

Draft Directive: Licensee Life-Cycle Management (released June 2021)

Stakeholder Feedback and AER Response



Stakeholder Feedback – Issue	Stakeholder	AER Response
1. General and Overall Comments		
<p>While we directionally support the high-level approach outlined within the directive, we wish to highlight several areas where additional detail and engagement would be beneficial, including the detailed design aspects of framework elements, how these design factors impact regulatory decision making, and how liability estimates will be improved over time based on reporting of closure spending.</p>	<p>Obsidian Energy Ltd. EPAC The Frac Notice Team</p>	<p>We provided additional details in <i>Manual 023</i> regarding the design aspects of the licensee capability assessment (LCA) and mandatory closure spend targets and how these design factors impact transfers and security deposits.</p> <p>Liability cost estimates are being improved in phases, and more information will be shared when available. The reporting of closure spending through the inventory reduction program will help the AER in updating these estimates.</p>
<p>We recommend the AER provide</p> <ul style="list-style-type: none"> • timeline for implementation and retirement of <i>Directive 011</i> and <i>Directive 006</i> as many lending institutions are still using these directives. • clarification regarding the LCA ratings process and the impact of the LCA on each individual borrower. • provision of “pro-forma” ratings before the system goes live. <p>We recommend the AER help lenders understand the timing of LCA ratings, and in turn, understand how this will impact credit agreements and borrowers.</p>		<p>In addition to the clarification provided in <i>Manual 023</i>, we held information sessions with the lending community on how we implement the Government of Alberta’s <i>Liability Management Framework</i> direction through the directive. The session focused on the holistic assessment and LCA and how the new <i>Liability Management Framework</i> policy components fit together, including the transition away from the Licensee Liability Rating (LLR) Program and liability management ratio.</p> <p>As outlined in section 2.1 of the directive, the LCA is used to assess the ability of licensees to meet regulatory and liability obligations.</p> <p>Lenders can request information from the holistic licensee assessment, including LCA information, from the licensee directly.</p>

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2. Holistic Licensee Assessment and LCA		
<i>Section 2, Holistic Licensee Assessment</i>		
<p>What is the methodology by which LCA factors and parameters will be calculated, as well as the associated weightings of these parameters to yield an LCA output?</p> <p>For well abandonment rate, what is the definition of a producing well vs. non-producing well? Could you provide definition of financial health factors, thresholds, and calculations?</p>	<p>Canadian Energy Pipeline Association</p> <p>CAPP</p> <p>International Petroleum Corp.</p>	<p>We provided additional details on LCA methodology, factors, parameters, and weightings in section 2 of <i>Manual 023</i>.</p>
<p>What is the application of the LCA methodology to midstream companies, particularly with respect to the Inventory Reduction Program?</p> <p>How will pipelines be included in liability estimates? Will it be the same approach as Area Based Closure (ABC), i.e., closure work counts towards spend?</p>		<p>Any AER licensee with inactive liability, including a midstream company, will be assigned a mandatory closure target.</p> <p>There is a closure cost associated with pipelines that has historically not been accounted for in our liability management programs unless the pipeline is defined as a problem site.</p> <p>In order to have liability considered for pipelines, the <i>Pipeline Act</i> will need to be updated, which would need to be completed by the Government of Alberta. Once these changes are made, we will then be able to update the AER requirements. We will reach out to midstream companies when this work moves forward.</p>
<i>Section 2.1, Licensee Capability Assessment, Section 2.2 LCA Factors, and Appendix 1, LCA Factors and Parameters</i>		
<p>How will industry transition from liability management rating (LMR) to LCA?</p>	<p>Ovinitiv Canada ULC</p> <p>CNRL</p> <p>ATB Capital Markets</p> <p>CAPP</p>	<p>The transition from LMR to LCA is being completed in phases. With the release of <i>Directive 088</i>, LMR will no longer be used for transfer applications. The results from the holistic licensee assessment, including LCA, will be used instead.</p> <p>The replacement of LMR security and the full transition away from the LLR program will be completed in phases throughout 2022.</p>

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<p>Could you confirm if LCA ratings are set annually, monthly, or otherwise? What is the anticipated timeline for initial LCA ratings?</p>	<p>Tourmaline Oil Obsidian Energy Ltd. EPAC</p>	<p>As outlined in the directive, the holistic licensee assessment will recur at various times as the licensee moves through the energy development lifecycle. Licensees will have access to their LCA information and ratings in November 2021.</p>
<p>Could you confirm the process for market participants, including lenders, to get guidance on the impact on LCA ratings relative to new companies around mergers & acquisitions, and with respect to asset purchase and sale agreements?</p>	<p>North River Midstream International Petroleum Corp. Vesta Energy Ltd.</p>	<p>We provided additional clarity on how the holistic licensee assessment will be considered as part of the transfer application in section 5 of the directive and in section 4.2 of <i>Manual 023</i>.</p> <p>As outlined in section 2.1 of the directive, the LCA is used to assess the ability of licensees to meet their regulatory and liability obligations.</p> <p>Lenders can request the results of the holistic licensee assessment, including the LCA, from the licensee directly.</p>
<p>The outcome of a LCA rating may be considered as a material event for both public and private companies. How will the AER and companies broadcast LCA rating changes? Will the AER establish guidelines for proper disclosure of LCA ratings; and clarify portions of the LCA that will be publicly available, if any?</p>		<p>As outlined in section 2 of <i>Manual 023</i>, the AER will only provide licensee-specific LCA information to the licensee and report publicly overall closure and liability trends as part of general industry data.</p>
<p>We recommend the AER to adjust the following weighting factors in the LCA calculation:</p> <ul style="list-style-type: none"> • increase weighting for Operating Netback to 25% • increase weighting for Cash Flows from Operations to Debt to 25% • reduce weighting for Net Profit Margin to 5%. • reduce weighting for Current ration to 5%. • add a cash flow from ops margin (3-year average) for 25% weighting, calculated using cash flow from operations over revenue. 		<p>We removed the netback parameter that was initially part of the LCA because netback is similar to net profit margin and is therefore redundant. We will continue to evaluate the parameters over time to ensure they remain relevant.</p> <p>We performed an extensive analysis of the financial information of AER-regulated companies (active and insolvent) to identify the financial ratios and thresholds that show a clear distinction between financially healthy and distressed licensees. The weighting factors used in the LCA calculation are listed in section 2 of <i>Manual 023</i>.</p>

