an important part of being competitive.

The objective of the Regulatory Enhancement Project (REP) is to ensure Alberta's regulatory system for energy development is efficient; supports the province's competitiveness; and effectively supports the achievement of Alberta's public safety, environmental management, and resource conservation objectives and respects the rights of landowners.

As part of this initiative, the Minister of Energy appointed the Regulatory Enhancement Task Force to examine how Alberta's regulatory system for energy could be improved.

Enhancing Assurance – What You Told Us

The Regulatory Enhancement Task Force undertook a thorough process that included three rounds of engagement with stakeholders and First Nations. Key stakeholders included landowners, officials of municipal governments, and representatives from environmental non-governmental organizations, the upstream oil and gas industry, and other interest groups.

Participants in the engagement process identified a number of ways in which Alberta's current regulatory system could be improved. They called for a simpler system for all stakeholders that is more transparent and easier to navigate. They stressed the need for a consistent set of processes, rather than the use of different processes across different regulatory bodies.

The Task Force heard a desire for enhanced policy clarity and greater integration of policies around the management, development and use of resources. Participants said that policies need to be more clearly communicated so that they are applied more consistently when decisions are made about proposed energy projects.

Participants said the system must continue to respect the role of Albertans to have their voices heard – on broader policy issues and on specific energy projects that are proposed. The system should also set clear expectations on industry regarding public safety, environmental performance and resource conservation, and make decisions about proposed projects based on the level of risk involved.

Accountability was also a key issue heard by the Task Force. Participants expressed a desire for greater clarity on how the system operates, and for regular measuring and reporting against performance benchmarks, so that we can continue to take steps to improve the system.

This input, along with significant research and analysis, informed the work of the Task Force as it examined ways to enhance Alberta's regulatory system.

In December 2010, the Regulatory Enhancement Task Force reported to the Minister of Energy in *Enhancing Assurance*.¹ In its report, the Task Force envisioned an enhanced Policy Development and Policy Assurance system for Alberta's energy sector. This "enhanced system" would reduce duplication and complexity, use consistent processes, and better manage risks to Alberta's desired outcomes, while enhancing accountability.

As envisioned by the Task Force, the enhanced system is comprised of two key functions: *policy development*, performed by the Government of Alberta; and *policy assurance*, performed by a single regulator for the energy sector.

- The *policy development* component involves the analysis and development of policies around natural resources. This includes policies relating to air, water, and land management, along with the conservation, extraction, processing and transportation of resources. In the enhanced system, Alberta government departments have increased capacity to focus on developing consistent and integrated policies around resource development that balance social, economic and environmental objectives.
- The *policy assurance* component supports achievement of the policy outcomes set by government through the regulation of energy development activities. Regulation includes project review and authorization, compliance monitoring, enforcement, facilities abandonment and site reclamation/remediation. In the enhanced system, regulatory functions are consolidated and integrated in a new, single regulator to provide greater consistency, clarity and accountability.

¹ *Enhancing Assurance: Report and Recommendations of the Regulatory Enhancement Task Force to the Minister of Energy* (2010) Alberta Energy. Available at <http://www.energy.alberta.ca/Initiatives/RegulatoryEnhancement.asp>

Recommendations For An Enhanced System

The Task Force made six recommendations to bring about the enhanced system. These recommendations are now being implemented:

- 1. *Establish a new policy management office to ensure the integration of natural resource policies and provide an interface between policy development and policy assurance.***

Work is underway within the Departments of Energy, Environment (AENV) and Sustainable Resource Development (SRD) to assess the functions and staffing required for a new policy management office. In the meantime, the departments are already working to develop policies in integrated ways. It is expected that a more formalized process through the new Policy Management Office will further improve policy integration efforts.

- 2. *Establish a single regulatory body with unified responsibility for policy assurance (regulatory delivery) of upstream oil and gas development activities.***

The Departments of Energy, AENV and SRD, as well as the Energy Resources Conservation Board (ERCB), have undertaken further analysis around the creation of a single regulator. This document focuses on the implementation of this recommendation.

- 3. *Provide clear public engagement processes that enable parties to engage effectively at the policy development and policy assurance stages.***

The Departments of Energy, AENV and SRD are reviewing public engagement processes for resource management policy development, with a view to continuing and enhancing current practices. As an example, as part of the Government's commitment to managing the cumulative effects of development on the environment, we are examining how to better engage Albertans and stakeholders in the development, assessment and ongoing performance of the cumulative effects management frameworks.

- 4. *Ensure a systemic and common risk assessment and management approach is used across the entire Policy Development and Policy Assurance System.***

In the enhanced system, Alberta government departments responsible for resource management policy, and the single regulator will employ a common risk assessment framework in their policy development and policy assurance activities, respectively. The framework will be developed based on an internationally recognized standard. The single regulator will be required to utilize this risk assessment framework as part of its decision-making process and compliance assurance approaches.

The risk management framework will encourage innovation and allow for the development and deployment of new technologies, in conjunction with the use of a broader set of policy tools. It will also encourage an evolution in regulatory practices. The risk management framework will help inform the single regulator in its selection of appropriate regulatory tools to manage specific risks, based on the assessed risks to Alberta's social, economic, and environmental outcomes. Clear and consistent data collection, including compliance, monitoring, and enforcement data, will be incorporated into risk assessment and risk management practices.

5. *Adopt a performance measurement framework and a public reporting function to measure and communicate the effectiveness of the system and identify opportunities for continuous improvement.*

The single regulator will be required to establish goals, performance measures and targets for the effectiveness and efficiency of the operation of the regulatory system. Results will be reported annually in a manner consistent with the requirements set out in the *Government Accountability Act*, regarding how Alberta government ministries currently report on goals and performance measures. In addition, the policy management office will lead the development of a broad performance measurement framework that can be benchmarked against other jurisdictions, with input, advice and review by arm's-length regulatory experts. The framework will assess and report on performance measures that align with the system design principles, and consider the outcomes expected across the economy, society and the environment. The objective is to assure Albertans that the system is effectively and efficiently delivering on integrated policy outcomes. The policy management office will assure that reports are delivered to the Government of Alberta and Albertans on a timely and regular basis.

6. *Ensure an effective mechanism to address landowner concerns is developed.*

The Departments of Energy, AENV, SRD and the ERCB are continuing to assess how to best ensure that landowner concerns regarding privately negotiated agreements with oil and gas companies are addressed and enforced. While there are linkages, and alignment that may be needed with the Alberta Surface Rights Board, please note that the current practices of the Surface Rights Board will not be diminished in any way. We will continue to consult with landowners on this recommendation.

Together, the six recommendations form a package of initiatives whose implementation will result in an enhanced system that reflects the principles of the REP – a system that is effective, efficient, adaptable, predictable, fair and transparent.

An Integrated Energy Resource Regulator That Meets Alberta's Needs

Developing a single regulator will go a long way in bringing about a more competitive regulatory system for Alberta's energy resources

The single regulator will provide a clear centre of responsibility and accountability for the regulation of energy activities. Rather than navigating different processes across several different bodies - landowners, municipalities, environmental groups, industry and other stakeholders will have the ability to engage the system through a single contact point – to obtain information, or to provide input into decisions on energy activities. This will result in a better decision-making process with greater efficiency, less confusion and fewer frustrations.

