

Bulletin 2018-16

July 19, 2018

Clarifying the Difference between the Transfer of an AER Licence and the Sale or Transfer of the Contractual Right to Operate Wells and Facilities

The Alberta Energy Regulator (AER) has become aware that some companies incorrectly believe that a transfer of the contractual right to operate wells and facilities entitles them to a transfer of the associated AER licences. The purpose of this bulletin is to clarify that contractual agreements purporting to sell or otherwise transfer the right to operate wells or facilities do not transfer the associated AER licences unless a licence transfer application is submitted to the AER and approved.

Acquiring and holding a licence for energy development in Alberta is a privilege, not a right. In order to become the licensee of a well or facility under the *Oil and Gas Conservation Act (OGCA)*, a person must apply and qualify for licence eligibility pursuant to *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*. If granted eligibility, that person can then apply for a licence or apply to have a licence transferred to them. A licence cannot be transferred without the AER's consent, which, if granted, may be subject to certain terms, conditions, and restrictions.

The term “operator” is defined in section 1(1)(kk) of the *OGCA* as follows:

1(1)(kk) “operator”, with respect to a well or facility, means a person who

- (i) has control of or undertakes the day to day operations and activities at a well or facility, or
- (ii) keeps records and submits production reports for a well or facility to the Regulator, **whether or not that person is also the licensee or approval holder in respect of the well or facility.**
[emphasis added]

A licensee may operate a well or facility itself, in which case it is both the licensee and the operator. But often a licensee contracts with others to operate the well or facility on the licensee's behalf. These contracted operators are *not* licensees. They do not of themselves have authority to develop the resources. They do so under the auspices of the licensee.

As stated in section 9 of the *OGCA*, terms or conditions of any contract or other arrangement that attempt to override the AER's statutory discretion regarding licence transfers, or otherwise conflict with the *OGCA*, are unenforceable.

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

If you have any questions about this bulletin, please contact inquiries@aer.ca.

<original signed by>

Patricia Johnston, Q.C., ICD.D.
Executive Vice President and General Counsel
Law Branch