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<p>How will the AER protect confidential financial and reserves information against Freedom of Information and Protection of Privacy (FOIP) requests?</p>		<p>Financial and reserves information is confidential as per sections 12.152(2)(a) and (b) of the <i>OGCR</i>. We will not release licensees’ financials or reserves information should we receive a FOIP request within the time period for when the information is to remain confidential.</p>
<p>Could you define “other factors” the AER may consider appropriate? For example, clear definition of all conditions, and to schedule periodic reviews whereby the AER and industry can review methodologies to see if the plan is delivering desired outcomes.</p>		<p>We assess the capabilities of licensees to meet their regulatory and liability obligations within the context of our mandate and the purposes of the acts that we administer. Section 2.2 of the directive outlines the key factors that we consider in LCA; however, there may be other factors we could consider appropriate in the circumstances when assessing licensees. Section 4.2 of <i>Manual 023</i> provides examples of other factors that may be considered.</p>
<p>How will licensees have access to their own LCA information and other licensees LCA information?</p>		<p>Licensee access to LCA information will be added to OneStop. As outlined in section 2.3.2 of <i>Manual 023</i>, licensees will only have access to their own LCA information and not the information of other licensees.</p>
<p>We recommend the AER remove magnitude of liability from risk calculation and redefine it as informing the priority of regulatory action.</p>		<p>The magnitude of liability is a key factor used as part of the holistic assessment to assess the capability and potential impact of a licensee’s ability in meeting their regulatory and liability obligations. It is included in the LCA to assist in prioritizing licensees.</p>
<p>We recommend the AER consider standardized guidelines for liability measurement and reporting. The current material variances in forecasts for total magnitude of liability in the industry cause concerns. In certain cases, forecasts have been observed as materially different from producers, purchases vs. sellers, account firms, the regulator, consultants, and engineering firms.</p>		<p>Liability is currently estimated using <i>Directive 011: Licensee Liability Rating (LLR) Program: Updated Industry Parameters and Liability Costs</i> and site-specific liability assessments.</p> <p>Liability cost estimates are being improved in phases as we implement the new <i>Liability Management Framework</i>, and more information will be shared when available</p>
<p>We recommend the AER improve transparency to how LCA parameters are measured.</p>		<p>The AER provided additional details in section 2 of <i>Manual 023</i> regarding how the LCA parameters are measured.</p>

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<p>We recommend the AER consider including compliance with “Orders” in LCA, such as Closure and Abandonment Orders.</p>		<p>Compliance with orders is one of the LCA factors listed in section 2.2 of the directive as part of the “management and maintenance of regulated infrastructure and sites, including compliance with operational requirements.”</p>
<p>We recommend the AER consider changing “Mineral Lease expiries” to “Mineral Lease expiries without approved extensions,” because companies should be compliant and not penalized for managing their mineral expiries in an ABC program.</p>		<p>The AER provided clarification in section 3.3 of <i>Manual 023</i> regarding mineral lease expiry extension incentive where licensees are managing their mineral lease expiries.</p>
<p>We recommend the AER exclude reserve-based value non-cash accounting adjustments (Impairment / Gain on re-evaluation) from Net Profit Margin and EBITDA calculations.</p>		<p>EBITDA calculations already exclude all non-cash transactions such as unrealized gain or loss, gain or loss on acquisitions and divestitures, and impairment.</p>
<p>We recommend the AER remove the calculation of remaining lifespan of mineral resources and infrastructure, and the extent to which existing operation may fund current and future liabilities.</p>		<p>The LCA factor of remaining lifespan of mineral resource and infrastructure is critical for the holistic assessment to assess the capability and potential impact of a licensee’s ability in meeting their regulatory and liability obligations and for quantifying the potential risk exposure to the Orphan Well Association or Albertans should a licensee become defunct.</p>
<p>What are the audit and appeal processes for LCA determinations?</p>		<p>Please refer to the AER’s website for further information with respect to the audit process and appeal process.</p>
<p>We recommend the AER to assign midstream companies to their own peer group or remove netback from the midstream company’s peer group only.</p>		<p>Midstream companies have been moved into their own peer group to improve the evaluation of these companies.</p> <p>We removed the netback parameters and will continue to evaluate the parameters over time to ensure they remain relevant</p>
<p>3. Licensee Management Program</p>		
<p>We recommend the AER define the level of “greater risk” based on the 9-box presented by the AER.</p>	<p>Ovinitive Canada ULC</p>	<p>Refer to <i>Manual 023</i> on how LCA factors are separated into risk and performance groups.</p>