The single regulator will also utilize a consistent set of processes. This will provide better clarity and certainty to landowners, other stakeholders and proponents regarding how energy activities are applied for, reviewed, considered, and decided upon.

The move to a single regulator for Alberta's energy sector is not about reducing our province's environmental standards or decreasing our expectations of industry. Nor is it about sacrificing public safety, resource conservation or the rights of landowners. On

the contrary, it is about enhancing the ability of our regulatory system to achieve policy outcomes, recognizing that the management of natural resources is becoming more complex and must encourage innovation.

Alberta is shifting to a “cumulative effects” approach to manage land and energy resources. This approach recognizes that each activity on the landscape – including energy activities – has incremental impacts on Alberta’s air, water, land and biodiversity. Through regional planning, as well as other initiatives, Alberta is moving towards managing the cumulative effects of all development on the air, water and landscape. This requires a step-change in our regulatory approach. The single regulator will play an important role in effecting this change.

This approach will also necessitate greater and ongoing dialogue between the single regulator and the Alberta government. While the energy regulator will make independent decisions, it is important that effective and appropriate processes be established to ensure that its decisions are informed by policy choices made by the government at the regional scale. It will also be important for the energy regulator to work with other economic sector regulators to ensure that regional scale objectives are considered in all project decisions. This will be essential to properly examine the cumulative effects of development when considering project applications.

The implementation of a single regulator for the energy sector can not happen overnight. It is a significant and complex undertaking, impacting a significant industry in our province. The current system has evolved over several decades. Many legal and policy instruments govern the regulation of energy activities (e.g., statutes, regulations, directives, bulletins, standards, codes of practice, etc.)

Most regulatory responsibilities and functions impacting the energy sector are currently distributed among AENV, SRD and the ERCB. Each regulatory body has developed its own processes which, while generally similar in intent and approach, will need to be integrated and reconciled.

Bringing consistency to legislative instruments and reconciling differences in regulatory processes will ultimately result in greater clarity, efficiency and effectiveness. However, this work takes time and must be done carefully to avoid unintended or undesirable consequences.

The new, single regulator will not simply be an expanded ERCB. That is not the Alberta government’s intent. Rather, the single regulator must represent a true integration of the important regulatory responsibilities and functions that have been fulfilled by all three current regulators in regards to energy development.

Relevant knowledge and experience must be part of the transfer of responsibilities to the single regulator. The important relationship between policy and regulation also demands that sufficient experience and capacity is maintained in the regulator and in government departments. As work progresses, attention will be paid to identifying and incorporating best practices used by the current regulators. The integration of regulatory responsibilities presents an opportunity to enhance energy sector regulation based on the REP principles of effectiveness, efficiency, adaptability, predictability, fairness and transparency.

Major Legislation Impacting The Regulation Of The Energy Sector*

- *Alberta Lands Stewardship Act*
- *Coal Conservation Act*
- *Energy Resources Conservation Act*
- *Environmental Protection and Enhancement Act*
- *Oil and Gas Conservation Act*
- *Oil Sands Conservation Act*
- *Pipeline Act*
- *Public Lands Act*
- *Water Act*

**Not intended to be an exhaustive list.*

Ultimately, we want Alberta to benefit from a comprehensive energy regulator that has the necessary capacity and expertise to provide competitive regulation. Given the importance of energy to Alberta's economy, it is crucial that we take the necessary time to get this right.

Working Toward A Single Regulator

The recommendations of the Regulatory Enhancement Task Force provided general guidance concerning the scope and activities of the new single regulator. Naturally, this has given rise to several important questions and many details that need to be examined.

In continued collaboration, Alberta Energy, AENV, SRD and the ERCB have undertaken further analysis on issues around a single regulator for the energy sector.

This document is one step on the path to implementing the single regulator. It is intended to provide insight and greater detail regarding the operation, key regulatory functions and processes of the single regulator. It also identifies issues that still need to be analysed and resolved, and where additional work needs to be done.

The main topics addressed in this document are:

- Scope and Governance of the Regulator;
- Application, Review and Authorization of Energy Activities;
- Hearings and Participation in Hearings;
- Compliance, Enforcement and Incident Response and Clean Up; and
- Shut Down and Closure of Facilities.

To provide additional clarity to landowners, industry and other stakeholders, this document also outlines a proposed legislative approach to the single regulator. This is intended only to depict the single regulator's expected structure and the processes that will be integrated in the single regulator. It is not presented as draft legislation.

It is expected that a bill will be introduced in the Alberta Legislature at the earliest possible opportunity, once further details have been worked out. The text in this document is provided solely for improved understanding and clarity of intent, and engagement with stakeholders and interested parties.

SCOPE AND GOVERNANCE OF THE REGULATOR

Where We Are Headed

The single regulator will have responsibility for the regulatory functions required to issue approvals, and to monitor compliance with approvals, for all upstream oil and gas activities.

The single regulator will also regulate all coal activities in Alberta. Coal is currently regulated by the ERCB, and the technologies and approaches used for coal extraction (mining and in situ) are similar to those used for oil, gas and oil sands extraction. These factors make coal a natural and efficient fit within the scope of the single regulator.

Down the road, the Alberta government intends to also include minerals regulation within the scope of the single regulator. As with coal, the current regulators have relevant expertise in this area, and the technologies and approaches used in minerals extraction are similar to coal and oil sands mining. The expertise of the single regulator will therefore lend itself to regulatory responsibility over the minerals sector. However, this sector will be phased into the single regulator's scope only after regulatory functions for oil and gas and coal have been successfully integrated in the regulator.

The single regulator will regulate all upstream oil and gas activities and all coal activities, throughout the project lifecycle.

The single regulator will perform a variety of regulatory functions for the resources within its scope. These functions include: project review and authorization, compliance monitoring, enforcement, facility abandonment and site reclamation/remediation.

Currently, these regulatory functions are distributed among several government entities:

- The ERCB regulates the safe, responsible and efficient development of Alberta's energy resources. It issues well, facility and pipeline licences, in situ bitumen recovery scheme approvals and approvals related to resource reservoir management (including pooling, spacing, commingling); conducts information collection and dissemination; undertakes compliance assurance activities; and oversees the abandonment of facilities at the end of their lifecycle.
- SRD is responsible for approving exploration (geophysical) activities on public and private land, administering surface land access and rights-of-way on most public land, ensuring reclamation is completed on public land, issuing reclamation certificates and auditing reclamation and remediation of certified sites on public lands.
- AENV issues authorizations for certain oil and gas and coal activities, administers and manages the environmental assessment process, as well as the reclamation and remediation of project sites following closure, and the issuance of licences for water use and approvals for disturbances that may affect water.

The single regulator will assume all of the regulatory functions currently executed by these entities in respect of oil, natural gas, oil sands and coal ("energy activities"). This includes all air, water, land, mine and facility authorizations.

The ERCB is also currently responsible for a variety of functions that address a number of resource conservation, processing and transportation issues. These include:

- Regulation of production through approval of well spacing, holdings and unit operations;
- Enhanced recovery schemes;
- Captured carbon dioxide schemes;
- Storage in a formation;
- Disposal of produced water, and other fluids into underground formations;
- Storage, treatment, processing or disposal of oil field waste in a formation; and
- Common carrier, common purchaser and common processor provisions.

