Directive 068

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Security Deposits

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1 Introduction

1.1 Purpose of This Directive

Directive 068 provides information and direction regarding the following:

- calculation, collection, and use of security deposits under the *Oil and Gas Conservation Rules* (*OGCR*), *Geothermal Resource Development Rules* (*GRDR*), and *Brine-Hosted Mineral Resource Development Rules* (*BMR*)
- cash and letters of credit (LOCs) provided to the AER to satisfy security deposit requirements under the energy resource enactments, including their form, use, and refund

This directive does not apply to security programs administered under the specified enactments (e.g., the Mine Financial Security Program, which is a liability management program under the *Environmental Protection and Enhancement Act*).

For the purpose of this directive, the following terms are defined:

- "Cash" means both Canadian currency and a negotiable financial instrument payable in Canadian currency and includes a cheque, money order, or bank draft.
- "Eligible financial institution" means all federally regulated Schedule I and II banks, as set out in the *Bank Act* (Canada), the Alberta Treasury Branch, and Alberta-based credit unions.

Questions regarding this directive should be directed to Directive068@aer.ca.

1.2 AER Requirements

Requirements are mandatory. The term "must" indicates a requirement, and terms such as "should," "recommends," and "expects" indicate a recommended practice. For ease of reference, requirements are numbered. Information on compliance and enforcement can be found on the AER website.

Because oilfield waste management facilities are included in the scope of this directive, but are approved rather than licensed, the terms "licence" and "licensee" are to be read as also including oilfield waste management approvals and oilfield waste management approval holders. The term "facility" includes oilfield waste management facilities.

1.3 What's New in This Edition

The following changes were made to the directive:

- Revised section 3 as follows:
  - Added information about security calculation for a new licensee resulting from a licence transfer.
  - Replaced the term "mandatory closure spend" with "licensee quota" to represent the required annual closure spend for a licensee.
- Clarified when interest earned on cash security trust accounts is refunded (section 6).
- Deleted redundant information on viewing security deposits (old section 8).

2 General Provisions

The AER is authorized to collect security deposits under various provisions in its legislation, such as Part 1.1 of the *Oil and Gas Conservation Rules* (*OGCR*), section 11 of the *Geothermal Resource Development Rules* (*GRDR*), and section 13 of the *Brine-Hosted Mineral Resource Development Rules* (*BMR*).

Section 3 only applies to licences and approvals issued under the *OGCR*. All other sections apply to licences and approvals issued under the *OGCR*, *GRDR*, and *BMR*.

1) Security deposits must be provided as directed by the AER.

3 *OGCR* Security Deposits

Part 1.1 of the *OGCR* imposes certain mandatory security requirements and also gives the AER broad discretionary authority to require security deposits across the energy development life cycle to offset the estimated costs of carrying out activities necessary to ensure the protection of the public and the environment and to address regulatory and liability obligations, including closure. Where security deposits are required, the AER will notify the licensee, specifying the amount and date due.

When considering whether to require security deposits under discretionary authorities or when determining the amount of security, the AER will, unless otherwise indicated, consider the holistic licensee assessment to mitigate the potential risks with a focus on the effects on the licensee capability assessment (LCA) factors identified in *Directive 088*. When security is determined to be required, the following factors may be used for calculating the amount of security that the AER could require:

- value of liability under *Directive 011*, including

  - marginal wells (defined in *Directive 011*)
  - inactive wells (defined in *Directive 013*)
  - inactive facilities (defined in *Directive 011*)
- value of *Directive 001* site-specific liability
- future cash flows based on the reserves and economic analysis
- any other amount that AER considers appropriate in the circumstances

3.1 Application Security

3.1.1 Oilfield Landfill Security

2) Where an approval is required in respect of an oilfield landfill, the applicant for the approval must provide security before construction or operation of the facility commences.

3) The amount of security to be provided for an oilfield landfill before construction or operation is

   a) the total amount (100%) of the costs set out in the site-specific liability assessment prepared and submitted under *Directive 011* and *Directive 001*, and

   b) any further amount the AER determines is appropriate after review of the site-specific liability assessment.

The amount of security required will be determined based on a site-specific liability assessment accepted by the AER. If a site-specific liability assessment is determined to be incomplete following an audit, any updates to the assessment may result in additional security required.