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<p>We recommend the AER to define what a specific regulatory action could be and when a special action is warranted. Are “regulatory steps” the same as “regulatory actions”?</p>	<p>CAPP Obsidian Energy Ltd.</p>	<p>Section 3 of the directive was updated.</p>
<p>It is a very fine balance to issue restrictions (i.e., orders) and/or require security to minimize the risk of licensee meeting their regulatory and liability obligations, and in some cases will force a struggling company out of business and increase the likelihood of failing to meet obligations.</p>		<p>The principles and intent of the compliance assurance program, as well as a description on the noncompliance triage assessment process, are available on the AER’s website.</p>

4. Inventory Reduction Program, Closure Spends, and Closure Targets

Section 4, Inventory Reduction Program

<p>We would not wish to be forced to spend funds abandoning economically viable wells.</p> <p>What are the requirements for companies with no or minimal inactive assets?</p>	<p>Dundurn Corp Ovintive Canada ULC CNRL ATB Capital Markets CAPP Tourmaline Oil Corp. Obsidian Energy Ltd. LongRun Exploration North River Midstream International Petroleum Corp.</p>	<p>Targets are set considering inactive inventory of licensees. Closure work can be completed on all types of assets, including those already abandoned.</p> <p>AER data shows that there is a sufficient amount of inactive and abandoned infrastructure such that funds should not need to be spent on abandoning economically viable wells in order to meet the closure spend targets.</p> <p>The closure spend target includes any spending on closure work, including abandonment, remediation, and reclamation of wells, facilities, and pipelines.</p> <p>In lieu of meeting the mandatory target through closure work, licensees may elect to provide security to the AER in the full amount of the mandatory target based on a threshold identified in OneStop. Please refer to section 4 of the directive and section 3 of <i>Manual 023</i>.</p>
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<p>What type of information could be requested by the AER under the Inventory Reduction Program? Is there an opportunity to include expected response timelines?</p>	<p>Vesta Energy Ltd.</p>	<p>We are not able to provide an exhaustive list of the type of information that could be requested; however, we provided some examples of information that may be requested by the AER in section 3 of <i>Manual 023</i>.</p> <p>When additional information is requested, that request will outline the specific response timelines.</p>
<p>We recommend the AER consider defining how the “increased liability risk accumulated over the year” will be measured.</p>		<p>We have considered this feedback together with additional clarification requested on how security will be determined and calculated for the new liability management programs and licence transfers. As a result, we provided further details in section 6 of the directive, and sections 2.2.2 and 4.2 of the manual also outlines how the magnitude of liability is assessed, which is included as a factor that will receive further scrutiny for assessing when security is determined and the amount of security.</p>
<p>We recommend the AER split closure reporting into two requirements: one for total provincial gross spend (signed off by the CFO and third-party auditor) and the other one for stage cost (signed off by qualified professionals).</p>		<p>Closure reporting demonstrates achievement of a closure milestone or stage. At this time, we will not be making changes to our reporting requirements or IT systems.</p>
<p>Will the AER allow overspend or carry forward any amounts that exceed a company’s target spend? Will the AER include allowance for rolling average?</p>		<p>We provided additional details regarding overspend, carry forward, and rolling average in section 3 of <i>Manual 023</i>.</p>
<p>Will the AER allow a licensee to be compliant with the target by either spending the required amount or submitting a cash deposit, or a combination of the two by December 31 of the target year?</p> <p>Will the AER consider a process to allow companies to draw on security deposits to pay for closure work?</p>		<p>No, for those licensees that elect to provide a security deposit in lieu of meeting their mandatory target through closure work, they must provide the deposit in the full amount of the mandatory target to the AER by January 31 of that year.</p> <p>Security collection provides a backstop to offset risk as well as being used to incentivize closure. The AER will not permit companies to draw on the security deposit to pay for closure work.</p>

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<p>We recommend the AER specify the basis on which targets will be determined, including providing the date on which liability will be assessed to determine a target, and what types of liability will inform this target calculation?</p> <p>Will the AER allow for the adjustment of mandatory targets during the calendar year on a limited basis?</p>		<p>We provided additional details regarding when and how targets will be calculated in section 4 of the directive and section 3 of <i>Manual 023</i>.</p> <p>Targets will not be adjusted throughout the year.</p>
<p>We recommend the AER provide certainty at a licensee level with respect to targets in both the short- and long-term, and to ensure that targets will achieve desired outcomes of liability reduction and reduced orphan inventories over time, while also considering economic conditions and other factors.</p>		<p>The AER will provide industry targets for a five-year period, the first two years being set, and the final three years forecasted. The forecasted targets may change due to a variety of factors, such as market conditions and results from previous years’ closure spending. This approach allows industry longer-term budgeting and planning certainty.</p>
<p>We recommend the AER recognize working-interest participant (WIP) closure spend towards the licensee specific target.</p>		<p>Currently we are not able to accept WIP spend toward a licensee’s closure spend target. The licensee is allocated 100% of the liability and WIPs are allocated 0% of the liability when estimating inactive liability and calculating closure spend targets. Credit for spend reported will also be allocated 100% to the licensee and 0% to WIPs. We do not regulate WIPs, and a significant amount of effort by both the AER and industry would be required to accept credit for WIP spend in a fair manner. We are open to further discussion on this matter with industry.</p>
<p>We recommend the AER enable flexibility for licensees to provide a security deposit for a portion of their mandatory target if a portion of closure target has been funded during the year.</p>		<p>The AER will consider the severity of the spend shortfall and perform a holistic licensee assessment when determining if and the amount of security that could be required. Please refer to section 6 of the directive and section 5 of <i>Manual 023</i>.</p>
<p>What’s AER’s roadmap for updating <i>Directive 011</i> cost? Licensee liability as calculated by <i>Directive 011</i> has a major impact on a licensee’s potential target.</p>		<p>A roadmap of liability calculations is under development, and we will engage with industry as we assess and consider revisions to liability calculations.</p>