While these functions are not specifically referenced in this document, the single regulator will assume responsibility for these important functions and how they are regulated.

The single regulator will not assume responsibility for mineral tenure, which will remain the responsibility of the Department of Energy. Nor will it assume the functions of the Surface Rights Board.

The new regulator must report annually on its goals, performance measures and targets. An arm's-length panel will also benchmark the regulatory system's performance against other jurisdictions.

The single regulator will be established and enabled through legislation. This legislation will clarify the scope and structure of the single regulator and set out the single regulator's powers and duties.

In creating the single regulator, the Alberta government will not start from scratch, but take an integrated approach. The single regulator will be built from the existing assets, legal and structural components, core regulatory processes and best practices of AENV, SRD and the ERCB.

How It Will Work

- The new, single regulator will be established as a corporation. This is the same structure used for the ERCB. This approach will place the regulator at arm's-length from government, ensuring that individual decisions on applications are made independently.
- The single regulator will have a Board whose members will be appointed by Cabinet. The single regulator will have a Chief Executive, and will have the authority to hire personnel, retain experts and appoint committees as necessary to fulfill its responsibilities.
- The legislation enabling the single regulator will reflect government's responsibility for policy development. It will explicitly require the single regulator to make decisions and act in accordance with established Alberta government policies, including regional plans. This will better clarify the roles of government and the regulator.

Proposed Legislative Approach

Establishment and Governance of the Single Regulator

Purposes of Act

The purposes of the Act would be to enable the assessment of productive capacity and markets for energy and coal resources; to ensure orderly, efficient and economic development of these resources and the conservation and prevention of waste of these resources; and to control pollution, ensure environmental conservation, and safe and efficient practices in the exploration, development, and transportation of energy and coal resources.

Establishment of Board

The single regulator board would be established as a corporation, with membership appointed by the Lieutenant Governor in Council. Members shall receive remuneration and hold office for a term as established by Lieutenant Governor in Council.

- Regulatory functions for energy activities will be transferred from existing regulatory bodies (i.e. AENV, SRD and the ERCB) to the single regulator. As such, the single regulator will be responsible for a broader scope of regulatory functions than the ERCB.
- Accordingly, the legislation will require the single regulator to work with the Alberta government to support sustainable resource and environmental management.
- The single regulator will have authority to establish technical standards and operating procedures (within the context of government policies) for energy activities on public land.
- Since the single regulator will provide policy assurance for the policies of multiple Alberta government ministries, effective and appropriate processes will need to be established to ensure the single regulator is conducting its policy assurance functions consistent with those policies. This will not extend to the single regulator's decision-making responsibilities for individual applications or proceedings.
- In addition to Cabinet appointment of the single regulator's board members, annual reporting requirements on the regulator, and approval of the regulator's budget, there will need to be an appropriate mechanism established to hold the single regulator accountable for performance in the mandate areas of the Ministers of Environment and Sustainable Resource Development.
- The single regulator will be required to establish goals, performance measures and targets for the effectiveness and efficiency of the operation of the regulatory system. These will be reported on annually.
- In addition, the policy management office will lead the development of a broad performance measurement framework that can be benchmarked against other jurisdictions, with input, advice and review by arm's-length regulatory experts.
- The approach currently used to fund the ERCB will be continued, initially, to fund the single regulator. Once the regulator is fully established, this funding approach will be reviewed. The funding approach used for the single regulator will need to be flexible to allow for changes in the economy and

Chief Executive

The regulator shall appoint a Chief Executive and shall determine the Chief Executive's powers, duties and functions and associated remuneration.

Duty of care

Every member must act honestly, in good faith and in the public interest; avoid conflicts of interest; and shall exercise the care, diligence and skill that a reasonable and prudent person would exercise.

Advisory committees, experts

The regulator may establish advisory committees and retain experts to report to the regulator with respect to any of the programs, services or other matters under the regulator's administration. The report of an advisory committee shall be made public.

Delegation of powers

The regulator may in writing delegate any of the powers, duties and functions conferred or imposed on it under legislation to any member or any other person. This does not apply to regulation making powers.

Personnel

The regulator may employ technical or professional persons and other officers, or employees as the regulator considers necessary.

Powers and duties of Board

The regulator is responsible for the establishment of the regulatory programs, services and administrative procedures of the new single regulatory agency, and for co-ordination with other natural resource regulatory agencies, departments of the Government and with government agencies of matters pertaining to the regulation of energy resources and energy.

Policy direction from Government

The regulator must act in accordance with any applicable policy, and in particular with any applicable regional plan, as specified by regulation authorized by the Lieutenant Governor in Council.

Resource and environmental management issues

The regulator shall co-operate with and assist the Ministers of Energy, Environment and Sustainable Resource Development in promoting sustainable resource and environmental management.

the availability of public funds. It will also need to apportion costs between government and industry in a way that is fair, while maintaining the public credibility and legitimacy of the regulator.

Issues to Consider

- Additional issues relating to the scope and governance of the single regulator will need to be further examined, including:
 - Whether the purpose section of the legislation enabling the single regulator should be a combination of existing clauses in legislation today (proposed as shown in the right-hand column) or be adjusted for the future;
 - How the single regulator's authority will be expanded to include the minerals sector;
 - What best practices in the operations and processes of the current regulatory entities must be incorporated in the single regulator;
 - The suitability and adequacy of Alberta government oversight mechanisms with respect to the single regulator and the appropriate government interface with the regulator; and
 - How the single regulator can work with other regulatory entities responsible for matters that could directly or indirectly impact energy activities.

Technical standards and directives

Where the regulator is setting technical standards and directives in specific areas of environment and public lands, it must first seek the authorization of the Minister of Environment and/or Sustainable Resource Development.

Inquiries and recommendations

The regulator may, and at the request of the Lieutenant Governor in Council shall, inquire and investigate on any matter regarding energy and coal resources in Alberta.

Reports on performance

The single regulator will report annually on its goals, performance measures and targets for the effectiveness and efficiency of the regulatory system

The Minister responsible will establish an independent arm's-length panel of regulatory experts to assess and benchmark the performance of the regulatory system against other jurisdictions. This assessment and reporting will be conducted with regular frequency.

Funding

The regulator may impose and collect an administration fee with respect to any facility, oil sands project, coal project or well to defray a portion or all of the estimated net expenditures of the regulator in that fiscal year. The regulator may also impose a penalty or may shut in a facility, oil sands project, coal project or well, for non-payment of the administration fee.

APPLICATION, REVIEW AND AUTHORIZATION OF ENERGY ACTIVITIES

Where We Are Headed

As described earlier, the single regulator will have unified responsibility for regulating energy activities throughout the project lifecycle. A major part of the single regulator's work will be reviewing applications and issuing authorizations to undertake energy activities.

Regulatory functions currently delivered by AENV, SRD and the ERCB will remain largely unchanged, but will be integrated in the single regulator.