4) An approval holder of an oilfield landfill must not commence modifications to the facility until the site-specific liability assessment has been updated in accordance with *Directive 001*, security has been provided (if required), and the approval holder has been issued an approval under *Directive 058* for the proposed modifications.

3.1.2 Transfer Application Security

To offset any potential increase in risk that may arise from a licence transfer, a transferor or transferee (including a new licensee as defined in *Directive 067*) will be required, as a condition of approval, to provide a security deposit to the AER.

The AER does not provide a preliminary determination of expected security requirements. Security cannot be determined until the licence transfer application has been received and reviewed. Section 6.1.2 of *Manual 023* provides the ranges of security that will be required at time of transfer and an explanation of how the ranges will be applied to a new licensee. A Licence Transfer

Security Estimator is available to estimate the security that may be required when transferring oil and gas infrastructure.

If a required security deposit is not received by the due date identified by the AER, the licence transfer application will be closed, and the transferor will remain the licensee.

If the transfer results in a reduction of the total amount of security deposit required for either the transferee or the transferor, a request for refund of security may be submitted to the AER in accordance with section 7.

3.2 Security Deposits for Licensee Quota Obligations

The AER will determine a threshold for when licensees may elect to provide a security deposit in the full amount of their licensee quota instead of achieving the licensee quota through closure work (security deposit in lieu). This threshold is identified in *Manual 023* and OneStop.

5) A licensee who meets the threshold and elects to provide a security deposit in lieu for a calendar year must provide the deposit (in the amount of the licensee quota) to the AER by December 31 of the same calendar year.

6) If a licensee fails to meet *Directive 088* requirements for its annual licensee quota, the licensee must provide a security deposit in the amount required to meet their licensee quota that was not met (difference of licensee quota and reported spend).

3.3 Security Deposits During Transition to the New Liability Management Framework

Security currently held under rescinded liability management programs will be held in the form it was submitted for the licensee that provided the deposit. Security will remain held for each licensee throughout implementation of new security approach or until the licensee has been assessed holistically under the new liability management framework. As the AER implements the new security approach, the security required will be evaluated to determine if the amount of security held is sufficient under the new liability management framework. The new security approach, when developed, will include additional details for when security is required, how security is calculated, opportunities for refunds, and reporting.

7) If a licensee wants security held for rescinded programs to be considered when submitting an application for a licence transfer, the licensee must make a request for security evaluation as part of its application.

As the AER continues to implement the liability management framework, it will apply the authorities under the *OGCR* and existing requirements, including security deposit requirements outlined in this directive, during this transitional period. Security will continue to be required, if

necessary, based on the holistic assessment of a licensee at the time of application (e.g., oilfield waste facility) or throughout the life cycle (e.g., licensee management).

4 Forms of Security Deposit

The AER will accept only cash and LOCs meeting the requirements of this directive to satisfy its security deposit requirements under the *OGCR*, *GRDR*, and *BMR*.

The AER will only accept a security deposit from the licensee required to submit the security deposit or from a trustee, receiver, or receiver manager acting on behalf of that licensee. The AER is unable to accept a security deposit provided by one licensee to satisfy the security deposit requirements of another licensee.

8) An LOC or financial instrument provided to the AER to satisfy a security deposit requirement must designate the AER as the beneficiary and include applicable information to designate which program or application the security deposit requirement is provided for.

9) The AER will accept either the letter of notification of security owed or the Security Deposit Submission form for designating which program or application the security deposit requirement is provided for. (The Security Deposit Submission form can be found on the *Directive 068* homepage, aer.ca > Regulating Development > Rules and Directives > Directives > Directive 068).

A licensee may change the form of its security deposit from a cash deposit to a LOC or vice versa, provided that the requirements of this directive are met in full. An existing security deposit will only be returned to a licensee once the replacement security deposit has been received and processed by the AER.

4.1 Negotiable Instruments

The AER will only accept one of the following:

- a cheque drawn on the account of the licensee required to provide the security deposit
- a cheque drawn on a legal trust account in the name of the licensee required to provide the security deposit
- a money order identifying the licensee required to provide the security deposit as the payer or remitter
- a bank draft identifying the licensee required to provide the security deposit as the payer or remitter
- an electronic transfer from the account of the licensee required to provide the security deposit

The AER establishes a separate interest-earning trust account with a Canadian chartered bank for each licensee providing a cash deposit with the AER. The bank is responsible for issuing monthly account statements and annual T-5 statements to a licensee having a cash deposit.