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<p>Could you specify what “complete and accurate records” are, and what money would be counted towards the spend target?</p>		<p>Complete and accurate means that the information being provided has all of the necessary and correct details of your closure activities and spending.</p> <p>The AER provided additional clarification in the section 3.5 of the <i>Manual 023</i> for eligible items that will be considered with the closure spend.</p>
<p>We are concerned that the AER can set whatever target they want for a company in absence of clear methodology. We recommend revising Sec 3.014 of the OGCR to introduce oversight from the Department of Energy (DOE), and confining AER’s authority to closure spend and direction of work only to those sites which may be high risk or contravention of regulations.</p>		<p>By setting a mandatory closure spend target we allow licensees to use an area-based approach to allow for efficiently completing closure work. Section 3.014 of the <i>OGCR</i> gives the AER the authority to set these targets within the context of its mandate and appropriately administer the Inventory Reduction Program.</p> <p>The approach and methodology to setting the closure spend targets announced in Bulletin 2021-23 was reviewed and approved by the Department of Energy.</p>
<p>Will the AER allow companies to set their own liability management and closer targets over the next 3–5 years?</p>		<p>No. The AER will be setting the closure targets to ensure that all licensees spend a minimum amount on closure each year to ensure liabilities are being proactively managed across industry.</p>
<p>Will there be a mechanism to reduce targets or some other solution in the event of a mid year price collapse like 2020? Will the AER allow a company to apply for relief from mandatory closure spending targets when market conditions warrant such relief? Will the targets be limited by a certain % of company cash flow?</p>		<p>Additional information on how the closure spend targets are set is in section 3 of <i>Manual 023</i>.</p> <p>Throughout the economic downturns, companies still continued to allocate funds to closure work, and the five-year rolling spend allows licensees to plan ahead and budget appropriately.</p>
<p>Will a company be exempt from a holistic assessment when it requests a security deposit refund for closure work, provides the AER with a long-term closure plan, and is in good standing based on the previous year’s LCA assessment?</p>		<p>No. The AER will consider the holistic licensee assessment when determining if and the amount of security that could be required or be refunded. Please refer to section 6 of the directive and section 5 of <i>Manual 023</i>.</p>

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<p>For companies operating in various provinces, will the minimum spending levels in other provinces be considered?</p> <p>Will the AER coordinate with regulators in British Columbia and Saskatchewan regarding corporate health tests? Will a company operating in the three provinces have the same corporate health score that all the provinces use?</p>		<p>We regulate energy development activities in Alberta, and closure spending in other provinces will not be considered on the setting of closure spend targets.</p> <p>Closure spend targets are based off a licensee’s inactive inventory in Alberta and their financial information.</p> <p>We continue to work and share lessons learned with regulators in other provinces.</p>
<p>Will the AER allow flexibility and deal with licensees on a case-by-case basis with respect to annual spend targets?</p>		<p>Closure spend targets are based off a licensee’s inactive inventory in Alberta and their financial information. All licensees with an inactive inventory will receive a closure spend target. Please refer to section 3 of <i>Manual 023</i> for further information on how targets are established.</p>
<p>Could you clarify whether costs associated with borrow pit reclamation would be eligible given that they are constructed to support road and well-pad construction for SAGD wells?</p>		<p>Currently borrow pits do not have an activity status and are generally not included in <i>Directive 011</i> liability. The AER received jurisdiction for borrow pits as of January 1, 2021 (announced in Bulletin 2020-27), which are regulated under the specified enactments. The AER plans to assess how borrow pits, specifically closure spending for these activities, could be considered under the requirements of the energy enactments, specifically the <i>OGCR</i>.</p> <p>However, in situations where a borrow pit’s reclamation liability is included in a site-specific liability assessment associated with an inactive or abandoned well licence or facility licence, the closure costs of the borrow pit are eligible to count toward the licensee’s spend target.</p>
<p>Could you provide clarity on whether abandonment costs associated with historic remote sumps would be eligible? These sumps contain cement/waste associated with inactive and abandoned wells and could be tied to a well licence for reporting.</p>		<p>Abandonment costs associated with historic remote sumps (refer to <i>Directive 050</i> for more details), where it is associated with an inactive or abandoned well licence, are eligible as closure work that will count towards the licensee’s target.</p>
<p>Would pipeline decommissioning and abandonment be included in eligible spend?</p>		<p>Closure spend on abandoned pipelines is eligible. Refer to section 3.5 of <i>Manual 023</i> on eligible closure spend activities.</p>