Currently, project proponents must initiate multiple applications with different regulatory entities, depending on the nature of their proposed activities. Similar information is often submitted multiple times. This complex system can make it challenging for landowners and others wanting information about or input into decisions on proposed energy activities.

The enhanced system aims to establish an authorization process that involves one application, one review and one decision. The single regulator will utilize one integrated, consistent process for application, review and authorization of energy activities. The regulator will also serve as a single point of access for submitting or accessing information about a proposed energy activity. This will offer greater certainty, greater predictability and better navigability for all industry, landowners and other parties.

Energy activities requiring a disposition, licence or approval today will continue to require a disposition, licence or approval in the new system.

Establishing an integrated, consistent authorization process in the single regulator will be relatively straightforward. While there are some differences, the existing processes used to review and issue authorizations are generally similar in intent among the three current regulators. The process is typically comprised of the same major steps:

- Pre-application – A project proponent is required to do certain planning activities in advance of their application to undertake an energy activity.
- Application – The proponent must formally apply to undertake the energy activity, and follow notice requirements. The proponent's application must be supported by required documentation to allow the public and the regulator to fully understand what is being proposed.
- Notice – The proponent must provide public notice of the application it has made to the regulator to undertake an energy activity.
- Public Input – Parties have the opportunity to provide input on the impacts of the energy activities proposed in the proponent's application. Issues may be resolved through a dispute resolution process and if there remain outstanding objections for parties whose rights may be directly and adversely affected, adjudication will include a hearing.
- Review – The proponent's application is reviewed by the regulator, consistent with established legislation and requirements.
- Public Interest Examination – In considering the application, the regulator considers whether the proposed energy activity is in the public interest, having regard to the social and economic effects of the activity and the effects of the activity on the environment.
- Decision – The regulator makes a decision on the proponent's application. The decision is communicated and registered. A mechanism is available for further review or variance of the decision as necessary.

Project proponents will still be required to provide public notice of applications. Landowners and others with specific interests maintain their participation rights in the authorization process.

These major steps will form the basis of the new, single regulator's approach to application, review and authorization of energy activities.

The integrated process used by the single regulator will satisfy the following objectives:

- Industry will prepare one common set of information documents for all approvals;
- Landowners and other stakeholders will have a single access point for obtaining information and participating in the process;
- Individual authorizations within the single regulator's overall process will be sequenced to ensure efficiency and effectiveness; and
- The consolidated process will provide the single regulator with sufficient time to review applications and make decisions.

The overall authorization process will remain largely unchanged. However, instead of multiple applications before multiple bodies there will be one integrated application to the single regulator.

The single regulator will continue to utilize a hearing process when objections to an energy activity remain unresolved. Participation rights will be maintained as they currently exist.

Importantly, existing participation rights will remain unaffected in the shift to a single regulator. Landowners and other parties who stand to be directly and adversely impacted by a proposed energy activity will continue to have the opportunity to raise those concerns with the single regulator, consistent with current ERCB practice. The single regulator will continue the practice of encouraging parties and the proponent to discuss and resolve concerns, including the use of alternative dispute resolution or other dialogue mechanisms.

In the event that concerns remain unresolved, the single regulator will utilize a public hearing process to consider and adjudicate on the application. Again, this

is a continuation of current practice and will ensure participation rights are not affected. Information about hearings is provided in the next chapter on page 17.

In reviewing applications and making decisions, the single regulator will take guidance from air, water and biodiversity management frameworks established by regional plans, and any limits on land disturbance that may be established by regional plans.

How It Will Work

- The authorization responsibilities assigned to the single regulator will be clearly defined in legislation. Authorization responsibilities for energy development will be transferred from existing regulatory bodies (i.e. AENV, SRD and the ERCB) to the single regulator. Thorough analysis will be required to ensure appropriate division of policy development (which will remain with government) and assurance functions.
- Transfer of responsibilities to the single regulator will likely need to be undertaken in phases. Clear guidance will be provided to industry and other stakeholders around these transitions.

Proposed Legislative Approach

Authorizations, Approvals and Licences

Requirement for licence or approval

No person may commence an activity, or enter on or occupy public land, unless they have a disposition, licence or approval and they are the disposition holder, licence holder or approval holder.

Activities requiring a public lands disposition, licence or approval include: geophysical exploration; drilling an oil or gas well; constructing or operating an oil and gas facility or processing plant; constructing or operating a facility for the recovery of oil sands or crude bitumen; commencing enhanced recovery of oil or gas; storing gas; storing or disposing of

Pre-application

- The single regulator may specify pre-application requirements.
- The Government of Alberta is currently reviewing the environmental impact assessment (EIA) process in light of the government's implementation of new cumulative effects management processes. After this review is complete, responsibility for EIA for energy resources will be transferred to the regulator.
- The Government of Alberta will retain expertise and authority for establishing plans, including regional plans, policy, standards and guidelines for the management of fish, wildlife, forestry, grazing and recreation on all public land. The single regulator will have authority to issue dispositions for the use of public land for energy activities subject to established plans, policy, standards and guidelines.
- SRD has streamlined the public land disposition process through the enhanced approval system. This process will be integrated into the regulator. The government will propose a process to deal with the applications that cannot be dealt with through the enhanced approval process (approximately 20 per cent of applications).
- The single regulator will also have authority for geophysical exploration authorizations. These authorizations enable geophysical exploration activities to help companies evaluate the potential for resource development. Requirements for geophysical exploration will remain consistent with what is in place today under legislation.
- Much of this geophysical work is done prior to companies acquiring mineral tenure and therefore the results of their geophysical work must remain confidential. In addition, since this work involves very preliminary resource assessment, prior to the decision to submit an application for construction and operation of wells and facilities, the authorizations should not be subject to the provisions for public hearing or review and variance.

fluids; storing, treating or disposing of oilfield waste; constructing or operating a coal mine, in situ coal gasification or processing plant; diverting water; etc.

Application for licence or approval

An application for a disposition, licence or approval shall be submitted to the regulator in the form and manner required by the regulator.

The regulator shall on receiving an application make any investigations or inquiries and hold any hearings that it considers necessary or desirable in connection with the application.

Notice of applications

The applicant must give public notice of the application in the form and manner required by the regulator. This requirement does not apply to applications for Geophysical Exploration (no change from current requirements).

Geophysical exploration

No person shall conduct exploration activities without the consent of the surface landowner, occupant (in the case of public lands), or appropriate agency or Minister of the Government among others (see the Exploration Regulation for specific details).

Regulatory decisions

If in its opinion it is in the public interest to do so, the regulator may:

- grant a disposition, licence or approval on any terms and conditions that it considers appropriate;
- refuse to grant a disposition, licence or approval;
- defer consideration of the application; or
- take any other action relative to the application that it considers appropriate.

Lieutenant Governor in Council approval

For large or complex activities, the regulator must seek the prior authorization of the Lieutenant Governor in Council, before granting a licence or approval.