10) As these accounts are trust accounts, changes to a security provider's address or other administrative changes must be submitted through the AER's Finance Branch at SecurityDeposits@aer.ca.

4.2 Letters of Credit

11) The licensee must submit only renewable, irrevocable LOCs in the form prescribed by this directive issued by an eligible financial institution in the exact legal name of the licensee required to provide the security deposit.

A blank sample LOC form and a blank sample of the demand draft are in appendices 1 and 2.

4.2.1 Nonrenewal of LOCs

12) The LOC agreement must stipulate that the issuing financial institution must automatically renew the LOC without amendment.

13) The LOC agreement must stipulate that, should the issuing financial institution elect not to renew the LOC, the issuing financial institution must notify the AER of the nonrenewal of the LOC by registered mail addressed to the AER's Chief Financial Officer 60 days before the expiry date.

4.2.2 Cancellation of LOCs

14) If a financial institution wishes to cancel a LOC before its renewal date, it must notify the AER's Chief Financial Officer of its intention by registered mail 60 days before the proposed cancellation date.

4.2.3 Amending LOCs

A licensee may amend an existing LOC held by the AER to meet incremental security deposit requirements.

15) An amendment to an existing LOC must be received by the AER by the date stipulated in the letter advising the licensee of the increased security deposit requirement.

A licensee may also amend an existing LOC to reflect a lower security deposit requirement. However, it may elect to maintain a LOC in excess of its current security deposit requirements.

16) Within 30 days after any change that would affect an existing LOC (e.g., corporate name change or amalgamation), a licensee must provide the AER with an appropriate amendment to that LOC.

5 Use of Security Deposits

Security can be collected at any time and used for any of the intended purposes set out in Part 1.1 of the *OGCR*, section 11(2) of the GRDR, and section 13(2) of the *BMR*.

17) If the amount of security held by the AER to meet a security deposit obligation is reduced by costs incurred by the AER or the Orphan Well Association for any of the purposes for which the security was provided, the licensee must provide additional security as required by the AER.

If the security used by the AER or Orphan Well Association proves to be inadequate, the difference between the security deposit held and the cost incurred constitutes a debt payable to the AER or to the AER to the account of the Orphan Fund.

If a security deposit lodged with the AER to satisfy a liability management program requirement exceeds the amount of the requirement, and the amount of security required by a liability management program increases, the AER may allocate any portion of the excess security deposit to satisfy the increased security deposit requirement without the consent of the licensee providing the security deposit.

6 Use of Interest Accrued from Security Deposits

If a licensee has accrued interest for security held under rescinded directives, the AER will continue to hold that interest as interest, rather than as security. The interest earned on the trust accounts cannot be applied to outstanding or future security requirements. The AER will refund accumulated interest when the licensee is eligible for a refund of its entire cash security deposit. Details on interest earned on cash deposits can be obtained from the financial institution administering the trust account.

7 Refund of Security Deposits

The AER expects parties to maintain a record of their AER security deposits and to request a refund when eligibility criteria are met and all obligations are addressed.

The AER will refund security deposits in accordance with the rules and the policy or program-specific criteria contained in the rule or directive under which the deposit was required.

18) A licensee must be compliant with AER requirements to be eligible for a refund of a security deposit in excess of any AER liability management program or policy.

19) The licensee must submit a written request for a refund by courier, mail service, or email addressed to Directive068@aer.ca.

20) The refund request must include the applicant's contact name, phone number, and email address, and must be submitted on company letterhead.

21) The licensee must describe in their refund request how they meet AER liability management program or policy-specific criteria for a security refund.

The AER will only consider a refund request from and refund a security deposit to the licensee that placed the deposit or, if appropriate, a trustee, receiver, or receiver manager. Only a director or senior corporate officer of a company may submit a request for a refund.

A request for a refund of security will trigger a holistic assessment of the licensee. If the holistic assessment of the licensee indicates that there is a risk and that security is still required to offset that risk, security will not be refunded. If the holistic licensee assessment indicates that the risk has been sufficiently reduced or if the security has been replaced with other security acceptable to the AER, a refund or partial refund of security may be warranted. The AER cannot conduct a holistic assessment because of insufficient licensee data; consequently, a new licensee, as defined in *Directive 067,* is not eligible for a security refund.