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<p>Why have the industry-wide mandatory spend targets set based on industry’s current inactive liability, but not on industry’s total clean-up liabilities? We recommend the AER to design the inventory reduction program to make sure all wells will be closed within a time frame that will be protective of Albertans.</p>		<p>While many licensees are proactively managing their liabilities, a significant portion of industry inactive liabilities are not being sufficiently managed. The closure spend targets are based on liabilities associated with infrastructure that is no longer active and will continue to adjust annually as infrastructure statuses change. As such, active liabilities will be accounted for when they become inactive. Mandatory closure spend targets will help to level the playing field and create a new performance expectation for all licensees. Please refer to section 3 of <i>Manual 023</i> for further details on the Inventory Reduction Program.</p>
<p>Will the AER allow companies to utilize their Alberta Site Restoration Program allocations as part of the spending target?</p>		<p>No. Grant funds allocated to licensees through the Site Rehabilitation Program will not be considered eligible expenses and will not count towards meeting the closure spend target. Licensees must submit all spend, and the AER will subtract the SRP portion afterwards.</p>
<p>What is the AER’s method or criteria for calculating these mandatory targets? Will the AER allow industry to self-calculate for planning purposes. Will the AER disclose its inactive inventory lists so the companies can reconcile differences?</p>		<p>The AER provided additional details on how the closure spend targets were calculated and how to access your inactive inventory in section 3 of <i>Manual 023</i>.</p>
<p><i>Bulletin 2021-23 Mandatory Closure Spend Targets</i></p>		
<p>We recommend the AER provide a more sustainable closure spend rate of increase that industry can stand behind.</p> <p>Will the escalation of combined mandatory targets be capped in advance?</p>	<p>ATB Capital Markets Obsidian Energy Ltd. EPAC MEG Energy University of Calgary</p>	<p>The increase in target is required to gradually bring industry to the level of closure spending required to adequately address inactive liabilities. The annual increase is to keep with the predicted growth of inactive assets. Without an appropriate amount of closure spending across industry, the total inactive liability in the province will continue to increase.</p>
<p>We recommend the AER publish an index to commodity pricing at the beginning of the five-year plan.</p>	<p>The Frac Notice Team</p>	<p>We do not intend to publish an index to commodity pricing.</p>

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What are the incentives of committing to an increased spend target?	LongRun Exploration North River Midstream International Petroleum Corp.	We provided additional details on regulatory incentives for an increased spend through the voluntary spend target in section 3 of the <i>Manual 023</i> . The types of incentives will continue to evolve as the inventory reduction program is developed.
We recommend the AER make all environmental work eligible for inclusion when meeting the mandatory closure spend target.		Eligible items for closure spending are outlined in section 3.5 of <i>Manual 023</i> .
5. Licence Transfers		
Could you define what type of factors the AER may take into consideration when assessing a transfer application, and what type of conditions could be implemented?	Ovinitiv Canada ULC CNRL ATB Capital Markets CAPP	A transfer application will trigger a holistic assessment of the licensee. The factors that are part of this assessment are outlined in section 2 of the directive. Examples of conditions that could be implemented at time of transfer are listed in sections 4 and 5 of <i>Manual 023</i> .
Does this mean that a transferor or transferee can submit a transfer application?	Obdisian Energy Ltd. EPAC International Petroleum Corp.	As stated in section 5 of the directive, a licence transfer can be submitted by the transferor, transferee, or an authorized agent or consultant acting on behalf of either party.
We recommend the AER expand the directive to include routine and nonroutine application types and processing times for transfer applications.		Licence transfer application status can be viewed from IAR. Routine and nonroutine application timelines are laid out in the AER Estimated Application Processing Timelines .
Licensees do not maintain or monitor reclaimed or reclamation exempt sites. Once a site is reclaimed or is reclamation exempt the surface lease is terminated and the licensee no longer has access to the site.		We have updated the language in section 5 of the directive and provided further clarification in the section 4 of the <i>Manual 023</i> .
Generally, licence transfers have gone from strong companies to weaker companies. The current rule that licences that have a reclamation certificate or are reclamation exempt stay with the strongest company should be maintained.		The AER provided clarification in section 4 of <i>Manual 023</i> regarding the potential transfer of reclamation certified and reclamation exempt licences in certain circumstances.

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<p>Reducing liability by selling to a weak company is not a sustainable liability reduction method for industry. We recommend the AER add “until the transferee goes defunct unless the transferor has security in place equal to the total liability of the transfer” to the last line,</p>		<p>We provided additional clarification in section 5 and 6 of the directive. Please also refer to sections 4 and 5 of <i>Manual 023</i>.</p>
<p>Will there be an advance ruling process for licence, including expected security requirements?</p>		<p>Additional details on when security may be required and how the security deposit amount will be calculated has been provided to section 6 of the directive and section 5 of <i>Manual 023</i>.</p>
<p>We recommend the AER:</p> <ul style="list-style-type: none"> • set a fixed timeline for acting on transfer applications or they will be processed automatically. • enable an appeal process, also with a fixed timeline using an independent authority like the Department of Energy or provincial court. • set fixed timelines for interveners to engage in the process and limit them to groups or individuals impacted directly by the project. • create legislation whereby interveners are responsible for paying licensee costs in the event their appeal is rejected. 		<p>Application review timelines are set out in the Estimated Application Processing Timelines on the AER website. Application review timelines when there is an SOC filed are provided in the “What Happens Next” section of AER’s website.</p>
<p>We recommend the AER provide rigid criteria around what will lead to a security deposit related to a sale so that parties can incorporate that knowledge into their deal negotiations.</p>		<p>The AER provided additional details on when security may be required for licence transfers and how security will be calculated in section 6 of the directive and in section 5 of <i>Manual 023</i>.</p>
<p>We recommend the AER add “In the alternative to rejecting the application, the AER may direct that either party pay their outstanding taxes in full. In the event this occurs, the AER will revisit its review of assigning or transferring the licence for public lands disposition.”</p>		<p>The AER does not have the jurisdiction to direct the payment of outstanding municipal taxes as part of a licence transfer application under the <i>OGCA</i> or <i>Pipeline Act</i>.</p>