Application

- The legislation will set down the basic requirements and process to apply for an authorization to commence an energy activity. This includes:
 - Which activities require a public lands disposition, a licence or an approval;
 - The requirement to give public notice of an application; and
 - The information requirements to support an application.
- Authorized activities are expected to remain the same. If a disposition, licence or approval is currently required for an energy activity, then a disposition, licence or approval will still be required for that activity in the new system.
- This includes obtaining a licence to divert water. The single regulator will have responsibility for issuing water licences. The Government of Alberta will remain responsible for developing and setting water policy. Similarly, licences regarding air emissions and waste will also be issued by the single regulator. Policy development and policy setting for air and waste will remain the responsibility of the Government of Alberta.
- The single regulator will have the authority to establish detailed application and procedural requirements, consistent with the legislation and rules of natural justice and fairness. For example, the legislation will require that an applicant provide public notice of its application; the single regulator can specify what form that notice must take.
- Within its jurisdiction, the single regulator will have authority to establish technical operating requirements through regulations, directives and other appropriate instruments subject to the Alberta government's cross-sector requirements and general policy direction. This will give the regulator the necessary flexibility to respond to changing technical developments in what is a diverse and highly competitive sector. It will also ensure there is co-ordination and oversight by the government where requirements are being set in specific areas of the environment and public lands.

Amendments, suspension and cancellation of licences and approvals

On application by the disposition, licence or approval holder, the regulator may amend a term and condition of the disposition, licence or approval, or suspend or cancel a disposition, licence or approval.

Notice of decisions

The regulator must give public notice of its decisions in a form and manner prescribed in the regulations.

Security

If required by the regulations, a disposition, licence or approval holder must provide financial or other security.

Regulations

The regulator may make regulations specifying application and public notice requirements.

Review and Examination

- In reviewing applications for proposed energy activities, the single regulator will consider:
 - Established Government of Alberta policies as set out in statutes and regulations;
 - Desired policy outcomes established as part of land-use and natural resource planning activities;
 - Risks of the proposed energy activity to desired policy outcomes including the social and economic effects of the project and the effects of the project on the environment;
 - Impacts of the proposed activity on potentially affected parties; and
 - Information requirements, including information relevant to audits, post-approval operations, monitoring, compliance and project closure.

Decision

- The enabling legislation will authorize the single regulator to make a decision on an application. This can include granting the disposition, licence or approval along with any terms or conditions the regulator deems fit. The single regulator can also refuse, defer or otherwise dispose of the application as the single regulator considers appropriate.
- Similar to existing regulatory entities, the single regulator will have the power to amend, suspend, or cancel a disposition, licence or approval.
- Before making decisions regarding certain large or complex projects, the single regulator will need to obtain prior authorization from Cabinet. This reflects the unique scale and nature of these developments.

Issues to Consider

- Additional issues relating to application, review and authorization will need to be further examined, including:
 - How to reconcile the policy issues or conflicts that arise in about 20 per cent of applications for public lands disposition and whether responsibility for these applications should remain with SRD;
 - How to transition geophysical activities to the single regulator and ensure existing requirements for confidentiality of geophysical information and the efficiency of the approval process for geophysical exploration are upheld; and
 - Whether the single regulator needs to seek Lieutenant Governor in Council authorization prior to issuing approvals.

HEARINGS AND PARTICIPATION IN HEARINGS

Where We Are Headed

Public engagement is a vital component of the Policy Development and Policy Assurance System. It is important that Albertans have the opportunity to provide input into policies and policy outcomes around natural resources and on the potential impacts of proposed energy activities.

The enhanced system will be structured to better provide these opportunities. It will provide clear public engagement processes at both the policy development (i.e. the Alberta government) and policy assurance (i.e. the single regulator) stages and channel participants to the stage where their input can most effectively inform key decisions.

Alberta government departments will establish more robust and coordinated processes to engage common interests – that is, input into broader policies around the management and development of natural resources. This will enable Albertans to effectively inform the policy choices made by the Government of Alberta. (For example, the policy choices and policy outcomes that will be established in regional plans.)

Participation rights of landowners and others with specific interests will not change.

The regulatory process will continue to engage those who may be impacted by a specific project, such as an oil well or a pipeline. This will ensure parties whose interests may be directly and adversely affected, can effectively inform the single regulator's decision on whether to authorize

a proposed project. These participation rights of landowners and those with specific interests will remain unchanged.

Currently, however, different engagement processes are used among the different regulatory entities.

The single regulator will use consistent, integrated processes for engaging those who may be impacted by its decisions and for conducting hearings. These processes will be fair, straightforward and understandable. This will provide clarity and predictability to landowners and others having specific interests so they know how they can participate in the decision-making process and have the opportunity to provide input regarding proposed energy activities that will impact them.

Requirements for hearings and basic rules relating to hearings will remain in place. The single regulator will use a consistent hearing process that is clear, fair and straightforward.

How It Will Work

- Landowners and other specific interests affected by a proposed energy activity will continue to have the opportunity to engage in the regulator's decision-making process to provide input regarding the activity's impact.
- The legislation enabling the single regulator will establish the major powers and duties of the regulator in holding hearings. The single regulator will have the authority to prescribe detailed rules and procedures consistent with the legislation.
- The integrated hearing process will engage specific interests before an energy activity is authorized. This follows the format currently used by the ERCB. This will enable the single regulator to make informed decisions in the public interest.
- The legislation will require the single regulator to give notice to certain parties when it appears they may be directly and adversely impacted by the single regulator's decision on an application. The single regulator will need to give the party a reasonable opportunity to understand the application and to provide evidence and make representations about the application.
- The single regulator may determine that a public hearing on an application is needed prior to decision.
- The single regulator will need to provide public notice of its hearings. This is consistent with current practice.
- Parties who qualify as "local interveners" (a person or group of persons who has an interest in or occupies land that is or may be directly and adversely affected) will continue to be eligible to apply for specified costs to assist them in preparing for and participating in a hearing on an application.
- The single regulator will encourage negotiation and resolution of disputes between proponents and specific interests affected by a proposed activity.
- The integrated process used by the single regulator will also establish a single, consistent mechanism for review and variance of the single regulator's decisions.

Proposed Legislative Approach

Hearing Administration

Co-operative proceedings

Where it is appropriate or in the public interest to do so, the regulator may conduct a hearing, inquiry or investigation under legislation or participate jointly with another board, commission or other body in Alberta.

With the approval of the Lieutenant Governor in Council, the regulator may enter into agreements with the Government of Canada or its agencies or other governments outside Alberta, with respect to a matter relating to the purpose of this legislation. Pursuant to these agreements, the regulator may hold proceedings jointly or in conjunction with other governments or agencies.

Public interest decisions

The regulator's decisions are final and conclusive. Parties may appeal to the Court of Appeal on matters of jurisdiction and law.

Hearings

If it appears to the regulator that its decision on a pending application may likely directly and adversely affect the rights of a person, the regulator shall give the person notice of the application, a reasonable opportunity to understand the application and to provide evidence relevant to the application, including an opportunity to cross-examine the applicant as necessary, and ensure an adequate opportunity to make representations (in writing, or in person directly if the regulator or the legislation requires it) to the regulator.

Interveners' cost

The regulator may make an award of costs to an intervener in a decision process, and specify the persons liable to pay the costs. Reviews of cost awards may be requested by the intervener or the persons liable for the costs.

