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File No: 700

March 31, 2017

Sent via E-mail

Hon. Shannon Phillips
Minister of Environment and Parks
Government of Alberta
208 Legislature Building
10800 – 97 Avenue
Edmonton, Alberta T5K 2B6
aep.minister@gov.ab.ca

Hon. Margaret McCuaig-Boyd
Minister of Energy
Government of Alberta
408 Legislature Building
10800 – 97 Avenue
Edmonton, Alberta T5K 2B6
minister.energy@gov.ab.ca

Dear Minister Phillips and Minister McCuaig-Boyd:

Re: Alberta Energy Regulator failure to enforce orders and regulations

I have in the past copied you with letters regarding the efforts of our clients, Tony and Lorraine Bruder, to have a known contaminated well site on their property cleaned up and reclaimed. As documented in those letters (dated May 17, 2016; July 8, 2016 and December 6, 2016; and attached for your reference), the Bruders have tried for years to have the Alberta Energy Regulator (“Regulator”), and its predecessor the Energy Resources Conservation Board (“ERCB”), address this issue.

The Regulator has on a number of occasions over the past three years ordered the well site licensee, Nomad Exploration Ltd. (“Nomad”), to provide a reclamation plan and to complete a Phase II Environmental Site Assessment (“Phase II ESA”) as a precursor to completing the required remediation and reclamation of this contaminated site. The Regulator has granted Nomad several time extensions to complete this work, the most recent being a deadline of February 15, 2017. Despite these orders and time extensions, Nomad has repeatedly failed to complete this work as ordered by the Regulator. Yet, the Regulator appears to be either unable or unwilling to enforce its own orders with respect to this work. When Nomad fails to meet the conditions of one of the Regulator’s orders, the Regulator has imposed no consequences.

I have also attached our most recent letter to the Regulator dated March 3, 2017 in which we presented several possible approaches to resolving this issue. In a response on March 30, 2017, the AER stated “that the AER is continuing to gather and assess the relevant facts and information in order to determine the most appropriate response moving forward.” More than 16 months after ordering Nomad to complete the Phase II ESA, the Regulator has failed ensure that this required Phase II ESA has been completed.

The Bruders' case is only one example of a much broader and systemic problem of lack of enforcement by the Regulator. The Bruders' case is actually quite simple: it involves a single order to complete a Phase II ESA that the Regulator seems unwilling to enforce. However, it is symptomatic of the Regulator's demonstrated inability to enforce in much broader ways in recent years.

In July 2014, the Regulator announced that approximately 37,000 wells out of 80,000 inactive wells were not in compliance with the requirements of *Directive 013: Suspension Requirements for Wells*. While the Inactive Well Compliance Program has started to address this backlog, it raises the question of how the Regulator allowed almost 47 percent of all inactive wells in the province to be out of compliance.

More recently, we have seen situations involving Redwater Resources Ltd. and Lexin Energy Corporation where the Regulator issued numerous warnings and orders to companies with no effect. The end result is that the only resolution was to transfer hundreds of wells to the Orphan Well Association, leaving financial responsibility for these sites to other industry members, the Canadian taxpayer, and potentially the Alberta public.

These situations, from a single well on the Bruders' property to over 1,600 wells, pipelines and facilities left behind by Lexin Energy Corporation, demonstrate the Regulator's inability or unwillingness to strictly enforce Alberta's laws, regulations and directives. The Regulator has numerous enforcement tools at its disposal but it simply refuses to use these tools to ensure compliance.

We suggest that a number of significant changes are required to remedy this situation:

1. The Government of Alberta and the Regulator need to introduce strict timelines for the abandonment and reclamation of inactive wells, in conjunction with full upfront security for all abandonment and reclamation work. We have proposed such a system to you in a previous letter dated March 11, 2016 which I have also attached for your reference. Under this system, when an operator refuses or is unable to carry out the Regulator's directions or orders, or when an operator enters bankruptcy, the Regulator holds the necessary funds to complete the required work.
2. In 2014, the *Responsible Energy Development Act* ("REDA") moved jurisdiction over a number of enforcement tools in the *Environmental Protection and Enhancement Act* ("EPEA") from the Minister of Environment and Parks and directors in Alberta Environment and Parks to the Regulator. For example, REDA stripped the Minister of the power to apply to the Court of Queen's Bench under subsection 213(1) of EPEA for an order to force compliance with an enforcement order. Similarly, REDA transferred the power to take whatever action is necessary to carry out the terms of an enforcement order, under section 214(1) of EPEA, from a director in Alberta Environment and Parks to the Regulator. Given that the Regulator appears unwilling to use these tools, we recommend that these powers be transferred back to Alberta Environment and Parks.

3. Further, we must consider whether the Regulator itself should be dismantled and its powers and functions transferred to the Departments of Energy and Environment and Parks. From our perspective, rather than meeting its mandate to regulate the petroleum industry in the public interest, the Regulator actually acts to regulate and limit the public's rights in the industry's interest. We can provide many examples of the Regulator's failure to act in the face of obvious problems and the Regulator's unwillingness to communicate with stakeholders. As a simple example, we first raised the Bruders' concerns with the inactive well site on their property with the ERCB in May 2009 and were given assurances that this problem would be dealt with. We are still dealing with this issue 8 years later. Similarly, we have requested a meeting with the Regulator to discuss the Bruders' concerns on numerous occasions over the past 18 months and have yet to be granted a meeting, yet the Regulator has continued to grant time extensions and concessions to Nomad. If the Regulator is unable or unwilling to improve its performance, perhaps it is time for a new regulatory framework.

We request an opportunity to meet with you to discuss more fully our concerns with the Regulator's failure to enforce Alberta's laws, regulations and directives. We are available to meet at your convenience.

Sincerely,



Barry Robinson
Barrister & Solicitor

Attachments:

- 2016 03 11 Letter to Minister Phillips and Minister McCuaig-Boyd
- 2016 05 17 Letter to A Koper, AER
- 2016 07 08 Letter to J Fulford and A Koper, AER
- 2016 12 06 Letter to A Koper and S Belliveau, AER
- 2017 03 03 Letter to A Koper, AER

Cc: Tony and Lorraine Bruder
Jim Ellis, Alberta Energy Regulator
Alison Koper, Alberta Energy Regulator
Suzanne Belliveau, Alberta Energy Regulator
Fraser Thomson, Ecojustice