Stakeholder Feedback – Issue	Stakeholder	AER Response
<p>We recommend the spend target follows the liability and it's up to the transferor and transferee to ensure any spend completed before the transaction is entered or re-entered into OneStop under the new BA code.</p>		<p>As per section 5 of <i>Directive 088</i>, requirement 11, closure spend reporting must be updated in OneStop prior to submitting the transfer application.</p> <p>Please also refer to section 4 of <i>Manual 023</i>. Once the transfer has been completed, the previous licensee will not be able to submit and receive credit toward their closure spend target for the assets transferred.</p>
<p>The AER can demand security deposits of the vendor and purchaser resulting from the sale of the assets to address concerns about licensees having a disproportionate amount of reclamation exempt and reclamation certified wells post sale. This represents an incursion in the private financial and commercial arrangements of vendor and purchaser in a sale agreement.</p>		<p>Section 1.100 of the <i>OGCR</i> has always provided the AER broad authority to require security deposits across the energy development life cycle to offset the costs of suspending, abandoning, remediating, reclaiming, or providing care and custody for a well, facility, well site, or facility site or at any time where the regulator considers it appropriate to do so to offset the estimated costs of carrying out any other activities necessary to ensure the protection of the public and the environment.</p> <p>As outlined in the directive, agreements for the purchase and sale of AER-licensed wells, facilities, and pipelines do not result in a transfer of the associated licences until a licence transfer application is submitted to and approved by the AER.</p>
<p><i>Appendix 2 Transfer Application Declaration</i></p>		
<p>Should Appendix 2 be listed as Page 10 rather than Page 11. Re-number pages if required.</p>	<p>Ovinitiv Canada ULC CNRL</p>	<p>Errors related to page numbers have been updated.</p>
<p>Holds valid minerals for all licenced “producing” wells. Remove “producing” and replace with “not abandoned” since requirement to hold non-abandoned wells is important.</p>	<p>Obsidian Energy Ltd.</p>	<p>“Producing” wells was retained and “inactive wells” was added to address this item.</p>
<p>Has the right to produce, inject or dispose of fluids for all licenced “active” wells. Remove “active” and replace with “not abandoned” since requirement to hold non-abandoned wells is important.</p>		<p>“Active wells” was retained, and “inactive wells” was added to address this item.</p>

Stakeholder Feedback – Issue	Stakeholder	AER Response
We recommend the AER change “will ensure that...are met” to “will ensure that...will be met.”		The original wording was retained.
How far back are Z662 records being required? Is this practicable?		As per AER’s Bulletin 2015-34 : “Effective April 1, 2016, the Alberta Energy Regulator (AER) is amending its pipeline licence transfer application process to require written confirmation that records required by <i>CSA Z662: Oil and Gas Pipeline Systems</i> and Part 4 of the <i>Pipeline Rules</i> have been maintained by the seller (transferor) of the pipeline licence and have been transferred to the purchaser (transferee) of the licence as of the effective date of the licence transfer.”
This section fails to address situations where the licensee does not have surface leases or minerals. It should be possible to deal with oddities and presently the AER has no way for industry to deal with this.		<p>As outlined in appendix 1 of the directive, the transfer application declaration does explicitly identify when surface access rights and mineral rights are required.</p> <p>For surface access – the declaration is requiring you have valid surface access rights, which can be satisfied through multiple options including but not limited to a surface lease agreement or own the land.</p> <p>For mineral rights – the declaration is requiring the Transferee to have “valid mineral rights for all licenced producing and inactive wells included in this application.” This would mean for facilities and pipelines, mineral rights are not required.</p> <p>Transferees are expected to have the surface access and mineral rights to be satisfied before submitting a licence transfer.</p>
A “nonroutine” license transfer if you cannot agree with the declaration.		No option is available if licensees disagree with the declaration statements. Choosing "Disagree" will not allow licensees to proceed with submitting the application in DDS.