- Under the single regulator's review and variance process, the regulator can review one of its decisions if there is a procedural error or if there is information material to the decision it did not have when the original decision was made. Unless appropriate to use the original panel, the general practice of the single regulator will be to conduct the review using a different panel.
- A further right of appeal to the courts will exist on matters of law and jurisdiction. If a court finds error, the decision can be vacated and returned to the single regulator for re-hearing.
- The Government of Alberta will maintain responsibility for assuring that First Nations consultation processes are completed. These will not be transferred to the single regulator. The government is committed to fulfilling its legal obligations to First Nations.

Issues to Consider

- Additional issues relating to application, review and authorization will need to be further examined, including:
 - How to structure the legislative regime to accommodate current practices around whether a public hearing is required. For example, well and facility applications and coal and oil sands applications may require public hearings as is currently the case today, but geophysical exploration and public land dispositions should not require public hearings, again, as consistent with current practice;
 - How to provide further clarity on the formal test for standing in decision processes (directly and adversely affected); and
 - How public engagement at the policy development stage should be made more robust. This is a key step towards achieving a clear, efficient and effective hearing process at the policy assurance (i.e. single regulator) stage.

Witnesses at hearing

The regulator may compel people to appear at a hearing, and also compel the production of documents or information as required. If witnesses fail to appear or produce the evidence requested, the regulator may apply to the Courts to enforce the appearance or production of information.

Review of Board order

The regulator may review, rescind, change, alter or vary an order or direction made by it, or may rehear an application before deciding it.

Rules of practice

The regulator may make regulations prescribing rules of practice governing the regulator's procedure and hearings.

COMPLIANCE, ENFORCEMENT AND INCIDENT RESPONSE AND CLEAN UP

Where We Are Headed

The enhanced system will maintain and enforce Alberta's high standards for environmental management, public safety and health, and resource conservation. The approach of the single regulator will be based around preventing non-compliance and reducing environmental, public safety and resource conservation risks.

The move to a single regulator will not result in diluted regulations or lowered expectations of industry. As in the current system, parties undertaking energy activities will need to comply with applicable legislation and regulations; the terms and conditions of their approvals; and additional technical and operational requirements established by the regulator.

The key difference is that compliance and enforcement functions will be delivered in an integrated way by the single regulator, rather than by several entities. The regulator will assume and integrate the enforcement and compliance activities currently delivered by AENV, SRD and the ERCB. This will enable better co-ordination of compliance activities (such as inspections) and ensure clear, consistent guidance is given to industry.

Compliance and enforcement functions will remain largely unchanged, but will be integrated in the single regulator.

A common risk management approach will be used by the regulator in its work. This approach will ensure the level of regulatory oversight for an activity is appropriate to the level of risk involved in the activity. Activities that come with higher risks to the environment, the health and safety of the public, or the long-term viability of the resource base, will require higher levels of oversight by the regulator.

The single regulator will have access to the entire spectrum of compliance tools currently available to AENV, SRD and the ERCB.

In line with this risk-management based approach, the single regulator will:

- Use a balance of strategies to assure compliance, including: education, prevention, continuous improvement and enforcement;
- Have the ability to utilize a broad suite of risk-based enforcement tools;
- Adopt and employ a “polluter pays” resource restitution philosophy;
- Deliver its functions in a consistent, fair and lawful manner; and
- Ensure that all suspected contraventions that come to its attention will be assessed and responded to in an appropriate and timely manner.

How It Will Work

- The regulator will assume the compliance and enforcement functions currently delivered by AENV, SRD and the ERCB for energy activities.

This includes:

- Education;
- Information reporting;
- Response to public complaints;
- Inspections, reviews and audits;
- Reporting of non-compliance;
- Unauthorized releases;
- Investigations;
- Emergency preparedness and response; and
- Incident responses and clean up.

Monitoring and reporting

- Monitoring and reporting will remain a cornerstone of compliance and enforcement. Public reporting, self reporting, and reporting by government and the regulator will continue as reporting mechanisms of the system. The single regulator will respond when information is brought to its attention through these mechanisms.
- The single regulator will oversee source monitoring and reporting and will assure accountability and credibility of the system by creating appropriate checks and balances. This will include:
 - Defining the type and frequency of monitoring and reporting required, and quality assurance/ quality control requirements;
 - Providing expertise to industry and its consultants on source monitoring and approving alternate methodologies;
 - Auditing the monitoring activities;
 - Reviewing reports from industry; and
 - Managing collected data and reporting, consistent with established Alberta government policies.

Inspections, investigations and inquiries

- In respect of energy activities within its jurisdiction, the single regulator will have the same powers to investigate and inquire into situations of non-compliance as the powers currently provided to the Director under the *Alberta Environmental Protection and Enhancement Act*.

Proposed Legislative Approach

Compliance and Enforcement

Reporting

The regulator will require industry to provide information required by the regulator and government for their purposes. The regulator sets requirements for responsibility areas it regulates.

The regulator shall compile and assess non-compliance or risk information that is brought to the attention of staff through means such as: self reporting, source monitoring, public reporting and government or regulator reporting, when the licence holder contravenes or fails to comply with an authorization.

Monitoring compliance

The regulator will use appropriate audits and inspections of facilities and activities to assure there are no contraventions of legislation, regulation or authorizations.

Investigations

The regulator will have powers and authorities of investigation to ensure compliance. For the purpose of any hearing, inquiry or investigation, the regulator and any member of it and any other person authorized by the regulator to conduct a hearing, or to make an inquiry or investigation, has all the powers of a commissioner appointed under the *Public Inquiries Act*.

At any reasonable time, the regulator is entitled to access to wells, facilities, pipelines, and other works; and to all buildings, installations, structures and land incidental to those works. The regulator is also entitled to access to any controlled area, and may enter on any land that the member or person must cross to reach a pipeline, installation or controlled area.

Enforcement

The regulator shall have the ability to apply tools currently in existing legislation. The regulator will have regard for risk in the selection of tools.

Enforcement tools used by the regulator include but are not limited to cancellation and suspension; stop, enforcement and environmental protection orders; authorization cancellation; stop or shut down of any

- Persons authorized by the regulator to investigate, make inquiries or hold hearings will continue to have the powers of a commissioner appointed under the *Public Inquiries Act*.
- The powers of investigation held by current regulatory entities will be adopted by the single regulator. This includes, without a search warrant or order to enter and inspect, the entitlement to:
 - Access pipelines and routes of proposed pipelines;
 - Access all buildings, installations, structures and land incidental to those pipelines or routes;
 - Access any controlled area; and
 - Enter on any land that the member or person must cross to reach a pipeline, installation or controlled area.

Compliance and enforcement approaches

- The single regulator will integrate the compliance and enforcement approaches currently utilized by AENV, SRD and the ERCB for energy activities into its operational practices. This will provide the single regulator with a broad “toolbox” of approaches that it can draw upon and utilize to deliver compliance and enforcement functions.
- The single regulator will have broad authority and flexibility to select the appropriate tools to assure compliance, guided by the relative risk of the energy activity at issue. There will be consistent and equitable enforcement across the province.
- Some of the tools at the disposal of the single regulator to address non-compliance and substance releases include:
 - Undertaking education activities to ensure proponents understand requirements of notice to the regulator of the release of substances that cause or may cause an adverse effect;
 - Directing a licence holder to contain and clean up escaped substances, including those from unidentified sources;
 - Registering and enforcing liens or stop work orders;
 - Removing works and obstructions;
 - Issuing compliance and enforcement orders;

activity; sale of equipment; enforcement of lien; fines; court action; removal of works and obstructions; administrative penalties; clean up of spills; recovery of costs; and notice of administrative penalty to the courts.