Where the AER is satisfied that all the eligibility criteria for full or partial refund are met, the AER will refund security deposits as follows:

- For LOCs, when there are no remaining security deposit requirements, the AER will return the LOC to the licensee that provided the security deposit. If there are reduced but continuing security deposit requirements, the AER will permit the amendment or substitution of an LOC for a reduced amount equal to or exceeding AER security deposit requirements.
- For cash deposits, when there are no remaining security deposit requirements, the AER will refund the full amount of any security deposit plus accumulated interest to the licensee that provided the security deposit. If there are reduced but continuing security deposit requirements, the AER will refund the difference between the security deposit held and the security deposit requirements or a lesser amount, if requested by the licensee. The AER will only refund accumulated interest when a licensee is eligible for a refund of its entire security deposit.

8 Availability of Information

The AER will make available through liability management reporting the security held by the AER for industry and licensees, including the following:

- security held for each type of energy development (e.g., oil and gas development, brine-hosted mineral development)

- security held by purpose or program it was required under, such as transfer security or closure quota security

Appendix 1 Sample Standby Letter of Credit

Issuing financial institution
(name and address):

_____

_____

_____

Date of issue: _____
(Month day, year)

Letter of Credit No.: _____

Amount: (Up to $ _____)

([amount in words] Canadian dollars)

Applicant (full legal name and address of the licensee providing the security deposit):

_____

_____

_____

Beneficiary:
Alberta Energy Regulator
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

Attention: Manager, Financial Services

On behalf of our client (the "Applicant"), we hereby issue in your favour this Irrevocable Standby Letter of Credit (the "Credit") for up to $_____.
([amount in words] Canadian dollars)

This Credit is available with the Financial Institution, by payment, against presentation of the following documents:

1) Beneficiary's demand on the Financial Institution in the form attached hereto as Appendix "A", indicating the amount to be drawn under this Credit, the number of this Credit, the date of issue of this Credit, and the name of our Financial Institution.

2) This Letter of Credit for endorsement by us of the amount drawn and on final drawing for cancellation.

This Letter of Credit is irrevocable and shall remain valid for one year up to and including

(date) _____. It is a condition of this Credit that it will from time to time be deemed to be automatically extended without amendment for one year from the present or any future expiration date unless

60 days prior to any such expiration date we shall notify the AER's Chief Financial Officer in writing by registered mail that we elect not to consider this Credit extended for any such additional period, at which time you can draw for the balance of the Credit, or

60 days prior to any proposed cancellation we shall notify the AER's Chief Financial Officer in writing by registered mail that we elect to cancel this Credit, at which time you can draw for the balance of the Credit.

Partial drawings are permitted.

We will honour each drawing made in conformity with the terms of this letter of credit without enquiring whether you have, as between you and the Applicant, the right to make such drawing and without recognizing any claim of the Applicant.

This Letter of Credit shall be governed by and construed in accordance with the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (the Publication) current at the time of issuance of this Letter of Credit, to the extent that such provisions are not inconsistent with this Letter of Credit, and engages us in accordance with the terms thereof. For matters not covered by the Publication, the laws of the Province of Alberta shall govern. To the extent of a conflict between the laws of the Province of Alberta and the Publication, the Publication will govern. Each of the Financial Institution and the Beneficiary hereby irrevocably and unconditionally attorns to the nonexclusive jurisdiction of the courts of the Province of Alberta and all courts competent to hear appeals there from.

Issuing Financial Institution
Authorized Signing Officer

Appendix 2 Sample Demand Letter

TO THE IRREVOCABLE LETTER OF CREDIT NO. (_____)

ISSUED BY_____Financial Institution

(name of)

DEMAND DRAFT

Drawn Under Letter of Credit No.:_____

(insert Letter of Credit number and date)

To (name and address of issuing financial institution):

_____

_____

_____

The undersigned hereby demands that (name of issuing financial institution)_____ _____ pay to the order of the undersigned the sum of **(Canadian $_____)** under the Letter of Credit described above

([in words] Canadian dollars)

Dated: _____

(Month day, year)

Alberta Energy Regulator

Per: _____

Authorized Signing Officer