Stakeholder Feedback – Issue	Stakeholder	AER Response
6. Security Deposits		
<p>Could you provide additional detail regarding when security deposits will be required, specifically what triggers a security deposit and what amount of deposit may be required, including specifically as a result of a proposed transfer application.</p> <p>Previously, licensees had the ability to approximately calculate the amount of security to be required based on assets and liabilities. Since the AER does not provide a preliminary determination of expected security requirements, how can licensees calculate this with today’s LCA model?</p>	<p>Ovinitiv Canada ULC ATB Capital Markets CAPP Obsidian Energy Ltd. EPAC International Petroleum Corp.</p>	<p>Section 5 and 6 of the directive were updated to provide some additional clarification on when security could be required and how the security amount would be determined. Additionally, please refer to section 5 of <i>Manual 023</i> on how the licensee could calculate the potential security amount that could be required based on the unique factors specific to them, including as a result of a transfer application.</p>
<p>Could you provide clarity as to when a licensee may request to collect a refund of security? It would be reasonable to allow licensees to measure whether they would be successful in securing a refund or not.</p>		<p>Refer to <i>Directive 068</i> on the process to request a refund of a security deposit. A request for a refund of security collected under the directive will trigger a holistic assessment of the licensee as outlined in section 6 of <i>Directive 088</i>.</p>
<p>We recommend the AER allow licensees the ability to plan for security payments (timing to secure, budgeting/financial) and allows for the licensee to inform other parties of what type of security payments are accepted if required.</p>		<p>We appreciate the need for licensees to plan for security payments. Section 5 and 6 of the directive were updated to provide some additional clarification on when security could be required and how the security amount would be determined. Additionally, please refer to section 5 of <i>Manual 023</i> on how the licensee could calculate the potential security amount that could be required based on the unique factors specific to them and how long they will have to provide it.</p> <p>Forms of security that are acceptable to the AER are outlined in <i>Directive 068</i>. We continue to have discussions with the Government of Alberta on if additional forms of security can be considered and what these forms may be.</p>
<p>Security requirements in the context of licence transfers should be understood in advance of licence transfer application submission such that licensees can incorporate information into negotiations.</p>		<p>Additional details have been provided within section 6 of the directive and section 5 of <i>Manual 023</i>.</p>

Stakeholder Feedback – Issue	Stakeholder	AER Response
<p>Why do security deposit maximum calculations exclude a licensee’s total assets and simply considers their total liabilities? A holistic process should look at both sides of the equation, including asset value calculation.</p>		<p>When deciding whether to require security deposits and when determining the amount of security, the AER will consider the holistic licensee assessment. This includes the remaining lifespan of mineral resources and infrastructure, which considers the following:</p> <ul style="list-style-type: none"> • production decline rate • inactive well ratio • marginal well ratio • inactive facility ratio • crossover range (closure costs exceed asset potential) <p>Please refer to section 2.2 of the directive and section 2.1 of <i>Manual 023</i> for details.</p>
<p>7. Taxes and Debts</p>		
<p>We recommend the AER amend “management of debts” to “management of debts, including arrears in municipal taxes...” By explicitly referencing municipal taxes as part of a licensee’s obligation to manage their debts, it bolsters the language and provides for certainty for all when it comes to understanding what debts are to be managed.</p> <p>We recommend the AER include property tax payment history in the list of LCA factors.</p>	<p>Municipal District of Smoky River No. 130</p> <p>Farmers’ Advocate Office – Agriculture and Forestry</p> <p>Reeve Beaver County</p> <p>Beaver County</p>	<p>The reference to debts needs to remain broad to consider a variety of debts. Currently municipal tax data is not available in a consolidated form from municipalities, so these data can’t be considered as part of the specific LCA data set to provide business intelligence to the AER. We will directly contact licensees for this information.</p>

Stakeholder Feedback – Issue	Stakeholder	AER Response
<p>We recommend the AER include specific provisions or requirements to include arrears in respect of any debt to the Crown or of any taxes owing to a municipality on Private Lands as well – not just Public Land.</p> <p>We recommend the AER include explicit reference to the AER’s authority to request the municipal tax documents of the oil company.</p>	<p>Rural Municipalities of Alberta</p> <p>County of Barrhead</p>	<p>At this time, the AER may only consider unpaid municipal taxes and surface lease payments as part of the review for eligibility and transfers.</p> <p>We do not have express authority in the <i>Oil and Gas Conservation Act</i> to refuse an application as a result of arrears in respect of any debt to the Crown or of any taxes owing to a municipality as outlined under the <i>Public Lands Act</i> and <i>Public Lands Administration Regulation</i>. We have advised the Government of Alberta of this policy gap.</p> <p>We may consider unpaid debts to the AER and the Crown, and unpaid municipal taxes, as a factor within the holistic licensee assessment.</p> <p>When requested by the AER, companies must disclose the amount of any unpaid municipal taxes or surface lease payments. This information may be a factor that the AER considers when determining if they are eligible to hold a licence or for a transfer application.</p> <p>We are not involved with the collection of unpaid municipal taxes and do not have jurisdiction to implement terms and conditions on approvals or undertake compliance or enforcement actions related to unpaid municipal taxes. Municipalities continue to remain responsible for the collection and enforcement of their municipal taxes.</p>
<p>We recommend the AER amend “regulatory and liability obligations” to “...meet their regulatory and liability obligations, including but not limited to municipal taxation, throughout...”</p> <p>The reference to “regulatory and liability obligations” is too broad to have any effect. Those obligations contemplated under this directive must be defined for the language to be effective and understood by the licensees.</p>		<p>The reference to “regulatory and liability obligations” is specific to those regulatory and liability obligations that the AER regulates and can undertake compliance and enforcement on. Municipal taxes are not within AER jurisdiction.</p> <p>The AER may consider unpaid debts to the AER and the Crown, and unpaid municipal taxes is a factor within the holistic licensee assessment.</p>