Use of courts

Court proceedings and court orders will be used where there is a failure to comply with an order and there is likely to be a continuing and serious risk to achieving the outcomes.

Reimbursement and recovery of costs

Where the regulator incurs costs to ensure compliance of a licence holder, the licence holder shall reimburse the regulator for those costs. In the event those costs are not paid by the licence holder, the regulator may seek recovery of costs through the courts.

Incident response plans

A licence holder of a well, an upstream oil and gas facility, coal facility or pipeline shall prepare and maintain incident response plans in accordance with the regulations.

Incident response and clean up

The regulator will support and assume a leadership role as necessary in coordinating emergency response amongst the company, the municipality in which the emergency occurs, and other government boards, departments and agencies. In cases of incidents the regulator will have authority to ensure adequate response by the licence holder to protect human health, the environment and public safety.

If oil, crude bitumen, water or any other substance, has escaped or appears to have escaped from a well, facility or pipeline and it appears to the regulator that the escaped substance may not otherwise be contained and cleaned up, the regulator may direct the licence holder to contain and clean up the escaped substance and to prevent further escapes.

Based on the principle of polluter pays, the licence holder will pay for all costs of clean up.

- Stopping or shutting down any activity temporarily or permanently;
 - Ceasing the construction or operation of any activity or thing until the regulator is satisfied the activity or thing will be constructed or operated in compliance;
 - Suspending or cancelling any licence or authorization;
 - Specifying measures that must be taken by parties in order to effect compliance;
 - Utilizing alternative dispute resolution processes;
 - Using administrative penalties; and
 - Initiating civil actions in court.
- Overall, the single regulator will approach compliance and enforcement activities with a preventative and curative philosophy, with the goal of helping operators remain compliant.

Incident response and clean up

- As is the case today, many agencies and government departments are involved in delivering incident responses when needed. The regulator will support and assume a leadership role as required in coordinating oil and gas incident response amongst first responders, the licence holder, the local government and other government boards, department and agencies.
- The regulator will have authority to ensure that the licence holder has appropriate plans in place to respond to issues respecting human health, the environment and public safety.
- Once an incident has passed, the single regulator will have primary accountability for any further follow-up including investigations. The regulator will assess the response by the licence holder to the incident (e.g., clean up) to ensure that incident mitigation and costs are addressed in a timely manner.
- It will be necessary to maintain emergency response capabilities in Alberta government departments, since they will continue to have emergency response accountabilities in areas not within the scope of the single regulator. They will also have an important role in providing support to decision-making by the single regulator.

Issues to Consider

- Additional issues will need to be further examined, including:
 - The requirement for the new single regulator to consult with Albertans to develop a compliance and enforcement program document that clearly outlines its standards, guidelines and approach to compliance assurance, given the variety of mechanisms and tools that are now proposed for integration into the single regulator from multiple agencies; and
 - Whether there are new or other preventive compliance tools that should be adopted by the single regulator.

SHUT DOWN AND CLOSURE OF FACILITIES

Where We Are Headed

The single regulator will be responsible for regulating energy activities throughout the project cycle. Accordingly, it will deliver all regulatory functions related to shut down, closure and abandonment of facilities and reclamation of land. Policy setting in these areas will remain the responsibility of the Government of Alberta.

Existing regulatory processes that will be integrated in the single regulator include:

- The reclamation certification process currently delivered by SRD and AENV;
- Suspension and abandonment of wells and facilities, and management and administration of the orphan fund, currently the responsibility of the ERCB; and
- Delivery of the Mine Financial Security Program, currently held by AENV.

The processes will remain the same. Alberta's high standards of environmental performance, and its expectations of industry, will be maintained.

The difference is that these processes and standards will be delivered by the single regulator in an integrated fashion, rather than distributed among different regulatory entities. The result will be less duplication and greater co-ordination of the functions. This will enhance our ability to ensure energy facilities are shut down properly and safely, and that lands are reclaimed to a productive state.

Furthermore, the use of a single regulator throughout the project lifecycle will help to reduce challenges during shut down and reclamation that sometimes occur. These challenges are often rooted in activities or incidents during construction and operation. By employing a single regulator throughout the project lifecycle, we will enhance the effectiveness of project oversight overall.

In delivering regulatory functions around shut down and closure, the single regulator will give effect to policies and support the achievement of policy outcomes established by the Government of Alberta.

Regulatory functions for shut down and closure will remain largely unchanged, but they will now be delivered by the integrated single regulator.

For example, the single regulator will support the Alberta's government policy goals of timely, progressive reclamation of oil sands projects. It will also support government policy regarding the management of oil sands tailings.

How It Will Work

- The single regulator will adopt the ERCB's legislative authority to direct licence holders to suspend or abandon a well, facility or pipeline.
- Licence holders will continue to be required to abandon their energy activities once they no longer hold the authorizations required to conduct the activity. (For example, their licence, mineral tenure, or right of entry.)

Proposed Legislative Approach

Suspension, Abandonment and Reclamation

Suspension and abandonment of wells, facilities and pipelines

A licence holder or approval holder shall suspend or abandon a well, facility or pipeline when directed by the regulator or required by the regulations. The regulator may also require, or consent to, a working interest participant to suspend or abandon the well, facility or pipeline.

- Licence holders and those with working interests will also remain liable and financially responsible for control of the well, facility or pipeline, and the costs associated with suspension, abandonment and reclamation.
- The single regulator will continue to support the Orphan Well Association and will adopt the ERCB's authority for the orphan fund, including the power to:
 - Assess fund levies;
 - Designate wells, facilities and sites as orphans; and
 - Authorize payments from the fund to pay for suspension, abandonment and reclamation of the sites.
- Those undertaking energy activities will have the same duty to reclaim specified lands.
- The reclamation certification process will remain unchanged. The single regulator will adopt AENV's and SRD's authorities and duties around:
 - Directing conservation and reclamation;
 - Conducting a reclamation inquiry as required;
 - Considering applications for reclamation certificates;
 - Issuing reclamation certificates;
 - Attaching terms and conditions to reclamation certificates; and
 - Amending or cancelling reclamation certificates.
- The single regulator will be responsible for implementing and delivering the new Mine Financial Security Program (MFSP), consistent with established government policy. AENV will remain responsible for setting MFSP policy direction.

Issues to Consider

- Additional issues will need to be further examined, including:
 - The need for further integration of processes for suspension, abandonment and reclamation; and
 - Whether the single regulator will require the authority to designate sites as "contaminated" under the *Environmental Protection and Enhancement Act*.

The regulator may also take action to suspend or abandon a well, facility or pipeline, and specify timelines as required.

A licence holder must abandon a well, facility or pipeline on termination of the mineral or surface lease or right of entry order; when they cease to hold an approval for the well, facility or pipeline, or where the regulator has suspended or cancelled the licence; where the regulator feels the well, facility or pipeline may be an environmental or safety hazard; or as otherwise required by the regulator.

