

Bulletin 2008-48

December 19, 2008

Clarification of Requirements Regarding Oil and Gas Development Within or Proximal to Water Bodies

The Energy Resources Conservation Board (ERCB) is giving notice to all companies regarding oil and gas development within or proximal to water bodies. The ERCB and Alberta Environment (AENV) have noted that some of these developments are not meeting current requirements.

The ERCB and AENV have identified oil and gas development within established setback distances to water bodies, and in some instances development has occurred directly within water bodies. A number of these instances have been in association with seasonal, ephemeral, or intermittent wetlands and in floodplains of watercourses. In some of these cases, the applicants did not identify these as water bodies and did not obtain approval from AENV for construction in a water body.

Appropriate preconstruction planning is required to ensure that placement of the site on the landscape and subsequent site construction are compliant with both ERCB and AENV requirements. It is preferred that the applicants avoid water bodies and take appropriate mitigative measures to protect the features incorporated into project construction, operation, abandonment, and reclamation activities.

If an applicant is proposing an activity within a water body, it must obtain any required *Water Act* approvals from AENV prior to submitting an application to the ERCB for a well or facility licence. The ERCB will close any applications if it has determined that an applicant is proposing its activity within a water body and it does not have an AENV *Water Act* approval. Failure to obtain an approval under the *Water Act* prior to commencing construction of a well or facility is an offence and may be subject to enforcement by AENV.

A *Water Act* approval is required prior to undertaking the following types of activities:

- physical disturbance of a water body (such as infilling, stripping, operating equipment in the water body, or destruction of vegetation);
- activities that are not listed in Schedule 1 of the *Water (Ministerial) Regulation*, which is available on the Web at http://www.qp.gov.ab.ca/Documents/REGS/1998_205.CFM;
- any construction that impacts or has the potential to impact water management or the aquatic environment (such as disturbing, infilling, altering or impeding natural drainage, altering the size of water body, berming, diking, ditching, erosion, constructing retention ponds, causing flooding to adjacent lands, and siltation of water bodies).

Some approvals may require compensation for the loss of wetlands, as Alberta's priority is to reduce loss by avoiding, minimizing, and compensating for impacts on wetlands. See the *Provincial Wetland Restoration/Compensation Guide* on the Web at

http://www3.gov.ab.ca/env/water/reports/Prov_Wetland_Rest_Comp_Guide.pdf.

- For further information, see the *Water Act* "Fact Sheet: Approvals," on the Web at <http://environment.alberta.ca/1632.html>. An application form to apply for an approval is at <http://environment.alberta.ca/documents/WAApplication.doc>.

An AENV *Code of Practice Notification* is required prior to undertaking the following types of activities:

- watercourse crossings (bridges, culverts, etc.)—see the *Code of Practice for Watercourse Crossings*;
- pipelines crossing a water body (includes wetlands identified as nonpeatland, such as marsh, shallow water, or swamp)—see the *Code of Practice for Pipelines and Telecommunication Lines Crossing a Water Body*; and
- hydrostatic testing of pipelines—see the *Code of Practice for Temporary Diversion of Water for Hydrostatic Testing of Pipelines*.

The ERCB, AENV, Sustainable Resource Development (SRD), and Special Areas Board (SAB) have formed a committee to address this issue for both Crown and Freehold lands. This cross-ministry committee is working to clarify current requirements regarding oil and gas development and water bodies to ensure that industry understands how to meet these requirements and that these requirements are interpreted and applied consistently. The committee work, including the analysis, is in the planning and development stage. Stakeholders will have an opportunity for input early in 2009. Until such time, this bulletin serves to identify that this issue has been recognized and what steps are being taken to address it.

In the interim, if the ERCB identifies that an applicant may be proposing to develop within a water body, the ERCB will request additional information and documentation prior to issuing a licence. This is to ensure that

- the applicant has conducted assessments that either 1) identify and delineate any water bodies to their ecological boundary or fullest extent or 2) demonstrate that the feature is not a water body;
- if it is determined to be a water body, the applicant avoids constructing or conducting any activity within the water body and takes appropriate mitigative measures to protect the water body; and
- if the applicant is unable to avoid a water body, the applicant has the applicable AENV *Water Act* approval and mitigative measures in place.

Assessments must be conducted by environmental professionals who are qualified and experienced in recognizing soil and vegetation characteristics associated with a water body and in addressing site sensitivities. These assessments must be signed by the assessor.

Any questions regarding this matter may be directed to

- AENV—contacts are listed on the Web at <http://environment.alberta.ca/contact.html>, or
- ERCB, Facilities Applications—*Directive 056* Help Line Phone: 403-297-4369; fax: 403-297-4117; e-mail: Directive56.help@ercb.ca

<original signed by>

K. G. Sharp, P.Eng.
Acting Executive Manager
Applications Branch