Stakeholder Feedback – Issue	Stakeholder	AER Response
<p>The amount of outstanding municipal taxes must be a listed factor explicitly stated to be what the AER used to make a determination regarding the licence transfer.</p>		<p>As outlined in section 5 of the directive, a licence transfer application will trigger a holistic assessment of both the transferor and transferee.</p> <p>Factors that may be considered when making a transfer application decision are listed in section 6 of the directive, including the factors listed in section 4.5 of <i>Directive 067</i>, for determining if a licensee poses an unreasonable risk. Outstanding debts owed for municipal taxes is one of the factors that AER may consider for determining if a licensee poses an unreasonable risk.</p>
<p>8. Miscellaneous</p>		
<p>Well site reclamation rates across industry have been impaired by inefficient regulations. The AER should be held to account to modernize these regulations, and <i>Directive 011</i> cost estimates, by a specific date.</p>	<p>Obsidian Energy Ltd. Rural Municipalities of Alberta</p>	<p>Liability cost estimates are being improved in phases, which will include assessment of <i>Directive 011</i> and more information will be shared when available.</p>
<p>We recommend the AER consider changing the Orphan Levy to a model that hits new well licenses based on total vertical depth (TVD) rather than based on licensees’ current liability exposure. This will free up more industry funds to be directed towards asset retirement.</p>	<p>GeoGen LongRun Exploration Ovintiv Canada ULC Strathcona County</p>	<p>This is beyond the scope of <i>Directive 088</i> development. As part of the ongoing review of the implementation of the new <i>Liability Management Framework</i>, we will be assessing the current calculation to determine if changes are needed to align with the new framework. The basic abandonment cost of a well, including well depth, is included within <i>Directive 011</i> estimates that factor into existing OFL calculations for industry.</p>

Stakeholder Feedback – Issue	Stakeholder	AER Response
<p>With increased spend requirements and enforcement capability, is there a corresponding reduction in OWA dues planned?</p>		<p>The orphan fund levy invoice is based on a proportionate allocation of a licensee’s outstanding deemed liabilities against industry’s total outstanding deemed liabilities at a specified point in time. Therefore, if a licensee proportionately reduces their own liabilities as compared to the total industry liability, and the set levy amount remains unchanged, then it can be expected to see a reduction in the levy invoice. However, other variables will impact a licensee’s future invoice that may include changes to the overall OFL amount collected for that fiscal year. We will assess the current calculation to determine if changes to the calculation are needed to align with the new framework.</p>
<p>The purpose of this directive is to use holistic benchmarks to determine whether a company is in good health and able to meet its liabilities throughout its lifespan, however the directive provides limited detail on how benchmarks will be used to enforce compliance and ensure “bad actors” remain accountable for their liabilities and obligations.</p>		<p>As outlined in <i>Directive 088</i>, the holistic licensee assessment will reoccur at various times as the licensee moves through the energy development life cycle. This assessment will help AER proactively monitor licensees’ ability to meet their regulatory and liability obligations throughout the energy development life cycle.</p> <p>Please refer to AER’s “Compliance Assurance Program,” the Integrated Compliance Assurance Framework, and <i>Manual 013: Compliance and Enforcement Tools</i> for information on how the AER ensures compliance with the requirements under its mandate.</p>
<p>We recommend the AER consider application of geothermal technologies that repurpose existing oil and gas wells. Policy that enables the lifecycle of a well to be extended beyond oil and gas can enable the energy transition at the asset level. This would not only reduce liabilities, but also lowering emissions and leave a green energy legacy in regions built around fossil fuel development.</p>		<p>Geothermal development will be managed through a separate directive, and the concepts and principles from <i>Directive 088</i> have been incorporated where appropriate.</p> <p>Please refer to Bulletin 2021-31 and the geothermal directive for the requirements and management of liability related to geothermal development</p>

Stakeholder Feedback – Issue	Stakeholder	AER Response
<p>Look broader into finding incentives that encourage closure. Monies spent on abandonment and reclamation could be utilized as credits towards mineral land sales, tax savings, and royalties. Channeling dollars through closure activates will go a long way to encourage reinvestment into Alberta.</p>		<p>Recommendations being provided are outside the scope of the authority of the AER.</p> <p>Where liability is not being appropriately addressed, we will use the new regulatory tools provided through the <i>GoA Liability Management Framework</i> policy and existing regulatory tools to offset the risk of liability which includes setting annual mandatory closure spending targets for licensees, collection of security, and the appropriate escalation of enforcement including orders when deemed necessary.</p> <p>We provided additional details on incentives for an increased spend through the voluntary spend targets in section 3 of <i>Manual 023</i>. The types of incentives will continue to evolve as the inventory reduction program is developed.</p>
<p>Consider rewording to: “In this directive, closure means the phase of the energy resource development life cycle that involves the permanent end of operations, and includes the abandonment and reclamation of wells, well sites, facilities, facility sites, and pipelines.” Rewording groups wells and facilities together for ease of reference.</p>		<p><i>Directive 088</i> was updated considering this feedback.</p>
<p>AER needs to fully define approval holder. Are they referencing EPEA, Water Act, DFO etc.? Could be cross jurisdictional issues here. Specify which approvals fall under the AER’s umbrella.</p>		<p>As per section 1 of <i>Directive 088</i>: “This directive applies to energy infrastructure and sites regulated under the <i>Oil and Gas Conservation Act</i> and <i>Pipeline Act</i>.” So “approval holder” under this directive includes anyone holding a licence or other approval under these acts.</p>
<p>Municipalities rely heavily on the AER to be a caretaker of any nuisance and environmental incidents that can happen during operations and at the end of operations including abandonment. Include municipal or local body clearance or consultation as part of clearance to companies and should be a factor in life cycle assessment.</p>		<p>The AER regulates the licensee based on our authorities and jurisdiction. If a municipality has concerns during operations or closure of a site related to public safety or environmental issues, it can be reported in through our Energy and Environmental 24-hour Response Line at 1-800-222-6514.</p>