Continuing liability

The licence holder, approval holder or working interest participant retains liability for the control or further abandonment of the well, facility or pipeline, and for the responsibility for the costs of doing that work.

Suspension, abandonment and reclamation costs

The well or facility suspension, abandonment, and reclamation costs must be paid by the working interest participants in accordance with their proportionate share in the well or facility. The regulator has the authority to allocate costs to working interest participants as required, and levy penalties for non-payment of costs.

Entry on land

Persons responsible for suspension or abandonment operations are entitled to have access to and may enter on the land to carry out the suspension or abandonment. They must give prior written notice to the owner or occupant of the land, and if they are prevented from entering the land, may apply to the court for an order permitting their entry. The person responsible must compensate the landowner or occupant for any direct expenses or damages, to their land, crop or livestock, and if a dispute arises, the compensation payable is set by the Surface Rights Board.

Orphan fund

The purpose of the orphan fund is to pay for suspension, abandonment, and related reclamation costs with respect to orphan wells, facilities, facility sites and well sites. The regulator may designate well, facilities, well sites and facility sites as an orphan, and authorize payment from the fund for the suspension, abandonment and reclamation of the sites.

The regulator may levy charges against well and facility licencees, for the purposes of the orphan fund, and can levy penalties for non-payments of the orphan levy.

Suspension and abandonment of oil sands sites, coal mines, coal processing plants

When planning the suspension and abandonment of an oil sands site, coal mine or processing plant, the licence holder must advise the regulator and obtain its consent. The licence holder must also advise the regulator if the mine or plant operations are to be suspended for more than three months. The shut down or suspension must comply with any conditions the regulator specifies.

If the licence holder fails to comply with the conditions of the regulator, the regulator may conduct the suspension and abandonment, and levy costs to the licence holder. The regulator may also utilize any performance bond or deposit that the licence holder has put forward, to defray its expenses for suspension or abandonment.

Security

If required by the regulations, an operator shall provide financial or other security and carry insurance in respect of reclamation activity.

Reclamation inquiry

The regulator shall, when required to do so by the regulations, conduct a reclamation inquiry in accordance with the regulations.

Duty to reclaim

An operator must conserve and reclaim specified land, and obtain a reclamation certificate. The conservation and reclamation must be carried out in accordance with the terms and conditions in any applicable approval or authorization; the terms and conditions of any order regarding conservation and reclamation that is issued; and the directions of designated staff of the regulator.

Issuance of reclamation certificate

An application for a reclamation certificate must be made by the operator to the regulator in the form and manner and within the time provided for in the regulations. The regulator may refuse to accept an application for a reclamation certificate if the application is not complete and accurate.

The regulator may issue a reclamation certificate to the operator if the conservation and reclamation have been completed properly, and may issue the certificate subject to any terms and conditions the regulator considers appropriate.

An approval in respect of an activity on specified land expires on the date that the final reclamation certificate is issued.

Amendment and cancellation of certificate

The regulator may amend a reclamation certificate issued by the regulator if the regulator considers it appropriate to do so. The regulator may cancel a reclamation certificate if no reclamation inquiry was conducted prior to issuance of the certificate, and the regulator is of the opinion that more work is required to conserve and reclaim the land.

No surrender or termination without reclamation certificate

No surrender of a surface lease (in effect on or after June 1, 1963) is effective or binding on any person, and no expropriation board shall order the termination of a right of entry order until a reclamation certificate has been issued in respect of the specified land affected by the surrender or termination.

AENV

Maintains authority for policy setting for air, water, land and climate change.

Continues to deliver regulatory functions for non-energy media.

Regulatory responsibilities for energy activities integrated in new single regulator:

- Issuing of licences and authorizations under *Water Act*.
- Issuing of licences and authorizations under *EPEA*.
- Inspections and compliance functions.
- Reclamation and remediation.

SRD

Maintains authority for policy setting for forestry, fish, wildlife and public lands.

Continues to deliver regulatory functions for non-energy media.

Regulatory responsibilities for energy activities integrated in new single regulator:

- Issuing of public lands dispositions.
- Geophysical authorizations.
- Right of entry.
- Reclamation and remediation on public lands.

ERCB

All regulatory responsibilities are integrated in the new single regulator.

Regulatory responsibilities for energy activities integrated in new single regulator:

- Well licence authorizations.
- Subsurface scheme approvals.
- Oil sands and facility authorizations.
- Application process.
- Adjudication and public hearing process.

INTEGRATED ENERGY REGULATOR

Responsible for regulation of all energy activities – includes oil and gas, oil sands, and coal activities.

Integrates regulatory functions transferred from AENV, SRD and the ERCB, to regulate activities throughout the project lifecycle.

Must act in accordance with applicable policies and regional plans established by the Government of Alberta as specified through regulation.

Required to co-operate with and assist the Ministers of Energy, Environment, and Sustainable Resource Development in promoting sustainable resource and environmental management.

Reports annually on its goals, performance measures and targets for the effectiveness and efficiency of the regulatory system.

THE WORK CONTINUES

The recommendation to create an integrated, single regulator followed comprehensive consultation and included extensive engagement of First Nations, the oil and gas industry, and individuals from landowner, municipal, and environmental groups.

To maintain Alberta's competitiveness the regulatory system must be effective, efficient, adaptable, predictable, fair and transparent.

At the same time, we will not compromise our responsibilities to environmental stewardship and the protection of public safety and public interests.

Regulatory efficiency and protection of our environment are not exclusive and cannot be achieved in isolation. In fact, the reporting requirements and tools for monitoring and enforcement are remarkably similar across the various agencies as they currently exist.

We understand the need and the benefits of moving forward with establishment of an effective and efficient integrated body to regulate development of Alberta's energy resources.

In reporting to the Alberta government, the Regulatory Enhancement Task Force made six recommendations, of which establishment of a single, integrated regulator is but one.

The single regulator will need to be linked to established performance criteria to ensure accountability and transparency and identify ongoing areas for improvements. Public reporting of results will be required to assure Albertans that we are achieving what we set out to do.

A common risk management framework will also be required to ensure that a consistent process is followed through all parts of the system to better anticipate, assess and guard against risks, including systemic risk, associated with development of energy resources.

Parallel to that, work will continue on the remaining recommendations of the Task Force that have been accepted by government, including establishment of a new policy management office to ensure the integration of natural resource policies and development of an effective mechanism to address landowner concerns that is independent, transparent and fair.

Next Steps

Creating a single regulator is a complex effort in itself. It means not only adopting best practices system-wide, but also drafting detailed legislation that will include amendments to many existing Acts. We need to get it right. To do that, we need the continued support and input of all stakeholders.

Many people and organizations can provide important input on how to structure and empower a single regulator to achieve those outcomes on behalf of all Albertans. We will be engaging the stakeholders who informed the recommendations of the Regulatory Enhancement Task Force, to discuss how to best ensure due diligence as we move forward. Other interested parties are invited to read or download the document from the Alberta Energy website and offer their comments as well.

That input will continue to inform the very detailed work ahead – to design the structure and to write the empowering legislation.



For more information visit:
www.energy.alberta.ca

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